



## **Guidelines for License Suspensions and Revocations, and the Sealing of Facilities in the Grain Warehouse Program**

Fair and consistent regulation of grain warehouses protects individuals and businesses, such as farmers, that own grain placed on deposit at licensed warehouses. Suspension and/or revocation of a grain warehouse license, or sealing of a warehouse facility, may sometimes be necessary to minimize or prevent the losses to those grain owners in the event of a warehouse failure.

The Texas Department of Agriculture (TDA) is authorized by various provisions of Chapter 14, relating to the regulation of public grain warehouses, to suspend the license of a warehouse operator when certain conditions exist or in response to violations of the public grain warehouse laws.

License holders have a right to appeal a department action or order affecting a warehouse operator under this chapter in accordance with [Section 14.066](#) of the Texas Agriculture Code.

To ensure that such suspensions are effective, TDA may continue to inspect and monitor a facility, “seal” a facility in whole or in part, enter into an agreed order with the warehouse operator, seek an injunction against the warehouse operator, assess administrative penalties, request that the Office of the Attorney General seek civil penalties, refer the matter for criminal prosecution, or use combinations of the preceding methods permitted by law. A suspension imposed under an agreed order has the same legal effect as an order issued after a hearing before the State Office of Administrative Hearings (SOAH). Thus, although agreement to the order is initially still voluntary, the agreed order once issued renders the ordered suspension fully binding and non-rescindable.

Finally, TDA may revoke or deny renewal of the license of a grain warehouse operator when compliance with the law is not achieved voluntarily or through suspension and the above complementary actions or when compliance is impossible. If lesser methods fail to achieve compliance or compliance is found to be impossible, ultimately revocation of the warehouse operator’s license may be required. TDA will evaluate the situation and, if warranted, immediately request a docket setting at SOAH, along with a request for an expedited hearing date no less than 30 days or no more than 90 days after receipt of the incident.

All references to statutory sections below are to [Chapter 14 of the Texas Agriculture Code](#), unless otherwise noted.

## **Automatic Suspensions**

An automatic suspension immediately exists whenever the specified condition exists and continues until that condition is eliminated and the risk of its recurrence is minimized. Thus, automatic suspensions are generally indefinite in nature, although a warehouse operator may appeal the suspension to state district court pursuant to [Section 14.066](#).

Automatic suspensions come into existence upon:

- cancellation of a required bond without an effective replacement - [Section 14.033](#)
  - cancellation of a required letter of credit without an effective replacement - [Section 14.034](#)
  - cancellation of a required insurance policy without an effective replacement - [Section 14.042](#)
1. Upon identifying an automatic suspension exists, TDA will immediately issue a written notice of suspension to the warehouse operator. The notice of suspension will specify a 10 business day deadline for correcting the applicable lapse.
  2. After the noncompliance issue has been identified, TDA will arrange for a facility inspection to be conducted within 48 hours, or at a time TDA deems necessary, to determine whether or not storage obligations exist at the facility.
  3. The initial deadline specified in the notice may be extended, either upon request of the operator or unilaterally by TDA. Extensions must be in writing, and be of duration no less than 10 business days or no more than 80 calendar days from the end of the initial deadline.
  4. If storage obligations exist, other than company-owned grain, at the beginning of or during the suspension, then TDA will:
    - a. determine whether sealing is appropriate to the circumstances and, if so, will use appropriate methods for sealing the facility given the particular circumstances, the nature of the issue requiring sealing, the extent of sealing required, and available resources.
    - b. provide written notification to the warehouse operator regarding their responsibility for preserving both the quantity and the quality of depositor grain.

Upon expiration of the final deadline, if the lapse has not been corrected or an Agreed Order (of Suspension) has not been issued, TDA may request a docket setting at the SOAH, along with a request for an expedited hearing date to revoke the warehouse operator's license. If the warehouse operator corrects the noncompliance and presents documents showing the insurance policy/bond/letter of credit was in effect prior to the expiration of an extended deadline, TDA will provide written notice lifting the suspension.

### **Suspensions Issued Without a Pre-Suspension Hearing**

In addition to Automatic suspensions, the Texas Agriculture Code provides for two other suspensions that can be issued without a pre-suspension hearing. These are provided under [Section 14.082](#) and [Section 14.083\(c\)](#). The warehouse operator may appeal a suspension under this section to state district court pursuant to [Section 14.066 of the Texas Agriculture Code](#).

Unless an agreed order (of suspension) is entered into, suspensions under [Section 14.083](#) cannot exceed 90 days without first requesting a hearing with SOAH.

