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## **An Agricultural Law Research Project**

# **Requirements for Grain Dealers**

## **State of Illinois**

### *Licensing Requirements*

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## Requirements for Grain Dealers

### STATE OF ILLINOIS

*Current through P.A. 98-925 of the 2014 Reg. Sess.*

#### **240 ILCS 40/5-5**

#### **40/5-5. Licenses required; applications; exemptions**

- (a) Except as provided in subsection (e), a person may not engage in the business of buying grain from producers, or storing grain for compensation, in the State of Illinois without a license issued by the Department, or in the case of a federal warehouseman, by the United States government.
- (b) An application for a license shall be filed with the Department, shall be in a form prescribed by the Department, and shall set forth the name of the applicant, the directors and officers if the applicant is a corporation, the partners if the applicant is a partnership, the members of the governing body and all persons with management or supervisory authority if the applicant is an entity other than a corporation or partnership, the location of the principal office or place of business of the applicant, the location of the principal office or place of business of the applicant in Illinois, and the location or locations in Illinois at which the applicant proposes to engage in business as a licensee, the fiscal year of the applicant, the kind of grain that the applicant proposes to buy, handle, or store, the type of business that the applicant proposes to conduct, and additional information that the Department may require by rule.
- (c) The application for a warehouseman shall state whether the applicant proposes to store grain only for others or for the applicant and for others and shall also state the storage capacity for which the applicant desires to be licensed.
- (d) If an applicant has been engaged in business as a grain dealer for one year or more, the application shall state the aggregate dollar amount paid to producers for grain during the applicant's last completed fiscal year. If the applicant has been engaged in business for less than one year or has not engaged in the business of buying grain from producers, the application shall state the estimated aggregate dollar amount to be paid by the applicant to producers for grain purchased from producers during the applicant's first fiscal year.
- (e) The following persons are exempt from being licensed as a grain dealer or incidental grain dealer:
- (1) A person purchasing grain from producers only for resale as agricultural seed.
  - (2) A producer purchasing grain from producers only for its own use as seed or feed.

#### **240 ILCS 40/5-10**

#### **40/5-10. Financial statement and fee requirements to obtain or amend a license**

- (a) Applications for a new license to operate as a Class I warehouseman or grain dealer shall be accompanied by each of the following:
- (1) A financial statement made within 90 days after the applicant's fiscal year end and prepared in conformity with generally accepted accounting principles following an examination

conducted in accordance with generally accepted auditing standards that has attached the unqualified opinion, or a qualified opinion if the qualification, in the sole discretion of the Department, does not unduly diminish the financial stability of the licensee or applicant, of an independent certified public accountant licensed under Illinois law or an entity permitted to engage in the practice of public accounting under item (b)(3) of Section 14 of the Illinois Public Accounting Act.

(A) If the applicant has been engaged in business prior to the application, the financial statement shall set forth the financial position and results in operations for the most recent fiscal year of the applicant. The financial statement shall consist of a balance sheet, statement of income, statement of retained earnings, statement of cash flows, notes to financial statements, and other information as required by the Department.

(B) If the applicant has not been engaged in business prior to the application, the financial statement shall consist of a balance sheet, notes to financial statements, and other information as required by the Department.

(2) An application fee of \$200 for each license, \$100 of which shall be deposited into the General Revenue Fund and the balance of which shall be deposited into the Regulatory Fund.

(3) A fee for each required certificate. The amount of the fee for each certificate shall be established by rule. Fees shall be deposited into the Regulatory Fund.

(b) Applications for a new license to operate as a Class II warehouseman or incidental grain dealer shall be accompanied by:

(1) A financial statement prepared in accordance with the requirements of item (a)(1) of Section 5-10 or, instead, a financial statement made within 90 days of the date of the application prepared or certified by an independent accountant and verified under oath by the applicant. The financial statement shall set forth the balance sheet and other information with respect to the financial resources of the applicant that the Department may require. If the applicant has been engaged in business prior to the application, the financial statement shall also set forth a statement of income of the applicant.

(2) An application fee of \$150 for each license, \$100 of which shall be deposited into the General Revenue Fund and the balance of which shall be deposited into the Regulatory Fund.

(3) A fee for each required certificate. The amount of the fee for each certificate shall be established by rule. Fees shall be deposited into the Regulatory Fund.

(c) Applications to amend a warehouseman's licensed storage capacity, including applications in reference to temporary storage and emergency storage or to otherwise amend a license, shall be accompanied by a filing fee of \$100, \$50 of which shall be deposited into the General Revenue Fund and the balance of which shall be deposited into the Regulatory Fund.

#### **240 ILCS 40/5-15 40/5-15. Renewal of license**

(a) The application for renewal of a license shall be filed with the Department annually within 90 days after the licensee's fiscal year end. The Department may, upon request of the licensee, payment of an extension fee of \$100, \$50 of which shall be deposited into the General Revenue Fund and the balance of which shall be deposited into the Regulatory Fund, and delivery to the Department of a preliminary financial statement compiled by an independent certified public accountant licensed under Illinois law or an entity permitted to engage in the practice of public accounting under item (b)(3) of Section 14 of the Illinois Public Accounting Act or, in the case of a Class II warehouseman or incidental grain

dealer, a preliminary financial statement reviewed by an independent accountant that meets the financial requirements of subsection (b) of Section 5-25, extend, for up to but not exceeding 30 days, the period of time during which the application for renewal of a license may be filed. The Department, however, may provide by rule for reducing the filing period for an application for renewal of a license to no less than 60 days after the licensee's fiscal year end if the Department determines that an applicant has financial deficiencies, or there are other factors, that would create a substantial risk of failure. The Department must give written notice of the reduced filing period to the licensee at least 60 days before the earlier deadline imposed by the Department to file the application for renewal of a license. Notice is deemed given when mailed by certified mail, return receipt requested, properly addressed and with sufficient postage attached.

(b) The application for renewal shall be accompanied by the financial statement required by Section 5-20.

(c) Failure to meet all of the conditions to renew the license may result in a denial of renewal of the license. The licensee may request an administrative hearing to dispute the denial of renewal, after which the Director shall enter an order either renewing or refusing to renew the license.

#### **240 ILCS 40/5-20**

#### **40/5-20. Financial statement and fee requirements for the renewal of a license**

(a) Applications for a renewal of a license to operate as a Class I warehouseman or grain dealer shall be accompanied by each of the following:

(1) A financial statement made within 90 days after the applicant's fiscal year end and prepared in conformity with generally accepted accounting principles following an examination conducted in accordance with generally accepted auditing standards that has attached the unqualified opinion, or a qualified opinion if the qualification, in the sole discretion of the Department, does not unduly diminish the financial stability of the licensee or applicant, of an independent certified public accountant licensed under Illinois law or an entity permitted to engage in the practice of public accounting under item (b)(3) of Section 14 of the Illinois Public Accounting Act.<sup>1</sup> The financial statement shall consist of a balance sheet, statement of income, statement of retained earnings, statement of cash flows, notes to financial statements, and other information as required by the Department. The financial statement shall set forth the financial position and results in operations for the most recent fiscal year of the applicant.

(2) A fee of \$200 for each license, \$100 of which shall be deposited into the General Revenue Fund and the balance of which shall be deposited into the Regulatory Fund.

(3) A fee for each required certificate. The amount of the fee for each certificate shall be established by rule. Fees shall be deposited into the Regulatory Fund.

(b) Applications for a renewal of a license to operate as a Class II warehouseman or incidental grain dealer shall be accompanied by each of the following:

(1) A financial statement prepared in accordance with the requirements of item (a)(1) of Section 5-10 or, instead, a financial statement made within 90 days after the date of the application prepared or certified by an independent accountant and verified under oath by the applicant. The financial statement shall set forth the balance sheet and statement of income of the applicant and other information with respect to the financial resources of the applicant that the Department may require.

(2) A fee of \$150 for each license, \$100 of which shall be deposited into the General Revenue Fund and the balance of which shall be deposited into the Regulatory Fund.

(3) A fee for each required certificate. The amount of the fee for each certificate shall be established by rule. Fees shall be deposited into the Regulatory Fund.

**240 ILCS 40/5-25**  
**40/5-25. Licensing standards and requirements**

The Department shall issue, amend, or renew a license if the Department is satisfied that the applicant or licensee meets the standards and requirements of this Section. The standards and requirements of subsections (a) and (b) of this Section must be observed and complied with at all times during the term of the license.

(a) General requirements.

