

ITEM 1: Rescind and adopt new Chapter 90

CHAPTER 90
STATE LICENSED WAREHOUSES
AND WAREHOUSE OPERATORS

[Prior to 7/30/86, Commerce Commission [250], Ch 12]

[Prior to 7/27/88, 21—Ch 60]

21—90.1(203C) Definitions. For this chapter, the following definitions apply:

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

“*Generally accepted accounting principles*” means accounting principles generally accepted in the United States of America, in accordance with the U.S. Financial Accounting Standards Board, or international financial reporting standards, in accordance with the International Accounting Standards Board.

“*Indemnity fund*” means the Iowa grain depositors and sellers indemnity fund created in Iowa Code chapter 203D.

“*Provider*” means a person approved by the department to maintain a secure electronic central filing system of electronic warehouse receipt records pursuant to Iowa Code section 203C.18.

“*Provider agreement*” means an agreement required by this chapter 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, Hoover State Office Building, Des Moines, Iowa 50319.

“*Scale ticket*” means the same as defined in Iowa Code section 203C.1(23) for “scale weigh tickets.”

“*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-460 and any addenda thereto.

“*User agreement*” means an agreement required by this chapter which is entered into between a provider and a warehouse operator licensed by the department pursuant to the provisions of Iowa Code chapter 203C.

[ARC 7553B, IAB 2/11/09, effective 3/18/09; ARC 9388B, IAB 2/23/11, effective 3/30/11; ARC 0392C, IAB 10/17/12, effective 11/21/12]

21—90.2(203C) Types of products to be warehoused. Products to be warehoused shall be divided into two general types or classes as follows:

90.2(1) Bulk grain, which is grain that is not contained in sacks.

90.2(2) Agricultural and farm consumable products other than bulk grain. Such products include those suitable for storage in quantity, canned agricultural products and products used in producing other agricultural products.

21—90.3(203C,203D) Application for a warehouse operator license. The bureau may require the applicant to file updated information if the information on the application is no longer current. The application, insurance certificate, financial statement, tariff, license fee, indemnity fund fee and background information on a person applying for the license and on the managers shall be on file before a license is issued. The bureau chief may require an inspection of the proposed facilities prior to the issuance of a warehouse operator license.

[ARC 9388B, IAB 2/23/11, effective 3/30/11]

21—90.4(203C) Warehouse operator license. Separate class licenses bearing the same number may

be issued to the same business entity authorizing the storage of bulk grain under one license and the storage of products other than bulk grain under the other license (Class 2 warehouse). The separate licenses may be for the same facilities provided the warehouse or warehouses described in the application are suitable for the safe storage of the products intended to be stored.

90.4(1) Warehouse operator license—nontransferable. Warehouse operator licenses are not transferable between different legal entities. Warehouse operator licenses 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.

90.4(2) Surrender of license. The license shall be surrendered to the bureau immediately upon cancellation, suspension, or revocation of such license.

[ARC 9388B, IAB 2/23/11, effective 3/30/11]

21—90.5(203C) Posting of license. The warehouse operator license certificate, including the warehouse diagram, shall be posted at all times in a conspicuous location in the place of business. A license certificate shall be posted in each location where grain is delivered or weighed. Upon receipt of an amended license, the warehouse operator shall immediately post the amended license and remove the old license.

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

21—90.6(203C) Renewal, expiration and reinstatement of license—payment of license fee.

90.6(1) Renewals. The bureau shall send to each licensed warehouse operator written notice that the application, the license fee and the indemnity fund fee for annual renewal of the warehouse operator license shall be received in accordance with Iowa Code section 203C.37. If the bureau does not receive the application and fees by the due date, the license shall expire. A license that has expired may be reinstated within 30 days of the date of expiration conditioned on the applicant's meeting all statutory requirements and submitting a completed application within 30 days of the expiration:

90.6(2) Proration of fees. 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 of a license holder is changed.

[ARC 9388B, IAB 2/23/11, effective 3/30/11]

21—90.7(203C) Financial statements.

90.7(1) New license applicants. To obtain a warehouse operator license, an applicant shall submit a financial statement that shall:

- a. Be prepared within three months from the date of filing and comply with 90.7(2), paragraph "a" or "b"; or
- b. Be prepared as of the applicant's usual fiscal year end and comply with 90.7(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 90.7(2), paragraph "a" or "b," within one month after the date the license is issued by the bureau.

90.7(2) Financial statement requirements. Financial statements filed pursuant to subrules 90.7(1), 90.7(3), 90.7(4) and 90.7(11) shall be prepared in accordance with generally accepted accounting principles.

90.7(3) Sole proprietorship financial statements. An individual licensed as a sole proprietorship shall file a financial statement which conforms with the provisions of subrules 90.7(2) and 90.7(4) on

the proprietorship business. The individual shall also file a personal statement of financial condition which conforms with the provisions of subrules 90.7(2) and 90.7(4). The personal statement of financial condition shall also disclose the historical cost basis for assets as provided in Iowa Code section 203C.6.

90.7(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 statement is due three months after the close of the licensee's fiscal year.

90.7(5) *Additional disclosures required in the financial statement.* 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 deferred-payment contract and deferred-price 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.

90.7(6) *Filing extension.*

a. The bureau chief may grant an extension of one month for the filing of financial statements upon receipt of the following:

(1) A letter from the warehouse operator'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 warehouse operator stating that the warehouse operator meets the financial responsibility requirements of Iowa Code section 203C.6, or that the licensee shall file additional bond in an amount to cover any net worth deficiency as provided in Iowa Code section 203C.6, based upon the licensed certified public accountant's best estimate of the licensee's financial position.

b. Warehouse operators who file false affidavits under this rule may be prosecuted under Iowa Code section 203C.36. Subrule 90.7(6) does not apply to the filing of financial statements required under the provisions of subrules 90.7(10), 90.7(11) and 90.7(12).

90.7(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 90.7(2).

90.7(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. 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.

90.7(9) *Assets allowed in meeting financial requirements.*

a. *Corporations, limited liability companies and partnerships.* When the bureau determines the net worth 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 bureau sufficient documentation to assure the bureau that the assets are collectible.

b. *Sole proprietors.* When the bureau determines the net worth 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. 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.

90.7(10) *Net worth deficiency monthly financial statements.* Every licensee who has a net worth deficiency and who has filed additional bond shall file monthly financial statements with the bureau by the end of the next month until the net worth meets the requirements of Iowa Code section 203C.6 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.

90.7(11) *Financial statement.* The bureau chief may require a licensee to submit financial statements on a monthly or quarterly basis to verify the operator's financial status, compliance with Iowa Code section 203C.6 or any one of the following :

- a. Quantity shortage;
- b. Quality shortage;
- c. 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;
- d. Record-keeping violations;
- e. Other documented evidence which indicates that the licensee's financial condition has deteriorated since the filing of the licensee's last financial statement; or
- f. A high risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the warehouse operator based on a statistical model provided in Iowa Code section 203C.40.

These financial statements shall be filed with the bureau by the end of the next month and by the end of every month thereafter until no longer required by the bureau. 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.

90.7(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 warehouse operator and work papers supporting the financial statements.

90.7(13) *Penalty for failure to timely supply financial statements.* The department may suspend the license of any warehouse operator who fails to provide the required financial statements within the time limits prescribed by these rules.

21—90.8(203C) Bonds and irrevocable letters of credit. Bonds filed with the bureau shall be on forms prescribed by the bureau. Irrevocable letters of credit filed with 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 depositors having storage in the warehouse as described in the particular license issued to a warehouse operator.

90.8(1) *Agricultural products other than bulk grain.* When the net worth of a licensee is less than that required by Iowa Code section 203C.13, the licensee may increase the bond or file an irrevocable letter of credit with the bureau to cover the net worth deficiency as provided by Iowa Code section 203C.13.

90.8(2) *Inadequate net worth—storage of bulk grain.* When the net worth of a licensee authorized to store bulk grain is less than that required by Iowa Code section 203C.6, the licensee may file a bond or an irrevocable letter of credit with the bureau to cover the net worth deficiency as provided by Iowa Code section 203C.6.