### **Suspensions issued under [Section 14.082](#) may include:**

#### **Grain Shortage**

Upon a determination that a grain shortage exists, TDA will immediately issue a written notice of suspension to the warehouse operator. The warehouse operator will have 24 hours to correct the shortage. The suspension will remain in effect until the shortage is corrected or the license is revoked in lieu of a shortage correction. The consequence for failure to correct the shortage or comply with the suspension or the deadline for correcting the shortage will be administrative penalties, revocation of the warehouse operator's license, or use of combinations of methods permitted by law.

1. If the warehouse corrects the shortage prior to expiration of the deadline, the suspension will be lifted by written notice.
2. The initial 24 hour deadline may be extended, either upon request of the operator or unilaterally by TDA. Each extension must be in writing, and be of duration no less than 24 hours or no more than 30 calendar days from the end of the initial deadline. The maximum number of days to comply may not exceed 60 days, unless otherwise provided by TDA.
3. If the shortage is not corrected by the initial 24-hour deadline, regardless of whether or not an extension to comply is granted, TDA will:
  - a. determine whether sealing is appropriate to the circumstances and, if so, will use appropriate methods for sealing the facility given the particular

circumstances, the nature of the issue requiring sealing, the extent of sealing required, and available resources.

- b. provide written notification to the warehouse operator regarding their responsibility for preserving both the quantity and the quality of depositor grain.
4. Upon expiration of the final deadline, if the warehouse operator is unable to correct the shortage or an Agreed Order (of Suspension) has not been issued, TDA may request a docket setting at SOAH, along with a request for an expedited hearing date to revoke the warehouse operator's license and will execute administrative penalties.

### **Refusal of Inspection**

If a warehouse operator refuses inspection, TDA will immediately issue a written notice of suspension to the warehouse operator and will immediately seal the facility. The warehouse operator will have 24 hours to permit inspection. The consequence for failure to permit inspection or comply with the suspension or the deadline for permitting inspection will be administrative penalties, revocation of the warehouse operator's license, or use of combinations of methods permitted by law.

1. If the warehouse permits inspection prior to expiration of the deadline, TDA will provide written notice lifting the suspension, will remove the seal, and will execute administrative penalties.
2. The deadline to comply may not be extended beyond 24 hours.
3. If permission to inspect is not granted by the initial 24-hour deadline, TDA may request a docket setting at SOAH, along with a request for an expedited hearing date to revoke the warehouse operator's license.

### **Operator unable to submit records or property for inspection**

Upon a determination that a warehouse operator is unable to submit records or property for inspection, TDA will immediately issue a written notice of suspension to the warehouse operator. The warehouse operator will have 24 hours to submit records or property for inspection. The consequence for failure to submit records or comply with the suspension or the deadline for submitting records will be administrative penalties, revocation of the warehouse operator's license, or use of combinations of methods permitted by law.

1. If compliance is achieved by the 24-hour deadline, TDA will provide written notice lifting the suspension and will execute administrative penalties.

2. If noncompliance is not corrected by the initial 24-hour deadline, regardless of whether or not an extension to comply is granted, TDA will:
  - a. determine whether sealing is appropriate to the circumstances and, if so, will use appropriate methods for sealing the facility given the particular circumstances, the nature of the issue requiring sealing, the extent of sealing required, and available resources.
  - b. provide written notification to the warehouse operator regarding their responsibility for preserving both the quantity and the quality of depositor grain.
3. The initial 24 hour deadline may be extended, either upon request of the operator or unilaterally by TDA. Each extension must be in writing, and be of duration no less than 24 hours or no more than 30 calendar days from the end of the initial deadline, with a maximum period to comply of 60 days, except as provided by TDA.
4. Upon expiration of the final deadline, if the warehouse operator is unable to submit all records and property for inspection or an Agreed Order (of Suspension) has not been issued, TDA may request a docket setting at the State Office of Administrative Hearings (SOAH) along with a request for an expedited hearing date to revoke the warehouse operator's license. If the warehouse operator submits all requested records and property for inspection prior to expiration of an extended deadline, TDA will provide written notice lifting the suspension and will execute administrative penalties.

### **Condition of warehouse or grain prevents inspection.**

Upon a determination that conditions of the warehouse or grain prevent inspection, TDA will immediately issue a written notice of suspension to the warehouse operator. The warehouse operator will have 24 hours for correcting any conditions that prevent inspection. The consequence for failure to correct any condition that prevents inspection or comply with the suspension or the deadline for correcting any conditions that prevent inspection will be administrative penalties, revocation of the warehouse operator's license, or use of combinations of methods permitted by law.

