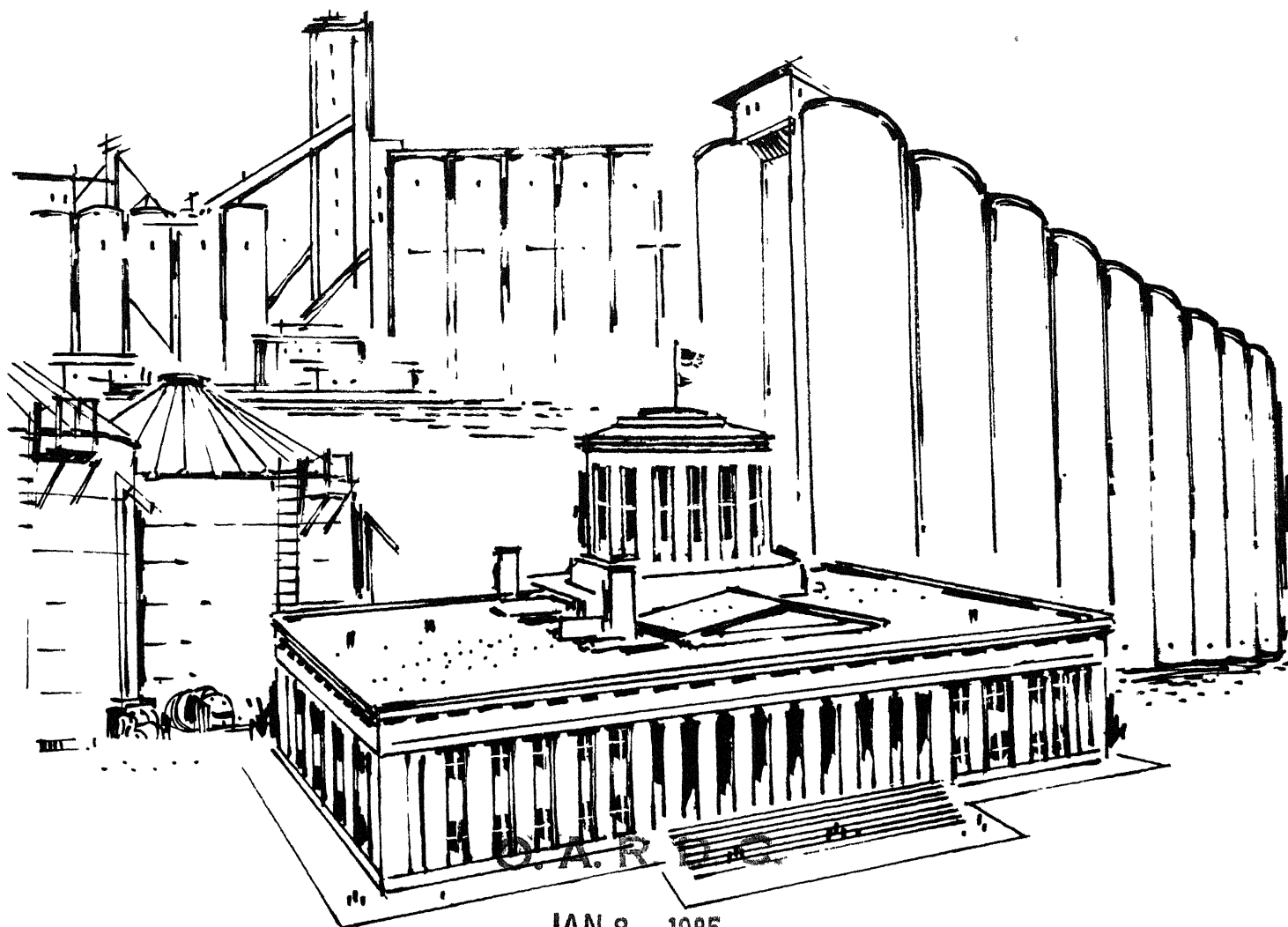




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THE OHIO GRAIN MARKETING LEGISLATION OF 1982-83



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The Ohio Grain Marketing Legislation of 1982 and 1983

By

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For Sale Publication

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The Ohio Grain Marketing Legislation of 1982 and 1983

By

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Section I

To preserve the integrity and stability of the Ohio grain marketing system, the Ohio General Assembly passed and the Governor signed House Bill 770 (H.B. 770). This grain marketing legislation was passed in late 1982 and is now fully effective. A portion of this 1982 law was amended by the passage of H.B. 291 on July 1, 1983. The portion of H.B. 291 related to grain marketing becomes effective January 1, 1984.

The objective of this paper is to explain the meaning and intent of the recent legislation affecting farm marketing. In Section I the paper evaluates the economic climate in Ohio that precipitated the drafting of these bills. Section II provides a synopsis of H.B. 770 and explains pertinent details by posing and answering important questions. Section III provides a synopsis of H.B. 291 which deals with mortgaged farm products and also explains details in a question/answer format. Section IV is a summary that outlines the duties and rights of the director of the Ohio Department of Agriculture (ODA), defines important terms and concludes by providing a copy of ODA regulations and a sample ODA negotiable warehouse receipt.

This explanation of the law is written as a general guide for the reader. If further interpretations are required, an attorney or an employee of ODA should be contacted. All persons wishing more information may write to the Grain Warehouse Division, Ohio Department of Agriculture, Room 609, 65 South Front Street, Columbus, Ohio 43215 or phone 614/466-7564.

Economic Conditions

Many changes have occurred in the Ohio grain marketing and production system. The volume of grain produced by farmers more than doubled during the last twenty years (Agricultural Statistics). Corn, which was the predominant crop, now competes with soybeans for planted acres. Farmers who fed large quantities of corn to livestock currently specialize in the production and sale of grain or livestock products. The number of specialized livestock and grain farms is decreasing and the size as measured in acres of harvested grain or pounds of meat produced per farm is increasing (Hennen et al. 1980, and Agricultural Statistics 1982).

Country elevators that primarily bought grain from farmers and provided a select set of services now compete with terminal and river elevators to merchandise large quantities of grain to export points and to deficit grain regions in the U.S. The number of elevators is declining, and the size as measured by storage capacity and/or volume of grain merchandised by elevator is increasing (Hennen, et al., 1980). Methods of transporting grain from its origin in Ohio to its final destination are changing as multi-car rates, unit train rates, train loading stations and barge facilities are introduced.

Because of Federal farm programs, grain prices in the 1950s and 1960s were relatively stable and predictable. Price levels at harvest approached the dollar level and increased by a few cents to cover storage and financial costs (Ohio Agricultural Statistics). The international free market policy of the 1970s and 1980s resulted in significant price fluctuation because of changing supply and demand relationships and conflicting government policies (embargoes versus international free trade, for example). This fluctuation in prices, coupled with changes in the annual supply of grain, created a dynamic marketing environment, causing incomes to vary for both farms and elevators.

Because of the dynamics of the market, the complexity and variety of selling methods, and the emergence of specialization in both the farm and elevator sectors, the financial success of many farms and elevators currently depends on the production and sale of grain. Financial losses due to insolvency of the trading partners (whether farmer or commodity marketing firm) seriously threaten the livelihood of farmers and the earned profits of elevators. Therefore, the respective trading partners must be concerned with the financial stability of each other. In the past if an elevator to which a farmer sold grain became insolvent, the unpaid farmer would be an unsecured creditor and might receive only a fraction, if any, payment for the unpaid grain deliveries. Elevators have been held accountable for losses sustained by creditors holding a secured interest in farm products when financially strapped farmers sold their produce and defaulted on their loans.

Many farmers, elevators and their respective organizations perceived the prior Ohio grain warehousing law as being inequitable and therefore petitioned the Ohio General Assembly to strengthen the existing Warehouse and Dealers law. The following synopsis outlines H.B. 770 which, like all legislation, seeks to satisfy the needs of all parties through compromise.

Section II Synopsis of House Bill 770

This law establishes specific standards of finance that must be maintained by licensed handlers, specifies under what terms the director of ODA may suspend an elevator's license, requires that the elevator maintain detailed records concerning transactions, and grants the director or his representative the right to inspect an elevator's records at any time. Strict procedures are also established to correct the following problems: discovery that a warehouse has an inadequate supply of grain relative to its grain position report (a grain

shortage), discovery that grain is going out of condition in the warehouse and discovery that grain must be sold to satisfy a warehouseman's lien. In addition, the law defines the use of warehouse receipts, the rights of farmers who elect to use the delayed price selling method, and procedures for grading grain (testing). It established a Commodity Advisory Commission and two special accounts: one to indemnify the depositor (farmer or elevator) who suffers losses due to an elevator financial failure, and the second to pay for the examination and administrative costs incurred by the director of ODA in performing authorized and required inspections of elevator and warehouse records.

