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## Requirements for Grain Dealers:

*Iowa*



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## Requirements for Grain Dealers: Iowa

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### [Iowa Code Ch. 203; Iowa Code Ch. 203D](#)

*Current through ch. 240 of the 150th General Assembly (2019-2020).*

#### **203.1. Definitions**

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

1. “Bond” means a bond issued by a surety company or an irrevocable letter of credit issued by a financial institution described in subsection 7.
  
2. “Check” means a paper instrument used for ordering, instructing, or authorizing a financial institution to make payment or credit a presenter’s account and debit the issuer’s account. “Check” includes instruments commonly referred to as a check, draft, share draft, or other negotiable instrument for the payment of money. An instrument may be a check even though it is described on its face by another term, such as “money order”.
  
3. “Credit-sale contract” means a contract for the sale of grain pursuant to which the sale price is to be paid more than thirty days after the delivery of the grain to the buyer, or a contract which is titled as a credit-sale contract, including but not limited to those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts, and price-later contracts.

4. "Custom livestock feeder" means a person who buys grain for the sole purpose of feeding it to livestock owned by another person in a feedlot as defined in section 172D.1, subsection 6, or a confinement building owned or operated by the custom livestock feeder and located in this state.

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

6. "Electronic funds transfer" means a remote electronic transmission used for ordering, instructing, or authorizing a financial institution to pay money to or credit the account of the payee and debit the account of the payer. The remote electronic transmission may be initiated by telephone, terminal, computer, or similar device.

7. "Financial institution" means any of the following:

a. A bank or savings association authorized by the laws of any other state or the United States, which is a member of the federal deposit insurance corporation.

b. A bank or association chartered by the farm credit system under the federal Farm Credit Act, as amended, 12 U.S.C. ch. 23.

8. "Good cause" means that the department has cause to believe that the net worth or current asset to current liability ratio of a grain dealer presents a danger to sellers with whom the grain dealer does business, based on evidence of any of the following:

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

b. A violation of recordkeeping requirements provided in this chapter or rules adopted pursuant to this chapter by the department.

c. A substantial risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the grain dealer based on a statistical model provided in section 203.22.

9. "Grain" means any grain for which the United States department of agriculture has established standards pursuant to the United States Grain Standards Act, 7 U.S.C. ch. 3.

10. "Grain dealer" means a person who cumulatively purchases at least one thousand bushels of grain from producers during any calendar month, if such grain is delivered within or into this state for purposes of resale, milling, or processing in this state. However, "grain dealer" does not include any of the following:

a. A producer of grain who is buying grain for the producer's own use as seed or feed.

b. A person solely engaged in buying grain future contracts on the board of trade.

c. A person who purchases grain only for sale in a feed regulated under chapter 198.

d. A person who purchases grain only from grain dealers licensed under this chapter.

e. A person engaged in the business of selling agricultural seeds regulated by chapter 199.

f. A person buying grain only as a farm manager.

g. An executor, administrator, trustee, guardian, or conservator of an estate.

h. A custom livestock feeder.

i. A cooperative organized under chapter 501 or 501A, if the cooperative only purchases grain from its members who are producers or from a licensed grain dealer, and the cooperative does not resell that grain.

j. A limited liability company as defined in section 489.102 that meets all of the following requirements:

(1) The majority of voting rights in the limited liability company are held by its members who are producers.

(2) The purpose of the limited liability company is to produce renewable fuel as defined in section 214A.1.

(3) The limited liability company only purchases grain from its members who are producers or from a licensed grain dealer.

(4) The limited liability company does not resell grain that it purchases.

11. "Person" means the same as defined in section 4.1 and includes a business association as defined in section 202B.102 or joint or common venture regardless of whether it is organized under a chapter of the Code.

12. "Producer" means the owner, tenant, or operator of land in this state who has an interest in and receives all or a part of proceeds from the sale of grain produced on that land.

13. "Seller" means a person who sells grain which the person has produced or caused to be produced to a licensed grain dealer, and includes a person who executes a credit-sale contract as a seller.

14. "United States Warehouse Act" means the United States Warehouse Act, 7 U.S.C. ch. 10.

15. "Warehouse operator" means the same as defined in section 203C.1.

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

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

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

1. This section applies to a person who is not required to be issued a license as a grain dealer pursuant to section 203.3. The person shall not purchase grain from a producer for purposes of resale, milling, feeding, or processing.

2. Subsection 1 does not apply to any of the following:

a. A person who purchases less than fifty thousand bushels of grain from all producers in the twelve months prior to purchasing grain from the producer.

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

3. a. The notice must be in the following form:

**Attention to Producers:**

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

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

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

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

1. A person shall not engage in the business of a grain dealer in this state without having obtained a license issued by the department.

2. The type of license required shall be determined as follows:

a. A class 1 license is required if the grain dealer purchases any grain by credit-sale contract, or if the value of grain purchased by the grain dealer from producers during the grain dealer's previous fiscal year exceeds five hundred thousand dollars. Any other grain dealer may elect to be licensed as a class 1 grain dealer.

b. A class 2 license is required for any grain dealer not holding a class 1 license. A class 2 licensee whose purchases from producers during a fiscal year exceed a limit of five hundred thousand dollars in value shall file within thirty days of the date the limit is reached a complete application for a class 1 license. If a class 1 license is denied, the person immediately shall cease doing business as a grain dealer.

