

NEBRASKA

PUBLIC SERVICE COMMISSION



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TO: ALL NEBRASKA PUBLIC GRAIN WAREHOUSE AND DEALER LICENSEES

FROM: TERRI FRITZ
DIRECTOR, GRAIN WAREHOUSES & DEALERS

DATE: NOVEMBER 28, 2023

RE: GRAIN DEPARTMENT COMPLAINT AND ADMINISTRATIVE FINING POLICY

During our Commission Meeting today, November 28th, the Commissioners approved the enclosed Grain Department Complaint and Administrative Fining Policy. This policy will go into effect immediately. I am asking that everyone review this policy and govern yourself accordingly. There is not anything new in regard to violations, in order to promote consistency and transparency the Commission has outlined procedures/policies for the Grain Department to follow in enforcing violations of our rules and regulations as well as our grain statutes.

If you have any questions, I can be reached at 402-471-0223 or terri.fritz@nebraska.gov.

Thomas W. Golden, Executive Director
Public Service Commission

P.O. Box 94927 OFFICE 402-471-3101 FAX 402-471-0254
300 The Atrium, 1200 N Street CONSUMER HOTLINE 800-526-0017
Lincoln, Nebraska 68509

psc.nebraska.gov

Nebraska Public Service Commission
Grain Department Complaint and Administrative Fining Policy

The Nebraska Public Service Commission (“Commission”) hereby sets forth the following policies and procedures for its Grain Department (“Department”) to address the filing of complaints and assessment of civil penalties against Grain Dealer and/or Grain Warehouse Licensees (hereinafter referred to as “Licensee”). For purposes of this policy, civil penalty has the same meaning as administrative fine and these terms may be used interchangeably.

The Commission reserves the right to exercise discretion in applying these policies and procedures, to grant waivers where appropriate, and to levy additional fines and fees as it deems necessary.

1) Procedure for Grain Warehouse and Grain Dealer Late Filing Violations:

- a) Violations under this section relate to late filings of required documents as listed in the Commission’s Grain Warehouse and Grain Dealer Rules and Regulations, 291 Neb. Admin. Code §§ 08-002.19 and 08-003.09, including but not limited to failure to timely file renewal applications, financial statements, security replacements or extensions, replacement stock insurance, or responses to exception reports.
- b) The Department may impose civil penalties against grain dealers and grain warehouses holding licenses issued by the Department for violations of the above-listed regulations without filing a complaint.
- c) For violations within this section, fines will accrue at ten dollars (\$10) per day, per violation, for up to thirty (30) days.
- d) After thirty (30) days, fines will accrue at one hundred dollars (\$100) per day, per violation.
- e) Fines calculated under this section shall not exceed three thousand, three hundred dollars (\$3,300) per violation.
- f) A Licensee that has submitted a late filing to the Department within the preceding twelve (12) months will be considered a willful violator and shall be subject to an additional one-time fine of five hundred dollars (\$500) upon the opening of the complaint.
- g) Waiver: The Commission may issue a waiver in lieu of a penalty for Licensees that:
 - i) Have not previously been considered delinquent with its filings with the Commission; and
 - ii) Provide information regarding reasonable exigent circumstances resulting in the violation.

2) Procedure for all other Grain Warehouse and Grain Dealer License Violations

- a) Violations under this section include all other violations and prohibited acts found in the Commission’s Grain Warehouse and Grain Dealer Rules and Regulations, found at 291 Neb.

Admin. Code, Chapter 08, and relevant statutes, including Nebraska Revised Statutes Chapters 75, 88, and 89.

- b) The Department may impose civil penalties against grain dealers and grain warehouses holding licenses issued by the Department for violations of the above-listed statutes and regulations without filing a complaint.
- c) For violations within this section, fines will accrue at one hundred dollars (\$100) per day, per violation, up to thirty (30) days.
- d) After thirty (30) days, fines will accrue at three hundred dollars (\$300) per day, per violation.
- e) Fines calculated under this section shall not exceed thirty thousand dollars (\$30,000) per violation.
- f) A Licensee that has been found by the Commission to have made a previous violation within the preceding eighteen (18) months will be considered a willful violator and shall be subject to an additional one-time fine of one thousand dollars (\$1,000) upon the opening of the complaint.

3) Complaint and Hearing Procedure:

- a) Once the Department is made aware of a violation by a Licensee, the Department will notify the Licensee of the violation and, if applicable, the steps needed to return to compliance. After notification of the violation is given, the Licensee will be given fourteen (14) calendar days to remedy the violation. If the fourteenth (14th) day falls on a weekend or holiday, the deadline to return to compliance will fall to the next business day. After the deadline has passed, and if the violation has not been satisfactorily remedied, the Department may open a formal complaint against the delinquent Licensee after it has been brought before the Commission for approval. Complaints will be handled pursuant to the Commission's Rules of Procedure, 291 Neb. Admin. Code, Chapter 1.
- b) The Department shall have the ability to seek settlement of complaints with Licensees prior to hearing, provided that the assessed fines and fees agreed upon are not less than the minimum amounts set forth in the policies above. If a complaint has not been resolved within forty-five (45) days of being opened, the complaint will then be scheduled for hearing.
- c) Once filed, a complaint may only be dismissed by the Commission.
- d) If a complaint is not resolved prior to hearing, the Department may recommend, and the Commission may consider, penalties greater than or in addition to those listed in sections (1) and (2) above. Penalties imposed may include revocation of the Licensee's authority.
- e) All fines will be assessed in accordance with Neb. Rev. Stat. § 75-156 and deposited in the common school fund.