

**MATERIAL CHANGES IN THE MICHIGAN GRAIN DEALERS ACT**  
(Effective date of PA 80 of 2002 is approximately March 2003.)

**Section 2    Materially Changed Definitions**

- (c)    **“Cash Sale”** clarified that payment must be made within ten days or that the payment is credited to the depositors account.
- (l)    **“Farm Produce”** deleted grass seeds, hay, and legume seeds in a raw or natural state produced or grown for storage or purchase by a person.
- (r)    **“Grain Dealer”** added definitions for a grain merchandiser (grain broker), farm produce trucker and processor for those individuals or companies that require a license. Added license exemption definitions for a retailer (less than 30,000 bushels handled annually), dealer to dealer transactions and seed production contractors. Will no longer use incidental business as measurement.
- (w)    **“Operating With-in This State”** clarified that any transfer of title or possession from a producer within the boundaries of Michigan could fall within the jurisdiction of this act.
- (hh)    **“Warehouse Receipts”** added definitions of negotiable and nonnegotiable. Also left door open for electronic warehouse receipts.

**Section 2    New Definitions:**

(d)“Claimant”, (e)“Collateral Warehouse Receipts”, (g) “Depositor”, (k)“Failure”, (m) “Farm Produce Handled”, (n)“Farm Produce Handling”, (v)“Open Storage”, (z)“Processing”, (bb) “Receiving Point”, (cc)“Reviewed”, (dd)“Revocation”, (ee)“Shortage”, (gg)“Temporary Facility”.

**Section 3    License Required**

- (3)    Increased minimum allowable net asset requirements from \$20,000 to \$50,000, and added a sliding scale based upon 10 cents per bushel for farm produce handled in past year over 500,000 bushels (\$1 million ceiling).
- (4)    Negotiable bond or trust deposit may be used with department approval to cover net worth deficiency.
- (6)    Department may review the books (pertaining to the grain dealer operations) and apply for injunction against persons who act as a grain dealer without a license.

**Section 7    Application**

- (1)(e) Statement of total bushels handled by the grain dealer over the prior twelve months. See definition of farm produce handled. Used in calculation of allowable net asset requirement.
- (1)(i) Resident agent requirement added for out of state grain dealers.

**Section 8    License Fees**

- (1) Increased license fees based on grain dealer's bushel capacity from a range of \$125 to \$400 to a range of \$150 to \$450. Separate fee of \$450 for grain merchandisers.
- (2) Establishment of grain dealer's fund for license fees and administrative fines to be used pursuant to legislative appropriation by the director..
- (4) CPI fee adjustment, maximum 5% increase over a three year period.

#### **Section 9 Financial Statement**

- (1) CPA requirement for all financial statements (no longer allowed to use an accountant who meets the requirements of the Accreditation Council of Michigan). Requirement that financial statement be of at least a review in nature continues. Rewrite also requires that fiscal year end be within six months of license expiration date rather than twelve months. The department will prorate the length of license and license fee to assist those grain dealers that do not currently fall within the six month window.
- (1)(b) CPA required to make a statement of grain dealers allowable net assets to verify compliance with allowable net asset requirement of section 3.
- (2) If a financial statement does not meet the current ratio requirement of 1 to 1, the licensee is required to file a plan to comply with the application.
- (3) Declaration of liability documentation required to be filed with the department by the parent company of a licensee who uses the parents financial statement to meet the allowable net asset requirements of section 3.

#### **Section 10 Revocation or Refusal of License or Fidelity Bond Requirement**

Department may revoke or refuse a license or require a fidelity bond after a hearing (in accordance with the Administrative Procedures Act) if it found that within the past five years the applicant(s) or its manager(s) have been materially involved in one or more of the following: an insolvency that resulted in losses to creditors or felony convictions involving fraud, conversion or embezzlement, and federal revocation due to violations of the act.

#### **Section 11 Temporary Facility**

- (1) Licensee shall provide notice, lease agreement and bin charts
- (2) Licensee shall pay additional fee based on Section 8 if required

#### **Section 12 Insurance**

- (3) Reimbursement shall be within 10 days of insurance payment.

#### **Section 13 Freedom of Information,**

- (3.) Department may disclose summary information as part of a statistical study which does not identify the grain dealer to which any date applies.