1. If compliance is achieved by the 24-hour deadline, TDA will provide written notice lifting the suspension and will execute administrative penalties
2. If noncompliance is not corrected by the initial 24-hour deadline, regardless of whether or not an extension to comply is granted, TDA will:
  - a. determine whether sealing is appropriate to the circumstances and, if so, will use appropriate methods for sealing the facility given the particular circumstances, the nature of the issue requiring sealing, the extent of sealing required, and available resources.

- b. provide written notification to the warehouse operator regarding their responsibility for preserving both the quantity and the quality of depositor grain.
3. The initial 24 hour deadline may be extended, either upon request of the operator or unilaterally by TDA. Extensions must be in writing, and be of duration no less than 24 hours or no more than 30 calendar days from the end of the initial deadline, with a maximum period to comply of 60 days, except as provided by TDA.
4. Upon expiration of the final deadline, if the warehouse operator is unable to correct any conditions that prevent inspection or an Agreed Order (of Suspension) has not been issued, TDA may request a docket setting at SOAH, along with a request for an expedited hearing date to revoke the warehouse operator's license. If the warehouse operator corrects any conditions that prevent inspection prior to expiration of an extended deadline, TDA will provide written notice lifting the suspension and will execute administrative penalties.

**Suspensions issued under [Section 14.083\(c\)](#) may include:**

**Net Worth Deficiency with a Positive Net Worth**

Upon a determination that a net worth is below what is required by law, but still greater than zero, TDA will immediately issue a written notice of suspension to the warehouse operator. The warehouse operator will have 10 days to correct the net worth deficiency. The consequence for failure to correct the deficiency will be immediate sealing of the warehouse, administrative penalties and either an agreed order (of Suspension) or revocation of the warehouse operator's license.

1. TDA shall arrange for a facility inspection to be conducted within 48 hours, or at time TDA deems necessary, after the noncompliance issue has been identified to determine whether storage obligations exist at the facility or not.
2. The initial 10 day *deadline* may be extended, either upon request of the operator or unilaterally by the TDA. Extensions must be in writing, and be of duration no less than 10 business days or no more than 80 calendar days from the end of the initial deadline.
3. The *suspension* itself may be extended by TDA as necessary to the circumstances for a total period of no more than 90 days and in increments of no more than 30 days. The number of such extensions is limited only by the limit on total suspension time.

4. If storage obligations exist, other than company-owned grain, at the beginning of or during the suspension, then TDA will:
  - a. determine whether sealing is appropriate to the circumstances and, if so, will use appropriate methods for sealing the facility given the particular circumstances, the nature of the issue requiring sealing, the extent of sealing required, and available resources.
  - b. provide written notification to the warehouse operator regarding their responsibility for preserving both the quantity and the quality of depositor grain.
5. If the warehouse corrects the net worth deficiency prior to expiration of an extended deadline, TDA will provide written notice lifting the suspension and will execute administrative penalties.
6. Upon expiration of the final deadline, if the noncompliance has not been corrected or an Agreed Order (of Suspension) has not been issued, TDA will request a docket setting at the State Office of Administrative Hearings (SOAH) along with a request for an expedited hearing date to revoke the warehouse operator's license. A suspension imposed under an agreed order has the same legal effect as an order issued after a hearing before the State Office of Administrative Hearings. Thus, although agreement to the order is initially still voluntary, the agreed order once issued renders the ordered suspension fully binding and non-rescindable. Depending upon the particular circumstances, a motion to dismiss the action to suspend may be filed with SOAH by TDA, if the noncompliance that instigated the action to suspend is corrected prior to issuance of a final order suspending the license.

### **Net Worth Deficiency with a Negative Net Worth**

Upon a determination that a negative net worth exists, TDA will immediately issue a written notice of suspension to the warehouse operator. The warehouse operator will have 24 hours to correct the net worth deficiency. The consequence for failure to correct the deficiency will be immediate sealing of the warehouse, administrative penalties and either an agreed order (of Suspension) or revocation of the warehouse operator's license.

1. The initial 24 hour deadline may be extended, either upon request of the operator or unilaterally by the TDA. Extensions must be in writing, and be of duration no less than 10 business days or no more than 80 calendar days from the end of the initial deadline.
2. The suspension itself may be extended by TDA as necessary to the circumstances for a total period of no more than 90 days and in increments of no more than 30 days. The number of such extensions is limited only by the limit on total suspension time.