90.8(3) *Bond or irrevocable letters of credit as department may require.* In addition to the minimum amount as provided by Iowa Code section 203C.13 and in addition to an amount to cover the net worth deficiency as provided by Iowa Code section 203C.6, the bureau chief may require a bond or an irrevocable letter of credit to be filed in an amount determined by the department for any of the following reasons:

- a. Quality deficiency in stored grain;
- b. Quantity deficiency in stored grain;
- c. Use of temporary storage facilities or emergency storage by licensee; or
- d. Documented evidence of the excessive use of lost warehouse receipt release forms by the licensee.

90.8(4) *Minimum amount of indemnification.* The amount of bond, additional bond, or irrevocable letter of credit prescribed under subrule 90.8(1), 90.8(2) or 90.8(3) is the minimum amount that shall be accepted by the bureau. A bond or irrevocable letter of credit in a higher amount may be filed if the warehouse operator deems it advisable in the operation of the warehouse business.

90.8(5) *Quality and quantity deficiency bonds.* Quality and quantity deficiency bonds shall be for a minimum of 45 days.

90.8(6) *Replacement bond or irrevocable letter of credit.* The bureau shall send a written notice and information and forms for filing the required replacement bond or irrevocable letter of credit, unless the bond or irrevocable letter of credit is no longer necessary. When the licensee's failure to file a replacement bond or irrevocable letter of credit causes revocation of the warehouse operator license, the bureau chief shall give notice of such revocation to each holder of an outstanding warehouse receipt and all persons known to have grain retained in open storage.

90.8(7) *Cancellation of bond or irrevocable letter of credit.* The issuer shall send the cancellation notice to the bureau by ordinary or certified mail. The notice shall be in accordance with the provisions of 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 the cancellation of the bond or irrevocable letter of credit to the issuer and the principal.

90.8(8) Claims against bonds or letters of credit.

(1) Persons who may file claims—time of filing. These rules are applicable only in those instances where a bond or letter of credit has been filed to satisfy Iowa Code sections 203C.6, 203C.11 or 203C.13. If a bond or irrevocable letter of credit is on file with the department, a depositor may file a claim with the bureau for satisfaction of a loss under the warehouse operator's bond or irrevocable letter of credit pursuant to Iowa Code section 203C.14. A claim shall must 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 warehouse operator; or
- b. The filing of a petition in bankruptcy by a warehouse operator.

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

(2) The failure to make a timely claim relieves the issuer and the grain depositors and sellers indemnity fund provided in chapter 203D of all obligations to the claimant.

(3) Determination of eligible claims. The bureau will 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 depositor; and
- c. There is adequate documentation to establish the existence of a claim and to determine the amount of the loss.

(4) Value of loss. The dollar value of a claim incurred by a depositor shall not exceed the price of that grain if the grain were U.S. No. 2 grain according to standards adopted by the federal grain inspection service of the United States department of agriculture. The price of the grain shall be determined in accordance with the relevant date used to determine the price described in subparagraph (1). The department may adjust the price of the grain if necessary to better account for the condition of the grain when stored. 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 warehouse 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 depositor. All depositors filing claims under this rule will 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.

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

(6) Payment of claims. Upon a determination of the status of all claims, and after the filing period has run, the bureau will provide a report to all valid, timely filed claimants. If there are no appeals filed pursuant to subrule 90.8(5), the bureau will make payment either in full or pro rata, in the event the value of the is greater than the amount of the bonds or irrevocable letter of credit. If an appeal is filed, the bureau will make payment upon conclusion of those proceedings.

(7) Claims made by depositor under this section are separate from any claim filed for indemnification from the grain depositors and sellers indemnity fund pursuant to Iowa Code chapter 203D and shall not be calculated within the indemnification limit, except to determine eligible claims under the fund.

21—90.9(203C) Insurance. Insurance shall be carried in an insurance company or companies authorized to do business in this state and shall be provided by and carried in the name of the warehouse operator. Each policy providing such coverage must have attached thereto an Iowa warehouse endorsement form as prescribed by the department. An insurance policy may include more than one location, and a location may be insured by more than one policy.

90.9(1) Certificate of insurance. As evidence that insurance coverage has been provided, the licensee shall file with the department a certificate of insurance form as prescribed by the department.

a. Not more than one policy shall be included on one certificate of insurance.

b. Where one policy provides coverage for two or more licenses or locations and coverage is provided separately at each location, a separate certificate of insurance shall be executed for each license or location shown on the policy. Each certificate shall show the total amount of insurance provided by the policy for the license or locations for which the certificate is provided.

c. Where one policy provides coverage for two or more licenses or locations and coverage is provided on a blanket basis at all locations, one certificate of insurance shall be executed for the policy. The certificate shall show the amount of insurance provided by the policy.

90.9(2) Cancellation of insurance. When the department receives notice from an insurance company

that the company is canceling the insurance of a licensed warehouse, the department shall send written notice to the warehouse operator. The notice shall explain the department's enforcement action that will result from the warehouse operator's noncompliance. The department shall suspend the warehouse operator license if the department does not receive proof of replacement insurance by the insurance cancellation date. The department shall immediately conduct an inspection of the licensed warehouse upon suspension of the license.

90.9(3) *Expiration of insurance.* The department shall send the warehouse operator a reminder letter 30 days prior to the effective date of the expiration of the insurance of a licensed warehouse. The notice shall explain the department's enforcement action that will result from the warehouse operator's noncompliance. The department shall suspend the warehouse operator license if replacement insurance is not received by the department by the expiration date. The department shall immediately conduct an inspection of the licensed warehouse upon suspension of the license.

90.9(4) *Insufficient insurance.* The department shall provide written notice to the warehouse operator when the department has evidence that the value of commodities in the warehouse is greater than the limit of liability of the insurance policy. The notice shall explain the department's enforcement action that will result from the warehouse operator's noncompliance. The department shall suspend the warehouse operator license if the department does not receive proof of sufficient insurance coverage within 30 days of the notice. The department shall immediately conduct an inspection of the licensed warehouse upon suspension of the license.

[ARC 0392C, IAB 10/17/12, effective 11/21/12]

21—90.10(203C) Notice to the warehouse bureau.

90.10(1) The licensee shall notify the bureau prior to:

- a. Change of ownership of a warehouse.
- b. Change in name or business address of a warehouse or warehouse operator.
- c. The use of additional storage facilities which are not covered under the warehouse operator license.
- d. The use of any facility under the warehouse operator license for storage of a product other than that for which it is licensed.
- e. The changing of the licensee's fiscal year.
- f. Using any bin or facility which has had a structural change.
- g. The ceasing of operations.

90.10(2) The licensee shall notify the bureau within 24 hours after the licensee knows or should have known any of the following:

- a. Loss or damage to stored products or to licensed storage facilities;
- b. Licensee's net worth falling below the amount required by Iowa Code section 203C.6 and if the amount of the deficiency is not covered by a net worth deficiency bond as required by Iowa Code section 203C.6; or
- c. Any quality or quantity deficiency of grain.

90.10(3) The licensee shall notify the bureau within ten days after the licensee knows or should have known any of the following:

- a. Termination of a lease on storage facilities, or the leasing of a facility under license to any other person;
- b. The death of an individual or any member of a partnership operating a warehouse; or
- c. Any change in management.

[ARC 9388B, IAB 2/23/11, effective 3/30/11]

21—90.11(203C) Issuance of warehouse receipts. A warehouse receipt shall be issued no later than the close of the next business day following demand by the depositor or depositor's agent.

The original (white) warehouse receipt shall be given to the depositor upon demand. The depositor's copy (green) shall be given to the depositor upon issuance of the warehouse receipt. The warehouse operator's copy (yellow) shall be maintained by the warehouse operator in a separate file in numerical

order while the warehouse receipt is outstanding.

