

CHAPTER 91
LICENSED GRAIN DEALERS
[Prior to 7/30/86, Commerce Commission [250], Ch 13]
[Prior to 7/27/88, 21—Ch 61]

21—91.1(203) Application of rules. These rules are subject to such changes and modifications as the department of agriculture and land stewardship may from time to time deem advisable. These rules are subject to such waivers or variances as may be considered just and reasonable in individual cases, subject to the provisions of 21—Chapter 8.

This rule is intended to implement Iowa Code section 203.2.

21—91.2(203) Definitions. For this chapter, the following definitions apply:

“*Bureau*” means the grain warehouse bureau of the department of agriculture and land stewardship.

“*Department*” means the Iowa department of agriculture and land stewardship.

“*Licensee*” means a licensed grain dealer.

“*Person*” means the same as defined in Iowa Code section 4.1.

“*Provider*” means a person approved by the department to maintain a secure electronic central filing system of electronic grain contract records.

“*Provider agreement*” means an agreement regarding electronic grain contracts which is entered into between the department and a provider.

“*Received*” means the earliest of the following:

1. The date a state warehouse examiner acknowledges receipt.
2. The date stamped “received” in the grain warehouse bureau.
3. The date postmarked, if the item is properly addressed, to the Grain Warehouse Bureau, Iowa Department of Agriculture and Land Stewardship, Henry A. Wallace Building, Des Moines, Iowa 50319.

“*USDA*” means the United States Department of Agriculture and its divisions and agencies, including, but not limited to, the Farm Service Agency.

“*USDA Provider Agreement*” means the agreement entered into between the USDA and a provider and which is printed on USDA Form WA-490 and any addenda thereto.

“*User agreement*” means an agreement regarding electronic grain contracts which is entered into between a provider and a licensee.

[ARC 7553B, IAB 2/11/09, effective 3/18/09]

21—91.3(203) Application for a grain dealer license. Application for a grain dealer license (Iowa Code chapter 203) shall be made to the bureau on forms prescribed for that purpose by the bureau. Forms are available from the bureau upon request. All information required by Iowa Code chapter 203 shall be furnished. The bureau may require the applicant to file updated information if the information on the application is no longer current. The background information on a person applying for the license and on the managers must be on file before a license is issued.

This rule is intended to implement Iowa Code sections 203.2 and 203.3.

21—91.4(203) Grain dealer license not transferable. A grain dealer license is not transferable between different legal entities. A grain dealer license may be amended to cover a name change of the same legal entity. The licensee shall give the bureau notice of a proposed name change. The bureau shall confirm the name change with the secretary of state or other governmental agency prior to amending the license.

This rule is intended to implement Iowa Code section 203.7.

21—91.5(203) Posting of license. The grain dealer license certificate shall be posted at all times in a conspicuous location in the office or place of business of the grain dealer. A license certificate shall be posted in each location where grain is purchased or delivered.

This rule is intended to implement Iowa Code section 203.7.

[ARC 7553B, IAB 2/11/09, effective 3/18/09]

21—91.6(203) Surrender of license. The grain dealer license and all unused credit-sale contracts shall be forwarded to the bureau immediately upon cancellation, termination, or revocation of such license. A grain dealer's letter requesting cancellation of the grain dealer license shall also state whether or not there are any unpaid obligations.

This rule is intended to implement Iowa Code sections 203.2, 203.3 and 203.7.

21—91.7(203) Renewal, termination and reinstatement of license—payment of license fee.

91.7(1) The bureau shall send to each licensed grain dealer written notice that the application and the license fee for annual renewal of the grain dealer license shall be received in accordance with Iowa Code section 203.5. If the bureau does not receive the application and fee by the due date, the license shall be terminated. A license that has been terminated may be reinstated within 30 days of the date of termination conditioned on the applicant's meeting all statutory requirements and the bureau's receipt of the following within 30 days of the termination:

- a. Completed application;
- b. License fee; and
- c. The reinstatement fee prescribed in Iowa Code section 203.6.

91.7(2) Fees for license periods of less than one year shall be prorated on a month-to-month basis. Fees for license periods of less than one year shall be applicable only under the following circumstances:

- a. When an application for a new license is filed; or
- b. When the fiscal year end of a license holder is changed.

This rule is intended to implement Iowa Code sections 203.5 and 203.6.

21—91.8(203) Financial statements.

91.8(1) *New license applicants.* To obtain a grain dealer license, an applicant shall submit a financial statement that shall:

- a. Be prepared within three months from the date of filing and comply with subrule 91.8(2), paragraph "a" or "b"; or
- b. Be prepared as of the applicant's usual fiscal year and comply with subrule 91.8(2), paragraph "a" or "b," and the applicant has continuously been in business for one year or more and the applicant has submitted any additional financial information required by the bureau; or
- c. Be a forecasted financial statement prepared by a certified public accountant licensed in this state and the applicant is a new business entity that is in the process of transferring funds into the business entity. An applicant who files a forecasted financial statement pursuant to this paragraph shall file a financial statement which complies with subrule 91.8(2), paragraph "a" or "b," within one month after the date the license is issued by the bureau.

91.8(2) *Financial statement requirements.* Financial statements filed pursuant to subrules 91.8(1), 91.8(3), 91.8(4) and 91.8(11) shall be prepared in accordance with accounting principles generally accepted in the United States and shall comply with either of the following:

- a. Be accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. The bureau may accept a qualification in an opinion that is unavoidable by any audit procedure. Opinions that are qualified because of the limited audit procedure or because the scope of an audit is limited shall not be accepted by the bureau; or
- b. Be accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant.

