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Requirements for Grain Dealers

State of Iowa

Indemnity Fund

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Requirements for Grain Dealers

STATE OF IOWA

Current with legislation from the 2014 Reg.Sess.

I.C.A. § 203.1

203.1. Definitions

As used in this chapter, unless the context otherwise requires:

1. “Bond” means a bond issued by a surety company or an irrevocable letter of credit issued by a financial institution described in subsection 7.
2. “Check” means a paper instrument used for ordering, instructing, or authorizing a financial institution to make payment or credit a presenter's account and debit the issuer's account. “Check” includes instruments commonly referred to as a check, draft, share draft, or other negotiable instrument for the payment of money. An instrument may be a check even though it is described on its face by another term, such as “money order”.
3. “Credit-sale contract” means a contract for the sale of grain pursuant to which the sale price is to be paid more than thirty days after the delivery of the grain to the buyer, or a contract which is titled as a credit-sale contract, including but not limited to those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts, and price-later contracts.
4. “Custom livestock feeder” means a person who buys grain for the sole purpose of feeding it to livestock owned by another person in a feedlot as defined in section 172D.1, subsection 6, or a confinement building owned or operated by the custom livestock feeder and located in this state.
5. “Department” means the department of agriculture and land stewardship.
6. “Electronic funds transfer” means a remote electronic transmission used for ordering, instructing, or authorizing a financial institution to pay money to or credit the account of the payee and debit the account of the payer. The remote electronic transmission may be initiated by telephone, terminal, computer, or similar device.
7. “Financial institution” means any of the following:
 - a. A bank or savings association authorized by the laws of any other state or the United States, which is a member of the federal deposit insurance corporation.
 - b. A bank or association chartered by the farm credit system under the federal Farm Credit Act, as amended, 12 U.S.C. ch. 23.
8. “Good cause” means that the department has cause to believe that the net worth or current asset to current liability ratio of a grain dealer presents a danger to sellers with whom the grain dealer does business, based on evidence of any of the following:
 - a. The making of a payment by use of a check or electronic funds transfer, and a financial institution refuses payment because of insufficient moneys in a grain dealer's account.
 - b. A violation of recordkeeping requirements provided in this chapter or rules adopted pursuant to this chapter by the department.

- c. A substantial risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the grain dealer based on a statistical model provided in section 203.22.
9. “Grain” means any grain for which the United States department of agriculture has established standards pursuant to the United States Grain Standards Act, 7 U.S.C. ch. 3.
10. “Grain dealer” means a person who cumulatively purchases at least one thousand bushels of grain from producers during any calendar month, if such grain is delivered within or into this state for purposes of resale, milling, or processing in this state. However, “grain dealer” does not include any of the following:
- a. A producer of grain who is buying grain for the producer's own use as seed or feed.
 - b. A person solely engaged in buying grain future contracts on the board of trade.
 - c. A person who purchases grain only for sale in a feed regulated under chapter 198.
 - d. A person who purchases grain only from grain dealers licensed under this chapter.
 - e. A person engaged in the business of selling agricultural seeds regulated by chapter 199.
 - f. A person buying grain only as a farm manager.
 - g. An executor, administrator, trustee, guardian, or conservator of an estate.
 - h. A custom livestock feeder.
 - i. A cooperative organized under chapter 501 or 501A, if the cooperative only purchases grain from its members who are producers or from a licensed grain dealer, and the cooperative does not resell that grain.
 - j. A limited liability company as defined in section 489.102 that meets all of the following requirements:
 - (1) The majority of voting rights in the limited liability company are held by its members who are producers.
 - (2) The purpose of the limited liability company is to produce renewable fuel as defined in section 214A.1.
 - (3) The limited liability company only purchases grain from its members who are producers or from a licensed grain dealer.
 - (4) The limited liability company does not resell grain that it purchases.
11. “Person” means the same as defined in section 4.1 and includes a business association as defined in section 202B.102 or joint or common venture regardless of whether it is organized under a chapter of the Code.
12. “Producer” means the owner, tenant, or operator of land in this state who has an interest in and receives all or a part of proceeds from the sale of grain produced on that land.
13. “Seller” means a person who sells grain which the person has produced or caused to be produced to a licensed grain dealer, and includes a person who executes a credit-sale contract as a seller.
14. “United States Warehouse Act” means the United States Warehouse Act, 7 U.S.C. ch. 10.
15. “Warehouse operator” means the same as defined in section 203C.1.

