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## Requirements for Grain Warehouses:

*Illinois*



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## Requirements for Grain Warehouses: Illinois

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### 240 ILCS 40/1-10 Definitions

*Current through February 5, 2020.*

#### **240 ILCS 40/1-10 Definitions**

As used in this Act:

“Board” means the governing body of the Illinois Grain Insurance Corporation.

“Certificate” means a document, other than the license, issued by the Department that certifies that a grain dealer’s license has been issued and is in effect.

“Claimant” means:

(a) a person, including, without limitation, a lender:

(1) who possesses warehouse receipts issued from an Illinois location covering grain owned or stored by a failed warehouseman; or

(2) who has other written evidence of a storage obligation of a failed warehouseman issued from an Illinois location in favor of the holder, including, but not limited to, scale tickets, settlement sheets, and ledger cards; or

(3) who has loaned money to a warehouseman and was to receive a warehouse receipt issued from an Illinois location as security for that loan, who surrendered warehouse receipts as part of a grain sale at an Illinois location, or who delivered grain out of storage with the warehouseman as part of a grain sale at an Illinois location; and

(i) the grain dealer or warehouseman failed within 21 days after the loan of money, the surrender of warehouse receipts, or the delivery of grain, as the case may be, and no

warehouse receipt was issued or payment in full was not made on the grain sale, as the case may be; or

(ii) written notice was given by the person to the Department within 21 days after the loan of money, the surrender of warehouse receipts, or the delivery of grain, as the case may be, stating that no warehouse receipt was issued or payment in full made on the grain sale, as the case may be; or

(b) a producer not included in item (a)(3) in the definition of "Claimant" who possesses evidence of the sale at an Illinois location of grain delivered to a failed grain dealer, or its designee in Illinois and who was not paid in full.

"Class I warehouseman" means a warehouseman who is authorized to issue negotiable and non-negotiable warehouse receipts.

"Class II warehouseman" means a warehouseman who is authorized to issue only non-negotiable warehouse receipts.

"Code" means this Grain Code.

"Collateral" means:

(a) irrevocable letters of credit;

(b) certificates of deposit;

(c) cash or a cash equivalent; or

(d) any other property acceptable to the Department to the extent there exists equity in that property. For the purposes of this item (d), "equity" is the amount by which the fair market value of the property exceeds the amount owed to a creditor who has a valid, prior, perfected security interest in or other valid, prior, perfected lien on the property.

"Corporation" means the Illinois Grain Insurance Corporation.

"Daily position record" means a grain inventory accountability record maintained on a daily basis that includes an accurate reflection of changes in grain inventory, storage obligations, company-owned inventory by commodity, and other information that is required by the Department.

"Daily grain transaction report" means a record of the daily transactions of a grain dealer showing the amount of all grain received and shipped during each day and the amount on hand at the end of each day.

"Date of delivery of grain" means:

(a) the date grain is delivered to a grain dealer, or its designee in Illinois, for the purpose of sale;

(b) the date grain is delivered to a warehouseman, or its designee in Illinois, for the purpose of storage; or

(c) in reference to grain in storage with a warehouseman, the date a warehouse receipt representing stored grain is delivered to the issuer of the warehouse receipt for the purpose of selling the stored grain or, if no warehouse receipt was issued:

- (1) the date the purchase price for stored grain is established; or
- (2) if sold by price later contract, the date of the price later contract.

“Department” means the Illinois Department of Agriculture.

“Depositor” means a person who has evidence of a storage obligation from a warehouseman.

“Director”, unless otherwise provided, means the Illinois Director of Agriculture, or the Director’s designee.

“Electronic document” means a document that is generated, sent, received, or stored by electrical, digital, magnetic, optical electromagnetic, or any other similar means, including, but not limited to, electronic data interchange, electronic mail, telegram, telex, or telecopy.

“Electronic warehouse receipt” means a warehouse receipt that is issued or transmitted in the form of an electronic document.

“Emergency storage” means space measured in bushels and used for a period of time not to exceed 3 months for storage of grain as a consequence of an emergency situation.

“Equity assets” means:

(a) The equity in any property of the licensee or failed licensee, other than grain assets. For purposes of this item (a):

(1) “equity” is the amount by which the fair market value of the property exceeds the amount owed to a creditor who has a valid security interest in or other valid lien on the property that was perfected before the date of failure of the licensee;

(2) a creditor is not deemed to have a valid security interest or other valid lien on property if (i) the property can be directly traced as being from the sale of grain by the licensee or failed licensee; (ii) the security interest was taken as additional collateral on account of an antecedent debt owed to the creditor; and (iii) the security interest or other lien was perfected (A) on or within 90 days before the date of failure of the licensee or (B) when the creditor is a related person, within one year of the date of failure of the licensee.

“Failure” means, in reference to a licensee:

(a) a formal declaration of insolvency;

(b) a revocation of a license;

(c) a failure to apply for license renewal, leaving indebtedness to claimants;

(d) a denial of license renewal, leaving indebtedness to claimants; or

(e) a voluntary surrender of a license, leaving indebtedness to claimants.

“Federal warehouseman” means a warehouseman licensed by the United States government under the United States Warehouse Act (7 U.S.C. 241 et seq.).

“Fund” means the Illinois Grain Insurance Fund.

“Grain” means corn, soybeans, wheat, oats, rye, barley, grain sorghum, canola, buckwheat, flaxseed, edible soybeans, and other like agricultural commodities that may be designated by rule.

“Grain assets” means:

(a) all grain owned and all stored by a licensee or failed licensee, wherever located, including redeposited grain of a licensee or failed licensee;

(b) (blank);

(c) identifiable proceeds, including, but not limited to, insurance proceeds, received by or due to a licensee or failed licensee resulting from the sale, exchange, destruction, loss, or theft of grain, or other disposition of grain by the licensee or failed licensee; or

(d) assets in hedging or speculative margin accounts held by commodity or security exchanges on behalf of a licensee or failed licensee and any moneys due or to become due to a licensee or failed licensee, less any secured financing directly associated with those assets or moneys, from any transactions on those exchanges.

For purposes of this Act, storage charges, drying charges, price later contract service charges, and other grain service charges received by or due to a licensee or failed licensee shall not be deemed to be grain assets, nor shall such charges be deemed to be proceeds from the sale or other disposition of grain by a licensee or a failed licensee, or to have been directly or indirectly traceable from, to have resulted from, or to have been derived in whole or in part from, or otherwise related to, the sale or other disposition of grain by the licensee or failed licensee.

“Grain dealer” means a person who is licensed by the Department to engage in the business of buying grain from producers.

“Grain Indemnity Trust Account” means a trust account established by the Director under Section 205-410 of the Department of Agriculture Law (20 ILCS 205/205-410) that is used for the receipt and disbursement of moneys paid from the Fund and proceeds from the liquidation of and collection upon grain assets, equity assets, collateral, and guarantees of or relating to failed licensees. The Grain Indemnity Trust Account shall be used to pay valid claims, authorized refunds from the Fund, and expenses incurred in preserving, liquidating, and collecting upon grain assets, equity assets, collateral, and guarantees relating to failed licensees.

“Guarantor” means a person who assumes all or part of the obligations of a licensee to claimants.

“Guarantee” means a document executed by a guarantor by which the guarantor assumes all or part of the obligations of a licensee to claimants.

“Incidental grain dealer” means a grain dealer who purchases grain only in connection with a feed milling operation and whose total purchases of grain from producers during the grain dealer’s fiscal year do not exceed \$100,000.