91.8(3) *Sole proprietorship financial statements.* An individual licensed as a sole proprietorship shall file a financial statement which conforms with the provisions of subrules 91.8(2) and 91.8(4) on the proprietorship business. The individual shall also file a personal statement of financial condition which conforms with the provisions of subrules 91.8(2) and 91.8(4). The personal statement of financial condition shall also disclose the historical cost basis for assets as provided in Iowa Code section 203.3.

91.8(4) *Filing date of annual statements.* Every licensee shall prepare financial statements at the close of the licensee's designated fiscal year and shall file the statements and the bureau's financial information form with the bureau not later than three months thereafter. These financial statements

shall be prepared in accordance with generally accepted accounting principles and shall consist, at a minimum, of a balance sheet, statement of income, statement of cash flow, and accompanying notes to the financial statements. The bureau shall notify every licensee during the month after the close of the licensee's fiscal year that the licensee's financial statements are due three months from the close of the licensee's fiscal year.

91.8(5) *Additional disclosures required in the financial statements.* Unless the following information is disclosed in the fiscal year end financial statements, the licensee's certified public accountant shall file with the financial statements a separate letter disclosing the information:

- a. A reconciliation of differences in the grain obligations as shown in the financial statement and the daily position record.
- b. Amount and kind of grain on collateral warehouse receipts.
- c. Amount and kind of company-owned grain which is being stored in unlicensed facilities or which has been transferred to another warehouse.
- d. Bushel and dollar amounts of all outstanding grain payables, including a breakdown of the bushels and dollars of each type of credit-sale contract.
- e. Gross grain sales for the fiscal year.
- f. Gross nongrain sales for the fiscal year.
- g. Cost of all goods sold for the fiscal year.
- h. Depreciation expense for the fiscal year.
- i. Interest expense for the fiscal year.
- j. Number of bushels of grain purchased under each grain dealer's license. For purposes of this paragraph, "purchases" shall mean all grain to which the grain dealer has obtained title during the grain dealer's fiscal year.

91.8(6) *Filing extension.*

a. An extension of one month may be granted by the bureau chief for the filing of financial statements upon receipt of the following:

(1) A letter from the grain dealer's certified public accountant stating the reason for filing the extension request and that work has been done on preparing the financial statements.

(2) An affidavit from the grain dealer stating that the grain dealer meets the financial responsibility requirements of Iowa Code sections 203.3 and 203.15, or that the licensee shall file additional bond in an amount to cover any net worth or current ratio deficiency as provided in Iowa Code sections 203.3 and 203.15, based upon the licensee's certified public accountant's best estimate of the licensee's financial position.

b. Grain dealers who file false affidavits under this rule may be prosecuted under Iowa Code section 203.11. Subrule 91.8(6) does not apply to the filing of financial statements required under the provisions of subrules 91.8(10), 91.8(11) and 91.8(12).

91.8(7) *Asset valuation.* The licensee may submit to the bureau a written request for asset valuation. The written request shall be accompanied by the appraisal and shall have been prepared by a licensed appraiser in this state and shall list the appraiser's credentials. Before an appraisal will be accepted by the bureau, the licensee shall show a positive net worth. All appraisals are subject to approval by the bureau chief. The bureau chief shall notify the licensee within five working days if the appraisal is unacceptable. Any approved asset valuation may be used in any financial statements prepared by or for the licensee in accordance with subrule 91.8(2).

91.8(8) *Appraisals.* Competent appraisals on file with the bureau shall be valid for use in determining asset value for a maximum period of three years. Thereafter, a new appraisal for asset valuation shall be required and shall be used for a like period of time. In the event the certified public accountant expresses doubt as to the licensee's ability to continue as a going concern, the bureau shall not allow an appraisal to be used to meet net worth requirements. The bureau shall not allow an appraisal to be used to determine the percentage of total liabilities to total assets as it relates to subrule 91.17(2), paragraph "e," concerning the suspension of a licensee's authorization to use credit-sale contracts. All assets included in the appraisal shall be depreciated by the bureau using the following schedule:

- a. Buildings and attached equipment—15 years.

- b. Rolling stock (trucks)—5 years.
- c. Equipment—5 years.

91.8(9) Assets allowed in meeting financial requirements.

a. *Corporations, limited liability companies and partnerships.* When the bureau determines the net worth, current assets to current liabilities ratio and total debts to total assets ratio requirements for corporations, limited liability companies and partnerships, related party assets that require financial disclosure per financial accounting standards shall be disallowed. These assets shall be excluded unless the licensee can show the department sufficient documentation to explain why these assets should be allowed.

b. *Sole proprietors.* When the bureau determines the net worth and current assets to current liabilities ratio requirements for sole proprietors, related party assets shall be excluded unless the licensee can show the department sufficient documentation to explain why these assets should be included. Only that part of the value of an asset which is subject to execution shall be allowed by the bureau in determining net worth and current assets to current liabilities ratio requirements. When a liability associated with an exempt asset (whether the asset is included or not) exceeds the original cost (or fair market value after an appraisal approved by the bureau), such excess shall be shown as a liability with appropriate footnotes to the financial statement. An applicant or a licensed warehouse operator shall complete the bureau's financial information form regarding this matter and submit the form with the financial statements.

91.8(10) Net worth and current ratio deficiency monthly financial statements. Every licensee who has a net worth or current ratio deficiency and who has filed additional bond shall file monthly financial statements with the bureau by the end of the next month until the licensee's net worth or current ratio meets the requirements of Iowa Code section 203.3 for a minimum of three consecutive months. These financial statements shall contain a minimum of a balance sheet and statement of income and shall be prepared in accordance with generally accepted accounting principles.