The following are major points of interest:

1. An indemnity fund defined as the Agricultural Commodity Depositors Special Account is used to indemnify the depositor (farmer or elevator) in the event of a warehouse or elevator bankruptcy or financial failure. The fund covers depositors for losses not recovered through other legal remedies up to 100 percent of the first \$10,000 and 80 percent of the remaining loss. The fund is created by requiring all licensed handlers to remit a one-half cent per bushel fee to ODA on:

- a. All grain delivered for storage, sale, exchange or negotiation of sale by farmers
- b. All grain delivered for storage under a bailment (storage) agreement, regardless of who deposited the grain and if a receipt is to be issued
- c. All grain owned and stored by a licensed handler for which a receipt is issued.

Therefore, elevators will remit a one-half cent per bushel fee until \$4 million is accumulated or until an amount of one-half the sum of all claims approved

during the preceding four years is accumulated. In any case, the minimum amount required for the fund is \$4 million. At that point, the director may elect to lower or eliminate the fee until the level of the fund is diminished.

2. A second fund, the Commodity Handler Regulatory Program Special Account, is used to pay the examination and administrative costs incurred by the director or his representative to enforce the law. The director or his representative is required to examine applicants for a license, the records, the commodity inventory and/or the warehouse of handlers who have licenses, and any unlicensed operator suspected of being a commodity handler. This account is funded by ODA who sells warehouse receipt forms to handlers and charges an annual licensing fee of \$250 per license. If these sales and licenses generate an inadequate source of funds to administer the law, interest earnings from the indemnity fund (No. 1) may be used or the deficit can be offset from general revenues.

3. The law requires that every handler maintain correct records, which can be examined by the Director of Agriculture for:

- a. Grain received in the warehouse and withdrawn therefrom
- b. Unissued receipts and tickets in the handler's possession
- c. Receipts and tickets issued by the handler
- d. Receipts and tickets returned to and canceled by the handler
- e. Grain merchandised by the handler, including the type of marketing transaction through which it was handled
- f. Obligations to depositors who agree to sell grain via delayed price contracts.

4. The law establishes the following financial solvency requirements that must be met by applicants for handler licenses and by handlers who want to maintain their licenses:

- a. Possession of net assets of at least \$25,000. A deficiency may be compensated with a bond.
- b. The maintenance of unencumbered assets of at least 10 cents per bushel, not to exceed \$200,000, for the total number of bushels of grain merchandised during the previous year to cover any indebtedness arising from the operation of the handler
- c. A yearly financial statement to be submitted to the director, who may require that it be prepared by a certified public accountant
- d. Adequate insurance coverage against loss by fire, internal explosion, lightning and windstorm.

5. The law establishes the following procedures for selling grain that is out of condition and determining its ownership. To sell grain that is out of condition, the grain handler must notify both the director and the owner of the grain. If the owner does not remove the grain promptly, the director may provide written permission for the handler to sell the grain without delay or advertisement.

The owner of the out-of-condition commodity shall be in order:

- a. The handler (elevator or warehouse), to the extent the handler owns or has stored the grain in the warehouse
- b. The depositor (farmer or another elevator) holding the oldest dated tickets or receipts.

6. A delayed price agreement shall be in such form and contain such terms as defined by the ODA director. The agreement must be signed by the licensed handler and the depositor. For all delayed price grain, the handler is required to maintain a financially secure position of at least 90 percent of the value of the grain. The financial position is defined as one or a combination of the following:

- a. Holding the grain in storage
- b. Holding a receipt for grain stored in a warehouse owned by a second handler
- c. Holding the proceeds from the sale of grain in the form of cash, balances in commodity margin accounts (futures market) or approved short-term investments
- d. A second delayed price agreement with another handler.
That is, the grain is delivered to a second handler but is not priced.

The law permits the farmer to demand additional assurances from the handler of delayed price grain. The amount demanded by the farmer may be equal to:

- a. 100 percent of the national loan rate value of the commodity
- b. 75 percent of the average price paid to farmers statewide, whichever is less

The type of security is determined by the elevator and may be either cash or an irrevocable letter of credit.

7. A handler is entitled to a "warehouseman's lien" on the farmer's stored grain ensuring that all drying and storing charges will be paid by the farmer when due. This law authorizes the handler to sell the grain out of

storage to collect money due him. Before selling the grain, written notice must be delivered to the farmer's residence either in person or by certified mail.

8. The law establishes a Commodity Advisory Commission. The Commission is composed of three farmers, three licensed handlers and one rural bank officer, all to be appointed by the ODA director. The Commission is to:

- a. Advise and counsel the director on all matters relating to this law
- b. Determine the validity and amount of any claim against the indemnity fund
- c. Determine, with the director, when the per bushel fee for the indemnity fund is to be reinstituted if the director has waived the initial fee requirement.

Questions and Answers for Select Topics

Licensing Requirements

The licensing and financial requirements of the program became effective April 1, 1983. To obtain a license, a handler must maintain a minimum net worth and specified set of insurance coverages. Anyone who handles agricultural commodities in Ohio must be licensed. A "handler" is defined as someone

- a. Engaging the business of buying, selling, exchanging and negotiating a sale, a transfer or an exchange
- b. Operating a warehouse
- c. Receiving grain under a delayed price agreement.

A handler is not defined to include:

- a. A farmer who sells what he produces
- b. The processor who buys for his own use

- c. The retail firm that does not buy more than 5,000 bushels of grain per year, does not handle grain under bailment or delayed price agreements and receives a waiver by the ODA director.

Although federally licensed handlers are licensed by the state of Ohio as well, the law does not apply to federally licensed elevators when the commodity is delivered under a bailment agreement (storage agreement). Grain deposited in a federally licensed warehouse is covered under federal laws, including, without limitation:

- a. Selling out-of-condition grain
- b. Records the handler must maintain
- c. Insurance that must be maintained
- d. Indemnification for dishonored receipts (a fee is not paid on grain stored in a federally licensed warehouse)
- e. Record examination by government authorities
- f. Renewal procedures for lost or destroyed receipts
- g. Right of federally licensed handler to sell grain to satisfy a lien
- h. Obligation of federally licensed handler to give notice of his intent to close the warehouse.
- i. Pertinent Federal laws can be found under Title 7 of the U.S. Code, Section 241.

Questions and Answers

1. What are the advantages of dealing with a handler licensed under this new law?

The handler is required to adhere to:

- a. Specified insurance coverage
- b. Specified record keeping

- c. Specified financial solvency standards
 - d. Specified financial standards for all delayed price grain
 - e. Specified standards for grading (sampling) grain
 - f. Legal requirements for dealing with select problems such as financial failure, lost receipts, selling out-of-condition grain and selling farmer-owned grain to settle a warehouseman's lien
 - g. Inspections by the director or his representatives.
2. Are commodities delivered by farmers to federally licensed handlers covered by the state's indemnity fund?
- a. No, if the grain is delivered under bailment (storage) agreement. The farmer must settle all disputes based on federal law.
 - b. Yes, if the grain is deposited under a delayed price agreement or for sale or negotiation of sale.
3. Are commodities sold by a state licensed handler to a federal handler covered by the state's indemnity fund?
- a. No, the state handler cannot collect from the federal handler because a fee was not paid into the indemnity fund.
4. How does the farmer or depositor identify which handlers are licensed by the state of Ohio or by the federal government?
- a. Each licensed handler shall keep posted where they can be easily read his handler's license and any grain testing certificates of employees of the firm.
 - b. In this explanation, the authors are not recommending one type of licensed handler over another, nor do we mean to imply that elevators posting only state licenses are better regulated or more closely examined than are federally licensed warehouses.

5. What are the standards of financial responsibility that must be met and maintained to be licensed in Ohio?
 - a. To acquire and maintain a license, the handler must have unencumbered assets of at least 10 cents per bushel for the total number of bushels handled during the year preceding the application date. An applicant's net assets need not exceed \$200,000 nor may they be less than \$25,000 regardless of the total number of bushels handled the previous year. If net assets are less than \$25,000 the deficit may be compensated for by securing a bond to protect any person who may be injured by the handler's failure to meet all obligations as described in the grain handlers' law.
 - b. To acquire and maintain a license, a handler must provide a financial statement to ODA. The statement must be prepared by an individual not associated with the firm, and if the ODA director insists, it must be prepared by a certified public accountant.
6. What are the insurance requirements that must be met and maintained to be licensed in Ohio?
 - a. The elevator must file a certificate of insurance with the director to verify that all agricultural commodities are insured for their full market value against loss by fire, internal explosion, lightning and windstorms.
7. How shall depositors' claims be satisfied if there is a loss by fire, internal explosion, lightning or windstorms?
 - a. The insurance policy must contain a clause granting a lien in favor of ODA. This means that the funds from the insurance policy are distributed to ODA, who insures that depositors'

claims are satisfied. Once the depositors' claims are satisfied, ODA releases its lien on the remaining insurance funds.