I.C.A. § 203.2A

203.2A. Grain purchasers who are not licensed grain dealers--special notice requirements

1. This section applies to a person who is not required to be issued a license as a grain dealer pursuant to section 203.3. The person shall not purchase grain from a producer for purposes of resale, milling, feeding, or processing.
2. Subsection 1 does not apply to any of the following:
 - a. A person who purchases less than fifty thousand bushels of grain from all producers in the

twelve months prior to purchasing grain from the producer.

b. A person who provides notice to the producer as provided in subsection 3.

3.

a. The notice must be in the following form:

Attention to Producers:

The person purchasing this grain is not a licensed grain dealer and this is not a covered transaction eligible for indemnification from the grain dealers and sellers indemnity fund as provided in Iowa Code section 203D.3

b. The notice must be provided to the producer prior to or at the time of the purchase. The notice may appear on a separate statement or as part of a document received by the producer, including a contract or receipt, as required by the department.

c. The notice must appear in a printed boldface font in at least ten point type.

I.C.A. § 203.4

203.4. Participation in indemnity fund required

A grain dealer licensed or required to be licensed pursuant to section 203.3 shall participate in and comply with the grain depositors and sellers indemnity fund provided in chapter 203D.

I.C.A. § 203.5

203.5. License

1.

a. Upon the filing of an application on a form prescribed by the department and compliance with the terms and conditions of this chapter including rules of the department, the department shall issue the applicant a grain dealer's license. The license expires at the end of the third calendar month following the close of the grain dealer's fiscal year. A grain dealer's license may be renewed annually by filing a renewal application on a form prescribed by the department. An application for renewal must be received by the department on or before the end of the third calendar month following the close of the grain dealer's fiscal year.

b. The department shall not issue a grain dealer's license unless the applicant pays all of the following fees:

(1) For the issuance of a license, all of the following:

(a) A license fee imposed under section 203.6.

(b) A participation fee imposed under section 203D.3A, and any delinquent participation fee imposed under a previous license as provided in that section.

(2) For the renewal of a license, all of the following:

(a) A renewal fee imposed under section 203.6.

(b) A participation fee imposed under section 203D.3A, and any delinquent participation fee as provided in that section.

(c) A per-bushel fee as provided in section 203D.3A, and any delinquent per-bushel fee and penalty as provided in that section.

2. The department shall notify a licensed grain dealer of any delinquency in the payment of a participation fee or per-bushel fee as provided in section 203D.3A. The department shall suspend the grain dealer's license thirty days after delivering the notice unless the licensed grain dealer pays the delinquent fee.
3. The department may suspend or revoke the license of a grain dealer who discounts the purchase price paid for grain nominally for the participation fee or per-bushel fee as provided in section 203D.3A while that fee is not in effect.
4. A grain dealer license which has expired may be reinstated by the department upon receipt of a proper renewal application, the renewal fee and a reinstatement fee as provided in section 203.6, and any delinquent participation fee or per-bushel fee and penalty as provided in section 203D.3A. The applicant must file the renewal application and pay the fees and penalty to the department within thirty days from the date of expiration of the grain dealer license.
5. The department may cancel a license upon request of the licensee unless a complaint or information is filed against the licensee alleging a violation of a provision of this chapter.
6.
 - a. The department shall refund a fee paid by an applicant to the department under this section if the department does not issue or renew a grain dealer's license.
 - b. The department shall prorate a fee paid by an applicant to the department under this section for the issuance or renewal of a license for less than a full year.
7. The department may deny a license to an applicant if the applicant has had a license issued under this chapter or chapter 203C revoked within the past three years, the applicant has been convicted of a felony involving a violation of this chapter or chapter 203C, or the applicant is owned or controlled by a person who has had a license so revoked or who has been so convicted.
8. The department may deny a license to an applicant if any of the following apply:
 - a. The applicant has caused liability to the Iowa grain depositors and sellers indemnity fund in regard to a license issued under this chapter or chapter 203C, and the liability has not been discharged, settled, or satisfied.
 - b. The applicant is owned or controlled by a person who has caused liability to the fund through operations under a license issued under this chapter or chapter 203C and the liability has not been discharged, settled, or satisfied.