3. An application for a license to engage in business as a grain dealer shall be filed with the department and shall be in a form prescribed by the department. The application shall include the name of the applicant, its principal officers if the applicant is a corporation or the active members of a partnership if the applicant is a partnership and the location of the principal office or place of business of the applicant. A separate license shall be required for each location at which records are maintained for transactions of the grain dealer. The application shall be accompanied by a complete financial statement of the applicant setting forth the assets, liabilities and the net worth of the applicant. The financial statement must be prepared according to generally accepted accounting principles. Assets shall be shown at original cost less depreciation. Upon a written request filed with the department, the department or a designated employee may allow asset valuations in accordance with a competent appraisal. Unpriced contracts shall be shown as a liability and valued at the applicable current market price of grain as of the date the financial statement is prepared.

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

a. The grain dealer shall have and maintain a net worth of at least seventy-five thousand dollars, or maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net worth deficiency. However, a person shall not be licensed as a class 1 grain dealer if the person has a net worth of less than thirty-seven thousand five hundred dollars.

b. The grain dealer shall submit, as required by the department, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, the department may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the department. The department shall not require that a grain dealer submit more than one such unqualified opinion per year. The grain dealer, except as provided in section 203.15, may elect to submit a financial

statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited financial statement specified in this paragraph. However, at any time the department may require a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by a certified public accountant if the department has good cause. A grain dealer shall submit financial statements to the department in addition to those required in this paragraph if the department determines that it is necessary to verify the grain dealer's financial status or compliance with this subsection.

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

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

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

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

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

a. The grain dealer shall have and maintain a net worth of at least thirty-seven thousand five hundred dollars, or maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net deficiency. However, a person shall not be licensed as a class 2 grain dealer if the person has a net worth of less than seventeen thousand five hundred dollars.

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

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

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

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

dollars of the highest amount of bushels of unpaid grain purchased by the grain dealer during each month.

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

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

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

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

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

#### **203.4. Participation in indemnity fund required**

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

#### **203.5. License**

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

application for renewal must be received by the department on or before the end of the third calendar month following the close of the grain dealer's fiscal year.

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

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

(a) A license fee imposed under section 203.6.

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

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

(a) A renewal fee imposed under section 203.6.

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

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

2. The department shall notify a licensed grain dealer of any delinquency in the payment of a participation fee or per-bushel fee as provided in section 203D.3A. The department shall suspend the grain dealer's license thirty days after delivering the notice unless the licensed grain dealer pays the delinquent fee.

3. The department may suspend or revoke the license of a grain dealer who discounts the purchase price paid for grain nominally for the participation fee or per-bushel fee as provided in section 203D.3A while that fee is not in effect.

4. A grain dealer license which has expired may be reinstated by the department upon receipt of a proper renewal application, the renewal fee and a reinstatement fee as provided in section

203.6, and any delinquent participation fee or per-bushel fee and penalty as provided in section 203D.3A. The applicant must file the renewal application and pay the fees and penalty to the department within thirty days from the date of expiration of the grain dealer license.

5. The department may cancel a license upon request of the licensee unless a complaint or information is filed against the licensee alleging a violation of a provision of this chapter.

6. a. The department shall refund a fee paid by an applicant to the department under this section if the department does not issue or renew a grain dealer's license.

b. The department shall prorate a fee paid by an applicant to the department under this section for the issuance or renewal of a license for less than a full year.

7. The department may deny a license to an applicant if the applicant has had a license issued under this chapter or chapter 203C revoked within the past three years, the applicant has been convicted of a felony involving a violation of this chapter or chapter 203C, or the applicant is owned or controlled by a person who has had a license so revoked or who has been so convicted.

8. The department may deny a license to an applicant if any of the following apply:

a. The applicant has caused liability to the Iowa grain depositors and sellers indemnity fund in regard to a license issued under this chapter or chapter 203C, and the liability has not been discharged, settled, or satisfied.

b. The applicant is owned or controlled by a person who has caused liability to the fund through operations under a license issued under this chapter or chapter 203C and the liability has not been discharged, settled, or satisfied.

### **203.6. Fees**

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

1. a. For the issuance or renewal of a license required under section 203.3, and for any inspection of a grain dealer, the fee shall be determined on the basis of all bushels of grain purchased during the grain dealer's previous fiscal year according to the grain dealer's financial statement required in section 203.3. The fee shall be calculated according to the following schedule:

(1) If the total number of bushels purchased is thirty-five thousand or less, the license fee is sixty-six dollars and the inspection fee is eighty-three dollars.

(2) If the total number of bushels purchased is more than thirty-five thousand, but not more than two hundred fifty thousand, the license fee is one hundred sixteen dollars and the inspection fee is one hundred twenty-five dollars.

(3) If the total number of bushels purchased is more than two hundred fifty thousand, but not more than five hundred thousand, the license fee is one hundred sixty-six dollars and the inspection fee is one hundred ninety-one dollars.

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

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

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

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

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

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

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

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

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

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

### **203.8. Payment**

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

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

2. As used in this section:

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

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

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

1. The department may inspect the premises used by any grain dealer in the conduct of the dealer's business at any time. The department may inspect a grain dealer's records that pertain to grain transactions during ordinary business hours. The department shall inspect a grain dealer's records at least once each eighteen-month period without justification. The department

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

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

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

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

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

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

a. The revocation of the license by the department as provided in subsection 2.

b. The cancellation of the license as provided in section 203.5.

c. The expiration of the license according to the terms of the license as provided in this chapter, including a rule adopted in accordance with this chapter pursuant to chapter 17A.

