

ITEM 1: Rescind and adopt new Chapter 92

CHAPTER 92

GRAIN INDEMNITY FUND—BOARD ORGANIZATION, OPERATIONS AND CLAIMS

[Prior to 7/27/88, 21—Ch 63]

21—92.1(203D) Definitions.

“Warehouse receipt” means a warehouse receipt issued for bulk grain in accordance with Iowa Code chapter 203C.

GRAIN INDEMNITY FUND BOARD

21—92.2(203D) Location. The office of the grain indemnity fund board is located in the Hoover State Office Building, Des Moines, Iowa; telephone (515)281-5321; mailing address: Grain Indemnity Fund Board, c/o Grain Warehouse Bureau, Iowa Department of Agriculture and Land Stewardship, Hoover State Office Building, 1305 E. Walnut Street, Des Moines, Iowa 50319.

21—92.3(203D) Meetings. Unless otherwise determined by the chairperson, the board will meet at 2 p.m. on the third Thursday of each month. In-person board meetings will generally be held in a conference room in the Hoover State Office building. Telephone and video conference call meetings may be permitted and will generally be hosted from the offices of the grain warehouse bureau of the Iowa department of agriculture and land stewardship in the Hoover State Office building. The establishment and public notice of meeting dates and locations are the responsibility of the chairperson, unless the majority of the members of the board eligible to vote request a meeting. In addition, the board will schedule meetings when circumstances require the board to address claims made against the fund and, for these meetings, establishment and public notice of meeting dates and locations are the responsibility of the chairperson.

92.3(1) Agenda. The tentative agenda is prepared by the chairperson in advance of the board meeting and will be mailed to board members in advance of the meeting date. A copy of the agenda will be mailed to those members of the public who request it and will be prominently posted at the board’s office at least 24 hours before the meeting and on the Bureau’s website. Members of the public wishing to be scheduled on the board’s agenda should notify the chairperson ten days in advance of the meeting and provide written materials explaining their reasons for wishing to address the board. In the case of a board meeting held to deal with claims against the fund, the filing of a written appeal under rule 21—94.9(203D) will satisfy the requirements of the preceding sentence. The chairperson has the authority to make all final decisions on the content and length of agenda items.

92.3(2) General conduct of meetings. The chairperson presides at all board meetings. Only individuals recognized by the presiding officer may address the board; in general, Robert’s Rules of Order will govern the meeting unless otherwise stated in this chapter or by special action of the board.

In all discussions before the board, members of the public should address any questions for the board to the presiding officer. Individual questioning of board members is allowed with the explicit consent of the presiding officer and the board members in question.

92.3(3) Voting. The board consists of seven members who are all eligible to vote on issues. The affirmative vote of four board members is necessary to carry an action.

92.3(4) Public participation. All meetings are open to the public in accordance with the open meetings law, Iowa Code chapter 21, except that portions of a meeting may be closed in accordance with the open meetings law. In the chairperson’s discretion, a 15-minute public forum may be scheduled on each agenda of regularly scheduled meetings to allow the public, if necessary, an opportunity to address the board on any issue that may have arisen after the agenda was posted.

21—92.11(203D) Minutes. The minutes of all board meetings are recorded and kept by the grain warehouse bureau in the board's office.

[ARC 9288B, IAB 2/23/11, effective 3/30/11]

21—92.12(203D) Board decisions. The actions of the board will be authoritatively recorded in the minutes of the board meeting at which the actions were taken. The board may adopt, amend, or repeal rules subject to Iowa Code chapter 17A to govern the operations of the board, to adjust or waive the per-bushel fee and the annual dealer-warehouse fee, and to govern the process of making claims against the fund. These rules are published by the department in the Iowa Administrative Code. The board may also recommend the adoption of other rules by the department relating to the fund.

21—92.13(203D) Records. The records of all the business transacted and other information with respect to the activities of the board are public records and are on file in the board's office. All records including board minutes are available for inspection during regular business hours. Copies may be obtained at a cost of 25 cents per page.

