

## GRAIN DEPOSITORS AND SELLERS INDEMNIFICATION

### Footnotes

This chapter not enacted as a part of this title;  
transferred from chapter 543A in Code 1993

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

1. "*Board*" means the Iowa grain indemnity fund board created in section 203D.4.
2. "*Department*" means the department of agriculture and land stewardship.
3. "*Depositor*" means a person who deposits grain in a state warehouse for storage, handling, or shipment, or who is the owner or legal holder of an outstanding warehouse receipt issued by a state warehouse, or who is lawfully entitled to possession of the grain.
4. "*Fund*" means the grain depositors and sellers indemnity fund created in section 203D.3.
5. "*Grain*" means wheat, corn, oats, barley, rye, flaxseed, field peas, soybeans, grain sorghums, spelt, and similar agricultural products, as defined in the Grain Standards Act, but does not include agricultural products other than bulk grain.
6. "*Licensed grain dealer*" means a person who has obtained a license to engage in the business of a grain dealer pursuant to section 203.3.
7. "*Licensed warehouse operator*" means the same as in section 203C.1.
8. "*Loss*" means the amount of a claim held by a seller or depositor against a grain dealer or warehouse operator which has not been recovered through other legal and equitable remedies including the liquidation of assets.
9. "*Seller*" means a person who sells grain which the person has produced or caused to be produced to a licensed grain dealer, but excludes a person who executes a credit sale contract as a seller. However, "*seller*" does not include a person licensed as a grain dealer in any jurisdiction who sells grain to a licensed grain dealer.

86 Acts, ch 1152, § 31

C87, § 543A.1

87 Acts, ch 147, §810; 89 Acts, ch 143, §901, 902

C93, § 203D.1

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

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

86 Acts, ch 1152, § 32

C87, § 543A.2

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

1. The grain depositors and sellers indemnity fund is created in the state treasury as a separate account. The general fund of the state is not liable for claims presented against the grain depositors and sellers indemnity fund under section 203D.6. The fund consists of a per-bushel fee on purchased grain remitted by licensed grain dealers and licensed warehouse operators; an annual fee charged to and remitted by licensed grain dealers and licensed warehouse operators; delinquency penalties; sums collected by the department by legal action on behalf of the fund; and interest, property, or securities acquired through the use of moneys in the fund. The fiscal year of the fund begins July 1. Fiscal quarters of the fund begin July 1, October 1, January 1, and April 1. The finances of the fund shall be calculated on an accrual basis in accordance with generally accepted accounting principles. The moneys collected under this section and deposited in the fund shall be used exclusively to indemnify depositors and sellers as provided in section 203D.6 and to pay the administrative costs of this chapter.

2. A per-bushel fee shall be assessed on all purchased grain. As used in this chapter, "*purchased grain*" means grain which is entered in the company owned paid position as evidenced on the grain dealer's daily position record. However, if the grain dealer provides documentation regarding the transaction satisfactory to the department, the following transactions shall be excluded from the fee:

- a. Grain purchased from the United States government or any of its subdivisions or agencies.
- b. Grain purchased from a person licensed as a grain dealer in any jurisdiction.
- c. Grain purchased under a credit sale contract entered into on or before the date of delivery.

The grain dealer shall forward the per-bushel fee to the department on a quarterly basis in the manner and using the forms prescribed by the department. A licensee is delinquent if the licensee fails to submit the full fee or quarterly forms when due, or if upon examination, an underpayment of the fee is found by the department. The grain dealer is subject to a penalty of ten dollars for each day the grain dealer is delinquent or an amount equal to the amount of the deficiency, whichever is less. However, a licensee who fails to submit the full fee or quarterly forms when due, is subject to a minimum payment of ten dollars. The department may establish and apply a margin of error in determining whether a grain dealer is delinquent. If the per-bushel fee and any penalty due have not been received by the department within thirty days after notice by the department, the grain dealer's license shall be suspended. The per-bushel fee shall be collected only once on each bushel of grain.

3. a. All licensed grain dealers and licensed warehouse operators shall annually remit a fee to be deposited into the fund which is determined as follows:

- (1) For class 1 grain dealers, five hundred dollars.
- (2) For class 2 grain dealers, two hundred fifty dollars.
- (3) For warehouse operators or participating federally licensed grain warehouses:
  - (a) For intended storage of bulk grain in any quantity less than twenty thousand bushels, forty-two dollars plus seven dollars for each two thousand bushels or fraction thereof in excess of twelve thousand bushels.
  - (b) For intended storage of bulk grain in any quantity not less than twenty thousand bushels and not more

than fifty thousand bushels, seventy dollars plus four and a half dollars for each three thousand bushels or fraction thereof in excess of twenty thousand bushels.

(c) For intended storage of bulk grain in any quantity not less than fifty thousand bushels and not more than seventy thousand bushels, one hundred fifteen dollars plus four and a half dollars for each four thousand bushels or fraction thereof in excess of fifty thousand bushels.

(d) For intended storage of bulk grain in any quantity not less than seventy thousand bushels, one hundred thirty-seven and a half dollars plus two and three-quarters dollars for each five thousand bushels or fraction thereof in excess of seventy thousand bushels.

*b.* Payment of the required amount shall be made before the grain dealer's or warehouse operator's license is renewed.