90.11(2) *Unpriced grain deemed held for storage after 30 days.* Pursuant to Iowa Code 203C.17, the 30-day provision is applicable only when there has been no commitment for storage by the depositor, or the warehouse operator fails to have a policy posted in a conspicuous location in the place of business. Grain shall be considered as storage in less than 30 days if the receiving warehouse operator has a policy specifying when such grain shall be considered as storage. Such policy shall be posted at all times in a conspicuous location in the place of business. Grain held in storage after the thirtieth day or after the time period less than 30 days in accordance with the warehouse operator's posted policy for which warehouse receipts have not been issued shall be considered as open storage. The warehouse operator's tariff charges shall apply to open storage from date of deposit. Open storage shall be considered as a storage obligation.

90.11(3) *Information on warehouse receipts.* Not more than one product, or grade, or value of product shall be shown on a warehouse receipt. All grade factors pertinent to determining grade shall be shown on warehouse receipts issued for bulk grain, and any other information pertinent to the product, stored under warehouse receipt, should clearly be stated under the heading "Remarks." The warehouse operator, in the inspection of the grain upon delivery, shall perform a sufficient amount of sampling of the grain to ensure a representative application of the grade factors to the grain. All warehouse receipts issued shall designate the person to whom the receipt is issued and whether it is issued negotiable or nonnegotiable.

a. All warehouse receipts shall be issued on an accurate and complete basis. All applicable areas shall be filled in. Any of the following errors shall be cause to cancel and reissue the warehouse receipt:

- (1) Illegible changes or appearance of change in overall amount;
- (2) Change in the type of grain; or
- (3) Changing the warehouse receipt from negotiable to nonnegotiable or vice versa.

b. Any alterations not directly prohibited shall be made by strike-through and replacement. No correction material shall be used. The person making the change shall initial and date the change. All copies shall be altered identically.

90.11(4) *Restrictions on the issuance of collateral warehouse receipts.* 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.

21—90.12(203C) Cancellation of warehouse receipts. Upon delivery of the product represented by a warehouse receipt, the original receipt shall be marked "canceled," signed or initialed, and dated upon the face thereof by the warehouse operator or an authorized agent. The warehouse operator shall then retain possession of the warehouse receipt in a separate numerical order of receipts canceled by the licensee but not yet marked with the warehouse bureau's stamp and shall present the receipt to be canceled with the department's stamp at the time of any inspection or examination of the warehouse records. Cancellation shall mean that the obligation is removed from the bureau's records. The warehouse operator shall, upon request of the bureau, forward any such warehouse receipts to the bureau's office to be canceled with the department's stamp. Before the bureau stamps the receipt "canceled" with the department's stamp, any negotiable receipts which have been used as collateral by the licensee shall have the lender's release date and signature on the reverse side indicating when the receipt was released.

90.12(1) *Partial delivery of negotiable warehouse receipted commodity.* If only a portion of the product represented by a negotiable warehouse receipt is delivered, such warehouse receipt shall be signed or initialed, dated and marked "canceled" by the warehouse operator or an authorized agent upon the face thereof. A new (or replacement) warehouse receipt shall be issued covering the balance of the product remaining in storage the same day as the original warehouse receipt is canceled. This replacement warehouse receipt, in the space provided under the "Remarks," shall be marked "Balance of warehouse

receipt No. _____,” and the canceled warehouse receipt number shall be inserted in that space.

90.12(2) *Voided warehouse receipts.* Original warehouse receipts voided on the day of issuance by the warehouse operator for any reason shall be so marked, signed or initialed, and dated and held to be stamped with the department’s cancellation stamp in the same manner as any other warehouse receipt.

90.12(3) *Warehouse receipt cancellation procedure.*

a. The warehouse operator shall have the original warehouse receipt in possession.
b. The warehouse operator shall mark the face of the warehouse receipt “canceled,” sign or initial and date it.

c. The purchase of grain from a warehouse receipt shall be recorded on a document that is numbered at the time of printing and that contains the following information:

- (1) Seller’s name;
- (2) Warehouse receipt number;
- (3) Number of bushels;
- (4) Price;
- (5) Items deducted from gross proceeds;
- (6) Net value; and
- (7) Check number, invoice reference, or credit-sale contract reference number.

One copy of the document shall be maintained by the licensee for inspection, and one copy shall be given to the seller.

90.12(4) *Surrender of warehouse receipts on cancellation, expiration, suspension or revocation of license.* When a warehouse operator license has expired or is canceled, suspended or revoked, all unused warehouse receipts under such license shall be surrendered to the bureau.

The bureau shall notify the warehouse operator that all outstanding warehouse receipts shall be returned to the bureau’s office no later than 120 days from the date of cancellation, expiration, or revocation of the license.

90.12(5) *Purchase or return of grain, replacement receipt issued, or cancellation of outstanding receipts, upon cancellation, expiration, or revocation of warehouse operator license.* When a warehouse operator license has expired or is canceled or revoked, all stored grain shall be either purchased and payment made, or returned within 30 days to the holders of warehouse receipts or unpriced scale tickets, except when the warehouse is continuing operation under new ownership or when storage obligations are assumed by another licensee. Upon completion of delivery to the receipt holder or the reissuance of the receipt under a new license, the warehouse operator shall immediately mark “canceled,” sign or initial and date such receipt on the face of the original copy, and forward such receipt to the bureau’s office to be stamped with the department’s cancellation stamp. When the storage obligations are assumed by a new licensee from a warehouse whose license is expired or has been canceled or revoked, replacement warehouse receipts shall be issued.

90.12(6) *Delivery conditioned upon return of outstanding warehouse receipt.* No product represented by an outstanding warehouse receipt shall be delivered until the original outstanding warehouse receipt is returned to the warehouse operator. The receipt shall be held by the warehouse operator as an open warehouse receipt until the delivery is completed. If periodic partial delivery is made against a nonnegotiable warehouse receipt, the delivery shall be documented on the back of the original warehouse receipt or other method of documentation approved by the bureau showing the net balance in store. Original nonnegotiable warehouse receipts may be maintained in alphabetical or numerical order. If partial delivery is made against a negotiable warehouse receipt, the warehouse receipt shall be canceled and a replacement warehouse receipt issued for the balance in store.

90.12(7) *Cancellation of warehouse receipt conditioned on removal from storage, purchase and payment, reissuance of receipt, or execution of a credit-sale contract.* No warehouse receipt shall be canceled by the warehouse operator unless:

- a.* The product represented by the receipt has been removed from storage;
- b.* The product has been purchased and payment made;
- c.* A replacement receipt is issued at the time the receipt is canceled; or

d. The product represented by the receipt is purchased and a credit-sale contract is properly executed.

[ARC 9388B, IAB 2/23/11, effective 3/30/11]

21—90.13(203C) Lost or destroyed receipt. If a warehouse receipt is lost or destroyed, one of three methods shall be used in canceling the receipt. The following procedures shall be adhered to:

90.13(1) Depositor's lost warehouse receipt release. If the depositor or warehouse receipt holder has lost the receipt and is either selling all of the grain to the warehouse operator or removing all of the grain from storage, a Lost Warehouse Receipt Release shall be used. The release shall be completed in duplicate and signed by the receipt holder and shall be notarized. Both copies shall be retained in the warehouse records in lieu of the original copy of the receipt, which shall be given to the bureau at the time of an examination. One copy of the release shall be filed with the bureau at the time of an examination.

90.13(2) Bond for issuance of duplicate receipts. If the depositor has lost a warehouse receipt and needs a duplicate warehouse receipt, the depositor shall obtain a bond made in favor of the warehouse operator in accordance with the provisions of Iowa Code section 554.7601 (Uniform Commercial Code). This bond shall be in the amount of at least double the market value of the commodity at the time of posting the bond. A copy of the bond shall also be filed with the bureau. Upon issuance of a duplicate receipt, it shall be marked "Duplicate of lost warehouse receipt No. ____," in the space provided under "Remarks," and the lost warehouse receipt number shall be inserted in that space. The bond shall be in the warehouse operator's possession prior to the issuance of a duplicate receipt.