21—92.7(203D) By whom claims can be made. A claim shall not be made on grain which was initially eligible as a covered transaction but became not covered as a result of a new deferred-payment contract transaction.

[ARC 9288B, IAB 2/23/11, effective 3/30/11]

92.20 and 92.9 reserved

PARTICIPATION IN GRAIN INDEMNITY FUND

21—92.10(203D) Fees. Until the amounts are amended or waived by the grain indemnity fund board pursuant to Iowa Code section 203D.5, in accordance with Iowa Code chapter 17A, fees are assessed as follows:

92.10(1) A per-bushel fee on all purchased grain, in an amount of one-quarter cent per bushel, remitted by grain dealers. However, if the grain dealer provides documentation satisfactory to the department, the exemptions noted in Iowa Code 203D.1(b) may apply.

92.10(2) An annual participation fee, remitted by licensees, as follows:

a. For grain dealers, a participation fee of fourteen thousandths of a cent per bushel on all purchased grain entered into the company-owned paid position during the grain dealer's last fiscal year, or a minimum participation fee of \$50, whichever is greater. If the grain dealer provides documentation satisfactory to the department, the exemptions noted in Iowa Code 203D.1(b) may apply.

[ARC 9288B, IAB 2/23/11, effective 3/30/11; ARC 2105C, IAB 8/19/15, effective 9/23/15]

21—92.11(203D) New license applicants. Persons applying for a new grain dealer license or warehouse operator license owe the initial participation fee regardless of whether the grain indemnity fund board has otherwise waived or adjusted the per-bushel or participation fees for licenses. Payment of the fees is due before a new license is issued. The department will refund a participation fee paid by an applicant if the license is not issued. A participation fee paid by a grain dealer applicant shall be recalculated by the end of the first state fiscal quarter after completion of the grain dealer's first year of operation. The grain dealer participation fee shall be recalculated based upon all actual purchased grain entered into the company-owned paid position in the dealer's first year of operation. However, redemptions of collateral warehouse receipts entered in the company-owned paid position shall not be considered as a purchase. Underpayments shall be paid by the licensee in accordance with rule 21—92.11(203D), and overpayments shall be refunded by the department.

[ARC 9288B, IAB 2/23/11, effective 3/30/11]

21—92.11(203D) Due date for payment of the per-bushel and participation fees.

92.11(1) Quarterly payments. The per-bushel fee and the participation fee installment payment and

the quarterly report are due, except as provided in subrule 92.11(2), on the fifteenth day of the fiscal month succeeding the fiscal quarter in which the fee accrued. The fiscal quarters are as follows: September 1 through November 30; December 1 through February 28; March 1 through May 31; and June 1 through August 31.

92.11(2) *Payments for licensees out of business.* If a grain dealer or warehouse operator license has expired or is revoked or canceled during the term of a fiscal quarter, the quarterly report and per-bushel fee for that quarter are due 15 days after the date of license expiration, revocation, or cancellation.

92.11(3) *Holidays.* If the due date determined under subrules 92.11(1) and 92.11(2) falls on a Saturday, Sunday, a legal holiday as provided in Iowa Code section 4.1(34), or a Monday following a Sunday which is a named legal holiday, the due date is the following day.

92.11(4) *Forms and payment.* Quarterly report submissions will be on forms or in a format prescribed by the bureau. The quarterly report will include payment of the amount of the per-bushel fee. Checks need to be made payable to the Iowa Department of Agriculture and Land Stewardship (abbreviated as IDALS). Payments and reports may also be submitted through the Department's on-line payment portal.

92.11(5) *"Receiving" defined.* For the purpose of this chapter, "received" means the earliest of the following:

- a. The date a state warehouse examiner acknowledges receipt;
- b. The date on which the report is stamped "received" in the warehouse bureau;
- c. The date on which the report is 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; or
- d. The date payment is made via the Department's on-line payment portal.

[ARC 9288B, IAB 2/23/11, effective 3/30/11]

21—92.12(203D) Penalty for delinquent submission of per-bushel and participation fees.