I.C.A. § 203.6
203.6. Fees

The department shall charge the following fees for deposit in the general fund:

1.
 - a. For the issuance or renewal of a license required under section 203.3, and for any inspection of a grain dealer, the fee shall be determined on the basis of all bushels of grain purchased during the grain dealer's previous fiscal year according to the grain dealer's financial statement required in section 203.3. The fee shall be calculated according to the following schedule:
 - (1) If the total number of bushels purchased is thirty-five thousand or less, the license fee is sixty-six dollars and the inspection fee is eighty-three dollars.
 - (2) If the total number of bushels purchased is more than thirty-five thousand, but not more than two hundred fifty thousand, the license fee is one hundred sixteen dollars and the inspection fee is one hundred twenty-five dollars.
 - (3) If the total number of bushels purchased is more than two hundred fifty thousand,

but not more than five hundred thousand, the license fee is one hundred sixty-six dollars and the inspection fee is one hundred ninety-one dollars.

(4) If the total number of bushels purchased is more than five hundred thousand, but not more than one million, the license fee is two hundred ninety-one dollars and the inspection fee is two hundred forty-nine dollars.

(5) If the total number of bushels purchased is more than one million, but not more than one million eight hundred fifty thousand, the license fee is four hundred ninety-eight dollars and the inspection fee is three hundred seven dollars.

(6) If the total number of bushels purchased is more than one million eight hundred fifty thousand, but not more than three million two hundred thousand, the license fee is seven hundred six dollars and the inspection fee is three hundred seventy-four dollars.

(7) If the total number of bushels purchased is more than three million two hundred thousand, the license fee is nine hundred fifty-five dollars and the inspection fee is four hundred forty dollars.

b. If the applicant did not purchase grain in the applicant's previous fiscal year, the applicant shall pay the fee specified in paragraph "a", subparagraph (1). If during the licensee's fiscal year the number of bushels of grain actually purchased exceeds thirty-five thousand, the licensee shall notify the department and the license and inspection fee shall be adjusted accordingly. Subsequent adjustments shall be made as necessary. An applicant may elect licensing in any category of this subsection. Fees for new licenses issued for less than a full year shall be prorated from the date of application.

2. For an amendment to a license, the fee is ten dollars.

3. For a duplicate license, the fee is five dollars.

4. For reinstatement of a license the fee is fifty dollars.

I.C.A. § 203.11A **203.11A. Civil penalties**

1. The department shall establish, by rule, civil penalties which may be administratively or judicially assessed against a grain dealer for a violation of this chapter.

2. The amount of a civil penalty shall not exceed one thousand five hundred dollars. Each day that a violation continues shall constitute a separate violation. The amount of the civil penalty that may be assessed in a case shall not exceed the amount recommended by the grain industry peer review panel established pursuant to section 203.11B. Moneys collected in civil penalties by the department or the attorney general shall be deposited in the general fund of the state.

3. A civil penalty may be administratively assessed only after an opportunity for a contested case hearing under chapter 17A. The department may be represented in an administrative hearing or judicial proceeding by the attorney general. A civil penalty shall be paid within thirty days from the date that an order or judgment for the penalty becomes final. When a person against whom a civil penalty is administratively assessed under this section seeks timely judicial review of an order imposing the penalty as provided under chapter 17A, the order is not final until all judicial review processes are completed. When a person against whom a civil penalty is judicially assessed under this section seeks a timely appeal of judgment, the judgment is not final until the right of appeal is exhausted.