- (1) The applicant or licensee must have a good business reputation, have not been involved in improper manipulation of books and records or other improper business practices, and have the qualifications and background essential for the conduct of the business of a licensee. The Department must be satisfied as to the business reputation, background, and qualifications of the management and principal officers of the applicant or licensee. The Department may obtain criminal histories of management and principal officers of the applicant or licensee.
- (2) The applicant or licensee must maintain a permanent business location in the State of Illinois. Each location where the licensee is transacting business shall remain open from at least one-half hour before the daily opening to at least one-half hour after the daily closing of the Chicago Board of Trade, unless otherwise approved by the Department.
- (3) The applicant or licensee must have insurance on all grain in its possession or custody as required in this Code.
- (4) The applicant or licensee shall at all times keep sufficiently detailed books and records to reflect compliance with all requirements of this Code. The Department may require that certain records located outside the State of Illinois, if any, be brought to a specified location in Illinois for review by the Department.
- (5) The applicant or licensee and each of its officers, directors, partners, and managers must not have been found guilty of a criminal violation of this Code, any of its predecessor statutes, or any similar or related statute or law of the United States or any other state or jurisdiction within 10 years of the date of application for the issuance or renewal of a license.
- (6) The applicant or licensee and each of its officers, directors, managers, and partners, that at any one time have been a licensee under this Code or any of its predecessor statutes, or licensed under any similar or related statute or law of the United States or any other state or jurisdiction, must not have had its license terminated or revoked by the Department, by the United States, or by any other state or jurisdiction, within 2 years of the date of application for the issuance or renewal of a license leaving unsatisfied indebtedness to claimants.
- (7) The applicant or licensee and each of its officers, directors, managers, and partners must not have been an officer, director, manager, or partner of a former licensee under this Code or any of its predecessor statutes, or of a business formerly licensed under any similar or related statute or law of the United States or any other state or jurisdiction, that had its license terminated or revoked by the Department, by the United States, or by any other state or jurisdiction, within 2 years of the date of application for the issuance or renewal of a license, leaving unsatisfied indebtedness to claimants, unless the applicant or licensee makes a sufficient showing to the Department that the applicable person or related party was not materially and substantially involved as a principal in the business that had its license

terminated or revoked. An interim or temporary manager that is employed by a licensee to reorganize the licensee or to manage the licensee until its business is sold, transferred, or liquidated is not in violation of this subsection (7) solely because of that employment as an interim or temporary manager.

(b) Financial requirements.

(1) The applicant or licensee's financial statement must show a current ratio of the total adjusted current assets to the total adjusted current liabilities of at least one to one.

(A) Adjusted current assets shall be calculated by deducting from the stated current assets shown on the balance sheet submitted by the applicant or licensee any current asset, as calculated in item (B) of this subdivision (1), resulting from notes receivable from related persons, accounts receivable from related persons, stock subscriptions receivable, and any other related person receivables.

(B) A disallowed current asset shall be netted against any related liability and the net result, if an asset, shall be subtracted from the current assets.

(2) The applicant or licensee's financial statement and balance sheet must show an adjusted debt to adjusted equity ratio of not more than 3 to one.

(A) Adjusted debt shall be calculated by totaling current and long-term liabilities and reducing the total liabilities, up to the amount of current liabilities, by the liquid assets appearing in the current asset section of the balance sheet submitted by the applicant or licensee. For the purposes of this Section, liquid assets include but are not limited to cash, depository accounts, direct obligations of the U.S. Government, marketable securities, grain assets, balances in margin accounts, and tax refunds.

(B) Adjusted equity shall be calculated by deducting from the stated net worth shown on the balance sheet submitted by the applicant or licensee any asset, as calculated in item (C) of this subdivision (2), resulting from notes receivable from related persons, accounts receivable from related persons, stock subscriptions receivable, or any other related person receivables.

(C) A disallowed asset shall be netted against any related liability and the net result, if an asset, shall be subtracted from the stated net worth, or if a liability it shall remain a liability.

(3) An applicant or licensee must have an adjusted equity of at least \$50,000 as determined by the method specified in item (b)(2) of this Section. Beginning with the first fiscal year of a licensee ending after 2004, the adjusted equity, as defined by the method specified in item (b)(2) of this Section, shall be increased by \$10,000 per fiscal year until the adjusted equity of an applicant or licensee is at least \$100,000.

(4) For the purposes of this Section, notes receivable from related persons, accounts receivable from related persons, and any other related person receivables are not a disallowed asset if the related person is also a licensee and meets all of the financial requirements of this Code.

(5) An applicant for a new license shall not be permitted to collateralize the requirements of items (b)(1) and (b)(3) of this Section in order to satisfy the requirements for a new license.

## **240 ILCS 40/5-30**

### **40/5-30. Grain Insurance Fund assessments**

The Illinois Grain Insurance Fund is established as a continuation of the fund created under the Illinois Grain Insurance Act, now repealed. Licensees, applicants for a new license, first sellers of grain to grain dealers at Illinois locations, and lenders to licensees shall pay assessments as set forth in this

Section.

(a) Subject to subsection (e) of this Section, a licensee that is newly licensed after the effective date of this Code shall pay an assessment into the Fund for 3 consecutive years. These assessments are known as “newly licensed assessments”. Except as provided in item (6) of subsection (b) of this Section, the first installment shall be paid at the time of or before the issuance of a new license, the second installment shall be paid on or before the first anniversary date of the issuance of the new license, and the third installment shall be paid on or before the second anniversary date of the issuance of the new license. For a grain dealer, the payment of each of the 3 installments shall be based upon the total estimated value of grain purchases by the grain dealer for the applicable year with the final installment amount determined as set forth in item (6) of subsection (b) of this Section. After the licensee has paid or was required to pay the last 3 installments of the newly licensed assessments, the licensee shall be subject to subsequent assessments as set forth in subsection (d) of this Section.

(b) Grain dealer newly licensed assessments.

- (1) The first installment for a grain dealer shall be an amount equal to:
  - (A) \$0.000145 multiplied by the total value of grain purchases for the grain dealer's first fiscal year as shown in the final financial statement for that year provided to the Department under Section 5-20; and
  - (B) \$0.000255 multiplied by that portion of the value of grain purchases for the grain dealer's first fiscal year that exceeds the adjusted equity of the licensee multiplied by 20, as shown on the final financial statement for the licensee's first fiscal year provided to the Department under Section 5-20.
- (2) The minimum amount for the first installment shall be \$500 and the maximum shall be \$15,000.
- (3) The second installment for a grain dealer shall be an amount equal to:
  - (A) \$0.0000725 multiplied by the total value of grain purchases for the grain dealer's second fiscal year as shown in the final financial statement for that year provided to the Department under Section 5-20; and
  - (B) \$0.0001275 multiplied by that portion of the value of grain purchases for the grain dealer's second fiscal year that exceeds the adjusted equity of the licensee multiplied by 20, as shown on the final financial statement for the licensee's second fiscal year provided to the Department under Section 5-20.
- (4) The third installment for a grain dealer shall be an amount equal to:
  - (A) \$0.0000725 multiplied by the total value of grain purchases for the grain dealer's third fiscal year as shown in the final financial statement for that year provided to the Department under Section 5-20; and
  - (B) \$0.0001275 multiplied by that portion of the value of grain purchases for the grain dealer's third fiscal year that exceeds the adjusted equity of the licensee multiplied by 20, as shown on the final financial statement for the licensee's third fiscal year.
- (5) The minimum amount of the second and third installments shall be \$250 per year and the maximum for each year shall be \$7,500.
- (6) Each of the newly licensed assessments shall be adjusted up or down based upon the actual annual grain purchases for each year as shown in the final financial statement for that year provided to the Department under Section 5-20. The adjustments shall be determined by the Department within 30 days of the date of approval of renewal of a license. Refunds shall be paid out of the Fund within 60 days after the Department's determination. Additional amounts owed for any installment shall be paid within 30 days after notification by the Department.
- (7) For the purposes of grain dealer newly licensed assessments under subsection (b) of this

Section, the total value of grain purchases shall be the total value of first time grain purchases by Illinois locations from producers.

(8) The second and third installments shall be paid to the Department within 60 days after the date posted on the written notice of assessment. The Department shall immediately deposit all paid installments into the Fund.

(c) Warehouseman newly licensed assessments.

(1) The first assessment for a warehouseman shall be an amount equal to:

(A) \$0.00085 multiplied by the total permanent storage capacity of the warehouseman at the time of license issuance; and

(B) \$0.00099 multiplied by that portion of the permanent storage capacity of the warehouseman at the time of license issuance that exceeds the adjusted equity of the licensee multiplied by 5, all as shown on the final financial statement for the licensee provided to the Department under Section 5-10.

(2) The minimum amount for the first installment shall be \$500 and the maximum shall be \$15,000.

(3) The second and third installments shall be an amount equal to:

(A) \$0.000425 multiplied by the total permanent storage capacity of the warehouseman at the time of license issuance; and

(B) \$0.000495 multiplied by that portion of the permanent licensed storage capacity of the warehouseman at the time of license issuance that exceeds the adjusted equity of the licensee multiplied by 5, as shown on the final financial statement for the licensee's last completed fiscal year provided to the Department under Section 5-20.

(4) The minimum amount for the second and third installments shall be \$250 per installment and the maximum for each installment shall be \$7,500.

(5) Every warehouseman shall pay an assessment when increasing available permanent storage capacity in an amount equal to \$0.001 multiplied by the total number of bushels to be added to permanent storage capacity. The minimum assessment on any increase in permanent storage capacity shall be \$50 and the maximum assessment shall be \$20,000. The assessment based upon an increase in permanent storage capacity shall be paid at or before the time of approval of the increase in permanent storage capacity. This assessment on the increased permanent storage capacity does not relieve the warehouseman of any assessments as set forth in subsection (d) of this Section.

