



**Title 291 NAC, Chapter 8
Grain Warehouse and Grain Dealer
Rules and Regulations
Includes Grain Warehouse and Grain Dealer Acts**

NEBRASKA ADMINISTRATIVE CODE

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TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

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001 GENERAL

001.01 DEFINITIONS AS USED IN CHAPTER 8 UNLESS THE CONTEXT OTHERWISE REQUIRES.

001.01A APPROVED GRAIN MOISTURE MEASURING DEVICE. A device included on the list of Approved Grain Moisture Measuring Devices or if a new device, has a current National Type Evaluation Program Certificate at the time of purchase.

001.01B COMMISSION. The Nebraska Public Service Commission.

001.01C DELIVERY. The voluntary transfer of possession from one person to another.

001.01D DEPOSITOR, STORER AND/OR OWNER. Any person who has grain stored with a warehouseman. However, unless said person complies with these regulations, said person shall not have the protection or benefit of the public grain warehouse security. Owner does not include mortgagee or pledgee.

001.01E DIRECT DELIVERY. All grain that is bought, sold or transported in the name of the licensee other than grain that is received at the licensed warehouse facilities.

001.01F DIRECT DELIVERY OBLIGATION. The obligation of a warehouseman/dealer to transfer title to warehouse owned grain to a producer via an in-store transfer upon the direct delivery. A direct delivery obligation is treated as a dealer obligation until such time as it is satisfied by an in-store transfer.

001.01G DIRECT DELIVERY TICKET. A ticket issued for grain upon direct delivery of grain in the name of the licensee that is not received or deposited into a public grain warehouse.

001.01H END INTAKE AIR PROBE. Any instrument which is used by any person for the collection of grain samples, for testing of grain offered for sale, processing, or storage by use of vacuum to collect the sample, excluding transfer of the taken sample.

001.01I GRAIN. The term shall include, but is not limited to, wheat, corn, oats, soybeans, barley, rye, flax, or sorghum which has not been processed or packaged for the purpose of distribution as seed, including edible beans, whole corn plant pellets, alfalfa pellets, millet, sunflower seed, safflower seed, and any other bulk pelleted agricultural storable commodity; provided that, as used in Section 004, all beans, whole corn plant pellets, alfalfa pellets, millet, safflower seed and any other bulk pelleted agricultural storable commodity will be grain whether or not processed or packaged for distribution as seed.

001.01J GRAIN DEALER. Any person, other than a feeder or custom feeder of livestock or poultry or a grain warehouse licensed under the Grain Warehouse Act or located in Nebraska and licensed under the United States Warehouse Act that does not buy, sell, or transport grain other than grain that is received at its licensed warehouse facilities, who (a) buys grain from the producer within this state for purposes of selling such grain, or (b) acts as an employee or agent of a buyer or seller for purposes of collective bargaining in the marketing of grain.

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001.01K GRAIN (GRAIN BANK). Grain which has been deposited with a licensee to be held for the account of the depositor, storer and/or owner, to be returned to the depositor, storer and/or owner, at a later date upon request, processed in some form in amounts to be determined by the depositor, storer and/or owner, usually in the form of processed feed and not intended for storage or sale to the licensee.

001.01L GRAIN (PROCESSED). Any grain in which the whole kernel has been physically altered by a process such as rolling, cracking, grinding, or extruding. This definition shall not include grain which has only been cleaned, graded, separated, and/or bagged.

001.01M GRAIN IN STORAGE. Any grain which has been received at any public grain warehouse and to which title has not been transferred to the warehouseman by signed contract or priced scale ticket.

001.01N HAND TRIER. A probe which does not use air flow as a means of obtaining a sample from a load of grain.

001.01O HOLDER OF A RECEIPT. A person who has actual possession of a receipt and a right of property therein, and includes a person who has served written notice on the Nebraska Public Service Commission as provided in Subsection 002.08D1.

001.01P IN-STORE TRANSFER. A method by which a warehouseman transfers title to warehouse owned grain to any person in satisfaction of a direct delivery obligation between the warehouseman/dealer and producer, and the grain remains in the warehouse.

001.01Q MECHANICAL PROBE. A probe which uses air flow as a means of obtaining a sample from a load of grain.

001.01R NEBRASKA STATE BOARD OF PUBLIC ACCOUNTANCY. The licensing and regulatory board for certified public accountants and public accountants.

001.01S PERSON. The term includes, but is not limited to, a corporation, partnership, cooperative, association, limited liability company, or two or more persons having a joint or common interest.

001.01T POST-DIRECT DELIVERY STORAGE POSITION. A storage position acquired through an In-Store Transfer in satisfaction of a direct delivery obligation.

001.01U PROBE, PROBING DEVICE. Any device used to obtain a sample from a load of grain.

001.01V PUBLIC GRAIN WAREHOUSE AND/OR WAREHOUSE. Any grain elevator building or receptacle in which grain is held for longer than ten (10) days and will include, but not be limited to, all buildings, elevators and warehouses, consisting of one or more warehouse sections within the confines of a city, township, county, or state, that are considered a single delivery point, with the capability to receive, load out, weigh, and store grain.

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001.01W QUALIFIED SELLER OF STORED GRAIN. Any person who, not more than five (5) business days prior to the date the Commission officially closes the warehouse, owned and sold grain stored in the warehouse and had not received payment from the warehouse licensee for such grain, but shall not include grain sold by signed contract or priced scale ticket.

001.01X RECEIPT. A warehouse receipt.

001.01Y RECEIPT (COLLATERAL). Any receipt issued in the name of the warehouseman for grain owned by the warehouseman, and pledged to a lender for the purpose of protecting the interests of the lender.

001.01Z RECEIPT (ELECTRONIC). Any non-paper receipt issued by a licensed grain warehouseman under procedures adopted by the Commission for the electronic issuance of receipts.

001.01AA RECEIVED. Any grain that is physically deposited into a licensed public grain warehouse.

001.01BB REGISTRAR OF RECEIPTS. The Grain Warehouse Director or named designee.

001.01CC SCALE TICKET. A load slip or other evidence, other than a receipt, given to a depositor by a warehouseman licensed under the Grain Warehouse Act, upon the grain being received at a public grain warehouse.

001.01DD SCALE TICKET (PRICED). A scale ticket, including the original and all copies, which is marked as sold or priced or for which the agreed sale price is indicated on the original and all copies of the scale ticket. The original scale ticket must be issued to the party making delivery in accordance with Neb. Rev. Stat. Section 88-535 (1994).

001.01EE STANDARD METER. A moisture meter used by a Commission representative for comparative tests to determine accuracy of another meter.

001.01FF VALUE. Any consideration sufficient to support a simple contract.

001.01GG WAREHOUSEMAN. Any person who:

001.01GG1. Receives grain for storage or stores or offers to store grain for legal consideration for another person in a warehouse where delivered; or,

001.01GG2. Receives grain for shipment to other points for storage, consignment, or resale either in or out of this state.

001.02 CONSTRUCTION. The following rules will be used in construing Chapter 8, unless the context otherwise requires:

001.02A. Reference to any person, depositor, storer, owner, holder, or warehouseman will be deemed to include a personal representative, executor, administrator, heirs or other person having lawful authority to act on their behalf.

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001.02B. The singular number will be construed to also mean plural.

001.03 FORMS. The use of all forms prescribed by the Commission relative to this chapter is mandatory and they will be obtained and used by the warehouseman at his or her own expense. Forms for applications, bonds, stock insurance verification, and irrevocable letters of credit will be available from the Commission without charge and can be found at the end of this chapter.

002 PUBLIC GRAIN WAREHOUSES.

002.01 LICENSING REQUIREMENT. No person shall operate a warehouse or act as a warehouseman without a license issued pursuant to the Grain Warehouse Act and these regulations. Warehouses, except warehouses licensed under the United States Warehouse Act, shall be licensed and regulated by the Commission.

002.02 ELIGIBILITY REQUIREMENTS.

002.02A ELIGIBLE WAREHOUSES. The following warehouses are eligible for a Public Grain Warehouse License, upon compliance with the statutory provisions of the Grain Warehouse Act and Rules and Regulations of the Commission:

002.02A1. Warehouses which are under the control of the applicant and are permanently equipped for receiving, weighing, storing, conditioning, handling, and loading out grain. A section which is under control of an applicant, but is not by itself eligible for license, may, at the Commission's discretion, be licensed in conjunction with an eligible warehouse.

