

Nebraska Public Service Commission

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Date: July 27, 2015

To: All Nebraska Grain Dealers and customers of Nebraska Grain Dealers

From: John Fecht, Director of the Nebraska Public Service Commission's (PSC) Grain Warehouse Department (Department)

RE: LB 183 [2015] Changes to Nebraska Grain Dealer Act

During the 2015 Legislative session, the Nebraska Legislature passed LB 183 which made modifications to the Grain Dealer Act. The provisions of LB 183 will become effective **August 30, 2015**. Attached please find a copy of LB 183 for your reference. The major provisions and changes contained in the bill are explained in detail below.

First, some of the changes contained within LB 183 were in direct response to events surrounding the Pierce Elevator closure in 2014. In the Pierce matter, half of the bond proceeds available to cover Pierce's dealer activity went to commercial grain companies. The Legislature, with the passage of LB 183, clarified it is the intent of the Grain Dealer Act to provide security coverage for producers that sold grain to a dealer and had not been paid, not to indemnify all sales to third party grain purchasers. Therefore, as of August 30, 2015, dealer security coverage will only cover first purchases of grain transactions. The change to protecting first purchases will reserve the proceeds of the dealer security for the farmers/producers and landlords.

Second, after consultation with interested industry groups, it was determined that to incentivize prudent and reasonable business practices within the industry, **the time to demand payment for grain sold to a dealer was reduced from 30 days to 15 days from the last delivery**. The corresponding time limits to negotiate a check received from a dealer and/or to report an insufficient fund check to the PSC were also reduced to 15 days from 30 days. Those selling grain to a grain dealer now have 15 days from the date

of the last delivery to demand payment. Failure to demand payment in a timely manner will result in no security protection for those transactions in the event of a dealer failure. Such customers will simply be out the money they are owed by the dealer for the grain they sold.

Please note, contracts written prior to August 30, 2015 will contain the current language of 30 days. However, the 15 day limit to procure security coverage will apply to final deliveries made after August 30, 2015, regardless of when the contract was signed. Sellers are urged to get their scale tickets and settlement sheets and demand payment from the grain dealers within 15 days of any delivery effective immediately to protect their interest to claim security coverage for dealer transactions.

With the changes regarding coverages of first purchases only, the "Warning to Seller" language that many of you include on your grain purchase contracts will now only apply to contracts for first purchase transactions. Please either add language to the warning clarifying only first purchase grain contracts are covered by the warning or ensure the language is only printed on first purchase contracts and not on commercial account contracts. For your reference, any contracts where checkoff fees will be collected will still need the warning language as both apply to a first purchase arrangement.

Third, LB 183 eliminates the requirement to register and pay \$40 per truck used by a dealer to transport grain. This was an old provision carried over from the days when the amount of the dealer security was determined by the number of trucks used by the dealer. As you all know, the amount of security required for grain dealer's licenses is now based on the amount of annual grain purchases. Therefore, the truck license provision was removed.

While LB 183 eliminated the \$40/truck fee, it also correspondingly raised the annual license fee from \$60 to \$100. The annual license fee has remained unchanged from \$60 for many years. Those dealers licensed prior to August 30, 2015 will still be assessed the \$60 license fee and be required to pay the truck fees. No refunds of the truck fees will be provided.

In addition, LB 183 modified language regarding financial documents, allowing the PSC to accept financial statements for the purposes of grain dealer licensing prepared by out-of-state duly licensed accounting firms. Financial documents no longer have to be prepared by a firm holding a permit with the Nebraska State Board of Public Accountancy.

Finally, LB 183 changed the definition of a grain dealer, removing persons or firms that do not buy grain as a first purchaser or who transport grain from outside Nebraska into the state to sell it from the definition of grain dealers. This means that individuals and/or firms that are currently licensed as grain dealers with the PSC that only purchase grain from commercial grain companies or simply sell grain produced out-of-state in Nebraska will no longer be required to be licensed dealers to conduct that activity. Those currently licensed dealers that as of August 30, 2015 will no longer be required to be licensed, are asked to notify the Department in writing of the nature of your business and your intent to cancel your dealer license for our records. Please return your current license with the written notice and proceed to cancel your bond or request the PSC return your irrevocable letter of credit.

Thank you for your time and attention to this matter and please do not hesitate to contact me or someone in the Department if you have questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "John Fecht", with a long horizontal flourish extending to the right.

John A. Fecht
Grain Department Director
Nebraska Public Service Commission

Attachment