90.13(3) Licensee's lost warehouse receipt affidavit. If a warehouse receipt has been lost or destroyed by the warehouse operator, the warehouse operator shall prepare an affidavit in duplicate, signed before a notary public, stating that the warehouse receipt was lost or destroyed on or about (date). The affidavit shall also state that after a diligent search was made, the warehouse receipt cannot be found and that no obligation is due any person under that warehouse receipt. The affidavit shall further state that if the lost receipt is found, it shall be forwarded immediately to the bureau for cancellation. If a depositor's name is on record under the warehouse receipt, the bureau may require that the warehouse operator also obtain a written statement from the depositor that confirms that the depositor has been paid for the grain or the depositor has received the grain back and that the depositor has no further claim against said receipt. The affidavits shall be held in lieu of the original copy of the warehouse receipt. The original copy shall be given to the bureau at the time of an examination.

[ARC 9388B, IAB 2/23/11, effective 3/30/11]

21—90.14(203C) Warehouse receipts.

90.14(1) Warehouse receipt forms. Warehouse receipt forms shall be 8.50 inches wide by 7 inches long or 8.5 inches wide by 11 inches long and shall be printed in not less than triplicate. The original receipt shall be white, and the weight of the paper shall be 26 pound Defenza premium Safety Paper; the warehouse operator's copy shall be yellow and the weight of the paper shall be 16 pound and the owner's copy shall be green and the weight of the paper shall not be less than 16-pound base. Numbering is to be in red ink on the original and part 2 and 3 red ink or carbon impression. Receipts issued for bulk grain and receipts issued for agricultural products other than bulk grain shall be in a form prescribed by the department. The bureau shall have control over the printing of warehouse receipts.

90.14(2) Electronic warehouse receipts. A warehouse operator licensed in accordance with the provisions of Iowa Code chapter 203C may contract with an independent provider to issue electronic warehouse receipts for grain and other agricultural products subject to the provisions of this chapter. The provider shall be approved by the department.

90.14(3) Electronic warehouse receipt 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 file and maintain electronic warehouse receipts only on behalf of licensed warehouse operators who contract with the provider for those services. The provider agreement shall be subject to, but not be limited to, the provisions of paragraphs “a” through “k” of this subrule.

a. Provider to be approved by the USDA. No provider shall be approved by the department unless the provider is first approved as an electronic warehouse receipt provider 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-460 and any addenda, and any other documentation requested by the department to confirm that the provider is a USDA-approved provider in good standing.

b. 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.

c. Provider to service only licensed warehouse operators. A provider shall enter into user agreements under the terms of this rule only with warehouse operators licensed in accordance with the provisions of Iowa Code chapter 203C. A provider shall not issue electronic warehouse receipts for grain or other agricultural products on behalf of a warehouse operator in the state of Iowa unless the warehouse operator is licensed in accordance with the provisions of Iowa Code chapter 203C or the United States Warehouse Act.

d. Notice requirements for providers.

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

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

(3) In the user agreement, a provider shall include a notice to the warehouse operator that the data on the provider’s central filing system is subject to disclosure to the department and the USDA.

e. Provisions to cease issuing electronic warehouse receipts. Upon notice by the department that a warehouse operator license issued under Iowa Code chapter 203C has expired or has been canceled, suspended or revoked, a provider shall prohibit the warehouse operator from issuing any electronic warehouse receipts until further notice from the department.

f. Department access to electronic warehouse receipt data. A provider shall allow the department unrestricted access to the central filing system for electronic warehouse receipts issued on behalf of warehouse operators licensed by the department. The electronic warehouse receipt data shall be maintained for six years after cancellation of the receipts. Access shall be made available in a manner that allows interaction with department warehouse examinations. Access shall be free of any charge or costs to the department.

g. Information profile. Upon issuance of a new user agreement to a warehouse operator licensed under Iowa Code chapter 203C, the provider shall notify the department and request an information profile. The department shall provide an information profile about the warehouse operator to the provider. The information profile shall consist of identifying information unique to each warehouse operator and shall be contained within each electronic warehouse receipt issued by a warehouse operator. The information profile shall include all statements and content required for warehouse receipts by the laws of the state of Iowa and as required by the provisions of the USDA Form WA-460 and any addenda pursuant to paragraph “a” of this subrule. This information profile shall include, but not be limited to, the following:

- (1) The warehouse operator’s name;
- (2) The type of business organization and the state under whose laws the business is organized;
- (3) The location of the warehouse operator’s corporate headquarters and the location of the warehouse;
- (4) The warehouse operator’s license number; and
- (5) For grain warehouse receipts, the following statement: “The warehouse operator named herein,

licensed under Iowa Code chapter 203C, has received for storage bulk grain of the amount, kind and grade, as determined in accordance with the official grain standards of the United States, for which this receipt is issued, subject to the provisions of Iowa Code chapters 203C and 203D and the applicable rules. Said grain is fully insured, unless otherwise allowed by law and noted within this receipt, by the above-named warehouse operator against loss or damage by fire, windstorm and inherent explosion.”

h. 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 paragraph “b” of this subrule. Upon termination of the provider agreement, the provider shall immediately surrender copies of the electronic data and paper records to the department for any electronic warehouse receipts contained within the central filing system. Such data and paper record copies, however, are limited to electronic warehouse receipts issued by warehouse operators licensed under the provisions of Iowa Code chapter 203C.

i. 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 paragraph “f” of this subrule.

j. Nonexclusive use. A warehouse operator shall not be required to issue warehouse receipts in electronic form.

k. Receiverships and indemnity fund claims—department as electronic warehouse receipt holder.

(1) A provider shall allow for the department and the grain indemnity fund board to be a sole or joint holder of an electronic warehouse receipt when the issuing warehouse operator’s license has been revoked and either one or both of the following apply:

1. The electronic warehouse receipt has been surrendered to the department by a claimant for the proceeds of a grain receivership pursuant to Iowa Code chapter 203C.

2. The electronic warehouse receipt has been surrendered to the department or the grain indemnity fund board by a claimant for payment of a grain indemnity fund claim pursuant to Iowa Code chapter 203D.

(2) When an electronic receipt holder files a claim against a grain receivership or against the grain indemnity fund, the department shall obtain the consent and instruction of the holder to change the holder information on the provider’s central filing system. The provider shall take any action ordered by the department in regard to an electronic warehouse receipt involved with a grain receivership or a grain indemnity fund claim. The department shall provide documentary evidence of the claim and any resulting required action to the provider. The department may order any action including, but not limited to, the following:

1. Reducing the quantity and value of the product represented by an electronic receipt upon payment of partial value from either receivership proceeds or the grain indemnity fund;

2. Prohibiting an electronic warehouse receipt from being negotiated or otherwise transferred without the department’s consent due to payment of partial value from either receivership proceeds or the grain indemnity fund;

3. Canceling a warehouse receipt upon payment of full value to a claimant from receivership proceeds, and issuing a replacement receipt to the department if needed.

90.14(4) *Electronic warehouse receipt users and agreements.* Prior to engaging in the issuance of electronic warehouse receipts, a warehouse operator shall enter into a user agreement with a provider approved by the department. All electronic warehouse receipts issued by the warehouse operator shall be issued through and filed in the provider’s electronic central filing system. As used in this subrule, “warehouse operator” means a warehouse operator who has obtained a license for the operation of a warehouse under Iowa Code section 203C.6. The use of electronic warehouse receipts is subject to the provisions of paragraphs 90.14(3) “a” through “g.”

a. Warehouse operator to use only one provider. A warehouse operator shall issue electronic warehouse receipts through only one provider.

b. Changing providers. Subject to the provisions of a user agreement in effect, a warehouse operator may change providers once per year. The provider shall follow the transfer terms specified in USDA Form WA-460 and any addenda pursuant to paragraph 90.14(3)“a.” The warehouse operator shall notify the department of a change in provider.

c. Numbering of receipts—no duplication. Electronic warehouse receipts shall be numbered and shall be issued consecutively starting with the number specified to the provider by the department. A warehouse operator shall not at any time have an electronic warehouse receipt and a paper warehouse receipt outstanding for the same lot of grain.

d. Nonexclusive use. A warehouse operator shall not require a depositor to accept an electronic warehouse receipt in lieu of a paper warehouse receipt.

e. Receipt holder power of attorney. A warehouse operator or a third party may not handle electronic warehouse receipts on behalf of a depositor unless a written power of attorney to do so has been provided by the depositor. Such power of attorney shall be provided to the department for inspection and verification upon the department’s request.

f. Issuance and cancellation of receipts. The provisions for issuance and cancellation of warehouse receipts found in rules 21—90.11(203C) and 21—90.12(203C) shall apply to electronic warehouse receipts except to the extent that the rules are not applicable to electronic warehouse receipts. A warehouse operator shall not cancel an electronic warehouse receipt unless the warehouse operator is the holder of the warehouse receipt.