002.02A2. At the Commission's discretion, a hearing may be set to determine eligibility for license. Upon review by the Commission of all documents sub-mitted, licenses may be issued for such warehouses where the evidence establishes the same to be necessary for the welfare of and service to the public.

002.02B INELIGIBLE WAREHOUSES. Any warehouse of any type, at any location, which is not under the control of the licensed warehouseman will not be licensed. This provision is intended to preclude any agreement or arrangements whereby a grain warehouseman places, keeps, or stores grain in a warehouse not licensed pursuant to these regulations.

002.02C SAFETY REQUIREMENTS. All eligible warehouses must meet the following minimum requirements:

002.02C1. Tanks to be licensed must meet the following minimum requirements:

<u>No. of Bins</u>	<u>Depth of Eaves</u>	<u>Requirements</u>
1 thru 9	20 to 29.9 feet high inclusive	Permanent ladder on each tank or permanent ladder on one 1 tank with catwalk to others

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Cluster of 10 or more	20 to 29.9 feet high inclusive	Permanent ladder on one 1 tank with a catwalk to others
1 thru 3	30 to 50 feet high inclusive	Permanent ladder on each tank or permanent ladder on one 1 tank with catwalk to others
Cluster of 4 or more	30 to 50 feet high inclusive	Permanent ladder on one 1 tank with catwalk to others
1 or more	50 feet or higher	Permanent ladder with a safety cage attached with catwalk to others or a manlift

002.02C2. Ladders and catwalks must be constructed with necessary handrails when required; and,

002.02C3. Ladders, catwalks and manlifts must be in a safe state of repair at all times.

002.03 LICENSE APPLICATION REQUIREMENTS.

002.03A FORM OF APPLICATION. All applications for a warehouse license will be submitted on a form prescribed by the Commission, incorporated herein at the end of the chapter and labeled as Attachment 1 (new form).

002.03B BACKGROUND CHECK. All applications for a grain warehouse 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 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

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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 warehouse license to any applicant whose primary party has been convicted of a felony financial crime.

002.03C FEES. All applications for license will include a fee as set by Nebraska statute. The license fee of the applicant shall be computed on the basis of the separate capacities of each warehouse. Any applicant who makes a first-time application for license will pay the prescribed fee, which will not be refundable should the applicant withdraw the application or be unable to meet all licensing requirements within one year from the date of application.

002.03D SEPARATE AND CONSOLIDATED LICENSES. Separate applications must be filed and separate licenses will be required for each warehouse, except:

002.03D1. When a warehouseman operates one or more warehouses in the same city, village, siding, zoned area, or legally described location in conjunction with each other, where only one set of books is kept for the warehouses, and scale tickets, warehouse receipts, and checks of but one series are issued for grain received or stored therein, only one license will be required for the operation of all the warehouses.

002.03D2. When a warehouseman operates two or more warehouses in different cities, villages, sidings or legally described locations, in conjunction with each other, and if only one set of books is kept for the warehouses, only one license may be required for the operation of the warehouses at the discretion of the Commission. In such cases, the license fee and security will be computed on the basis of the separate capacities of each warehouse.

002.03E TERMS OF LICENSE. All warehouse licenses issued or renewed will expire no more than twelve (12) calendar months after the effective date. The expiration date will be either March 31, June 30, September 30, or December 31.

002.04 FINANCIAL REQUIREMENTS. Each license applicant and warehouse licensee shall file the financial statement prepared in accordance with accounting principles generally accepted as prescribed by section 88-528. If an applicant for a 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 audited fiscal year-end financial statement and shall execute an unconditional guarantee agreement as prescribed by the Commission. In determining whether an application should be granted, or a warehouse license renewed or remain in effect, the applicant or licensee shall meet the following requirements:

002.04A NET WORTH. An applicant or licensee shall demonstrate and maintain an allowable net worth of \$.25 per bushel for each bushel of licensed capacity. A minimum allowable net worth of \$10,000 will be required to obtain or maintain a license. An applicant or licensee whose allowable net worth exceeds \$10,000, but fails to meet the net worth requirement of \$.25 per bushel of licensed capacity, shall file deficiency security with the Commission in an amount equal to the deficiency. No license shall be issued, nor allowed to remain in force, for any warehouseman who possesses an allowable net worth of less than \$10,000.

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002.04B WORKING CAPITAL. Current liabilities to allowable current assets shall show a working capital ratio of not less than 1 to 1. Applicants whose statements fail to meet this requirement before a license is granted, or licensees whose financial condition fails to meet this requirement, shall provide additional data sufficient to satisfy the Commission that additional operating capital can be obtained to meet the requirement.

002.04C. For purposes of the financial review conducted by the Commission to determine whether an applicant or licensee meets financial requirements, the following shall apply unless waived by the Commission. In addition to those listed in this section, assets may be disallowed, in whole or in part, based upon the individual circumstances of the licensee or applicant:

002.04C1 PHYSICAL ASSETS.

002.04C1a. Depreciable assets not covered by insurance are disallowed.

002.04C1b. Personal assets, including but not limited to residences, household items, recreational items, restricted retirement accounts and vehicles, are disallowed, net of debt on each asset.

002.04C1c. Other assets that are not itemized are disallowed.

002.04C1d. Appraised valuations of assets not substantiated by a satisfactory appraisal are disallowed. An applicant or licensee may submit a valuation of assets by competent appraisal to the Commission for inclusion in computing net worth. If a valuation of assets is submitted and satisfies Commission requirements, no more than seventy percent of appraised value over the book value of the assets may be used in determining compliance with net worth requirements. Acceptance of an appraisal is subject to the following:

002.04C1d(1). The appraisal must be prepared by an independent certified appraiser.

002.04C1d(2). The appraisal must be prepared on market, income, and cost approaches.

002.04C1d(3). A one to one working capital ratio must be maintained.

002.04C1d(4). Any value claimed over the insured value will be disallowed.

002.04C1d(5). Appraisals will only be allowed for three years following the date of the appraisal.

002.04C2 RECEIVABLES.

002.04C2a. Accounts or notes receivables due from related parties, affiliates, or employees are disallowed.

002.04C2b. Accounts receivables due after one year are disallowed.

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002.04C2c. Accounts or notes receivable under litigation are disallowed.

002.04C2d. Unsecured notes receivables are disallowed.

002.04C2e. Other receivables that are not itemized are disallowed.

002.04C3 OTHER.

002.04C3a. Prepaid expenses that are not itemized are disallowed.

002.04C3b. Prepaid taxes are disallowed.

002.04C3c. Prepaid loan fees are disallowed.

002.04C3d. Returned checks are disallowed.

002.04C3e. Organization costs are disallowed.

002.04C3f. Stock subscriptions are disallowed.

002.04C3g. Intangible assets including but not limited to goodwill are disallowed.

002.04C3h. Refundable and deferred income taxes are disallowed.

002.04D FILING. Each warehouse licensee shall comply with the statutory filing within ninety (90) calendar days after its fiscal year closes, provided that the Commission may grant, upon request and reasonable cause shown, one filing extension of thirty (30) days whereupon the financial report shall be filed with the Commission not later than one hundred twenty (120) calendar days after a warehouseman's fiscal close.

002.04E CURRENT FINANCIAL REPORTS. Upon complaint filed with the Commission, and after hearing, the Commission may require a warehouse licensee to file current financial reports showing that the warehouse licensee is maintaining the requirements set forth in Section 002.04 and the subsections thereunder.

002.04F ADDITIONAL FINANCIAL REQUIREMENTS. In addition to the reviewed fiscal year-end financial statement required by section 88-528 and to detect noncompliance with financial requirements established by the Commission pursuant to section 88-530, the Commission shall, for good cause shown as determined by considering the criteria set forth below, require (1) a verified report of the total grain inventory or (2) an audited financial statement. A verified report of grain inventory or audited financial statement shall be prepared in accordance with generally accepted accounting principles by a person or firm which holds a permit granted by the Nebraska State Board of Public Accountancy.

002.04F1. Verified inventory criteria, any one of which may be deemed by the Commission to be sufficient to require a verified inventory:

- A) Repeat or consecutive grain shortage within company owned.
- B) Repeat or consecutive losses that do not leave the licensee below Commission required net worth and working capital.

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- C) Oversold grain position.
- D) Examination indicating inaccurate grain inventory being used in financial statement.
- E) Failure to maintain an accurate Daily Position Record.
- F) Insufficient funds check found on examination.
- G) Grain quality not meeting requirement.
- H) Failure to respond to an exception report issued for shortage or lack of adequate handling or moisture shrink.