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

I.C.A. § 203.12

203.12. Claims--cessation of a license and notice of license revocation

1. Upon the cessation of a grain dealer license by revocation, cancellation, or expiration, any claim for the purchase price of grain against the grain dealer shall be made in writing and filed with the grain dealer and with the issuer of a deficiency bond or of an irrevocable letter of credit and with the department within one hundred twenty days after the date of the cessation. A failure to make this timely claim relieves the issuer and the grain depositors and sellers indemnity fund provided in chapter 203D of all obligations to the claimant.
2. Upon the revocation of a grain dealer license, the department shall cause notice of the revocation to be published once each week for two consecutive weeks in a newspaper of general circulation within the state of Iowa and in a newspaper of general circulation within the county of the grain dealer's principal place of business when that dealer's principal place of business is located in the state of Iowa. The notice shall state the name and address of the grain dealer and the effective date of revocation. The notice shall also state that any claims against the grain dealer shall be made in writing and sent by ordinary mail or delivered personally within one hundred twenty days after revocation to the grain dealer, to the issuer of a deficiency bond or of an irrevocable letter of credit, and to the department, and the notice shall state that the failure to make a timely claim does not relieve the grain dealer from liability to the claimant.

I.C.A. § 203.12A

203.12A. Lien on grain dealer assets

1.
 - a. As used in this section:
 - (1) "Grain dealer assets" includes proceeds received or due a grain dealer upon the sale, including exchange, collection, or other disposition, of grain sold by the grain dealer. "Grain dealer assets" also includes any other funds or property of the grain dealer which can be directly traced as being from the sale of grain by the grain dealer, or which were utilized in the business operation of the grain dealer.
 - (2) "Proceeds" means noncash and cash proceeds as defined in section 554.9102.
 - b. A court, upon petition by an affected party, may order that claimed grain dealer assets are not grain dealer assets as defined in this section. The burden of proof shall be upon the petitioner to establish that the assets are not grain dealer assets as defined in this section.
2. A statutory lien is imposed on all grain dealer assets in favor of sellers who have surrendered warehouse receipts or other written evidence of ownership as part of a grain sale transaction or who possess written evidence of the sale of grain to a grain dealer, without receiving full payment for the grain.
3. The lien shall arise at the time of surrender of warehouse receipts or other written evidence of ownership as part of a grain sale transaction or the time of delivery of the grain for sale, and shall terminate when the liability of the grain dealer to the seller has been discharged. The lien of all sellers is hereby assigned to the Iowa grain indemnity fund board, on behalf of the grain depositors and sellers indemnity fund.

4. To perfect the lien, the Iowa grain indemnity fund board must file a lien statement with the office of the secretary of state. The lien statement is valid only if filed on or after the date of suspension but not later than sixty days after the incurrence date as provided in section 203D.6. The lien statement shall disclose the name of the grain dealer, the address of the dealer's principal place of business, a description of identifiable grain dealer assets, and the amount of the lien. The lien amount shall be the board's estimate of the final cost of reimbursing the grain depositors and sellers indemnity fund for the payment of claims against the fund resulting from the breach of the grain dealer's obligations. The board shall correct the amount not later than one hundred eighty days following the incurrence date. A court, upon petition by an affected person, may correct the amount. The board shall have the burden of proving that the amount is an accurate estimate.

5. The Iowa grain indemnity fund board, upon written demand of the grain dealer, shall file a termination statement with the secretary of state, if after one hundred eighty days from the date that the lien is perfected the grain dealer's license has not ceased by revocation, cancellation, or expiration. Upon filing the termination statement, the lien becomes unperfected. The board shall also deliver a copy of the termination statement to the grain dealer.

6. The secretary of state shall note the filing of a lien statement under this section in a manner provided by chapter 554, the uniform commercial code. The secretary shall note the filing of a termination statement with the lien statement.

7. A lien statement filed under this section shall be a security interest perfected under chapter 554 and subject to the same priority as provided under section 554.9322.

8. If the grain dealer is also licensed under chapter 203C, and in the event the department is appointed as a receiver under section 203C.3, assets under the authority of the receiver are free from this statutory lien. However, if there are receivership assets in excess of those necessary to fully reimburse depositors, the perfected lien will attach to those excess assets.