- b. If the insurance funds do not satisfy all claims, depositors may file to be reimbursed from the Indemnity Fund.
- c. Note: If one of the above disasters led to elevator financial failure, ODA could also make claim on unsecured elevator assets if the insurance proceeds did not cover depositors' claims.

8. What procedures are required to cancel insurance policies?

- a. The handler must acquire the written approval of the ODA director by demonstrating that an alternative insurance policy has been acquired.
- b. The handler can be ordered by the director to alter an existing policy to acquire more coverage.

9. Does a non-Ohio handler who buys or negotiates for grain from an Ohio farmer and/or handler need to be licensed in Ohio?

- a. Yes, if the out-of-state handler enters Ohio to negotiate for grain or takes title to the grain in Ohio. In this case the transaction is covered under the Ohio law and a fee is paid into the indemnity fund.
- b. No, if the title to the grain is taken in the neighboring state. The transaction is covered under the neighboring state's law and the fee is not paid into the indemnity fund.

10. Can the ODA director cancel or suspend a license?

The director may cancel, suspend or refuse to grant a license without prior hearing if reasonable cause suggests that the operator has:

- a. Failed to maintain proper insurance coverage

- b. Failed to maintain accurate and complete records
- c. Failed to charge, collect or remit the indemnity fund fee
- d. Refused to allow the business records to be examined
- e. Insufficient grain to cover receipts and tickets written for grain in storage
- f. Issued a receipt illegally
- g. A net asset value of less than \$25,000 and/or net assets of a value of less than 10 cents per bushel not to exceed \$200,000 for all grain handled the preceding year.

Storage Duties of the Handler

The handler must exercise as much care in regard to stored grain as would a reasonably prudent owner. Any handler guilty of neglect is liable to the depositor who was damaged by that neglect. The law lists strict procedures for the director to follow when a handler is believed to be short of grain. If grain is out of condition or is going out of condition, the handler may have it removed or may sell the commodity. If any aspect of this part of the law is violated, the director may go to court to terminate the operation of the handler.

Questions and Answers

1. What may the handler do if a stored commodity is out of condition or is going out of condition?
 - a. If the grain cannot be preserved, the depositor and the ODA director must be notified immediately.
 - b. The director, unless otherwise requested by the depositor, inspects the grain.
 - c. If the director judges the grain to be out of condition or going out of condition and if the depositor does not

remove the commodity promptly, the handler may sell the commodity by providing notice of sale to the depositor. The formal notice of sale must be in writing and must be delivered in person or by certified mail to the place of business or residence of the depositor.

- d. With written permission of the director, the grain may be sold without delay and without advertising at a public or private sale.

2. Who would be considered owner of the out-of-condition commodity?

- a. The owner of the grain shall be in order: the handler, to the extent he holds title to any of the commodity, and the depositor holding uncanceled warehouse receipts or scale tickets in the order in which the receipts or tickets are dated. That is, the depositor holding the oldest dated receipt or ticket shall be considered the owner of the out-of-condition grain.

3. How shall the depositor other than the handler of the out-of-condition grain be paid?

- a. If the depositor does not immediately remove or sell the grain, the handler proceeds with the sale.
- b. All proceeds of the sale shall be sent to the director after the handler's advertising expenses are deducted.
- c. The depositor of the commodity must file a claim with the director to receive payment.
- d. If the handler was guilty of neglect and caused the grain to become out of condition, he is liable to the depositor.

4. What action can the director take if the handler is short grain, i.e., there is an inadequate quantity of grain to cover the outstanding warehouse receipts and scale tickets issued under bailment agreements?
 - a. The handler is ordered to cover the shortage by issuing a bond or by acquiring an additional supply of the commodity.
 - b. If the handler does not comply with the order within 24 hours, the director can petition the Court of Common Pleas in the county where the handler is located for an order authorizing the director to seize the warehouse and all records.
5. If the warehouse and its records are seized, how long can the director retain possession of all records, commodities and properties?
 - a. The handler can regain the property by satisfying the claims of all depositors or by petitioning the courts for release of property.
 - b. If the handler can neither satisfy the claims nor obtain the court order, the director may petition the Court of Common Pleas for an appointment of a receiver to operate or liquidate the handler's business.

Receipts (Evidence of Title for Depositor)

If the depositor who stored grain under a bailment agreement requests a warehouse receipt, the handler must issue it. If a receipt is not requested and is not issued, the terms of the bailment agreement are the same as if a non-negotiable receipt were issued.

Questions and Answers

1. What is a non-negotiable warehouse receipt?

- a. It is a document that states that the grain can only be delivered to the person named on the receipt or to the bearer of the receipt who has written permission from the person named in the receipt. The law states that scale tickets shall be regarded as non-negotiable warehouse receipts.
2. What is a negotiable warehouse receipt?
 - a. It is a document that states that the grain can be delivered to the depositor named on the receipt, the bearer of the receipt or the order of any person named in the receipt.
 - b. For example, a depositor holding a warehouse receipt may want to transfer the receipt to another person, like a creditor. In such case the creditor could be given the right to negotiate the receipt with the handler.
3. Are both the scale ticket and the warehouse receipts considered documents of title to stored grain?
 - a. The legal definition of a document of title includes specifically a "warehouse receipt".
 - b. The law further states that any other document "that in the regular course of business is treated as evidence that the person holding it is entitled to the goods the document covers" is also considered a document of title. This implies that a scale ticket would be considered as a document of title; however, the words "scale tickets" are not specifically cited in the legal definition.

4. Why is the document of title important?

The document of title is important as it is the only evidence that the person named in the scale ticket or warehouse receipt owns the grain being stored. A warehouse receipt or scale ticket obligates the handler to deliver the commodity to its rightful owner.

5. What are the handler's responsibilities toward the depositor if no receipt (either ticket or warehouse receipt) was demanded by the depositor?

- a. The handler has the same responsibility as if a scale ticket was issued.

6. Why would the depositor request a warehouse receipt instead of a scale ticket for grain in storage?

- a. A scale ticket is not accepted as collateral at a bank, while a warehouse receipt is acceptable collateral.
- b. The warehouse receipt is proof of title to the grain. The scale ticket should be proof but is not specifically stated in the law, nor has it been proven to be a document of title in an Ohio court. The difference between the two documents becomes apparent if the farmer attempts to sell his grain to a third party. The scale ticket is non-negotiable and thus cannot be sold. To sell to a third party, the farmer must request a negotiable warehouse receipt from the elevator.
- c. If a warehouse receipt is lost or must be altered when a part of the grain is sold, the handler's necessary records are governed by the law. In contrast, the law does not prescribe procedures for dealing with lost, destroyed or modified scale tickets.

7. What are the similarities between issuing a warehouse receipt or scale ticket for grain in storage?

Tickets and warehouse receipts are interchangeable in many aspects of the law. The following are examples of this interchangeability.

- a. The handler must maintain records of all warehouse receipts and scale tickets issued.
- b. If during an examination the director discovers that a shortage of grain exists, all holders of warehouse receipts and scale tickets are notified.
- c. When a dollar value of loss from a grain shortage is calculated, warehouse receipt and scale ticket holders are treated equally.
- d. When determining the owner of out-of-condition grain, dates on both warehouse receipts and scale tickets are verified and all holders of these instruments are treated equally.

8. Will the depositor pay for the issuance of a warehouse receipt?

- a. Usually there is a small charge per bushel, but the Ohio law does not address the question.
- b. The charge for the warehouse receipt is regulated by competition in that the handler can charge whatever the market will bear.

9. Is there an expiration date on a warehouse receipt?

- a. The warehouse receipt is valid for one year or until the grain is removed or sold, whichever occurs first.
- b. Anytime within 30 days before the expiration date, the farmer may request the issuance of a new receipt. After the depositor pays any charges due for the storage of grain,

the handler cancels the old receipt and issues a new one. The new receipt shows the date of issuance and serial number of the prior receipt. The reference to the prior receipt is important in case the need arises to determine ownership of out-of-condition grain.

10. What if the depositor neglects to renew the receipt?

- a. The handler must give written notice to the depositor.
- b. The handler may choose to sell the grain but must give the depositor 45 days in which to renew the receipt.
- c. The handler must advertise the intent to sell the grain two weeks before the actual sale date.
- d. If the depositor presents the receipt for renewal anytime during the 45-day period, including the two-week advertising period, the handler must renew the receipt after the depositor paid all storage charges and advertising costs to the handler.
- e. If the sale occurs, the handler extracts storage costs and advertisement fees and remits the residual proceeds to ODA.
To obtain payment the depositor must file a claim with ODA.

11. Can a lost or destroyed receipt be replaced?

- a. Yes, the dates and serial numbers of the prior receipt must appear on the duplicate.
- b. The depositor must file with the handler an affidavit stating that the depositor is entitled to the original receipt and that the original was lost.
- c. The depositor must file with the handler a bond double the value of the grain as specified in the receipt. The bond protects the

handler, the indemnification fund and third parties who may be damaged because a second receipt is issued.

