

AN ACT concerning agriculture.

Be it enacted by the People of the State of Illinois,
represented in the General Assembly:

Section 5. The Grain Code is amended by changing Sections 1-5, 1-10, 1-15, 1-20, 1-25, 5-5, 5-10, 5-15, 5-20, 5-25, 5-30, 10-5, 10-10, 10-15, 10-20, 15-15, 15-20, 15-30, 15-35, 15-40, 15-45, 20-10, 20-15, 20-20, 25-5, 25-10, 25-20, 30-5, and 30-10 and by adding Section 30-25 and Article 35 as follows:

(240 ILCS 40/1-5)

Sec. 1-5. Purpose. ~~The---Illinois---grain---industry comprises---a---significant---and---vital---part---of---the---State's economy.---The---grain---industry---can---function---to---its---fullest competitive---and---profitable---potential,---thus---contributing---to the---economic---health---of---this---State,---when---it---operates---under---a coordinated---and---integrated---structure.---The---purpose---of---this Code---is---to---provide---a---single---system---of---governmental---regulation of---the---Illinois---grain---industry.~~ It is also the primary purpose of this Code to promote the State's welfare by improving the economic stability of agriculture through the existence of the Illinois Grain Insurance Fund in order to protect producers in the event of the failure of a licensed grain dealer or licensed warehouseman and to ensure the existence of an adequate resource so that persons holding valid claims may be compensated for losses occasioned by the failure of a licensed grain dealer or licensed warehouseman. To that end, this Code shall be liberally construed and liberally administered in favor of claimants.

In addition, the Illinois grain industry comprises a significant and vital part of the State's economy and as such can function to its fullest competitive and profitable

potential, thus contributing to the economic health of this State, when it operates under a coordinated and integrated regulatory structure. Thus, a further purpose of this Code is to provide a single system of governmental regulation of the Illinois grain industry.

(Source: P.A. 89-287, eff. 1-1-96.)

(240 ILCS 40/1-10)

Sec. 1-10. Definitions. As used in this Act:

"Board" means the governing body of the Illinois Grain Insurance Corporation.

"Certificate" means a document, other than the license, issued by the Department that certifies that a grain dealer's license has been issued and is in effect.

"Claimant" means:

(a) a person, including, without limitation, a lender:

(1) who possesses warehouse receipts issued from an Illinois location covering grain owned or stored by a failed warehouseman; or

(2) who has other written evidence of a storage obligation of a failed warehouseman issued from an Illinois location in favor of the holder, including, but not limited to, scale tickets, settlement sheets, and ledger cards; or

(3) who has loaned money to a warehouseman and was to receive a warehouse receipt issued from an Illinois location as security for that loan, who surrendered warehouse receipts as part of a grain sale at an Illinois location, or who delivered grain out of storage with the warehouseman as part of a grain sale at an Illinois location; and

(i) the grain dealer or warehouseman failed within 21 days after the loan of money, the surrender of warehouse receipts, or the delivery of

grain, as the case may be, and no warehouse receipt was issued or payment in full was not made on the grain sale, as the case may be; or

(ii) written notice was given by the person to the Department within 21 days after the loan of money, the surrender of warehouse receipts, or the delivery of grain, as the case may be, stating that no warehouse receipt was issued or payment in full made on the grain sale, as the case may be; or

(b) a producer not included in item (a)(3) in the definition of "Claimant" who possesses evidence of the sale at an Illinois location of grain delivered to a failed grain dealer, or its designee in Illinois and who was not paid in full.

"Class I warehouseman" means a warehouseman who is authorized to issue negotiable and non-negotiable warehouse receipts.

"Class II warehouseman" means a warehouseman who is authorized to issue only non-negotiable warehouse receipts.

"Code" means this the Grain Code.

"Collateral" means:

- (a) irrevocable letters of credit;
- (b) certificates of deposit;
- (c) cash or a cash equivalent; or

(d) any other property acceptable to the Department to the extent there exists equity in that property. For the purposes of this item (d), "equity" is the amount by which the fair market value of the property exceeds the amount owed to a creditor who has a valid, prior, perfected security interest in or other valid, prior, perfected lien on the property.

"Corporation" means the Illinois Grain Insurance Corporation.

"Daily position record" means a grain inventory

accountability record maintained on a daily basis that includes an accurate reflection of changes in grain inventory, storage obligations, company-owned inventory by commodity, and other information that is required by the Department.

"Daily grain transaction report" means a record of the daily transactions of a grain dealer showing the amount of all grain received and shipped during each day and the amount on hand at the end of each day.

"Date of delivery of grain" means:

(a) the date grain is delivered to a grain dealer, or its designee in Illinois, for the purpose of sale;

(b) the date grain is delivered to a warehouseman, or its designee in Illinois, for the purpose of storage; or

(c) in reference to grain in storage with a warehouseman, the date a warehouse receipt representing stored grain is delivered to the issuer of the warehouse receipt for the purpose of selling the stored grain or, if no warehouse receipt was issued:

(1) the date the purchase price for stored grain is established; or

(2) if sold by price later contract, the date of the price later contract.

"Department" means the Illinois Department of Agriculture.

"Depositor" means a person who has evidence of a storage obligation from a warehouseman.

"Director", unless otherwise provided, means the Illinois Director of Agriculture, or the Director's designee.

"Electronic document" means a document that is generated, sent, received, or stored by electrical, digital, magnetic, optical electromagnetic, or any other similar means, including, but not limited to, electronic data interchange, electronic mail, telegram, telex, or telecopy.

"Electronic warehouse receipt" means a warehouse receipt that is issued or transmitted in the form of an electronic document.

"Emergency storage" means space measured in bushels and used for a period of time not to exceed 3 months for storage of grain as a consequence of an emergency situation.

"Equity assets" means:

(a) The equity in any property of the licensee or failed licensee, other than grain assets. For purposes of this item (a):

(1) "equity" is the amount by which the fair market value of the property exceeds the amount owed to a creditor who has a valid security interest in or other valid lien on the property that was perfected before the date of failure of the licensee;

(2) a creditor is not deemed to have a valid security interest or other valid lien on property if (i) the property can be directly traced as being from the sale of grain by the licensee or failed licensee; (ii) the security interest was taken as additional collateral on account of an antecedent debt owed to the creditor; and (iii) the security interest or other lien was perfected (A) on or within 90 days before the date of failure of the licensee or (B) when the creditor is a related person, within one year of the date of failure of the licensee.

"Failure" means, in reference to a licensee:

- (a) a formal declaration of insolvency;
- (b) a revocation of a license;
- (c) a failure to apply for license renewal, leaving indebtedness to claimants;
- (d) a denial of license renewal, leaving indebtedness to claimants; or
- (e) a voluntary surrender of a license, leaving

indebtedness to claimants.

"Federal warehouseman" means a warehouseman licensed by the United States government under the United States Warehouse Act (7 U.S.C. 241 et seq.).

"Fund" means the Illinois Grain Insurance Fund.

"Grain" means corn, soybeans, wheat, oats, rye, barley, grain sorghum, canola, buckwheat, flaxseed, edible soybeans, and other like agricultural commodities that may be designated by rule.

"Grain assets" means:

(a) all grain owned and all grain stored by a licensee or failed licensee, wherever located, including redeposited grain of a licensee or failed licensee;

(b) (blank) ~~redeposited--grain--of-a-licensee-or-failed licensee;~~

(c) identifiable proceeds, including, but not limited to, insurance proceeds, received by or due to a licensee or failed licensee resulting from the sale, exchange, destruction, loss, or theft of grain, or other disposition of grain by the licensee or failed licensee; or

(d) assets in hedging or speculative margin accounts held by commodity or security exchanges on behalf of a licensee or failed licensee and any moneys due or to become due to a licensee or failed licensee, less any secured financing directly associated with those assets or moneys, from any transactions on those exchanges.

For purposes of this Act, storage charges, drying charges, price later contract service charges, and other grain service charges received by or due to a licensee or failed licensee shall not be deemed to be grain assets, nor shall such charges be deemed to be proceeds from the sale or other disposition of grain by a licensee or a failed licensee, or to have been directly or indirectly traceable from, to have resulted from, or to have been derived in whole

or in part from, or otherwise related to, the sale or other disposition of grain by the licensee or failed licensee.

"Grain dealer" means a person who is licensed by the Department to engage in the business of buying grain from producers.

"Grain Indemnity Trust Account" means a trust account established by the Director under Section 205-410 of the Department of Agriculture Law (20 ILCS 205/205-410) that is used for the receipt and disbursement of moneys paid from the Fund and proceeds from the liquidation of and collection upon grain assets, equity assets, collateral, and ~~or~~ guarantees of or relating to failed licensees. The Grain Indemnity Trust Account shall be used to pay valid claims, authorized refunds from the Fund, and expenses incurred in preserving, liquidating, and collecting upon grain assets, equity assets, collateral, and guarantees relating to failed licensees.

"Guarantor" means a person who assumes all or part of the obligations of a licensee to claimants.

"Guarantee" means a document executed by a guarantor by which the guarantor assumes all or part of the obligations of a licensee to claimants.

"Incidental grain dealer" means a grain dealer who purchases grain only in connection with a feed milling operation and whose total purchases of grain from producers during the grain dealer's fiscal year do not exceed \$100,000.

"Licensed storage capacity" means the maximum grain storage capacity measured in bushels approved by the applicable licensing agency for use by a warehouseman.

"Licensee" means a grain dealer or warehouseman who is licensed by the Department and a federal warehouseman that is a participant in the Fund, under subsection (c) of Section 30-10.

"Official grain standards" means the official grade designations as adopted by the United States Department of

Agriculture under the United States Grain Standards Act and regulations adopted under that Act (7 U.S.C. 71 et seq. and 7 CFR 810.201 et seq.).

"Permanent storage capacity" means the capacity of permanent structures available for storage of grain on a regular and continuous basis, and measured in bushels.

"Person" means any individual or entity, including, but not limited to, a sole proprietorship, a partnership, a corporation, a cooperative, an association, a limited liability company, an estate, or a trust, or a governmental agency.

"Price later contract" means a written contract for the sale of grain whereby any part of the purchase price may be established by the seller after delivery of the grain to a grain dealer according to a pricing formula contained in the contract. Title to the grain passes to the grain dealer at the time of delivery. The precise form and the general terms and conditions of the contract shall be established by rule.

"Producer" means the owner, tenant, or operator of land who has an interest in and receives all or part of the proceeds from the sale of the grain produced on the land.

"Producer protection holding corporation" means a holding corporation to receive, hold title to, and liquidate assets of or relating to a failed licensee, including assets in reference to collateral or guarantees relating to a failed licensee.

"Regulatory Fund" means the fund created under Article 35.