“Licensed storage capacity” means the maximum grain storage capacity measured in bushels approved by the applicable licensing agency for use by a warehouseman.

“Licensee” means a grain dealer or warehouseman who is licensed by the Department and a federal warehouseman that is a participant in the Fund, under subsection (c) of Section 30-10 [240 ILCS 40/30-10].

“Official grain standards” means the official grade designations as adopted by the United States Department of Agriculture under the United States Grain Standards Act and regulations adopted under that Act (7 U.S.C. 71 et seq. and 7 CFR 810.201 et seq.).

“Permanent storage capacity” means the capacity of permanent structures available for storage of grain on a regular and continuous basis, measured in bushels.

“Person” means any individual or entity, including, but not limited to, a sole proprietorship, a partnership, a corporation, a cooperative, an association, a limited liability company, an estate, a trust, or a governmental agency.

“Price later contract” means a contract, in written or electronic form, for the sale of grain whereby any part of the purchase price may be established by the seller after delivery of the grain to a grain dealer according to a pricing formula contained in the contract. Title to the grain passes to the grain dealer at the time of delivery. The precise form and the general terms and conditions of the contract shall be established by rule.

“Producer” means the owner, tenant, or operator of land who has an interest in and receives all or part of the proceeds from the sale of the grain produced on the land.

“Producer protection holding corporation” means a holding corporation to receive, hold title to, and liquidate assets of or relating to a failed licensee, including assets in reference to collateral or guarantees relating to a failed licensee.

“Regulatory Fund” means the fund created under Article 35.

“Related persons” means affiliates of a licensee, key persons of a licensee, owners of a licensee, and persons who have control over a licensee. For the purposes of this definition:

(a) “Affiliate” means a person who has direct or indirect control of a licensee, is controlled by a licensee, or is under common control with a licensee.

(b) “Key person” means an officer, a director, a trustee, a partner, a proprietor, a manager, a managing agent, or the spouse of a licensee. An officer or a director of an entity organized or operating as a cooperative, however, shall not be considered to be a “key person”.

(c) “Owner” means the holder of: over 10% of the total combined voting power of a corporation or over 10% of the total value of shares of all classes of stock of a corporation; over a 10% interest in a partnership; over 10% of the value of a trust computed actuarially; or over 10% of the legal or beneficial interest in any other business, association, endeavor, or entity that is a licensee. For purposes of computing these percentages, a holder is deemed to own stock or other interests in a business entity whether the ownership is direct or indirect.

(d) “Control” means the power to exercise authority over or direct the management or policies of a business entity.

(e) "Indirect" means an interest in a business held by the holder not through the holder's actual holdings in the business, but through the holder's holdings in another business or other businesses.

(f) Notwithstanding any other provision of this Act, the term "related person" does not include a lender, secured party, or other lien holder solely by reason of the existence of the loan, security interest, or lien, or solely by reason of the lender, secured party, or other lien holder having or exercising any right or remedy provided by law or by agreement with a licensee or a failed licensee.

"Reserve Fund" means a separate and discrete fund of up to \$2,000,000 held by the Corporation as set forth in Section 30-25 [240 ILCS 40/30-25].

"Successor agreement" means an agreement by which a licensee succeeds to the grain obligations of a former licensee.

"Temporary storage space" means space measured in bushels and used for 6 months or less for storage of grain on a temporary basis due to a need for additional storage in excess of permanent storage capacity.

"Trust account" means the Grain Indemnity Trust Account.

"Valid claim" means a request for payment under the provisions of this Code, submitted by a claimant, the amount and category of which have been determined by the Department, to the extent that determination is not subject to further administrative review or appeal. Each grain sale transaction and each storage obligation shall be considered a separate and discrete request for payment even though one or more requests are contained on one claim form or are filed with the Department in one document.

"Warehouse" means a building, structure, or enclosure in which grain is stored for the public for compensation, whether grain of different owners is commingled or whether identity of different lots of grain is preserved.

"Warehouse receipt" means a receipt for the storage of grain issued by a warehouseman.

"Warehouseman" means a person who is licensed:

- (a) by the Department to engage in the business of storing grain for compensation; or
- (b) under the United States Warehouse Act but participates in the Fund under subsection (c) of Section 30-10.

#### **240 ILCS 40/1-15 Powers and duties of Director**

The Director has all powers necessary and proper to fully and effectively execute the provisions of this Code and has the general duty to implement this Code. The Director's powers and duties include, but are not limited to, the following:

- (1) The Director may, upon application, issue or refuse to issue licenses under this Code, and the Director may extend, renew, reinstate, suspend, revoke, or accept voluntary surrender of licenses under this Code.

(2) The Director shall examine and inspect each licensee at least once each calendar year. The examination shall cover all aspects of the grain operations of the licensee, including but not necessarily limited to options trades and programs and farmer marketing programs.

(A) Basic Examination. The basic examination shall be performed when the licensee's merchandising and trade practices involve minimal market risk, which might include those situations in which the licensee uses cash back-to-back contracts, traditional hedges with the Chicago Board of Trade, and price later contracts. The specific components and guidelines of the basic examination are to be as provided by rule, but shall at a minimum include verification of grain quality and quantity, reconciliation of records with grain transactions, computation of current ratios, and checking of posting procedures for accuracy.

(B) Intermediate Examination. The intermediate examination shall be performed when the licensee's merchandising and trade practices involve an increased amount of risk, which might include those situations in which the licensee uses guaranteed minimum price contracts, purchases options, or writes options. This examination shall include all those things performed as part of the basic examination. In addition, the specific components and guidelines of the intermediate examination are to be as provided by rule, but shall at a minimum include verification of grain quality and quantity, reconciliation of records with grain transactions, and checking of posting procedures for accuracy.

(C) Advanced Examination. The advanced examination shall be performed when the licensee's merchandising and grain trading practices involve the most risk, which might include those situations in which the licensee has discretionary trading authority from producers, uses premium offer type contracts, or has contracts with producers that cover multiple crop years. This examination shall include all those things performed as part of the basic examination and the intermediate examination. In addition, the specific components and guidelines of the advanced examination are to be provided by rule, but shall at a minimum include grain market risk evaluation and appropriate levels thereof for the licensee and adequacy of internal controls.

The Department shall perform one of 3 types of examinations of licensees.

(3) The Director may, upon his or her initiative or upon the written verified complaint of any person setting forth facts that if proved would constitute grounds for a refusal to issue or renew a license or for a suspension or revocation of a license, investigate the actions of any person applying for, holding, or claiming to hold a license or any related party of that person.

(4) The Director (but not the Director's designee) may issue subpoenas and bring before the Department any person and take testimony either at an administrative hearing or by deposition with witness fees and mileage fees and in the same manner as prescribed in the Code of Civil Procedure [735 ILCS 5/1-101 et seq.]. The Director or the Director's designee may administer oaths to witnesses at any proceeding that the Department is authorized by law to conduct. The Director (but not the Director's designee) may issue subpoenas duces tecum to command the production of records relating to a licensee, guarantor, related business, related person, or related party. Subpoenas are subject to the rules of the Department.

(5) Notwithstanding other judicial remedies, the Director may file a complaint and apply for a temporary restraining order or preliminary or permanent injunction restraining or enjoining any person from violating or continuing to violate this Code or its rules.