12. If the grain is owned by more than one party, how should the receipt be issued?

- a. More than one receipt may be issued for a load of grain.
- b. The total bushels of grain specified for the multiple receipts cannot exceed the total bushels of grain delivered to the handler.

13. Can receipts be divided or consolidated?

- a. Yes, provided that the receipts to be consolidated were issued within a span of 30 days. All new receipts must bear prior serial numbers and the date of the original issuance.
- b. No, if the receipts to be consolidated were issued more than 30 days apart.
- c. Yes, a receipt may be divided if for instance the farmer wishes to sell a partial load.

14. If only part of a lot of grain is removed from storage, will the receipt be valid and what charges must the depositor settle with the handler?

- a. If part of the grain is removed from storage, the original receipt is canceled and a new one is issued for the residual stored grain. Prior serial numbers and dates are posted on the new receipt.
- b. The law does not address the question of what charges must be paid. At this juncture, the handler, if not requiring payment, may expand his warehouseman's lien on the remaining stored grain to cover costs associated with the grain removed by so stating on the newly issued negotiable receipt.

15. May a handler who owns grain issue a warehouse receipt to himself?
 - a. The handler may issue either a warehouse receipt or a scale ticket to himself.
 - b. The handler must register every self-issued warehouse receipt (a negotiable receipt) with the ODA director at the time the receipt is issued.
 - c. The handler must also file with the director a report identifying current liabilities and the inventory of the warehouse whenever a warehouse receipt is issued to himself.
16. If the receipt is not canceled at the time grain is removed or sold, is the handler liable to the legal holder of the receipt such as a farmer's creditor?
 - a. Yes, the handler is liable to the person who legally holds the receipt.
 - b. The law states that "no commodity shall be delivered twice upon the same receipt". Therefore, a payment would be made in a form other than grain, most probably cash.
17. Can the handler print warehouse receipts?
 - a. No, the law states that "no person shall issue a receipt that has not been furnished by the director".
 - b. ODA sells these instruments at cost, depositing the fee into the grain handler's regulatory account.
18. What shall be printed on the receipt?
 - a. Location of the warehouse
 - b. Date of issuance of the receipt
 - c. Rate of storage charge or the basis for the charge
 - d. Net weight, the percentage of dockage or foreign material, and the grade of the grain

- e. Signature of the handler or his agent
- f. A statement specifying whether the receipt is negotiable or non-negotiable
- g. The amount of advances made or the liability incurred for which the handler claims a lien other than his lien for storing, drying and other such charges related directly to the grain on which the lien exists. If either amount is unknown at the time the receipt is issued, a statement verifying that advances or liabilities exist is required.
- h. A statement identifying the owner of the grain
- i. Other information to be determined at the discretion of the director.

Delivery From Storage

This section of the law identifies procedures and situations in which handlers can justifiably deliver grain from storage. To deliver grain, the receipt must be presented to the handler who marks the following across the face of the instrument:

- a. "Canceled"
- b. The date
- c. The name of the person canceling the agreement.

The handler can deliver grain when:

- a. A receipt is presented on which grain has not been previously delivered
- b. There is a need to satisfy a warehouseman's lien he holds on the depositor's grain
- c. Grain is going out of condition.

Questions and Answers

1. To whom may the grain be delivered?

The Uniform Commercial Code states that:

- a. For a negotiable receipt, the commodity will be delivered to the bearer of the receipt or to any person named in the receipt. A bearer of a receipt other than the depositor can sell or request delivery of the grain if the receipt has been signed over to him or if the receipt is made out to the bearer.
- b. For a non-negotiable receipt (scale ticket), the grain may be delivered to a person named to take delivery or a person who has written authority from the person named in the non-negotiable receipt.

2. When should the handler refuse delivery?

- a. The handler should never deliver grain to persons not entitled to the commodity. That is, if he knows personally or has been informed that the individual claiming the grain does not have legal ownership, the handler may not deliver the grain.
- b. By law, the handler has a reasonable time period to check the validity of any claim.

3. What is a warehouseman's lien?

If a negotiable receipt is issued for a commodity in storage, the handler automatically has a lien on the grain in storage. This is called a warehouseman's lien and it covers costs that accrue to the grain represented by the receipt such as storage, transportation, demurrage, labor and insurance

costs. The scope of the warehouseman's lien may be enlarged to cover other charges on like goods such as storage costs on grain previously delivered. To claim a lien on these goods, the handler must state in the receipt that a lien is being placed on the grain for the specific lists of goods in question. A handler has the legal right to sell grain to collect on a warehouseman's lien that is due and has not been paid by the depositor. If the handler follows prescribed procedures, the law protects the handler against claims from other parties who have liens against the depositor's commodity and against court judgments from depositors.

4. What procedures are required to sell a depositor's grain to satisfy a warehouseman's lien?
 - a. A written notice must be given to the depositor in person or by certified mail.
 - b. The notice must contain the following:
 1. An itemized statement of the handler's claim against the depositor
 2. A description of the commodity against which the lien exists
 3. A demand stating that the depositor has 10 days from the time the notice is received by the depositor or is delivered to his residence in which to pay the amount of the claim to the handler
 4. A notice stating that if the claim is not paid within 10 days, the grain will be advertised for sale during a two-week period before being sold.

5. Can the depositor prevent the sale?
 - a. The depositor can abort the sale by settling the claim and by paying for any advertising expenditures.
 - b. He can also prevent the sale by going to court and obtaining an injunction to stop the sale.
6. If the grain is sold, how is the depositor paid the residual funds?
 - a. From the proceeds of the sale, the elevator may keep an amount that satisfies the lien and pays for any advertising cost of the sale.
 - b. The residual, if any, is mailed to ODA where the depositor may file a claim.
 - c. If the proceeds of the sale do not cover the amount of the lien, the handler may use other legal remedies.

Sampling Rights and Delivery Obligations of the Farmer

This section of the law states that each shipment of grain must be sampled by a trained tester or grader. It further identifies the delivery rights and duties of both the elevator and farmer. H.B. 770, The Handlers' Act, requires that anyone depositing grain notify the handler of any lien existing on that grain. Failure to notify is a fourth degree felony and can result in a maximum fine of \$2,500 or a jail sentence of 6 months to 5 years.

Questions and Answers

1. Who may sample and grade grain?
 - a. An individual who has completed a training course or who has had adequate on-the-job training as an agricultural commodity tester and is certified to be properly trained by the director or his representative may sample and grade grain.
 - b. The certificate must be posted.

- c. The director may suspend or revoke a certificate if the tester fails to apply the Official Grain Standards of the United States when testing grain.
- 2. Can a second sample be taken and graded?
 - a. Yes, if the second sample is taken before or during the unloading process and such a second test is requested by the handler or the depositor. The second sample shall be used for the testing of the shipment.
- 3. Can samples be combined to obtain a single result of many loads of grain?
 - a. Yes. If the handler and depositor agree, samples of each load shipped to the handler during any one day may be combined.
- 4. If the depositor is dissatisfied with the test results for his grain, what are the options?
 - a. If the grain has not been unloaded, the depositor may request the grading of a second sample or may refuse to sell or store the grain.
 - b. If the grain has been unloaded, the depositor may order the handler to immediately mail the sample to a federally licensed grain inspector. The farmer must specify in writing which factors (foreign matter, moisture content, etc.) should be tested. The federally licensed inspector's decision is final and must be respected by the elevator and the farmer.
- 5. Who must pay for the testing service provided by the federally licensed tester?
 - a. If the federal test increases the value of the grain (depositor's suspicions are correct), the handler must pay the fee.

- b. If the test does not change or lowers the value of the grain (depositor's suspicions are incorrect), the depositor must pay the fee.
- 6. Is it illegal to sell grain that has been treated?
 - a. Yes, it is illegal to offer for sale or storage any commodity treated with any poisonous material or containing rodent excreta, which may render the commodity unfit for animal or human consumption.
- 7. Is it illegal to load unevenly to conceal inferior grain?

Yes, it is illegal to knowingly load a commodity unevenly to distort the testing and grading process

Delayed Price and Deferred Price

A delayed price agreement is defined as a written contract or agreement signed by a licensed handler and a depositor that covers the sale and transfer of title of an agricultural commodity. The agreement contains provisions for establishing the service charges and the method for pricing the commodity at a later date. Deferred payment is a transaction in which grain is delivered for sale and price is determined but payment is deferred to a future date.

Questions and Answers

- 1. What are the responsibilities of the handler who is a party to a delayed price agreement?
 - a. The handler must maintain a file of executed agreements that are available for ODA inspection at any time.
 - b. The handler must maintain appropriate records that document his obligations to the depositor.

