

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 8 - GRAIN WAREHOUSE RULES AND REGULATIONS

003 GRAIN DEALERS:

003.01 Licensing Requirements: All grain dealers doing business in Nebraska are required to procure and maintain a license from the Commission.

003.02 License Application Requirements:

003.02A Form: All applications for a grain dealer license shall be submitted on the form prescribed by the Commission, incorporated herein at the end of the chapter and labeled as Attachment 14 (new form).

003.02B Vehicle Registration: Each grain dealer or applicant shall register with the Commission each motor vehicle to be used by the licensee for transporting grain.

003.02C Determining Volume of Business for New Applicant: A new applicant may obtain a license on the basis of an estimate of the volume of business the applicant expects to do during the term of the license for which the application is made. When a first year applicant obtains a license on the basis of an estimate of its purchases for the year, and the licensee, in fact, buys an amount of grain equal to or more than the initial estimate, the licensee shall revise the estimate and immediately furnish sufficient additional security to cover the additional projected purchases.

003.02D Background Check: All applications for a grain dealer license shall include the primary party. Such primary party shall be subject to fingerprinting and a check of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nebraska State Patrol: (1) If the applicant is not an individual, the chief executive officer, president, or general manager; or (2) if the applicant is an individual, the individual. If the primary party has been subject to a check of his or her criminal history record information pursuant to this section on a prior application, he or she is not subject to another such check upon a subsequent application. If a primary party has been subject to a check of his or her criminal history record information pursuant to another law, the Commission may waive such requirement. A primary party shall furnish to the Nebraska State Patrol a full set of fingerprints to enable a criminal background investigation to be conducted. The primary party (1) may be fingerprinted

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at a Nebraska State Patrol office, or (2) may request a fingerprint card from the Commission. If a primary party is fingerprinted at a county sheriff's office or a local police department, the primary party shall send the completed fingerprint card to the Nebraska State Patrol, c/o/ Criminal Records & Identification, P.O. Box 94907, Lincoln, Nebraska, 68509-4907. The primary party shall request that the Nebraska State Patrol submit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The primary party shall pay the actual cost, if any, of the fingerprinting and check of his or her criminal history record information. The primary party shall authorize release of the national criminal history record check to the Commission. The criminal history record information check shall be completed within ninety days after the date the application for a license is received in the Commission's office, and if not, the application shall be returned to the applicant. The Commission shall deny a dealer license to any applicant whose primary party has been convicted of a felony financial crime.

003.02E Fees:

003.02E1 Application Fee: All applications for license will include a fee as set by Neb. Rev. Stat. Section 75-903 (1997). Any application fees paid will be non-refundable should the applicant withdraw the application or be unable to meet all licensing requirements within one year from the date of application.

003.02E2 Registration Fee: A registration fee, as set forth in Neb. Rev. Stat. Section 75-903 (Reissue of 1996) will be paid for each vehicle registered as a part of the grain dealer application.

003.02F Commercial License Plates: Each vehicle used by a grain dealer, licensed under the provisions of Section 003, shall be equipped with a commercial license plate as registered with the Department of Motor Vehicles, except that a grain dealer who resides in another state shall license the vehicles according to the laws of the grain dealer's state of residence. The number of the commercial license shall be submitted to the Commission on the application for license.

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003.02G Term of License: A grain dealer license shall expire at midnight on the following March 31, June 30, September 30, or December 31.

003.03 Financial Requirements: Each grain dealer or applicant shall submit a review or audit level fiscal year end financial statement prepared by an independent certified public accountant or independent public accountant. The independent public accountant shall hold a permit granted by the Nebraska State Board of Public Accountancy. If licensing as an individual, the financial statement shall be prepared in accordance with Other Comprehensive Basis of Accountancy for a personal financial statement, using historical cost and accrual basis of accounting. If licensing as a partnership, corporation, or limited liability company, the financial statement must be prepared in accordance with accounting principles generally accepted in the United States. If an applicant for a grain dealer license is a wholly owned subsidiary of a parent company and such a financial statement is not prepared for the subsidiary, the parent company shall submit its reviewed or audited fiscal year-end financial statement and shall execute an unconditional guarantee agreement as prescribed by the commission. The financial statement shall include, but is not limited to, the following:

003.03A Statement of income (Profit and Loss)

003.03B Balance sheet

003.03C Statement of cash flows

003.03D Statement of proprietor's capital or retained earnings.

003.03E The volume and dollar value of grain dealer purchases the licensee made in Nebraska during the fiscal year. If the volume and dollar value of the grain purchases is not reported, the grain dealer shall file the maximum grain dealer security as required by the Grain Dealer Act.

003.03F This section applies to all licensees who hold both a warehouse and dealer license. The volume and dollar value of transactions in which direct delivery grain is exchanged for a post-direct delivery storage position and the post-direct delivery storage position is not created by an in-store transfer on the same date as the delivery of the direct delivery grain.

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003.03F1 The value shall be calculated as set forth in Section 003.04A1.