(6) The Director shall act as Trustee for the Trust Account, act as Trustee over all collateral, guarantees, grain assets, and equity assets held by the Department for the benefit of claimants, and exercise certain powers and perform related duties under Section 20-5 of this Code [240 ILCS 40/20-5] and Section 205-410 of the Department of Agriculture Law (20 ILCS 205/205-410), except that the provisions of the Trust and Trustees Act [760 ILCS 5/1 et seq.] do not apply to the Trust Account or any other trust created under this Code.

(7) The Director shall personally serve as president of the Corporation.

(8) The Director shall collect and deposit all monetary penalties, printer registration fees, funds, and assessments authorized under this Code into the Fund.

(9) The Director may initiate any action necessary to pay refunds from the Fund. The Director may initiate refunds for errors of assessments that do not exceed \$2,000 per licensee, lender, or grain seller without authorization by the Board.

(10) The Director shall maintain a holding corporation to receive, hold title to, and liquidate assets of or relating to a failed licensee, including assets in reference to collateral or guarantees, and deposit the proceeds into the Fund.

(11) The Director may initiate, participate in, or withdraw from any proceedings to liquidate and collect upon grain assets, equity assets, collateral, and guarantees relating to a failed licensee, including, but not limited to, all powers needed to carry out the provisions of Section 20-15 [240 ILCS 40/20-15].

(12) The Director, as Trustee or otherwise, may take any action that may be reasonable or appropriate to enforce this Code and its rules.

Using these guidelines, the Department shall determine the level of examination to be applied to each licensee. In addition, the Department may, in its sole discretion, engage the services of accounting experts, grain risk management experts, or both as part of any intermediate or advanced examination. The Regulatory Fund may be used as a source of payment for the services of accounting experts, grain risk management experts, or both.

The Director may inspect the premises used by a licensee at any time. The books, accounts, records, and papers of a licensee are at all times during business hours subject to inspection by the Director. Each licensee may also be required to make reports of its activities, obligations, and transactions that are deemed necessary by the Director to determine whether the interests of producers and the holders of warehouse receipts are adequately protected and safeguarded. The Director may take action or issue orders that in the opinion of the Director are necessary to prevent fraud upon or discrimination against producers or depositors of grain by a licensee. The sole and exclusive means of halting the warehouse and grain dealer business activities of a licensee, however, are set forth in Section 15-40 [240 ILCS 40/15-40] relating to suspension and revocation of licenses.

#### **240 ILCS 40/1-17 Administrative procedure**

The Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.] applies to this Code.

#### **240 ILCS 40/1-20 Administrative review and venue**

Final administrative decisions of the Department are subject to judicial review under Article III of the Code of Civil Procedure [735 ILCS 5/3-101 et seq.] and its rules. The term “administrative

decision” is defined as in Section 3-101 of the Code of Civil Procedure. An action to review a final administrative decision under this Code may be commenced in the Circuit Court of any county in which any part of the transaction occurred that gave rise to the claim that was the subject of the proceedings before the Department.

#### **240 ILCS 40/1-25 Rules**

The Department may promulgate rules that are necessary for the implementation and administration of this Code.

(a) The Department shall adopt rules governing electronic systems under which electronic warehouse receipts are issued and transferred. Licensees shall not be required, however, to issue or use electronic warehouse receipts. These rules shall be adopted after the United States Department of Agriculture adopts regulations concerning an electronic receipt transfer system pursuant to 7 U.S.C. 242, 250.

(b) The Department shall adopt rules governing electronic price later contracts. Licensees and producers shall not be required, however, to issue or use electronic price later contracts.

#### **240 ILCS 40/1-30 Sections of this Code**

All references in this Code to Sections, unless otherwise designated, refer to Sections of this Code.

#### **240 ILCS 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 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 [225 ILCS 450/14].

(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 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 [225 ILCS 450/14] 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 [240 ILCS 40/5-25], 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 [240 ILCS 40/5-20].

(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 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 [225 ILCS 450/14]. 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 [240 ILCS 40/5-10] 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 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 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 [240 ILCS 40/5-20]; 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 [240 ILCS 40/5-10].



(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.

(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.

(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.

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.

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.

(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 [240 ILCS 40/30-10] 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 [P.A. 93-225] 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 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 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 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 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.

(l) 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 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 [7 U.S.C. 241 et seq.], 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 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 [240 ILCS 40/10-20].

(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 [240 ILCS 40/5-30].

(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 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 De minimis violations.**

(a) If a licensee commits a de minimis 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 minimis violation exists when a licensee:

(1) violates the maximum allowable speculative limits of item (a)(2) of Section 10-10 [240 ILCS 40/10-10] 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 [240 ILCS 40/15-20]; 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 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 [240 ILCS 40/10-10] 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 [240 ILCS 40/15-10] 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 [240 ILCS 40/15-5] 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 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 Deposit of penalties**

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

#### **240 ILCS 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 [240 ILCS 40/5-25] and subsection (b) of Section 10-15 of this Code [240 ILCS 40/10-15].

(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 [240 ILCS 40/15-15 and 240 ILCS 40/15-20], 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 [240 ILCS 40/5-15], 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 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 40/5-20].

#### **240 ILCS 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 [225 ILCS 40/5-30].

(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 [225 ILCS 4/15-40] 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 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 [240 ILCS 40/10-15]; 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 40/20-5 Failure**

Upon the failure of a licensee, the Director has all powers as Trustee for the benefit of claimants as established under this Code, including, but not limited to, the power to do the following:

(a) Seize or otherwise gain possession or control of grain assets (except the Department may not seize or otherwise gain possession or control of any equity asset on which there is a valid security interest or other lien without the prior, written permission of the secured party or lien holder), equity assets, and collateral and enforce the lien set forth in Section 20-10 [240 ILCS 40/20-10].

(b) Protect the grain assets, equity assets (to the extent the Department has received the written permission of any secured party or lien holder to take possession and control of the equity asset), and collateral of or relating to a failed licensee in the possession or under the control of the Department for the benefit of claimants, secured parties, and lien holders.

(c) Liquidate and collect upon all grain assets, equity assets (except the Department may not liquidate and collect upon any equity asset on which there is a valid security interest or other lien without the prior, written permission of the secured party or the lien holder), collateral and guarantees posted with the Department of or relating to a failed licensee, and deposit the proceeds into the Trust Account.

(d) Establish accounts in federally insured financial institutions and hold all moneys received as trustee.

(e) Request the transfer of moneys from the Fund to the Trust Account for the purpose of payment to claimants in accordance with Section 25-10 [240 ILCS 40/25-10].

(f) Disburse the funds in the Trust Account in accordance with this Code.

#### **240 ILCS 40/20-10 Lien on grain assets and equity assets**

(a) A statutory lien shall be imposed on all grain assets and equity assets in favor of and to secure payment of obligations of the licensee to:

(1) A person, including, without limitation, a lender:

(A) who possesses warehouse receipts issued from an Illinois warehouse location covering grain owned or stored by a warehouseman;

(B) who has other written evidence of a storage obligation of a warehouseman issued from an Illinois warehouse location in favor of the holder, including, but not limited to, scale tickets, settlement sheets, and ledger cards; or

(C) who has loaned money to a warehouseman and was to receive a warehouse receipt from an Illinois location as security for that loan, who surrendered warehouse receipts as a part of a grain sale at an Illinois location, or who delivered grain out of storage with the warehouseman as a part of a grain sale at an Illinois location and:

(i) the grain dealer or warehouseman experienced a failure within 21 days thereafter, a warehouse receipt was not issued, and payment in full was not made; or

(ii) written notice was given by the person to the Department within 21 days thereafter stating that a warehouse receipt was not issued and payment in full was not made.