(6) Every warehouseman shall pay an assessment of \$0.0005 per bushel when increasing available storage capacity by use of temporary storage space. The minimum assessment on temporary storage space shall be \$100. The assessment based upon temporary storage space shall be paid at or before the time of approval of the amount of the temporary storage space. This assessment on the temporary storage space capacity does not relieve the warehouseman of any assessments as set forth in subsection (d) of this Section.

(7) Every warehouseman shall pay an assessment of \$0.001 per bushel of emergency storage space. The minimum assessment on any emergency storage space shall be \$100. The assessment based upon emergency storage space shall be paid at or before the time of approval of the amount of the emergency storage space. This assessment on the emergency storage space does not relieve the warehouseman of any assessments as set forth in subsection (d) of this Section.

(8) The second and third installments shall be paid to the Department within 60 days after the date posted on the written notice of assessment. The Department shall immediately deposit all paid installments into the Fund.



(d) Grain dealer subsequent assessments; warehouseman subsequent assessments.

(1) Subject to paragraph (4) of this subsection (d), if on the first working day of a calendar quarter when a licensee is not already subject to an assessment under this subsection (d) (the assessment determination date), if the equity in the Fund is less than \$6,000,000, every grain dealer who has, or was required to have, already paid the newly licensed assessments shall be assessed by the Department in a total amount equal to:

(A) \$0.0000725 multiplied by the total value of grain purchases for the grain dealer's last completed fiscal year prior to the assessment determination date as shown in the final financial statement for that year provided to the Department under Section 5-20; and

(B) \$0.0001275 multiplied by that portion of the value of grain purchases for the grain dealer's last completed fiscal year prior to the assessment determination date that exceeds the adjusted equity of the licensee multiplied by 20, as shown on the final financial statement for the licensee's last completed fiscal year provided to the Department under Section 5-20.

The minimum total amount for the grain dealer's subsequent assessment shall be \$250 per 12-month period and the maximum amount shall be \$7,500 per 12-month period.

For the purposes of grain dealer assessments under this item (1) of subsection (d) of this Section, the total value of grain purchases shall be the total value of first time grain purchases by Illinois locations from producers.

(2) Subject to paragraph (4) of this subsection (d), if on the first working day of a calendar quarter when a licensee is not subject to an assessment under this subsection (d) (the assessment determination date), if the equity in the Fund is less than \$6,000,000, every warehouseman who has, or was required to have, already paid the newly licensed assessments shall be assessed a warehouseman subsequent assessment by the Department in a total amount equal to:

(A) \$0.000425 multiplied by the total licensed storage capacity of the warehouseman as of the first day of September that immediately precedes the assessment determination date; and

(B) \$0.000495 multiplied by that portion of the licensed storage capacity of the warehouseman as of the first day of September that immediately precedes the assessment determination date that exceeds the adjusted equity of the licensee multiplied by 5, as shown on the final financial statement for the licensee's last completed fiscal year provided to the Department under Section 5-20.

The minimum total amount for a warehouseman subsequent assessment shall be \$250 per 12-month period and the maximum amount shall be \$7,500 per 12-month period.

(3) Subject to paragraph (4) of this subsection (d), if the equity in the Fund is below \$6,000,000 on the first working day of a calendar quarter when a licensee is not already subject to an assessment under this subsection (d) (the assessment determination date), every incidental grain dealer who has, or was required to have, already paid all 3 installments of the newly licensed assessments shall be assessed by the Department in a total amount equal to \$100. It shall be paid to the Department within 60 days after the date posted on the written notification by the Department, which shall be sent after the first day of the calendar quarter immediately following the assessment determination date.

(4) Following the payment of the final quarterly installment by grain dealers and warehousemen, the next assessment determination date can be no sooner than the first working day of the sixth full calendar month following the payment.

(5) All assessments under paragraphs (1) and (2) of this subsection (d) shall be effective as of the first day of the calendar quarter immediately following the assessment determination date and shall be paid to the Department by licensees in 4 equal installments by the twentieth day of each consecutive calendar quarter following notice by the Department of the assessment. The Department shall give written notice to all licensees of when the assessment is effective, and the rate of the assessment, by mail within 20 days after the assessment determination date.

(6) After an assessment under paragraph (1) and (2) of this subsection (d) is instituted, the amount of any unpaid installments for the assessment shall not be adjusted based upon any change in the financial statements or licensed storage capacity of a licensee.

(7) If the due date for the payment by a licensee of the third assessment under subsections (b) and (c) of this Section 5-30 is after the assessment determination date, that licensee shall not be subject to any of the 4 installments of an assessment under paragraphs (1) and (2) of this subsection (d).

(8) The Department shall immediately deposit all paid assessments into the Fund.

(e) Newly licensed; exemptions.

(1) For the purpose of assessing fees for the Fund under subsection (a) of this Section, and subject to the provisions of item (e)(2) of this Section, the Department shall consider the following to be newly licensed:

(A) A person that becomes a licensee for the first time after the effective date of this Code.

(B) A licensee who has a lapse in licensing of more than 30 days. A license shall not be considered to be lapsed after its revocation or termination if an administrative or judicial action is pending or if an order from an administrative or judicial body continues an existing license.

(C) A grain dealer that is a general partnership in which there is a change in partnership interests and that change is greater than 50% during the partnership's fiscal year.

(D) A grain dealer that is a limited partnership in which there is a change in the controlling interest of a general partner and that change is greater than 50% of the total controlling interest during the limited partnership's fiscal year.

(E) A grain dealer that is a limited liability company in which there is a change in membership interests and that change is greater than 50% during the limited liability company's fiscal year.

(F) A grain dealer that is the result of a statutory consolidation if that person has adjusted equity of less than 90% of the combined adjusted equity of the predecessor persons who consolidated. For the purposes of this paragraph, the adjusted equity of the resulting person shall be determined from the approved or certified financial statement submitted to the Department for the first fiscal year of the resulting person. For the purpose of this paragraph, the combined adjusted equity of the predecessor persons shall be determined by combining the adjusted equity of each predecessor person as set forth in the most recent approved or certified financial statement of each predecessor person submitted to the Department.

(G) A grain dealer that is the result of a statutory merger if that person has adjusted equity of less than 90% of the combined adjusted equity of the predecessor persons who merged. For the purposes of this paragraph, the adjusted equity of the resulting person shall be determined from the approved or certified financial statement submitted to the Department for the first fiscal year of the resulting person ending after the merger. For the purposes of this paragraph, the combined adjusted equity of the predecessor persons

shall be determined by combining the adjusted equity of each predecessor person as set forth in the most recent approved or certified financial statement submitted to the Department for the last fiscal year of each predecessor person ending on the date of or before the merger.

(H) A grain dealer that is a general partnership in which there is a change in partnership interests and that change is 50% or less during the partnership's fiscal year if the adjusted equity of the partnership after the change is less than 90% of the adjusted equity of the partnership before the change. For the purpose of this paragraph, the adjusted equity of the partnership after the change shall be determined from the approved or certified financial statement submitted to the Department for the first fiscal year ending after the change. For the purposes of this paragraph, the adjusted equity of the partnership before the change shall be determined from the approved or certified financial statement submitted to the Department for the last fiscal year of the partnership ending on the date of or before the change.

(I) A grain dealer that is a limited partnership in which there is a change in the controlling interest of a general partner and that change is 50% or less of the total controlling interest during the partnership's fiscal year if the adjusted equity of the partnership after the change is less than 90% of the adjusted equity of the partnership before the change. For the purposes of this paragraph, the adjusted equity of the partnership after the change shall be determined from the approved or certified financial statement submitted to the Department for the first fiscal year ending after the change. For the purposes of this paragraph, the adjusted equity of the partnership before the change shall be determined from the approved or certified financial statement submitted to the Department for the last fiscal year of the partnership ending on the date of or before the change.

(J) A grain dealer that is a limited liability company in which there is a change in membership interests and that change is 50% or less of the total membership interests during the limited liability company's fiscal year if the adjusted equity of the limited liability company after the change is less than 90% of the adjusted equity of the limited liability company before the change. For the purposes of this paragraph, the adjusted equity of the limited liability company after the change shall be determined from the approved or certified financial statement submitted to the Department for the first fiscal year ending after the change. For the purposes of this paragraph, the adjusted equity of the limited liability company before the change shall be determined from the approved or certified financial statement submitted to the Department for the last fiscal year of the limited liability company ending on the date of or before the change.

(K) A grain dealer that is the result of a statutory consolidation or merger if one or more of the predecessor persons that consolidated or merged into the resulting grain dealer was not a licensee under this Code at the time of the consolidation or merger.

(2) For the purpose of assessing fees for the Fund as set forth in subsection (a) of this Section, the Department shall consider the following as not being newly licensed and, therefore, exempt from further assessment unless an assessment is required by subsection (d) of this Section:

(A) A person resulting solely from a name change of a licensee.

(B) A warehouseman changing from a Class I warehouseman to a Class II warehouseman or from a Class II warehouseman to a Class I warehouseman under this Code.

(C) A licensee that becomes a wholly owned subsidiary of another licensee.