"Related persons" means affiliates of a licensee, key persons of a licensee, owners of a licensee, and persons who have control over a licensee. For the purposes of this definition:

- (a) "Affiliate" means a person who has direct or indirect control of a licensee, is controlled by a

licensee, or is under common control with a licensee.

(b) "Key person" means an officer, a director, a trustee, a partner, a proprietor, a manager, a managing agent, or the spouse of a licensee. An officer or a director of an entity organized or operating as a cooperative, however, shall not be considered to be a "key person".

(c) "Owner" means the holder of: over 10% of the total combined voting power of a corporation or over 10% of the total value of shares of all classes of stock of a corporation; over a 10% interest in a partnership; over 10% of the value of a trust computed actuarially; or over 10% of the legal or beneficial interest in any other business, association, endeavor, or entity that is a licensee. For purposes of computing these percentages, a holder is deemed to own stock or other interests in a business entity whether the ownership is direct or indirect.

(d) "Control" means the power to exercise authority over or direct the management or policies of a business entity.

(e) "Indirect" means an interest in a business held by the holder not through the holder's actual holdings in the business, but through the holder's holdings in another business or other businesses.

(f) Notwithstanding any other provision of this Act, the term "related person" does not include a lender, secured party, or other lien holder solely by reason of the existence of the loan, security interest, or lien, or solely by reason of the lender, secured party, or other lien holder having or exercising any right or remedy provided by law or by agreement with a licensee or a failed licensee.

"Reserve Fund" means a separate and discrete fund of up

to \$2,000,000 held by the Corporation as set forth in Section 30-25.

"Successor agreement" means an agreement by which a licensee succeeds to the grain obligations of a former licensee.

"Temporary storage space" means space measured in bushels and used for 6 months or less for storage of grain on a temporary basis due to a need for additional storage in excess of permanent storage capacity.

"Trust account" means the Grain Indemnity Trust Account.

"Valid claim" means a request for payment under the provisions of this Code claim, submitted by a claimant, the whose amount and category of which have been determined by the Department, to the extent that determination is not subject to further administrative review or appeal. Each grain sale transaction and each storage obligation shall be considered a separate and discrete request for payment even though one or more requests are contained on one claim form or are filed with the Department in one document.

"Warehouse" means a building, structure, or enclosure in which grain is stored for the public for compensation, whether grain of different owners is commingled or whether identity of different lots of grain is preserved.

"Warehouse receipt" means a receipt for the storage of grain issued by a warehouseman.

"Warehouseman" means a person who is licensed:

(a) by the Department to engage in the business of storing grain for compensation; or

(b) under the United States Warehouse Act but who participates in the Fund under subsection (c) of Section 30-10.

(Source: P.A. 91-213, eff. 7-20-99; 91-239, eff. 1-1-00; 92-16, eff. 6-28-01.)

(240 ILCS 40/1-15)

Sec. 1-15. Powers and duties of Director. The Director has all powers necessary and proper to fully and effectively execute the provisions of this Code and has the general duty to implement this Code. The Director's powers and duties include, but are not limited to, the following:

(1) The Director may, upon application, issue or refuse to issue licenses under this Code, and the Director may extend, renew, reinstate, suspend, revoke, or accept voluntary surrender of licenses under this Code.

(2) The Director shall examine and inspect each licensee at least once each calendar year. The examination shall cover all aspects of the grain operations of the licensee, including but not necessarily limited to options trades and programs and farmer marketing programs.

The Department shall perform one of 3 types of examinations of licensees.

(A) Basic Examination. The basic examination shall be performed when the licensee's merchandising and trade practices involve minimal market risk, which might include those situations in which the licensee uses cash back-to-back contracts, traditional hedges with the Chicago Board of Trade, and price later contracts. The specific components and guidelines of the basic examination are to be as provided by rule, but shall at a minimum include verification of grain quality and quantity, reconciliation of records with grain transactions, computation of current ratios, and checking of posting procedures for accuracy.

(B) Intermediate Examination. The intermediate examination shall be performed when the licensee's merchandising and trade practices involve an increased amount of risk, which might include those situations in which the licensee uses guaranteed minimum price

contracts, purchases options, or writes options. This examination shall include all those things performed as part of the basic examination. In addition, the specific components and guidelines of the intermediate examination are to be as provided by rule, but shall at a minimum include verification of grain quality and quantity, reconciliation of records with grain transactions, and checking of posting procedures for accuracy.

(C) Advanced Examination. The advanced examination shall be performed when the licensee's merchandising and grain trading practices involve the most risk, which might include those situations in which the licensee has discretionary trading authority from producers, uses premium offer type contracts, or has contracts with producers that cover multiple crop years. This examination shall include all those things performed as part of the basic examination and the intermediate examination. In addition, the specific components and guidelines of the advanced examination are to be provided by rule, but shall at a minimum include grain market risk evaluation and appropriate levels thereof for the licensee and adequacy of internal controls.

Using these guidelines, the Department shall determine the level of examination to be applied to each licensee. In addition, the Department may, in its sole discretion, engage the services of accounting experts, grain risk management experts, or both as part of any intermediate or advanced examination. The Regulatory Fund may be used as a source of payment for the services of accounting experts, grain risk management experts, or both.

The Director may inspect the premises used by a licensee at any time. The books, accounts, records, and papers of a licensee are at all times during business hours subject to inspection by the Director. Each licensee may also be

required to make reports of its activities, obligations, and transactions that are deemed necessary by the Director to determine whether the interests of producers and the holders of warehouse receipts are adequately protected and safeguarded. The Director may take action or issue orders that in the opinion of the Director are necessary to prevent fraud upon or discrimination against producers or depositors of grain by a licensee. The sole and exclusive means of halting the warehouse and grain dealer business activities of a licensee, however, are set forth in Section 15-40 relating to suspension and revocation of licenses.

(3) The Director may, upon his or her initiative or upon the written verified complaint of any person setting forth facts that if proved would constitute grounds for a refusal to issue or renew a license or for a suspension or revocation of a license, investigate the actions of any person applying for, holding, or claiming to hold a license or any related party of that person.

(4) The Director (but not the Director's designee) may issue subpoenas and bring before the Department any person and take testimony either at an administrative hearing or by deposition with witness fees and mileage fees and in the same manner as prescribed in the Code of Civil Procedure. The Director or the Director's designee may administer oaths to witnesses at any proceeding that the Department is authorized by law to conduct. The Director (but not the Director's designee) may issue subpoenas duces tecum to command the production of records relating to a licensee, guarantor, related business, related person, or related party. Subpoenas are subject to the rules of the Department.

(5) Notwithstanding other judicial remedies, the Director may file a complaint and apply for a temporary restraining order or preliminary or permanent injunction restraining or enjoining any person from violating or

continuing to violate this Code or its rules.

(6) The Director shall act as Trustee for the Trust Account, act as Trustee over all collateral, guarantees, grain assets, and equity assets held by the Department for the benefit of claimants, and exercise certain powers and perform related duties under Section 20-5 of this Code and Section 205-410 of the Department of Agriculture Law (20 ILCS 205/205-410), except that the provisions of the Trust and Trustees Act do not apply to the Trust Account or any other trust created under this Code.

(7) The Director shall personally serve as president of the Corporation.

(8) The Director shall collect and deposit all monetary penalties, printer registration fees, funds, and assessments authorized under this Code into the Fund.

(9) The Director may initiate any action necessary to pay refunds from the Fund. The Director may initiate refunds for errors of assessments that do not exceed \$2,000 per licensee, lender, or grain seller without authorization by the Board.

(10) The Director shall maintain a holding corporation to receive, hold title to, and liquidate assets of or relating to a failed licensee, including assets in reference to collateral or guarantees, and deposit the proceeds into the Fund.

(11) The Director may initiate, participate in, or withdraw from any proceedings to liquidate and collect upon grain assets, equity assets, collateral, and guarantees relating to a failed licensee, including, but not limited to, all powers needed to carry out the provisions of Section 20-15.

(12) The Director, as Trustee or otherwise, may take any action that may be reasonable or appropriate to enforce this Code and its rules.

(Source: P.A. 91-213, eff. 7-20-99; 91-239, eff. 1-1-00;
92-16, eff. 6-28-01.)

(240 ILCS 40/1-20)

Sec. 1-20. Administrative review and venue. Final administrative decisions of the Department are subject to judicial review under Article III of the Code of Civil Procedure and its rules. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure. An action to review a final administrative decision under this Code may be commenced in the Circuit Court of any county in which any part of the transaction occurred that gave rise to the claim that was the subject of the proceedings before the Department.

(Source: P.A. 89-287, eff. 1-1-96.)

(240 ILCS 40/1-25)

Sec. 1-25. Rules. The Department may promulgate rules that are necessary for the implementation and administration of this Code.

The Department shall adopt rules governing electronic systems under which electronic warehouse receipts may be issued and transferred. Licensees shall not be required, however, to issue or use electronic warehouse receipts. These rules shall be adopted after the United States Department of Agriculture adopts regulations concerning an electronic receipt transfer system pursuant to 7 U.S.C. 242, 250.

(Source: P.A. 89-287, eff. 1-1-96.)

(240 ILCS 40/5-5)

Sec. 5-5. Licenses required; applications; exemptions.

(a) Except as provided in subsection (e), a person may not engage in the business of buying grain from producers, or storing grain for compensation, as--a--grain--dealer,--an

~~incidental-grain-dealer,-or-a-warehouseman~~ in the State of Illinois without a license issued by the Department, or in the case of a federal warehouseman, by the United States government.

(b) An application for a license shall be filed with the Department, shall be in a form prescribed by the Department, and shall set forth the name of the applicant, the directors and officers if the applicant is a corporation, the partners if the applicant is a partnership, the members of the governing body and all persons with management or supervisory authority if the applicant is an entity other than a corporation or partnership, the location of the principal office or place of business of the applicant, the location of the principal office or place of business of the applicant in Illinois, and the location or locations in Illinois at which the applicant proposes to engage in business as a licensee, the fiscal year of the applicant, the kind of grain that the applicant proposes to buy, handle, or store, the type of business that the applicant proposes to conduct, and additional information that the Department may require by rule.

(c) The application for a warehouseman shall state whether the applicant proposes to store grain only for others or for the applicant and for others and shall also state the storage capacity for which the applicant desires to be licensed.

(d) If an applicant has been engaged in business as a grain dealer for one year or more, the application shall state the aggregate dollar amount paid to producers for grain during the applicant's last completed fiscal year. If the applicant has been engaged in business for less than one year or has not engaged in the business of buying grain from producers ~~as-a-grain-dealer~~, the application shall state the estimated aggregate dollar amount to be paid by the applicant

to producers for grain purchased from producers during the applicant's first fiscal year.

(e) The following persons are exempt from being licensed as a grain dealer or incidental grain dealer:

(1) A person purchasing grain from producers only for resale as agricultural seed.