[ARC 7553B, IAB 2/11/09, effective 3/18/09; ARC 9388B, IAB 2/23/11, effective 3/30/11]

21—90.15(203C) Tariffs. After being properly numbered and dated by the bureau, tariffs shall be returned to the licensee for posting in a conspicuous location. A copy of the tariff shall be posted in each location where grain is weighed and delivered.

90.15(1) Application of tariff. The tariff rates applicable to stored products shall be those as contained in the tariff on file with the bureau at the time the product is received for storage. The tariff rates shall be applicable on an annual basis from date of deposit. If a tariff is amended, the charges shall be applied in accordance with subrule 90.15(3). Tariff charges shall cease upon cancellation, expiration, or revocation of a warehouse operator license. Tariff charges shall continue in accordance with the rates as filed by the successor warehouse operator. In the determination of the applicable rates to be applied under the successor warehouse operator’s tariff, the date of deposit under the new tariff shall be the actual date of deposit. No charges shall apply to grain held for less than 30 days and for which no warehouse receipt has been issued unless the warehouse operator has a posted policy which provides for a shorter time period.

90.15(2) Supplemental tariff. The warehouse operator may file with the bureau a supplemental tariff that sets tariff rates for grain meeting special descriptive standards or characteristics. The supplemental tariff shall include the special descriptive standards or characteristics and the rates that will apply to grain meeting those standards or characteristics. The supplemental tariff shall be posted next to the regular warehouse tariff.

90.15(3) Amending tariff. The warehouse operator may amend a tariff by filing a new tariff with the bureau, including all supplemental tariffs. The amended tariff shall contain rates as specified by the warehouse operator. The previous tariff shall be posted and continue to apply on all products that are received prior to the effective date of the amended tariff until the anniversary date of deposit unless the new tariff is lower, in which case the amended tariff shall become effective immediately. The amended tariff shall apply to any products received after the effective date of the amendment. The amended tariff shall apply to any products stored under the previous tariff on the anniversary date of the storage period. The effective date of the amended tariff will be the date on which the tariff is received by the bureau or a specified later date.

90.15(4) Documentation of tariff charges. Documents on which storage is billed, including bushels and type of commodity, must contain a reference to each warehouse receipt or storage document.

[ARC 9388B, IAB 2/23/11, effective 3/30/11]

21—90.16(203C) Records. A warehouse operator shall maintain complete and sufficient records to show all deposits, purchases, sales, storage obligations and loadouts of the warehouse.

90.16(1) *Maintaining warehouse receipts.* Unused warehouse receipts shall be maintained in numerical order. The warehouse operator's copy (yellow) of outstanding warehouse receipts and the original copy (white) of warehouse receipts canceled since the previous examination shall be maintained in separate numerical sequences.

90.16(2) *Daily position record.* 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 total stocks, open storage, warehouse-receipted, unpaid company-owned, and paid company-owned, and shall indicated the ending balance of total company-owned. The daily position record shall reflect the obligations in the appropriate columns. A separate daily position record shall be maintained:

- a. For each kind and class of grain; and
- b. For each type of commodity that is identity-preserved in licensed facilities.

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.

90.16(3) *Scale tickets.* (a) Unless the warehouse operator utilizes a computer system which sequentially numbers and prints scale weight tickets, every warehouse operator shall have prenumbered scale tickets.

Every scale ticket shall show, at a minimum, the following:

- (1) The warehouse operator's name and location where the grain was delivered;
- (2) Date;
- (3) Depositor's name;
- (4) Gross weight, tare weight, and delivered weight;
- (5) Type of product or commodity; and
- (6) An indication of whether product or commodity is being received or loaded out.

(b) One copy of each ticket will be maintained in numerical order by the warehouse operator as part of the records, unless the warehouse operator uses a computer system which sequentially numbers and prints scale tickets and the scale ticket information can be retrieved and reprinted by the computer system.. A scale ticket printed at the time of weighing shall be the document of record.

(c) All copies of reprinted scale tickets shall be marked "duplicate" or "reprint". All scale ticket forms in the possession of a warehouse operator will have been permanently and consecutively numbered at the time of printing. The licensee will be responsible for providing a list of all scale tickets used at each location.

90.16(4) *Settlement sheets.* Unless the warehouse operator utilizes a computer system which sequentially numbers and prints settlement sheets as generated, every warehouse operator shall have prenumbered settlement sheets. All settlement sheets shall show, at a minimum, the following:

- a. The warehouse operator's name and location;
- b. The seller's name and address;
- c. Date(s) 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, or a computer generated report that includes all of the same information and includes a settlement sheet reference number within the report.

(3) If credit-sale contract, the contract type, date and number and the quantity of grain transferred

to the contract, or a computer generated report that includes all of the same information and includes a settlement sheet reference number within the report..

(4) If warehouse receipt, the receipt number, date of issuance and quantity of grain transferred to the receipt, or a computer generated report that includes all of the same information and includes a settlement sheet reference number within the report. .

(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 numerical or alphabetical order by the warehouse operator as part of the records, unless the warehouse operator 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 depositor upon demand, upon the issuance of a credit-sale contract, upon the issuance of a warehouse receipt or upon the completion of returning the commodity to the depositor. Any settlement sheet used in the pricing of grain for the purpose of sale to the warehouse operator 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 utilized can generate a scale ticket summary sheet for each depositor.

90.16(5) *Multiple locations.* If the licensee operates multiple locations under one license, the branch locations may maintain a separate series of the following documents:

- a. Scale tickets;
- b. Settlement sheets;
- c. Credit-sale contracts;
- d. Warehouse receipts; and
- e. Checks.

However, upon issuance, the warehouse operator's copy (yellow) of all warehouse receipts and a copy of each credit-sale contract shall be returned to the main location.

90.16(6) *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. Any records requested by the Bureau may be required to be available to the Bureau within 72 hours.

90.16(7) *Retention of records.* Such records shall be kept as required under Iowa Code section 203C.2 for the stated time period even if a license has expired or has been canceled or revoked.

90.16(8) *Grade factors on scale tickets.* All grade factors for determining the quality and grade of grain in accordance with the Official United States Standards for Grain shall be documented on scale tickets or supplemental records at time of deposit.

[ARC 9388B, IAB 2/23/11, effective 3/30/11]

21—90.17(203C) Adjustment of records.

90.17(1) *Adjustment of inventory for operational shrink.* The department may require a licensee to take an operational shrink not to exceed one-half of one percent on grain received on a monthly basis.

90.17(2) *Other inventory adjustments.* Any reduction of record obligation shall be justified. Any increase in adjustments of record obligation shall be made only upon department approval or request. An upward adjustment may be made to the records at any time that a total weigh-up for a particular kind of grain is made and all records of the weigh-up have been maintained for verification. The licensee may make upward adjustments for rail and barge shipments based upon actual unloaded weights when the origin weights were estimated. Outbound truck shipments must be weighed on the licensee's scale if one is available. A warehouse operator may voluntarily adjust the records at the time of examination when the measured inventory exceeds the record obligation in an amount in excess of 1½ percent. All adjustments shall be readily identifiable in the daily position record. Unless the delivered weight is adjusted for and reflects dry bushels, all adjustments for moisture shall be shown in the records. A

computer-generated scale ticket listing that shows gross weights and net weights will satisfy the requirements of this rule.