91.8(11) Good cause financial statement. The bureau chief may require a licensee to file a financial statement which complies with paragraph 91.8(2) "b" within 45 days of notification by the bureau if one of the following conditions exists:

- a. Payment is made by use of a check or electronic funds transfer and a financial institution refuses payment because of insufficient moneys in the licensee's account;
- b. Evidence of licensee requesting or delaying payment for grain without the use of a credit-sale contract for grain;
- c. Other documented evidence which indicates that the licensee's financial condition has deteriorated since the filing of the licensee's last financial statement;
- d. A high risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the grain dealer based on a statistical model provided in Iowa Code section 203.22; or
- e. Record-keeping violations.

91.8(12) Additional information. The bureau chief may require an applicant or licensee to provide the bureau with any other information reasonably related to the business of a grain dealer and work papers supporting the financial statements.

91.8(13) Penalty for failure to timely supply financial statements. The department may suspend the license of any grain dealer who fails to provide the required financial statements within the time limits prescribed by these rules.

This rule is intended to implement Iowa Code sections 203.1, 203.2, 203.3, 203.6, and 203.15.

21—91.9(203) Bonds and irrevocable letters of credit. Bonds filed with the bureau shall be on forms prescribed by the bureau. Irrevocable letters of credit issued to the bureau shall be on the form prescribed by the bureau. Bonds and irrevocable letters of credit shall be written so as to provide funds to protect producers who have sold grain to the licensed grain dealer.

91.9(1) Deficiency bond or irrevocable letter of credit. When the net worth or current ratio of a licensee is less than that required by Iowa Code section 203.3, the grain dealer may file a bond or an irrevocable letter of credit with the bureau to cover the deficiency as provided by and within the time

prescribed in Iowa Code section 203.3. Bonds filed with the bureau shall be on the form prescribed and furnished by the bureau. Irrevocable letters of credit shall be on the form prescribed by the bureau. Bonds or irrevocable letters of credit shall be written so as to provide a source of funds to protect producers who have sold grain to the licensed grain dealer. Unless the licensee files the bond or irrevocable letter of credit within the prescribed time period, the grain dealer license shall be suspended. The licensee's failure to provide the bond or irrevocable letter of credit within ten days of suspension shall cause the license to be revoked.

91.9(2) *Time period to correct deficiency.* If a grain dealer has current assets equal to less than 50 percent of current liabilities and files a deficiency bond or irrevocable letter of credit as provided in Iowa Code section 203.3(5) within the 30-day period after the notice by the bureau, the grain dealer shall correct the deficiency other than by the use of a deficiency bond or irrevocable letter of credit within 30 days after the filing of the deficiency bond or irrevocable letter of credit. Failure to cure the deficiency other than by the use of a deficiency bond or irrevocable letter of credit within the 30 days shall cause the license to be suspended.

91.9(3) *Replacement bond or irrevocable letter of credit.* The bureau shall send written notice to the licensee notifying the licensee that the bond or irrevocable letter of credit shall be canceled on the date specified by the surety or issuer in its notice to the bureau. The bureau shall send a written notice and information and forms for filing the required replacement bond or irrevocable letter of credit. Replacement bond or irrevocable letter of credit shall be on file with the bureau prior to the time of cancellation of the bond or irrevocable letter of credit. The department shall suspend any grain dealer license from the time the grain dealer's bond or irrevocable letter of credit is canceled until the replacement bond or irrevocable letter of credit is on file with the department. Unless the bond or irrevocable letter of credit is no longer necessary, the department shall revoke the grain dealer's license if a replacement bond or irrevocable letter of credit is not received from the licensee within 30 days of suspension of the license.

91.9(4) *Cancellation of the bond or irrevocable letter of credit.* The issuer shall send a cancellation notice to the bureau by certified mail. The notice shall be in accordance with the provisions stated in the bond or irrevocable letter of credit. The time period for notice of cancellation stated in the bond or irrevocable letter of credit commences on the date when the bureau receives the notice. The bureau shall send written acknowledgment of notice of the cancellation of the bond or irrevocable letter of credit to the issuer and the principal.

This rule is intended to implement Iowa Code sections 203.3 and 203.4.

21—91.10(203) Payment. Payment for grain shall be made as provided by Iowa Code section 203.8. When a dealer has failed to make payment on demand of the seller and the failure has come to the attention of the bureau, the bureau chief shall request the dealer to make payment within 24 hours. The request may be made verbally and confirmed by ordinary mail. The bureau chief may require the dealer to make payment with a cashier's check or money order if there is any evidence of financial instability. Absent a dispute between buyer and seller, the license may be suspended if the dealer fails to make timely payment as requested by the bureau chief. An insufficient funds check or failed electronic funds transfer shall not constitute payment under this rule.

This rule is intended to implement Iowa Code sections 203.2 and 203.8.

21—91.11(203) Books and records.

91.11(1) *General records.* A grain dealer shall maintain complete and sufficient records to show all purchases, sales, and payments for grain purchased.

91.11(2) *Daily position record.* Unless otherwise approved by the bureau, every grain dealer shall keep and maintain on a daily basis a grain position record on a form approved by the bureau. The daily position record shall summarize one month's activity in a format approved by the bureau. The daily position record shall indicate at least the increases and decreases and ending balances on a daily basis for unpaid company-owned. The daily position record shall reflect the obligations in the appropriate columns.

