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## **An Agricultural Law Research Project**

# **Requirements for Grain Dealers**

## **State of Iowa**

### *Licensing Requirements*

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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. § 203.2**  
**203.2. Powers and duties of the department**

The department may exercise general supervision over the business operations of grain dealers. The supervisory and regulatory powers authorized by this chapter shall be the responsibility of the warehouse bureau of the department. The department may inspect or cause to be inspected any grain dealer operating in this state and may require the filing of reports pertaining to the operation of the dealer's business. The department shall adopt rules to provide for the efficient administration and regulation of the provisions of this chapter, and may designate an employee of the department to act

for the department in any details connected with such administration, including the issuance of licenses and approval of grain dealers' bonds in the name of the department.

### **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. § 203.3**

#### **203.3. License required--financial responsibility**

1. A person shall not engage in the business of a grain dealer in this state without having obtained a license issued by the department.
2. The type of license required shall be determined as follows:
  - a. A class 1 license is required if the grain dealer purchases any grain by credit-sale contract, or if the value of grain purchased by the grain dealer from producers during the grain dealer's previous fiscal year exceeds five hundred thousand dollars. Any other grain dealer may elect to be licensed as a class 1 grain dealer.
  - b. A class 2 license is required for any grain dealer not holding a class 1 license. A class 2 licensee whose purchases from producers during a fiscal year exceed a limit of five hundred thousand dollars in value shall file within thirty days of the date the limit is reached a complete application for a class 1 license. If a class 1 license is denied, the person immediately shall cease doing business as a grain dealer.
3. An application for a license to engage in business as a grain dealer shall be filed with the department and shall be in a form prescribed by the department. The application shall include the name of the applicant, its principal officers if the applicant is a corporation or the active members of a partnership if the applicant is a partnership and the location of the principal office or place of business of the applicant. A separate license shall be required for each location at which records are maintained for transactions of the grain dealer. The application shall be accompanied by a complete financial

statement of the applicant setting forth the assets, liabilities and the net worth of the applicant. The financial statement must be prepared according to generally accepted accounting principles. Assets shall be shown at original cost less depreciation. Upon a written request filed with the department, the department or a designated employee may allow asset valuations in accordance with a competent appraisal. Unpriced contracts shall be shown as a liability and valued at the applicable current market price of grain as of the date the financial statement is prepared.

4. In order to receive and retain a class 1 license the following conditions must be satisfied:

a. The grain dealer shall have and maintain a net worth of at least seventy-five thousand dollars, or 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 net worth deficiency. However, a person shall not be licensed as a class 1 grain dealer if the person has a net worth of less than thirty-seven thousand five hundred dollars.

b. The grain dealer shall submit, as required by the department, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, the department may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the department. The department shall not require that a grain dealer submit more than one such unqualified opinion per year. The grain dealer, except as provided in section 203.15, may elect to submit a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited financial statement specified in this paragraph. However, at any time the department may require a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by a certified public accountant if the department has good cause. A grain dealer shall submit financial statements to the department in addition to those required in this paragraph if the department determines that it is necessary to verify the grain dealer's financial status or compliance with this subsection.

c. A grain dealer shall submit a report to the department according to procedures required by the department, if the grain dealer provides a bond based in part on the number of bushels of unpaid grain purchased by the grain dealer, as provided in rules adopted by the department, in order to satisfy the current assets to current liabilities ratio requirement of this section. The report shall contain information required by the department, including the number of bushels of unpaid grain purchased by the grain dealer. The grain dealer shall submit the report not more than once each month. However, the department may require that a grain dealer submit a report on a more frequent basis, if the department has good cause.

d. The grain dealer shall have and maintain current assets equal to at least one hundred percent of current liabilities or provide a bond under the following conditions:

(1) A grain dealer with current assets equal to at least fifty percent of current liabilities shall provide a bond of two thousand dollars for each one thousand dollars or fraction of one thousand dollars of current assets that the grain dealer is lacking to meet the minimum requirement. After the amount of the bond equals one million dollars, the grain dealer may elect to base the remainder of the amount of the bond on the number of bushels of unpaid grain being purchased by the grain dealer, as provided for by rules which shall be adopted by the department. The remaining amount shall equal two thousand dollars for each one thousand dollars of the highest amount of bushels of unpaid grain purchased by the grain dealer during each month.