(D) Subject to item (e)(1)(K) of this Section, a person that is the result of a statutory consolidation if that person has adjusted equity greater than or equal to 90% of the combined adjusted equity of the predecessor persons who consolidated. For the purposes of this paragraph, the adjusted equity of the resulting person shall be determined from the approved or certified financial statement submitted to the Department for the first fiscal year of the resulting person. For the purpose of this paragraph, the combined adjusted equity of the predecessor persons shall be determined by combining the adjusted equity of each predecessor person as set forth in the most recent approved or certified financial statement of each predecessor person submitted to the Department.

(E) Subject to item (e)(1)(K) of this Section, a person that is the result of a statutory merger if that person has adjusted equity greater than or equal to 90% of the combined adjusted equity of the predecessor persons who merged. For the purposes of this paragraph, the adjusted equity of the resulting person shall be determined from the approved or certified financial statement submitted to the Department for the first fiscal year of the resulting person ending after the merger. For the purposes of this paragraph, the combined adjusted equity of the predecessor persons shall be determined by combining the adjusted equity of each predecessor person as set forth in the most recent approved or certified financial statement, submitted to the Department for the last fiscal year of each predecessor person ending on the date of or before the merger.

(F) A general partnership in which there is a change in partnership interests and that change is 50% or less during the partnership's fiscal year and the adjusted equity of the partnership after the change is greater than or equal to 90% of the adjusted equity of the partnership before the change. For the purposes of this paragraph, the adjusted equity of the partnership after the change shall be determined from the approved or certified financial statement submitted to the Department for the first fiscal year ending after the change. For the purposes of this paragraph, the adjusted equity of the partnership before the change shall be determined from the approved or certified financial statement submitted to the Department for the last fiscal year of the partnership ending on the date of or before the change.

(G) A limited partnership in which there is a change in the controlling interest of a general partner and that change is 50% or less of the total controlling interest during the partnership's fiscal year and the adjusted equity of the partnership after the change is greater than or equal to 90% of the adjusted equity of the partnership before the change. For the purposes of this paragraph, the adjusted equity of the partnership after the change shall be determined from the approved or certified financial statement submitted to the Department for the first fiscal year ending after the change. For the purposes of this paragraph, the adjusted equity of the partnership before the change shall be determined from the approved or certified financial statement submitted to the Department for the last fiscal year of the partnership ending on the date of or before the change.

(H) A limited liability company in which there is a change in membership interests and that change is 50% or less of the total membership interests during the limited liability company's fiscal year if the adjusted equity of the limited liability company after the change is greater than or equal to 90% of the adjusted equity of the limited liability company before the change. For the purposes of this paragraph, the adjusted equity of the limited liability company after the change shall be determined from the approved or

certified financial statement submitted to the Department for the first fiscal year ending after the change. For the purposes of this paragraph, the adjusted equity of the limited liability company before the change shall be determined from the approved or certified financial statement submitted to the Department for the last fiscal year of the limited liability company ending on the date of or before the change.

(I) A licensed warehouseman that is the result of a statutory merger or consolidation to the extent the combined storage capacity of the resulting warehouseman has been assessed under this Code before the statutory merger or consolidation, except that any storage capacity of the resulting warehouseman that has not previously been assessed under this Code shall be assessed as provided in items (c)(5), (c)(6), and (c)(7) of this Section.

(J) A federal warehouseman who participated in the Fund under Section 30-10 and who subsequently received an Illinois license to the extent the storage capacity of the warehouseman was assessed under this Code prior to Illinois licensing.

(f) Grain seller initial assessments and regular assessments. Assessments under this subsection (f) apply only to the first sale of grain to a grain dealer at an Illinois location.

(1) The grain seller initial assessment period is that period of time beginning on the effective date of this amendatory Act of the 93rd General Assembly and ending on the first assessment determination date thereafter when the equity in the fund is at least \$6,000,000.

(2) Subject to paragraph (3) of this subsection (f) (i) if during the grain seller initial assessment period the equity in the Fund is less than \$3,000,000 or (ii) if at any time after the grain seller initial assessment period the equity in the Fund is less than \$2,000,000, on the first working day of a calendar quarter when a grain seller is not already subject to an assessment under this subsection (f) (the assessment determination date), each person who settles for grain (sold to a grain dealer at an Illinois location) during the 12-month period commencing on the first day of the succeeding calendar quarter (the assessment period) shall pay an assessment equal to \$0.0004 multiplied by the net market value of grain settled for (payment received for grain sold).

(3) The next assessment determination date can be no sooner than the first working day of the fourth full calendar month following the end of the assessment period.

(4) "Net market value" of grain means the gross sales price of that grain adjusted by application of the grain dealer's discount schedule in effect at the time of sale and after deduction of any statutory commodity check-offs. Other charges such as storage charges, drying charges, and transportation costs shall not be deducted in arriving at the net market value of grain sold to a grain dealer. The net market value of grain shall be determined from the settlement sheet or other applicable written evidence of the sale of grain to the grain dealer.

(5) All assessments under this subsection (f) shall commence on the first day of the calendar quarter immediately following the assessment determination date and shall continue for a period of 12 consecutive calendar months. The assessments shall be collected by licensees at the time of settlement during the assessment period, and shall be remitted by licensees to the Department by the twentieth day of each calendar quarter, commencing with the second calendar quarter following the assessment determination date. The Department shall give written notice to all licensees of when an assessment under this subsection (f) is to begin and end, and the appropriate level of the assessment, by mail within 20 days after the assessment determination date.

(6) Assessments under this subsection (f) apply only to grain for which settlement is made during the assessment period, without regard to the date the grain was sold to the licensee.

(7) The collection and remittance of assessments from first sellers of grain under this subsection (f) is the sole responsibility of the licensees to whom the grain is sold. Sellers of grain shall not be penalized by reason of any licensee's failure to comply with this subsection (f). Failure of a licensee to collect any assessment shall not relieve the grain seller from paying the assessment, and the grain seller shall promptly remit the uncollected assessments upon demand by the licensee, which may be accounted for in settlement of grain subsequently sold to that licensee. Licensees who do not collect assessments as required by this subsection (f), or who do not remit those assessments to the Department within the time deadlines required by this subsection (f), shall remit the amount of the assessments that should have been remitted to the Department and in addition shall be subject to a monetary penalty in an amount not to exceed \$1,000.

(8) Notwithstanding the other provisions of this subsection (f), no assessment shall be levied against grain sold by the Department as a result of a failure.

(g) Lender assessments.

(1) Subject to the provisions of this subsection (g), if on the first working day of a calendar quarter when a person is not already subject to an assessment under this subsection (g) the equity in the Fund is less than \$6,000,000, each person holding warehouse receipts issued from an Illinois location on grain owned or stored by a licensee to secure a loan to that licensee shall be assessed a quarterly lender assessment for each of 4 consecutive calendar quarters beginning with the calendar quarter next succeeding the assessment determination date.

(2) Each quarterly lender assessment shall be at the rate of \$0.00000055 per bushel per day for bushels covered by a warehouse receipt held as security for the loan during that calendar quarter times the applicable commodity price times the lender assessment multiplier, if any, determined by the Department in accordance with paragraph (3) of this subsection (g). With respect to each calendar quarter within the assessment period, the "applicable commodity price" shall be the closing price paid by the licensee on the last working day of that calendar quarter for the base commodity for which the warehouse receipt was issued.

(3) With respect to the second assessment period beginning after June 30, 2003, the Department shall determine and apply a lender assessment multiplier equal to 250,000 divided by the aggregate dollar amount of lender assessments imposed under this subsection (g) under the first assessment period beginning after June 30, 2003. With respect to the third assessment period beginning after June 30, 2003, the Department shall determine and apply a lender assessment multiplier equal to 250,000 divided by the average of aggregate dollar amounts of lender assessments imposed under this subsection (g) under the first 2 assessment periods beginning after June 30, 2003. With respect to assessment periods thereafter, the Department shall determine and apply a lender assessment multiplier equal to 250,000 divided by the average of the 3 most recent aggregate dollar amounts of lender assessments imposed under this subsection (g).

(4) The next assessment determination date can be no sooner than the first working day of the fourth full calendar month following the end of the assessment period.

(5) The Department shall give written notice by mail within 20 days after the assessment determination date to all licensees of when assessments under this subsection (g) are to begin and end, the rate of the lender assessment, and the lender assessment multiplier, if any, that shall apply.

(6) It is the responsibility of a licensee to inform each of its lenders and other persons by virtue of whose relationship with the licensee this subsection (g) will apply as to the onset of an assessment for which that person might be liable and the applicable lender assessment

multiplier, if any. The notification must be in writing and, as to persons subject to assessment under this subsection (g) on the assessment determination date, must be sent no later than 20 days after the licensee receives notice of an assessment from the Department. As to persons not subject to assessment under this subsection (g) as of the assessment determination date, the notice shall be sent or given no later than the closing of any transaction subsequent to the assessment determination date involving the licensee and by virtue of which transaction the person is made subject to assessment under this subsection (g).

(7) Within 20 days after the end of each calendar quarter within the assessment period, each licensee shall send to each lender with which it has been associated during that calendar quarter and to the Department a written notice of quarterly assessment together with the information needed to determine the amount of the quarterly assessment owing with respect to loans from that lender. This information shall include the number of bushels covered by each warehouse receipt, organized by commodity, held as security for the loan owing to that lender, the number of days each of those warehouse receipts was outstanding during that calendar quarter, the applicable commodity price, the applicable lender assessment multiplier, the amount of the resulting quarterly lender assessment, and the due date of the quarterly assessment.