A separate daily position record shall be maintained for each kind and class of grain and each type of commodity that is identity-preserved. All daily entries to the daily position record shall reflect transactions made through that day's close of business unless another time of day is elected by the licensee and applied by the licensee on a consistent basis.

91.11(3) Inspection. For the purpose of inspection, the hours of 8 a.m. to 5 p.m., except Saturday, Sunday and holidays, shall be considered as ordinary business hours. All financial records, grain records and payment records shall be available for inspection by the bureau during ordinary business hours, and any other time specified by the bureau in writing. All records shall be made available within the state of Iowa upon request. Unless the bureau has been notified that the records would not be available for inspection, an examination fee may be assessed to the grain dealer if an examiner arrives at the licensee's location and the records are not available for inspection.

91.11(4) Settlement sheets. Unless the grain dealer utilizes a computer system which sequentially numbers settlement sheets as generated, every grain dealer shall have prenumbered settlement sheets. All settlement sheets shall show, at a minimum, the following:

- a. The grain dealer's name and address;
- b. Seller's name and address;
- c. Date of deliveries;
- d. Scale ticket numbers;
- e. Amount, kind and grade factors of the grain; and
- f. Method of settlement:
 - (1) If priced, the price per bushel, the quantity of grain priced and the date of pricing.
 - (2) If paid for, the date, price per bushel, the quantity of grain paid for, the amount of payment and check number or electronic funds transfer number.
 - (3) If credit-sale contract, the contract type, date and number and the quantity of grain transferred to the contract.
 - (4) If warehouse receipt, the receipt number, date and quantity of grain transferred to the receipt.
 - (5) If removed from the warehouse, the delivery document numbers, dates and amounts of the shipments.

Copies of all settlement sheets shall be maintained in alphabetical or numerical order by the dealer as part of the records, unless the dealer uses a computer system approved in writing by the bureau which sequentially numbers and prints settlement sheets and the settlement sheets can be retrieved on and reprinted by the computer system. A copy of the settlement sheet shall be given to the seller upon demand, upon payment or upon the issuance of a credit-sale contract. Any settlement sheet used in the pricing of grain for the purpose of sale to the grain dealer shall have the price shown on all copies of such settlement sheet. Deliveries and settlement transactions shall be posted to the settlement sheet on a daily basis unless a computer system is utilized which can generate a scale ticket summary sheet for each depositor.

91.11(5) Scale tickets. If the dealer has a scale or regular access to a scale which can be used for weighing grain, the dealer shall use prenumbered scale tickets showing, at a minimum, the following:

- a. Date.
- b. The dealer's name and location.
- c. Seller's name.
- d. Gross weight, tare weight, and delivered weight.
- e. Type of product or commodity.
- f. An indication of whether the commodity is being received or loaded out.

One copy of each ticket shall be maintained in numerical order, unless the grain dealer uses a computer system approved in writing by the warehouse bureau which sequentially numbers and prints scale tickets and the scale ticket information and can be retrieved on and reprinted by the computer system. However, a ticket printed at the time of weighing shall be the document of record. All copies of reprinted scale tickets shall be marked "duplicate." All scale ticket forms in the possession of a grain dealer shall have been permanently and consecutively numbered at the time of printing. The licensee shall be responsible for providing a list of all scale tickets used at each location. Any scale ticket used

in pricing grain for the purpose of sale to the grain dealer shall have the price shown on all copies of such ticket if priced at the time of delivery. If the dealer does not have a scale or regular access to a scale and purchases grain by having the grain custom weighed at various locations or at destination, the dealer shall maintain one copy of the scale ticket in daily order as part of the grain records.

91.11(6) Direct shipment records. When grain is delivered by a producer or the producer's agent to a third party in accordance with an agreement between the producer and the grain dealer and the grain is weighed at the destination or is custom weighed, the following shall apply:

a. The grain dealer shall maintain one copy of every direct shipment scale ticket in daily order as part of the grain records. These scale tickets shall have the name of the producer recorded on them.

b. The direct shipment is to be considered an obligation of the grain dealer on the date stated on the destination scale ticket, and the direct shipment shall be reflected in the daily position record on the date when the grain dealer is able to obtain the load weights.

c. If the destination weights are transferred to the grain dealer's scale tickets, the tickets shall contain a minimum of the producer's name and the destination scale ticket number and weights.

d. A grain dealer who also holds a warehouse operator license may maintain a separate daily position record for each kind of direct shipment grain. The grain dealer shall notify the bureau in writing if the grain dealer elects to maintain such a daily position record.

91.11(7) Credit-sale contracts. One copy of every outstanding credit-sale contract shall be maintained in numerical order as part of the records.

a. Required content. A credit-sale contract shall contain a minimum of the following:

- (1) Buyer's name and location;
- (2) Seller's name and address;
- (3) The conditions of delivery;
- (4) Amount and kind of grain delivered;
- (5) Price per bushel or basis of value;
- (6) The date payment is to be made;
- (7) The duration of the credit-sale contract, which shall not exceed 12 months from the date the contract is executed;
- (8) The wording "Credit-Sale Contract," which shall appear in the title or subtitle of the contract;
- (9) Consecutive numbering at the time of printing; and
- (10) Signature and date by both parties.

b. Notice of credit-sale contract acknowledgment. A licensed grain dealer who purchases grain by credit-sale contract shall obtain the seller's signature on a notice of credit-sale contract acknowledgment, which shall be in a form prescribed by the bureau. The notice shall state that the seller has received notice that the grain is not protected by the grain depositors and sellers indemnity fund. A copy of the notice shall be attached to the grain dealer's copy and seller's copy of the credit-sale contract. Failure of the grain dealer to obtain the acknowledgment of the seller is a violation of Iowa Code section 203.15 and may result in license suspension or revocation under Iowa Code section 203.10. Failure of the grain dealer to obtain the acknowledgment of the seller does not alter the fact that the seller shall be unable to recover from the grain depositors and sellers indemnity fund any loss incurred under the credit-sale contract.