- c. The handler must store the commodity, have rights to the commodity, and/or must have the proceeds from the sale of the commodity which in the aggregate equal at least 90 percent of the value of all obligations for all grain purchased via a delayed price agreement. The latter obligation is satisfied in any of several ways, including:
 1. Storing the commodity
 2. Holding a receipt or ticket for the commodity which is stored via a bailment agreement at a second handler's warehouse.
 3. Holding proceeds from the sale of the commodity in one or more of the following forms: cash on hand or deposited in a bank, short-term investments held in a time account, balances in a commodity margin account (futures), commodities sold and shipped by the handler under delayed price agreements that have not been priced (less any payment or advance received by the handler) or other evidence shown of unencumbered assets acceptable to the director, including an irrevocable letter of credit.
2. When must the delayed price agreement be signed and who must sign the document?
 - a. The licensed grain handler and the depositor or their representatives must sign the agreement on or before the date that the first load of grain is delivered.
 - b. This aspect of the law applies to all federal and state licensed grain handlers; therefore, any handler or a representative must sign this document.

3. How does this law protect the depositors of delayed price grain?
- a. First, there is statutory protection, which means that the handler must maintain specified records and specified financial standards on the value of the grain even though the depositor may not make such requests.
 - b. Second, there is personal protection. That is, a depositor can demand from the handler at the time of delivery a security payment equal to 100 percent of the national loan rate or an amount equal to 75 percent of the average statewide price paid to farmers, whichever is less. The handler may pay in the form of cash or letter of credit.
 - c. Third, there is protection via the indemnity fund. If the handler suffers financial failure and the depositor is unable to collect, he can recover from the indemnity fund 100 percent of the first \$10,000 loss and 80 percent of the residual loss.
4. In what ways is the farmer or depositor protected when deferred payment is used?

The depositor is protected in that he has access to the indemnity fund and can be reimbursed should a handler declare bankruptcy. The depositor does not have the right to a security payment as he does in a delayed price transaction. Thus the depositor is usually an unprotected general creditor of the elevator.

Indemnity and Regulatory Funds and Records

The law creates two funds. The first, the Agricultural Commodity Depositor's Special Account (Indemnity Fund), is designed to reimburse grain depositors for losses due to handlers's financial failure. This fund is

financed by requiring handlers to remit a one-half cent per bushel fee to ODA for grain deposited at a handler's facility.

The second fund, the Commodity Handler Regulatory Program Special Account (Regulatory Fund), is used by the director of ODA to pay for the inspection of handlers' facilities and records and to offset other administrative costs incurred to enforce the law. This fund is financed by charging an annual \$250 licensing fee. If these two fees provide an inadequate source of funds to administer the law, the director can offset the deficit by using interest earnings from the Indemnity Fund and by petitioning the General Assembly.

Questions and Answers

1. How is the Indemnity Fund created?
 - a. The licensed handler is required to pay a fee on:
 1. All grain delivered to him for storage
 2. All grain delivered to him for sale, exchange or negotiation of sale by farmers
 3. All grain owned in any way by a licensed handler that is stored in a warehouse (his own or another) and for which a warehouse receipt is issued.
2. How much is the Indemnity Fund fee and when must the fee be paid?
 - a. The fee is set at a maximum of one-half cent per bushel.
 - b. The level of the fee is determined annually by the director and could be waived entirely.
 - c. The fee schedule must be announced by March 1 and becomes effective June 1 each year beginning in 1983.

3. Is the Indemnity Fund fee permanent?
 - a. Yes, but for any one year the director may waive the fee provided the value of the fund equals or exceeds the required minimum limit.
4. What is the required minimum limit?
 - a. The required minimum limit varies depending on the quantity of funds paid to indemnity depositors during the preceding four-year period.
 - b. The amount in the fund must equal at least \$4 million or one-half of the money paid out during the preceding four years, whichever is greater.
 - c. If, for example, in the past four years \$10 million was paid out in claims, then the required minimum limit is \$5 million.
 - d. If, for example, in the past four years \$6 million was paid out in claims, the required minimum limit of \$3 million is negated because the law requires at least \$4 million to be in the fund.
5. What portion of the depositor's losses will be covered by the fund?
 - a. The fund insures 100 percent of all losses up to \$10,000 which cannot be recovered through other legal or equitable remedies.
 - b. In addition, the fund insures 80 percent of the loss beyond \$10,000.
6. What value is assigned to the grain to cover losses and what are the procedures for assigning value?
 - a. The Commodity Advisory Commission, which is appointed by the ODA director, determines the value of the grain.

- b. For stored grain and delayed price grain, the value is based on the fair market price paid to farmers on the day that ODA is notified that the receipt or ticket was not honored by the creditor.
 - c. For cash sale grain and deferred payment grain the value of grain is based on the amount stated on the contract or written promise.
 - d. The depositor demonstrates that on request the handler did not honor his warehouse receipt or scale ticket.
 - e. This evidence along with an affidavit is filed with the director of ODA.
7. How will depositors be indemnified when claims exceed the amount in the Indemnity Fund?
- a. Depositors' claims will be paid in the order in which they are presented and are found to be valid.
 - b. When claims cannot be paid due to an inadequate supply of funds, the ODA director will hold the valid claims and will pay each claimant as money becomes available.
8. What are valid indemnity claims?
- a. Valid claims must be based on grain:
 - 1. Sold as a cash sale
 - 2. Stored under a bailment agreement
 - 3. Sold under a delayed price agreement
 - 4. Sold with deferred payment
 - b. A claim is valid for a cash sale when:
 - 1. A scale ticket is provided by the depositor as evidence of an obligation on the part of the handler

2. The depositor has demanded payment at least once during the last year.
- c. A claim is valid for a bailment agreement when:
1. The depositor presents to ODA a warehouse receipt or scale ticket as evidence of ownership of grain
 2. The depositor has demanded payment from the handler within 12 months after the grain was priced or was delivered, whichever occurred later.
 3. The grain was not stored in a federally licensed warehouse.
- d. A claim is valid for delayed price grain when:
1. A delayed price agreement is provided to ODA by the depositor as evidence of an obligation on the part of the handler
 2. The depositor demanded payment within 12 months after the price is determined. If the depositor did not demand payment within the 12 month period, the claim is invalid.
- e. A claim is valid for a deferred payment grain when:
1. A scale ticket or deferred payment agreement is provided to ODA by the depositor as evidence of an obligation on the part of the handler
 2. Grain was delivered and sold to a handler and the depositor has not been paid but has requested payment within the last 12 months. If the depositor did not demand payment within the last 12 months, the claim is invalid.

9. Who can be reimbursed from the Indemnity Fund?
 - a. The depositor whose warehouse receipt, scale ticket or other demand for settlement of an account is not honored by the handler
 - b. All of the above conditions (Question 8) are met.
10. Who cannot be reimbursed from the Indemnity Fund?
 - a. A handler who delivers grain to a second handler under a delayed price agreement or for sale
 - b. A depositor (farmer/elevator) who delivers grain under a bailment agreement to a federally licensed handler
 - c. Any depositor who does not meet conditions specified in Question 8.
11. What records and accounts must be maintained by the handler?
 - a. All grain receipts and shipments in and out of the warehouse
 - b. All unissued warehouse receipts and tickets
 - c. All issued warehouse receipts and tickets
 - d. All canceled warehouse receipts and tickets
 - e. All grain handled, including type of marketing transaction such as delayed price, cash, storage, etc.
12. For what time period must records be maintained by the handler?
 - a. All documents and records required by this law shall be maintained by the handler for as long as a claim could be made on the transaction.
 - b. Canceled copies of receipts or other documents proving ownership must be retained for at least three years.

Commodity Advisory Commission

The law establishes a seven-member commission to advise and counsel the director in matters concerning this law. The Commission meets three times annually and the director designates one member as chairperson. The journal of the meetings and findings are public records.

Questions and Answers

1. Who shall serve on the Commission?
 - a. The director appoints the Commission members for a three-year period.
 - b. The Commission consists of:
 1. Three farmers who are primarily engaged in farming
 2. One licensed handler, a co-op manager
 3. One licensed handler, owner-operator of a rural warehouse
 4. One licensed handler representing a warehouse located at a major grain transportation center
 5. One banker, an officer of a rural bank
2. What are the duties of the Commission?
 - a. To advise and counsel the director on all matters relating to this law
 - b. To determine the validity of claims against the Indemnity Fund
 - c. To establish the dollar value of a loss incurred by a depositor who makes a valid claim against the Indemnity Fund
 - d. To determine with the director the appropriate annual Indemnity Fund fee

- e. To approve or amend the Regulatory Fund budget.
- 3. How are costs and expenses of the Commission paid?
 - a. Costs are paid from the Regulatory Fund.
 - b. All vouchers must be approved by the ODA director and the chairperson of the Commission.
- 4. Who are the current members of the Commission?

