

## **CHAPTER 60-02.1 GRAIN BUYERS**

### **60-02.1-01. Definitions.**

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

1. "Commissioner" means the agriculture commissioner.
2. "Credit-sale contract" means a written contract for the sale of grain pursuant to 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 subsection 7 of section 60-02.1-14. 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 such part of the contract is a credit-sale contract.
3. "Facility" means a structure in which grain purchased by a grain buyer is received or held.
4. "Facility-based grain buyer" means a grain buyer who operates a facility licensed under the United States Warehouse Act [7 U.S.C. 241-273] where grain is received.
5. "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" does not include grain or grass seeds owned by or in the possession of the grain buyer 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.
6. "Grain buyer" means any person, other than a public warehouseman as defined in chapter 60-02, who purchases or otherwise merchandises grain for compensation. The term does not include:
  - a. A producer of grain who purchases grain from other producers to complete a carload or truckload in which the greater portion of the load is grain grown by the producer or on-farm feedlot operations in which at least fifty percent of the livestock is owned by the owner of the farm.
  - b. A person who is permitted to sell seed under chapter 4.1-53, if that person buys grain only for processing and subsequent resale as seed.
  - c. A person who is an authorized dealer or agent of a seed company holding a permit in accordance with section 4.1-53-38.
7. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.
8. "Receipts" means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract.
9. "Roving grain buyer" means a grain buyer who does not operate a facility where grain is received.

### **60-02.1-02. Commissioner - Powers and duties.**

The powers and duties of the commissioner are enumerated in this chapter.

### **60-02.1-03. Duties and powers of the commissioner.**

The commissioner has the duty and power to:

1. Exercise general supervision of grain buyers of this state.
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.
3. Examine and inspect, during ordinary business hours, any books, documents, and records.
4. Make all proper rules for carrying out and enforcing any law in this state regarding grain buyers.

### **60-02.1-04. Federal licensed inspector.**

The commissioner may employ a federal licensed inspector whose duties are enumerated in this chapter and may employ other employees as necessary to carry out the provisions of this chapter.

**60-02.1-05. Grain marketing - Procedure for resolving disputes.**

1. If any dispute or disagreement arises between the person receiving and the person delivering grain 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 interested parties. 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 transferred. 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. The person requesting the inspection service shall pay for the inspection. 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. 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. However, all other quality factors may also be considered in determining the price of the grain. An appeal of the determination made by a third party other than a federal licensed inspector may be made to a federal licensed inspector. 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. A person not abiding by a final determination is liable for damage resulting from not abiding by the determination.
2. If any 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 in the state 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 interested parties. 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 transferred. If the grain is damp or otherwise out of condition, the sample must be placed in an airtight container. 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. The person requesting the inspection service shall pay for the inspection. The determination made by the inspector, or the third party, must be used in the settlement of the dispute.

**60-02.1-06. Notice of procedures for resolving disputes over grain.**

A facility-based grain buyer shall post a notice containing the procedures specified in section 60-02.1-05 for resolving disputes. The commissioner shall prescribe the form of the notice and shall provide a copy of the notice to each facility-based grain buyer. The facility-based grain buyer shall post the notice in the grain inspection room of the facility. 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.

#### **60-02.1-06.1. Release of records - Confidentiality.**

1. As a condition of licensure under section 60-02.1-07, 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 grain buyer license; or
  - b. An investigation after issuance or renewal of a grain buyer 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 grain buyer license; or
  - b. An investigation after issuance or renewal of a grain buyer license.
3. Any 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.

#### **60-02.1-07. Grain buyer license - How obtained - Fee - Financial statement.**

Grain buyers shall obtain an annual license from the commissioner. Except as provided in this section, each license expires on July thirty-first of each year. If a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. A facility-based grain buyer shall obtain a license for each receiving location operated in the state. If a grain buyer operates two or more facilities in the same city or siding, in conjunction with each other and with the same working force, and where but one set of books and records is kept for all such facilities, and scale tickets and checks of but one series are issued for the grain, purchased, only one license is required for the operation of all such facilities. The annual license fee for a facility-based grain buyer is four hundred dollars and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee per receiving location.

If required to obtain United States department of agriculture approval of the commissioner's grain buyer inspection program, the commissioner may require grain buyers submit a current financial statement prepared in accordance with generally accepted accounting principles. A financial statement furnished under this section is a confidential trade secret and is not a public record.