c. In lieu of obtaining the separate credit-sale acknowledgment form, the grain dealer may add the following wording to the credit-sale contract directly above the signature of the buyer and seller in bold size print of equal size or larger than the body of the contract: "By their signature hereto, the undersigned aver that the seller has been orally advised by the buyer that this transaction is not covered by the grain depositors and sellers indemnity fund."

d. If someone other than the seller indicated on a credit-sale contract signs the contract, the grain dealer shall be able to provide the bureau with proof of business relationship between the indicated seller and the person who signed the contract. This document shall be signed by the person who produced the grain or caused the grain to be produced. The document is required for but not limited to contracts signed by the following:

- (1) Landlord or tenant.

- (2) Parent or child.
- (3) Spouse.
- (4) Siblings.
- (5) Farm managers (may use a copy of the management agreement).
- (6) Executors, trustees, administrators, etc. (may use a copy of court document of appointment).
- (7) Corporate officers (other than the president), partners and members or officers of other legal entities.

If a contract is issued to two or more sellers, all must sign the contract.

e. A licensee's purchases of grain by credit-sale contract from a person licensed as a grain dealer in any jurisdiction are not subject to the requirements of 91.11(7). Any grain purchased from a grain dealer is not eligible for recovery from the grain depositors and sellers indemnity fund.

91.11(8) Cancellation procedures for credit-sale contracts.

a. One copy of the canceled credit-sale contract shall be maintained in separate numerical order from the outstanding credit-sale contracts as part of the records. The grain dealer shall mark the face of the credit-sale contract with the word "Canceled," the check number, and date of payment. Credit-sale contracts may only be marked "void" if errors are made on the day of issue; otherwise they are to be considered "canceled."

b. Partial payments. Advances and partial payments shall be noted on the face of the outstanding credit-sale contracts or by other method of documentation that shows the net balance and is approved by the bureau. The following information shall be noted:

- (1) Amount of bushels paid;
- (2) Date paid;
- (3) Check number; and
- (4) Remaining balance of the contract.

91.11(9) Retention of records. All records shall be kept for a period of not less than six years. Such records shall be kept for the stated time period even if a license has been canceled.

This rule is intended to implement Iowa Code sections 203.2, 203.9, 203.15, 203D.1, 203D.3 and 203D.6.

21—91.12(203) Assignment of contracts. Upon cancellation, termination, suspension or revocation of the license, credit-sale contracts may be assigned to another grain dealer licensed under Iowa Code chapter 203 unless strictly prohibited in the terms of the credit-sale contract. The assignee shall notify all affected producers in writing of the assignment. A copy of the assignment shall be forwarded to the bureau showing the contracts assigned and to whom they are assigned within 30 days of cancellation, termination, suspension or revocation of the license. All credit-sale contracts shall be paid for or reassigned within 30 days of cancellation, termination, or revocation of the license.

This rule is intended to implement Iowa Code sections 203.2 and 203.15.

21—91.13(203) Filing of monthly grain statement and reports. A grain statement shall be prepared at the close of business at the end of each calendar month and filed with the bureau by the tenth of the following month. The grain statement shall be on a form prescribed by the bureau and furnished to the dealer. A grain statement shall be filed for each calendar month regardless of whether or not the dealer has conducted any business during that period.

The bureau may require the dealer to file other types of reports, and the dealer shall file with the bureau any such report requested by the bureau within the time period as is specified by the bureau.

This rule is intended to implement Iowa Code section 203.2.

21—91.14(203) Notice to the warehouse bureau.

91.14(1) The bureau shall be notified in writing prior to:

- a.* Change of ownership of the grain dealer.
- b.* Change of name or business address of the grain dealer.
- c.* Change of the grain dealer's fiscal year end.

d. The ceasing of operations.

91.14(2) The licensee shall notify the bureau within 24 hours after the licensee knows or should have known any of the following:

a. Licensee's net worth falling below the amount required by Iowa Code section 203.3 and if the amount of the deficiency is not covered by a net worth deficiency bond.

b. Licensee's current assets falling below the amount required by Iowa Code section 203.3 and the deficiency is not covered by a current ratio deficiency bond.

c. Class 2 licensee's grain purchases from producers exceed \$500,000 during the licensee's fiscal year.

91.14(3) The licensee shall notify the bureau in writing within ten days after the licensee knows or should have known either of the following:

a. Change in management.

b. The death of an individual or member of a partnership licensed as a grain dealer.

This rule is intended to implement Iowa Code sections 203.2 and 203.3.

21—91.15(203) Shrinkage due to moisture. A person who, in connection with the receipt of grain for storage, processing or sale, adjusts the scale weight of the grain to compensate for the moisture content of the grain; or to compensate for losses to be incurred during the handling, processing, or storage of the grain shall do so in accordance with the provisions of Iowa Code section 203.20.

This rule is intended to implement Iowa Code section 203.20.

21—91.16(203) Requirements for Class 2 licensees. A Class 2 licensee whose purchases from producers during the fiscal year exceed \$500,000, and who is thereby required by Iowa Code section 203.3 to apply for a Class 1 license, shall file the application with the bureau within 30 days after the purchases exceed \$500,000. The application shall include the additional \$250 annual assessment for Class 1 licensees required under rule 21—92.2(203D).