3. If the warehouse corrects the net worth deficiency prior to expiration of an extended deadline, TDA will provide written notice lifting the suspension and will execute administrative penalties.
4. Upon expiration of the final deadline, if the noncompliance has not been corrected or an Agreed Order (of Suspension) has not been issued, TDA will request a docket setting at the State Office of Administrative Hearings (SOAH) along with a request for an expedited hearing date to revoke the warehouse operator's license. A suspension imposed under an agreed order has the same legal effect as an order issued after a hearing before the State Office of Administrative Hearings. Thus, although agreement to the order is initially still voluntary, the agreed order once issued renders the ordered suspension fully binding and non-rescindable. Depending upon the particular circumstances, a motion to dismiss the action to suspend may be filed with SOAH by TDA, if the noncompliance that instigated the action to suspend is corrected prior to issuance of a final order suspending the license.

### **General Suspension for Other Situations**

Upon a determination that it is necessary to suspend a warehouse operator's license, TDA will immediately issue a written notice of suspension to the warehouse operator, specifying the reason for the suspension. The deadline for correcting the noncompliance will be stated in the notice of suspension and the amount of time provided will be determined as appropriate for the circumstances. The consequence for failure to correct the reason for the suspension or comply with the suspension or the deadline for correcting any conditions associated with the suspension will be administrative penalties, revocation of the warehouse operator's license, or use of combinations of methods permitted by law.

1. TDA shall arrange for a facility inspection to be conducted within 48 hours, or at a time TDA deems necessary, after the noncompliance issue has been identified to determine whether storage obligations exist at the facility or not.
2. The initial deadline issued by TDA in the written notice, may be extended, either upon request of the operator or unilaterally by the TDA. Extensions must be in writing, and be of duration no less than 10 business days or no more than 80 calendar days from the end of the initial deadline.
3. The suspension itself may be extended by TDA as necessary to the circumstances for a total period of no more than 90 days and in increments of no more than 30 days. The number of such extensions is limited only by the limit on total suspension time.

4. If storage obligations exist, other than company-owned grain, at the beginning of or during the suspension, then TDA will:
  - a. determine whether sealing is appropriate to the circumstances and, if so, will use appropriate methods for sealing the facility given the particular circumstances, the nature of the issue requiring sealing, the extent of sealing required, and available resources.
  - b. provide written notification to the warehouse operator regarding their responsibility for preserving both the quantity and the quality of depositor grain.
  
5. If the warehouse corrects the noncompliance prior to expiration of an extended deadline, TDA will provide written notice lifting the suspension and will execute administrative penalties.
  
6. Upon expiration of the final deadline, if the noncompliance has not been corrected or an Agreed Order (of Suspension) has not been issued, TDA will request a docket setting at SOAH, along with a request for an expedited hearing date to revoke the warehouse operator's license. Depending upon the particular circumstances, a motion to dismiss the action to suspend may be filed with SOAH by TDA, if the noncompliance that instigated the action to suspend is corrected prior to issuance of a final order suspending the license.

## **Unlicensed Facilities**

For facilities which have not obtained a license and are not exempt from licensing (unlicensed facilities), TDA is authorized to issue cease and desist orders. While TDA attempts to utilize efforts other than cease and desist orders, as with suspensions and even in the absence of a cease and desist order, TDA may seal an unlicensed facility in whole or in part, seek an injunction against the warehouse operator, assess administrative penalties, enter into an agreed order with the warehouse operator, request that the Office of the Attorney General seek civil penalties, refer the matter for criminal prosecution, or use combinations of the preceding methods permitted by law.

### **Sealing of a Warehouse for Unlicensed Facility**

Facilities found to be operating without a license and do not meet the exemptions referenced by [Section 14.011](#) will be sealed in whole or part. TDA will follow the procedures below if the facility is found to be operating as an unlicensed facility without an exemption referenced in [Section 14.011](#).

1. TDA will immediately issue a written notice to comply to the warehouse operator. The warehouse operator will have 10 days to submit required documents for a grain warehouse license.

2. If storage obligations exist, other than company-owned grain, at the beginning of or during the suspension, then:
  - a. determine whether sealing is appropriate to the circumstances and, if so, will use appropriate methods for sealing the facility given the particular circumstances, the nature of the issue requiring sealing, the extent of sealing required, and available resources.
  - b. provide written notification to the warehouse operator regarding their responsibility for preserving both the quantity and the quality of depositor grain.
3. The initial deadline to meet licensing requirements may be extended, either upon request of the operator or unilaterally by the TDA. Extensions must be in writing, and be of duration no less than 24 hours or no more than 30 calendar days from the end of the initial deadline, with a maximum period to comply of 60 days.