9.

a. The board may enforce the lien in the manner provided in chapter 554, article 9, part 6, for the enforcement of security interests. If, upon enforcement of the lien, the lien amount is satisfied in full without exhaustion of the grain dealer assets, the remaining assets shall be returned to the grain dealer or, if there are competing claims to those remaining assets by other creditors, shall place those assets in the custody of the district court and implead the known creditors.

b. For purposes of enforcement of the lien, the board is deemed to be the secured party and the grain dealer is deemed to be the debtor, and each has the respective rights and duties of a secured party and a debtor as provided in chapter 554, article 9, part 6. If a right or duty under chapter 554, article 9, part 6, is contingent upon the existence of express language in a security agreement, or may be waived by express language in a security agreement, the requisite language is deemed not to exist for purposes of enforcement of the lien created by this section.

10. Actions relating to this section shall be brought in the district court in the county in which the grain dealer's primary place of business is located or in Polk county.

I.C.A. § 203.15

203.15. Credit-sale contracts

A grain dealer shall not purchase grain by a credit-sale contract except as provided in this section.

1. The grain dealer shall be licensed pursuant to section 203.3. All of the following shall apply to a grain dealer required to be licensed under that section who purchases grain by credit-sale contract:

a. The grain dealer shall give written notice to the department prior to engaging in the purchase

of grain by credit-sale contract. The notice shall contain information required by the department.

b. All credit-sale contract forms in the possession of the grain dealer shall have been permanently and consecutively numbered at the time of printing of the forms. The grain dealer shall maintain an accurate record of all credit-sale contract forms and numbers obtained by that dealer. The record shall include the disposition of each numbered form, whether by execution, destruction, or otherwise.

c. The grain dealer who purchases grain by credit-sale contract shall maintain records as required by the department in compliance with this section.

2. In addition to other information as may be required, a credit-sale contract shall contain or provide for all of the following:

a. The seller's name and address.

b. The conditions of delivery.

c. The amount and kind of grain delivered.

d. The price per bushel or basis of value.

e. The date payment is to be made.

f. The duration of the credit-sale contract, which shall not exceed twelve months from the date the contract is executed.

3. Title to all grain sold by a credit-sale contract is in the purchasing grain dealer as of the time the contract is executed, unless the contract provides otherwise. The contract must be signed and dated by both parties and executed in duplicate. One copy shall be retained by the grain dealer and one copy shall be delivered to the seller. Upon the cessation of the grain dealer's license by revocation, cancellation, or expiration, the payment date for all credit-sale contracts shall be advanced to a date not later than thirty days after the effective date of the cessation, and the purchase price for all unpriced grain shall be determined as of the effective date of the cessation in accordance with all other provisions of the contract. However, if the business of the grain dealer is sold to another licensed grain dealer, credit-sale contracts may be assigned to the purchaser of the business.

4.

a. A grain dealer shall not purchase grain on credit-sale contract during any time period in which the grain dealer fails to maintain fifty cents of net worth for each outstanding bushel of grain purchased under credit. The grain dealer may maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of deficiency in net worth.

b. A grain dealer who is also a warehouse operator licensed by the department under chapter 203C or the United States department of agriculture under the United States Warehouse Act, 1 and who does not have a sufficient quantity or quality of grain to satisfy the warehouse operator's obligations based on an examination by the department or the United States department of agriculture shall not purchase grain on credit-sale contract to correct the shortage of grain.

c.

(1) A grain dealer must meet at least either of the following conditions:

(a) The grain dealer's last financial statement required to be submitted to the department pursuant to section 203.3 is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state.

(b) The grain dealer files a bond with the department in the amount of one hundred thousand dollars payable to the department.

(2)

(a) The bond filed with the department under this paragraph shall be used to indemnify sellers for losses resulting from a breach of a credit-sale contract as provided by rules adopted by the department. The rules shall include but are not limited to procedures and criteria for providing notice, filing claims, valuing losses, and paying claims. The bond provided in this paragraph shall be in addition to any other bond required in this chapter.

(b) The bond shall not be canceled by the issuer on less than ninety days' notice by certified mail to the department and the principal. However, if an adequate replacement bond is filed with the department, the department may authorize the cancellation of the original bond before the end of the ninety-day period.

(c) If an adequate replacement bond is not received by the department within sixty days of the issuance of the notice of cancellation, the department shall suspend the grain dealer's license. The department shall cause an inspection of the licensed grain dealer immediately at the end of the sixty-day period. If a replacement bond is not filed within another thirty days following the suspension, the department shall revoke the grain dealer's license.