(2) A producer who possesses evidence of the sale at an Illinois location of grain delivered to that failed grain dealer, or its designee, and who was not paid in full.

This statutory lien arises, attaches, and is perfected at the date of delivery of grain, and is at that time deemed assigned by the operation of this Code to the Department.

(b) The lien on grain assets created under this Section shall be preferred and prior to any other lien, encumbrance, or security interest relating to those assets described in the definition of “grain assets” in Section 1-10 [240 ILCS 40/1-10], regardless of the time the other lien, encumbrance, or security interest attached or became perfected. The lien on equity assets created under this Section shall also be preferred and prior to any other lien, encumbrance, or security interest relating to “equity assets” as defined in Section 1-10 [225 ILCS 40/1-10]. The lien on equity assets created under this Section, however, shall be subordinate and subject to any other lien, encumbrance, or security interest relating to “equity assets” to the extent a creditor has a valid security interest in or other valid lien on the property that was perfected prior to the date of failure of the licensee; provided, however, that a creditor is not deemed to have a valid security interest or other valid lien on property if (i) the property can be directly traced as being from the sale of grain by the licensee or failed licensee; (ii) the security interest was taken as additional collateral on account of an antecedent debt owed to the creditor; and (iii) the security interest or other lien was perfected (A) on or within 90 days before the date of failure of the licensee or (B) when the creditor is a related person, within one year of the date of failure of the licensee.

(c) To the extent any portion of this Code conflicts with any portion of the Uniform Commercial Code [810 ILCS 5/1-101 et seq.], the provisions of this Code control.

(d) If an adversarial proceeding is commenced to recover “grain assets” or “equity assets” upon which a lien created under this Section is imposed and if the Department declines to take part in that adversarial proceeding, the Department, upon application to the Director by any claimant, shall assign to the claimant the statutory lien to permit the claimant to pursue the lien in the adversarial proceeding, but only if the assignment and adversarial proceeding will not delay the Department’s liquidation and distribution of grain assets, equity assets, collateral, and guarantees, including proceeds thereof, to all claimants holding valid claims.

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

When a licensee experiences a failure, the Department has the authority to and shall:

(a) Immediately post notice at all locations of the failed licensee stating that the licensee has experienced a failure and that the license has been terminated and is no longer effective.

(b) Immediately take physical control and possession of the failed licensee’s facility, including but not limited to all offices and grain storage facilities, books, records, and any other property necessary or desirable to liquidate grain assets and equity assets.

(c) Give public notice and notify all known potential claimants by certified mail of the licensee’s failure and the processes necessary to file grain claims with the Department as set forth in Section 25-5 [225 ILCS 40/25-5].



(d) Perform an examination of the failed licensee.

(e) Seize and take possession of, protect, liquidate, and collect upon all grain assets, collateral, and guarantees of or relating to the failed licensee and deposit the proceeds into the Trust Account. If at any time it appears, however, in the judgment of the Department that the costs of seizing and taking possession of, protecting, liquidating, and collecting upon any or all of the grain assets, collateral, and guarantees equals or exceeds the expected recovery to the Department, the Department may elect not to pursue seizing and taking possession of, protecting, liquidating, and collecting upon any or all of the assets.

(f) Seize, take possession of, protect, liquidate, and collect upon the equity assets of the failed licensee and deposit the proceeds into the Trust account if the Department has first obtained the written consent of all applicable secured parties or lien holders, if any. If at any time it appears, however, in the judgment of the Department that the costs of seizing and taking possession of, protecting, liquidating, and collecting upon any or all of the equity assets equals or exceeds the expected recovery to the Department, the Department may elect not to pursue seizing and taking possession of, protecting, liquidating, and collecting upon any or all of the equity assets. If the Department does not otherwise pursue seizing and taking possession of, protecting, liquidating, and collecting upon any of the equity assets, the Department may bring or participate in any liquidation or collection proceedings involving the applicable secured parties or other interested party, if any, and shall have the rights and remedies provided by law, including the right to enforce its lien by any available judicial procedure.

If an applicable secured party or lien holder does not consent to the Department seizing, taking possession of, liquidating, or collecting upon the equity assets, the secured party or lien holder shall have the rights and remedies provided by law or by agreement with the licensee or failed licensee, including the right to enforce its security interest or lien by any available judicial procedure.

(g) Make available on demand to an applicable secured party or lien holder the equity asset, to the extent the Department seized or otherwise gained possession or control of the equity asset, but the secured party or lien holder does not consent to the Department liquidating and collecting upon the equity asset.

#### **240 ILCS 40/20-20 Liquidation expenses; Asset Preservation Account**

(a) The Trustee shall pay from the Trust Account all reasonable expenses incurred by the trustee on or after the date of failure in reference to seizing, preserving, and liquidating the grain assets, equity assets, collateral, and guarantees of or relating to a failed licensee, including, but not limited to, the hiring of temporary field personnel, equipment rental, auction expenses, mandatory commodity check-offs, and clerical expenses.

(b) Except as to claimants holding valid claims, any outstanding indebtedness of a failed licensee that has accrued before the date of failure shall not be paid by the Trustee and shall represent a separate cause of action of the creditor against the failed licensee.

(c) The Trustee shall report all expenditures paid from the Trust Account to the Corporation at least annually.

(d) To the extent assets are available under subsection (g) of Section 25-20 [225 ILCS 40/25-20] and upon presentation of documentation satisfactory to the Trustee, the Trustee shall

transfer from the Trust Account to the Regulatory Fund an amount not to exceed the expenses incurred by the Department in performance of its duties under Article 20 of this Code, in reference to the failed licensee.

(e) The Department shall establish and maintain an Asset Preservation Account as provided in Section 205-410 of the Department of Agriculture Law [20 ILCS 205/205-410] of the Civil Administrative Code of Illinois that shall contain a maximum of \$50,000. The funds in the Asset Preservation Account are to be used solely by the Trustee for the reasonable expenses incurred by the Department on or after the date of failure for preserving and liquidating grain assets, equity assets, collateral, and guarantees of or relating to a failed licensee, provided that the Department has made a determination that the benefit of preserving and liquidating the grain assets, equity assets, collateral, and guarantees exceeds the anticipated costs of the preservation and liquidation, and only to the extent that all liquid and available moneys in the Grain Indemnity Trust Account relating to the particular failure have been exhausted. The Asset Preservation Account shall be funded by the income earned on the assets in the Fund. The income must be transferred to the Asset Preservation Account on a monthly basis, within 10 business days after the end of each calendar month, and to the extent necessary to maintain the \$50,000 balance. The Trustee, or his or her designee, must file a report of all receipts by and disbursements from the Asset Preservation Account with the Board prior to each meeting of the Board.

#### **240 ILCS 40/20-25 Refusal of licensee to allow liquidation**

(a) If, after a failure, the failed licensee does not transfer control of the grain assets to the Trustee, the Director may, in conjunction with the authority granted in this Code and in Section 205-410 of the Department of Agriculture Law (20 ILCS 205/205-410), file a complaint and apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or a permanent injunction to be entered without bond to carry out the provisions of this Code.