#### **60-02.1-07.1. Roving grain buyer license - How obtained - Fee.**

Roving grain buyers that purchase, solicit, merchandise, or take possession of grain in this state shall obtain an annual license from the commissioner. Except as provided in this section, each license expires on July thirty-first of each year. If a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. The annual license fee for a roving grain buyer is three hundred dollars, and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee.

#### **60-02.1-08. Bond filed by grain buyer.**

Before any license is effective for any grain buyer under this chapter, the applicant for the license shall file a bond with the commissioner which must:

1. Be in a sum not less than ten thousand dollars.
2. 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.
3. Run to the state of North Dakota for the benefit of all persons selling grain to or through the grain buyer.
4. Be conditioned:

- a. For the faithful performance of the licensee's duties as a grain buyer.
- b. For compliance with the provisions of law and the rules of the commissioner relating to the purchase of grain by such grain buyer.
5. For facility-based grain buyers, specify the location of each facility intended to be covered by the bond.
6. Be for the specific purpose of:
  - a. Protecting the sellers of grain.
  - b. Covering the costs incurred by the commissioner in the administration of the licensee's insolvency.
7. Not accrue to the benefit of any person entering a credit-sale contract with a grain buyer.
8. 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 any annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

The commissioner may require an increase in the amount of any bond as the commissioner deems necessary to accomplish the purposes of this section. 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 when, in the commissioner's judgment, cash, a negotiable instrument, or a personal surety bond properly will protect the holders of outstanding receipts. Only one bond may be required for any series of facilities operated by a facility-based grain buyer, and the bond must be construed to cover those facilities as a whole and not a specific amount for each.

**60-02.1-09. Bond cancellation - Release of surety.**

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. Unless the grain buyer files a new bond at least thirty days before liability ceases, the commissioner, without hearing, shall immediately suspend the grain buyer's license and the suspension may not be removed until a new bond has been filed and approved by the commissioner.

**60-02.1-10. Grain buyer license to be posted or carried - Penalty.**

The license obtained by a facility-based grain buyer shall be posted in a conspicuous place in the buyer's facility. A roving grain buyer shall have the buyer's license in possession at all times. A grain buyer who transacts business without first procuring a license and giving a bond is guilty of a class B misdemeanor.

**60-02.1-11. Revocation and suspension.**

The commissioner may suspend or revoke the license of any grain buyer for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a grain buyer must automatically be suspended for failure at any time to have or to maintain either a bond or insurance policy in the amount and type required. During a suspension of a license a facility-based grain buyer, upon the commissioner's approval, may operate its facility and purchase or redeliver grain previously received, but may not receive additional grain for purchase, shipping, or processing. Grain may be sold only with the prior approval of the commissioner.

**60-02.1-12. Scale ticket - Contents.**

Every grain buyer, upon receiving grain, shall issue a uniform scale ticket or comparable receipt for each load of grain received. Receipts must be numbered consecutively and one copy

of each receipt must be retained and remain as a permanent record. The original receipt must be delivered to the person from whom the grain is received, upon receipt of each load of grain.

**60-02.1-13. Penalty.**

Any person who violates any provision of this chapter or any rule adopted pursuant to this chapter, if punishment is not specifically provided for, is guilty of an infraction.

**60-02.1-14. Credit-sale contracts.**

A grain buyer 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 at the time of printing the contract. The grain buyer 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 all of the following:

1. The seller's name and address.
2. The conditions of delivery.
3. The amount and kind of grain delivered.
4. The price per unit or basis of value.
5. The date payment is to be made.
6. The duration of the credit-sale contract.
7. Notice in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section 60-02.1-08. However, if the grain buyer has obtained bond coverage in addition to that required by section 60-02.1-08 and the coverage extends to the benefit of credit-sale contracts, the grain buyer may state that fact in the credit-sale contract along with the extent of such coverage.

The contract must be signed by both parties and executed in duplicate. One copy must be retained by the grain buyer and one copy must be delivered to the seller. Upon revocation, termination, or cancellation of a grain buyer'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 facility is transferred under this chapter, credit-sale contracts may be assigned to another licensed facility-based grain buyer or public warehouseman.

