

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on	)	RULE AND REGULATION NO. 191
its own motion, seeking to amend	)	
Title 291, Chapter 8 Grain	)	ORDER ADOPTING FIRST SET OF
Warehouse Rules and Regulations, to	)	PROPOSED RULES AND ISSUING
update rules regarding grain	)	CERTIFICATE OF ADOPTION
warehouses, grain dealers and grain	)	
moisture meters.	)	Entered: December 3, 2013

BY THE COMMISSION:

On July 30, 2013, the Commission, on its own motion, opened this proceeding seeking to amend Title 291, Chapter 8, Grain Warehouse Rules and Regulations, to update rules regarding grain warehouses, grain dealers and grain moisture meters.

The Commission proposed to amend Title 291, Chapter 8, Grain Warehouse Rules and Regulations, as set forth in the attached Appendix, incorporated herein by this reference. The proposed rules modify provisions related to grain warehouse shipping ledgers and grain dealer receipts, incorporate existing standards regarding the calculation of net worth and working capital, modify the range of tolerances for grain moisture meters, and correct typographical errors.

Written comments in support of the proposed changes were filed on behalf of the Nebraska Grain and Feed Association and the Nebraska Cooperative Council. Hearing on the proposed rules was held on **November 13, 2013**. Attorney Angela Melton appeared on behalf of the Commission staff.

E V I D E N C E

Mr. John Fecht, director of the Grain Warehouse Department testified regarding the proposed changes and indicated that with respect to the changes related to the review of financial statements the proposed rules merely codify existing practice. Additionally, Mr. Fecht stated that the changes to the grain moisture meter standards were necessary to accommodate changes in technology.

Mr. Robert Andersen of the Nebraska Cooperative Council testified in support of the Department's recommendation. Copies of the comments received were entered into the record.

O P I N I O N     A N D     F I N D I N G S

Based upon the evidence received, the Commission finds that the proposed rules attached hereto as Appendix and incorporated herein by this reference should be adopted.

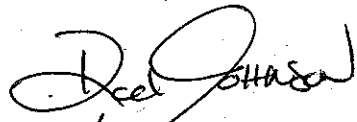

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that a certificate of adoption for the proposed rules as set forth in the Appendix be, and is hereby, issued.

MADE AND ENTERED at Lincoln, Nebraska, this 3rd day of December, 2013.

COMMISSIONERS CONCURRING:



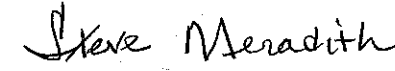
  


//s//Anne C. Boyle  
//s//Frank E. Landis

NEBRASKA PUBLIC SERVICE COMMISSION

  
Chair

ATTEST:

  
Executive Director

## APPENDIX

1) Amend section 002.02C as set forth below:

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 tank with catwalk to others
Cluster of 10 or more	20 to 29.9 feet high inclusive	Permanent ladder on one 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 tank with catwalk to others
Cluster of 4 or more	30 to 50 feet or higher inclusive	Permanent ladder on one tank with catwalk to others
1 or more	50 feet or higher	Permanent ladder with a safety cage attached <u>with catwalk to others</u> or a manlift

002.02C2 Ladders and catwalks must be constructed with necessary hand rails when required; and,

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

2) Amend section 002.04 as set forth below and renumber sections accordingly:

002.04 Financial Requirements: Each license applicant and warehouse licensee shall file the financial statement prescribed by statute prepared in accordance with accounting principles generally accepted in the United States. 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. ~~For purposes of the financial review conducted by the Commission to determine whether the applicant or licensee meets net worth requirements, certificates of deposit filed as security will not be disallowed as part of that review process.~~ 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. ~~An applicant may also submit a valuation of assets by competent appraisal to the Commission for inclusion in computing net worth for the purpose of meeting any net worth requirements imposed by the act or rules and regulations of the Commission. If a valuation of assets is submitted, no more than seventy percent of appraised value shall be used in determining compliance with net worth requirements.~~

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.

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 ~~002.04C~~ 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 ~~002.04D~~ 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 ~~002.04E~~ 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 accounting principles generally accepted in the United States by a person or firm which holds a permit granted by the Nebraska State Board of Public Accountancy.

002.04F1 ~~002.04E1~~ 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.
- 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 ~~002.04E2~~ 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.

3) Amend sections 002.07L and 002.070 as follows:

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.

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.

- 4) Amend section 003.03J as set forth below adding new language and renumbering accordingly:

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:

003.03J1 Physical Assets

003.03J1a Depreciable assets not covered by insurance are disallowed.

003.03J1b 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.



003.03J1c Other assets that are not itemized are disallowed.

003.03J1d 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:

003.03J1d(1) The appraisal must be prepared by an independent certified appraiser.

003.03J1d(2) The appraisal must be prepared on market, income, and cost approaches.

003.03J1d(3) A one to one working capital ratio must be maintained.

003.03J1d(4) Any value claimed over the insured value will be disallowed.

003.03H1d(5) 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.

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

5) Amend sections 003.06 and renumber accordingly:

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

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

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

003.06A2 The name and address of the buyer.

003.06A3 The name of the seller.

003.06A4 The name of the agent of the buyer.

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

003.06A5 ~~003.06A6~~ The kind of grain delivered to the buyer.

003.06A6 ~~003.06A7~~ The approximate quantity of grain delivered to the buyer.

003.06A7 ~~003.06A8~~ The following provisions shall be printed on the face of a receipt in eight point type or larger:

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

003.06A8 All receipts, contracts, bills of lading or other written communications shall be pre-numbered and copies shall be maintained in numeric order.

003.06B Checks issued as payment for grain.

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

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

6) Delete section 003.07 and renumber sections accordingly.

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

7) Amend the section 004.01E as set forth below:

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-two 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,

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.