(2) A producer purchasing grain from producers only for its own use as seed or feed.

(Source: P.A. 89-287, eff. 1-1-96.)

(240 ILCS 40/5-10)

Sec. 5-10. Financial statement and fee requirements to obtain or amend a license.

(a) Applications for a new license to operate as a Class I warehouseman or grain dealer shall be accompanied by each of the following:

(1) A financial statement made within 90 days after the applicant's fiscal year end and prepared in conformity with generally accepted accounting principles following an examination conducted in accordance with generally accepted auditing standards that has attached the unqualified opinion, or a qualified opinion if the qualification, in the sole discretion of the Department, does not unduly diminish the financial stability of the licensee or applicant, ~~7-or-other-opinion--acceptable--to the---Department,~~ of an independent certified public accountant licensed under Illinois law or an entity permitted to engage in the practice of public accounting under item (b)(3) of Section 14 of the Illinois Public Accounting Act.

(A) If the applicant has been engaged in business prior to the application, the financial statement shall set forth the financial position and results in operations for the most recent fiscal

year of the applicant. The financial statement shall consist of a balance sheet, statement of income, statement of retained earnings, statement of cash flows, notes to financial statements, and other information as required by the Department.

(B) If the applicant has not been engaged in business prior to the application, the financial statement shall consist of a balance sheet, notes to financial statements, and other information as required by the Department.

(2) An application fee of \$200 ~~\$100~~ for each license, \$100 of which shall be deposited into the General Revenue Fund and the balance of which shall be deposited into the Regulatory Fund.

(3) A fee for each required certificate. The amount of the fee for each certificate shall be established by rule. Fees shall be deposited into the Regulatory Fund.

(b) Applications for a new license to operate as a Class II warehouseman or incidental grain dealer shall be accompanied by:

(1) A financial statement prepared in accordance with the requirements of item (a)(1) of Section 5-10 or, instead, a financial statement made within 90 days of the date of the application prepared or certified by an independent accountant and verified under oath by the applicant. The financial statement shall set forth the balance sheet and other information with respect to the financial resources of the applicant that the Department may require. If the applicant has been engaged in business prior to the application, the financial statement shall also set forth a statement of income of the applicant.

(2) An application fee of \$150 ~~\$100~~ for each

license, \$100 of which shall be deposited into the General Revenue Fund and the balance of which shall be deposited into the Regulatory Fund.

(3) A fee for each required certificate. The amount of the fee for each certificate shall be established by rule. Fees shall be deposited into the Regulatory Fund.

(c) Applications to amend a warehouseman's licensed storage capacity, including applications in reference to temporary storage and emergency storage or to otherwise amend a license, shall be accompanied by a filing fee of \$100, \$50 of which shall be deposited into the General Revenue Fund and the balance of which shall be deposited into the Regulatory Fund \$50.

(Source: P.A. 89-287, eff. 1-1-96.)

(240 ILCS 40/5-15)

Sec. 5-15. Renewal of license.

(a) The application for renewal of a license shall be filed with the Department annually within 90 days after the licensee's fiscal year end. The Department may, upon request of the licensee, payment of an extension fee of \$100 \$50, \$50 of which shall be deposited into the General Revenue Fund and the balance of which shall be deposited into the Regulatory Fund, and delivery to the Department of a preliminary financial statement compiled reviewed by an independent certified public accountant licensed under Illinois law or an entity permitted to engage in the practice of public accounting under item (b)(3) of Section 14 of the Illinois Public Accounting Act or, in the case of a Class II warehouseman or incidental grain dealer, a preliminary financial statement reviewed by an independent accountant that meets the financial requirements of subsection (b) of Section 5-25, extend, for up to but not exceeding 30 days,

the period of time during which the application for renewal of a license may be filed. The Department, however, may provide by rule for reducing the filing period for an application for renewal of a license to no less than 60 days after the licensee's fiscal year end if the Department determines that an applicant has financial deficiencies, or there are other factors, that would create a substantial risk of failure ~~loss-to-potential-claimants~~. The Department must give written notice of the reduced filing period to the licensee at least 60 days before the earlier deadline imposed by the Department to file the application for renewal of a license. Notice is deemed given when mailed by certified mail, return receipt requested, properly addressed and with sufficient postage attached.

(b) The application for renewal shall be accompanied by the financial statement required by Section 5-20.

(c) Failure to meet all of the conditions to renew the license may result in a denial of renewal of the license. The licensee may request an administrative hearing to dispute the denial of renewal, after which the Director shall enter an order either renewing or refusing to renew the license.

(Source: P.A. 89-287, eff. 1-1-96.)

(240 ILCS 40/5-20)

Sec. 5-20. Financial statement and fee requirements for the renewal of a license.

(a) Applications for a renewal of a license to operate as a Class I warehouseman or grain dealer shall be accompanied by each of the following:

(1) A financial statement made within 90 days after the applicant's fiscal year end and prepared in conformity with generally accepted accounting principles following an examination conducted in accordance with generally accepted auditing standards that has attached

the unqualified opinion, or a qualified opinion if the qualification, in the sole discretion of the Department, does not unduly diminish the financial stability of the licensee or applicant, ~~or other opinion acceptable to the Department,~~ of an independent certified public accountant licensed under Illinois law or an entity permitted to engage in the practice of public accounting under item (b)(3) of Section 14 of the Illinois Public Accounting Act. The financial statement shall consist of a balance sheet, statement of income, statement of retained earnings, statement of cash flows, notes to financial statements, and other information as required by the Department. The financial statement shall set forth the financial position and results in operations for the most recent fiscal year of the applicant.

(2) A fee of \$200 ~~\$100~~ for each license, \$100 of which shall be deposited into the General Revenue Fund and the balance of which shall be deposited into the Regulatory Fund.

(3) A fee for each required certificate. The amount of the fee for each certificate shall be established by rule. Fees shall be deposited into the Regulatory Fund.

(b) Applications for a renewal of a license to operate as a Class II warehouseman or incidental grain dealer shall be accompanied by each of the following:

(1) A financial statement prepared in accordance with the requirements of item (a)(1) of Section 5-10 or, instead, a financial statement made within 90 days after the date of the application prepared or certified by an independent accountant and verified under oath by the applicant. The financial statement shall set forth the balance sheet and statement of income of the applicant and other information with respect to the financial

resources of the applicant that the Department may require.

(2) A fee of \$150 ~~\$100~~ for each license, \$100 of which shall be deposited into the General Revenue Fund and the balance of which shall be deposited into the Regulatory Fund.

(3) A fee for each required certificate. The amount of the fee for each certificate shall be established by rule. Fees shall be deposited into the Regulatory Fund.

(Source: P.A. 89-287, eff. 1-1-96.)

(240 ILCS 40/5-25)

Sec. 5-25. Licensing standards and requirements. The Department shall issue, amend, or renew a license if the Department is satisfied that the applicant or licensee meets the standards and requirements of this Section. The standards and requirements of subsections (a) and (b) of this Section must be observed and complied with at all times during the term of the license.

(a) General requirements.

(1) The applicant or licensee must have a good business reputation, have not been involved in improper manipulation of books and records or other improper business practices, and have the qualifications and background essential for the conduct of the business of a licensee. The Department must be satisfied as to the business reputation, background, and qualifications of the management and principal officers of the applicant or licensee. The Department may obtain criminal histories of management and principal officers of the applicant or licensee.

(2) The applicant or licensee must maintain a permanent business location in the State of Illinois. At

Each location where the licensee is transacting business, ~~that place of business~~ shall remain open from at least one-half hour before the daily opening to at least one-half hour after the daily closing of the Chicago Board of Trade, unless otherwise approved by the Department.

(3) The applicant or licensee must have insurance on all grain in its possession or custody as required in this Code.

(4) The applicant or licensee shall at all times keep sufficiently detailed books and records to reflect compliance with all requirements of this Code. The Department may require that certain records located outside the State of Illinois, if any, be brought to a specified location in Illinois for review by the Department.

(5) The applicant or licensee and each of its officers, directors, partners, and managers must not have been found guilty of a criminal violation of this Code, any of its predecessor statutes, or any similar or related statute or law of the United States or any other state or jurisdiction within 10 3 years of the date of application for the issuance or renewal of a license.

(6) The applicant or licensee and each of its officers, directors, managers, and partners, that at any one time have been a licensee under this Code or any of its predecessor statutes, or licensed under any similar or related statute or law of the United States or any other state or jurisdiction, must not have had its license terminated or revoked by the Department, by the United States, or by any other state or jurisdiction, within 2 years of the date of application for the issuance or renewal of a license leaving unsatisfied indebtedness to claimants.

(7) The applicant or licensee and each of its officers, directors, managers, and partners must not have been an officer, director, manager, or partner of a former licensee under this Code or any of its predecessor statutes, or of a business formerly licensed under any similar or related statute or law of the United States or any other state or jurisdiction, that had its license terminated or revoked by the Department, by the United States, or by any other state or jurisdiction, within 2 years of the date of application for the issuance or renewal of a license, leaving unsatisfied indebtedness to claimants, unless the applicant or licensee makes a sufficient showing to the Department that the applicable person or related party was not materially and substantially involved as a principal in the business that had its license terminated or revoked. An interim or temporary manager that is employed by a licensee to reorganize the licensee or to manage the licensee until its business is sold, transferred, or liquidated is not in violation of this subsection (7) solely because of that employment as an interim or temporary manager.

(b) Financial requirements.

(1) The applicant or licensee's financial statement must show a current ratio of the total adjusted current assets to the total adjusted current liabilities of at least one to one.

(A) Adjusted current assets shall be calculated by deducting from the stated current assets shown on the balance sheet submitted by the applicant or licensee any current asset, as calculated in item (B) of this subdivision (1), resulting from notes receivable from related persons, accounts receivable from related persons, stock subscriptions receivable, and any other

related person receivables.

(B) A disallowed current asset shall be netted against any related liability and the net result, if an asset, shall be subtracted from the current assets.

(2) The applicant or licensee's financial statement and balance sheet must show an adjusted debt to adjusted equity ratio of not more than 3 to one.

(A) Adjusted debt shall be calculated by totaling current and long-term liabilities and reducing the total liabilities, up to the amount of current liabilities, by the liquid assets appearing in the current asset section of the balance sheet submitted by the applicant or licensee. For the purposes of this Section, liquid assets include but are not limited to cash, depository accounts, direct obligations of the U.S. Government, marketable securities, grain assets, balances in margin accounts, and tax refunds.

(B) Adjusted equity shall be calculated by deducting from the stated net worth shown on the balance sheet submitted by the applicant or licensee any asset, as calculated in item (C) of this subdivision (2), resulting from notes receivable from related persons, accounts receivable from related persons, stock subscriptions receivable, or any other related person receivables.