(2) A grain dealer with current assets equal to less than fifty percent of current liabilities shall provide a bond of two thousand dollars for each one thousand dollars or fraction of one thousand dollars of current assets that the grain dealer is lacking to meet the minimum requirement. However, the bond shall not be used for longer than thirty consecutive days in a twelve-month period.

5. In order to receive and retain a class 2 license the following conditions must be satisfied:

a. The grain dealer shall have and maintain a net worth of at least thirty-seven thousand five hundred dollars, or 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 net deficiency. However, a person shall not be licensed as a class 2 grain dealer if the person has a net worth of less than seventeen thousand five hundred dollars.

b. The grain dealer shall submit, as required by the department, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, the department may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the department. The department shall not require that a grain dealer submit more than one such unqualified opinion per year. The grain dealer may elect, however, to submit a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited financial statement specified in this paragraph. However, at any time the department may require a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by a certified public accountant if the department has good cause. A grain dealer shall submit financial statements to the department in addition to those required in this paragraph if the department determines that it is necessary to verify the grain dealer's financial status or compliance with this section.

c. A grain dealer shall submit a report to the department according to procedures required by the department, if the grain dealer provides a bond based in part on the number of bushels of unpaid grain purchased by the grain dealer, as provided in rules adopted by the department, in order to satisfy the current assets to current liabilities ratio requirement of this section. The report shall contain information required by the department, including the number of bushels of unpaid grain purchased by the grain dealer. The grain dealer shall submit the report not more than once each month. However, the department may require that a grain dealer submit a report on a more frequent basis, if the department has good cause.

d. The grain dealer shall have and maintain current assets equal to at least one hundred percent of current liabilities or provide a bond under the following conditions:

(1) A grain dealer with current assets equal to at least fifty percent of current liabilities shall provide a bond of two thousand dollars for each one thousand dollars or fraction of one thousand dollars of current assets that the grain dealer is lacking to meet the minimum requirement. After the amount of the bond equals one million dollars, the grain dealer may elect to base the remainder of the amount of the bond on the number of bushels of unpaid grain being purchased by the grain dealer, as provided for by rules which shall be adopted by the department. The remaining amount shall equal two thousand dollars for each one thousand dollars of the highest amount of bushels of unpaid grain purchased by the grain dealer during each month.

(2) A grain dealer with current assets equal to less than fifty percent of current liabilities

shall provide a bond of two thousand dollars for each one thousand dollars or fraction of one thousand dollars of current assets that the grain dealer is lacking to meet the minimum requirement. However, the bond shall not be used for longer than thirty consecutive days in a twelve-month period.

6. The department shall adopt rules relating to the form and time of filing of financial statements. The department may require additional information or verification with respect to the financial resources of the applicant and the applicant's ability to pay producers for grain purchased from them.

7.

a. When the net worth or current ratio of a licensee in good standing is less than that required by this section, the grain dealer shall correct the deficiency or file a deficiency bond or an irrevocable letter of credit within thirty days of written notice by the department. Unless the deficiency is corrected or the deficiency bond or irrevocable letter of credit is filed within thirty days, the grain dealer license shall be suspended.

b. If the department finds that the welfare of grain producers requires emergency action, and incorporates a finding to that effect in its order, immediate suspension of a license may be ordered notwithstanding the thirty-day period otherwise allowed by paragraph "a".

8. A deficiency bond or irrevocable letter of credit filed with the department pursuant to this section shall not be canceled by the issuer on less than ninety days' notice by certified mail to the secretary of agriculture and the principal.

#### **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. § 203.7 203.7. Posting of license**

The grain dealer's license shall be posted in a conspicuous location in the place of business. A grain dealer's license is not transferable.

#### **I.C.A. § 203.8 203.8. Payment**

1.
  - a. A grain dealer licensed or required to be licensed pursuant to section 203.3 shall pay the purchase price to the seller for grain upon delivery or demand by the seller, but not later than thirty days after delivery by the seller unless in accordance with the terms of a credit-sale contract that satisfies the requirements of this chapter. The department shall adopt rules for

payment by check and electronic funds transfer.

b. A grain dealer licensed or required to be licensed pursuant to section 203.3 shall not hold a check for the purchase of grain more than five days after the grain dealer issues a check to the seller. After that date, the grain dealer shall deliver the check in person or by mail to the seller's last known address.