002.04F2. Audit criteria, any one of which may be deemed by the Commission to be sufficient to require an audit:

- A) Repeat or consecutive grain shortage not within company owned.
- B) Repeat or consecutive losses that leave the licensee below Commission net worth or working capital requirements.
- C) Oversold grain position and collateral warehouse receipt(s) was outstanding.
- D) Repeat failure to maintain an accurate Daily Position Record.
- E) Repeat insufficient fund checks found on examinations.
- F) Not paying for grain on demand or as required by contract terms.
- G) Withdrawing capital, paying dividends or making a loan that leaves the licensee below the Commission net worth or working capital requirements.
- H) Working capital deficiency and issuance of collateral warehouse receipts for unpaid grain.
- I) Repeat or consecutive oversold grain position.

002.05 SECURITY REQUIREMENTS.

002.05A AMOUNT. Pursuant to the statutory requirements, each licensee shall provide a bond, irrevocable letter of credit, certificate of deposit, United States bonds or treasury notes, or other debt obligations of the United States, or combination thereof, in the amount determined by the Commission according to the following requirements:

002.05A1 SECURITY CALCULATIONS. The security amount shall be calculated by multiplying the separate capacity of each warehouse by \$.20 per bushel, except that warehouse sections exceeding 5,000 bushels in capacity, without permanent turning or aerating capabilities, will be calculated at \$.40 per bushel. The security amount shall be rounded to the next highest \$100 increment.

002.05A2 MINIMUM AND MAXIMUM REQUIREMENTS PER LICENSED ENTITY. The security requirements shall not be less than \$25,000 or greater than \$500,000, except as outlined in Subsection 002.05A3.

002.05A3 ADDITIONAL SECURITY REQUIRED. Security may be required, in addition to the amount determined in Subsections 002.05A1 and 002.05A2, if one or more of the following conditions occur:

- A) For an applicant who has filed a reviewed fiscal year-end financial

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statement pursuant to section 88-528, the Commission shall require additional security in an amount of \$.02 per bushel but not less than \$25,000 or more than \$500,000.

- B) The Commission finds, after administrative review, that the financial statement of an applicant or licensee is inadequate for the warehouseman's particular operation, therefore requiring the filing of deficiency security.
- C) A situation arises in which the Commission finds, after hearing, that conditions exist at a warehouse which warrant that additional security be filed.
- D) If the warehouseman forwards receipted grain to other licensed locations for storage, additional security must be furnished in the same manner and on the same basis as if the warehouseman increased the storage capacity, up to the \$500,000 maximum security requirement.

002.05B PERSONS ENTITLED TO SECURITY. The security shall be payable to the Nebraska Public Service Commission for the benefit of all depositors, storers and/or owners and qualified sellers of stored grain.

002.05C SINGLE SECURITY FILING PER ENTITY. When an entity has more than one license, only one security filing shall be required to cover the aggregate amount of security required for all of the entity's licenses. The minimum aggregate total will be \$25,000 for each license and the maximum total will not exceed \$500,000 for the combined licenses.

002.05D TYPES OF SECURITY.

002.05D1 PUBLIC GRAIN WAREHOUSE BOND. A 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 2. Changes to a bond must be made on a form prescribed by the Commission, incorporated herein at the end of the chapter and labeled as Attachment 3.

002.05D2 CERTIFICATE OF DEPOSIT. A warehouseman may deliver certificates of deposit to the Commission in an amount equal to the security required. The certificates of deposit will be:

- A) Issued by a financial institution which is insured by the Federal Deposit Insurance Corporation (FDIC);
- B) In amounts not to exceed the amount for which the accounts may be insured at the issuing institution; and,
- C) Payable to the Nebraska Public Service Commission with interest to be paid to the beneficiary designated by the buyer of the certificate.
- D) 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 bond shall not be considered as part of the assets of the warehouse and will have the same legal significance as a bond.

002.05D3 IRREVOCABLE LETTER OF CREDIT. A ware-houseman may deliver an

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irrevocable letter of credit to the Commission in an amount equal to or greater than the security required. Such irrevocable letter of credit will 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 six (6) months longer than the expiration date of the underlying license;
- C) Provide for payment to the Commission up to the security liability of the warehouseman; and,
- D) On a form prescribed by the Commission, incorporated herein at the end of the chapter and labeled as Attachment 4. Changes to an irrevocable letter of credit must be made on a form prescribed by the Commission, incorporated herein at the end of the chapter and labeled as Attachment 5.

002.05D4 OTHER TYPES OF SECURITY ALLOWED. In accordance with Neb. Rev. Stat. Section 88-530 (1994) the Commission may accept as security a public debt obligation of the United States which is unconditionally guaranteed as to both principal and interest by the United States and pledged to the Commission in the amount as prescribed by the Commission.

002.05E 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.

002.05F RELEASE OR REDUCTION OF SECURITY.

002.05F1 RELEASE. No security shall be released until one hundred eighty (180) days have elapsed from the cancellation, revocation, or expiration of the license, unless one of the following occurs:

- A) The warehouseman files another type or types of security as a replacement; or,
- B) The warehouseman transfers all storage obligations to another licensed warehouseman.

002.05F2 REDUCTION. The Commission may, at its discretion, reduce a security filing; provided that the security filing shall not be reduced below the requirements stated in Subsection 002.05A.

002.06 STOCK INSURANCE REQUIREMENTS.

002.06A NECESSITY OF INSURANCE. No license will be issued before satisfactory proof of insurance coverage has been filed with the Commission. Failure to maintain insurance will be grounds for revocation of a license after due notice and hearing.

002.06B PROOF OF INSURANCE. Proof of insurance coverage shall be filed on a form prescribed by the Commission, incorporated herein at the end of the chapter and labeled

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as Attachment 6.

002.06C MINIMUM INSURANCE COVERAGE. The warehouseman must maintain a policy or policies of combustion, fire, lightning, and tornado insurance in an amount sufficient to cover the total loss upon all grain in the licensed warehouse, as valued by the formula set forth in Subsection 002.08H2. Without in any way limiting the warehouseman's liability under this section, the warehouseman may carry a standard form of insurance policy approved for grain warehousemen, with a total deductible not to exceed \$10,000; provided that the Commission may require a lower deductible based on the warehouseman's financial condition. Any applicant or licensee seeking a deductible higher than \$10,000 will submit an application to the Commission for consideration.

002.07 RECORDS AND FILING REQUIREMENTS. Each warehouseman shall maintain at a place of business accurate, complete, and current records of all grain handled by the warehouse. The required records shall include, but are not limited to, the following:

002.07A SCALE TICKETS. Scale tickets must contain the following information and be filed numerically:

002.07A1. Be prenumbered.

002.07A2. Name of the warehouse.

002.07A3. Name of the depositor, storer, owner, or consignee of the grain.

002.07A4. Issue date.

002.07A5. Gross, tare and net weight, and whether driver is on or off truck.

002.07A6. Commodity.

002.07A7. Signature or initials of the warehouseman or duly authorized agent.

002.07B PRICED SCALE TICKETS. Priced scale tickets must contain the information required for a scale ticket (002.07A). In addition the grain represented by Priced Scale Tickets must be paid for by the licensee within thirty (30) days of delivery or the licensee must obtain a duly executed contract within the thirty (30) day period.

002.07C DIRECT DELIVERY TICKET. Direct delivery ticket is the means by which a dealer/warehouseman shall maintain records of direct delivery grain. A direct delivery ticket shall be issued no later than fifteen (15) days after the date of the last shipment of the contract, be filed numerically, and shall contain the following information:

002.07C1. Be prenumbered.

002.07C2. Name of the dealer/warehouse.

002.07C3. Name of the owner.

002.07C4. Issue date.

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002.07C5. Gross, tare and net weight.

002.07C6. Commodity.

002.07C7. Signature or initials of the warehouseman or duly authorized agent.

002.07D SETTLEMENT SHEETS. The settlement sheets shall contain the following information and be filed systematically:

002.07D1. Name of the warehouse.

002.07D2. Name of the depositor, storer, owner, or consignee of the grain.

002.07D3. Scale ticket dates and numbers.

002.07D4. Commodity.

002.07D5. Net weight or net bushels.

002.07D6. Discount factors, if used to adjust the value of the grain.