92.12(1) *Delinquent payments defined.* In regard to the submission of the quarterly report, per-bushel fee and the participation fee installment payment, the licensee is deemed to be delinquent if any of the following apply:

- a. The quarterly report and payment of the per-bushel fee due are not received on or before the due date.
- b. The quarterly report and partial payment of the per-bushel fee due are received on or before the due date, but the underpayment exceeds the margin of error, which for this rule is the greater of \$10 or 10 percent of the per-bushel fee due as determined by the warehouse bureau.
- c. The quarterly report and partial payment of the per-bushel fee due are received on or before the due date, and the underpayment is within the margin of error provided, but the amount of the underpayment has not been received on or before the tenth day after the licensee is notified of the underpayment.
- d. The participation fee installment payment is not received on or before the due date.

92.12(2) *Penalty amount.* The amount of penalty for a delinquent submission is the lesser of the amount of the deficiency or \$10 per day for each day after the due date for the quarter in question, through the earlier of the date the underpayment is received or the date the licensee's license has expired or has been revoked or canceled. However, a delinquent payment is subject to a minimum penalty amount of \$10.

92.12(3) *Penalty when no assessment is due.* If the licensee is delinquent because the quarterly report is not received until after the due date, but no per-bushel fee was due for that quarter, there is a one-day penalty of \$10.

92.12(4) *License suspension and revocation for failure to pay.* If the delinquency is not cured within 30 days after the due date, the grain dealer's or warehouse operator's license may be suspended. If the delinquency is not cured within 30 days after suspension, the license may be revoked.

92.12(5) *Overpayments.* If, upon review of the quarterly report, the grain warehouse bureau determines that there has been an overpayment of \$1 or more, the bureau shall issue a credit to the

licensee which may be applied against the amount of assessment due in succeeding quarters. Overpayments of less than \$1 are negated.
[ARC 9288B, IAB 2/23/11, effective 3/30/11]

21—92.13(203D) Penalty for delinquent payment of per-bushel fee discovered during examination.

92.13(1) *Delinquent payments defined.* In regard to an underpayment discovered during the performance of an examination, the licensee is deemed to be delinquent if any of the following apply:

a. The underpayment for any quarter exceeds the margin of error, which for this rule is the greater of \$100 or 50 percent of the per-bushel fee due for the quarter in question, as determined by the grain warehouse bureau.

b. The underpayment is within the margin of error provided, but the amount of the underpayment has not been received on or before the fifth day after the licensee is notified of the underpayment in the examiner's written report.

92.13(2) *Negated amounts.* Underpayments of less than \$1 are negated and do not constitute delinquency.

92.13(3) *Penalty amount.* If the licensee is delinquent, the penalty is the lesser of the amount of the deficiency or \$10 per day for each day after the due date for the quarter in question, through the earlier of the date the underpayment is received or the date the licensee's license has expired or has been revoked or canceled. However, a delinquent payment is subject to a minimum penalty amount of \$10.

92.13(4) *License suspension and revocation for failure to pay.* If the underpayment is not received within 30 days after the date of the examiner's report, the grain dealer's or warehouse operator's license may be suspended. If the underpayment is not received within 30 days after suspension, the license may be revoked.

92.13(5) *Overpayments.* If, during the performance of any examination, the warehouse bureau determines that there has been an overpayment of \$1 or more, the warehouse bureau shall issue a credit to the licensee which may be applied against the amount of assessment due in succeeding quarters. Overpayments of less than \$1 are negated.

92.14 through 92.19 reserved

CLAIMS AGAINST THE FUND

21—92.20(203D) Procedure for filing claims. In regard to claims by a depositor or seller arising against a grain dealer or warehouse operator, a claim against the grain depositors and sellers indemnity fund may be filed with the Grain Warehouse Bureau (the bureau), Iowa Department of Agriculture and Land Stewardship, Hoover State Office Building, 1305 E. Walnut Street, Des Moines, Iowa 50319. The bureau will create and provide a claim form. Use of the claim form is the exclusive manner of filing a claim against the fund and includes the following information:

1. The name and address of the grain dealer or warehouse operator against whom the claim arose;
2. The name, address, telephone number, and social security or tax identification number of the person making the claim;
3. The type and amount of grain involved;
4. The type of transaction involved;
5. Evidence of ownership;
6. Documentation of a demand on the obligation and a failure to honor the demand; In the event of a repayment loss indemnity claim, documentation of the repayment loss; and
7. A notarized signature by each person making the claim.