(C) A disallowed asset shall be netted against any related liability and the net result, if an asset, shall be subtracted from the stated net worth, or if a liability it shall remain a liability.

(3) An applicant or licensee must have an adjusted equity of at least \$50,000 as determined by the method

specified in item (b)(2) of this Section. Beginning with the first fiscal year of a licensee ending after 2004, the adjusted equity, as defined by the method specified in item (b)(2) of this Section, shall be increased by \$10,000 per fiscal year until the adjusted equity of an applicant or licensee is at least \$100,000.

(4) For the purposes of this Section, notes receivable from related persons, accounts receivable from related persons, and any other related person receivables are not a disallowed asset if the related person is also a licensee and meets all of the financial requirements of this Code.

(5) An applicant for a new license shall not be permitted to collateralize the requirements of items (b)(1) and (b)(3) of this Section in order to satisfy the requirements for a new license.

(Source: P.A. 89-287, eff. 1-1-96.)

(240 ILCS 40/5-30)

Sec. 5-30. Grain Insurance Fund assessments. The Illinois Grain Insurance Fund is established as a continuation of the fund created under the Illinois Grain Insurance Act, now repealed. Licensees, and applicants for a new license, first sellers of grain to grain dealers at Illinois locations, and lenders to licensees shall pay assessments as set forth in this Section.

(a) Subject to subsection (e) of this Section, a licensee that is newly licensed after the effective date of this Code shall pay an assessment into the Fund for 3 consecutive years. These assessments are known as "newly licensed assessments". Except as provided in item (6) of subsection (b) of this Section, the first installment assessment shall be paid at the time of or before the issuance of a new license, the second installment assessment

shall be paid on or before the first anniversary date of the issuance of the new license, and the third installment assessment shall be paid on or before the second anniversary date of the issuance of the new license. For a grain dealer, the ~~initial~~ payment of each of the 3 installments assessments shall be based upon the total estimated value of grain purchases by the grain dealer for the applicable year with the final installment assessment amount determined as set forth in item (6) of subsection (b) of this Section. After the licensee has paid or was required to pay the last 3 installments of the newly licensed assessments ~~first--3 assessments-to-the-Department-for-payment-into-the-Fund~~, the licensee shall be subject to subsequent assessments as set forth in subsection (d) of this Section.

(b) Grain dealer newly licensed assessments.

(1) The first installment assessment for a grain dealer shall be an amount equal to:

(A) \$0.000145 multiplied by the total value of grain purchases for the grain dealer's first fiscal year as shown in the final financial statement for that year provided to the Department under Section 5-20; and

(B) \$0.000255 multiplied by that portion of the value of grain purchases for the grain dealer's first fiscal year that exceeds the adjusted equity of the licensee multiplied by 20, as shown on the final financial statement for the licensee's first fiscal year provided to the Department under Section 5-20.

(2) The minimum amount assessment for the first installment assessment shall be \$500 ~~\$1,000~~ and the maximum shall be \$15,000 ~~\$10,000~~.

(3) The second installment assessment for a grain dealer shall be an amount equal to:

(A) \$0.0000725 multiplied by the total value of grain purchases for the grain dealer's second fiscal year as shown in the final financial statement for that year provided to the Department under Section 5-20; and

(B) \$0.0001275 multiplied by that portion of the value of grain purchases for the grain dealer's second fiscal year that exceeds the adjusted equity of the licensee multiplied by 20, as shown on the final financial statement for the licensee's second fiscal year provided to the Department under Section 5-20.

(4) The third installment assessment for a grain dealer shall be an amount equal to:

(A) \$0.0000725 multiplied by the total value of grain purchases for the grain dealer's third fiscal year as shown in the final financial statement for that year provided to the Department under Section 5-20; and

(B) \$0.0001275 multiplied by that portion of the value of grain purchases for the grain dealer's third fiscal year that exceeds the adjusted equity of the licensee multiplied by 20, as shown on the final financial statement for the licensee's third fiscal year.

(5) The minimum amount of the second and third installments assessments shall be \$250 \$500 per year and the maximum for each year shall be \$7,500 \$5,000.

(6) Each of the newly licensed ~~first~~-3 assessments shall be adjusted up or down based upon the actual annual grain purchases for each year as shown in the final financial statement for that year provided to the Department under Section 5-20. The adjustments shall be determined by the Department within 30 days of the date

of approval of renewal of a license. Refunds shall be paid out of the Fund within 60 days after the Department's determination. Additional amounts owed for any installment assessments shall be paid within 30 days after notification by the Department ~~as--provided--in subsection-(f)-of-this-Section.~~

(7) For the purposes of grain dealer newly licensed assessments under subsection (b) of this Section, the total value of grain purchases shall be the total value of first time grain purchases by Illinois locations from producers.

(8) The second and third installments shall be paid to the Department within 60 days after the date posted on the written notice of assessment. The Department shall immediately deposit all paid installments into the Fund.

(c) Warehouseman newly licensed assessments.

(1) The first assessment for a warehouseman shall be an amount equal to:

(A) \$0.00085 multiplied by the total permanent storage capacity of the warehouseman at the time of license issuance; and

(B) \$0.00099 multiplied by that portion of the permanent storage capacity of the warehouseman at the time of license issuance that exceeds the adjusted equity of the licensee multiplied by 5, all as shown on the final financial statement for the licensee provided to the Department under Section 5-10.

(2) The minimum amount assessment for the first installment assessment shall be \$500 ~~\$1,000~~ and the maximum shall be \$15,000 ~~\$10,000~~.

(3) The second and third installments assessments shall be an amount equal to:

(A) \$0.000425 multiplied by the total

permanent storage capacity of the warehouseman at the time of license issuance; and

(B) \$0.000495 multiplied by that portion of the permanent licensed storage capacity of the warehouseman at the time of license issuance that exceeds the adjusted equity of the licensee multiplied by 5, as shown on the final financial statement for the licensee's last completed fiscal year provided to the Department under Section 5-20.

(4) The minimum amount assessment for the second and third installments assessments shall be \$250 ~~\$500~~ per installment assessment and the maximum for each installment assessment shall be \$7,500 ~~\$5,000~~.

(5) Every warehouseman shall pay an assessment when increasing available permanent storage capacity in an amount equal to \$0.001 multiplied by the total number of bushels to be added to permanent storage capacity. The minimum assessment on any increase in permanent storage capacity shall be \$50 and the maximum assessment shall be \$20,000. The assessment based upon an increase in permanent storage capacity shall be paid at or before the time of approval of the increase in permanent storage capacity. This assessment on the increased permanent storage capacity does not relieve the warehouseman of any assessments as set forth in subsection (d) of this Section.

(6) Every warehouseman shall pay an assessment of \$0.0005 per bushel when increasing available storage capacity by use of temporary storage space. The minimum assessment on temporary storage space shall be \$100. The assessment based upon temporary storage space shall be paid at or before the time of approval of the amount of the temporary storage space. This assessment on the temporary storage space capacity does not relieve the

warehouseman of any assessments as set forth in subsection (d) of this Section.

(7) Every warehouseman shall pay an assessment of \$0.001 per bushel of emergency storage space. The minimum assessment on any emergency storage space shall be \$100. The assessment based upon emergency storage space shall be paid at or before the time of approval of the amount of the emergency storage space. This assessment on the emergency storage space does not relieve the warehouseman of any assessments as set forth in subsection (d) of this Section.

(8) The second and third installments shall be paid to the Department within 60 days after the date posted on the written notice of assessment. The Department shall immediately deposit all paid installments into the Fund.

(d) Grain dealer subsequent assessments; warehouseman subsequent assessments Subsequent-assessments.

(1) Subject to paragraph (4) of this subsection (d), if on the first working day of a calendar quarter when a licensee is not already subject to an assessment under this subsection (d) (the assessment determination date), if the equity in the Fund is less than \$6,000,000 below-\$3,000,000-on-September--1st--of--any--year, every grain dealer who has, or was required to have, already paid the newly licensed first, second, and third assessments shall be assessed by the Department in a total an amount equal to:

(A) \$0.0000725 multiplied by the total value of grain purchases for the grain dealer's last completed fiscal year prior to the assessment determination date as shown in the final financial statement for that year provided to the Department under Section 5-20; and

(B) \$0.0001275 multiplied by that portion of

the value of grain purchases for the grain dealer's last completed fiscal year prior to the assessment determination date that exceeds the adjusted equity of the licensee multiplied by 20, as shown on the final financial statement for the licensee's last completed fiscal year provided to the Department under Section 5-20.

The minimum total amount for the grain dealer's a subsequent assessment shall be ~~\$250~~ \$500 per 12-month period year and the maximum amount shall be ~~\$7,500~~ \$5,000 per 12-month period year. For the purposes of grain dealer assessments under this item (1) of subsection (d) of this Section, the total value of grain purchases shall be the total value of first time grain purchases by Illinois locations from producers.

(2) Subject to paragraph (4) of this subsection (d), if on the first working day of a calendar quarter when a licensee is not subject to an assessment under this subsection (d) (the assessment determination date), if the equity in the Fund is less than \$6,000,000 below ~~\$3,000,000--on--September--1st---of---any---year,~~ every warehouseman who has, or was required to have, already paid the newly licensed first, second, and third assessments shall be assessed a warehouseman subsequent assessment by the Department in a total an amount equal to:

(A) \$0.000425 multiplied by the total licensed storage capacity of the warehouseman as of the first day of September that immediately precedes the assessment determination date ~~1st-of-that-year;~~ and

(B) \$0.000495 multiplied by that portion of the licensed storage capacity of the warehouseman as of the first day of September that immediately precedes the assessment determination date ~~1st-of~~

~~that~~-year that exceeds the adjusted equity of the licensee multiplied by 5, as shown on the final financial statement for the licensee's last completed fiscal year provided to the Department under Section 5-20.

The minimum total amount for a warehouseman subsequent assessment shall be \$250 ~~\$500~~ per 12-month ~~period~~ year and the maximum amount shall be \$7,500 ~~\$5,000~~ per 12-month ~~period~~ year.

(3) Subject to paragraph (4) of this subsection (d), if the equity in the Fund is below \$6,000,000 on the first working day of a calendar quarter when a licensee is not already subject to an assessment under this subsection (d) (the assessment determination date), every incidental grain dealer who has, or was required to have, already paid all 3 installments of the newly licensed assessments shall be assessed by the Department in a total amount equal to \$100. It shall be paid to the Department within 60 days after the date posted on the written notification by the Department, which shall be sent after the first day of the calendar quarter immediately following the assessment determination date.

(4) Following the payment of the final quarterly installment by grain dealers and warehousemen, the next assessment determination date can be no sooner than the first working day of the sixth full calendar month following the payment.