**60-02.1-15. Discrimination by grain buyer prohibited.**

A grain buyer may not discriminate:

1. In the buying, selling, receiving, and handling of grain or in the charges made or the service rendered to owners of purchased grain;
2. In the receiving of grain offered for sale, but this chapter may not be construed to require a processor to receive or purchase any lot or kinds of grain;
3. In regard to the persons offering such grain for sale; or
4. Between points or stations except as the marketing factors or transportation costs or grain quality premiums may warrant.

A grain buyer is not required to receive any grain that is heating or otherwise out of condition. A facility-based grain buyer shall post grain prices paid in a conspicuous place in the office or driveway of the buyer's place of business.

**60-02.1-16. Records required to be kept by grain buyers.**

Each grain buyer shall keep such accounts, records, and memoranda concerning the buyer's dealing as such grain buyer as may be required by the commissioner and shall make such reports of purchases of grain as may be required by the rules adopted by the commissioner. The commissioner at all times must have access to such accounts, records, and memoranda.

**60-02.1-17. Reports to be made by grain buyers - Penalty for failure.**

Each licensed and bonded grain buyer shall:

1. 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 this information available for use by other governmental entities, but the information may not be released by those entities in a manner that jeopardizes the confidentiality of individual licensees.
2. File the report with the commissioner not later than the last day of the following month. Failure to file this report promptly will be considered cause for revoking the grain buyer license after due notice and hearing.
3. Keep a separate account of the grain business, if the grain buyer is engaged in handling or selling any other commodity, and under no circumstances may the grain account and other accounts be mixed.

The commissioner may refuse to renew a license to any grain buyer who fails to make a required report.

**60-02.1-18. Standard weights to be used - Exception.**

A person purchasing grain may not use any measure for such grain other than the standard bushel, and a number of pounds may not 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 that 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.

**60-02.1-19. Federal grades to control - Grades to be posted.**

All grain buyers shall purchase grain, except dry edible beans, in accordance with the official grades established from time to time by the secretary of agriculture of the United States, except as otherwise provided in applicable rules and regulations adopted by federal officials pursuant to law. A facility-based grain buyer shall post in a conspicuous place in the buyer's facility the official grades so established and also any change that may be made from time to time. A grain buyer of dry edible beans shall purchase and deliver beans in accordance with the buyer's policy, which must be filed with the commissioner and, if applicable, posted in a conspicuous place in the buyer's facility. Other grading standards may be used if mutually agreed to in writing by the grain buyer and the owner of the grain. However, the owner may demand the use of federal grading standards. After hearing, the commissioner may prohibit the use of nonfederal grades.

**60-02.1-20. Grading of grain - Penalty.**

All grain buyers before testing for grade any grain handled by them shall remove therefrom and make due allowance for any dockage of such grain made by reason of the presence of straw, weed seeds, dirt, or any other foreign matter. Any grain buyer within this state who violates this provision is guilty of a class B misdemeanor.

**60-02.1-21. Grain to be kept insured for benefit of owner by grain buyer.**

A license may not be issued to a facility-based grain buyer unless all company-owned and unconverted scale ticket grain is kept fully insured at the expense of the grain buyer 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 such other risks of direct physical loss as provided by the insurer in a policy approved by the insurance commissioner. An insurance policy may not be transferred or assigned to any person for any purpose.

**60-02.1-22. Insurance - Cancellation - Suspension of license.**

An insurance company shall give at least sixty days' notice to the commissioner and the insured by registered mail return receipt requested before cancellation of an insurance policy required in section 60-02.1-21. Unless the grain buyer files proof of new or renewed insurance at least thirty days before the existing policy ceases, the commissioner, without hearing, shall immediately suspend the grain buyer's license and the suspension may not be removed until a new policy has been filed and approved by the commissioner.

**60-02.1-23. Destruction of grain - First lien by holder of outstanding receipt.**

The holder of an unconverted scale ticket or other comparable receipt issued by any facility-based grain buyer shall have a first lien, to the extent of the value of the grain at the time of loss at the place where held, on all insurance of the grain buyer for any loss sustained by the receipt holder, on account of the loss of such grain by fire, tornado, or any other cause covered by such insurance policy.

**60-02.1-24. Destruction of facility - Duty to notify commission.**

Repealed by S.L. 2005, ch. 588, § 4.