(8) Each quarterly assessment shall be due and paid by the lender or its designee to the Department within 20 days after the end of the calendar quarter to which the assessment pertains.

(9) Lenders shall not be penalized by reason of any licensee's failure to comply with this subsection (g). Failure of a licensee to comply with this subsection (g) shall not relieve the lender from paying the assessment, and the lender shall promptly remit the uncollected assessments by the due date as set forth in the notice from the licensee.

(10) This subsection (g) applies to any person who holds a grain warehouse receipt issued by a licensee from an Illinois location pursuant to any transaction, regardless of its form, that creates a security interest in the grain including, without limitation, the advancing of money or other value to or for the benefit of a licensee upon the licensee's issuance or negotiation of a grain warehouse receipt and pursuant to or in connection with an agreement between the licensee and a counter-party for the repurchase of the grain by the licensee or designee of the licensee. For purposes of this subsection (g), any such transaction shall be treated as one in which grain is held as security for a loan outstanding to a licensee within the meaning of this subsection (g), and such a person shall be treated as a lender.

(11) The Department shall immediately deposit all paid assessments under this subsection (g) into the Fund.

(h) Equity in the Fund shall exclude moneys owing to the State or the Reserve Fund as a result of transfers to the Fund from the General Revenue Fund or the Reserve Fund under subsection (h) of Section 25-20. Notwithstanding the foregoing, for purposes of calculating equity in the Fund during the grain seller initial assessment period and assessing grain sellers, it shall be presumed that the State is owed, prior to repayment, only \$2,000,000 and the Reserve Fund contains a balance of \$2,000,000. Under no circumstances, however, shall there be more than 2 consecutive grain seller assessments during the initial assessment period, unless there is a failure that reduces the equity in the Fund to below \$3,000,000.

(i) Notwithstanding the provisions of subsections (d)(4), (f)(3), and (g)(4) of this Section or any other law to the contrary, until the equity in the Fund reaches a level of \$6,000,000 for the first time, assessment periods shall continue without interruption, subject to the termination of assessments on grain sellers provided in subsections (f)(2) and (h) of this Section.

**240 ILCS 40/5-35**  
**40/5-35. Termination of license**

- (a) Revocation of a license by the Department constitutes a termination of the license on the earlier of:
  - (1) the day of the revocation order;
  - (2) the day that a licensee voluntarily files for bankruptcy under the federal bankruptcy laws; or
  - (3) the day that an order for relief is entered in reference to a licensee as a consequence of a petition for involuntary bankruptcy filed under the federal bankruptcy laws.
- (b) Voluntary surrender of a license by a licensee constitutes a termination of the license on the day the surrender occurs.
- (c) Failure to apply for a license renewal constitutes a termination of the license on the day the license expires.
- (d) Denial of a license renewal by the Department constitutes a termination of the license on the day of the order denying the license renewal.



## **240 ILCS 40/10-5**

### **40/10-5. Duties and requirements of licensees**

- (a) Each licensee shall have adequate property insurance covering grain in its possession or custody and adequate liability, property, theft, hazard, and workers' compensation insurance.
- (1) Every insurance policy shall contain a provision that it will not be cancelled by the principal or the insurance company except on 60 days prior written notice to the Director and the principal insured. Cancellation of the policy does not affect the liability accrued or that may accrue under the policy before the expiration of the 60 days. The notice shall contain the termination date.
  - (2) Each licensee shall keep a general insurance account showing the policy number, issuing company, amount, binding date, and expiration date of insurance coverage and the property covered by insurance.
  - (3) In reference to a warehouseman, notwithstanding any provision to the contrary contained in the warehouse receipts involved, a warehouseman is not obligated to provide property insurance on Commodity Credit Corporation grain ("CCC-owned grain"). The warehouseman, however, shall continue to carry the insurance required on loan grain that becomes CCC-owned grain until the date stated in a written notice from CCC or its agent instructing the warehouseman to cancel the insurance on the grain as of that date. If CCC-owned grain is not covered by property insurance, recovery by the Commodity Credit Corporation from the Fund shall be reduced by the amount of property insurance proceeds that would have been available to cover any loss to CCC-owned grain had the CCC-owned grain been covered by property insurance.
- (b) A licensee shall immediately notify the Department when there is a change of management or cessation of operations or change in fiscal year end.
- (c) All grain trades, grain merchandising transactions, grain origination plans and programs, and transactions or arrangements that represent or reflect rights and obligations in grain must be clearly identified and disclosed in the books and records of the licensee, for audit and examination purposes.

## **240 ILCS 40/10-10**

### **40/10-10. Duties and requirements of grain dealers**

- (a) Long and short market position.
- (1) Grain dealers shall at all times maintain an accurate and current long and short market position record for each grain commodity. The position record shall at a minimum contain the net position of all grain owned, wherever located, grain purchased and sold, and any grain option contract purchased or sold.
  - (2) Grain dealers, except grain dealers regularly and continuously reporting to the Commodity Futures Trading Commission or grain dealers who have obtained the permission of the Department to have different open long or short market positions, may maintain an open position in the grain commodity of which the grain dealer buys the greatest number of bushels per fiscal year not to exceed one bushel for each \$10 of adjusted equity at fiscal year end up to a maximum open position of 50,000 bushels and one-half that number of bushels up to 25,000 bushels for all other grain commodities that the grain dealer buys. A grain dealer, however, may maintain an open position of up to 5,000 bushels for each grain commodity the grain dealer buys.

- (b) The license issued by the Department to a grain dealer shall be posted in the principal office of the licensee in this State. A certificate shall be posted in each location where the licensee engages in business as a grain dealer. In the case of a licensee operating a truck or tractor trailer unit for the purpose of purchasing grain, the licensee shall have a certificate carried in each truck or tractor trailer unit used in connection with the licensee's grain dealer business.
- (c) The licensee must have at all times sufficient financial resources to pay producers on demand for grain purchased from them.
- (d) A licensee that is solely a grain dealer shall on a daily basis maintain an accurate and current daily grain transaction report.
- (e) A licensee that is both a grain dealer and a warehouseman shall at all times maintain an accurate and current daily position record.
- (f) In the case of a change of ownership of a grain dealer, the obligations of a grain dealer do not cease until the grain dealer has surrendered all unused price later contracts to the Department and the successor has executed a successor's agreement that is acceptable to the Department, or the successor has otherwise provided for the grain obligations of its predecessor in a manner that is acceptable to the Department.
- (g) If a grain dealer proposes to cease doing business as a grain dealer and there is no successor, it is the duty of the grain dealer to surrender all unused price later contracts to the Department, together with an affidavit accounting for all grain dealer obligations setting forth the arrangements made with producers for final disposition of the grain dealer obligations and indicating the procedure for payment in full of all outstanding grain obligations. It is the duty of the Department to give notice by publication that a grain dealer has ceased doing business without a successor. After payment in full of all outstanding grain obligations, it is the duty of the grain dealer to surrender its license.

**240 ILCS 40/10-15**  
**40/10-15. Price later contracts**

- (a) Price later contracts shall contain provisions prescribed or authorized by the Department and shall be in either written or electronic form. If in written form, price later contract forms shall be printed by a person authorized to print those contracts by the Department after that person has agreed to comply with each of the following:
  - (1) That all price later contracts shall be printed as prescribed by the Department and shall be printed only for a licensed grain dealer.
  - (2) That all price later contracts shall be numbered consecutively and a complete record of these contracts shall be retained showing for whom printed and the consecutive numbers printed on the contracts.
  - (3) That a duplicate copy of all invoices rendered for printing price later contracts that will show the consecutive numbers printed on the contracts, and the number of contracts printed, shall be promptly forwarded to the Department.
  - (4) that the person shall register with the Department and pay an annual registration fee of \$100 to print price later contracts.Price later contracts that are in electronic form shall be numbered consecutively.
- (b) A grain dealer purchasing grain by price later contract shall at all times own grain, rights in grain, proceeds from the sale of grain, and other assets acceptable to the Department as set forth in this Code totaling 90% of the unpaid balance of the grain dealer's obligations for grain purchased by price later contract. That amount shall at all times remain unencumbered and shall be represented by the

aggregate of the following:

- (1) Grain owned by the grain dealer valued by means of the hedging procedures method that includes marking open contracts to market.
- (2) Cash on hand.
- (3) Cash held on account in federally or State licensed financial institutions.
- (4) Investments held in time accounts with federally or State licensed financial institutions.
- (5) Direct obligations of the U.S. government.
- (6) Funds on deposit in grain margin accounts.
- (7) Balances due or to become due to the licensee on price later contracts.
- (8) Marketable securities, including mutual funds.
- (9) Irrevocable letters of credit in favor of the Department and acceptable to the Department.
- (10) Price later contract service charges due or to become due to the licensee.
- (11) Other evidence of proceeds from or of grain that is acceptable to the Department.

(c) For the purpose of computing the dollar value of grain and the balance due on price later contract obligations, the value of grain shall be figured at the current market price.