003.03F2 The statement shall specifically show:

003.03F2a The total volume and dollar value of the direct delivery grain exchanged for a post-direct delivery storage position,

003.03F2b The total volume and dollar value of the direct delivery grain exchanged for a post-direct delivery storage position created by an in-store transfer on the same date as the delivery of the direct delivery grain, and

003.03F2c The net volume and dollar value of the direct delivery grain exchanged for a post-direct delivery storage position that will be used for calculation of the grain dealer security as set forth in Section 3.04.

003.03G The accountant's certification, assurances, opinions, and comments and the notes with respect to the financial statement.

003.03H Net Worth: Each grain dealer or applicant shall demonstrate and maintain a minimum allowable net worth of \$10,000 to obtain and maintain a license.

003.03I Working Capital: Each grain dealer or applicant shall demonstrate and maintain a working capital ratio (current liabilities to allowable current assets) of not less than 1 to 1. Applicants or licensees who fail to meet this requirement shall provide additional data sufficient to satisfy the Commission that additional operating capital can be obtained to meet the requirement.

003.03J Filing: Each grain dealer shall file a financial statement within ninety (90) calendar days following the close of the licensee's fiscal year, except that, the Commission may grant, upon request and reasonable cause shown, one filing extension of thirty (30) calendar days.

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003.04 Grain Dealer Security Requirements: A grain dealer applicant shall file security which may be a bond issued by a corporate surety company and payable to the Commission, an irrevocable letter of credit, or a certificate of deposit, subject to approval of the Commission for the benefit of persons doing business with the grain dealer. The security shall be furnished on the condition that the licensee will pay for any grain purchased upon demand, not later than thirty (30) days after taking possession of the grain purchased. The liability of the surety shall cover purchases and sales made or arranged by the grain dealer during the time the bond is in force.

003.04A Amount: The security shall be in the amount of the greater of \$35,000 or seven percent (7%) of grain purchases and exchanges by the applicant, in the preceding license year or as reported in the fiscal year end financial statement, not to exceed \$300,000. For purposes of calculating the security, grain purchases and exchanges do not include in-store purchases by a warehouse, or grain that passes title at the time of delivery.

003.04A1 Amounts used in the calculation of the security shall include the net volume and dollar value of the direct delivery grain exchanged for a post-direct delivery storage position valued on the date delivery is made.

003.04A2 Amounts used in the calculation of the security shall not include any transactions in which direct delivery grain is exchanged for a post-direct delivery storage position and the post-direct delivery storage position is created by an in-store transfer on the same date as the delivery of the direct delivery grain.

003.04B Types of Security:

003.04B1 Surety Bond: The surety bond shall be issued by a company authorized to conduct business in Nebraska, on a form prescribed by the Commission, incorporated herein at the end of the chapter and labeled as Attachment 15. Changes to a bond must be on a form prescribed by the Commission, incorporated herein at the end of the chapter and labeled as Attachment 16.

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003.04B2 Certificate of Deposit: A grain dealer may deliver certificates of deposit to the Commission in an amount equal to the security required. Upon the deposit of a qualified certificate of deposit with the Commission, the certificate of deposit will be transferred to a financial institution for safe keeping. Any certificate of deposit furnished in lieu of a surety bond shall not be part of the assets of the grain dealer and will have the same legal significance as a surety bond. Each certificate of deposit shall be:

- A) Issued by a financial institution which is insured by the Federal Deposit Insurance Corporation (FDIC);
- B) In an amount not to exceed the amount for which the account may be insured at the issuing institution; and,
- C) Payable to the Nebraska Public Service Commission with interest to be paid to the beneficiary.

003.04B3 Irrevocable Letter of Credit: A grain dealer may deliver an irrevocable letter of credit or letters of credit to the Commission in an amount equal to or greater than the security required. Each irrevocable letter of credit shall be:

- A) Issued by a financial institution which is insured by the Federal Deposit Insurance Corporation (FDIC) or issued by farm credit institutions chartered by the Farm Credit Administration;
- B) Issued for a period at least three (3) months longer than the expiration date of the underlying license;
- C) Payable to the Nebraska Public Service Commission up to the security liability of the grain dealer; and,

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- D) Issued on a form prescribed by the Commission, incorporated herein at the end of the chapter and labeled as Attachment 17.

003.04C Combination of Security Types: If two or more allowable security types are filed with the Commission to satisfy the security requirement, claims against the security will be paid using a pro rata share of each security filing, up to the limit of liability of each filing.

003.04D Release or Reduction of Security:

003.04D1 Release: No security shall be released until ninety (90) days have elapsed from the cancellation, revocation, or expiration of the license, unless the grain dealer files another type or types of security as replacement.

003.04D2 Reduction: The Commission may, at its discretion, reduce a security filing as long as the security filing is not reduced below the requirements stated in Subsection 003.04A.

003.04E The grain dealer security shall provide security for direct delivery grain until any post-direct delivery storage position is created for a period not to exceed thirty (30) days after the date of the last shipment of the contract.