(b) If a party seeks relief from a court of competent jurisdiction that would enjoin, restrain, stay, or otherwise resist either (1) an administrative order of the Department that suspends, revokes, or denies renewal of a license under this Code or (2) an action brought by the Department relating to liquidation of a licensee, the court shall require the party requesting the relief to provide a bond as provided for in the Code of Civil Procedure. The bond shall be in an amount adequate to assure that all producers and depositors will be paid while the licensee is operating following suspension, revocation, or denial of renewal of a license under the judicial relief for grain sold to or stored with the licensee. The bond shall be in a minimum amount sufficient to satisfy all existing grain obligations of the licensee for grain purchased, sold, or stored. In setting the amount of the bond, the court shall consider increasing the amount of the bond based upon a consideration of other factors, including, but not limited to, the total dollar amount of grain purchased annually by the licensee and the value of the storage obligations of the licensee.

#### **240 ILCS 40/25-5 Adjudication of claims**

When a licensee has experienced a failure, the Department shall process the claims in the following manner:

(a) The Department shall publish once each week for 3 successive weeks in at least 3 newspapers of general circulation within the county of the licensee, and shall mail or deliver to each claimant whose name and post office address are known or are reasonably ascertainable by the Department, a notice stating:

- (1) That the licensee has experienced a failure and the date of that failure.
- (2) The place and post office address where claims may be filed.
- (3) The procedure for filing claims, as determined by rule.
- (4) That a claimant's claims shall be barred if not filed with the Department on or before the later of:

(A) the claim date, which shall be 90 days after the date of failure of the licensee; or

(B) 7 days from the date notice was mailed to a claimant if the date notice was mailed to that claimant is on or before the claim date.

(b) Time of notice.

(1) The first date of publication of the notice as provided for in subsection (a) of this Section shall be within 30 days after the date of failure.

(2) The published notice as provided for in subsection (a) of this Section shall be published in at least 3 newspapers of general circulation in the area formerly served by the failed licensee.

(3) The notice as provided for in subsection (a) of this Section shall be mailed by certified mail, return receipt requested, within 60 days after the date of failure to each claimant whose name and post office address are known by the Department within 60 days after the date of failure.

(c) Every claim filed must be in writing, verified, and signed by a person who has the legal authority to file a claim on behalf of the claimant and must state information sufficient to notify the Department of the nature of the claim and the amount sought.

(d) A claim shall be barred and disallowed in its entirety if:

(1) notice is published and given to the claimant as provided for in subsections (a) and (b) of this Section and the claimant does not file a claim with the Department on or before the claim date; or

(2) the claimant's name or post office address is not known by the Department or cannot, within 60 days after the date of failure, be reasonably ascertained by the Department and the claimant does not file a claim with the Department on or before the later of the claim date or 7 days after the date notice was mailed to that claimant if the date notice was mailed to that claimant is on or before the claim date.

(e) Subsequent notice.

(1) If, more than 60 days after the date of failure but before the claim date, the Department learns of the name and post office address of a claimant who was previously not notified by the Department by mail, the Department shall mail by certified mail, return receipt requested, the notice to the claimant as provided for in subsection (a) of this Section.

(2) The notice mailed as provided for in item (e)(1) of this Section shall not extend the period of time in which a claimant may file its claim beyond the claim date. A claimant to whom notice is mailed under item (e)(1) of this Section, however, shall have the later of the claim date or 7 days after the date notice was mailed to file a claim with the Department.

(f) The Department shall determine the validity, category, and amount of each claim within 120 days after the date of failure of the licensee and shall give written notice within that time period to each claimant and to the failed licensee of the Department's determination as to the validity, category, and amount of each claim.

(g) A claimant or the failed licensee may request a hearing on the Department's determination within 30 days after receipt of the written notice and the hearing shall be held in the county of the location of the principal office or place of business, in Illinois, of the failed licensee and in accordance with rules. Under no circumstances shall payment to claimants who have not requested a hearing be delayed by reason of the request for a hearing by any unrelated claimant.

(h) Within 30 days after a failure of a licensee, the Director shall appoint an Administrative Law Judge for the hearings. The Director shall appoint a person licensed to practice law in this State; who is believed to be knowledgeable with regard to agriculture and the grain industry in Illinois; who has no conflict of interest; and who at the time of his or her appointment is not working for or employed by the Department in any capacity whatsoever.

(i) For the purposes of this Article, the "reasonably ascertainable" standard shall be satisfied when the Department conducts a review of the failed licensee's books and records and an interview of office and clerical personnel of the failed licensee.

(j) It is the intent of this Act that the time periods and deadlines in this Section 25-5 [240 ILCS 40/25-5] are absolute, and are not to be tolled, or their operation halted or delayed. In the event of a bankruptcy by a licensee, the Director shall seek to have commenced any proceedings that are necessary and appropriate to lift the automatic stay or make it otherwise inapplicable to the actions of the Department with regard to the claims determination process. In all other cases, the Department shall seek to have commenced the proceedings necessary to expeditiously remove or lift any order of any court or administrative agency that might attempt to delay the time periods and deadlines contained in this Section 25-5.

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

Within 30 days after the day on which a claim becomes a valid claim, a claimant shall be compensated to the extent of its valid claim as provided in this Section.

It is the express intent of this legislation that each undisputed portion of a claim shall be paid in accordance with the deadlines of this Code, even if there are disputed portions of the claim. For example, the amount of a valid claim calculated for an "unpriced obligation" shall be paid to the claimant despite the fact that claimant additionally seeks the amount for a "priced obligation".

Each claimant shall be compensated in accordance with the following provisions:

(a) Valid claims filed by warehouse claimants shall be paid 100% of the amount determined by the Department out of the net proceeds of the liquidation of grain assets as set forth in this subsection (a). To the extent the net proceeds are insufficient, warehouse claimants shall be paid their pro rata share of the net proceeds of the liquidation of grain assets and, subject to subsection (j) of this Section, an additional amount per claimant not to exceed the balance of their respective claims out of the Fund.

(b) Subject to subsection (j) of this Section, if the net proceeds as set forth in subsection (a) of this Section are insufficient to pay in full all valid claims filed by warehouse claimants as payment becomes due, the balance shall be paid out of the Fund in accordance with subsection (b) of Section 25-20 [240 ILCS 40/25-20].

(c) Valid claims filed by producers who:

(1) have delivered grain within 21 days before the date of failure, or the date of suspension if the suspension results in a failure, for which pricing of that grain has been completed before date of failure; or

(2) gave written notice to the Department within 21 days of the date of delivery of grain, if the pricing of that grain has been completed, that payment in full for that grain has not been made;

shall be paid, subject to subsection (j) of this Section, 100% of the amount of the valid claim determined by the Department. Valid claims that are included in subsection (c) of this Section shall receive no payment under subsection (d) of this Section, and any claimant having a valid claim under this subsection (c) determined by the Department to be in excess of the limits, if any, imposed under subsection (j) of this Section shall be paid only sums in excess of those limits to the extent additional money is available under subsection (d)(2) of Section 25-20.

(d) Valid claims that are not included in subsection (c) of this Section that are filed by producers where the later date of completion of delivery or pricing of the grain is within 160 days before the date of failure shall be paid 85% of the amount of the valid claim determined by the Department or \$250,000, whichever is less, per claimant. In computing the 160-day period, the phrase "date of completion of delivery" means the date of the last delivery of grain to be applied to the quantity requirement of the contract, and the phrase "the later date" means the date closest to the date of failure. In addition, for claims filed by producers for grain sold on a contract, the later of the date of execution of the contract or the date of delivery of the grain covered by the price later contract must not be more than 365 days before the date of failure in order for the claimant to receive any compensation. In computing the 365-day period, the phrase "the later of the date" means the date closest to the date of failure, and the phrase "date of delivery" means the date of the last delivery of grain to be applied to the quantity requirement of the price later contract.