2. As used in this section:

a. "Delivery" means the transfer of title to and possession of grain by a seller to a grain dealer or to another person in accordance with the agreement of the seller and the grain dealer.

b. "Payment" means the actual payment or tender of payment by a grain dealer to a seller of the agreed purchase price, or in the case of disputes as to sales of grain, the undisputed portion of the purchase price without reduction for any separate claim of the grain dealer against the seller.

### **I.C.A. § 203.9**

#### **203.9. Inspection of premises and records--reconstruction of records**

1. The department may inspect the premises used by any grain dealer in the conduct of the dealer's business at any time. The department may inspect a grain dealer's records that pertain to grain transactions during ordinary business hours. The department shall inspect a grain dealer's records at least once each eighteen-month period without justification. The department shall prioritize inspections based on the system provided in section 203.22. The department may use a risk rating produced by a statistical model provided in section 203.22 as justification to conduct an inspection. A transporter of grain in transit shall possess bills of lading or other documents covering the grain, and shall present them to any law enforcement officer on demand. If there is justification to believe that a grain dealer is engaged without a license as required pursuant to section 203.3, the department may inspect the grain dealer's records which pertain to grain transactions at any time.

2. If a grain dealer does not maintain a place of business in this state, the department is not required to inspect the grain dealer's records. A grain dealer shall submit the grain dealer's records relating to grain transactions occurring within this state to the department for purposes of an inspection as provided in this section at any reasonable time and place, including the offices of the department during regular business hours, as ordered by the department.

3. A grain dealer shall keep complete and accurate records. A grain dealer shall keep records for the previous six years. If the grain dealer's records are incomplete or inaccurate, the department may reconstruct the grain dealer's records in order to determine whether the grain dealer is in compliance with the provisions of this chapter. The department may charge the grain dealer the actual cost for reconstructing the grain dealer's records, which shall be considered repayment receipts as defined in section 8.2.

4. The department may suspend or revoke the license of a grain dealer for failing to consent to a departmental inspection or cooperate with the department during an inspection as provided in this chapter.

### **I.C.A. § 203.10**

#### **203.10. Action affecting a license**

##### **Text subject to final changes by the Iowa Code Editor for Code 2015**

1. The cessation of a grain dealer's license occurs from any of the following:

- a. The revocation of the license by the department as provided in subsection 2.
  - b. The cancellation of the license as provided in section 203.5.
  - c. The expiration of the license according to the terms of the license as provided in this chapter, including a rule adopted in accordance with this chapter pursuant to chapter 17A.
2. The department may issue an order to suspend or revoke the license of a grain dealer who violates a provision of this chapter, including a rule adopted in accordance with this chapter pursuant to chapter 17A.

#### **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. § 203.15**

#### **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. § 203D.1** **203D.1. Definitions**

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

1. "Board" means the Iowa grain indemnity fund board created in section 203D.4.

2. "Credit-sale contract" means the same as defined in section 203.1.

3. "Department" means the department of agriculture and land stewardship.

4. "Depositor" means a person who deposits grain in a licensed warehouse for storage, handling, or shipment, or who is the owner or legal holder of an outstanding warehouse receipt issued by a licensed

- warehouse, or who is lawfully entitled to possession of the grain.
5. "First point of sale" means the initial transfer of title to grain from a person who has produced the grain or caused the grain to be produced to the first purchaser of the grain for consideration, conditional or otherwise, in any manner or by any means.
  6. "Fund" means the grain depositors and sellers indemnity fund created in section 203D.3.
  7. "Grain" means the same as defined in section 203.1.
  8. "Grain dealer" means the same as defined in section 203.1.
  9. "Licensed grain dealer" means a person who has obtained a license to engage in the business of a grain dealer pursuant to section 203.3.
  10. "Licensed warehouse" means the same as defined in section 203C.1.
  11. "Licensed warehouse operator" means the same as in section 203C.1.
  12. "Licensee" means a licensed grain dealer or licensed warehouse operator.
  13. "Loss" means the amount of a claim held by a seller or depositor against a grain dealer or warehouse operator which has not been recovered through other legal and equitable remedies including the liquidation of assets.
  14. "Purchased grain" means grain which is entered in the company-owned paid position as evidenced on the grain dealer's daily position record.
  15. "Seller" means a person who sells grain which the person has produced or caused to be produced to a licensed grain dealer, but excludes a person who executes a credit-sale contract as a seller as provided in section 203.15. However, "seller" does not include any of the following:
    - a. A person licensed as a grain dealer in any jurisdiction who sells grain to a licensed grain dealer.
    - b. A person who sells grain that is not produced in this state unless such grain is delivered to a licensed grain dealer at a location in this state as the first point of sale.
  16. "Warehouse operator" means the same as defined in section 203C.1.