(5) All assessments under paragraphs (1) and (2) of this subsection (d) shall be effective as of the first day of the calendar quarter immediately following the assessment determination date and shall be paid to the Department by licensees in 4 equal installments by the twentieth day of each consecutive calendar quarter following notice by the Department of the assessment. The

Department shall give written notice to all licensees of when the assessment is effective, and the rate of the assessment, by mail within 20 days after the assessment determination date.

(6) After an assessment under paragraph (1) and (2) of this subsection (d) is instituted, the amount of any unpaid installments for the assessment shall not be adjusted based upon any change in the financial statements or licensed storage capacity of a licensee.

(7) If the due date for the payment by a licensee of the third assessment under subsections (b) and (c) of this Section 5-30 is after the assessment determination date, that licensee shall not be subject to any of the 4 installments of an assessment under paragraphs (1) and (2) of this subsection (d).

(8) The Department shall immediately deposit all paid assessments into the Fund. If the due date for the payment by a licensee of the third assessment is after September 1st in a year when the equity in the Fund is below \$3,000,000, that licensee shall not be subject to a subsequent assessment for that year.

(e) Newly licensed; exemptions.

(1) For the purpose of assessing fees for the Fund under subsection (a) of this Section, and subject to the provisions of item (e)(2) of this Section, the Department shall consider the following to be newly licensed:

(A) A person that becomes a licensee for the first time after the effective date of this Code.

(B) A licensee who has a lapse in licensing of more than 30 days. A license shall not be considered to be lapsed after its revocation or termination if an administrative or judicial action is pending or if an order from an administrative or judicial body continues an existing license.

(C) A grain dealer that is a general partnership in which there is a change in partnership interests and that change is greater than 50% during the partnership's fiscal year.

(D) A grain dealer that is a limited partnership in which there is a change in the controlling interest of a general partner and that change is greater than 50% of the total controlling interest during the limited partnership's fiscal year.

(E) A grain dealer that is a limited liability company in which there is a change in membership interests and that change is greater than 50% during the limited liability company's fiscal year.

(F) A grain dealer that is the result of a statutory consolidation if that person has adjusted equity of less than 90% of the combined adjusted equity of the predecessor persons who consolidated. For the purposes of this paragraph, the adjusted equity of the resulting person shall be determined from the approved or certified financial statement submitted to the Department for the first fiscal year of the resulting person. For the purpose of this paragraph, the combined adjusted equity of the predecessor persons shall be determined by combining the adjusted equity of each predecessor person as set forth in the most recent approved or certified financial statement of each predecessor person submitted to the Department.

(G) A grain dealer that is the result of a statutory merger if that person has adjusted equity of less than 90% of the combined adjusted equity of the predecessor persons who merged. For the purposes of this paragraph, the adjusted equity of

the resulting person shall be determined from the approved or certified financial statement submitted to the Department for the first fiscal year of the resulting person ending after the merger. For the purposes of this paragraph, the combined adjusted equity of the predecessor persons shall be determined by combining the adjusted equity of each predecessor person as set forth in the most recent approved or certified financial statement submitted to the Department for the last fiscal year of each predecessor person ending on the date of or before the merger.

(H) A grain dealer that is a general partnership in which there is a change in partnership interests and that change is 50% or less during the partnership's fiscal year if the adjusted equity of the partnership after the change is less than 90% of the adjusted equity of the partnership before the change. For the purpose of this paragraph, the adjusted equity of the partnership after the change shall be determined from the approved or certified financial statement submitted to the Department for the first fiscal year ending after the change. For the purposes of this paragraph, the adjusted equity of the partnership before the change shall be determined from the approved or certified financial statement submitted to the Department for the last fiscal year of the partnership ending on the date of or before the change.

(I) A grain dealer that is a limited partnership in which there is a change in the controlling interest of a general partner and that change is 50% or less of the total controlling

interest during the partnership's fiscal year if the adjusted equity of the partnership after the change is less than 90% of the adjusted equity of the partnership before the change. For the purposes of this paragraph, the adjusted equity of the partnership after the change shall be determined from the approved or certified financial statement submitted to the Department for the first fiscal year ending after the change. For the purposes of this paragraph, the adjusted equity of the partnership before the change shall be determined from the approved or certified financial statement submitted to the Department for the last fiscal year of the partnership ending on the date of or before the change.

(J) A grain dealer that is a limited liability company in which there is a change in membership interests and that change is 50% or less of the total membership interests during the limited liability company's fiscal year if the adjusted equity of the limited liability company after the change is less than 90% of the adjusted equity of the limited liability company before the change. For the purposes of this paragraph, the adjusted equity of the limited liability company after the change shall be determined from the approved or certified financial statement submitted to the Department for the first fiscal year ending after the change. For the purposes of this paragraph, the adjusted equity of the limited liability company before the change shall be determined from the approved or certified financial statement submitted to the Department for the last fiscal year of the limited liability company ending on the date of or

before the change.

(K) A grain dealer that is the result of a statutory consolidation or merger if one or more of the predecessor persons that consolidated or merged into the resulting grain dealer was not a licensee under this Code at the time of the consolidation or merger.

(2) For the purpose of assessing fees for the Fund as set forth in subsection (a) of this Section, the Department shall consider the following as not being newly licensed and, therefore, exempt from further assessment unless an assessment is required by subsection (d) of this Section:

(A) A person resulting solely from a name change of a licensee.

(B) A warehouseman changing from a Class I warehouseman to a Class II warehouseman or from a Class II warehouseman to a Class I warehouseman under this Code.

(C) A licensee that becomes a wholly owned subsidiary of another licensee.

(D) Subject to item (e)(1)(K) of this Section, a person that is the result of a statutory consolidation if that person has adjusted equity greater than or equal to 90% of the combined adjusted equity of the predecessor persons who consolidated. For the purposes of this paragraph, the adjusted equity of the resulting person shall be determined from the approved or certified financial statement submitted to the Department for the first fiscal year of the resulting person. For the purpose of this paragraph, the combined adjusted equity of the predecessor persons shall be determined by combining the adjusted equity net--worth of each

predecessor person as set forth in the most recent approved or certified financial statement of each predecessor person submitted to the Department.

(E) Subject to item (e)(1)(K) of this Section, a person that is the result of a statutory merger if that person has adjusted equity greater than or equal to 90% of the combined adjusted equity of the predecessor persons who merged. For the purposes of this paragraph, the adjusted equity of the resulting person shall be determined from the approved or certified financial statement submitted to the Department for the first fiscal year of the resulting person ending after the merger. For the purposes of this paragraph, the combined adjusted equity of the predecessor persons shall be determined by combining the adjusted equity of each predecessor person as set forth in the most recent approved or certified financial statement, submitted to the Department for the last fiscal year of each predecessor person ending on the date of or before the merger.

(F) A general partnership in which there is a change in partnership interests and that change is 50% or less during the partnership's fiscal year and the adjusted equity of the partnership after the change is greater than or equal to 90% of the adjusted equity of the partnership before the change. For the purposes of this paragraph, the adjusted equity of the partnership after the change shall be determined from the approved or certified financial statement submitted to the Department for the first fiscal year ending after the change. For the purposes of this paragraph, the adjusted equity of the partnership before the change shall be

determined from the approved or certified financial statement submitted to the Department for the last fiscal year of the partnership ending on the date of or before the change.

(G) A limited partnership in which there is a change in the controlling interest of a general partner and that change is 50% or less of the total controlling interest during the partnership's fiscal year and the adjusted equity of the partnership after the change is greater than or equal to 90% of the adjusted equity of the partnership before the change. For the purposes of this paragraph, the adjusted equity of the partnership after the change shall be determined from the approved or certified financial statement submitted to the Department for the first fiscal year ending after the change. For the purposes of this paragraph, the adjusted equity of the partnership before the change shall be determined from the approved or certified financial statement submitted to the Department for the last fiscal year of the partnership ending on the date of or before the change.

(H) A limited liability company in which there is a change in membership interests and that change is 50% or less of the total membership interests during the limited liability company's fiscal year if the adjusted equity of the limited liability company after the change is greater than or equal to 90% of the adjusted equity of the limited liability company before the change. For the purposes of this paragraph, the adjusted equity of the limited liability company after the change shall be determined from the approved or certified financial statement submitted to the Department for the first

fiscal year ending after the change. For the purposes of this paragraph, the adjusted equity of the limited liability company before the change shall be determined from the approved or certified financial statement submitted to the Department for the last fiscal year of the limited liability company ending on the date of or before the change.

(I) A licensed warehouseman that is the result of a statutory merger or consolidation to the extent the combined storage capacity of the resulting warehouseman has been assessed under this Code before the statutory merger or consolidation, except that any storage capacity of the resulting warehouseman that has not previously been assessed under this Code shall be assessed as provided in items (c)(5), (c)(6), and (c)(7) of this Section.

(J) A federal warehouseman who participated in the Fund under Section 30-10 and who subsequently received an Illinois license to the extent the storage capacity of the warehouseman was assessed under this Code prior to Illinois licensing.

(f) Grain seller initial assessments and regular assessments. Assessments under this subsection (f) apply only to the first sale of grain to a grain dealer at an Illinois location.

(1) The grain seller initial assessment period is that period of time beginning on the effective date of this amendatory Act of the 93rd General Assembly and ending on the first assessment determination date thereafter when the equity in the fund is at least \$6,000,000.

(2) Subject to paragraph (3) of this subsection (f) (i) if during the grain seller initial assessment period the equity in the Fund is less than \$3,000,000 or (ii) if

at any time after the grain seller initial assessment period the equity in the Fund is less than \$2,000,000, on the first working day of a calendar quarter when a grain seller is not already subject to an assessment under this subsection (f) (the assessment determination date), each person who settles for grain (sold to a grain dealer at an Illinois location) during the 12-month period commencing on the first day of the succeeding calendar quarter (the assessment period) shall pay an assessment equal to \$0.0004 multiplied by the net market value of grain settled for (payment received for grain sold).

(3) The next assessment determination date can be no sooner than the first working day of the fourth full calendar month following the end of the assessment period.

(4) "Net market value" of grain means the gross sales price of that grain adjusted by application of the grain dealer's discount schedule in effect at the time of sale and after deduction of any statutory commodity check-offs. Other charges such as storage charges, drying charges, and transportation costs shall not be deducted in arriving at the net market value of grain sold to a grain dealer. The net market value of grain shall be determined from the settlement sheet or other applicable written evidence of the sale of grain to the grain dealer.

(5) All assessments under this subsection (f) shall commence on the first day of the calendar quarter immediately following the assessment determination date and shall continue for a period of 12 consecutive calendar months. The assessments shall be collected by licensees at the time of settlement during the assessment period, and shall be remitted by licensees to the Department by the twentieth day of each calendar quarter,

commencing with the second calendar quarter following the assessment determination date. The Department shall give written notice to all licensees of when an assessment under this subsection (f) is to begin and end, and the appropriate level of the assessment, by mail within 20 days after the assessment determination date.