003.04F No seller shall have recourse to the grain dealer's security unless the seller:

003.04F1 Demands payment from the grain dealer within thirty (30) days after the date of the last shipment of any contract;

003.04F2 Negotiates any negotiable instrument issued as payment for grain by the grain dealer within thirty (30) days after its issuance; and

003.04F3 Notifies the Commission within thirty (30) days after any apparent loss to be covered under the terms of the grain dealer's security.

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003.05 Issuance: Upon review of all required documents, the Commission shall issue the following:

003.05A Grain dealer license.

003.05B Grain dealer truck registration and plate for each vehicle registered with the Commission as a part of the license application.

003.05B1 Plate Requirement: Each grain dealer plate shall be affixed on the front of the vehicle to which it is assigned, in close proximity to the commercial plate.

003.05B2 Registration Requirement: The registration for each truck shall be carried in the cab of the vehicle to which it is assigned.

003.06 Records Requirements: Each grain dealer shall maintain, at its place of business, accounts of each transaction conducted under its license. The records shall be subject to inspection by the Commission and must include, but are not limited to, the following:

003.06A Receipts: Each grain dealer or an agent, upon taking possession of grain from a seller, shall issue a writing, in the form of a receipt, contract, bill of lading or other written communication(s) to the seller, or its agent, that includes, but is not necessarily limited to, the following:

003.06A1 The date and time of day the grain dealer or its agent took possession of the seller's grain.

003.06A2 The name and address of the buyer.

003.06A3 The name of the seller.

003.06A4 The name of the agent of the buyer.

003.06A5 The motor vehicle license plate number of any vehicle used by the grain dealer or its agent in taking possession of the grain.

003.06A6 The kind of grain delivered to the buyer.

003.06A7 The approximate quantity of grain delivered to the buyer.

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003.06A8 The following provisions shall be printed on the face of a receipt in eight point type or larger:

"WARNING TO SELLER: You will have no recourse to the grain dealer's security posted with the Nebraska Public Service Commission (NPSC) unless you (1) demand payment from the grain dealer within thirty (30) days after the date of the last shipment of any contract; and, (2) cash any check or draft issued as payment for your grain within thirty (30) days after its issuance; and, (3) notify the Nebraska Public Service Commission, PO Box 94927, Lincoln, NE 68509-4927, within thirty (30) days if a check or draft is returned unpaid. You will have no recourse to the grain warehouseman's security posted with the NPSC unless you have secured a post-direct delivery storage position within thirty (30) days after the last shipment of any contract. Direct delivery of grain may affect the eligibility of the grain for participation in federal price support programs."

003.06B Checks issued as payment for grain.

003.06C Contracts issued for grain purchases or sales in Nebraska.

003.06D Retention: Each grain dealer shall, unless otherwise authorized by the Commission, maintain the required records for not less than five (5) year(s).

003.07 Grain Dealer's or Hauler's Proof of Ownership: Each grain hauler, whether dealer or hired truck, shall have available at all times on the truck proof of ownership of the grain being transported thereon, the point at which the grain was loaded, and its destination. Failure to present such proof upon demand of any law enforcement officer or Commission representative may be deemed to be cause for revocation of the grain dealer's license.

003.08 Storage Prohibited: No grain dealer may store grain for any person unless licensed under the Grain Warehouse Act or US Warehouse Act.

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003.09 Complaint Proceedings: In the event of a notification of an apparent loss under Neb. Rev. Stat. Section 75-905 (1996) or if the Grain Warehouse Director or other Commission personnel have reasonable cause to believe that a grain dealer has violated the statutes or rules of the Commission, the Director or other Commission personnel will:

003.09A File a complaint before the Commission against the grain dealer setting forth the alleged violation.

003.09B Obtain a hearing date on the complaint.

003.09C Notify the grain dealer and its security provider of the complaint and hearing date on the complaint.

003.10 Suspension or Revocation of License:

003.10A Suspension: If the Commission determines that the public good requires it, it may, upon the filing of a complaint and without hearing, temporarily suspend a grain dealer license pending the determination of the complaint.

003.10B Revocation: The Commission will hold a hearing on any complaint filed against a grain dealer by Commission personnel according to the Rules of Commission Procedure. If the Commission finds that the allegations of the complaint are true, it may revoke the defendant's grain dealer license. Further notice and hearing may be ordered to determine whether there are claims against the defendant's security. If any valid claim is determined to exist, the Commission may require the security to be forfeited in whole or in part to satisfy the claims. If the security is insufficient to pay all of the valid claims, the Commission may distribute the security pro rata among the valid claimants.

003.11 Civil Penalty: Any person who violates the grain dealer act may be assessed a civil penalty by the commission for one or more, but is not limited to the following violations:

A) Failure to timely file renewal application.

B) Failure to timely complete application process.

C) Failure to timely file financial statement.

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- D) Failure to timely file security replacement or extension.
- E) Failure to maintain accurate, complete or current records.
- F) Failure to make payment on demand.
- G) Failure to maintain Commission financial requirements.
- H) Failure to issue grain dealer receipt to seller.