**60-02.1-25. Facility not to be closed without permission from commission - Penalty.**

Repealed by S.L. 2017, ch. 417, § 19.

**60-02.1-26. Transfer of facility - Redemption of receipts.**

If a facility-based grain buyer desires to transfer a facility, either by sale or lease to any other individual, firm, or corporation, the grain buyer shall:

1. Notify the commissioner first of its intention to transfer the facility, giving the name and address of the proposed lessee or purchaser.
2. Provide related information as may be required by the commissioner.
3. Surrender to the commissioner the grain buyer's license for cancellation and at that 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, whereupon, it first being duly satisfied that all the outstanding receipts have been redeemed, or that the redemption thereof has been provided for, the commissioner may permit a new license to become effective for the lessee or purchaser.

No sale, lease, or transfer of any facility will be recognized by the commissioner except when made in accordance with the provisions of this section.

**60-02.1-27. Going out of business - Redemption of receipts.**

If a facility-based grain buyer ceases business through closure, the destruction of a facility by fire or other cause, or through insolvency, the grain buyer shall redeem all outstanding receipts at the price prevailing on the date the facility was closed, destroyed, or became insolvent. The holder of the receipts, upon due notice, shall accept this price and surrender the receipts. Any facility-based grain buyer who voluntarily ceases business or fails to renew an existing grain buyer license or whose grain buyer license is revoked shall notify the commissioner and all receipt holders of such closing and redeem all such receipts at the price prevailing on the date the business closed or at the option of the owner of the receipt redeliver the kind, grade, and quantity of grain called for by the receipt. 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.

**60-02.1-28. Insolvency of grain buyer.**

A licensee is insolvent when the licensee refuses, neglects, or is unable upon proper written demand, including electronic communication, to make payment for grain purchased or marketed by the licensee or is unable to make redelivery upon proper written demand, including electronic communication. The licensee may not assess receiving or redelivery fees on grain that is

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.

**60-02.1-29. Appointment of commissioner.**

Upon the insolvency of any roving grain buyer, the commissioner shall apply to the district court of Burleigh County for authority to take all action necessary to act as trustee of the trust fund described in section 60-02.1-30. If the insolvency involves a facility-based grain buyer, application must be to the district court of a county in which the licensee operates a licensed facility. Upon notice to the licensee as the court prescribes, but not exceeding twenty days, or upon waiver of notice in writing by the licensee, the court shall hear and determine the application in a summary manner. If the court determines that the licensee is insolvent within the meaning of this chapter and that it would be in the best interests of the receiptholders that the commissioner secure and execute the trust, the court shall issue an order granting the application, without bond, and the commissioner shall proceed to exercise the commissioner's authority without further direction from the court.

Upon the filing of the commissioner's application, the court may issue ex parte a temporary order to preserve or protect the assets of the trust fund until the court issues its order granting or denying the application.

**60-02.1-30. Trust fund established.**

Upon the insolvency of any licensee, a trust fund must be established for the benefit of noncredit-sale receiptholders and to pay the costs incurred by the commissioner in the administration of the insolvency. The trust fund must consist of the following:

1. Nonwarehouse receipt grain of the insolvent licensee held in storage or the proceeds obtained from the conversion of such grain.
2. 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 must be remitted to the commissioner and included in the trust fund.
3. The proceeds of insurance policies on destroyed grain.
4. The claims for relief, and proceeds from the claims for relief, for damages upon bond given by the licensee to ensure faithful performance of the duties of a licensee.
5. The claim for relief, and proceeds from the claim for relief, for the conversion of any grain stored in the warehouse.
6. Unencumbered accounts receivable for grain sold prior to the filing of the claim that precipitated an insolvency.
7. Unencumbered equity in grain hedging accounts.
8. Unencumbered grain product assets.

**60-02.1-31. Joinder of surety - Deposit of proceeds.**

Each surety on the insolvent licensee's bonds must be joined as a party to the insolvency proceeding. If it is in the best interests of the receiptholders, the court may order a surety to deposit some or all of the penal sum of the bond into the trustee's trust account pending determination of the surety's liability under the bond.