002.07D7. Agreed price, if price was not shown on the scale ticket.

002.07D8. Date and description of the disposition, if settled, and/or reference transfer, if posted to another settlement sheet.

002.07E WAREHOUSE RECEIPTS.

002.07E1. The warehouseman's copy of each receipt issued must be filed numerically and maintained at the warehouseman's place of business.

002.07E2. Each redeemed original warehouse receipt must be attached to the warehouseman's copy of the receipt, to be cancelled by the Commission as outlined in Subsection 002.08E.

002.07F ELECTRONIC WAREHOUSE RECEIPTS. Receipts are maintained on electronic media provided by a third party under agreement with the Commission. The Commission may enter into provider agreements under which electronic receipts may be issued, registered, transferred and cancelled.

002.07G CHECKS. Checks shall contain the following information and be filed in numerical order, by month:

002.07G1. Name of warehouse.

002.07G2. Be prenumbered.

002.07G3. Name of depositor, storer and/or owner.

002.07G4. Issue date.

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002.07H CONTRACTS. Contracts shall contain the following information and be filed in numerical order:

002.07H1. Be prenumbered.

002.07H2. Name of the warehouse.

002.07H3. Name of the depositor, storer and/or owner.

002.07H4. Commodity and quantity.

002.07H5. Title to the grain has passed from the depositor, storer and/or owner to the warehouseman.

002.07H6. Be signed and dated by all parties.

002.07I IN-STORE TRANSFER NOTICE. An in-store transfer operates to transfer warehouse-owned grain physically stored in the warehouse by a warehouse licensee, to a person in satisfaction of a direct delivery obligation and the grain remains in the warehouse. To be considered a valid in-store transfer notice, proper documentation must be issued pursuant to Neb. Rev. Stat. Section 88-543(1)(b). An in-store notice shall contain the following information and be filed in numerical order:

002.07I1. Be Pre-numbered.

002.07I2. Name of the warehouse.

002.07I3. Name of the producer.

002.07I4. Commodity and quantity.

002.07I5. Be signed and dated by the warehouseman.

002.07I6. A statement that title to the grain stored in the warehouse passes from the warehouse licensee to the person with the direct delivery obligation upon execution of the in-store transfer notice in satisfaction of the direct delivery obligation.

002.07J DAILY POSITION RECORD. The Daily Position Record shall contain the following information and be in a format approved by the Commission:

002.07J1. Total quantity of each kind and class of grain received and loaded out.

002.07J2. Quantity of each kind and class of grain remaining in the warehouse as of the close of each business day.

002.07J3. Total amount of grain in terminal storage.

002.07J4. Quantity of grain for which negotiable receipts have been issued.

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002.07J5. Quantity of grain in open storage.

002.07J6. Quantity of grain in any Grain Bank accounts the warehouseman maintains.

002.07J7. Quantity of grain to which the warehouse- man has title and for which payment has not been made, including, but not limited to, grain on deferred or delayed payment and deferred price contracts.

002.07J8. Quantity of grain for which payment has been made.

002.07J9. Total quantity of warehouse owned grain (total of Subsections 002.07F7 and 002.07F8).

002.07J10. Allow for documenting at least one other type of storage situation which may be required.

002.07J11 Be posted each business day.

002.07J12. Reason(s) for any adjustment entry.

002.07J13 FILING. If the Daily Position Record is computerized, a hard copy printout of the record, as of the close of each business day, must be generated and retained in the warehouseman's place of business.

002.07J14 CORRUPTION OF THE DAILY POSITION RECORD. No warehouse may record grain in the warehouse daily position record as physically received or physically loaded out that has not been physically deposited in or removed from the warehouse.

002.07K RECORD OF KIND AND CLASS OF GRAIN IN EACH BIN. A current record must be maintained which shows the kind and class of grain in each bin.

002.07L SHIPPING LEDGERS. All grain loaded out of a warehouse by rail or barge without origin weights must be posted to a shipping ledger. All other grain loaded out of a warehouse must be weighed on an approved scale and posted to a scale ticket or sales invoice. The Commission may waive this requirement based upon the individual circumstances. Ledger information must include, but is not limited to, the following:

002.07L1. Rail car or barge identification numbers;

002.07L2. The destination, if known;

002.07L3. The billed weight of the grain; and,

002.07L4. The actual settlement weight of the grain.

002.07M INSURANCE REPORTS. A copy of the warehouseman's stock insurance report, for reporting policies, must be maintained at the warehouseman's place of business. All reports must be filed with the insurance carrier no later than the 15th day of the month following the month covered by the report.

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002.07N NOTICE TO DEPOSITORS, STORERS AND/OR OWNERS. The warehouseman must retain one copy of each notice sent to comply with Subsection 002.12B.

002.07O RETENTION. The warehouseman shall, unless otherwise authorized by the Commission, retain the required records for not less than five (5) years.

002.07P. A post-direct delivery storage position may not be created at any time the warehouse licensee does not have sufficient warehouse owned grain.

002.08 GRAIN WAREHOUSE RECEIPT REQUIREMENTS.

002.08A FORMS.

002.08A1 PURCHASES. Warehouse receipts are furnished by the Commission in quadruplicate in lots of 50. The purchase price of all warehouse receipts will be established by the Commission, in conformity with the applicable statutes.

002.08A2 REFUND FOR UNUSED RECEIPTS. The Commission shall refund the purchase price of any unused lot of 50 warehouse receipts, after return to the Commission by the purchaser, or a successor in business, guardian, administrator, or other law-fully authorized representative. This provision will not apply to receipts that have been specially printed for a warehouseman or to receipts which contain outdated language or information.

002.08B Issuance.

002.08B1 TIME. Upon demand, or within fifteen (15) days thereafter, every warehouseman shall issue a receipt to the depositor, storer and/or owner of grain delivered to a warehouse for storage.

002.08B2 PRESERVED IDENTITY OF GRAIN. If the depositor, storer and/or owner and warehouseman agree that the identical grain stored will be delivered and not be commingled with grain of the same kind and grade, the warehouseman shall write on the face of the receipt the following: "Identity Preserved".

002.08B3 PARTIAL LOAD OUT OR SALE OF GRAIN ON RECEIPT.

- A) NON-NEGOTIABLE RECEIPTS. If demand is made for a portion of the grain represented by a non-negotiable receipt, the amount shall be entered on the face of the receipt.
- B) NEGOTIABLE RECEIPTS. If demand is made for a portion of grain represented by a negotiable receipt, the receipt shall be cancelled, as outlined in Subsection 002.08E.

002.08C TIME AND MANNER OF DELIVERY. On the same day as issuance of a receipt, the warehouseman will deliver the original and fourth copy of the receipt to the depositor, storer and/or owner or other specified person. Receipts will be delivered either by mail or personal delivery.

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002.08D Registration.

002.08D1 PROCEDURE FOR REGISTRATION OF RECEIPTS. A warehouseman shall register a receipt by mailing or delivering, on the same day that the receipt is issued, the third copy to the Commission for registration. Any holder of an original receipt may request the Commission to register the receipt. When an error has been made, changes or corrections will be allowed as prescribed by the Grain Warehouse Director.

002.08D2 PROCEDURE FOR REGISTRATION OF COLLATERAL WAREHOUSE RECEIPTS. A warehouseman shall register the third copy of a collateral warehouse receipt as prescribed in Subsection 002.08D1. In addition, the Commission may require the registration of the original collateral warehouse receipt or a certified copy of the original receipt if it becomes aware of problems or irregularities in the issuance or endorsement of the receipt.

002.08D3 ENDORSEMENT. When the Commission receives an original receipt issued on the form prescribed by the Commission, incorporated herein at the end of the chapter and labeled as Attachments 7A, 7B and 8, it shall register the receipt by stamping and endorsing thereon the following:

NEBRASKA PUBLIC SERVICE COMMISSION
REGISTERED

(Month)

(Day)

(Year)

By _____

Grain Warehouse Director

002.08D4 DISPOSITION OF RECEIPT. The Commission, after registering the original receipt, shall deliver the original copy to the warehouseman or, upon request, to the person designated to be the holder of the receipt. The Commission shall retain the third copy.

002.08E CANCELLATION OF REGISTERED RECEIPTS.

002.08E1 NEGOTIABLE RECEIPTS. Upon endorsement and surrender of the original receipt by the holder of a negotiable receipt, the warehouseman shall indicate on the face of the receipt, the date and description of the disposition of the grain. The warehouseman shall retain possession of the receipt and the registration of the receipt shall be cancelled by the Commission by stamping and endorsing thereon during the next warehouse examination.