(6) Assessments under this subsection (f) apply only to grain for which settlement is made during the assessment period, without regard to the date the grain was sold to the licensee.

(7) The collection and remittance of assessments from first sellers of grain under this subsection (f) is the sole responsibility of the licensees to whom the grain is sold. Sellers of grain shall not be penalized by reason of any licensee's failure to comply with this subsection (f). Failure of a licensee to collect any assessment shall not relieve the grain seller from paying the assessment, and the grain seller shall promptly remit the uncollected assessments upon demand by the licensee, which may be accounted for in settlement of grain subsequently sold to that licensee. Licensees who do not collect assessments as required by this subsection (f), or who do not remit those assessments to the Department within the time deadlines required by this subsection (f), shall remit the amount of the assessments that should have been remitted to the Department and in addition shall be subject to a monetary penalty in an amount not to exceed \$1,000.

(8) Notwithstanding the other provisions of this subsection (f), no assessment shall be levied against grain sold by the Department as a result of a failure.

(g) Lender assessments.

(1) Subject to the provisions of this subsection (g), if on the first working day of a calendar quarter

when a person is not already subject to an assessment under this subsection (g) the equity in the Fund is less than \$6,000,000, each person holding warehouse receipts issued from an Illinois location on grain owned or stored by a licensee to secure a loan to that licensee shall be assessed a quarterly lender assessment for each of 4 consecutive calendar quarters beginning with the calendar quarter next succeeding the assessment determination date.

(2) Each quarterly lender assessment shall be at the rate of \$0.00000055 per bushel per day for bushels covered by a warehouse receipt held as security for the loan during that calendar quarter times the applicable commodity price times the lender assessment multiplier, if any, determined by the Department in accordance with paragraph (3) of this subsection (g). With respect to each calendar quarter within the assessment period, the "applicable commodity price" shall be the closing price paid by the licensee on the last working day of that calendar quarter for the base commodity for which the warehouse receipt was issued.

(3) With respect to the second assessment period beginning after June 30, 2003, the Department shall determine and apply a lender assessment multiplier equal to 250,000 divided by the aggregate dollar amount of lender assessments imposed under this subsection (g) under the first assessment period beginning after June 30, 2003. With respect to the third assessment period beginning after June 30, 2003, the Department shall determine and apply a lender assessment multiplier equal to 250,000 divided by the average of aggregate dollar amounts of lender assessments imposed under this subsection (g) under the first 2 assessment periods beginning after June 30, 2003. With respect to assessment

periods thereafter, the Department shall determine and apply a lender assessment multiplier equal to 250,000 divided by the average of the 3 most recent aggregate dollar amounts of lender assessments imposed under this subsection (g).

(4) The next assessment determination date can be no sooner than the first working day of the fourth full calendar month following the end of the assessment period.

(5) The Department shall give written notice by mail within 20 days after the assessment determination date to all licensees of when assessments under this subsection (g) are to begin and end, the rate of the lender assessment, and the lender assessment multiplier, if any, that shall apply.

(6) It is the responsibility of a licensee to inform each of its lenders and other persons by virtue of whose relationship with the licensee this subsection (g) will apply as to the onset of an assessment for which that person might be liable and the applicable lender assessment multiplier, if any. The notification must be in writing and, as to persons subject to assessment under this subsection (g) on the assessment determination date, must be sent no later than 20 days after the licensee receives notice of an assessment from the Department. As to persons not subject to assessment under this subsection (g) as of the assessment determination date, the notice shall be sent or given no later than the closing of any transaction subsequent to the assessment determination date involving the licensee and by virtue of which transaction the person is made subject to assessment under this subsection (g).

(7) Within 20 days after the end of each calendar quarter within the assessment period, each licensee shall

send to each lender with which it has been associated during that calendar quarter and to the Department a written notice of quarterly assessment together with the information needed to determine the amount of the quarterly assessment owing with respect to loans from that lender. This information shall include the number of bushels covered by each warehouse receipt, organized by commodity, held as security for the loan owing to that lender, the number of days each of those warehouse receipts was outstanding during that calendar quarter, the applicable commodity price, the applicable lender assessment multiplier, the amount of the resulting quarterly lender assessment, and the due date of the quarterly assessment.

(8) Each quarterly assessment shall be due and paid by the lender or its designee to the Department within 20 days after the end of the calendar quarter to which the assessment pertains.

(9) Lenders shall not be penalized by reason of any licensee's failure to comply with this subsection (g). Failure of a licensee to comply with this subsection (g) shall not relieve the lender from paying the assessment, and the lender shall promptly remit the uncollected assessments by the due date as set forth in the notice from the licensee.

(10) This subsection (g) applies to any person who holds a grain warehouse receipt issued by a licensee from an Illinois location pursuant to any transaction, regardless of its form, that creates a security interest in the grain including, without limitation, the advancing of money or other value to or for the benefit of a licensee upon the licensee's issuance or negotiation of a grain warehouse receipt and pursuant to or in connection with an agreement between the licensee and a

counter-party for the repurchase of the grain by the licensee or designee of the licensee. For purposes of this subsection (g), any such transaction shall be treated as one in which grain is held as security for a loan outstanding to a licensee within the meaning of this subsection (g), and such a person shall be treated as a lender.

(11) The Department shall immediately deposit all paid assessments under this subsection (g) into the Fund.

(h) Equity in the Fund shall exclude moneys owing to the State or the Reserve Fund as a result of transfers to the Fund from the General Revenue Fund or the Reserve Fund under subsection (h) of Section 25-20. Notwithstanding the foregoing, for purposes of calculating equity in the Fund during the grain seller initial assessment period and assessing grain sellers, it shall be presumed that the State is owed, prior to repayment, only \$2,000,000 and the Reserve Fund contains a balance of \$2,000,000. Under no circumstances, however, shall there be more than 2 consecutive grain seller assessments during the initial assessment period, unless there is a failure that reduces the equity in the Fund to below \$3,000,000. Except for the first assessment made under this Section, and assessments under items (e)(5), (e)(6), and (e)(7) of this Section, all assessments shall be paid to the Department within 60 days after the date posted on the written notice of assessment. The Department shall forward all paid assessments to the Fund.

(Source: P.A. 91-213, eff. 7-20-99.)

(240 ILCS 40/10-5)

Sec. 10-5. Duties and requirements of licensees.

(a) Each licensee shall have adequate property insurance covering grain in its possession or custody and adequate

liability, property, theft, hazard, and workers' compensation insurance.

(1) Every insurance policy shall contain a provision that it will not be cancelled by the principal or the insurance company except on 60 days prior written notice to the Director and the principal insured. Cancellation of the policy does not affect the liability accrued or that may accrue under the policy before the expiration of the 60 days. The notice shall contain the termination date.

(2) Each licensee shall keep a general insurance account showing the policy number, issuing company, amount, binding date, and expiration date of insurance coverage and the property covered by insurance.

(3) In reference to a warehouseman, notwithstanding any provision to the contrary contained in the warehouse receipts involved, a warehouseman is not obligated to provide property insurance on Commodity Credit Corporation grain ("CCC-owned grain"). The warehouseman, however, shall continue to carry the insurance required on loan grain that becomes CCC-owned grain until the date stated in a written notice from CCC or its agent instructing the warehouseman to cancel the insurance on the grain as of that date. If CCC-owned grain is not covered by property insurance, recovery by the Commodity Credit Corporation from the Fund shall be reduced by the amount of property insurance proceeds that would have been available to cover any loss to CCC-owned grain had the CCC-owned grain been covered by property insurance.

(b) A licensee shall immediately notify the Department when there is a change of management or cessation of operations or change in fiscal year end.

(c) All grain trades, grain merchandising transactions, grain origination plans and programs, and transactions or

arrangements that represent or reflect rights and obligations in grain must be clearly identified and disclosed in the books and records of the licensee, for audit and examination purposes.

(Source: P.A. 89-287, eff. 1-1-96.)

(240 ILCS 40/10-10)

Sec. 10-10. Duties and requirements of grain dealers.

(a) Long and short market position.

(1) Grain dealers shall at all times maintain an accurate and current long and short market position record for each grain commodity. The position record shall at a minimum contain the net position of all grain owned, wherever located, grain purchased and sold, and any grain option contract purchased or sold.

(2) Grain dealers, except grain dealers regularly and continuously reporting to the Commodity Futures Trading Commission or grain dealers who have obtained the permission of the Department to have different open long or short market positions, may maintain an open position in the grain commodity of which the grain dealer buys the greatest number of bushels per fiscal year not to exceed one bushel for each \$10 of adjusted equity at fiscal year end up to a maximum open position of 50,000 bushels and one-half that number of bushels up to 25,000 bushels for all other grain commodities that the grain dealer buys. A grain dealer, however, may maintain an open position of up to 5,000 bushels for each grain commodity the grain dealer buys.

(b) The license issued by the Department to a grain dealer shall be posted in the principal office of the licensee in this State. A certificate shall be posted in each location where the licensee engages in business as a grain dealer. In the case of a licensee operating a truck or

tractor trailer unit for the purpose of purchasing grain, the licensee shall have a certificate carried in each truck or tractor trailer unit used in connection with the licensee's grain dealer business.

(c) The licensee must have at all times sufficient financial resources to pay producers on demand for grain purchased from them.

(d) A licensee that is solely a grain dealer shall on a daily basis maintain an accurate and current daily grain transaction report.

(e) A licensee that is both a grain dealer and a warehouseman shall at all times maintain an accurate and current daily position record.

(f) In the case of a change of ownership of a grain dealer, the obligations of a grain dealer do not cease until the grain dealer has surrendered all unused price later contracts to the Department and the successor has executed a successor's agreement that is acceptable to the Department, or the successor has otherwise provided for the grain obligations of its predecessor in a manner that is acceptable to the Department.

(g) If a grain dealer proposes to cease doing business as a grain dealer and there is no successor, it is the duty of the grain dealer to surrender all unused price later contracts to the Department, together with an affidavit accounting for all grain dealer obligations setting forth the arrangements made with producers for final disposition of the grain dealer obligations and indicating the procedure for payment in full of all outstanding grain obligations. It is the duty of the Department to give notice by publication that a grain dealer has ceased doing business without a successor. After payment in full of all outstanding grain obligations, it is the duty of the grain dealer to surrender its license.

(Source: P.A. 91-213, eff. 7-20-99.)

(240 ILCS 40/10-15)

Sec. 10-15. Price later contracts.