[ARC 2035C, IAB 6/10/15, effective 7/15/15]

21—90.18(203C) Monthly grain statements. 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. This grain statement shall be on a form or in a format prescribed by the bureau. The bureau shall furnish forms to the warehouse operator upon request. A grain statement shall be filed for each calendar month regardless of whether or not the warehouse operator has products in storage.

[ARC 9388B, IAB 2/23/11, effective 3/30/11]

21—90.19(203C) Grain stored in another warehouse. Upon approval by the bureau, a warehouse operator may store grain in another licensed warehouse.

90.19(1) Decision criteria. The department shall consider the following in deciding to approve or deny a warehouse operator's request to store grain in another licensed warehouse:

a. The other licensed warehouse is located in Iowa and is either licensed by the department pursuant to Iowa Code chapter 203C or licensed pursuant to the United States Warehouse Act.

b. The other licensed warehouse is located in another state and is licensed pursuant to the United States Warehouse Act.

c. The other licensed warehouse is located in another state and is licensed pursuant to that state's statutes and that state's warehouse license provides all of the following:

(1) Financial requirements and examination programs essentially equivalent to Iowa's;

(2) Insurance coverage equivalent to Iowa's; and

(3) Indemnification, surety bond coverage, letter of credit or other security satisfactory to the department.

90.19(2) Notice and licensing. Upon receipt of a written request from a warehouse operator to store a specified amount of grain in another warehouse and confirmation of compliance with Iowa Code section 203C.6, the bureau shall issue an amended license to the warehouse operator. The amended license shall show the number of bushels which the warehouse operator is authorized to store in another warehouse. The warehouse operator shall not store grain in another warehouse prior to the issuance of the amended warehouse operator license.

90.19(3) Net worth requirement. The number of bushels of grain to be stored in another warehouse shall be added to the warehouse operator's gross capacity. The warehouse operator must have sufficient net worth to cover the gross capacity or provide a deficiency bond or irrevocable letter of credit as provided for in Iowa Code section 203C.6. The net worth requirements of Iowa Code section 203C.6 shall not apply to transfers of grain between warehouses licensed by the same entity.

90.19(4) Trust warehouse receipts. A warehouse operator who stores grain in another warehouse shall obtain a nonnegotiable warehouse receipt for the grain stored. The warehouse receipt shall be on an official form as specified in 21—90.14(203C), an official United States Department of Agriculture authorized bonded warehouse receipt as provided for in the United States Warehouse Act or on an official form as specified in the regulations of the state in which the warehouse receipt is issued.

90.19(5) Record keeping—daily position record. Grain stored in another warehouse under the provisions of this rule shall be reflected in the total stocks section and the appropriate obligations section of the warehouse operator's daily position record.

90.19(6) Record keeping—shipment records. Grain shipped to another warehouse operator under the provisions of this rule shall be documented on scale tickets. The warehouse operator shall either clearly indicate "forwarded grain" on the scale ticket or maintain a supplementary record of such shipments. The warehouse operator shall at all times maintain a record of the amount of grain stored in another elevator.

90.19(7) Monthly grain statement requirement. On the monthly statements filed pursuant to rule 21—90.18(203C), a warehouse operator shall disclose the amount of each type of grain stored in another

warehouse.

[ARC 0392C, IAB 10/17/12, effective 11/21/12]

21—90.20(203C) Warehouse operator's obligation and storage. If, at the time of an examination, a shortage is determined, a warehouse operator shall purchase and make actual payment in the manner approved by the bureau for a sufficient quantity and quality of the commodity to fully cover the shortage by the end of the second business day after notice by the bureau, excluding weekends or holidays, unless the bureau chief receives within the same time period a confirmation from a surety company or financial institution for 100 percent bonding of the deficiency. Any shortage secured by 100 percent bonding within the allotted time period shall be covered in full within 30 days from the discovery of the shortage. A warehouse operator who does not have a sufficient quantity or quality of grain to satisfy the warehouse operator's obligation based on an examination by the department shall not purchase grain by credit-sale contract to correct the shortage of grain. The department may suspend the license of any licensee who has a shortage and who is unable to satisfy the requirements of this rule.

21—90.21(203C) Storing of products. Bulk grain in storage shall be stored in such a manner that the amount of grain in the storage facility can be readily determined. A product other than bulk grain shall be stored in such a manner that it can be readily inspected and the amount and kind thereof determined. The maintenance, conditioning, care, or surveillance shall be given to stored products as is required to maintain the quality, grade, and safe storage of the products. Nothing shall be placed or stored in a licensed facility that will in any way contaminate the stored products or cause any degrading of grade or value. Storage facilities shall not be overfilled. There shall be sufficient overhead airspace to provide adequate ventilation and to allow the examiner to readily determine the quality and quantity of the grain. The bureau chief may require the installation of overhead ventilation fans in facilities when in the bureau chief's judgment such fans are needed to preserve the quality of stored products. The bureau chief may require the installation of aeration equipment in storage facilities when it is deemed necessary to preserve the quality of stored products.

90.21(1) *Storage of contaminating products or more than one type of agricultural product.* Facilities may be licensed for both bulk grain and agricultural products other than bulk grain; however, if products of a contaminating nature are stored in the facility, the facility shall be removed from the license for any other agricultural products. If more than one type of an agricultural product is being stored in a facility, proper measures shall be implemented to keep such products from intermingling.

90.21(2) *Stored products in licensed facilities.* All stored products shall be maintained in licensed facilities.

[ARC 9388B, IAB 2/23/11, effective 3/30/11]

21—90.22(203C) Facilities. No facility shall be considered suitable for the storage of bulk grain unless the warehouse has the necessary equipment such as grain leg, portable augers or vacuators for handling, receiving, and loading out of grain.

90.22(1) *No connection between facilities.* No unlicensed facility shall be connected to a licensed facility unless prior approval is obtained from the bureau.

90.22(2) *Scale required.* All licensees shall have an approved scale for inbound deliveries made by depositors.

21—90.23(203C) Maintenance of storage facilities. All licensed storage facilities shall be maintained in such manner as to be suitable for the proper and safe storage of the particular product or products to be stored therein. Safe and adequate means of ingress and egress to the various storage units and grounds of the warehouse complex shall be provided and maintained by the warehouse operator. Sufficient louvers, outlets, overhead ventilation fans, aeration ducts and fans or any combination of these shall be maintained in each storage facility to prevent deterioration or spoilage and to maintain proper and safe storage of stored products.

90.23(1) *Inspection safety specifications for ladders and lifts on storage units.* Storage units having entrances over 20 feet to a maximum of 100 feet above floor level shall be equipped with a fixed ladder,

an attached circular or spiral stairway, an alternating tower-type stairway or a safe and adequate lift. Storage units having entrances in excess of 100 feet above floor level shall be equipped with an adequate electric lift. Catwalks or walkways between storage units may be provided in lieu of ladders or lifts between facilities. Rungs on fixed ladders shall be spaced not to exceed 1-foot centers, and there shall be sufficient space between the ladder rung and face of the structure to permit a safe foothold. Landing platforms shall be provided for each 30 feet of fixed ladder or fraction thereof for ladders constructed after December 31, 2005. Landing platforms shall be provided for each offset of fixed ladder sections regardless of the length of the ladder sections. Any facilities with a safety cable and belt hookup that were approved for licensing prior to September 1, 1992, shall continue to be approved provided they are maintained in a safe working order. Any facilities with a fixed ladder more than 20 feet in length, but not more than 24 feet in length, that were approved for licensing prior to December 31, 2005, shall continue to be approved provided they are maintained in a safe condition.