002.08E2 NON-NEGOTIABLE RECEIPTS. The procedure for cancelling non-negotiable receipts is the same as outlined in Subsection 002.08E1, except that the original receipt does not require endorsement by the receipt holder.

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002.08E3 COLLATERAL RECEIPTS. Upon release of a collateral receipt by the lending institution, the lender shall endorse the back of the receipt with an authorized signature and release date before mailing or delivering the receipt to the warehouse man. The warehouseman shall retain possession of the receipt for cancellation during the next grain warehouse examination, as stated in Subsection 002.08E1.

002.08F LOST OR DESTROYED RECEIPTS.

002.08F1 NEGOTIABLE RECEIPTS. If a registered negotiable receipt is lost or destroyed prior to cancellation, the holder thereof shall submit an application to the Commission, on a form prescribed by the Commission, incorporated herein at the end of the chapter and labeled as Attachment 9, together with a corporate or personal surety bond. This procedure will be followed whether the receipt holder chooses to take delivery of the grain, sell the grain, or have a duplicate receipt issued. If the holder of the receipt is the warehouseman, a surety bond is not required.

002.08F2 NON-NEGOTIABLE RECEIPTS. If a registered non-negotiable receipt is lost or destroyed prior to cancellation, the Commission may, at its discretion, require the same provisions as for a negotiable receipt. However, in the case of a non-negotiable receipt, the Commission may accept a verified statement from the warehouseman, signed by the party to whom the receipt was issued, showing settlement in full, and no security would be required to indemnify the warehouseman. If the warehouseman chooses this method, he or she should be aware that if a dispute arises in which there is reasonable doubt, the warehouseman would not be protected against the possibility that the missing document would, in the hands of an innocent purchaser for value, be held negotiable.

002.08F3 PRIOR TO REGISTRATION OR DELIVERY. If all copies of a negotiable or non-negotiable receipt are lost or destroyed prior to registration or delivery, the Commission may accept a signed statement from the warehouseman describing the cause of the receipt's loss or destruction.

002.08G DUPLICATE REGISTERED RECEIPTS.

002.08G1 APPLICATION. The application for a duplicate registered receipt must be verified and contain the following information:

- A) The date and place of issuance of the lost or destroyed receipt.
- B) The name and address of the person to whom it was issued.
- C) The commodity, amount, and grade.
- D) The value of the commodity on the date of the application.
- E) The receipt number.
- F) The date of registration.

002.08G2 BOND. The applicant shall submit with the application a bond of indemnity, with corporate or personal surety, duly executed in the form pre-scribed by the Commission, incorporated herein at the end of the chapter and labeled as Attachment 2. The bond will be conditioned to indemnify the warehouseman or any holder or other person entitled to the grain, against any loss, liability, or expense which may be

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sustained by reason of such delivery. The amount of the bond will be determined by the Commission.

002.08G3 PROCEDURE FOR ISSUANCE. A copy of the application and a letter of authority shall be forwarded to the warehouseman if the Commission approves the application. The bond and original application will remain on file with the Commission. The warehouseman shall attach the documents received from the Commission to the warehouseman's copy of the lost registered receipt in the warehouse receipt book on file. The warehouseman shall issue a new receipt and stamp or write on the face the following:

"This receipt is issued as a duplicate, replacing receipt number (number of lost receipt), as approved by the Nebraska Public Service Commission on (date)."

002.08H REDEMPTION OF RECEIPT WHEN GRAIN IS DESTROYED.

002.08H1 NOTIFICATION OF DESTRUCTION. In the event that all or part of the grain contained in a warehouse, for which receipts are outstanding, is destroyed by any means whatsoever, the warehouseman shall notify the Commission of such destruction.

002.08H2 Settlement.

- A) The warehouseman may redeem the receipts upon delivery of grain, upon payment for the grain represented by the receipt, or upon any other basis as may be agreed upon by the warehouseman and the holder of the receipt.
- B) If no settlement is reached, the warehouseman shall redeem the receipts by application of the following formula: The prevailing price at the nearest terminal market on the date the grain was destroyed, less the freight cost on the date of destruction for transporting a like kind and quantity of grain from the warehouse to the closest terminal market, less load out costs, and less all warehouse storage charges accrued but unpaid on the date of destruction.
- C) The receipt holders shall, upon due notice, accept the offered settlement and surrender the receipts.

002.08H3 EXISTING RIGHTS OR LIABILITIES. The Commission does not intend that this section will in any way alter the legal rights or liabilities of either the warehouseman or the holder of a warehouse receipt. Thus it is contemplated that the Commission shall direct payment only upon a finding that the warehouseman is liable for the loss.

002.09 POSTING REQUIREMENTS.

002.09A LICENSE. Each warehouseman shall, at all times, post in a conspicuous place in the warehouseman's place of business, the license issued by the Commission.

002.09B SECURITY FILING AND STORAGE RATES. Each licensed warehouseman

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shall, at all times, post in a conspicuous place in the warehouseman's place of business, a notice furnished by the Commission stating the amount of security filed with the Commission and approved storage, receiving, and load out charges for each type of grain stored or handled.

002.09C UNSAFE ENTRY. A warning sign will be posted on all bins which may have been fumigated and/or are unsafe for inspection purposes. The sign may be removed when the bin is safe to enter.

002.10 DUTY TO RECEIVE GRAIN. Every warehouseman shall receive, so far as the capacity and policy of the warehouse will permit, all grain tendered for storage.

002.11 PAYMENT REQUIREMENT. Payment to the depositor, storer and/or owner for grain purchased by a warehouseman shall be made upon demand, except as provided by written contract between the parties.

002.12 STORAGE RATE REQUIREMENTS.

002.12A Rates and Charges.

002.12A1 STORAGE AND HANDLING. At least once each year, the Commission shall fix reasonable storage and handling rates, as outlined in Commission Rate Schedules "A" and "E". The charges shall be full compensation for the receiving, handling, storing, insuring, and load out of the grain. No discrimination shall be made between different customers by any warehouseman either in facilities, charges, or handling of any grain, except that members of a cooperative may be given preference in storage facilities in warehouses of the cooperative. The rates charged to any governmental agency shall be exempt from Commission regulation.

002.12A2 SPECIAL RATES. No warehouseman shall charge a lesser or greater rate, except upon application to, and a hearing before, the Commission. If, after hearing, the Commission finds that a lesser or greater rate should be ordered, it shall enter a supplemental order fixing a different rate for the applicant. The Commission shall charge a fee for the application as established pursuant to Rules of Commission Procedure, Section 025.

002.12A3 STORAGE RATE CHANGES. Prior to increasing or decreasing storage rates, a warehouseman must notify the Commission in writing of the changes, except that a rate increase shall require written notice to the Commission and all depositors, storers and/or owners not less than thirty (30) days prior to the rate increase.

002.12B NOTIFICATION TO DEPOSITORS, STORERS AND/OR OWNERS. At least once each calendar year, and not later than one year from the date of receipt of the previous written notice, each warehouseman shall send written notice to each depositor, storer and/or owner of grain in the warehouse, at the person's last-known address, specifying the type and amount of grain in storage, the location at which the grain is being stored, and the current rate of storage. Notification to the Commodity Credit Corporation is not required.

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002.13 STORAGE CONTRACT TERMINATION REQUIREMENTS.

002.13A TERMINATION BY WAREHOUSEMAN. At the election of the warehouseman, storage in the warehouse may be terminated upon application to the Commission and good cause shown.

002.13A1 APPLICATION. The warehouseman shall submit, not less than thirty (30) days prior to the termination date, a verified application, on a form prescribed by the Commission, incorporated herein at the end of the chapter and labeled as Attachment 10, stating the name and address of the applicant, name and address of the depositor, storer and/or owner of the grain, commodity, amount, grade, value of the commodity on the date of the application, warehouse receipt number(s) (if receipted), and a statement of the reason why the warehouseman wants to terminate the contract(s).

002.13A2 NOTICES. Not less than fifteen (15) days prior to the termination date, the warehouseman shall:

- A) Post a notice of termination in a conspicuous place in the warehouseman's place of business listing each storage contract and showing the name of the last-known depositor, storer and/or owner of such storage contract, and specifying the date of termination;
- B) Transmit one copy of the notice by first-class mail to each person named in the notice, at the last-known address;
- C) File one copy of the notice with the Grain Warehouse Director; and,
- D) Furnish a copy of the notice to any person requesting one.