(3) When a license is revoked, the department shall provide notice of the revocation by ordinary mail to the last known address of each holder of an outstanding credit-sale contract and all known sellers.

5. The department may suspend the right of a grain dealer to purchase grain by credit-sale contract based on any of the following conditions:

a. The grain dealer who is also a warehouse operator licensed by the department under chapter 203C or the United States department of agriculture under the United States Warehouse Act does not have a sufficient quantity or quality of grain to satisfy the warehouse operator's obligations based on an examination by the department or the United States department of agriculture.

b. The grain dealer who is also a warehouse operator licensed by the department under chapter 203C or the United States department of agriculture under the United States Warehouse Act issues back to the grain dealer a warehouse receipt for purposes of providing collateral, if the grain which is the subject of the warehouse receipt was purchased on credit and is unpaid for by the grain dealer.

c. The grain dealer fails to maintain requirements relating to net worth or fails to maintain a ratio of current assets to current liabilities, as required in section 203.3.

d. The grain dealer violates this section.

e. The grain dealer's total liabilities are greater than seventy-five percent of the grain dealer's total assets.

f. The grain dealer has made payment by use of a check or electronic funds transfer, and a financial institution refuses payment because of insufficient funds in a grain dealer's account.

g. The department discovers that a grain dealer has delayed payment for grain purchased since the department last inspected the grain dealer pursuant to section 203.9.

6. A grain dealer who purchases grain by credit-sale contract shall obtain from the seller a signed acknowledgment stating that the seller has received notice that grain purchased by credit-sale contract is not protected by the grain depositors and sellers indemnity fund. The form for the acknowledgment shall be prescribed by the department, and the licensed grain dealer and the seller shall each be provided a copy.

I.C.A. § 203.16
203.16. Confidentiality of records

Notwithstanding chapter 22, all financial statements of grain dealers under this chapter shall be kept confidential by the department and its agents and employees and are not subject to disclosure except as follows:

1. Upon waiver by the licensee.
2. In actions or administrative proceedings commenced under this chapter or chapter 203C.
3. Disclosure to the Iowa grain indemnity fund board in regard to licensees who present liability to the fund.
4. When required by subpoena or court order.
5. Disclosure to law enforcement agencies in regard to the detection and prosecution of public offenses.
6. When released to a bonding company approved by the department, or released to the United States department of agriculture or any of its divisions.
7. Where released at the request of the Iowa accountancy examining board for licensee review and discipline in accordance with chapters 272C and 542 and subject to the confidentiality requirements of section 272C.6.
8. Disclosure to the grain industry peer review panel as provided in section 203.11B.

I.C.A. § 203.19
203.19. Cooperative agreements

1. Notwithstanding the other provisions of this chapter, the department may enter into cooperative agreements with other states for the purpose of making available to those states the information acquired under the bonding, licensing, and examination procedures of this chapter.
2. If a cooperative agreement is in effect under this section, the indemnification requirements of this chapter may be satisfied by filing with the department evidence of a bond or an irrevocable letter of credit on file with a state or of participation in an indemnity fund in a state with which Iowa has a cooperative agreement as provided for by this section.
3.
 - a. Indemnification proceeds shall be copayable to the state of Iowa for the benefit of sellers of grain under this chapter.
 - b. Indemnification proceeds required by this chapter may be made copayable to any state with whom this state has entered into contracts or agreements as authorized by this section, for the benefit of sellers of grain in that state.

I.C.A. § 203.22
203.22. Prioritization of inspections of grain dealers

The department shall develop a system to prioritize the inspections of grain dealers provided in section 203.9. The system of prioritization shall be computed each year based on the risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the grain dealer. The department shall compute the risk by utilizing an available statistical model to measure the financial condition of grain dealers, and especially grain dealers who execute credit-sale contracts. Procedures for utilizing the statistical model shall be adopted by department rules. The statistical model shall be

used to provide risk ratings. A risk rating shall be used as a factor by the department to prioritize its inspection schedule. The department may use a risk rating produced by the statistical model as justification to inspect the grain dealer at any time. A substantial risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the grain dealer based on the statistical model shall be good cause.