This rule is intended to implement Iowa Code section 203.3.

21—91.17(203) Requirements for licensees authorized to issue credit-sale contracts.

91.17(1) Financial statements—audit or bond or irrevocable letter of credit. A grain dealer shall not purchase grain by a credit-sale contract until the licensee complies with paragraph "a" or "b." If the grain dealer elects to be authorized to issue credit-sale contracts under paragraph "b," the grain dealer shall also comply with rule 21—91.8(203).

a. Financial statements filed pursuant to this rule shall be accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. The bureau may accept a qualification in an opinion that is unavoidable by any audit procedure. Opinions that are qualified because of the limited audit procedure or because the scope of an audit is limited shall not be accepted by the bureau. A sole proprietor who desires to be authorized to issue credit-sale contracts shall file a financial statement on the proprietorship business which is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state, and shall file a personal financial statement which conforms with the provisions of subrule 91.8(3).

b. The grain dealer bond or irrevocable letter of credit filed pursuant to this rule shall be in the amount of \$100,000 payable to the department. Bonds or irrevocable letters of credit shall be on the forms prescribed and furnished by the bureau.

91.17(2) Credit-sale contract net worth requirements. When the grain dealer's net worth falls below the amount required by Iowa Code section 203.15(4), the grain dealer shall immediately cease purchasing grain by credit-sale contract. Failure to cease purchasing grain by credit-sale contract shall result in the suspension of the grain dealer license. Bonds or irrevocable letters of credit filed to correct the deficiency shall be on the forms prescribed and furnished by the bureau. The procedure for the filing of a deficiency bond or irrevocable letter of credit shall be the same as set forth in Iowa Code section 203.3. Bonds or irrevocable letters of credit shall be written so as to provide a source of funds to protect sellers who have sold grain by means of a credit-sale contract to the licensed grain dealer. Advances to sellers on grain

purchased by credit-sale contract will be considered when the 50 cents per bushel net worth requirement is calculated. The amount and percentage of advances shall be shown on the face of the credit-sale contract or on a listing which identifies the contracts and the amount of the advance.

91.17(3) Suspension of authorization to issue credit-sale contracts. The department may suspend the right of a grain dealer to purchase grain by credit-sale contract based on any of the following conditions:

a. The grain dealer holding a federal or state warehouse operator license does not have a sufficient quantity or quality of grain to satisfy the warehouse operator's obligation based on an examination by the department or the United States Department of Agriculture.

b. Collateral receipts cannot be issued for grain represented by credit-sale contract except for the percentage of bushels paid for through advances to sellers on grain purchased by credit-sale contract. The amount and percentage of advances shall be shown on the face of the credit-sale contract or on a listing which identifies the contracts and the amount of the advances.

c. A grain dealer shall not purchase grain on credit-sale contracts during any time period in which the grain dealer's current assets are less than 100 percent of current liabilities, or in which the grain dealer's net worth is less than \$75,000.

d. The grain dealer violates Iowa Code section 203.15.

e. The grain dealer's total liabilities are greater than 75 percent of the grain dealer's total assets. The valuation of fixed assets as stated by an approved appraisal on file with the bureau pursuant to subrule 91.8(8) will not be used to determine this percentage.

f. The grain dealer has made payment by use of an electronic funds transfer or a financial instrument which is a check, share draft, draft, or written order on a financial institution, and a financial institution refuses payment on the electronic funds transfer or on the financial instrument because of insufficient funds in a grain dealer's account.

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

This rule is intended to implement Iowa Code section 203.15.

21—91.18(203) Department of agriculture and land stewardship enforcement procedures. The bureau shall follow a step-by-step enforcement policy to ensure consistent compliance with and application of this chapter. The department recognizes that violations of certain rules may have more serious ramifications; thus, the enforcement of those rules requires stricter policies. The enforcement policies apply to any violation of this chapter unless enforcement provisions are specifically addressed in a particular rule or subrule.

91.18(1) If it is necessary to establish proof of a violation of statute or rule, the bureau shall conduct a special investigation of the licensee. The bureau may contact the licensed grain dealer, the grain dealer's employees, or any other interested party to gain information for the investigation. The bureau, in its investigation of a licensee, may cause a special examination to occur if evidence of at least one of the following conditions is present:

a. Insufficient funds check, or failed electronic funds transfer.

b. Stalled payment for grain.

c. Quantity deficiency.

d. Quality deficiency.

e. Incomplete or inaccurate records as specified in rule 91.11(203).

The expense of such special examination shall be based on actual costs incurred by the bureau and may be assessed to the licensee. The costs shall include the labor, travel and any other additional costs incurred by the bureau. Payment shall be made as directed by the bureau.

91.18(2) Upon establishment by the bureau of a violation of statute or rule, the bureau shall notify the licensee in writing that the licensee must be in compliance with the department's rules within a period of time to be established by the bureau. The bureau shall consider the following elements in determining the proper period of time within which to require a licensee to comply with the rules:

a. Likelihood of producer loss;

b. Gravity of the offense; and

c. Length of time within which a reasonable licensee in a similar circumstance should be able to comply with the rules.

91.18(3) The bureau chief may initiate license suspension or revocation proceedings against the licensee for any violation of these rules. The bureau chief shall consider the following factors in making the determination to initiate the suspension or revocation proceedings:

- a. Likelihood of producer loss.
- b. Gravity of the offense.
- c. Licensee's intent to violate the rule.
- d. Licensee's record of violations of statute or rule.
- e. Number of violations in the particular report.