2. The department may issue an order to suspend or revoke the license of a grain dealer who violates a provision of this chapter, including a rule adopted in accordance with this chapter pursuant to chapter 17A.

### **203.11. Penalties--injunctions**

1. A person who knowingly submits false information to or knowingly withholds information from the department or any of its employees when required to be submitted or maintained under this chapter, commits a fraudulent practice.

2. a. Except as provided in paragraph "b", a person commits a serious misdemeanor if the person does any of the following:

(1) Engages in business as a grain dealer without a license as required in section 203.3.

(2) Obstructs an inspection of the person's business premises or records required to be kept by a grain dealer pursuant to section 203.9.

(3) Uses a scale ticket or credit-sale contract in violation of this chapter or a requirement established by the department under this chapter.

b. A person who commits an offense specified in paragraph "a" after having been found guilty of the same offense commits an aggravated misdemeanor.

3. Except as provided in subsections 1 and 2, a person who violates any provision of this chapter commits a simple misdemeanor. With respect to a continuing violation, each day that the violation continues is a separate offense.

4. A person in violation of this chapter, or in violation of chapter 714 or 715A, which violation involves the business of a grain dealer, is subject to prosecution by the county attorney in the county where the business is located. However, if the county attorney fails to initiate prosecution within thirty days and upon request by the department, the attorney general may initiate and carry out the prosecution in cooperation, if possible, with the county attorney. The person in violation may be restrained by an injunction in an action brought by the department or the attorney general upon request by the department.

### **203.11A. Civil penalties**

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

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

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

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

### **203.11B. Grain industry peer review panel**

1. The department shall establish a grain industry peer review panel to assist the department in assessing civil penalties pursuant to this section and section 203C.36A. The secretary of agriculture shall appoint to the panel the following members:

a. Two natural persons who are grain dealers licensed under this chapter and actively engaged in the grain dealer business.

b. Two natural persons who are warehouse operators licensed pursuant to chapter 203C and actively engaged in the grain warehouse business.

c. One natural person who is a producer actively engaged in grain farming.

2. a. The members appointed pursuant to this section shall serve four-year terms beginning and ending as provided in section 69.19. However, the secretary of agriculture shall appoint initial members to serve for less than four years to ensure that members serve staggered terms. A member is eligible for reappointment. A vacancy on the panel shall be filled for the unexpired portion of the regular term in the same manner as regular appointments are made.

b. The panel shall elect a chairperson who shall serve for a term of one year. The panel shall meet on a regular basis and at the call of the chairperson or upon the written request to the chairperson of three or more members. Three members constitute a quorum and the affirmative vote of a majority of the members present is necessary for any substantive action to be taken by the panel. The majority shall not include any member who has a conflict of interest and a statement by a member that the member has a conflict of interest is conclusive for this purpose. A vacancy in the membership does not impair the duties of the panel.

c. Notwithstanding section 7E.6, the members shall only receive reimbursement for actual expenses for performance of their official duties, as provided by the department.

d. The panel shall be staffed by employees of the department.

3. The panel may propose a schedule of civil penalties for minor and serious violations of this chapter and chapter 203C. The department may adopt rules based on the recommendations of the panel as approved by the secretary of agriculture.

4. a. The panel shall review cases of grain dealers regulated under this chapter and warehouse operators regulated under chapter 203C who are subject to civil penalties as provided in section 203.11A or 203C.36A. A review shall be performed upon the request of the department or the person subject to the civil penalty.

b. The department shall present reports to the panel in regard to investigations of cases under review which may result in the assessment of a civil penalty against a person. The reports may be reviewed by the panel in closed session pursuant to section 21.5, and are confidential records. In presenting the reports, the department shall make available to the panel records of persons which are otherwise confidential under section 22.7, 203.16, or 203C.24. The panel members shall maintain the confidentiality of records made available to the panel. However, a determination to assess a civil penalty against a person shall be made exclusively by the department.

c. The panel may establish procedures for the review and establish a system of prioritizing cases for review, consistent with rules adopted by the department. The department shall adopt

rules establishing a period for the review and response by the panel which must be completed prior to a contested case hearing under chapter 17A. A hearing shall not be delayed after the required period for review and response, except as provided in chapter 17A or the Iowa rules of civil procedure. The rules adopted by the department may exclude review of minor violations. The review may also include the manner of assessing and collecting the civil penalty.

d. The findings and recommendations of the panel shall be included in a response delivered to the department and the person subject to the civil penalty. The response may include a recommendation that a proposed civil penalty be modified or suspended, that an alternative method of collection be instituted, or that conditions be placed upon the license of a grain dealer as provided in section 203.3 or the license of a warehouse operator as provided in section 203C.6.

5. This section does not apply to an action by the department for a license suspension or revocation. This section also does not require a review or response if the case is subject to criminal prosecution or involves a petition seeking injunctive relief.

6. A response by the panel may be used as evidence in an administrative hearing or in a civil or criminal case except to the extent that information contained in the response is considered confidential pursuant to section 22.7, 203.16, or 203C.24.