The seven Commission appointees are:

Jane Johnston, Washington, C.H. (Farmer)

Ellen Ricketts, Thornville (Farmer)

Joe Whitney, St. Marys (Farmer)

Ralph Barnhorst, Sidney (Grain Handler-Manager)

John Sharp, Westerville (Grain Handler-Export)

David Craig, Blanchester (Grain Handler-Rural)

Jessee Curtis, Huntsville (Rural Bank President)

Section III Mortgaged Farm Products (H.B. 291)

Historically, buyers of farm products have been held responsible for liens created by the farmer and have at times paid twice for the farm product, once to the farmer (who fails to pay the mortgage) and a second time to the secured creditors who held the mortgage. House Bill 291 will permit the buyer of farm products, as of January 1, 1984, to buy free and clear of liens created by the farmer unless the buyer receives a written notice that the lien exists and is instructed as to payment procedures. If the buyer fails to comply with the payment procedures he may be held responsible for the lien.

As H.B. 291 will not become effective until January 1984 one cannot be sure of its future interpretation and impacts. In this section the portion

of the bill related to security agreements and agricultural products is explained in a question answer format and in a manner consistent with current legal interpretations.

Questions and Answers

1. What are the obligations of the depositor of grain on which a lien exists?
 - a. At the lienholder's (creditor's) request, the farmer must identify the names and locations of buyers to whom he may sell farm products (grain or livestock).
 - b. Upon delivery the handler must be notified by the depositor that a lien exists as required by H.B. 770. This requirement only relates to grain sales (not livestock).
2. May a farmer deliver farm products to a buyer not identified on the list of potential buyers?

If a farmer wishes to sell farm products to buyers not identified on the original list (Question #1a), the farmer must provide the identity of the new buyer(s) to the holders of liens 15 days prior to selling the products. Legally, a "sale" is the passing of title from the seller to the buyer for a price or a value (Ohio Revised Code, Section 1302.01). Two examples should clarify what constitutes a sale. If a farmer forward contracts grain, price has been established but title has not been passed. Thus, a sale does not take place until the farmer delivers the grain and passes title to the buyer. In a second example, the farmer who uses a delayed pricing agreement has passed the title to the buyer, and has received the right to price later. Thus a sale has occurred upon delivery. Therefore, a farmer must notify his creditor holding a lien at least 15 days before delivering grain to satisfy a forward contract or 15 days prior to delivering grain under a delayed pricing agreement.

3. May the buyer of a farm product post the names of farmers with mortgages?

No, the buyer cannot post or disseminate the name of any debtor who may deliver grain to him.

4. Is the handler legally responsible to settle liens on commodities held by other parties if a farmer sells the grain to the handler and the farmer does not pay the secured creditor holding the liens?

- a. No, if the handler was not notified of the lien in writing within 18 months prior to paying the depositor.
- b. No, if a buyer merely knows of a lien's existence and not of specific terms in the agreement.
- c. Yes, if the buyer not only knows of the lien but also knows that the sale of grain would violate some term in the security agreement between farmer and creditor. Examples of terms which could be violated are that the agreement requires a joint check to be issued or states that sale cannot take place without creditors' approval.
- d. Yes, if the holder of the lien has notified the buyer that a lien exists and has given reasonable payment instructions (such as joint payment) and the buyer does not follow the instructions.
- e. This portion of the law does not go into effect until January 1, 1984. The handler, prior to January 1, 1984 will be held accountable for buying liened grain from the producer on which there is a perfected lien.

Section IV Summary

Over the past twenty years agricultural markets have become more dynamic and complex, specialization in production and marketing has occurred, and traditional trading partners have become more financially interdependent. In the late 60s industry leaders, elevator managers and farmers became increasingly aware of the need to update and enhance the Warehouseman and Dealers' Law. In the early 1970s the Ohio General Assembly, with the intent of creating more safe and equitable marketing practices began revising what is now named the Ohio Agricultural Commodity Handler Law.

The first revisions of this law were no more than statements of objectives on the part of the General Assembly. These beginning objectives outlined the rights and duties of all participants. Over the years, ODA, farmers, and industry members have collaborated and compromised to achieve H.B. 770. This recent law is thus the outcome of a decade of labor and will most probably continue to be amended as economic conditions warrant. The law as it stands gives the farmer, the handler, and ODA the explicit duties outlined in this paper.

The passage of H.B. 291 affected H.B. 770 by requiring that the purchaser of farm products be notified in writing if he is buying the product subject to a lien. If not properly notified the buyer buys free of any lien created by the depositor even if he knows of the lien's existence. This portion of the law becomes effective January 1, 1984. The depositor will continue to be required to notify the buyer of liens existing on farm products (grain or livestock).

The various powers and duties of the Director of Agriculture and ODA were dictated by the Ohio General Assembly. These laws charge the director with the responsibility of ensuring that Ohio grain marketing practices

remain safe and equitable. The director's responsibilities which have been referred to throughout the paper are to:

- a. Inspect any licensed warehouse or premise or firm suspected of being a warehouse at any reasonable time
- b. Require that reports and accounting records be submitted by handlers
- c. Determine whether warehouses are suitable for storing, shipping or conditioning grain
- d. Petition any county Court of Common Pleas to acquire a restraining order or mandatory injunction to force a negligent handler to comply with the law
- e. Prescribe all instruments (warehouse receipts, scale tickets, contracts, licenses, reports, etc.)
- f. License all handlers
- g. Approve or invalidate a handler's insurance
- h. Oversee the Indemnity Fund
- i. Make payment from the Indemnity Fund for valid claims
- j. Establish a curriculum for and certify all grain testers
- k. Authorize the sale of out-of-condition grain.
- l. Authorize the sale of grain to satisfy a warehouseman's lien against a farmer
- m. Appoint and consult with the Commodity Advisory Commission.

Definitions

"Agricultural Commodity" means barley, corn, oats, rye, grain, sorghum, soybeans, wheat, sunflower, speltz, and any other agricultural crop which the director of agriculture may designate by rule. "Agricultural commodity" does not mean any grain that is offered for sale as seed.

"Bailment agreement" means an agreement between a depositor and a licensed handler as stated in the terms of a receipt that is issued for an agricultural commodity in storage and subject to the requirements of this law governing the use of a receipt.

The receipt may be either a warehouse receipt or a scale ticket. If it is a scale ticket, the grain in the custody of the bailee (elevator) must be treated with the same care as the grain for which a warehouse receipt was issued. The elevator has the same duties and obligations towards the stored grain no matter what type of receipt was issued, a scale ticket or a warehouse receipt.

"Depositor" means:

1. Any person who delivers an agricultural commodity to a licensed handler for storage, conditioning, shipment or sale
2. Any owner or legal holder of a ticket or receipt issued for an agricultural commodity who is a creditor of the licensed handler for the value of the agricultural commodity
3. Any licensed handler storing an agricultural commodity that he owns solely, jointly, or in common with others in a warehouse owned or controlled by him or any other licensed handler.

Farm Products - Crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states, such as ginned cotton, wool clip, maple syrup, milk, and eggs, and if they are in the possession of a debtor engaged in raising, fattening, grazing, or other farming operations. If goods are farm products they are neither equipment nor inventory.

"Federally licensed grain inspector" means a person who is licensed by the United States Department of Agriculture under the "United States Grain Standards Act," 39 Stat. 482 (1916), 7 U.S.C. 71, as amended, to test and grade grain, as "grain" is defined in that act.

"Grain Bank" - As used in agricultural commodity transactions, "grain bank" means the storage of an agricultural commodity under a bailment agreement with the commodity normally returned to the bailor at a later date as an ingredient of a processed feed.

Lien - Qualified right of property which a creditor has in or over specific property of his debtor, as a security for the debt or charge or for performance of some act. A claim on property for payment of some debt.

Perfected Lien - A lien held by a creditor on which he has taken all the procedural steps such as filing in the county recorder's office(s), in order to place him in a priority position as to other creditors or buyers of farm products.

"Producer" means any person who grows an agricultural commodity on land that he owns or leases.

"Ticket" means a scale weight ticket, a load slip, or any evidence, other than a receipt, given to a depositor by a licensed handler upon delivery of an agricultural commodity by a licensed handler upon delivery of an agricultural commodity to the handler.

"Warehouse" means any building, bin, protected enclosure, or similar premises under the control of a licensed or unlicensed handler used for receiving, storing, shipping or handling an agricultural commodity.