90.23(2) *Catwalks, walkways, landing platforms and stairs.* Catwalks, walkways and landing platforms shall be equipped with a top rail 42 inches from the floor and a middle rail. Catwalks, walkways and landing platforms constructed after September 1, 1992, must also be equipped with toeboards which are at least 4 inches in height and which are not more than ¼ inch from the floor. Stairways shall be equipped with handles which are not more than 34 inches nor less than 30 inches in height and of similar construction as catwalk or walkway rails. Catwalks, walkways, landing platforms, stairways, lifts and ladders shall be kept clean and free of grain and other matter which might endanger the safety of persons using them. Guardrails shall be placed around the entrance to any storage facility exceeding 30 feet above the floor, or around a landing platform below such entrance to a facility. At no time shall electrical lines be anchored on or within reach of a ladder or safety cage unless enclosed in conduit. All electrical lines in proximity of the inspection ladder, stairway, walkway or lift shall be enclosed in conduit.

90.23(3) *Removal of facilities from warehouse operator license.* Any storage facility which fails to meet the requirements of this rule shall be called to the attention of the warehouse operator. Failure of the warehouse operator to place the facility in a suitable condition within a reasonable length of time shall result in the elimination of the facility from coverage under the warehouse operator license in accordance with the provisions of Iowa Code section 203C.8. However, if in the bureau's judgment any facility is unsafe to gain ingress and egress at the time of an examination, the products stored in the facility may not be included in the inventory. Any facility which has deteriorated to the extent that it is unsuitable for storage shall be immediately removed from the warehouse operator license in accordance with the provisions of Iowa Code section 203C.8, until such time that the facility meets the requirements of this rule and has been reinspected.

21—90.24(203C) Temporary grain storage facilities. A temporary grain storage facility may, in the discretion of the department, be approved and licensed on the following bases:

90.24(1) *License period.* A license for a temporary storage facility may be issued at any time but shall be effective for the storage of grain only from August 1 to May 1 of the following year. A temporary storage facility license shall expire each May 1 unless the licensee requests and obtains an extension in accordance with subrule 90.24(2).

90.24(2) *Extensions.* An extension of 90 days may be granted if all of the following requirements are satisfied:

- a. The licensee has requested an original extension or an additional extension no later than 45 days prior to the expiration of the licensing period or extension then in effect.
- b. The bureau has completed an examination of the licensee's temporary storage facility.
- c. The licensee has paid the bureau for the cost of the examination of its temporary storage facility. The payment shall include the labor cost, the equipment cost, the sampling cost and any additional costs incurred by the bureau in examining a licensee's temporary storage facilities. Payment shall be made and received by the bureau before any extension may be granted.
- d. Every temporary storage facility for which the department has granted an extension shall

continue to meet all of the other requirements of rule 21—90.24(203C). Before an extension is granted, the bureau chief may require the filing of a bond or irrevocable letter of credit in an amount to be determined by the department.

90.24(3) *Restrictions on extensions.* The licensing period for a temporary storage facility may be extended beyond August 1. However, the extension of a licensing period for a temporary storage facility shall not result in the granting of a new August 1 to May 1 licensing period. As a result, a licensee shall be required to request additional extensions at least 45 days prior to the expiration of the extension then in effect.

90.24(4) *Expiration.* The warehouse operator shall either purchase the grain stored in the temporary storage facility or remove the grain from the temporary storage facility prior to May 1 or prior to the expiration of a granted extension.

90.24(5) *Specifications for temporary storage facilities.* Every temporary storage facility shall comply with the following specifications:

a. Each storage unit shall contain aeration equipment to provide at least .13 cubic feet of air per bushel per minute.

b. Each storage unit shall have an asphalt base, concrete base, pozzuolanic base, or a compacted limestone base which meets the following minimum specifications:

(1) Base shall be of a depth and compaction to permit trucks or other equipment, used in loading or unloading the pad, to move around over the base without breaking through or unduly scuffing the surface.

(2) Depth of limestone top shall not be less than four inches.

(3) Adequate slope and drainage away from the base shall be provided to prevent any water from standing or backing up under the grain. Base shall be at least six inches above surrounding area.

c. The angle of repose of the stored grain shall be maintained to provide sufficient drainage.

d. The storage unit shall be covered. The cover shall be of sufficient strength to resist tearing under normal expected conditions and to allow a person to walk on the cover without penetrating it.

e. All storage units shall have rigid sidewalls.

90.24(6) *Inspection for licensing.* Every temporary storage facility to be included under a warehouse operator license shall be inspected and licensed before any products to be stored are placed in the facility.

90.24(7) *Limitation.* Temporary licensed storage capacity may not exceed 50 percent of permanent licensed storage capacity. However, the department may issue a license for temporary storage capacity exceeding the temporary capacity limit of 50 percent for a licensing period ending on or before May 1.

90.24(8) *Removal from license.* The bureau chief or examiner shall issue written notice to the warehouse operator for any temporary storage facility which no longer meets the requirements of this rule. Failure of the warehouse operator to place the facility in a suitable condition within a reasonable length of time shall result in the elimination of the facility from coverage under the warehouse operator license. Any facility which has deteriorated to the extent that it is unsuitable for storage shall be immediately removed from the warehouse operator license until the time that the facility meets the requirements of this rule and has been reinspected.

90.24(9) *Moisture and quality.* Corn containing more than 14 percent moisture or soybeans containing more than 13 percent moisture shall not be stored in temporary facilities. Corn and soybeans which do not grade No. 2 or better using the Official United States Standards for Grain shall not be stored in a temporary storage facility.

90.24(10) *Periodic maintenance.* The warehouse operator will make observations of grain temperature, aeration outlet temperature and odor, condition of the cover and drainage as necessary to ensure the safe storage of the grain in a temporary storage facility. These observations shall be made at regular intervals.

[ARC 9388B, IAB 2/23/11, effective 3/30/11]

21—90.25(203C) Emergency ground pile storage space. Emergency ground pile storage space may, in the discretion of the department, be approved and licensed for the storage of corn on the following

bases:

90.25(1) *License period.* A license for emergency ground pile storage space shall be effective from August 1 to January 31 of the following year.

90.25(2) *Expiration.* The warehouse operator shall either purchase the grain stored in the emergency ground pile storage space or remove the corn from the emergency ground pile storage space prior to February 1. Any corn remaining in such space after this date will not be included in grain inventory measurements made by the department, and such corn may not be used to cover storage obligations.

90.25(3) *Bonding.* Before any corn can be placed in licensed emergency ground pile storage space, the department shall receive either an irrevocable letter of credit or a surety bond in the amount of \$2 for each bushel to be placed in emergency ground pile storage space. The irrevocable letter of credit or surety bond will expire on April 1. The issuer shall not cancel the irrevocable letter of credit or surety bond filed with the department under this rule on less than 45 days' notice by certified mail to the department and to the licensee. When the department receives notice from an issuer that the issuer has canceled the irrevocable letter of credit or surety bond, and the letter of credit or surety bond is still needed, the department shall automatically suspend the license if the department does not receive a replacement irrevocable letter of credit or surety bond within 30 days of the issuance of the notice of cancellation. If a replacement irrevocable letter of credit or surety bond is not filed within 10 days following the suspension, the department shall automatically revoke the warehouse operator's license.

90.25(4) *Specifications for emergency ground pile storage.* All emergency ground pile storage space shall have an asphalt base, concrete base, or a compacted limestone base which meets the following minimum specifications:

- a.* Base shall be of a depth and compaction to permit trucks or other equipment used in loading or unloading the pad to move around over the base without breaking through or unduly scuffing the surface.
- b.* Depth of limestone top shall be not less than four inches.
- c.* Adequate slope and drainage away from the base shall be provided to prevent any water from standing or backing up under the grain.

90.25(5) *Licensing.* All emergency ground pile storage space to be included under a warehouse operator license shall be licensed before any corn to be stored is placed in it.

90.25(6) *Limitation.* Emergency licensed ground pile storage space may not exceed 30 percent of permanent licensed storage capacity.

90.25(7) *Record keeping.* A separate daily position record shall be maintained on all corn placed in the emergency licensed ground pile storage space.

90.25(8) *Moisture and quality.* Corn containing more than 15 percent moisture shall not be stored in emergency ground pile storage space. Corn which does not grade No. 2 or better using the Official United States Standards for Grain shall not be stored in emergency ground pile storage space.