(e) Valid claims filed by producers for grain sold on a price later contract, for which the final price has not been established, shall be paid 85% of the amount of the valid claims determined by the Department or \$250,000, whichever is less, per claimant, if the later of the date of execution of the contract or the date of delivery of the grain covered by the price later contract occurred not more than 365 days before the date of failure. In computing the 365-day period, the phrase "the later of the date" means the date closest to the date of failure, and the phrase "date of delivery" means the date of the last delivery of grain to be applied to the quantity requirement of the price later contract.

The execution of subsequent price later contracts by the producer and the licensee for grain previously covered by a price later contract shall not extend the coverage of a claim beyond the original 365 days.

(f) The maximum payment to producers under subsections (d) and (e) of this Section, combined, shall be \$250,000 per claimant.

(g) The following claims shall be barred and disallowed in their entirety and shall not be entitled to any recovery from the Fund or the Trust Account:

(1) Claims filed by producers where both the date of completion of delivery and the date of pricing of the grain are in excess of 160 days before the date of failure.

(2) Claims filed by producers for grain sold on a price later contract if the later of the date of execution of the contract or the date of delivery of grain in reference to the grain covered by the price later contract occurred more than 365 days before the date of failure. In computing the 365-day period, the phrase "the later of the date" means the date closest to the date of failure, and the phrase "date of delivery" means the date of the last delivery of grain to be applied to the quantity requirement of the price later contract.

(3) Claims filed by any claimant that are based upon or acquired by fraudulent or illegal acts of the claimant.

(h) To the extent moneys are available, additional pro rata payments may be made to claimants under subsection (d) of Section 25-20.

(i) For purposes of this Section, a claim filed in connection with warehouse receipts that are possessed under a collateral pledge of a producer, or that are subject to a perfected security interest, or that were acquired by a secured party or lien holder under an obligation of a producer, shall be deemed to be a claim filed by the producer and not a claim filed by the secured party or the lien holder, regardless of whether the producer is in default under that collateral pledge, security agreement, or other obligation.

(j) The maximum payment out of the Fund for claimants under subsection (a), (b) of this Section shall be \$1,000,000 per claimant and the maximum payment out of the Fund for claimants under subsections (c), (d), and (e) of this Section, combined, shall be \$1,000,000 per claimant.

(k) The amounts to be paid to warehouse valid claimants and grain dealer valid claimants shall be calculated according to the following:

(1) Valid claimants who have warehouse claims, or who have grain dealer claims for grain sold, delivered but unpriced as of the date of failure, shall have "unpriced obligations", and to determine the per bushel value of these valid claims the Department shall use an average of the cash bid prices on the date of failure from grain dealers located within the market area of the failed licensee, and the cash bid price offered by the failed licensee on the date of failure, less transportation, handling costs, and discounts applicable as of that date.

(2) Valid claimants who have grain dealer claims for grain sold, delivered, and priced as of the date of failure shall have "priced obligations", and the price per bushel to be used in calculating the compensation due these valid claimants shall be that which has been agreed upon by the failed licensee and the claimant, less applicable discounts. For purposes of this item (2), a person has "priced" his or her grain if he or she has done those things necessary under the agreement to set, choose, or select a price for any portion of the grain under the agreement, without regard to whether he or she has received a check in payment for the grain, or could have received a check in payment for the grain, prior to the failure.

(l) Arrangements whereby a producer agrees with a licensee to defer receipt of payment of amounts due from the sale of grain are covered by this Code and are not to be considered loans by the producer to the licensee, despite payments to the producer as an inducement for the leaving of moneys with the licensee, unless the licensee has executed and delivered to the producer a promissory note covering those amounts.

#### **240 ILCS 40/25-15 Equity asset secured party or lien holder**

To the extent an applicable secured party or lien holder consents to the Department liquidating and collecting upon an equity asset under subsection (f) of Section 20-15 [240 ILCS 40/20-15], the secured party or lien holder shall submit to the Department a request for payment, to the extent of its security interest or lien. The Department shall make payment to the secured party or lien holder within 60 days after the equity asset has been liquidated and collected upon. The Department or the secured party or lien holder may bring a civil action in the Circuit Court in Sangamon County or in the Circuit Court of the county where the failed licensee is domiciled or has its principal operating office for a determination of any dispute between the Department and the secured party or lien holder as to payment of the security interest or lien.

#### **240 ILCS 40/25-20 Priorities and repayments**

(a) All valid claims shall be paid from the Trust Account, as provided in Section 25-10 [240 ILCS 40/25-10], first from the proceeds realized from liquidation of and collection upon the grain assets relating to the failed licensee, as to warehouse claimants, and the equity assets as to a secured party or lien holder who has consented to the Department liquidating and collecting upon the equity asset as set forth in subsection (f) of Section 20-15 [240 ILCS 40/20-15], and the remaining equity assets, collateral, and guarantees relating to the failed licensee, as to grain dealer claimants.

(b) If the proceeds realized from liquidation of and collection upon the grain assets, equity assets, collateral, and guarantees relating to the failed licensee are insufficient to pay all valid claims as provided in Section 25-10 and subsection (a) of this Section as payment on those claims becomes due, the Director shall request from the Board sufficient funds to be transferred from the Fund to the Trust Account to pay the balance owed to claimants as determined under Section 25-10. If a request is made by the Director for a transfer of funds to the Trust Account from the Fund, the Board shall act on that request within 25 days after the date of that request. Once moneys are transferred from the Fund to the Trust Account, the Director shall pay the balance owed to claimants in accordance with Section 25-10.

(c) Net proceeds from liquidation of grain assets as set forth in subsection (a) of Section 25-10 received by the Department, to the extent not already paid to warehouse claimants, shall be prorated among the fund and all warehouse claimants who have not had their valid claims paid in full.

(1) The pro rata distribution to the Fund shall be based upon the total amount of valid claims of all warehouse claimants who have had their valid claims paid in full. The pro rata distribution to each warehouse claimant who has not had his or her valid claims paid in full shall be based upon the total amount of that claimant's original valid claims.

(2) If the net proceeds from the liquidation of grain assets as set forth in subsection (a) of Section 25-10 exceed all amounts needed to satisfy all valid claims filed by warehouse

claimants, the balance remaining shall be paid into the Trust Account or as set forth in subsection (h).

(d) Subject to subsections (c) and (h):

(1) The proceeds realized from liquidation of and collection upon the grain assets, equity assets, collateral, and guarantees relating to the failed licensee or any other assets relating to the failed licensee that are received by the Department, to the extent not already paid to claimants, shall be first used to repay the Fund for moneys transferred to the Trust Account.

(2) After the Fund is repaid in full for the moneys transferred from it to pay the valid claims in reference to a failed licensee, any remaining proceeds realized from liquidation of and collection upon the grain assets, equity assets, collateral, and guarantees relating to the failed licensee thereafter received by the Department shall be prorated to the claimants holding valid claims who have not received 100% of the amount of their valid claims based upon the unpaid amount of their valid claims.

(e) After all claimants have received 100% of the amount of their valid claims, to the extent moneys are available interest at the rate of 6% per annum shall be assessed and paid to the Fund on all moneys transferred from the Fund to the Trust Account.

(f) After the Fund is paid the interest as provided in subsection (e) of this Section, then those claims barred and disallowed under items (1) and (2) of subsection (g) of Section 25-10 shall be paid on a pro rata basis only to the extent that moneys are available.

