

CHAPTER 95
CIVIL PENALTIES

21—95.1(203,203C) Definitions. For the purpose of these rules, the following definitions shall apply:

“*Contested case hearing*” means an evidentiary hearing pursuant to Iowa Code chapter 17A.

“*Department*” means the grain warehouse bureau of the Iowa department of agriculture and land stewardship.

“*Informal settlement*” means an agreement between a licensee and the department which provides for sanctions for a violation of Iowa Code chapter 203 or 203C or the rules promulgated thereunder, but does not include a contested case hearing.

“*Licensee*” means a grain dealer or warehouse operator licensed under Iowa Code chapter 203 or 203C.

“*Panel*” means the grain industry peer review panel.

“*Report*” means the information provided by the department to the panel to assist in its review of cases involving proposed civil penalties.

“*Review period*” means the period of time during which the licensee may seek review of a proposed civil penalty by the panel.

21—95.2(203,203C) Grain industry peer review panel. The panel shall review cases of licensees subject to civil penalties for violations of Iowa Code chapter 203 or 203C or the rules promulgated thereunder. The decision to assess a civil penalty shall be made exclusively by the department. The panel’s review shall be limited to the issues of whether a civil penalty should be assessed and the amount of the penalty. The panel will not determine whether a violation of law has occurred.

21—95.3(203,203C) Organization and location. The panel is located within the Iowa Department of Agriculture and Land Stewardship, Henry A. Wallace Building, Des Moines, Iowa 50319. The department’s office hours are from 8 a.m. to 4:30 p.m., Monday through Friday.

21—95.4(203,203C) Membership. The panel shall consist of five members as set forth in Iowa Code Supplement section 203.11B.

21—95.5(203,203C) Staff. Staff assistance shall be provided through the department.

21—95.6(203,203C) Meetings. The panel shall meet annually to elect a chairperson but may meet at the call of the chairperson or upon written request to the chairperson of two or more members. All panel meetings shall comply with Iowa Code chapter 21. A quorum of three-fifths of the panel shall be present to transact business. Action by the panel requires a vote of a majority of those on the panel. Meetings follow Robert’s Rules of Order. Minutes of each meeting shall be available from the department.

21—95.7(203,203C) Criteria for assessing civil penalties. Licensees who violate Iowa Code chapter 203 or 203C or the rules promulgated thereunder may be subject to civil penalties. In evaluating a violation to determine which cases may be appropriate for assessment of civil penalties, or for purposes of assessing civil penalties, the department shall consider, among other relevant factors, the following:

1. Economic benefits realized by the violator through noncompliance.
2. Willfulness or recklessness of the violation.
3. Actual or threatened damage to sellers or depositors.
4. Actual or potential costs incurred by the department in discovering and responding to the violation.
5. Remedial or corrective action taken by the licensee.
6. Previous history of noncompliance by the licensee.

The amount of civil penalty assessed shall not exceed \$1500 per violation. Each day that a violation continues constitutes a separate violation.

21—95.8(203,203C) Notice of civil penalty assessment—informal settlement. The department shall give written notice to the licensee that it intends to seek assessment of a civil penalty. The notice shall describe the violation involved and set forth the amount of civil penalty sought by the department. The licensee shall have 14 days following receipt of the notice to request review of the amount of the civil penalty by the panel.

The department and the licensee may meet to discuss the case and the possibility of an informal settlement. If the parties reach an informal settlement, they may enter a joint stipulation providing for payment of an agreed-upon civil penalty and other sanctions. The joint stipulation is not reviewable by the panel.

21—95.9(203,203C) Panel review. The licensee may seek review of the proposed civil penalty by filing a request for review within 14 days of receipt of the notice of assessment. The request for review shall be served in writing by regular mail upon the chairperson of the panel and the department. The request for review shall contain a concise statement of the reasons why a civil penalty should not be assessed or why it should be assessed at a lesser amount than that proposed by the department. Within 7 days of receipt of the request for review, the department shall forward its report to the panel.

Within 14 days of receipt of the department's report, the chairperson shall schedule a meeting of the panel in Des Moines at the Henry A. Wallace Building or telephonically, and copies of the request for review and the department's report shall be provided to the panel.

21—95.10(203,203C) Scope of panel review. The panel shall confine its review to the licensee's request for review and the department's report. The department's investigative file or parts thereof may be made available upon request. The department shall also make available, upon request, records which are otherwise confidential under Iowa Code section 22.7, 203.16, or 203C.24. The review may be in closed session pursuant to Iowa Code section 21.5. The department's reports shall be considered confidential records. The panel members shall maintain the confidentiality of records made available to the panel.

The panel's review shall not be a contested case hearing. The panel shall not have power to examine or cross-examine witnesses, nor shall it have power to subpoena witnesses or documents.

21—95.11(203,203C) Panel response. The panel shall respond in writing to the licensee and the department within 30 days of meeting to review the proposed penalty. The panel's response may include recommendations that the proposed civil penalty be increased, decreased, that no penalty be assessed, or that conditions be placed upon the license.

If the licensee does not respond to the department's notice of proposed penalty, the department shall seek review of its proposed civil penalty by submitting its report to the panel. Upon receipt of the report, the chairperson shall schedule a meeting and the provisions of 21—95.9(203,203C) shall apply.

21—95.12(203,203C) Civil penalty assessment. If the licensee fails to pay the recommended civil penalty within 30 days of receipt of the panel's response, the department may seek either administrative or judicial assessment of the penalty. The amount of civil penalty sought shall not exceed that recommended by the panel. The panel's response may be used as evidence in an administrative hearing or civil case except to the extent that the response contains information considered confidential pursuant to Iowa Code section 22.7, 203.16, or 203C.24.

Upon finding that the licensee has violated Iowa Code chapter 203 or 203C or the rules promulgated thereunder, an order shall be issued assessing the civil penalty. The order shall recite the facts, the legal requirements violated, the rationale for assessment of the civil penalty and the date of issuance.

21—95.13(203,203C) Judicial assessment. The department may seek judicial assessment of civil penalties by requesting that the attorney general file an action in Iowa district court to seek assessment of the penalty. In requesting that the attorney general file an action seeking civil penalties, the department may also request that the attorney general seek other relief, such as issuance of an injunction.

21—95.14(203,203C) Civil penalty payment. A civil penalty shall be paid within 30 days from the date that an order or judgment for the penalty becomes final. In an administrative assessment, the order is not final until all judicial review processes are completed. In a judicial assessment, the judgment is not final until the right of appeal is exhausted.

A person who fails to timely pay a civil penalty shall pay, in addition to the penalty, interest at the rate of one and one-half percent on the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid.

Moneys collected in civil penalties through settlement or administrative or judicial proceedings shall be deposited in the general fund of the state.

These rules are intended to implement Iowa Code Supplement sections 203.11A and 203C.36A.

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