(d) Title to grain sold by price later contract shall transfer to a grain dealer at the time of delivery of the grain. Therefore, no storage charges shall be made with respect to grain purchased by price later contract. A service charge for handling the contract, however, may be made.

(e) Subject to subsection (f) of this Section, if a price later contract is not signed by all parties within 30 days of the last date of delivery of grain intended to be sold by price later contract, then the grain intended to be sold by price later contract shall be priced on the next business day after 30 days from the last date of delivery of grain intended to be sold by price later contract at the market price of the grain at the close of the next business day after the 29th day. When the grain is priced under this subsection, the grain dealer shall send notice to the seller of the grain within 10 days. The notice shall contain the number of bushels sold, the price per bushel, all applicable discounts, the net proceeds, and a notice that states that the Grain Insurance Fund shall provide protection for a period of only 160 days from the date of pricing of the grain.

In the event of a failure, if a price later contract is not signed by all the parties to the transaction, the Department may consider the grain to be sold by price later contract if a preponderance of the evidence indicates the grain was to be sold by price later contract.

(f) If grain is in storage with a warehouseman and is intended to be sold by price later contract, that grain shall be considered as remaining in storage and not be deemed sold by price later contract until the date the price later contract is signed by all parties.

(g) Scale tickets or other approved documents with respect to grain purchased by a grain dealer by price later contract shall contain the following: "Sold Grain; Price Later".

(h) Price later contracts shall be issued consecutively and recorded by the grain dealer as established by rule.

(i) A licensee shall not issue a collateral warehouse receipt on grain purchased by a price later contract to the extent the purchase price has not been paid by the licensee.

(j) Failure to comply with the requirements of this Section may result in suspension of the privilege to purchase grain by price later contract for up to one year.

(k) When a producer with a price later contract selects a price for all or any part of the grain represented by that contract, then within 5 business days after that price selection, the licensee shall mail to that producer a confirmation of the price selection, clearly and succinctly indicating the price selected. If the price later contract is in electronic form, the licensee shall, within 5 business days after that price selection, e-mail to that producer a confirmation of the price selection, clearly and succinctly indicating the price selected, in full satisfaction of the mailing requirement in the previous sentence.

(1) The issuance and use of price later contracts in electronic form pursuant to the rules promulgated by the Department are specifically authorized by this Code, and any such price later contracts shall have the same validity and enforceability, for all purposes, as those in non-electronic form. For purposes of this Code, the word “written”, and derivatives thereof, when used in relation to price later contracts, shall include price later contracts created or displayed electronically.

## **240 ILCS 40/10-20**

### **40/10-20. Duties and requirements of warehouseman**

(a) It is the duty of every warehouseman to receive for storage any grain that may be tendered to it in the ordinary course of business so far as the licensed storage capacity of the warehouse permits and if the grain is of a kind customarily stored by the warehouseman and is in suitable condition for storage.

(1) If the condition of grain offered for storage might adversely affect the condition of grain in the warehouse, a warehouseman need not receive the grain for storage, but if a warehouseman does receive the grain, then it must be stored in a manner that will not lower the grade of other grain in the warehouse.

(2) A warehouseman shall provide competent personnel and equipment to weigh and grade all grain in and out of storage.

(3) A warehouseman shall maintain all licensed warehouse facilities in a manner suitable to preserve the quality and quantity of grain stored.

(b) For the purposes of the Department's examinations, a warehouseman shall provide and maintain safe and adequate means of ingress and egress to the various and surrounding areas of the facilities, storage bins, and compartments of the warehouse.

(c) Except as provided in this item (c), a warehouseman shall at all times have a sufficient quantity of grain of like kind and quality to meet its outstanding storage obligations. For purposes of this Section, “like kind and quality” means the type of commodity and a combination of grade, specialty traits, if any, and class or sub-class as applicable.

(d) A warehouseman shall not store grain in excess of the capacity for which it is licensed.

(e) A warehouseman may redeposit grain from its warehouse with another warehouseman or a federal warehouseman in an additional quantity not to exceed the licensed storage capacity of its own warehouse.

(1) If grain is redeposited as provided in this Section, a warehouseman must retain the receipt it obtains from the second warehouseman as proof of the redeposit and retain sufficient control over the redeposited grain as is necessary to comply with directions of the original depositor regarding disposition of the redeposited grain.

(2) While grain is en route from the redepositing warehouseman to the second warehouseman, a redepositing warehouseman must retain an original or a duplicate bill of lading instead of and until such time as it obtains possession of the warehouse receipt as proof of disposition of the redeposited grain.

(f) Schedule of rates and licenses.

(1) A warehouseman shall file its schedule of rates with the Department and shall post its warehouse license and a copy of the schedule of rates on file with the Department in a conspicuous place in each location of the warehouseman where grain is received.

(2) The schedule of rates shall be on a form prescribed by the Department and shall include the names and genuine signatures of all persons authorized to sign warehouse receipts issued by the warehouseman.

(3) To change the schedule of rates or the name of any person authorized to sign warehouse receipts, a warehouseman must file with the Department a revised schedule of rates and, thereafter, post the revised schedule of rates at each location of the warehouseman where grain is received. The revised schedule of rates shall be deemed filed with the Department on the earlier of the date it is delivered to the Department or mailed to the Department by certified mail properly addressed with sufficient postage attached. The revised schedule of rates shall be effective on the date the schedule of rates is posted after delivery or mailing to the Department in accordance with this Section. Revised schedules of rates shall apply only to grain delivered for storage after the effective date of the revised schedule of rates. No grain in storage at the time of the effective date of a revised schedule of rates shall be subject to a revised schedule of rates until one year after the date of delivery of grain, unless otherwise provided by a written contract.

(4) The schedule of rates may provide for the negotiation of different rates for large deliveries of grain if those rates are applied on a uniform basis to all depositors under the same circumstances.

(g) A warehouseman may refuse to accept grain if the identity of the grain is to be preserved. If a warehouseman accepts grain and the identity of the grain is to be preserved, the evidence of storage shall state on its face that the grain is stored with its identity preserved and the location of that grain.

(h) A warehouseman shall at all times maintain an accurate and current daily position record on a daily basis.

(i) In the case of a change of ownership of a warehouse, the obligations of a warehouseman do not cease until its successor is properly licensed under this Code or the United States Warehouse Act,<sup>1</sup> it has surrendered all unused warehouse receipts to the Department and has executed a successor's agreement, or the successor has otherwise provided for the obligations of its predecessor.

(j) If a warehouseman proposes to cease doing business as a warehouseman and there is no successor, it is the duty of the warehouseman to surrender all unused warehouse receipts to the Department, together with an affidavit accounting for all warehouse receipts setting forth the arrangements made with depositors for final disposition of the grain in storage and indicating the procedure for payment in full of all outstanding obligations. After payment in full of all outstanding obligations, it is the duty of the warehouseman to surrender its license.

(k) Requests by a warehouseman for special examinations, grain inventory computation, or verification of grain quantity or quality shall be accompanied by a fee of \$200.

(l) Nothing in this Section is deemed to prohibit a warehouseman from entering into agreements with depositors of grain relating to allocation or reservation of storage space.

## **240 ILCS 40/10-25**

### **40/10-25. Warehouse receipts and storage of grain**

(a) When grain is delivered to a warehouseman at a location where grain is also purchased, the licensee shall give written evidence of delivery of grain and that written evidence shall be marked to indicate whether the grain is delivered for storage or for sale. In the absence of adequate evidence of sale, the grain shall be construed to be in storage.

(b) Upon demand by a depositor, a warehouseman shall issue warehouse receipts for grain delivered into storage.

(c) There shall be no charge for the first warehouse receipt issued to a depositor for a given lot of grain. Charges for any additional warehouse receipts for grain previously covered by a warehouse

receipt must be commensurate with the cost of issuance of the additional warehouse receipt.

(d) A warehouseman shall issue warehouse receipts only in accordance with the following requirements:

(1) Warehouse receipts shall be consecutively numbered in a form prescribed by the Department and issued consecutively by the warehouseman.

(2) In the case of a lost or destroyed warehouse receipt, the new warehouse receipt shall bear the same date as the original and shall be plainly marked on its face “duplicate in lieu of lost or destroyed warehouse receipt number .....", and the warehouseman shall duly fill in the blank with the appropriate warehouse receipt number.

(3) Warehouse receipts shall be printed by a person authorized by the Department. The person shall register with the Department and pay an annual registration fee of \$100 to print warehouse receipts.

(4) Negotiable warehouse receipts shall be issued only for grain actually in storage with the warehouseman from which it is issued or redeposited by that warehouseman as provided in subsection (e) of Section 10-20.

(5) A warehouseman shall not insert in any negotiable warehouse receipt issued by it any language that in any way limits or modifies its liability or responsibility.

(e) Upon delivery of grain covered by a negotiable warehouse receipt, the holder of the negotiable warehouse receipt must surrender the warehouse receipt for cancellation, and a warehouseman must cancel and issue a new negotiable warehouse receipt for the balance of grain in storage.

(f) When all grain, the storage of which is evidenced by a warehouse receipt, is delivered from storage, the warehouse receipt shall be plainly marked across its face with the word “cancelled” and shall have written on it the date of cancellation, the name of the person canceling the warehouse receipt, and such other information as required by rule, and is thereafter void.