002.13A3 LETTER OF AUTHORITY. Upon approval by the Commission of the warehouseman's application for termination, the Commission shall enter an order and forward a copy to the applicant. The order will constitute authority to terminate the contract.

002.13A4 SETTLEMENT BY WAREHOUSEMAN. Upon termination of any storage contract by a warehouseman, the warehouseman may:

- A) Deliver the grain to the depositor, storer and/or owner;
- B) Sell the grain in the open market on the business day following the day of termination; or,
- C) Purchase the grain at the price determined by the formula set forth in Subsection 002.08H2. The price will be determined as of the close of business on the business day following the day of termination.

002.13A5. The warehouseman shall deduct from, and retain out of the proceeds of the sale or purchase, all lawful accrued charges and necessary expenses incurred in making and completing the sale, and pay the balance of the proceeds to the depositor, storer and/or owner upon surrender of the warehouse receipts, if applicable.

002.13B TERMINATION BY DEPOSITOR, STORER AND/OR OWNER. The depositor, storer and/or owner of grain in a licensed warehouse may terminate, at any time, the

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storage contract on any or all grain, by:

002.13B1. Presenting a demand for delivery or request to sell the grain, along with any endorsed warehouse receipts covering the grain;

002.13B2. Paying all lawful charges due the warehouseman for the storage of the grain; and,

002.13B3. Furnishing transportation for loading out the grain provided that if the depositor, storer and/or owner does not notify the warehouseman of an intention to furnish transportation, the warehouse-man shall procure the transportation as the agent of the depositor, storer and/or owner, as promptly as may be done in the exercise of ordinary diligence. The storage charges shall not cease until load out is completed.

002.14 CHANGES IN STORAGE CAPACITY. No warehouseman shall increase or decrease the licensed capacity without first meeting the eligibility requirements of Subsection 002.02A and obtaining Commission approval. The Commission shall charge a fee as established pursuant to Rules of Commission Procedure, Section 025, for the change in licensed capacity. An increase in capacity will require an increased storage fee as outlined in the Commission's fee schedule, except that a new warehouse added to an existing license will require a fee as outlined in Subsection 002.03B. The fee shall be non-refundable if the application is withdrawn.

002.15 WAREHOUSE TRANSFER OR CHANGE IN FORM OF BUSINESS.

002.15A TRANSFER OF A WAREHOUSE. The transferor shall notify the Commission prior to transferring a warehouse licensed pursuant to Section 002. The transferee shall submit an application to the Commission as set forth in Subsections 002.03 or 002.14, as applicable. The Commission shall not issue a license to the transferee unless the transferee has filed with the Commission a Successor's Agreement, as prescribed by the Commission, incorporated herein at the end of the chapter and labeled as Attachments 11 and 12, as applicable, whereby the transferee assumes all storage obligations of the transferor.

002.15B CHANGE IN FORM OF BUSINESS. A change from a sole proprietorship, partnership, limited liability company, or corporation to any other form of organization will require compliance with Subsection 002.15A.

002.16 TRANSFERS OF STORED GRAIN. No grain may be transferred from one warehouse to a warehouse at a different location, except as provided in this section. The depositor, storer and/or owner of grain, unless otherwise agreed, may recover grain at the same location where it was deposited.

002.16A WAREHOUSEMAN WHO OPERATES TWO OR MORE WAREHOUSES AT DIFFERENT LOCATIONS UNDER ONE LICENSE. When a warehouseman operates two or more warehouses at different locations under one license, the warehouseman may transfer grain received at one location to a different location operated under the same license.

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002.16B UNRECEIPTED GRAIN. When a warehouseman has grain stored in facilities for which no receipt has been issued, the warehouseman may transfer the grain to a licensed warehouse at a different location for storage.

002.16C TRANSFER OF UNRECEIPTED GRAIN BY JOINT MARKETING OR SHIPPING AGREEMENT. A warehouseman may include in total stocks of grain on its daily position record quantities of grain by commodity and class, represented by non-negotiable warehouse receipts issued to the warehouseman by other licensed warehousemen provided that:

002.16C1. The participating warehousemen maintain a copy of the agreement and current and complete accounts of all transactions involved;

002.16C2. The non-negotiable warehouse receipts issued as a part of such transaction shall contain the declaration: "Held in trust for the depositor(s), storer(s) and/or owner(s) of (name of original receiving warehouseman)"; and,

002.16C3. The warehouseman storing the grain represented by the non-negotiable receipts shall not forward receipted grain for storage under Subsection 002.16D.

002.16D EMERGENCY FORWARD SHIPMENT OF WAREHOUSE RECEIPTED GRAIN FOR STORAGE. Upon determination by the Commission that an emergency storage situation exists, a warehouseman who has grain stored in licensed facilities for which warehouse receipts have been issued, may transfer the grain to a licensed warehouse for storage, subject to the following provisions:

002.16D1. The warehouseman shall apply to the Commission, on a form prescribed by the Commission, incorporated herein at the end of the chapter and labeled as Attachment 13, for approval to forward receipted grain for storage.

002.16D2. The warehouseman shall demonstrate and maintain net worth in accordance with Subsection 002.04 for each bushel of receipted grain forwarded for storage, as determined by the Commission.

002.16D3. The warehouseman shall post additional security, in amounts required for the licensing of additional warehouse space, as prescribed in Subsection 002.05.

002.16D4. Each warehouseman authorized by the Commission to forward receipted grain for storage shall obtain a non-negotiable warehouse receipt to cover grain in storage at the receiving warehouse. Each non-negotiable receipt issued under this section shall contain the declaration, "Held in trust for the depositor(s), storer(s) and/or owner(s) of (name of original receiving warehouse)."

002.16D5. Prior to the approval of an application to forward warehouse receipted grain for storage, the receiving warehouseman must agree to store all grain in licensed space.

002.16D6. Each warehouseman which has received and is storing warehouse

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received grain for another warehouseman shall be prohibited from forwarding received grain for storage.

002.16D7. Any warehouseman who has transferred received grain for storage shall regain sufficient quantities and quality of grain in its licensed facilities to cover all warehouse received obligations no later than one hundred twenty (120) days after an emergency storage situation has ended, as determined by the Commission.

002.17 WAREHOUSE EXAMINATIONS.

002.17A EXAMINATION FREQUENCY REQUIREMENT. All licensed warehouses will be examined by the Commission, or its representatives, at least once every twelve (12) months. Upon demand made by an agent of the Commission, the warehouseman will make available all books and records of the warehouseman relating directly to the operation of the warehouse.

002.17B REQUESTED EXAMINATIONS. When examinations are requested of the Commission, the Commission may charge a fee as established pursuant to Rules of Commission Procedure, Section 025.

002.17C ADDITIONAL EXAMINATIONS. If the Commission determines that additional examinations are necessary after a regular examination is completed at a warehouse, the Commission may charge such warehouse for the cost of the additional examinations according to the Commission's fee schedule. Warehouses shall only be charged if such examinations are for reasons of irregularities from the previous examination or if financial conditions warrant additional examinations.

002.18 WAREHOUSE SURVEILLANCE: CLOSURE OF A WAREHOUSE.

002.18A SURVEILLANCE. If any examination reveals a deficiency in quantity, quality, or both, of the grain stored in a warehouse, the Commission shall have the authority to place an agent of the Commission at the warehouse so as to supervise all operations conducted at said warehouse which would involve stored grain, until the deficiency is corrected. The Commission shall have authority to take possession of the warehouse and supervise the operations to see that no grain moves in or out except at the discretion and/or direction of the Commission. The Commission shall have complete authority to inspect books, records, accounts, papers, and proceedings and, through its agent, monitor and supervise access to and control of the warehouseman's records for the protection and preservation of the depositor, storer and/or owner accounts. The Commission may monitor the records until any litigation, which it has initiated for the benefit of any depositor, storer and/or owner of grain, is completed.

002.18B CLOSURE OF WAREHOUSE; REVOCATION OF LICENSE. The Commission may close a warehouse because of one or more of the following circumstances:

002.18B1. If the Commission determines that a shortage of grain exists or that the quality of grain in storage is insufficient to meet the obligations at a warehouse;

002.18B2. If a license expires and is not renewed;

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002.18B3. If a license is surrendered to, cancelled or revoked by the Commission for violation of any statute or the Commission's Rules and Regulations; or,

002.18B4. If a warehouse is operated without a license.