(a) Price later contracts shall be written on forms prescribed or authorized by the Department. Price later contract forms shall be printed by a person authorized to print those contracts by the Department after that person has agreed to comply with each of the following:

(1) That all price later contracts shall be printed as prescribed by the Department and shall be printed only for a licensed grain dealer.

(2) That all price later contracts shall be numbered consecutively and a complete record of these contracts shall be retained showing for whom printed and the consecutive numbers printed on the contracts.

(3) That a duplicate copy of all invoices rendered for printing price later contracts that will show the consecutive numbers printed on the contracts, and the number of contracts printed, shall be promptly forwarded to the Department.

(4) that the person shall register with the Department and pay an annual registration fee of \$100 to print price later contracts.

(b) A grain dealer purchasing grain by price later contract shall at all times own grain, rights in grain, proceeds from the sale of grain, and other assets acceptable to the Department as set forth in this Code totaling 90% of the unpaid balance of the grain dealer's obligations for grain purchased by price later contract. That amount shall at all times remain unencumbered and shall be represented by the aggregate of the following:

(1) Grain owned by the grain dealer valued by means of the hedging procedures method that includes marking open contracts to market.

(2) Cash on hand.

(3) Cash held on account in federally or State licensed financial institutions.

(4) Investments held in time accounts with federally or State licensed financial institutions.

(5) Direct obligations of the U.S. government.

(6) Funds on deposit in grain margin accounts.

(7) Balances due or to become due to the licensee on price later contracts.

(8) Marketable securities, including mutual funds.

(9) Irrevocable letters of credit in favor of the Department and acceptable to the Department.

(10) Price later contract service charges due or to become due to the licensee.

(11) Other evidence of proceeds from or of grain that is acceptable to the Department.

(c) For the purpose of computing the dollar value of grain and the balance due on price later contract obligations, the value of grain shall be figured at the current market price.

(d) Title to grain sold by price later contract shall transfer to a grain dealer at the time ~~en-the-date~~ of delivery of the grain. Therefore, no storage charges shall be made with respect to grain purchased by price later contract. A service charge for handling the contract, however, may be made.

(e) Subject to subsection (f) of this Section, if a price later contract is not signed by all parties within 30 days of the last date of delivery of grain intended to be sold by price later contract, then the grain intended to be sold by price later contract shall be priced on the next business day after 30 days from the last date of delivery of grain intended to be sold by price later contract at the market price of the grain at the close of the next business day after the 29th day. When the grain is priced under this

subsection, the grain dealer shall send notice to the seller of the grain within 10 days. The notice shall contain the number of bushels sold, the price per bushel, all applicable discounts, the net proceeds, and a notice that states that the Grain Insurance Fund shall provide protection for a period of only 160 days from the date of pricing of the grain.

In the event of a failure, if a price later contract is not signed by all the parties to the transaction, the Department may consider the grain to be sold by price later contract if a preponderance of the evidence indicates the grain was to be sold by price later contract.

(f) If grain is in storage with a warehouseman and is intended to be sold by price later contract, that grain shall be considered as remaining in storage and not be deemed sold by price later contract until the date the price later contract is signed by all parties.

(g) Scale tickets or other approved documents with respect to grain purchased by a grain dealer by price later contract shall contain the following: "Sold Grain; Price Later".

(h) Price later contracts shall be issued consecutively and recorded by the grain dealer as established by rule.

(i) A licensee grain-dealer shall not issue a collateral warehouse receipt on grain purchased by a price later contract to the extent the purchase price has not been paid by the licensee grain-dealer.

(j) Failure to comply with the requirements of this Section may result in suspension of the privilege to purchase grain by price later contract for up to one year.

(k) When a producer with a price later contract selects a price for all or any part of the grain represented by that contract, then within 5 business days after that price selection, the licensee shall mail to that producer a

confirmation of the price selection, clearly and succinctly indicating the price selected.

(Source: P.A. 91-213, eff. 7-20-99.)

(240 ILCS 40/10-20)

Sec. 10-20. Duties and requirements of warehouseman.

(a) It is the duty of every warehouseman to receive for storage any grain that may be tendered to it in the ordinary course of business so far as the licensed storage capacity of the warehouse permits and if the grain is of a kind customarily stored by the warehouseman and is in suitable condition for storage.

(1) If the condition of grain offered for storage might adversely affect the condition of grain in the warehouse, a warehouseman need not receive the grain for storage, but if a warehouseman does receive the grain, then it must be stored in a manner that will not lower the grade of other grain in the warehouse.

(2) A warehouseman shall provide competent personnel and equipment to weigh and grade all grain in and out of storage.

(3) A warehouseman shall maintain all licensed warehouse facilities in a manner suitable to preserve the quality and quantity of grain stored.

(b) For the purposes of the Department's examinations, a warehouseman shall provide and maintain safe and adequate means of ingress and egress to the various and surrounding areas of the facilities, storage bins, and compartments of the warehouse.

(c) Except as provided in this item (c), a warehouseman shall at all times have a sufficient quantity of grain of like kind and quality to meet its outstanding storage obligations. For purposes of this Section, "like kind and quality" means the type of commodity and a combination of

grade, specialty traits, if any, and class or sub-class as applicable.

(d) A warehouseman shall not store grain in excess of the capacity for which it is licensed.

(e) A warehouseman may redeposit grain from its warehouse with another warehouseman or a federal warehouseman in an additional quantity not to exceed the licensed storage capacity of its own warehouse.

(1) If grain is redeposited as provided in this Section, a warehouseman must retain the receipt it obtains from the second warehouseman as proof of the redeposit and retain sufficient control over the redeposited grain as is necessary to comply with directions of the original depositor regarding disposition of the redeposited grain.

(2) While grain is en route from the redepositing warehouseman to the second warehouseman, a redepositing warehouseman must retain an original or a duplicate bill of lading instead of and until such time as it obtains possession of the warehouse receipt as proof of disposition of the redeposited grain.

(f) Schedule of rates and licenses.

(1) A warehouseman shall file its schedule of rates with the Department and shall post its warehouse license and a copy of the schedule of rates on file with the Department in a conspicuous place in each location of the warehouseman where grain is received.

(2) The schedule of rates shall be on a form prescribed by the Department and shall include the names and genuine signatures of all persons authorized to sign warehouse receipts issued by the warehouseman.

(3) To change the schedule of rates or the name of any person authorized to sign warehouse receipts, a warehouseman must file with the Department a revised

schedule of rates and, thereafter, post the revised schedule of rates at each location of the warehouseman where grain is received. The revised schedule of rates shall be deemed filed with the Department on the earlier of the date it is delivered to the Department or mailed to the Department by certified mail properly addressed with sufficient postage attached. The revised schedule of rates shall be effective on the date the schedule of rates is posted after delivery or mailing to the Department in accordance with this Section. Revised schedules of rates shall apply only to grain delivered for storage after the effective date of the revised schedule of rates. No grain in storage at the time of the effective date of a revised schedule of rates shall be subject to a revised schedule of rates until one year after the date of delivery of grain, unless otherwise provided by a written contract.

(4) The schedule of rates may provide for the negotiation of different rates for large deliveries of grain if those rates are applied on a uniform basis to all depositors under the same circumstances.

(g) A warehouseman may refuse to accept grain if the identity of the grain is to be preserved. If a warehouseman accepts grain and the identity of the grain is to be preserved, the evidence of storage shall state on its face that the grain is stored with its identity preserved and the location of that grain.

(h) A warehouseman shall at all times maintain an accurate and current daily position record on a daily basis.

(i) In the case of a change of ownership of a warehouse, the obligations of a warehouseman do not cease until its successor is properly licensed under this Code or the United States Warehouse Act, it has surrendered all unused warehouse receipts to the Department and has executed a successor's

agreement, or the successor has otherwise provided for the obligations of its predecessor.

(j) If a warehouseman proposes to cease doing business as a warehouseman and there is no successor, it is the duty of the warehouseman to surrender all unused warehouse receipts to the Department, together with an affidavit accounting for all warehouse receipts setting forth the arrangements made with depositors for final disposition of the grain in storage and indicating the procedure for payment in full of all outstanding obligations. After payment in full of all outstanding obligations, it is the duty of the warehouseman to surrender its license.

(k) Requests by a warehouseman for special examinations, grain inventory computation, or verification of grain quantity or quality shall be accompanied by a fee of \$200.

(l) Nothing in this Section is deemed to prohibit a warehouseman from entering into agreements with depositors of grain relating to allocation or reservation of storage space.

(Source: P.A. 89-287, eff. 1-1-96.)

(240 ILCS 40/15-15)

Sec. 15-15. Violations of open position limits.

(a) Violations of maximum allowable open position limits by more than 1,000 bushels but less than twice the maximum allowable open position limits.

(1) If a licensee violates the maximum allowable open position limits of item (a)(2) of Section 10-10 and the open position is more than 1,000 bushels but less than twice the maximum allowable open position limits, the licensee shall be required to:

(A) Post collateral with the Department in an amount equal to \$1 per bushel for each bushel of soybeans in excess of the maximum allowable open position limits and 50 cents per bushel of each

bushel for all other grain in excess of the maximum allowable open position limits or \$2,500, whichever is greater; and

(B) Pay a penalty in an amount not to exceed \$250.

(2) If a licensee commits 2 violations as set forth in item (a) (1) of Section 15-10 within a 2 year period, the licensee must:

(A) post collateral with the Department in an amount equal to \$1 per bushel for each bushel of soybeans in excess of the maximum allowable open position limits and 50 cents per bushel of each bushel for all other grain in excess of the maximum allowable open position limits or \$5,000, whichever is greater; and

(B) pay a penalty in the amount of \$750 \$500.

(3) If a licensee commits 3 or more violations as set forth in item (a)(1) of Section 15-10 within a 5 year period, the licensee must:

(A) post collateral with the Department in an amount equal to \$2 per bushel for each bushel of soybeans in excess of the maximum allowable open position limits and \$1 per bushel of each bushel for all other grain in excess of the maximum allowable open position limits or \$10,000, whichever is greater; and

(B) pay a penalty in an amount greater than \$2,000 \$1,000 but less than \$20,000 \$10,000.

(b) Violations of maximum allowable open position limits that equal or exceed twice the maximum allowable open position.

(1) If a licensee violates the maximum allowable open position limits of item (a)(2) of Section 10-10 and the open position equals or exceeds twice the maximum

allowable open position limits, the licensee must:

(A) post collateral with the Department in an amount equal to \$1 per bushel for each bushel of soybeans in excess of the maximum allowable open position and 50 cents per bushel for each bushel of all other grain in excess of the maximum allowable open position limits or \$5,000, whichever is greater; and

(B) pay a penalty in the amount of \$500.00.