(g) When a warehouseman delivers grain out of storage but fails to collect and cancel the negotiable warehouse receipt, the warehouseman shall be liable to any purchaser of the negotiable warehouse receipt for value in good faith for failure to deliver the grain to the purchaser, whether the purchaser acquired the negotiable warehouse receipt before or after the delivery of the grain by the warehouseman. If, however, grain has been lawfully sold by a warehouseman to satisfy its warehouseman's lien, the warehouseman shall not be liable for failure to deliver the grain pursuant to the demands of a holder of a negotiable warehouse receipt to the extent of the amount of grain sold.

(h) Except as otherwise provided by this Code or other applicable law, a warehouseman shall deliver the grain upon demand made by the holder of a warehouse receipt pertaining to that grain if the demand is accompanied by:

(1) satisfaction of the warehouseman's lien;

(2) in the case of a negotiable warehouse receipt, a properly endorsed negotiable warehouse receipt; or

(3) in the case of a non-negotiable warehouse receipt, written evidence that the grain was delivered to the warehouseman and that the depositor is entitled to it.

(i) If no warehouse receipt is issued to a depositor, a warehouseman shall deliver grain upon the demand of a depositor if the demand is accompanied by satisfaction of the warehouseman's lien and written evidence that the grain was delivered to the warehouseman and the depositor is entitled to it.

(j) If a warehouseman refuses or fails to deliver grain in compliance with a demand by a holder of a warehouse receipt or a depositor, the burden is on the warehouseman to establish the existence of a lawful excuse for the refusal.

(k) If a warehouse receipt has been lost or destroyed, a warehouseman may issue a substitute warehouse receipt, as provided for in this Section, upon delivery to the warehouseman of an affidavit

under oath stating that the applicant for the substitute warehouse receipt is entitled to the original warehouse receipt and setting forth the circumstances that resulted in the loss or destruction of the original warehouse receipt. The warehouseman may request from the depositor a bond in double the value of the grain represented by the original warehouse receipt at the time of issuance of the substitute warehouse receipt so as to protect the warehouseman from any liability or expense that it, or any person injured by the delivery, may incur by reason of the original warehouse receipt remaining outstanding.

(l) A warehouse receipt that is to be used for collateral purposes by a warehouseman must be first issued by the warehouseman to itself.

(m) The Department shall approve temporary storage space in an amount to be determined by the Department if all the following conditions are met:

(1) The warehouseman pays all fees and assessments associated with the temporary storage space.

(2) The warehouseman demonstrates that there is a need for additional storage on a temporary basis due to a bumper crop or otherwise.

(3) The structure for the storage of grain meets all of the following requirements:

(A) The grain storage area has a permanent base made of concrete, asphalt, or a material having similar structural qualities.

(B) Hot spot detectors, aeration fans, and ducts are provided to assure that the quality of grain in storage is maintained.

(C) The grain storage structure has rigid sidewalls made of concrete, wood, metal, or a material having similar structural qualities.

(D) The grain storage structure is equipped with a waterproof covering of sufficient strength to support a person's weight and with inlets to allow airflow.

(E) Access to the grain is provided for the purpose of sampling and making examinations.

(4) Temporary storage space shall be considered an increase in the licensed storage capacity of the licensee and shall be subject to Section 5-30.

(5) The authorization to use temporary storage space for the storage of grain shall expire at the end of 6 months after the date of approval by the Department or May 15th, whichever comes first.

(n) The Department may approve emergency storage space at the request of the licensee according to rule.

(o) The issuance and transfer of the warehouse receipts in electronic form pursuant to rules promulgated by the Department are specifically authorized by this Code, and any such warehouse receipts shall have the same validity and enforceability, for all purposes, as those in non-electronic form. For purposes of this Code, the words "written" and "printed", and derivatives thereof, when used in relation to warehouse receipts, shall include warehouse receipts created or displayed electronically.

#### **240 ILCS 40/15-5 40/15-5. Training**

Without limitation upon any other action under this Code, if a licensee violates any of the provisions of this Code, the Department may, without need for a hearing, require additional training.

**240 ILCS 40/15-10**  
**40/15-10. De minimus violations**

- (a) If a licensee commits a de minimus violation of this Code, the Director may, in his or her discretion, and without further action, issue a warning letter to the licensee.
- (b) For the purposes of this Article, a de minimus violation exists when a licensee:
- (1) violates the maximum allowable speculative limits of item (a)(2) of Section 10-10 by 1,000 bushels or less;
  - (2) has total grain quantity deficiency violations that do not exceed \$1,000 as determined by the formula set forth in subsection (c) of Section 15-20; or
  - (3) has total grain quality deficiency violations that do not exceed \$1,000 as determined by the formula set forth in subsection (d) of Section 15-20.

**240 ILCS 40/15-15**  
**40/15-15. Violations of open position limits**

§ 15-15. Violations of open position limits.

- (a) Violations of maximum allowable open position limits by more than 1,000 bushels but less than twice the maximum allowable open position limits.
- (1) If a licensee violates the maximum allowable open position limits of item (a)(2) of Section 10-10 and the open position is more than 1,000 bushels but less than twice the maximum allowable open position limits, the licensee shall be required to:
    - (A) Post collateral with the Department in an amount equal to \$1 per bushel for each bushel of soybeans in excess of the maximum allowable open position limits and 50 cents per bushel of each bushel for all other grain in excess of the maximum allowable open position limits or \$2,500, whichever is greater; and
    - (B) Pay a penalty in an amount not to exceed \$250.
  - (2) If a licensee commits 2 violations as set forth in item (a)(1) of Section 15-10 within a 2 year period, the licensee must:
    - (A) post collateral with the Department in an amount equal to \$1 per bushel for each bushel of soybeans in excess of the maximum allowable open position limits and 50 cents per bushel of each bushel for all other grain in excess of the maximum allowable open position limits or \$5,000, whichever is greater; and
    - (B) pay a penalty in the amount of \$750.
  - (3) If a licensee commits 3 or more violations as set forth in item (a)(1) of Section 15-10 within a 5 year period, the licensee must:
    - (A) post collateral with the Department in an amount equal to \$2 per bushel for each bushel of soybeans in excess of the maximum allowable open position limits and \$1 per bushel of each bushel for all other grain in excess of the maximum allowable open position limits or \$10,000, whichever is greater; and
    - (B) pay a penalty in an amount greater than \$2,000 but less than \$20,000.
- (b) Violations of maximum allowable open position limits that equal or exceed twice the maximum allowable open position.
- (1) If a licensee violates the maximum allowable open position limits of item (a)(2) of Section 10-10 and the open position equals or exceeds twice the maximum allowable open position limits, the licensee must:



- (A) post collateral with the Department in an amount equal to \$1 per bushel for each bushel of soybeans in excess of the maximum allowable open position and 50 cents per bushel for each bushel of all other grain in excess of the maximum allowable open position limits or \$5,000, whichever is greater; and
  - (B) pay a penalty in the amount of \$500.00.
- (2) If a licensee commits 2 violations as set forth in item (b)(1) of Section 15-10 within a 2 year period, the licensee must:
- (A) post collateral with the Department in an amount equal to \$2 per bushel for each bushel of soybeans in excess of the maximum allowable open position limits and \$1 per bushel for each bushel of all other grain in excess of the maximum allowable open position limits or \$10,000, whichever is greater; and
  - (B) pay a penalty in an amount greater than \$750 but less than \$15,000.
- (3) If a licensee commits 3 or more violations as set forth in item (b)(1) of Section 15-5 within a 5 year period, the licensee must:
- (A) post collateral with the Department in an amount equal to \$2 per bushel for each bushel of soybeans in excess of the maximum allowable open position limits and \$1 per bushel for each bushel for all other grain in excess of the maximum allowable open position limits or \$10,000, whichever is greater; and
  - (B) pay a penalty in an amount greater than \$2,000 but less than \$20,000.