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

1. Upon the cessation of a grain dealer license by revocation, cancellation, or expiration, any claim for the purchase price of grain against the grain dealer shall be made in writing and filed with the grain dealer and with the issuer of a deficiency bond or of an irrevocable letter of credit and with the department within one hundred twenty days after the date of the cessation. A failure to make this timely claim relieves the issuer and the grain depositors and sellers indemnity fund provided in chapter 203D of all obligations to the claimant.

2. Upon the revocation of a grain dealer license, the department shall cause notice of the revocation to be published once each week for two consecutive weeks in a newspaper of general circulation within the state of Iowa and in a newspaper of general circulation within the county of the grain dealer's principal place of business when that dealer's principal place of business is located in the state of Iowa. The notice shall state the name and address of the grain dealer and the effective date of revocation. The notice shall also state that any claims against the grain dealer shall be made in writing and sent by ordinary mail or delivered personally within one hundred twenty days after revocation to the grain dealer, to the issuer of a deficiency bond or of an irrevocable letter of credit, and to the department, and the notice shall state that the failure to make a timely claim does not relieve the grain dealer from liability to the claimant.

### **203.12A. Lien on grain dealer assets**

1. a. As used in this section:

(1) "Grain dealer assets" includes proceeds received or due a grain dealer upon the sale, including exchange, collection, or other disposition, of grain sold by the grain dealer. "Grain dealer assets" also includes any other funds or property of the grain dealer which can be directly traced as being from the sale of grain by the grain dealer, or which were utilized in the business operation of the grain dealer.

(2) "Proceeds" means noncash and cash proceeds as defined in section 554.9102.

b. A court, upon petition by an affected party, may order that claimed grain dealer assets are not grain dealer assets as defined in this section. The burden of proof shall be upon the petitioner to establish that the assets are not grain dealer assets as defined in this section.

2. A statutory lien is imposed on all grain dealer assets in favor of sellers who have surrendered warehouse receipts or other written evidence of ownership as part of a grain sale transaction or who possess written evidence of the sale of grain to a grain dealer, without receiving full payment for the grain.

3. The lien shall arise at the time of surrender of warehouse receipts or other written evidence of ownership as part of a grain sale transaction or the time of delivery of the grain for sale, and shall terminate when the liability of the grain dealer to the seller has been discharged. The lien of all sellers is hereby assigned to the Iowa grain indemnity fund board, on behalf of the grain depositors and sellers indemnity fund.

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

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

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

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

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

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

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

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

### **203.12B. Appointment of department as receiver**

1. As used in this section:

a. "Grain dealer assets" means the same as defined in section 203.12A, including any proceeds from a deficiency bond or irrevocable letter of credit, or any insurance policy relating to those assets.

b. "Interested seller" means a person who delivers or has delivered grain to a grain dealer who has not been paid as provided in section 203.8 or according to the terms of a credit-sale contract breached by the grain dealer.

c. "Issuer" means a person who issues a deficiency bond or an irrevocable letter of credit pursuant to section 203.3, or an issuer of grain assets.

2. a. The department may file a verified petition in district court requesting that the department be appointed as a receiver, and the district court shall appoint the department as receiver, in order to protect interested sellers, if any of the following apply:

(1) The grain dealer's license is revoked or suspended under section 203.10.

(2) There is evidence that the grain dealer has engaged or is engaging in business under this chapter without obtaining a license as required pursuant to section 203.3.

b. Upon being appointed as a receiver, the department shall take custody and provide for the disposition of the grain dealer assets of the grain dealer under the supervision of the court.

(1) The petition shall be filed in the county in which the grain dealer maintains its principal place of business in this state. The court may issue ex parte any temporary order as it determines necessary to preserve or protect the grain dealer assets and the rights of interested sellers.

(2) The petition shall be accompanied by the department's plan for disposition of grain dealer assets which shall provide terms as may be necessary to preserve or protect the grain dealer assets and the rights of interested sellers, less expenses incurred by the department in connection with the receivership. The plan may provide for the delivery or sale of grain as provided in section 203C.4. The plan may provide for the operation of the business of the grain dealer on a temporary basis and any other course of action or procedure which will serve the interests of interested sellers.

(3) The petition shall be filed with the clerk of the district court who shall set a date for a hearing in the same manner as provided in section 203C.3.

(4) Copies of the petition, the notice of hearing, and the department's plan of disposition shall be delivered to the following:

(a) The grain dealer and each issuer who shall receive copies delivered in the manner required for service of an original notice.

(b) Interested sellers as determined by the department who shall receive copies delivered by ordinary mail.

(5) The failure of a person to receive the required notification shall not invalidate the proceedings on the petition or any part of the petition for the appointment of the department as the receiver.

(6) A person is not a party to the action unless admitted by the court upon application.

3. When appointed as a receiver, the department shall publish notice of the appointment in the same manner provided in section 203C.3.

4. The department may employ or appoint a person to appear on behalf of the department in any proceedings before the court as provided in section 203C.3.

5. An action of the department shall not be subject to the provisions of chapter 17A. A person employed or appointed by the department as receiver shall be deemed to be an employee of the state as defined in section 669.2. Chapter 669 is applicable to any claim as defined in section 669.2 against the person carrying out the duties of the department acting as receiver.