002.18C. The Commission may take one or more of the following actions in determining whether to close a warehouse or revoke a license:

002.18C1. Conduct an examination.

002.18C2. Issue an order requiring the licensee to show cause why the license should not be revoked upon filing of a verified complaint by the Grain Warehouse Director.

002.18C3. Issue a temporary suspension.

002.18C4. Take possession of the warehouse.

002.18C5. Take title to all grain stored in the warehouse in trust, for all valid depositors, storers and/or owners and qualified sellers of stored grain.

002.18C6. Conduct surveillance.

002.18C7. Hold a hearing on the complaint and any order to show cause which may have been served on the licensee, followed by a Commission order.

002.18C8. Upon revocation of a warehouse license, take custody of the warehouseman's records for the protection and preservation of the depositor, storer and/or owner accounts, and retain custody of these records until the matter has been completely litigated. Requests to review the records must be approved by the Commission.

002.18C9. Make redelivery of the grain on a pro rata basis to all valid depositors, storers and/or owners, or,

- A) Sell the grain using a broker hired by the Commission, through a bidding procedure, auction or any other means which in the Commission's judgment would be best for the depositors, storers and/or owners of grain in the warehouse and qualified check holders.
- B) Award a contract to the highest bidder or bidders, with the Commission reserving the right to reject any or all bids. The Commission may reserve the right to reject all bids submitted pursuant to an offering and reoffer the grain for sale until it is satisfied that it has been tendered an adequate price.
- C) Deposit money from the sale of grain in an interest-bearing trust account for the benefit of the valid depositors, storers and/or owners and qualified check holders.

002.18C10. Supervise the load out and delivery of grain. The Commission, after reviewing and giving consideration to all conditions and circumstances, shall determine how the costs will be borne in each individual case. All liquidation expenses

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shall be paid from the Warehouse Surveillance Cash Fund or the grain sale proceeds.

002.18C11. Publish notice to potential claimants in newspapers published in the area served by the licensee.

002.18C12. Review the records to determine apparently valid claims of depositors, storers and/or owners and qualified sellers of stored grain.

002.18C13. Hold a public hearing for potential claimants to provide evidence of their claims.

002.18C14. Enter a final order with notice to all claimants of record. After the final order, an appeal may be made to the Court of Appeals.

002.18C15. If required, request that all or part of the security be forfeited to the Commission.

002.18C16. Distribute grain sale and/or security proceeds.

002.18C17. Assess the assets of the warehouseman a surveillance fee as established pursuant to Rules of Commission Procedure, Section 025, for actual expenses incurred by the Commission.

002.18C18. Request the redelivery of, or cash payment for, any grain transferred to any person within ten (10) days prior to the closing. Any grain which has been received at the warehouse and forwarded to another location for storage or sale, on which settlement has not been made, shall be subject to the same procedure, with the exception that the ten (10) day provision would not apply. The receiving location is entitled to legitimate storage and handling charges.

002.18D. Upon the Commission's closure of a warehouse and taking title to grain pursuant to Section 002.18, grain seized pursuant to Section 002.18, including grain owned by the warehouse licensee, is subject to a first priority lien in favor of valid owners, depositors, or storers of grain who are holders of evidence of ownership of grain. The lien created under this section shall be preferred to any lien or security interest in favor of any creditor of the warehouse licensee regardless of the time when the creditor's lien or security interest attached to the grain. Notice of the first priority lien referred to herein need not be filed in order to perfect the lien. All the grain in the warehouse, whether stored or not, first shall be applied at all times to the satisfaction of all valid owners, depositors, or storers of grain who hold evidence of ownership of grain.

002.18D1. In the event no distribution is made to valid owners, depositors, or storers of grain who are holders of evidence of ownership of grain and the Commission transfers title to the grain back to the warehouse or to another person, then the first priority lien created shall terminate. Such termination shall not affect any other rights, including rights of ownership in grain stored at the warehouse, of valid owners, depositors, or storer of grain who are holders of evidence of ownership of grain. Nothing shall prevent the Commission from subsequently closing the warehouse and taking other action permitted under law.

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002.18D2. Prior to or within ten days after any creditor of the warehouse licensee commences a judicial proceeding to reduce to judgment, foreclose, or otherwise enforce any claim on a creditor's lien or security interest attached to grain contained in the warehouse, the creditor shall serve written notice on the executive director of the commission.

002.18D3. If the Commission closes the warehouse and takes title to the grain, such action shall operate as a stay of the commencement or continuation, including the issuance or employment of process, of any judicial, administrative, or other action or proceeding to take title to the grain that was or could have been commenced before such action by the Commission.

002.19 CIVIL PENALTY. Any person who violates the grain warehouse 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.
- D) Failure to timely file security replacement or extension.
- E) Failure to timely file replacement stock insurance.
- F) Failure to maintain accurate, complete or current records.
- G) Failure to make payment on demand.
- H) Failure to charge posted storage and handling rates.
- I) Failure to notify the Commission of changes in storage capacity.
- J) Failure to maintain Commission financial requirements.
- K) Repeat or consecutive grain shortage.
- L) Insufficient funds check found on examination.
- M) Grain quality not meeting requirement.
- N) Failure to timely respond to exception report.
- O) Repeat oversold position.

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 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.

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003.02C 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 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.

003.02D APPLICATION FEES. All applications for license will include a fee as set by Neb. Rev. Stat. Section 75-903. 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.

003.02E 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 reviewed or audited fiscal year-end financial statement prepared by an independent certified public accounting firm. 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 generally accepted accounting principles. 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)

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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.

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 accounting firm'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. For purposes of determining whether an applicant or grain dealer meets financial requirements, the following shall apply unless waived by the Commission. In addition to those listed in this section, items may be disallowed, in whole or in part, depending upon the individual circumstances of the grain dealer or applicant:

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003.03J1 PHYSICAL ASSETS.

003.03J1a. Personal assets, including but not limited to residences, household items, recreational items, restricted retirement accounts and vehicles, are disallowed, net of debt on each asset.

003.03J1b. Other assets that are not itemized are disallowed.

003.03J1c. Appraised valuations of assets not substantiated by a satisfactory appraisal are disallowed. An applicant or licensee may submit a valuation of assets by competent appraisal to the Commission for inclusion in computing net worth. If a valuation of assets is submitted and satisfies Commission requirements, no more than seventy percent of appraised value over book value of the assets may be used in determining compliance with net worth requirements. Acceptance of an appraisal is subject to the following:

003.03J1c(1). The appraisal must be prepared by an independent certified appraiser.

003.03J1c(2). The appraisal must be prepared on market, income, and cost approaches.

003.03J1c(3). A one to one working capital ratio must be maintained.

003.03J1c(4). Appraisals will only be allowed for three years following the date of the appraisal.

003.03J2 RECEIVABLES.

003.03J2a. Accounts or notes receivables due from related parties, affiliates, or employees are disallowed.

003.03J2b. Accounts receivables due after one year are disallowed.

003.03J2c. Accounts or notes receivable under litigation are disallowed.

003.03J2d. Unsecured notes receivables are disallowed.

003.03J2e. Other receivables that are not itemized are disallowed.

003.03J3 OTHER.

003.03J3a. Prepaid expenses that are not itemized are disallowed.

003.03J3b. Prepaid taxes are disallowed.

003.03J3c. Prepaid loan fees are disallowed.

003.03J3d. Returned checks are disallowed.

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003.03J3e. Organization costs are disallowed.

003.03J3f. Stock subscriptions are disallowed.

003.03J3g. Intangible assets including but not limited to goodwill are disallowed.

003.03J3h. Refundable and deferred income taxes are disallowed.

003.03K 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.

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 any producer doing business with the grain dealer who files a valid claim arising from a sale to 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 fifteen (15) days after taking possession of the grain purchased. The liability of the surety shall cover purchases made 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.

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

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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,
- 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 fifteen (15) 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 fifteen (15) days after the date of the last shipment of any contract;

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003.04F2. Negotiates any negotiable instrument issued as payment for grain by the grain dealer within fifteen (15) days after its issuance; and

003.04F3. Notifies the Commission within fifteen (15) days after any apparent loss to be covered under the terms of the grain dealer's security.

003.05 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:

003.05A RECEIPTS. Each grain dealer, 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:

003.05A1. The date the grain dealer or its agent took possession of the seller's grain.