## **240 ILCS 40/15-20**

### **40/15-20. Grain quantity and grain quality violations**

- (a) Grain quantity deficiencies of more than \$1,000 but less than \$20,000.
- (1) If a licensee fails to have a sufficient quantity of grain in store to meet outstanding storage obligations and the value of the grain quantity deficiency as determined by the formula set forth in subsection (c) of Section 15-20 is more than \$1,000 but less than \$20,000, the licensee must:
    - (A) post collateral with the Department in an amount equal to the value of the grain quantity deficiency or \$2,500, whichever is greater; and
    - (B) pay a penalty of \$250.
  - (2) If a licensee commits 2 violations as set forth in item (a)(1) of Section 15-20 within a 2 year period, the licensee must:
    - (A) post collateral with the Department in an amount equal to the value of the grain quantity deficiency or \$10,000, whichever is greater; and
    - (B) pay a penalty of \$750.
  - (3) If a licensee commits 3 or more violations as set forth in item (a)(1) of Section 15-20 within a 5 year period, the licensee must:
    - (A) post collateral with the Department in an amount equal to the value of the grain quantity deficiency or \$20,000, whichever is greater; and
    - (B) pay a penalty of no less than \$2,000 and no greater than \$20,000.
- (b) Grain quantity deficiencies of \$20,000 or more.
- (1) If a licensee fails to have sufficient quantity of grain in store to meet outstanding storage obligations and the value of the grain quantity deficiency as determined by the formula set forth in subsection (c) of Section 15-20 equals or exceeds \$20,000, the licensee must:
    - (A) post collateral with the Department in an amount equal to twice the value of the grain quantity deficiency; and

- (B) pay a penalty of \$500.
- (2) If a licensee commits 2 violations as set forth in item (b)(1) of Section 15-20 within a 2 year period, the licensee must:
  - (A) post collateral with the Department in an amount equal to twice the value of the grain quantity deficiency or \$20,000, whichever is greater; and
  - (B) pay a penalty of no less than \$750 and no greater than \$15,000.
- (3) If a licensee commits 3 or more violations as set forth in item (b)(1) of Section 15-20 within a 5 year period, the licensee must:
  - (A) post collateral with the Department in an amount equal to twice the value of the grain quantity deficiency or \$40,000, whichever is greater; and
  - (B) pay a penalty of no less than \$2,000 and no greater than \$20,000.
- (c) To determine the value of the grain quantity deficiency for the purposes of this Section, the rate shall be \$1 per bushel for soybeans and 50 cents per bushel for all other grains.
- (d) If a licensee fails to have sufficient quality of grain in store to meet outstanding storage obligations when the value of the grain quality deficiency exceeds \$1,000, the licensee must post collateral with the Department in an amount equal to the value of the grain quality deficiency. For the purposes of this Section, the value of the grain quality deficiency shall be determined by applying prevailing market discount factors to all grain quality factors.

**240 ILCS 40/15-25**  
**40/15-25. Deposit of penalties**

All monetary penalties collected by the Department shall be paid into the Fund.

**240 ILCS 40/15-30**  
**40/15-30. Financial and record keeping deficiencies; collateral and guarantees**

- (a) An applicant or a licensee has a financial deficiency if it does not meet the minimum financial requirements of Section 5-25 and subsection (b) of Section 10-15 of this Code.
- (b) A licensee must collateralize all financial deficiencies at the rate of one dollar's worth of collateral for each dollar of the aggregate sum of the individual ratio deficiencies, the net worth deficiencies, and 90% asset requirement deficiencies.
- (c) A licensee who is found to have record keeping deficiencies, other than in reference to violations as set forth in subsection (b) of Section 10-15 and in Sections 15-15 and 15-20, may be required by the Department to post collateral up to the amount of \$10,000.
- (d) If an applicant for a new license or a renewal of a license has financial deficiencies or the Department has reason to believe that the financial stability of an applicant or a licensee is in question, the Department may require the applicant or licensee to provide the Department, in addition to collateral, personal, corporate, or other related person guarantees in a form and in an amount satisfactory to the Department.
- (e) Subject to subsection (c) of Section 5-15, the posting of collateral and the delivery of guarantees does not relieve a licensee of the continuing obligation to otherwise comply with the requirements imposed by the Code.

**240 ILCS 40/15-35**  
**40/15-35. Return of collateral and guarantees**

If the next fiscal year's financial statement of a licensee received by the Department and an examination performed by the Department after delivery or posting of any required collateral or the guarantee indicates compliance by the licensee with all statutory requirements of this Code for which the collateral and guarantees were required, the collateral and guarantee shall be returned within 90 days to the licensee and the guarantor following a written request for the return. The financial statement must comply with the requirements of Section 5-20.

**240 ILCS 40/15-40**  
**40/15-40. Suspension and revocation of license**

(a) The Director may suspend a license and take possession and control of all grain assets and equity assets (except that the Department may not take possession and control of any equity asset on which there is a valid prior perfected security interest or other valid prior perfected lien without the prior, written permission of the secured party or lien holder) of the suspended licensee if the Department has reason to believe that any of the following has occurred:

- (1) A licensee has made a formal declaration of insolvency; failed to apply for license renewal, leaving indebtedness to claimants; or been denied a license renewal, leaving indebtedness to claimants.
- (2) A licensee has failed to pay a producer, on demand, for grain purchased from that producer, assuming no bona fide dispute exists with regard to the payment.
- (3) A licensee is otherwise unable to financially satisfy claimants in accordance with any applicable statute, rule, or agreement, assuming a bona fide dispute does not exist between the licensee and the claimant.
- (4) A licensee has violated any of the other provisions of this Code and the violation, or the pattern of the violations, would create a substantial risk of failure.
- (5) A licensee has failed to pay a penalty or post collateral or guarantees by the date ordered by the Director.
- (6) A licensee has failed to pay an assessment as required by Section 5-30.

(b) The Director may revoke a license if the Director finds, after an administrative hearing, that any of the grounds for suspension under item (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), or (a)(6) of Section 15-40 have occurred.

(c) When a licensee voluntarily files for bankruptcy under the federal bankruptcy laws, that filing constitutes a revocation of the license of the licensee on the day that the filing occurs.

(d) When an order for relief is entered in reference to a licensee as a consequence of a petition for involuntary bankruptcy filed under the federal bankruptcy laws, that order constitutes a revocation of the license on the date of that order.

(e) Within 10 days after suspension of a license, an administrative hearing shall be commenced to determine whether the license shall be reinstated or revoked. Whenever an administrative hearing is scheduled, the licensee shall be served with written notice of the date, place, and time of the hearing at least 5 days before the hearing date. The notice may be served by personal service on the licensee or by mailing it by registered or certified mail, return receipt requested, to the licensee's place of business. The Director may, after a hearing, issue an order either revoking or reinstating the license.

**240 ILCS 40/15-45**  
**40/15-45. Criminal offenses**

- (a) A person who causes a warehouse receipt for grain to be issued knowing that the grain for which that warehouse receipt is issued is not under the licensee's control at the time of issuing that warehouse receipt, or who causes a licensee to issue a warehouse receipt for grain knowing that the warehouse receipt contains any false representation, is guilty of a Class 2 felony.
- (b) A person who, knowingly and without lawful authority, disposes of grain represented by outstanding warehouse receipts or covered by unreceipted storage obligations is guilty of a Class 2 felony.
- (c) A person who, knowingly and without lawful authority:
- (1) withholds records from the Department;
  - (2) keeps, creates, or files with the Department false, misleading, or inaccurate records;
  - (3) alters records without permission of the Department; or
  - (4) presents to the Department any materially false or misleading records;
- is guilty of a Class 2 felony.
- (d) A licensee who, after suspension or revocation of its license, knowingly and without legal authority refuses to surrender to the Department all books, accounts, and records relating to the licensee that are in its possession or control is guilty of a Class 2 felony.
- (e) A licensee who knowingly impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the Director from performing his or her duties under this Code, or who knowingly refuses to permit inspection of its premises, books, accounts, or records by the Department, is guilty of a Class A misdemeanor.
- (f) A person who, knowingly and without a license, engages in the business of a grain dealer or a warehouseman for which a license is required under the Code is guilty of a Class A misdemeanor.
- (g) A person who, intentionally, knowingly and without lawful authority:
- (1) fails to maintain sufficient assets as required by subsection (b) of Section 10-15; or
  - (2) issues a collateral warehouse receipt covering grain purchased by a price later contract to the extent the purchase price has not been paid by the grain dealer; is guilty of a Class 3 felony.
- (h) In case of a continuing violation, each day a violation occurs constitutes a separate and distinct offense.

**240 ILCS 40/35-5**  
**40/35-5. Regulatory Fund**

- (a) The Regulatory Fund is created as a trust fund in the State Treasury. The Regulatory Fund shall receive license, certificate, and extension fees under Sections 5-10, 5-15, and 5-20 and funds under subsection (g) of Section 25-20 and shall pay expenses as set forth in this Article 35.
- (b) Any funds received by the Director under Sections 5-10, 5-15, and 5-20 and funds disbursed for deposit to the Regulatory Fund under subsection (g) of Section 25-20 shall be deposited with the Treasurer as ex officio custodian and held separate and apart from any public money of this State, with interest accruing on moneys in the Regulatory Fund deposited into the Regulatory Fund. Disbursement from the Fund for expenses as set forth in this Article 35 shall be by voucher ordered by the Director, accompanied by documentation satisfactory to the Treasurer and the Comptroller supporting the

payment warrant drawn by the Comptroller and countersigned by the Treasurer. Moneys in the Regulatory Fund shall not be subject to appropriation by the General Assembly but shall be subject to audit by the Auditor General. Interest earned on moneys deposited into the Regulatory Fund shall be deposited into the Regulatory Fund.

(c) Fees deposited into the Regulatory Fund under Sections 5-10, 5-15, and 5-20 shall be expended only for the following program expenses of the Department;

(1) Implementation and monitoring of programs of the Department solely under this Code, including an electronic warehouse receipt program.

(2) Employment or engagement of certified public accountants to assist in oversight and regulation of licensees in the course of an intermediate or advanced examination under Section 1-15.

(3) Training and education of examiners and other Department employees in reference to Department programs established to implement the Department's duties solely under the Code.

(d) Any expenses incurred by the Department in performance of its duties under Article 20 of the Code shall be reimbursed to the Department out of the net assets of a liquidation to the extent available under subsection (g) of Section 25-20 and shall be deposited into the Regulatory Fund and shall be expended solely for program expenses under the Code.