(g) Once all claims become valid claims and have been paid in full and all interest as provided in subsection (e) of this Section is paid in full, all claims are paid in full under subsection (f), and all payments are made as required under Section 20-20(d) [240 ILCS 40/20-20], any remaining grain assets, equity assets, collateral, and guarantees, and the proceeds realized from liquidation of and collection upon the grain assets, equity assets, collateral, and guarantees relating to the failed licensee, shall be returned to the failed licensee or its assignee, or as otherwise directed by a court of competent jurisdiction.

(h) If amounts in the Fund are insufficient to pay all valid claims, the Corporation shall transfer from the Reserve Fund to the Fund amounts sufficient to satisfy the valid claims, and to the extent the amounts thus transferred are insufficient to pay all valid claims, the General Assembly shall appropriate to the Corporation amounts sufficient to satisfy the valid claims. If for any reason the General Assembly fails to make an appropriation to satisfy outstanding valid claims, this Code constitutes an irrevocable and continuing appropriation of all amounts necessary for that purpose and the irrevocable and continuing authority for and direction to the State Comptroller and to the State Treasurer to make the necessary transfers and disbursements from the revenues and funds of the State for that purpose. Subject to payments to warehouse claimants as set forth in subsection (c) of Section 25-20 [225 ILCS 40/25-20], the State shall be first reimbursed, and the Reserve Fund shall thereafter be reimbursed to the extent needed to restore the Reserve Fund to a level of \$2,000,000 of principal (not including income on the assets in the Reserve Fund) as soon as funds become available for any amounts paid under subsection (g) of this Section upon replenishment of the Fund from assessments under subsections (d), (f), and (g) of Section 5-30 [225 ILCS 40/5-30] and collection upon grain assets, equity assets, collateral, and guarantees relating to the failed licensee.



(i) The Department shall have those rights of equitable subrogation which may result from a claimant receiving from the Fund payment in full of the obligations of the failed licensee to the claimant.

#### **240 ILCS 40/30-5 Illinois Grain Insurance Corporation**

(a) The Corporation is a political subdivision, body politic, and public corporation. The governing powers of the Corporation are vested in the Board of Directors composed of the Director, who shall personally serve as president; the Attorney General or his or her designee, who shall serve as secretary; the State Treasurer or his or her designee, who shall serve as treasurer; the Director of the Department of Insurance or his or her designee; and the chief fiscal officer of the Department. Three members of the Board constitute a quorum at any meeting of the Board, and the affirmative vote of 3 members is necessary for any action taken by the Board at a meeting, except that a lesser number may adjourn a meeting from time to time. A vacancy in the membership of the Board does not impair the right of a quorum to exercise all the rights and perform all the duties of the Board and Corporation.

(b) The Corporation has the following powers, together with all powers incidental or necessary to the discharge of those powers in corporate form:

(1) To have perpetual succession by its corporate name as a corporate body.

(2) To adopt, alter, and repeal bylaws, not inconsistent with the provisions of this Code, for the regulation and conduct of its affairs and business.

(3) To adopt and make use of a corporate seal and to alter the seal at pleasure.

(4) To avail itself of the use of information, services, facilities, and employees of the State of Illinois in carrying out the provisions of this Code.

(5) To receive funds, printer registration fees, and penalties assessed by the Department under this Code.

(6) To administer the Fund by investing funds of the Corporation that the Board may determine are not presently needed for its corporate purposes.

(7) To receive funds from the Trust Account for deposit into the Fund.

(8) Upon the request of the Director, to make payment from the Fund and the Reserve Fund to the Trust Account when payment is necessary to compensate claimants in accordance with the provisions of Section 25-20 [225 ILCS 40/25-20] or for payment of refunds to licensees in accordance with the provisions of this Code.

(9) To authorize, receive, and disburse funds by electronic means.

(10) To make any inquiry and investigation deemed appropriate with regard to the failure of any licensee, including but not limited to analyzing the causes of and reasons for the failure; determining the adequacy and accuracy of Department examinations and other regulatory measures with regard to the failed licensee; and analyzing whether the handling of the liquidation and payment process by the Department was done in a manner that served the interests of those persons whose interests this Code was designed to protect.

(11) To have those powers that are necessary or appropriate for the exercise of the powers specifically conferred upon the Corporation and all incidental powers that are customary in corporations.

(12) To make payments from the Fund to the Asset Preservation Account in accordance with Section 20-20(e) of this Code [240 ILCS 40/20-20].

(c) A committee of advisors shall be created to provide technical assistance and advice and make recommendations to the Board. The advisory committee shall assist the board in understanding pertinent developments in grain production and marketing and the grain industry. The advisory committee shall be composed of one grain producer designated by the Illinois Farm Bureau; one grain producer designated by the Illinois Farmers Union; one grain producer designated by the Illinois Corn Growers Association; one grain producer designated by the Illinois Soybean Association; 2 representatives of the grain industry, designated by the Grain and Feed Association of Illinois; and 2 representatives of the lending industry, one each designated by the Illinois Bankers Association and the Community Bankers of Illinois. Members of the advisory committee shall serve terms of 2 years from the date of their designation. Members of the advisory committee shall have the right to attend all meetings of the Board and participate in Board discussions, but shall not have a vote.

#### **240 ILCS 40/30-10 Participants in the Fund**

(a) A licensee under this Code is subject to this Article and shall collect and pay assessments into the Fund as provided in Section 5-30 [240 ILCS 40/5-30].

(b) Except as provided in subsection (c) of this Section, a person engaged in the business of a grain dealer or warehouseman but not licensed under this Code shall not participate in or benefit from the Fund and its claimants shall not receive proceeds from the Fund.

(c) Participation of federal warehousemen.

(1) A federal warehouseman may participate in the Fund. If a federal warehouseman chooses to participate in the Fund, it shall to the extent permitted by federal law:

(A) pay assessments into the Fund;

(B) be deemed a licensee and a warehouseman under this Code;

(C) be subject to this Code; and

(D) execute a cooperative agreement between itself and the Department.

(2) The cooperative agreement shall, at a minimum, provide each of the following to the extent permitted by federal law:

(A) Authorization for the Department to obtain information about the federal warehouseman including, but not limited to, bushel capacity of storage space, financial stability, and examinations performed by employees of the United States Department of Agriculture.

(B) That the federal warehouseman submits itself to the jurisdiction of the Department and that it agrees to be subject to and bound by this Code and deemed a licensee under this Code.

(C) That in the event of a failure of the federal warehouseman, the Department shall have authority to seize, liquidate, and collect upon all grain assets, collateral, and guarantees relating to the federal warehouseman as in the case of any other licensee.

(D) Such other requirements as established by rule.

(3) A federal warehouseman that participates in the Fund shall at a minimum meet the licensing requirements of this Code and shall comply with all requirements of a licensee and a warehouseman under this Code to the extent permitted by federal law.

(d) A federal warehouseman that participates in the Fund or a warehouseman that desires to or has become a federal warehouseman cannot withdraw from participation in the Fund for the benefit of existing depositors until the occurrence of all of the following:

(1) Payment in full by the federal warehouseman or withdrawing warehouseman of all assessments under subsection (a) of Section 5-30.

(2) Payment in full by the federal warehouseman or withdrawing warehouseman of all assessments instituted under subsection (d) of Section 5-30 on or after an assessment determination date that occurs before the federal warehouseman or withdrawing warehouseman notifies the Department that it desires to withdraw from participation in the Fund and before the issuance by the Department of a certificate of withdrawal from the Fund.