91.18(4) The bureau chief may cause charges to be filed against the licensee for any violation of these rules. The bureau chief shall consider the following factors in making the determination to file charges:

- a. Likelihood of producer loss.
- b. Gravity of the offense.
- c. Licensee's intent to violate the rule.
- d. Licensee's record of violations of statute or rule.
- e. Number of violations in the particular report.

91.18(5) The bureau chief may initiate the assessment of civil penalties against the licensee for any violation of these rules. The bureau chief shall consider the following factors in making the determination to initiate the assessment of civil penalties:

- a. Likelihood of producer loss.
- b. Gravity of the offense.
- c. Licensee's intent to violate the rule.
- d. Licensee's record of violations of statute or rule.
- e. Number of violations in the particular report.

This rule is intended to implement Iowa Code sections 203.2, 203.9, 203.10, 203.11 and 203.11A.

21—91.19(203) Review proceedings. A grain dealer licensee or applicant may file a formal written complaint with the department if the licensee or applicant contests the finding or decision of the bureau chief. Any such complaint shall be resolved in contested case proceedings conducted pursuant to the applicable provisions of 21—Chapter 2.

21—91.20(203) Prioritization of inspections of grain dealers. Licensees with a probability of failure factor greater than 40 percent, as calculated by the statistical model, shall be examined at least twice in an 18-month period.

This rule is intended to implement Iowa Code section 203.22.

21—91.21(203) Claims against credit-sale contract bond.

91.21(1) *Persons who may file claims—time of filing.* These rules are applicable only in those instances where a bond has been filed to satisfy Iowa Code section 203.15. If a bond is on file with the department, a seller may file a claim with the bureau for satisfaction of a loss under the grain dealer's bond. 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
- b. The filing of a petition in bankruptcy by a grain dealer.

To be timely, a claim shall be filed within 120 days of the incurrence date.

91.21(2) *Notice.* The bureau 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 in 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 bond on account of the licensee shall be sent by certified mail to the bureau within 120 days after the incurrence date, and that the failure to make a timely claim relieves the

department from liability to the claimant. This notice may be incorporated by the bureau with the notice required by Iowa Code section 203.12.

91.21(3) *Determination of eligible claims.* The bureau shall determine a claim to be eligible for payment if the bureau finds all of the following:

- a. The claim was timely filed;
- b. The claimant qualifies as a credit-sale contract seller;
- c. A claim derives from a credit-sale contract transaction, if the claimant is a seller who delivered and transferred title of the grain to the grain dealer by credit-sale contract; and
- d. There is adequate documentation to establish the existence of a credit-sale contract claim and to determine the amount of the loss.

91.21(4) *Value of loss—credit-sale contract claims.* The dollar value of a credit-sale contract claim incurred by a seller who has sold and delivered grain 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 sale. If the sold grain was unpriced, the value of the claim shall be presumed to be based upon the fair market price, free-on-board from the site of the grain dealer, that is being paid to producers for grain by the grain terminal operator or grain processor 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 bureau may choose between the two. However, the bureau may accept an alternative valuation of a claim upon a showing of just cause by the seller. All sellers filing claims under this rule shall be bound by the value determined by the bureau. The value of the loss is the outstanding balance on the validated claim at the time of payment.

91.21(5) *Procedure—appeal.* The bureau shall provide for notice to each credit-sale contract seller upon the bureau's determination of eligibility and value of loss. Within 20 days of the notice, the credit-sale contract seller may file a petition for hearing for review of either determination with the district court in the county in which the credit-sale contract seller resides, or in Polk County.

91.21(6) *Payment of claims.* Upon a determination of the status of all credit-sale contract claims, and after the filing period has run, the bureau shall provide a report to all valid, timely filed credit-sale contract claimants. If there are no appeals filed pursuant to subrule 91.21(5), the bureau shall make payment either in full or pro rata, in the event the value of the credit-sale contract claims is greater than the amount of the bonds.

This rule is intended to implement Iowa Code section 203.15.

21—91.22(203) *Electronic grain contracts.* Subject to the provisions of this chapter, a licensee may issue electronic grain contracts using its own computer system or may contract with an independent provider to issue electronic grain contracts. If the licensee contracts with an independent provider, rules 21—91.22(203) through 21—91.26(203) shall apply. If the licensee issues electronic grain contracts using its own computer system, rules 21—91.22(203), 21—91.25(203) and 21—91.26(203) shall apply.

This rule is intended to implement Iowa Code sections 203.2 and 203.17.
[ARC 7553B, IAB 2/11/09, effective 3/18/09]

21—91.23(203) *Electronic grain contract providers and provider agreements.* A provider shall be independent of any outside influence or bias in action or appearance. A provider shall enter into a provider agreement with the department prior to being approved by the department. A provider shall issue and maintain electronic grain contracts only on behalf of licensees who contract with the provider for those services. The provider agreement shall be subject to, but not be limited to, the provisions of subrules 91.23(1) through 91.23(7).

91.23(1) *Provider to be approved by the USDA.* No provider shall be approved by the department unless the provider is first approved as a provider of "other electronic documents" by the USDA pursuant to the provisions of 7 CFR Part 735. Upon department request, a provider shall provide a copy of the provider's executed USDA Form WA-490 and any addenda, and any other documentation requested by the department to confirm that the provider is a USDA-approved provider in good standing.

91.23(2) *USDA action against providers.* In the event that the USDA shall take action to deny, withdraw, suspend, reinstate or terminate a USDA provider agreement, the department shall automatically take the same action and the provider shall be subject to such action by the department. A provider shall notify the department of any such actions taken by the USDA.