6. When the department is appointed as a receiver, the issuer shall be joined as a party, and may be ordered by the court to pay indemnification proceeds, and shall be discharged from further liability as provided in section 203C.4. The department shall provide notice to interested sellers within one hundred twenty days after the date of appointment. A failure of a person to file a timely claim as provided by the department shall defeat the claim, except to the extent of any excess grain dealer assets remaining after all timely claims are paid in full.

7. If the court approves the sale of grain, the department shall employ or appoint a merchandiser who shall enjoy the same status, exercise the same powers, and receive compensation to the same extent as a merchandiser employed or appointed pursuant to section 203C.4. A person employed or appointed as a merchandiser must meet the following requirements:

a. Be experienced or knowledgeable in the operation of grain dealers as provided in this chapter.

b. Be experienced or knowledgeable in the marketing of grain.

c. Not have had a grain dealer's license issued pursuant to section 203.3 suspended or revoked as provided in section 203.10.

d. Not have any pecuniary interest in the grain dealer assets of the grain dealer and not have a business relationship with the grain dealer.

8. The sale of the grain shall proceed in the same manner as grain sold pursuant to section 203C.4. The department may, with the approval of the court, continue the operation of all or any part of the business of the grain dealer on a temporary basis and take any other course of action or procedure which will serve the interests of interested sellers. The department is entitled to reimbursement out of grain dealer assets for costs directly attributable to the receivership. The department shall be reimbursed from the grain dealer assets in the same manner as provided in section 203C.4. If the approved plan of disposition requires a distribution of cash proceeds, the department shall submit to the court a proposed plan of distribution of those proceeds. The plan shall be approved and executed and the department shall be discharged and the receivership terminated in the same manner as provided in section 203C.4.

#### **203.14. No obligation of state**

Nothing in this chapter shall be construed to imply any guarantee or obligation on the part of the state of Iowa, or any of its agencies, employees or officials, either elective or appointive, in respect to any agreement or undertaking to which the provisions of this chapter relate.

#### **203.15. Credit-sale contracts**

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

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

a. The grain dealer shall give written notice to the department prior to engaging in the purchase of grain by credit-sale contract. The notice shall contain information required by the department.

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

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

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

a. The seller's name and address.

b. The conditions of delivery.

c. The amount and kind of grain delivered.

d. The price per bushel or basis of value.

e. The date payment is to be made.

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

3. Title to all grain sold by a credit-sale contract is in the purchasing grain dealer as of the time the contract is executed, unless the contract provides otherwise. The contract must be signed

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

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

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

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

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

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

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

(b) The bond shall not be canceled by the issuer on less than ninety days' notice by certified mail to the department and the principal. However, if an adequate replacement bond is filed with

the department, the department may authorize the cancellation of the original bond before the end of the ninety-day period.

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

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

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

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

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

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

d. The grain dealer violates this section.

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

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

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

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

### **203.16. Confidentiality of records**

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

1. Upon waiver by the licensee.

2. In actions or administrative proceedings commenced under this chapter or chapter 203C.

3. Disclosure to the Iowa grain indemnity fund board in regard to licensees who present liability to the fund.

4. When required by subpoena or court order.

5. Disclosure to law enforcement agencies in regard to the detection and prosecution of public offenses.

6. When released to a bonding company approved by the department, or released to the United States department of agriculture or any of its divisions.

7. Where released at the request of the Iowa accountancy examining board for licensee review and discipline in accordance with chapters 272C and 542 and subject to the confidentiality requirements of section 272C.6.

8. Disclosure to the grain industry peer review panel as provided in section 203.11B.

### **203.17. Documents and records**

1. The department may adopt rules specifying the form, content, use, and maintenance of documents issued by a grain dealer under this chapter including but not limited to scale tickets, settlement sheets, daily position records, and credit-sale contracts. The department may adopt rules for both printed and electronic documents, including rules for the transmission, receipt, authentication, and archiving of electronically generated or stored documents.

2. All scale ticket forms in the possession of a grain dealer shall have been permanently and consecutively numbered at the time of printing. A grain dealer shall maintain an accurate record of all scale ticket numbers. The record shall include the disposition of each numbered form, whether issued, destroyed, or otherwise disposed of.

### **203.19. Cooperative agreements**

1. Notwithstanding the other provisions of this chapter, the department may enter into cooperative agreements with other states for the purpose of making available to those states the information acquired under the bonding, licensing, and examination procedures of this chapter.

2. If a cooperative agreement is in effect under this section, the indemnification requirements of this chapter may be satisfied by filing with the department evidence of a bond or an irrevocable letter of credit on file with a state or of participation in an indemnity fund in a state with which Iowa has a cooperative agreement as provided for by this section.

3. a. Indemnification proceeds shall be copayable to the state of Iowa for the benefit of sellers of grain under this chapter.

b. Indemnification proceeds required by this chapter may be made copayable to any state with whom this state has entered into contracts or agreements as authorized by this section, for the benefit of sellers of grain in that state.

### **203.20. Shrinkage adjustments--disclosures--penalties**

1. A person who, in connection with the receipt of corn or soybeans for storage, processing, or sale, adjusts the scale weight of the grain to compensate for the moisture content of the grain shall compute the amount of the adjustment by multiplying the scale weight of the grain by that

factor which results in a rate of adjustment of one and eighteen hundredths percent of weight per one percent of moisture content. The use of any rate of weight adjustment for moisture content other than the one prescribed by this subsection is a fraudulent practice. The person shall post on the business premises in a conspicuous place notice of the rate of adjustment for moisture content that is prescribed by this subsection. Failure to make this disclosure is a simple misdemeanor.