#### **Section 14 Notice, Duplicate Receipt and Due Care**

- (2) Licensee may commingle fungible farm produce unless agreement.

- (3) Licensee shall post at a readily visible location in the office and the scale the type of grain transactions offered if they elect to limit transaction types.
- (4) Duplicate warehouse receipts and acknowledgment form guidelines.
- (6) If depositor fails to remove or sell farm produce within terms of agreement grain dealers may sell farm produce within terms of the agreement.
- (7) Grain Dealer is limited to their net positive accumulated dollar value of farm produce (as reported on position report) on loans secured by farm produce.

**Section 15 Daily Position Reports:**

- (5) Failure to file timely or accurate daily position reports may result in a fine, suspension or revocation of grain dealers license.

**Section 16 Records**

- (1) Grain dealer shall retain a paper copy or a copy stored in electronic or other format for at least 3 years since cancellation and no greater than 7.

**Section 17 Discontinued Operations**

- (1) Grain dealer shall notify the department and depositors of its intent to discontinue operations at least thirty days prior to the discontinue date.
- (2) Within 14 days of discontinuance grain dealer shall file with the department a list of obligations assumed by the purchaser.

**Section 18 Acknowledgment forms (scale tickets)**

- (1) Acknowledgment forms may be used as price later agreements, if the acknowledgement form satisfies the requirements applicable to a price later agreement and is signed by the depositor and grain dealer or their agents.
- (2)(c) Statement that farm produce not designated within 30 days of delivery shall be placed on a price later agreement. See Sect 21 for requirements.
- (3) Farm produce shall be considered open storage for 30 days after delivery when no disposition has occurred. See Section 27 for bond requirements.
- (4) Farm produce obtained by grain dealer but not delivered to a facility shall be issued a temporary acknowledgment form.
- (5) Acknowledgement forms shall have settlement information or grain shall provide settlement documentation with a reference to the acknowledgement.

**Section 20 Warehouse Receipts**

- (2)(g) The warehouse receipt form shall have an expiration date.
- (8) Farm produce stored for the purpose of preserving identity shall reference storage location on the warehouse receipt.
- (9) Collateral warehouse receipts may be issued only on farm produce owned and unencumbered by grain dealer.

**Section 21 Price Later Agreements**

- (1) Farm produce not designated within 30 days of delivery shall be placed on a price later agreement. See (5) (f) for depositor's signature exception.
- (5)(f) Signature of depositor not required where non-designated farm produce is placed on price later agreement after thirty days of delivery.
- (5)(g) Expiration date.

**Section 22 Enforcement of Act**

- (1)(c) Administer oaths and issue subpoenas
- (10) Seizure of assets and liquidation upon license revocation or suspension

**Section 23 Criminal Penalties**

- (1) Unless other wise provided violations of act are misdemeanor offenses.
- (3) Lists felony punishable violations.

**Section 24 Administrative Fines**

- (1) Violations of act or rules may result in administrative fine and amount of fine is based on number of violations.
- (2) Hearings are held in accordance with administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.
- (5) License may be revoked for failure to pay administrative fine.

**Section 26 Liquidation Priorities upon grain dealers failure**

- (1)(a) 1st priority for farm produce under storage including farm produce under storage that was priced, but not paid, within 21 days of insolvency.
- (1)(b) 2nd priority to price later agreement holders.
- (1)(c) 3rd priority to all priced, but not paid produce within 30 days of failure
- (1)(d) Forth priority- all others that present written evidence of a sale.
- (2) Director may reduce claim by amount owed to grain dealer.

**Section 27 Surety Bond for warehouse receipts and open storage**

- (1) Surety bond required for warehouse receipts and open storage transactions.
- (7.) Licensee may provide security acceptable to department in lieu of bond.
- (8) Holders of collateral warehouse receipts or warehouse receipts issued in the name of the grain dealer may not recover against the bond.

**Section 28 Merchandiser and Farm Produce Trucker Bond**

- (1) Bond amount increased to \$100,000 for trucker and grain merchandiser
- (3) Bond for all farm produce transactions covered by the act.
- (5) Licensee may provide security acceptable to department in lieu of bond