#### **I.C.A. § 203D.2**

#### **203D.2. Persons participating in fund**

All licensed grain dealers and licensed warehouse operators shall participate in the fund.

#### **I.C.A. § 203D.3**

#### **203D.3. Grain depositors and sellers indemnity fund**

1. The grain depositors and sellers indemnity fund is created in the state treasury as a separate account. The general fund of the state is not liable for claims presented against the fund under section 203D.6.
2. The fund consists of all of the following:
  - a. Participation fees paid to the department by licensed grain dealers and persons applying to be issued a grain dealer's license as provided in section 203D.3A.
  - b. Participation fees paid to the department by licensed warehouse operators and persons applying to be issued a warehouse operator's license as provided in section 203D.3A.
  - c. Per-bushel fees paid to the department by licensed grain dealers as provided in section 203D.3A.
  - d. Delinquency penalties.
  - e. Amounts collected by the state pursuant to legal action on behalf of the fund.

- f. Interest, earnings on investments, property, or securities acquired through the use of moneys in the fund.
3. The fiscal year of the fund begins July 1 and ends on June 30. Fiscal quarters of the fund begin July 1, October 1, January 1, and April 1. The finances of the fund shall be calculated on an accrual basis in accordance with generally accepted accounting principles.
4. The moneys collected under this section and deposited in the fund shall be used exclusively to indemnify depositors and sellers as provided in section 203D.6 and to pay the administrative costs of this chapter.
5. All disbursements from the fund shall be paid by the treasurer of state pursuant to vouchers authorized by the department.
6. The administrative costs of this chapter shall be paid from the fund after approval of the costs by the board.

**I.C.A. § 203D.3A**  
**203D.3A. Fees**

The department shall collect fees as provided in this section, if established by the board pursuant to section 203D.5, at rates determined by the board as provided in that section. A person required to pay a fee shall use forms and deliver the payment to the department as required by the department.

1.

a. A person who applies for the issuance of a new license as a grain dealer pursuant to section 203.5 or a warehouse operator pursuant to sections 203C.7 and 203C.33 shall pay the department an initial participation fee as part of the application.

(1) In calculating the amount of the initial participation fee, an applicant for a license shall be deemed a licensee paying the full amount of the participation fee owing on the licensee's first anniversary date as provided in paragraph "b". The department must be satisfied that the applicant is calculating the amount due in good faith and using the best information available.

(2) If the department issues the license, the licensee shall recalculate the participation fee when making a payment on the licensee's first installment date as provided in paragraph "b". The licensee may notify the department of any overpayment and shall notify the department of any underpayment by the licensee's first installment date in a manner and according to procedures required by the department. The department shall refund any overpayment to the licensee and the licensee shall pay any additional amount resulting from an underpayment.

b. A licensee shall pay a participation fee on four successive installment dates, with each installment date occurring on the last date of the fund's fiscal quarter as provided in section 203D.3. The licensee shall pay twenty-five percent of the total participation fee assessed on each installment date. However, nothing in this subsection prevents a licensee from paying the participation fee on an accelerated basis. A licensee shall pay the first installment on the last date of the fund's fiscal quarter immediately following the licensee's anniversary date.

(1) For a licensed grain dealer, the anniversary date is the last date to apply for the renewal of the grain dealer's license before the license expires as provided in section 203.5.

(2) For a licensed warehouse operator, the anniversary date is the last date to apply for the renewal of the warehouse operator's license before the license expires as provided in

section 203C.37.

- c. A licensee is delinquent if the licensee fails to submit the payment when due or if, upon examination, an underpayment of the fee is found by the department.
- d. A licensee shall not pass on the cost of a participation fee to sellers. The department may suspend or revoke the license of a grain dealer for passing on the cost, as provided in chapter 203.

2.