2. A person who, in connection with the receipt of grain for storage, processing or sale, adjusts the quantity of the grain received to compensate for losses to be incurred during the handling, processing, or storage of the grain shall post on the business premises in a conspicuous place notice of the rate of adjustment to be made for this shrinkage. Failure to make the required disclosure is a simple misdemeanor.

3. A person who adjusts the scale weight of corn or soybeans both for moisture content and for handling, processing, or storage losses may combine the two adjustment factors into a single factor and may use this resulting factor to compute the amount of weight adjustment in connection with storage, processing, or sale transactions, provided that the person shall post on the business premises in a conspicuous place a notice that discloses the moisture shrinkage factor prescribed by subsection 1, the handling shrinkage factor to be imposed, and the single factor that results from combining these factors. Failure to make the required disclosure is a simple misdemeanor.

### **203.22. Prioritization of inspections of grain dealers**

The department shall develop a system to prioritize the inspections of grain dealers provided in section 203.9. The system of prioritization shall be computed each year based on the risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the grain dealer. The department shall compute the risk by utilizing an available statistical model to measure the financial condition of grain dealers, and especially grain dealers who execute credit-sale contracts. Procedures for utilizing the statistical model shall be adopted by department rules. The statistical model shall be used to provide risk ratings. A risk rating shall be used as a factor by the department to prioritize its inspection schedule. The department may use a risk rating produced by the statistical model as justification to inspect the grain dealer at any time. A substantial risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the grain dealer based on the statistical model shall be good cause.

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

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

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

2. "Credit-sale contract" means the same as defined in section 203.1.
  
3. "Department" means the department of agriculture and land stewardship.
  
4. "Depositor" means a person who deposits grain in a licensed warehouse for storage, handling, or shipment, or who is the owner or legal holder of an outstanding warehouse receipt issued by a licensed warehouse, or who is lawfully entitled to possession of the grain.
  
5. "First point of sale" means the initial transfer of title to grain from a person who has produced the grain or caused the grain to be produced to the first purchaser of the grain for consideration, conditional or otherwise, in any manner or by any means.
  
6. "Fund" means the grain depositors and sellers indemnity fund created in section 203D.3.
  
7. "Grain" means the same as defined in section 203.1.
  
8. "Grain dealer" means the same as defined in section 203.1.
  
9. "Licensed grain dealer" means a person who has obtained a license to engage in the business of a grain dealer pursuant to section 203.3.
  
10. "Licensed warehouse" means the same as defined in section 203C.1.
  
11. "Licensed warehouse operator" means the same as in section 203C.1.
  
12. "Licensee" means a licensed grain dealer or licensed warehouse operator.
  
13. "Loss" means the amount of a claim held by a seller or depositor against a grain dealer or warehouse operator which has not been recovered through other legal and equitable remedies including the liquidation of assets.
  
14. a. "Purchased grain" means grain entered in the company-owned paid position as evidenced on the grain dealer's daily position record.

b. "Purchased grain" does not include grain that is subject to an exempt transaction based on documentation satisfactory to the department showing that the grain dealer did any of the following:

(1) Purchased the grain from the United States government or any of its subdivisions or agencies.

(2) Purchased the grain from a person licensed as a grain dealer in any jurisdiction.

(3) Purchased the grain under a credit-sale contract.

(4) Entered the grain in the company-owned paid position as a cancellation of a collateral warehouse receipt.

(5) Entered the grain in the company-owned paid position as an intra-company location transfer.

15. "Seller" means a person who sells grain which the person has produced or caused to be produced to a licensed grain dealer, but excludes a person who executes a credit-sale contract as a seller as provided in section 203.15. However, "seller" does not include any of the following:

a. A person licensed as a grain dealer in any jurisdiction who sells grain to a licensed grain dealer.

b. A person who sells grain that is not produced in this state unless such grain is delivered to a licensed grain dealer at a location in this state as the first point of sale.

16. "Warehouse operator" means the same as defined in section 203C.1.

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

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

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

1. The grain depositors and sellers indemnity fund is created in the state treasury as a separate account. The general fund of the state is not liable for claims presented against the fund under section 203D.6.

2. The fund consists of all of the following:

a. Participation fees paid to the department by licensed grain dealers and persons applying to be issued a grain dealer's license as provided in section 203D.3A.

b. Participation fees paid to the department by licensed warehouse operators and persons applying to be issued a warehouse operator's license as provided in section 203D.3A.

c. Per-bushel fees paid to the department by licensed grain dealers as provided in section 203D.3A.

d. Delinquency penalties.

e. Amounts collected by the state pursuant to legal action on behalf of the fund.

f. Interest, earnings on investments, property, or securities acquired through the use of moneys in the fund.

3. The fiscal year of the fund begins July 1 and ends on June 30. Fiscal quarters of the fund begin July 1, October 1, January 1, and April 1. The finances of the fund shall be calculated on an accrual basis in accordance with generally accepted accounting principles.

4. The moneys collected under this section and deposited in the fund shall be used exclusively to indemnify depositors and sellers as provided in section 203D.6 and to pay the administrative costs of this chapter.