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AGENCY RULES
Adopted pursuant to Sections 926.01 to 926.33,
Ohio Revised Code

- Rule 901-7-2-01 (Reserved for future use)
- 901-7-2-02 LICENSES AND RENEWALS
 - 901-7-2-03 FINANCIAL RESPONSIBILITY REQUIREMENTS
 - 901-7-2-04 SUITABILITY OF WAREHOUSES FOR HANDLING AGRICULTURAL
COMMODITIES
 - 901-7-2-05 SCALE WEIGHT TICKET FORMAT
 - 901-7-2-06 MARKETING SERVICES OFFERED BY HANDLER
 - 901-7-2-07 REPORT OF BUSHEL HANDLED
 - 901-7-2-08 SUSPENSION OF LICENSE
 - 901-7-2-09 RETENTION OF RECORDS
 - 901-7-2-10 PER DIEM CHARGES FOR SPECIAL WAREHOUSE
EXAMINATION SERVICES
 - 901-7-2-11 HANDLER'S REMITTANCE OF THE PER BUSHEL FEE
 - 901-7-2-12 AMOUNT OF PER BUSHEL FEE TO BE REMITTED BY
LICENSED HANDLERS
 - 901-7-2-13 ADJUSTMENT OF THE PER BUSHEL FEE
 - 901-7-2-14 PARTIAL DELIVERY ON A WAREHOUSE RECEIPT
 - 901-7-2-15 SALE OF COMMODITY UNDER BAILMENT
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TESTERS

OHIO DEPARTMENT OF AGRICULTURE
Grain Warehouse Division
65 South Front Street - Room 609
Columbus, Ohio 43215

AGENCY RULES
Adopted pursuant to Sections 926.01 to 926.33,
Ohio Revised Code

901:7-2-01 (Reserved for future use)

901:7-2-02 LICENSES AND RENEWALS

- (A) In order to equally distribute the licensing of agricultural commodity handlers throughout the year the following system of expiration dates is established:
- (1) Licenses which are issued effective April 1, 1983, shall expire on the date which corresponds with the alphabetical listing of the county in which the licensee's business is located according to the following schedule:
Richland County to Wyandot County-----September 30, 1983
Adams County to Erie County and
out-of-state licensees-----December 31, 1983
Fairfield County to Logan County-----March 31, 1984
Lorain County to Putnam County-----June 30, 1984
 - (2) Licenses which are issued and become effective after April 1, 1983, may be issued for an initial period of not less than six months nor more than eighteen months so as to expire on March 31st, June 30th, September 30th, or December 31st, but need not be on the same date as licensees in the county in which the applicant is located as provided in paragraph (A-1) of this rule.
 - (3) Renewal of licenses originally issued according to the schedule listed in paragraphs (A-1) and (A-2) of this rule shall be for a twelve-month period commencing on the first day of the month following the expiration date of the license which it renews.
- (B) Licenses which are issued effective on any date between the first and the last day of any month shall be considered to have been issued on the first day of that month for the purpose of establishing the expiration date.
- (C) When an applicant operates facilities in more than one county which is subject to licensing, the director may license all facilities of the applicant to expire on the same date as if all of the licensed facilities were in the same county.
- (D) The fee for a license issued for a period other than one year shall be proportionate to the fee for a one-year license.

901:7-2-03 FINANCIAL RESPONSIBILITY REQUIREMENTS

- (A) The applicant for a handler's license, or renewal of a handler's license, shall submit a current financial statement prepared by a qualified person who is not directly associated with the applicant's business. The financial statement shall consist of a balance sheet showing the current and deferred assets and liabilities of the applicant, a statement of income, a statement

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- of retained earnings, a statement of changes in financial position, and whatever notes are sufficient to explain the details contained in the financial statement.
- (B) The financial statement accompanying an applicant's original application shall show a statement closing date that is within six months of the date of application. Thereafter, the licensee applying for renewal shall submit an annual statement not later than ninety days after the close of his business year.
 - (C) A person who is qualified to prepare the financial statement of a licensed handler, or applicant for a handler's license, shall have, as a minimum, an associate degree in accounting from a school which is accredited to confer said degree by the state in which the degree was earned, or shall possess such other qualifications as shall be approved by the director.

901:7-2-04 SUITABILITY OF WAREHOUSES FOR HANDLING AGRICULTURAL COMMODITIES

- (A) In determining the suitability of warehouses for the storing, shipping, and conditioning of agricultural commodities the director of agriculture shall consider:
 - (1) The physical condition of the warehouse and its ability to withstand weather conditions which may cause deterioration of the agricultural commodities stored therein;
 - (2) Whether the warehouse has handling equipment sufficient to transfer commodities into and out of the warehouse and to maintain quality of the commodity while in storage;
 - (3) Whether the warehouse has scales of sufficient capacity to efficiently and accurately weigh commodities into and out of the warehouse.
- (B) If the director finds that a warehouse is unsuitable for the storing of commodities he shall notify the handler of the requirements necessary to make the warehouse suitable.

901:7-2-05 SCALE WEIGHT TICKET FORMAT

- (A) Scale weight tickets, other than those approved for use by persons licensed under the United States Warehouse Act, which are used to weigh agricultural commodities handled by a licensed handler must contain provisions for the following information in its printed format:
 - (1) Name of licensed handler and location of warehouse;
 - (2) Date the commodity is weighed;
 - (3) Tickets shall be serially numbered and used in the order of numbering;
 - (4) At least one copy to be retained by the licensed handler as a permanent record,
 - (5) Provisions to indicate if the commodity is inbound or outbound at the handler's warehouse.
 - (6) Name of the depositor (inbound), or the consignee (outbound);
 - (7) Name of the commodity;
 - (8) The gross, tare, and net weight of the commodity and provisions for adjustments due to quality factors;
 - (9) Price of the commodity if established;
 - (10) Provisions for indicating the type of marketing transaction, such as "for sale", "contract", "delayed price", "storage

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under bailment', "grain bank", or as many of these or other marketing transactions as may be offered by the handler;

- (11) Vehicle driver on or off scale at the time of weighing;
 - (12) Provisions for weigher to initial ticket.
- (B) If the scale tickets used in weighing agricultural commodities are used in weighing other products, or if a ticket is voided, copies of such tickets are to be retained as a part of the permanent record of the licensed handler in the same manner as tickets used to weigh agricultural commodities.

901:7-2-06 MARKETING SERVICES OFFERED BY HANDLER

Each licensed agricultural commodity handler shall file with the director of agriculture a list of the commodity marketing services which the handler offers to depositors. The handler shall notify the director in writing within thirty days of any additions or deletions to the list of marketing services offered. The commodity marketing services offered by the handler include:

- (A) Purchase and/or sale of commodities;
- (B) Delayed price;
- (C) Storage under bailment which includes grain bank;
- (D) Uniform Grain Storage Agreement;
- (E) United States Warehouse Act license.

901:7-2-07 REPORT OF BUSHELS HANDLED

- (A) Each licensed agricultural commodity handler shall furnish to the director of agriculture as a part of his annual financial statement a report, on a form furnished by the director, certifying the number of bushels of agricultural commodities handled in Ohio during the business year covered by the financial statement. The number of bushels handled shall be used as the basis for determining if net assets are equal to the ten cents per bushel of commodities handled as required under division (B) of Section 926.06 of the Revised Code.
- (B) All licenses held by one person shall be considered as one license for the purpose of determining net assets in relation to the number of bushels handled.

901:7-2-08 SUSPENSION OF LICENSE

- (A) When the license of an agricultural commodity handler has been suspended by the director of agriculture for a violation of Chapter 926. of the Revised Code, the director shall notify the handler of the restrictions which are imposed upon him in the handling of agricultural commodities during the period of suspension.
- (B) Upon written request to the director of agriculture within thirty days after receiving notice of suspension, a handler shall be afforded a hearing in accordance with Chapter 119. of the Revised Code.

901:7-2-09 RETENTION OF RECORDS

All records pertaining to the handling of agricultural commodities, including but not limited to settlement records and records of obligations to depositors, shall be retained by the licensed handler for a period of three years, or until the obligations underlying such records have been extinguished, whichever is greater. However, all records shall be kept throughout the pendency of active or reasonably anticipated administrative or judicial review.

901:7-2-10 PER DIEM CHARGES FOR SPECIAL WAREHOUSE EXAMINATION SERVICES

If the director of agriculture or his designated representative is unable to conduct or complete an examination of a licensed handler's records, inventory, or warehouse due to inadequate, incomplete, or non-current records, he shall assess a charge against the handler for the expense incurred in completing the examination as follows:

- (A) The hourly salary of the examiner in charge times the number of hours required to complete the examination, plus thirty percent fringe benefit costs; plus
- (B) The per diem expenses which may include meals, lodging, and auto mileage of the examiner based on the allowances authorized by the Office of Budget and Management;
- (C) Such additional necessary incidental expenses as may be approved by the director of agriculture.

901:7-2-11 HANDLER'S REMITTANCE OF THE PER BUSHEL FEE

- (A) The per bushel fee to be remitted under Section 926.16 of the Revised Code by agricultural commodity handlers to the director of agriculture shall be submitted with a form to be supplied by the director. The form shall summarize the commodities subject to the per bushel fee that have been handled by the licensed handler for the period covered by the form.
- (B) The forms shall be forwarded to the director reflecting each quarterly period ending March 31st, June 30th, September 30th, and December 31st of each year. The assessment due on commodities subject to the fee for each period shall be included with the form and made payable to the Ohio Department of Agriculture. The report for each reporting period shall be forwarded to the director not later than thirty days after the close of the period.