003.05A2. The name and address of the buyer.

003.05A3. The name of the seller.

003.05A4. The name of the agent of the buyer.

003.05A5. The kind of grain delivered to the buyer.

003.05A6. The approximate quantity of grain delivered to the buyer.

003.05A7. The following warning shall be printed on the 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 are a Nebraska producer and you: (1) demand payment from the grain dealer within fifteen (15) days after the date of the last shipment of any contract;(2) negotiate any negotiable instrument issued as payment for your grain by the grain dealer within fifteen (15) days after its issuance; and,(3) notify the NPSC, PO Box 94927, Lincoln, NE 68509-4927, within fifteen (15) days after an apparent loss. The grain dealer's security shall provide security for direct delivery grain until a post-direct delivery storage position is created for a period not to exceed fifteen (15) days after date of the last shipment of grain. Direct delivery of grain may affect the eligibility of the grain for participation in federal price support programs.

Nebraska Law defines a producer as the owner, tenant, or operator of land in this state who has an interest in and receives all or part of the proceeds from the sale of grain produced on that land.

003.05A8. All receipts, contracts, bills of lading or other written communications shall be pre-numbered and copies shall be maintained in numeric order.

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003.05B. Checks issued as payment for grain.

003.05C. Contracts issued for grain purchases in Nebraska.

003.05D RETENTION. Each grain dealer shall, unless otherwise authorized by the Commission, maintain the required records for not less than five (5) year(s).

003.06 STORAGE PROHIBITED. No grain dealer may store grain for any person unless licensed under the Grain Warehouse Act or US Warehouse Act.

003.07 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:

003.07A. File a complaint before the Commission against the grain dealer setting forth the alleged violation.

003.07B. Obtain a hearing date on the complaint.

003.07C. Notify the grain dealer and its security provider of the complaint and hearing date on the complaint.

003.08 SUSPENSION OR REVOCATION OF LICENSE.

003.08A 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.

003.08B 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.

003.09 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.
- 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.

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004 GRAIN MOISTURE MEASURING DEVICES.

004.01 TESTING AND INSPECTION.

004.01A SCOPE OF TESTING. The Grain Warehouse Department shall annually test and inspect all approved grain moisture and test weight measuring devices in Nebraska used to ascertain the moisture content of grain in connection with, or in any manner relating to, the storage, purchase or sale of grain. The Commission's inspection of grain moisture measuring devices shall be for determining the device's accuracy in determining moisture content and test weight of grain and is not intended to determine accuracy of the device's temperature or other measurements.

004.01B FEES. The fees charged to cover the cost of testing and inspecting grain moisture and test weight measuring devices shall be established pursuant to Rules of Commission Procedure, Section 025.

004.01C APPROVED GRAIN MOISTURE MEASURING DEVICES. The warehouse department will maintain a list of approved grain moisture and test weight measuring devices. Devices on the approved list must be inspected by the Commission and pass the Commission's inspection each calendar year. If a device is not inspected each calendar year or it fails to pass an inspection and cannot be repaired, the device will be re-moved from the list of approved grain moisture and test weight measuring devices. For new grain moisture and test weight measuring devices purchased after 2001 to be included on the list of approved grain moisture and test weight measuring devices, the device must have a current National Type Evaluation Program Certificate at the time of purchase.

004.01D PROCEDURE. All grain moisture measuring devices will be tested against a standard meter which will be furnished by the Commission. All grain moisture measuring devices will be inspected to determine whether they are in proper operational condition and supplied with the proper accessories. The inspection results shall be documented on a form prescribed by the Commission, incorporated herein at the end of the chapter and labeled as Attachment 18, with a copy of the inspection report delivered to the owner or user of the grain moisture measuring device.

004.01E GROUNDS FOR REJECTING TESTED GRAIN MOISTURE MEASURING DEVICES. Devices may be rejected for any of the following reasons:

004.01E1. The moisture device tested is found to be out of tolerance with the standard meter used by the inspector by more than one-half of one percent on grain up to and including twenty percent (20%) moisture content or eight-tenths of one percent on grain over twenty percent (20%) up to and including twenty-two percent (22%);

004.01E2. The owner or user of the device does not have available the latest charts for the type of device being used;

004.01E3. The owner or user of the device does not have available the proper scale, or scales, and the thermometers for use with the type of device being used; or,

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004.01E4. The grain moisture measuring device is not free from excessive dirt or cracked glass, or is not kept in good operational condition at all times.

004.01F COMMISSION APPROVAL OR REJECTION. The Commission inspector shall affix a decal to each grain moisture and test weight measuring device which has been inspected to indicate approval or rejection by the Commission.

004.01G. Procedure for Testing Test Weight Measuring Devices: All test weight measuring devices shall be tested by the inspector against grain samples of known weight.

004.01H GROUNDS FOR REJECTING TESTED TEST WEIGHT MEASURING DEVICES. Devices may be rejected if the test weight measuring device is found to be out of tolerance with the sample used by the inspector by more than eight tenths of a pound per bushel for corn and oats, one-half a pound per bushel for all wheat and seven tenths of a pound per bushel for soybeans, barley, sunflower and sorghum.

004.02 REJECTED GRAIN MOISTURE AND TEST WEIGHT MEASURING DEVICES.

004.02A MARKING REJECTED GRAIN MOISTURE MEASURING DEVICES. Whenever a grain moisture and test weight measuring device is rejected, for one or more of the grounds specified in Subsections 004.01E and 004.0G, the inspector shall mark the device with a tag or other appropriate seal or mark which will indicate that the device is defective or not properly maintained for use.

004.02B REMOVAL OF REJECTION MARK. No tag, seal, or mark, indicating that a grain moisture and test weight measuring device has been rejected, will be removed from the device until after the device has been repaired, placed in proper operational condition, supplied with the proper accessories, reinspected, and approved by the Commission.

004.02C USE OF GRAIN MOISTURE AND TEST WEIGHT MEASURING DEVICE WHILE MARKED. A grain moisture measuring device, while marked, sealed, or tagged, as provided in Subsection 004.02A, may not be used to ascertain the moisture content or test weight of grain in connection with, or in any manner relating to, the storage, purchase or sale of grain, except under the following conditions:

004.02C1. The owner or user of the device shall keep a record, open to inspection, of every sample of grain tested by the tagged device, showing that the adjustment was made on all such grain tested.

004.02C2. The device will be repaired to comply with Subsections 004.01E and 004.04G within thirty (30) days, and the Commission thereupon notified. If, upon reinspection, the device again is rejected under the provisions of Subsections 004.01E and 004.04G, it will be sealed and will not be used until repaired and reinspected.

004.03 PLACEMENT AND VISUAL OPERATION OF GRAIN MOISTURE MEASURING DEVICE. Every device in Nebraska used to ascertain the moisture content or test weight of grain in connection with, or in any manner relating to, the storage, purchase or sale of grain, will be used in a location where the test being made may be observed by the producer or

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owner of the grain being tested and the detailed procedure for running moisture tests will be displayed in a conspicuous place close to the moisture device.

005 GRAIN PROBES.

005.01 SCOPE. Every mechanical probe in Nebraska, used to collect a sample from a load of grain to determine foreign material content, must be one which has been tested and inspected by the Commission and is listed on the Commission's approved list of mechanical probes.

005.02 PROCEDURES. Every person shall notify the Commission at once upon the purchase of a mechanical probe or upon the modification of any mechanical probe, now in its possession, to be used in collecting a sample from a load of grain to determine foreign material content, in order that the Commission may check and inspect the probe to determine approval or disapproval. Any mechanical probe for use in collecting a sample from a load of grain to determine foreign material content, which does not appear on either the Commission's approved or disapproved list of mechanical probes, will be reported to the Commission at once.

005.03 INSPECTIONS AND APPROVAL. The Commission shall place an appropriate seal or tag on all mechanical probes being used under Subsection 005.01 to indicate the probe is approved or disapproved by the Commission. The Commission may inspect or re-inspect any mechanical probe being used for the purpose of verification.

005.04 HAND TRIER. The hand trier is an approved probe.

005.05 END INTAKE AIR PROBES. The use of end intake air probes, which use a vacuum to collect a sample to determine foreign material content from a load of grain, is prohibited.

005.06 APPROVED OR DISAPPROVED MECHANICAL PROBES. The Commission shall maintain a separate current and complete listing of all manufacturers' approved and disapproved probes.