5. All disbursements from the fund shall be paid by the treasurer of state pursuant to vouchers authorized by the department.

6. The administrative costs of this chapter shall be paid from the fund after approval of the costs by the board.

### **203D.3A. Fees**

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

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

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

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

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

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

(2) For a licensed warehouse operator, the anniversary date is the last date to apply for the renewal of the warehouse operator's license before the license expires as provided in section 203C.37.

c. A licensee is delinquent if the licensee fails to submit the payment when due or if, upon examination, an underpayment of the fee is found by the department.

d. A licensee shall not pass on the cost of a participation fee to sellers. The department may suspend or revoke the license of a grain dealer for passing on the cost, as provided in chapter 203.

2. a. A per-bushel fee shall be assessed on all purchased grain.

b. The grain dealer shall forward the per-bushel fee to the department on a quarterly basis in the manner and using the forms prescribed by the department. A licensee is delinquent if the licensee fails to submit the full fee or quarterly forms when due or if, upon examination, an underpayment of the fee is found by the department. The grain dealer is subject to a penalty of ten dollars for each day the grain dealer is delinquent or an amount equal to the amount of the deficiency, whichever is less. However, a licensee who fails to submit the full fee or quarterly forms when due, is subject to a minimum payment of ten dollars. The department may establish and apply a margin of error in determining whether a grain dealer is delinquent. The per-bushel fee shall be collected only once on each bushel of grain.

c. A grain dealer may choose to pass on the cost of a per-bushel fee to the sellers by an itemized discount noted on the settlement sheet. However, if the per-bushel fee is not in effect, no grain dealer shall make such a discount on the purchase of grain. A discount made nominally for the per-bushel fee while the fee is not in effect is grounds for license suspension or revocation under chapter 203.

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

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

only actively participating producers, and grain dealers and warehouse operators are eligible for reappointment. The banking industry representative and the grain industry representatives are entitled to a per diem as specified in section 7E.6 for each day spent in the performance of the duties of the board, plus actual expenses incurred in the performance of those duties. Four members of the board constitute a quorum, and the affirmative vote of four members is necessary for any action taken by the board, except that a lesser number may adjourn a meeting. A vacancy in the membership of the board does not impair the rights of a quorum to exercise all the rights and perform all the duties of the board.

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

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

#### **203D.5. Fees--imposition, adjustment, or waiver**

1. The board shall annually review the debits of and credits to the grain depositors and sellers indemnity fund created in section 203D.3 and shall determine whether to impose the

participation fee and per-bushel fee as provided in section 203D.3A, make adjustments to the fees effective on the previous July 1, or waive the fees as necessary to comply with this section. The board shall make the determination not later than May 1 of each year. The board shall impose the fees or adjust the fees effective on the previous July 1 in accordance with chapter 17A. The imposition or adjustment of the fees shall become effective as follows:

a. For the participation fee, on the following July 1. However, the licensee shall continue to pay the participation fee at the rate in effect on the prior July 1, until the licensee has paid the amount owing.

b. For a per-bushel fee, on the following July 1.

2. a. Except as provided in paragraph "b", the rate of a participation fee owed by a licensee shall be calculated as follows:

(1) For a licensed grain dealer, not more than fourteen thousandths of a cent per bushel assessed on all purchased grain during the grain dealer's last fiscal year at each location at which records are maintained for transactions of the grain dealer, as determined according to information submitted by the grain dealer to the department for the issuance or renewal of a license as provided in section 203.5.

(2) For a licensed warehouse operator, not more than fourteen thousandths of a cent per bushel of bulk grain storage capacity for each warehouse licensed pursuant to section 203C.8 or five hundred dollars, whichever is less. The participation fee shall be determined using information provided to the department by the warehouse operator applying for the issuance or renewal of a license as provided in sections 203C.7 and 203C.37.

b. A licensee shall pay a participation fee of at least fifty dollars.

3. The rate of the per-bushel fee shall not exceed one-quarter cent per bushel assessed on all purchased grain.

4. If on the last date of the fund's fiscal year as provided in section 203D.3 the assets of the fund exceed eight million dollars, less any encumbered balances or pending or unsettled claims, all of the following apply:

a. The participation fee shall be waived and shall not be assessable or owing for the following fiscal year of the fund. However, the licensee shall continue to pay any owing participation fee that was in effect on the prior July 1.

b. The per-bushel fee shall be waived and shall not be assessable or owing.

5. The board shall reinstate the fees as provided in this section if the assets of the fund, less any unencumbered balances or pending or unsettled claims, are three million dollars or less.

#### **203D.5A. Lien on licensee's assets**

The board may enforce a lien attached to assets held by a licensee under chapter 203 or 203C. The lien shall be perfected and enforced pursuant to section 203.12A or 203C.12A.

#### **203D.6. Claims against fund**

**1. Persons who may file claims.** A depositor or seller may file a claim with the department for indemnification of a loss from the grain depositors and sellers indemnity fund. A claim shall be filed in the manner prescribed by the board.

#### **2. Time of filing claim.**

a. As used in this subsection, an incurrence date is when either of the following occurs:

(1) The cessation of the license of the grain dealer as described in section 203.10 or warehouse operator as described in section 203C.10.