21—92.21(203D) Claims by depositors where bureau is receiver. In regard to claims by depositors arising against a warehouse operator whose license has expired or has been revoked or canceled and who has not filed a petition for bankruptcy and where the bureau has been appointed by the court as the

receiver of the grain assets of the warehouse, a claim properly filed with the bureau as receiver within 120 days of the license expiration, revocation or cancellation also is deemed to be a properly filed claim against the fund.

[ARC 9288B, IAB 2/23/11, effective 3/30/11]

21—92.22(203D) Notice of claims. Within 30 days of the receipt of a claim, the bureau will send notice of the claim to each member of the board.

21—92.23(203D) Report by bureau. When adequate information is available, the bureau will make a report to the board of claims ready for determination, identifying the gross and net amount of each claim and the bureau's recommendations as to the validity and value of each claim. The bureau may report the claims ready for determination either as a class of listed claims relating to an identified licensee or individually, as may be appropriate.

21—92.24(203D) Determination of claims. The board will review the report submitted by the bureau and may request additional information on a claim. The board will determine the amount of the loss and the amount the claimant is validly entitled to from the fund within 90 days after the submission of the report to the board, unless the board finds good cause to delay the determination. "Good cause" includes the need for additional information on a claim. Notice of the board's determination will be sent to each claimant by ordinary mail. The notice of the determination will indicate the date when it is sent.

21—92.25(203D) Appeal from determination.

92.25(1) Time limit for filing. A claimant whose claim has been determined by the board may appeal the determination by filing an appeal with the board within 20 days of the date the notice of the determination was sent. Appeals shall include a statement as to the amount the appellant is contesting and as to the basis for appeal. The board's determination becomes final if there is no timely appeal.

92.25(2) Board action on appeals. Upon the timely filing of an appeal, the board will schedule an evidentiary hearing or an opportunity for oral argument before the board on the appeal. The hearing or argument will be scheduled no sooner than 15 days after notice of the hearing or oral argument is sent to the appellant by ordinary mail. If an evidentiary hearing is scheduled, the appellant may appear and submit evidence concerning the claim. The bureau may also appear and submit evidence. If the appellant fails to appear, the board may proceed in the appellant's absence. If a hearing or oral argument is held, the board will prepare a written decision. The appellant will be sent a copy of the board's decision by ordinary mail. The decision will indicate the date when it is sent.

92.25(3) Exclusive remedy. The procedure provided by this rule is the exclusive administrative remedy in regard to the board's determinations as to the validity and amount of claims.

21—92.26(203D) Payment of valid claims—conflicting interests.

92.26(1) Subrogation and payment. If the board has validated all or part of a claim, the board authorizes the chairperson or the chairperson's designee to facilitate payment from the fund to the claimant in the determined amount upon the claimant's execution of a subrogation of the fund to the rights of the claimant and of an agreement to hold the fund harmless as against competing claims to the determined amount.

92.26(3) Joint payments and interpleader for conflicting claims. If the board determines that a valid claim is subject to an interest by more than one depositor or seller, the board may order joint payment. If priority of interests in the validated claim is at issue, the board may bring an equitable action of interpleader against the conflicting parties pursuant to Iowa Rule of Civil Procedure 1.251, and may order the deposit of the determined amount with the court pursuant to Iowa Rule of Civil Procedure 1.253.

[ARC 9288B, IAB 2/23/11, effective 3/30/11]

These rules are intended to implement Iowa Code chapter 203D.

Ch , p.6 Agriculture and Land Stewardship[21]
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IAC 3/22/23

ITEM 2: Rescind chapters 93, 94 and 95