4. Payment of the full annual fee shall be made before a grain dealer's or warehouse operator's license is issued or renewed. If a licensee amends its license during the fiscal year for which an annual fee was paid, and the licensing entity remains the same, the licensee is required to pay a further fee only if the amendment changes the licensee's class from class 2 to class 1.

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

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

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

86 Acts, ch 1152, § 33

C87, § 543A.3

87 Acts, ch 147, §1215; 88 Acts, ch 1148, §3; 89 Acts, ch 143, §903905

C93, § 203D.3

## **Footnotes**

See 86 Acts, ch 1246, § 501(3) for permitted uses of interest

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

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

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

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

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

86 Acts, ch 1152, § 34

C87, § 543A.4

87 Acts, ch 147, §16; 89 Acts, ch 143, §906; 90 Acts, ch 1256, § 49

C93, § 203D.4

## **Footnotes**

Confirmation, see § 2.32

## **203D.5 Adjustments to fee.**

1. The board shall review annually the debits of and credits to the grain depositors and sellers indemnity fund created in section 203D.3 and shall make any adjustments in the per-bushel fee required under section 203D.3, subsection 2, and the dealer-warehouse fee required under section 203D.3, subsection 3, that are necessary to maintain the fund within the limits established under this section. Not later than the first day of

May of each year, the board shall determine the proposed amount of the per-bushel fee based on the expected volume of grain on which the fee is to be collected and that is likely to be handled under this chapter, and shall also determine any adjustment to the dealer-warehouse fee. The board shall make any changes in the previous year's fees in accordance with chapter 17A. Changes in the fees shall become effective on the following first day of July. The per-bushel fee shall not exceed one-quarter cent per bushel on all purchased grain as defined in section 203D.3. Until the per-bushel fee is adjusted or waived as provided in this section, the per-bushel fee is one-quarter cent on all purchased grain.

2. If, at the end of any three-month period, the assets of the fund exceed six million dollars, less any encumbered balances or pending or unsettled claims, the per-bushel fee required under section 203D.3, subsection 2, and the dealer-warehouse fee required under section 203D.3, subsection 3, shall be waived and the fees are not assessable or owing. The board shall reinstate the fees if the assets of the fund, less any unencumbered balances or pending or unsettled claims, are three million dollars or less.

86 Acts, ch 1152, § 35

C87, § 543A.5

87 Acts, ch 147, §17; 88 Acts, ch 1148, §4; 89 Acts, ch 143, §907

C93, § 203D.5

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

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

92 Acts, ch 1239, §78

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

1. *Persons who may file claims time of filing.* A depositor or seller may file a claim with the department for indemnification of a loss from the grain depositors and sellers indemnity fund. A claim shall be filed in the manner prescribed by the board. A claim shall not be filed prior to the incurrence date, which is the earlier of the following:

- a. The revocation, termination, or cancellation of the license of the grain dealer or warehouse operator.
- b. The filing of a petition in bankruptcy by a grain dealer or warehouse operator.

To be timely, a claim shall be filed within one hundred twenty days of the incurrence date.

2. *Notice.* The department shall cause notice of the opening of the claim period to be published once each week for two consecutive weeks in a newspaper of general circulation in each of the counties in which the licensee maintains a business location and in a newspaper of general circulation within the state. The notice shall state the name and address of the licensee and the claim incurrence date. The notice shall also state that any claims against the fund on account of the licensee shall be sent by ordinary mail to the department within one hundred twenty days after the incurrence date, and that the failure to make a timely claim relieves the fund from liability to the claimant. This notice may be incorporated by the department with a notice required by section 203.12 or 203C.14.

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

a. That the claim was timely filed.

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

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

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

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

4. *Value of loss warehouse claims.* The board shall determine the dollar value of a claim incurred by a depositor holding a warehouse receipt or a scale weight ticket for grain that the depositor delivered for storage to the licensed warehouse operator. If the department has been appointed by the court as receiver of the grain assets of the warehouse operator, the value shall be presumed to be as stated in the plan of disposition approved by the court. If the warehouse operator has filed a petition in bankruptcy, the value shall be presumed to be based upon the fair market price, free-on-board from the site of the warehouse operator, being paid to producers for grain by the grain terminal operator nearest the warehouse operator on the date the petition was filed. If there is neither a department receivership nor a bankruptcy filing, the value shall be presumed to be based upon the fair market price, free-on-board from the site of the warehouse operator, being paid to producers for grain by the grain terminal operator nearest the warehouse operator on the date of license revocation or cancellation. If more than one date applies to a claim, the board may choose between the two. However, the board may accept an alternative valuation of a claim upon a showing of just cause by the depositor or department. All depositors filing claims under this section shall be bound by the value determined by the board. The value of the loss is the outstanding balance on the validated claim at time of payment from the fund.

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

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

7. *Payment of claims.* Upon a determination that the claim is eligible for payment, the board shall provide for payment of ninety percent of the loss, as determined under subsection 4, but not more than one hundred fifty thousand dollars per claimant. If at any time the board determines that there are insufficient funds to make

payment of all claims, the board may order that payment be deferred on specified claims. The department, upon the board's instruction, shall hold those claims for payment until the board determines that the fund again contains sufficient assets.

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

86 Acts, ch 1152, § 36

C87, § 543A.6

87 Acts, ch 147, §18, 19; 89 Acts, ch 143, §908

C93, § 203D.6

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

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

86 Acts, ch 1152, § 37

C87, § 543A.7

C93, § 203D.7