- a. A per-bushel fee shall be assessed on all purchased grain. However, if the grain dealer provides documentation regarding the transaction satisfactory to the department, the following transactions shall be excluded from the per-bushel fee:
  - (1) Grain purchased from the United States government or any of its subdivisions or agencies.
  - (2) Grain purchased from a person licensed as a grain dealer in any jurisdiction.
  - (3) Grain purchased under a credit-sale contract.
- b. The grain dealer shall forward the per-bushel fee to the department on a quarterly basis in the manner and using the forms prescribed by the department. A licensee is delinquent if the licensee fails to submit the full fee or quarterly forms when due or if, upon examination, an underpayment of the fee is found by the department. The grain dealer is subject to a penalty of ten dollars for each day the grain dealer is delinquent or an amount equal to the amount of the deficiency, whichever is less. However, a licensee who fails to submit the full fee or quarterly forms when due, is subject to a minimum payment of ten dollars. The department may establish and apply a margin of error in determining whether a grain dealer is delinquent. The per-bushel fee shall be collected only once on each bushel of grain.
- c. A grain dealer may choose to pass on the cost of a per-bushel fee to the sellers by an itemized discount noted on the settlement sheet. However, if the per-bushel fee is not in effect, no grain dealer shall make such a discount on the purchase of grain. A discount made nominally for the per-bushel fee while the fee is not in effect is grounds for license suspension or revocation under chapter 203.

#### **I.C.A. § 203D.4**

#### **203D.4. Indemnity fund board**

1. The Iowa grain indemnity fund board is established to advise the department on matters relating to the fund and to perform the duties provided it in this chapter. The board is composed of the secretary of agriculture or a designee who shall serve as president; the state treasurer or a designee who shall serve as treasurer; a representative of the banking industry appointed by the governor, who shall be selected from a list of three nominations made by the secretary of agriculture; and four representatives of the grain industry appointed by the governor, subject to confirmation by the senate, two of whom shall be representatives of producers and who shall be actively participating producers, and two of whom shall be representatives of licensed grain dealers and licensed warehouse operators and who shall be actively participating licensed grain dealers and licensed warehouse operators, each of whom shall be selected from a list of three nominations made by the secretary of agriculture. The term of membership of the banking industry representative and the grain industry representatives is three years, and the representatives are eligible for reappointment. However, of the grain industry representatives, only actively participating producers, and grain dealers and warehouse operators are eligible for reappointment. The banking industry representative and the grain industry representatives are entitled



to a per diem as specified in section 7E.6 for each day spent in the performance of the duties of the board, plus actual expenses incurred in the performance of those duties. Four members of the board constitute a quorum, and the affirmative vote of four members is necessary for any action taken by the board, except that a lesser number may adjourn a meeting. A vacancy in the membership of the board does not impair the rights of a quorum to exercise all the rights and perform all the duties of the board.

2. The duties of the board include the review and determination of claims, and the review and approval of administrative costs of the fund. To carry out these duties, the board has the power to adopt rules regarding its organization and procedures for determining claims. Further, the board shall approve rules proposed by the department for the administration of the per-bushel fee prior to their adoption by the department. The board may provide comment and advice to the department in regard to the department's administration of chapters 203 and 203C where the department's policies and rules may affect the exposure of the fund to liability. However, the board shall not become actively involved in a determination by the department as to whether disciplinary action is to be taken against a particular licensee. The board is not a forum for review or appeal in regard to any particular action taken by the department against a licensee.

3. The department through the grain warehouse bureau shall perform the administrative functions necessary for the operation of the board and the fund. Administrative costs approved by the board shall be paid from the fund. The rules of the department shall contain the rules of the board adopted for its organization and its procedures. The department shall adopt rules for the administration of the per-bushel fee upon the board's approval of the rules proposed by the department. The secretary of agriculture, as president of the board as well as head of the department of agriculture and land stewardship, shall administer the department so as to minimize the risk of loss to the fund while protecting interests of depositors and sellers of grain. Policies and rules for the administration of chapters 203 and 203C which, as determined by the secretary of agriculture, may affect the exposure of the fund, shall be presented to the board for comment prior to their adoption by the department. The department shall make reports to the board in regard to licensee investigations which may result in disciplinary action against a licensee and exposure of the fund. The reports may be discussed by the board in closed session pursuant to section 21.5, and are confidential. In making the report, the department shall make available to the board records of licensees which are otherwise confidential under section 22.7, 203.16, or 203C.24. However, a determination to take disciplinary action against a particular licensee shall be made exclusively by the department. A report to the board is not a prerequisite to disciplinary action against a licensee. Review of any action against a licensee, whether or not relating to the fund, shall be made exclusively through the department.