(2) The filing of a petition in bankruptcy by a licensed grain dealer or licensed warehouse operator.

b. To be timely, a claim must be filed within a claim period beginning on either incurrence date and ending one hundred twenty days after that incurrence date, regardless of whether a previous claim period has expired.

**3. Notice.** The department shall cause notice of the opening of the claim period to be published once each week for two consecutive weeks in a newspaper of general circulation in each of the counties in which the licensee maintains a business location and in a newspaper of general

circulation within the state. The notice shall state the name and address of the licensee and the claim incurrence date. The notice shall also state that any claims against the fund on account of the licensee shall be sent by ordinary mail to the department within one hundred twenty days after the incurrence date, and that the failure to make a timely claim relieves the fund from liability to the claimant. This notice may be incorporated by the department with a notice required by section 203.12 or 203C.14.

**4. Determination of eligible claims.** The board shall determine a claim to be eligible for payment from the fund if the board finds all of the following:

a. That the claim was timely filed.

b. That the incurrence date was on or after May 15, 1986.

c. That the claimant qualifies as a depositor or seller.

d. That the claim derives from a covered transaction. For purposes of this paragraph, a claim derives from a covered transaction if the claimant is a seller who transferred title to the grain to a licensed grain dealer other than by credit-sale contract within six months of the incurrence date for a claim period as provided in subsection 2, or if the claimant is a depositor who delivered the grain to a licensed warehouse operator.

e. That there is adequate documentation to establish the existence of a claim and to determine the amount of the loss.

f. A claim has not been paid for the same loss.

**5. Value of loss--warehouse claims.** The board shall determine the dollar value of a claim incurred by a depositor holding a warehouse receipt or a scale weight ticket for grain that the depositor delivered for storage to the licensed warehouse operator. If the department has been appointed by the court as receiver of the grain assets of the warehouse operator, the value shall be presumed to be as stated in the plan of disposition approved by the court. If the warehouse operator has filed a petition in bankruptcy, the value shall be presumed to be based upon the fair market price, free-on-board from the site of the warehouse operator, being paid to producers for grain by the grain terminal operator nearest the warehouse operator on the date the petition was filed. If there is neither a department receivership nor a bankruptcy filing, the value shall be presumed to be based upon the fair market price, free-on-board from the site of the warehouse operator, being paid to producers for grain by the grain terminal operator nearest the warehouse

operator on the date of license revocation or cancellation. If more than one date applies to a claim, the board may choose between the two. However, the board may accept an alternative valuation of a claim upon a showing of just cause by the depositor or department. All depositors filing claims under this section shall be bound by the value determined by the board. The value of the loss is the outstanding balance on the validated claim at time of payment from the fund.

**6. Value of loss--grain dealer claims.** The dollar value of a claim incurred by a seller who has sold grain or delivered grain for sale or exchange and who is a creditor of the licensed grain dealer for all or part of the value of the grain shall be based on the amount stated on the obligation on the date of the sale. If the sold grain was unpriced, the value of a claim shall be presumed to be based upon the fair market price, free-on-board from the site of the grain dealer, being paid to producers for grain by the grain terminal operator nearest the grain dealer on the date of the license revocation or cancellation or the filing of a petition in bankruptcy. If more than one date applies to a claim, the board may choose between the two. However, the board may accept an alternative valuation of a claim upon a showing of just cause by the seller or department. All sellers filing claims under this section shall be bound by the value determined by the board. The value of the loss is the outstanding balance on the validated claim at the time of payment from the fund.

**7. Procedure--appeal.** The board, through the department, shall provide for notice to each depositor and seller upon its determination of eligibility and value of loss. Within twenty days of the notice, the depositor or seller may request a hearing for the review of either determination. The request shall be made in the manner provided by the board. The hearing and any further appeal shall be conducted as a contested case subject to chapter 17A. A depositor or seller whose claim has been refused by the board may appeal the refusal to either the district court of Polk county or the district court of the county in which the depositor or seller resides.

**8. Payment of claims.** Upon a determination that the claim is eligible for payment, the board shall provide for payment of ninety percent of the loss, as determined under subsection 5, but not more than three hundred thousand dollars per claimant. If at any time the board determines that there are insufficient funds to make payment of all claims, the board may order that payment be deferred on specified claims. The department, upon the board's instruction, shall hold those claims for payment until the board determines that the fund again contains sufficient assets.

**9. Subrogation of fund.** In the event of payment of a loss under this section, the fund is subrogated to the extent of the amount of any payments to all rights, powers, privileges, and remedies of the depositor or seller against any person regarding the loss. The depositor or seller shall render all necessary assistance to aid the department and the board in securing the rights granted in this section. No action or claim initiated by a depositor or seller and pending at the time of payment from the fund shall be compromised or settled without the consent of the board.

## **10. Time limitation on claims.**

a. A claim shall expire if five years after the board determines that the claim is eligible, the claimant has failed to do any of the following:

(1) Provide for the fund's subrogation or has failed to render all necessary assistance to aid the department and the board in securing the department's rights of subrogation as required in this section.

(2) Failed to provide necessary documentation or information required by the board in order to process the claim.

b. The fund shall not be liable for the payment of an expired claim.

### **203D.7. No obligation of state**

This chapter does not imply any guarantee or obligation on the part of the state of Iowa, or any of its agencies, employees, or officials, either elective or appointive, in respect of any agreement or undertaking to which this chapter relates.