90.25(9) *Removal from license.* The bureau chief or examiner shall issue written notice to the warehouse operator for any emergency ground pile storage space which no longer meets the requirements of this rule. Failure of the warehouse operator to place the emergency ground pile storage space in a suitable condition within a reasonable length of time shall result in the elimination of emergency ground pile storage space from coverage under the warehouse operator license.

21—90.26(203C) Polyethylene (polyvinyl) bag storage space. Polyvinyl bag storage space may, in the discretion of the department, be approved and licensed for the storage of corn on the following bases:

90.26(1) *License period.* A license for polyvinyl bag storage space shall be effective from August 1 to May 1 of the following year. A polyvinyl bag storage space license shall expire each May 1 unless the licensee requests and obtains an extension in accordance with subrule 90.26(2).

90.26(2) *Extensions.* An extension of 90 days may be granted if all of the following requirements are satisfied:

- a.* The licensee has requested an original extension or an additional extension no later than 45 days prior to the expiration of the licensing period or extension then in effect.
- b.* The bureau has completed an examination of the licensee's polyvinyl bag storage space.

c. The licensee has paid the bureau for the cost of the examination of the licensee's polyvinyl bag storage space. The payment shall include the equipment cost, sampling cost, labor cost and any additional costs incurred by the bureau in examining a licensee's polyvinyl bag storage space. Payment shall be made and received by the bureau before any extension may be granted.

90.26(3) *Restrictions on extensions.* The licensing period for polyvinyl bag storage space may be extended beyond August 1. However, the extension of a licensing period for polyvinyl bag storage space shall not result in the granting of a new August 1 to May 1 licensing period. As a result, a licensee shall be required to request additional extensions at least 45 days prior to the expiration of the extension then in effect.

90.26(4) *Expiration.* The warehouse operator shall either purchase the corn stored in the polyvinyl bag storage space or remove the corn from the polyvinyl bag storage space prior to May 1 or prior to the expiration of a granted extension.

90.26(5) *Specifications for polyvinyl bag storage space.* All polyvinyl bag storage space shall comply with the following specifications:

- a. The polyvinyl bag shall be a minimum of 8.5 mil or thicker.
- b. The polyvinyl bag shall be white.
- c. The polyvinyl bag site shall be firm and free of objects that could puncture the polyvinyl bag. A gravel base will not be an approved surface.
- d. The following are approved surfaces:
 - (1) Asphalt base.
 - (2) Concrete base.
 - (3) Compacted limestone base.
 - (4) On turf or hay ground that has been mowed to a height (not more than 2.5 inches) not to puncture the polyvinyl bag.
 - (5) Bladed dirt.
- e. Adequate drainage away from the base shall be provided to prevent any water from standing or backing up under the polyvinyl bags.
- f. The polyvinyl bag site shall be free of any spilled grain and tall grass.
- g. The polyvinyl bag must be closed in accordance with the manufacturer's written instructions or so that no deterioration of the stored corn can occur.

90.26(6) *Inspection for licensing.* Polyvinyl bag storage space to be included under a warehouse operator license shall be inspected and licensed before any corn to be stored is placed into the bags.

90.26(7) *Limitations.* Polyvinyl bag storage space may not exceed 30 percent of permanent licensed storage capacity.

90.26(8) *Moisture and quality.* Corn containing more than 14 percent moisture shall not be stored in polyvinyl bags. Corn which does not grade No. 2 or better using the Official United States Standards for Grain shall not be stored in polyvinyl bags.

90.26(9) *Removal from license.* The bureau chief or examiner shall issue written notice to the warehouse operator for any polyvinyl bag which no longer meets the requirements of this rule. Failure of the warehouse operator to place the polyvinyl bag in a suitable condition within a reasonable length of time shall result in the elimination of the polyvinyl bag from coverage from the warehouse operator license. Any polyvinyl bag which has deteriorated to the extent that it is unsuitable for storage shall be immediately removed from the warehouse operator license until the time that the facility meets the requirements of this rule and has been reinspected.

90.26(10) *Periodic maintenance.* The warehouse operator will make such observations of the condition of the polyvinyl bags and the surface temperature of the corn as necessary to ensure the safe storage of the corn in polyvinyl bags. Such observations shall be made at regular intervals.

[ARC 9388B, IAB 2/23/11, effective 3/30/11]

21—90.27(203C) Prioritization of inspections of warehouse operators. Warehouse operators with a probability of failure factor greater than 40 percent, as calculated by the statistical model, shall be examined at least twice in a 12-month period.

21—90.28(203C) 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.

90.28(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 warehouse operator, the warehouse operator's employees, or any other interested party to gain information for its 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 21—90.16(203C).

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, equipment, sampling and any additional costs incurred by the bureau. Payment shall be made as directed by the bureau.

90.28(2) Upon establishment of a rule violation by an examiner or 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. Gravity of the offense.
- b. Likelihood of depositor loss.
- c. Length of time within which a reasonable licensee in a similar circumstance should be able to comply with the rule.

90.28(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 depositor 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.

90.28(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 depositor loss.
- b. Gravity of the offense.
- c. Licensee's intent to violate the rule.
- d. Licensee's record of rule violations.
- e. Number of violations in the particular report.

90.28(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 depositor 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.

These rules are intended to implement Iowa Code chapter 203C

[Filed 1/30/56, amended 1/23/64, 12/7/71, 10/18/72]
 [Filed emergency 10/25/78—published 11/15/78, effective 10/25/78]
 [Filed 2/1/80, Notice 8/22/79—published 2/20/80, effective 3/26/80]
 [Filed 8/14/81, Notice 7/8/81—published 9/2/81, effective 10/7/81]
 [Filed 1/28/83, Notice 11/10/82—published 2/16/83, effective 3/23/83]
 [Filed emergency 7/14/86—published 7/30/86, effective 7/14/86]
 [Filed emergency 8/19/86—published 9/10/86, effective 8/19/86]
 [Filed 9/5/86, Notice 7/30/86—published 9/24/86, effective 10/29/86]
 [Filed 5/9/88, Notice 1/13/88—published 6/1/88, effective 7/6/88]
 [Filed emergency 7/8/88 after Notice 6/1/88—published 7/27/88, effective 7/8/88]
 [Filed emergency 7/1/92—published 7/22/92, effective 7/1/92]
 [Filed 10/22/92, Notice 7/22/92—published 11/11/92, effective 12/16/92]
 [Filed emergency 10/25/94—published 11/23/94, effective 10/26/94]
 [Filed emergency 9/9/98—published 10/7/98, effective 9/9/98]
 [Filed emergency 8/2/99—published 8/25/99, effective 8/2/99]
 [Filed emergency 8/18/00—published 9/6/00, effective 8/18/00]
 [Filed 1/5/01, Notice 9/6/00—published 1/24/01, effective 2/28/01]
 [Filed emergency 12/7/01—published 12/26/01, effective 12/7/01]
 [Filed 10/21/05, Notice 9/14/05—published 11/23/05, effective 12/28/05]
 [Filed emergency 10/17/07—published 11/7/07, effective 10/17/07]
 [Filed ARC 7553B (Notice ARC 7338B, IAB 11/19/08), IAB 2/11/09, effective 3/18/09]
 [Filed ARC 9388B (Notice ARC 9165B, IAB 10/20/10), IAB 2/23/11, effective 3/30/11]
 [Filed ARC 0392C (Notice ARC 0234C, IAB 7/25/12), IAB 10/17/12, effective 11/21/12]
 [Filed ARC 1381C (Notice ARC 1280C, IAB 1/8/14), IAB 3/19/14, effective 4/23/14]
 [Filed ARC 2035C (Notice ARC 1965C, IAB 4/15/15), IAB 6/10/15, effective 7/15/15]
 [Filed ARC 5721C (Notice ARC 5575C, IAB 4/21/21), IAB 6/30/21, effective 8/4/21]

¹ Applicable to Commerce Commission [250] Ch 12