91.23(3) *Notice requirements for providers.*

a. When entering into a new user agreement, a provider shall provide written notice to the department.

b. All notices to the USDA required by 7 CFR Part 735 and by the USDA provider agreement shall also be served upon the department except as specifically exempted in the provider agreement.

c. In the user agreement, a provider shall include a notice to the licensee that the data on the provider's central filing system is subject to disclosure to the department and the USDA.

91.23(4) *Provisions to cease issuing electronic grain contracts.* Upon notice by the department that a grain dealer license issued under Iowa Code chapter 203 has been terminated, canceled, suspended or revoked, a provider shall prohibit the licensee from entering into any electronic grain contracts until further notice from the department. Upon notice by the department that a licensee has had its right to purchase grain by credit-sale contract suspended or denied under rule 21—91.17(203), a provider shall prohibit the licensee from entering into any electronic credit-sale grain contracts until further notice from the department.

91.23(5) *Department access to electronic grain contract data.* A provider shall allow the department unrestricted access to the central filing system for electronic grain contracts issued on behalf of licensees. The electronic grain contract data shall be maintained for six years after a contract has been canceled. Access shall be made available in a manner that allows interaction with department examinations. Access shall be free of any charge or costs to the department.

91.23(6) *Termination of provider agreement.* The department or provider may terminate the provider agreement upon 60 days' written notice to the other party. The department shall terminate a provider agreement on less than 60 days' notice in accordance with subrule 91.23(2). Upon termination of the provider agreement, the provider shall immediately surrender to the department copies of the electronic data and paper records for any electronic grain contracts contained within the central filing system. Such data and paper record copies, however, are limited to electronic grain contracts issued by licensees.

91.23(7) *Authorization, jurisdiction and liability.* A provider shall be authorized to transact business in the state of Iowa and shall consent to jurisdiction in the state of Iowa and venue in Polk County, Iowa. A provider shall be liable to the department for costs incurred by the department as a result of action taken in the event of a failure of the central filing system or any inability to provide the access required in subrule 91.23(5).

This rule is intended to implement Iowa Code sections 203.2, 203.15, and 203.17.
[ARC 7553B, IAB 2/11/09, effective 3/18/09]

21—91.24(203) *Electronic grain contract users and user agreements.* Prior to engaging in the issuance of electronic grain contracts, a licensee shall enter into a user agreement with a provider approved by the department. All electronic grain contracts issued by the licensee shall be issued through and filed in the provider's electronic central filing system. The use of electronic grain contracts is subject to the provisions of subrules 91.23(1) through 91.23(5).

91.24(1) *Licensee to use only one provider.* A licensee shall issue electronic grain contracts through only one provider.

91.24(2) *Changing providers.* Subject to the provisions of a user agreement in effect, a licensee may change providers once per year. The provider shall follow the transfer terms specified in USDA Form WA-490 and any addenda pursuant to subrule 91.23(1). The licensee shall notify the department of a change in provider.

This rule is intended to implement Iowa Code sections 203.2 and 203.17.
[ARC 7553B, IAB 2/11/09, effective 3/18/09]

21—91.25(203) *Electronic grain contracts—issuance and form.* Electronic grain contracts shall comply with the provisions of Iowa Code chapters 203 and 554D.

91.25(1) *Agreement to conduct electronic transactions.* A licensee or the licensee's provider shall maintain complete and sufficient records to show agreement between the grain seller and the licensee to conduct electronic grain contract transactions. The records shall be presented to the department for inspection upon request. An electronic grain contract shall be capable of being printed or stored by both the licensee and the grain seller.

91.25(2) *Electronic signatures.* Sufficient security procedures shall be used by a licensee or the licensee's provider to reasonably ascertain that the electronic grain contract signature is the act of the grain seller. The security procedures shall be subject to the review of and approval by the department. A seller shall be allowed to sign an electronic grain contract only at the conclusion of all electronic grain contract terms and conditions.

91.25(3) *Numbering of electronic contracts—no duplication.* Electronic grain contracts shall be consecutively numbered as issued. A licensee shall not at any time have an electronic grain contract and a paper grain contract outstanding for the same lot of grain.

91.25(4) *Seller power of attorney.* A licensee or a third party may not handle electronic grain contracts on behalf of a seller unless a written power of attorney to do so has been provided by the seller. Such power of attorney shall be provided to the department for inspection and verification upon the department's request.

91.25(5) *Issuance, form, cancellation, and assignment of electronic credit-sale contracts.* The provisions for issuance, cancellation, and assignment of credit-sale contracts found in rules 21—91.11(203) and 21—91.12(203) shall apply to electronic credit-sale contracts except to the extent that the rules are not applicable to paperless credit-sale contracts.

91.25(6) *Authorization to issue electronic credit-sale contracts.* A licensee who issues electronic credit-sale contracts shall comply with all requirements of rule 21—91.17(203).

91.25(7) *Nonexclusive use.* A licensee shall not be required to issue grain contracts in electronic form.

This rule is intended to implement Iowa Code sections 203.2, 203.15, 203.17, 554D.106, 554D.110 and 554D.111.

[ARC 7553B, IAB 2/11/09, effective 3/18/09]

21—91.26(203) *Security of a provider's electronic central filing system or a licensee's electronic database.* Only authorized employees of the licensee shall have access to the provider's central filing system or the licensee's electronic database. A provider shall prevent unauthorized persons from gaining access to its central filing system. If a licensee uses its own computer database, the licensee shall maintain a backup of the database to ensure electronic grain contracts are not inadvertently lost.

This rule is intended to implement Iowa Code sections 203.2 and 203.17.

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