(3) The expiration of 30 days following the later of:

(A) the date the federal warehouseman or withdrawing warehouseman has ceased providing its depositors with coverage under the Fund;

(B) the date the federal warehouseman or withdrawing warehouseman has posted at each of its locations a notice stating when it will cease providing its depositors with coverage under the Fund;

(C) notification of all potential claimants by the federal warehouseman or withdrawing warehouseman of the date on which it will cease providing its depositors with coverage under the Fund; and

(D) Completion of an audit and examination satisfactory to the Department as provided for in this Code and by rule, which is to be the Department's final examination.

(4) Obtaining releases of liability from all existing depositors or posting collateral with the Department for 270 days after withdrawing from the Fund in an amount equal to the liability to existing depositors who have not executed releases before the completion of the Department's final examination.

(5) Compliance with all notification requirements as provided for in this Code and by rule.

(6) Issuance by the Department of a certificate of withdrawal from the Fund when the federal warehouseman or withdrawing warehouseman has met all requirements for withdrawal from participation in the Fund.

(e) Before a federal warehouseman or a warehouseman that desires to or has become a federal warehouseman may withdraw from participation in the Fund, it must pay for an audit and

examination and must provide to the Department all names and addresses of potential claimants for the purposes of notification of withdrawal of participation in the Fund.

#### **240 ILCS 40/30-15 Investments of the Fund**

(a) All assessments by the Department under Section 5-30 [240 ILCS 40/5-30] shall be held by the Corporation in the Fund.

(b) Subject to applicable law, the assets of the Fund may be invested and reinvested at the discretion of the Corporation, and the income from these investments shall be deposited to the credit of the Fund and shall be available for the same purposes as all other assets of the Fund.

(c) Except as provided in Section 20-20(e) [240 ILCS 40/20-20], the assets of the Fund shall not be available for any purpose other than the payment of valid claims under this Code and the payment of refunds of amounts that the Board determines have been inappropriately paid into the Fund, and may not be transferred to any other fund, other than the Trust Account when necessary to pay valid claims under this Code or to pay refunds authorized by the Board.

#### **240 ILCS 40/30-20 Recovery of funds**

Amounts paid from the Fund in satisfaction of a valid claim constitute a debt and obligation of the licensee against whom the claim was made. On behalf of the Fund, the Director may bring suit, file a claim, or intervene in any legal proceeding to recover from a failed licensee, or upon any collateral and guarantees relating to the failed licensee, the amount of the payment made from the Fund together with interest at 6% per annum and all expenses, costs, and attorneys' fees incurred by the Department in its efforts to recover assets for the Fund in reference to the failed licensee.

#### **240 ILCS 40/30-25 Grain Insurance Reserve Fund**

Upon payment in full of all money that has been transferred to the Fund prior to June 30, 2003 from the General Revenue Fund as provided for under subsection (h) of Section 25-20 [240 ILCS 40/25-20], the State of Illinois shall remit \$2,000,000 to the Corporation to be held in a separate and discrete account to be used to the extent the assets in the Fund are insufficient to satisfy claimants as payment of their claims become due as set forth in subsection (h) of Section 25-20. The remittance of the \$2,000,000 reserve shall be made to the Corporation within 60 days of payment in full of all money transferred to the Fund as set forth above in this Section 30-25 [240 ILCS 40/30-25]. All income received by the Reserve Fund shall be deposited in the Fund within 35 days of the end of each calendar quarter.

#### **240 ILCS 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 [240 ILCS 40/5-10, 240 ILCS 40/5-15, and 240 ILCS 40/5-20] and funds under subsection (g) of Section 25-20 [240 ILCS 40/25-20] 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 [240 ILCS 40/1-15].

(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.

#### **240 ILCS 40/85-5 Prior law**

(a) A provision of this Code that is the same as a prior law shall be construed as a continuation of the prior law and not as a new or different law.

(b) A citation in another Act to an Act or to a Section of an Act that is continued in this Code shall be construed to be a citation to that continued provision in this Code.

#### **240 ILCS 40/90-5 Severability**

The provisions of this Code are severable under Section 1.31 of the Statute on Statutes [5 ILCS 70/1.31].

#### **5/7-201. Person that may issue a warehouse receipt; storage under bond**

(a) A warehouse receipt may be issued by any warehouse.

(b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

#### **§ 5/7-202. Form of warehouse receipt; effect of omission.**

(a) A warehouse receipt need not be in any particular form.

(b) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:

(1) a statement of the location of the warehouse facility where the goods are stored;

(2) the date of issue of the receipt;

- (3) the unique identification code of the receipt;
  - (4) a statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;
  - (5) the rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;
  - (6) a description of the goods or the packages containing them;
  - (7) the signature of the warehouse or its agent;
  - (8) if the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, a statement of the fact of that ownership; and
  - (9) a statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.
- (c) A warehouse may insert in its receipt any terms that are not contrary to the Uniform Commercial Code and do not impair its obligation of delivery under Section 7-403 or its duty of care under Section 7-204. Any contrary provision is ineffective.

**5/7-203. Liability for non-receipt or misdescription**

A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

- (1) the document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by “contents, condition, and quality unknown”, “said to contain”, or words of similar import, if the indication is true; or
- (2) the party or purchaser otherwise has notice of the nonreceipt or misdescription.

**§ 5/7-204. Duty of care; contractual limitation of warehouse's liability.**

(a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse's liability may be increased on part or all of the goods covered by the storage agreement or the warehouse

receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

(d) (Blank).

**§ 5/7-205. Title under warehouse receipt defeated in certain cases.**

A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

**§ 5/7-206. Termination of storage at warehouse's option.**

(a) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than 30 days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to Section 7-210.

(b) If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection (a) and Section 7-210, the warehouse may specify in the notice given under subsection (a) any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(c) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

(d) A warehouse shall deliver the goods to any person entitled to them under this Article upon due demand made at any time before sale or other disposition under this Section.

(e) A warehouse may satisfy its lien from the proceeds of any sale or disposition under this Section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

**§ 5/7-207. Goods must be kept separate; fungible goods.**

(a) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.

(b) If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts

the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

**5/7-208. Altered warehouse receipts**

If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good-faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

**§ 5/7-209. Lien of warehouse.**

(a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (a), such as for money advanced and interest. The security interest is governed by Article 9.1

(c) A warehouse's lien for charges and expenses under subsection (a) or a security interest under subsection (b) is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good-faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

(1) deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) actual or apparent authority to ship, store, or sell;

(B) power to obtain delivery under Section 7-403; or

(C) power of disposition under Sections 2-403, 2A-304(2), 2A-305(2), 9-320, or 9-321(c) or other statute or rule of law; or

(2) acquiesce in the procurement by the bailor or its nominee of any document.

(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (a) is also effective against all persons if the depositor was the legal



possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

**§ 5/7-210. Enforcement of warehouse's lien.**

(a) Except as otherwise provided in subsection (b), a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefore, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:

(1) All persons known to claim an interest in the goods must be notified.

(2) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(3) The sale must conform to the terms of the notification.

(4) The sale must be held at the nearest suitable place to where the goods are held or stored.

(5) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not fewer than six conspicuous places in the neighborhood of the proposed sale.

(c) Before any sale pursuant to this Section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this Section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this Article.

(d) A warehouse may buy at any public sale held pursuant to this Section.

(e) A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this Section.

(f) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this Section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.

(g) The rights provided by this Section are in addition to all other rights allowed by law to a creditor against a debtor.

(h) If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with subsection (a) or (b).

(i) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this Section and, in case of willful violation, is liable for conversion.