**60-02.1-32. Notice to receiptholders and credit-sale contract claimants.**

Upon the commissioner's appointment, the commissioner may take possession of relevant books and records of the licensee. If the insolvency involves a roving grain buyer, the commissioner shall publish a notice of the commissioner's appointment once each week for two consecutive weeks in all daily newspapers in the state and may notify, by ordinary mail, the holders of record of outstanding receipts and those who are potential credit-sale contract claimants, disclosed by the licensee's records. If the insolvency involves a facility-based grain buyer, the notice must be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located. The notice must require outstanding receiptholders and credit-sale contract claimants to file their claims with the commissioner along with the receipts, contracts, or other evidence of the claims required by the commissioner. If an



outstanding receipt holder 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 set by the commissioner, the commissioner is relieved of further duty in the administration of the insolvency on behalf of the receipt holder or credit-sale contract claimant and the receipt holder may be barred from participation in the trust fund, and the credit-sale contract claimant may be barred from payment for any amount due. Outstanding receipt holders and credit-sale contract claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

**60-02.1-33. Remedy of receipt holders.**

A receipt holder does not have a separate claim for relief upon any insolvent licensee's bond, nor for insurance, nor against any person converting grain, nor against any other receipt holder, except through the trustee, unless, upon demand of five or more receipt holders, the commissioner fails or refuses to apply for the commissioner's own appointment or unless the district court denies the application. This chapter does not prohibit any receipt holder, either individually or in conjunction with other receipt holders, from pursuing concurrently any other remedy against the person or property of the licensee.

**60-02.1-34. Commissioner to marshal trust assets.**

Upon the commissioner's appointment, the commissioner shall marshal all of the trust fund assets. The commissioner may maintain suits in the name of the state of North Dakota for the benefit of all receipt holders against the licensee's bonds, insurers of grain, any person who may have converted any grain, and any person who may have received preferential treatment by being paid by the insolvent licensee after the first default.

**60-02.1-35. Power of commissioner to prosecute or compromise claims.**

The commissioner may:

1. Prosecute any action provided in sections 60-02.1-28 through 60-02.1-38 in any court in this state or in any other state.
2. Appeal from any adverse judgment to the courts of last resort.
3. Settle and compromise any action if it will be in the best interests of the receipt holders.
4. Settle and compromise any action if it is in the best interests of the credit-sale contract claimants.
5. Upon payment of the amount of any settlement or of the full amount of any bond, exonerate the person so paying from further liability growing out of the action.

**60-02.1-36. Money received by trustee - Deposited in Bank of North Dakota.**

All funds received by the commissioner as trustee must be deposited in the Bank of North Dakota.

**60-02.1-37. Report of trustee to court - Approval - Distribution.**

1. Upon the receipt and evaluation of claims, the commissioner shall file with the court a report showing the amount and validity of each claim after recognizing:
  - a. Relevant liens or pledges.
  - b. Relevant assignments.
  - c. Relevant deductions due to advances or offsets accrued in favor of the licensee.
  - d. In case of relevant cash claims or checks, the amount of the claim.
  - e. In case of a relevant credit-sale contract or noncredit-sale contract, the amount remaining to be paid based on the terms of the contract.
2. The report must also contain the proposed reimbursement to the commissioner for the expenses of administering the insolvency, the proposed distribution of the trust fund assets to receipt holders, 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 receipt holder claims in full, the report should list the funds as prorated.

3. The court 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. Any aggrieved person having an objection to the commissioner's report shall file the objection with the court 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 court 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.

**60-02.1-38. Filing fees and court costs - Expenses.**

The commissioner may not be required to pay any filing fee or other court costs or disbursements. The attorney general may appoint outside legal counsel to assist the commissioner in the prosecution of the action and the cost of employing outside counsel must be paid from the trust fund and the credit-sale contract indemnity fund as appropriate. All other necessary expenses incurred by the commissioner in carrying out the provisions of this chapter, including adequate insurance to protect the commissioner, the commissioner's employees, and others engaged in carrying out the provisions of sections 60-02.1-28 through 60-02.1-38, must be reimbursed to the commissioner from the trust fund and credit-sale contract indemnity funds as appropriate.

**60-02.1-39. Cease and desist.**

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

**60-02.1-40. Agricultural contracts - Mediation and arbitration.**

If a written contract for the sale of grain does not contain provisions to settle disagreements concerning factors not governed by section 60-02.1-05, the parties shall attempt to resolve the disagreements through mediation or arbitration.

**60-02.1-41. 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 this chapter. 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.