901:7-2-12 AMOUNT OF PER BUSHEL FEE TO BE REMITTED BY LICENSED HANDLERS

In compliance with division (A) of Section 926.17 of the Revised Code, the director of agriculture has determined that the fee to be remitted by licensed handlers for deposit in the Agricultural Commodity Depositor's Special Account as required in division (A) of Section 926.16 of the Revised Code, shall be one-half cent per bushel commencing on July 1, 1983.

901:7-2-13 ADJUSTMENT OF THE PER BUSHEL FEE

If, not later than the first day of March of any year, the director of agriculture determines that an adjustment in the per bushel fee established in Section 926.17 of the Revised Code is necessary to maintain the Agricultural Commodity Depositor's Special Account within the limits established, he shall publish notice of the proposed adjustment and hold a hearing in accordance with the requirements of Chapter 119. of the Revised Code to accept comments of interested persons relative to the proposed adjustments. After holding the hearing the director shall either permit the fee then in effect to continue or shall adopt an adjusted fee, whichever he determines is necessary to maintain the liquidity of the special account.

901:7-2-14 PARTIAL DELIVERY ON A WAREHOUSE RECEIPT

If a person to whose order a warehouse receipt is issued, or who is in possession of the receipt by endorsement, requests delivery out of storage of a part of the commodity covered by the receipt, or sells to the licensed handler or to some other person a part of the commodity covered by the receipt, the receipt originally issued covering the commodity shall be returned to the licensed handler for cancellation and the handler shall issue a new receipt for the balance of the commodity remaining in storage under bailment and the new receipt shall show the number and date of issuance of the original receipt which it replaces.

901:7-2-15 SALE OF COMMODITY UNDER BAILMENT

When an agricultural commodity in storage under bailment in the warehouse of a licensed handler has been sold to satisfy a handler's lien, or for any other lawful reason as permitted under Sections 926.01 to 926.33 of the Revised Code, and after the handler has satisfied his lien and the expenses of advertising have been paid, the handler shall forward to the director of agriculture the remaining proceeds of the sale together with a written accounting of the income and expenses associated with the sale. The copies of the records and documents relative to the commodity under bailment, and the identity of the bailor and the bailor's last known address. The director shall deposit the proceeds of the sale with the treasurer of state to be held for the benefit of the person who is rightfully entitled to possession of the commodity had it not been sold under 926.06 (D) of the Ohio Revised Code.

901:7-2-16 ENDORSEMENT STATEMENT ON COMMODITY SETTLEMENT CHECK

Checks issued by licensed handlers to depositors in settlement for agricultural commodities purchased by the handler shall, as a part of the endorsement, contain a certification statement as follows:

- (A) "The person or persons to whose order this check is issued hereby certify by their endorsement that there is no lien, mortgage, or security interest pledged against any agricultural commodity which has been purchased by _____ (Buyer) and included in whole or in part in this check or draft as settlement of _____ (Buyer's) obligation to the endorsees", or
- (B) A similar certification statement approved by the director.

901:7-2-17 DELAYED PRICE AGREEMENTS, FORM AND CONTENT

- (A) Licensed handlers who purchase agricultural commodities under delayed price agreements shall furnish the seller with an agreement for his approval and signature which shall contain the following terms and conditions:
- (1) The method for establishing the price of the commodity;
 - (2) How notice shall be given to the handler to establish the price;
 - (3) All charges for which the seller is liable;
 - (4) A clause stating that title to the commodity transfers to the handler upon delivery and that the seller is a common creditor of the handler until settlement is completed.
- (B) One agreement may cover one or more agricultural commodities delivered to a depositor if the terms relating to the pricing

901:7-2-17 (Continued)

and service charges are identical on all commodities covered by the agreement.

- (C) A delayed price agreement may be in one or more parts provided that the total agreement contains the terms and conditions stated in paragraph (A) of this rule and all parts of the agreement are identified by the agreement number.
- (D) Agricultural commodities may be delivered on a delayed price agreement for a period of one year after its effective date. Commodities delivered thereafter shall be covered by a new agreement which must be executed not later than the first delivery under the new agreement.

901:7-2-18 TRAINING REQUIREMENT FOR AGRICULTURAL COMMODITY TESTER

- (A) No licensed handler or employee of a licensed handler who receives an agricultural commodity from a producer, either for sale or for storage under a bailment agreement, shall perform a quality test on the commodity for the purpose of applying a premium, discount, or conditioning charge unless such person has attended a training course in which:
 - (1) The person has received formalized instruction and training from a federally licensed grain inspector or other person equally qualified and experienced in the instruction, use, and application of the Official Grain Standards of the United States for the commodity which the person will test; or
 - (2) The person has received equivalent practical experience and training under the direct supervision of a certified tester which shall include on-the-job training in the use and application of the Official Grain Standards of the United States for the commodity which the person will test.
- (B) Discounts or conditioning charges applied to an agricultural commodity delivered to a licensed handler shall be determined through the use of testing equipment approved by the Federal Grain Inspection Service, or by the director of agriculture, for making such determining.
- (C) When a person has completed the training required in paragraph (A) of this rule, he may apply to the director of agriculture, on a form to be supplied by the director, for certification as an agricultural commodity tester.

OHIO DEPARTMENT OF AGRICULTURE - GRAIN WAREHOUSE DIVISION - NEGOTIABLE WAREHOUSE RECEIPT

Licensed Handler **Farmers Grain Company**
 Location of Warehouse **Anywhere, Ohio 45678**
 Date Receipt Issued _____
 Name & Address of Depositor _____

Receipt No. **00123**
 Ohio Code No. **89-0111-06**
 CCC Code No. **8-7654**

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Commodity	Grade	Gross Lbs.	Doc	Net Lbs.	Net Bushels	Rate of Storage Charges								
						Elevation Ppd. In ____ Out ____ Storage paid to _____								
SUPPLEMENTAL INFORMATION FOR U.G.S.A. - NOT PART OF WAREHOUSE RECEIPT														
T.W.	%Met	%Pro-Spl-Snd	%TD	%HD	%FM	%SBK	Def	Date Rec'd	RR	Bg	Tk	CCCChgs	Type Stg	Area

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ADVANCES MADE OR LIABILITY INCURRED FOR WHICH THE HANDLER CLAIMS A LIEN

The agricultural commodity identified hereon is stored in a warehouse under the control of the licensed Agricultural Commodity Handler named hereon and is insured against loss or damage by fire, internal explosion, lightning, or windstorm. The commodity has been graded according to the United States Grain Standards Act. The licensed handler is not the owner of the commodity covered by this receipt, either solely, jointly, or in common with others, unless the facts of such ownership are stated hereon. The person to whom this receipt is issued, or to whom it is negotiated by endorsement, is protected against loss of the commodity or the value thereof, according to the terms of Section 928.13 of the Ohio Revised Code. Upon return of this receipt properly endorsed and payment of the Handler's lien claimed hereon, said grain or grain of the same or better grade will be delivered to the above named depositor or his order.

REMARKS:

 Authorized Signature

OHIO DEPARTMENT OF AGRICULTURE - GRAIN WAREHOUSE DIVISION - NEGOTIABLE WAREHOUSE RECEIPT

EXAMINER'S COPY

WAREHOUSEMAN'S COPY NO. 1

WAREHOUSEMAN'S COPY NO. 2

DEPOSITOR'S COPY

Shown above is the new Ohio Negotiable Warehouse Receipt which is to be used for grain stored under bailment (storage for hire) with Agricultural Commodity Handlers who offer this service to their customers. This receipt, and the federal warehouse receipt used by U. S. Warehouse Act licensees, are the only receipts authorized for use in Ohio after July 1, 1983.

The receipts are in "computer compatible" make-up which can be completed on a computer printer, a typewriter, or in long-hand using a ball-point pen. A receipt consists of an original and four copies. The "Original" and the "Depositors Copy" go to the depositor. The Handler is to retain "Warehouseman's Copy No. 1" filed numerically at the warehouse where the receipt is issued. "Warehouseman's Copy No. 2" may be used or destroyed by the Handler in whatever manner might fit into his accounting requirements. The "Examiner's Copy" is to be retained by the Handler to be picked up by the Warehouse Examiner at the time the facility is examined, EXCEPT, the "Examiner's Copy" on receipts written on handler-owned commodities are to be sent to the Grain Warehouse Division with the "Inventory Position Report", Form CH-2, at the time the receipt is written.

Handlers not having Uniform Grain Storage Agreements with CCC must complete the depositor's name and address and the date the receipt is issued. Also, the line showing the Commodity, Grade, Weight, etc., must be completed, and the receipt must be signed by a person authorized by the licensed handler. Handlers who have Uniform Grain Storage Agreements will fill out the receipt in accordance with the instructions in their UGSA Handbook.

If you have any questions contact the Grain Warehouse Division at 614-466-7564.