(2) If a licensee commits 2 violations as set forth in item (b)(1) of Section 15-10 within a 2 year period, the licensee must:

(A) post collateral with the Department in an amount equal to \$2 per bushel for each bushel of soybeans in excess of the maximum allowable open position limits and \$1 per bushel for each bushel of all other grain in excess of the maximum allowable open position limits or \$10,000, whichever is greater; and

(B) pay a penalty in an amount greater than \$750 ~~\$500~~ but less than \$15,000 ~~\$10,000~~.

(3) If a licensee commits 3 or more violations as set forth in item (b)(1) of Section 15-5 within a 5 year period, the licensee must:

(A) post collateral with the Department in an amount equal to \$2 per bushel for each bushel of soybeans in excess of the maximum allowable open position limits and \$1 per bushel for each bushel for all other grain in excess of the maximum allowable open position limits or \$10,000, whichever is greater; and

(B) pay a penalty in an amount greater than \$2,000 ~~\$1,000~~ but less than \$20,000 ~~\$10,000~~.

(Source: P.A. 89-287, eff. 1-1-96.)

(240 ILCS 40/15-20)

Sec. 15-20. Grain quantity and grain quality violations.

(a) Grain quantity deficiencies of more than \$1,000 but less than \$20,000.

(1) If a licensee fails to have a sufficient quantity of grain in store to meet outstanding storage obligations and the value of the grain quantity deficiency as determined by the formula set forth in subsection (c) of Section 15-20 is more than \$1,000 but less than \$20,000, the licensee must:

(A) post collateral with the Department in an amount equal to the value of the grain quantity deficiency or \$2,500, whichever is greater; and

(B) pay a penalty of \$250.

(2) If a licensee commits 2 violations as set forth in item (a)(1) of Section 15-20 within a 2 year period, the licensee must:

(A) post collateral with the Department in an amount equal to the value of the grain quantity deficiency or \$10,000, whichever is greater; and

(B) pay a penalty of ~~\$750~~ \$500.

(3) If a licensee commits 3 or more violations as set forth in item (a)(1) of Section 15-20 within a 5 year period, the licensee must:

(A) post collateral with the Department in an amount equal to the value of the grain quantity deficiency or \$20,000, whichever is greater; and

(B) pay a penalty of no less than \$2,000 ~~\$1,000~~ and no greater than \$20,000 ~~\$10,000~~.

(b) Grain quantity deficiencies of \$20,000 or more.

(1) If a licensee fails to have sufficient quantity of grain in store to meet outstanding storage obligations and the value of the grain quantity deficiency as determined by the formula set forth in subsection (c) of

Section 15-20 equals or exceeds \$20,000, the licensee must:

(A) post collateral with the Department in an amount equal to twice the value of the grain quantity deficiency; and

(B) pay a penalty of \$500.

(2) If a licensee commits 2 violations as set forth in item (b)(1) of Section 15-20 within a 2 year period, the licensee must:

(A) post collateral with the Department in an amount equal to twice the value of the grain quantity deficiency or \$20,000, whichever is greater; and

(B) pay a penalty of no less than \$750 ~~\$500~~ and no greater than \$15,000 ~~\$10,000~~.

(3) If a licensee commits 3 or more violations as set forth in item (b)(1) of Section 15-20 within a 5 year period, the licensee must:

(A) post collateral with the Department in an amount equal to twice the value of the grain quantity deficiency or \$40,000, whichever is greater; and

(B) pay a penalty of no less than \$2,000 ~~\$1,000~~ and no greater than \$20,000 ~~\$10,000~~.

(c) To determine the value of the grain quantity deficiency for the purposes of this Section, the rate shall be \$1 per bushel for soybeans and 50 cents per bushel for all other grains.

(d) If a licensee fails to have sufficient quality of grain in store to meet outstanding storage obligations when the value of the grain quality deficiency exceeds \$1,000, the licensee must post collateral with the Department in an amount equal to the value of the grain quality deficiency. For the purposes of this Section, the value of the grain

quality deficiency shall be determined by applying prevailing market discount factors to all grain quality factors.

(Source: P.A. 89-287, eff. 1-1-96; 89-463, eff. 5-31-96.)

(240 ILCS 40/15-30)

Sec. 15-30. Financial and record keeping deficiencies; collateral and guarantees.

(a) An applicant or a licensee has a financial deficiency if it does not meet the minimum financial requirements of Section 5-25 and subsection (b) of Section 10-15 of this Code.

(b) A licensee must collateralize all financial deficiencies at the rate of one dollar's worth of collateral for each dollar of the aggregate sum of the individual ratio deficiencies, the net worth deficiencies, and 90% asset requirement deficiencies.

(c) A licensee who is found to have record keeping deficiencies, other than in reference to violations as set forth in subsection (b) of Section 10-15 and in Sections 15-15 and 15-20, may be required by the Department to post collateral up to the amount of \$10,000.

(d) If an applicant for a new license or a renewal of a license has financial deficiencies or the Department has reason to believe that the financial stability of an applicant or a licensee is in question, the Department may require the applicant or licensee to provide the Department, in addition to collateral, personal, corporate, or other related person guarantees in a form and in an amount satisfactory to the Department.

(e) Subject to subsection (c) of Section 5-15, the posting of collateral and the delivery of guarantees does not relieve a licensee of the continuing obligation to otherwise comply with the requirements imposed by the Code.

(Source: P.A. 89-287, eff. 1-1-96.)

(240 ILCS 40/15-35)

Sec. 15-35. Return of collateral and guarantees. If the next fiscal year's financial statement of a licensee received by the Department and an examination performed by the Department after delivery or posting of any required collateral or the guarantee indicates compliance by the licensee with all statutory requirements of this Code for which the collateral and guarantees were required, the collateral and guarantee shall be returned within 90 days a ~~reasonable-period-of-time~~ to the licensee and the guarantor following a written request for the return. The financial statement must comply with the requirements of Section 5-20.

(Source: P.A. 89-287, eff. 1-1-96.)

(240 ILCS 40/15-40)

Sec. 15-40. Suspension and revocation of license.

(a) The Director may suspend a license and take possession and control of all grain assets and equity assets (except that the Department may not take possession and control of any equity asset on which there is a valid prior perfected security interest or other valid prior perfected lien without the prior, written permission of the secured party or lien holder) of the suspended licensee if the Department has reason to believe that any of the following has occurred:

(1) A licensee has made a formal declaration of insolvency; failed to apply for license renewal, leaving indebtedness to claimants; or been denied a license renewal, leaving indebtedness to claimants ~~experienced-a failure-or-is-unable-to-financially-satisfy-claimants--in accordance-with-applicable-statute,-rule,-or-agreement-if a--bona--fide-dispute-does-not-exist-between-the-licensee and-a-claimant.~~

(2) A licensee has failed to pay a producer, on

demand, for grain purchased from that producer, assuming no bona fide dispute exists with regard to the payment.

(3) A licensee is otherwise unable to financially satisfy claimants in accordance with any applicable statute, rule, or agreement, assuming a bona fide dispute does not exist between the licensee and the claimant.

(4) A licensee has violated any of the other provisions of this Code and the violation, or the pattern of the violations, would create a substantial risk of failure ~~violated-any-of-the-provisions-of-this--Code--and the--violation-or-the-pattern-of-the-violations-indicates an-immediate-danger-of-loss-to-potential-claimants.~~

(5) ~~(3)~~ A licensee has failed ~~fails~~ to pay a penalty or post collateral or guarantees by the date ordered by the Director.

(6) ~~(4)~~ A licensee has failed ~~fails~~ to pay an assessment as required by Section 5-30.

(b) The Director may revoke a license if ~~any--of--the following---occurs:---~~~~(1)~~ the Director finds, after an administrative hearing, that any of the grounds for suspension under item (a)(1), (a)(2), (a)(3), ~~or~~ (a)(4), ~~(a)(5), or (a)(6)~~ of Section 15-40 have occurred.

(c) ~~(2)~~ When a licensee voluntarily files for bankruptcy under the federal bankruptcy laws, that filing constitutes a revocation of the license of the licensee on the day that the filing occurs.

(d) ~~(3)~~ When an order for relief is entered in reference to a licensee as a consequence of a petition for involuntary bankruptcy filed under the federal bankruptcy laws, that order constitutes a revocation of the license on the date of that order.

(e) ~~(e)~~ Within 10 days after suspension of a license, an administrative hearing shall be commenced to determine whether the license shall be reinstated or revoked. Whenever

an administrative hearing is scheduled, the licensee shall be served with written notice of the date, place, and time of the hearing at least 5 days before the hearing date. The notice may be served by personal service on the licensee or by mailing it by registered or certified mail, return receipt requested, to the licensee's place of business. The Director may, after a hearing, issue an order either revoking or reinstating the license.

(Source: P.A. 89-287, eff. 1-1-96.)

(240 ILCS 40/15-45)

Sec. 15-45. Criminal offenses.

(a) A person who causes a warehouse receipt for grain to be issued knowing that the grain for which that warehouse receipt is issued is not under the licensee's control at the time of issuing that warehouse receipt, or who causes a licensee to issue a warehouse receipt for grain knowing that the warehouse receipt contains any false representation, is guilty of a Class 2 3 felony.

(b) A person who, knowingly and without lawful authority, disposes of grain represented by outstanding warehouse receipts or covered by unreceipted storage obligations is guilty of a Class 2 3 felony.

(c) A person who, knowingly and without lawful authority:

(1) withholds records from the Department;

(2) keeps, creates, or files with the Department false, misleading, or inaccurate records;

(3) alters records without permission of the Department; or

(4) presents to the Department any materially false or misleading records;

is guilty of a Class 2 3 felony.

(d) A licensee who, after suspension or revocation of

its license, knowingly and without legal authority refuses to surrender to the Department all books, accounts, and records relating to the licensee that are in its possession or control is guilty of a Class 2 3 felony.

(e) A licensee who knowingly impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the Director from performing his or her duties under this Code, or who knowingly refuses to permit inspection of its premises, books, accounts, or records by the Department, is guilty of a Class A misdemeanor.

(f) A person who, knowingly and without a license, engages in the business of a grain dealer or a warehouseman for which a license is required under the Code is guilty of a Class A misdemeanor.

(g) A person who, intentionally, knowingly and without lawful authority:

(1) fails to maintain sufficient assets as required by subsection (b) of Section 10-15; or

(2) issues a collateral warehouse receipt covering grain purchased by a price later contract to the extent the purchase price has not been paid by the grain dealer; is guilty of a Class 3 4 felony.

(h) In case of a continuing violation, each day a violation occurs constitutes a separate and distinct offense.

(Source: P.A. 89-287, eff. 1-1-96.)

(240 ILCS 40/20-10)

Sec. 20-10. Lien on grain assets and equity assets.

(a) A statutory lien shall be imposed on all grain assets and equity assets in favor of and to secure payment of obligations of the licensee to:

(1) A person, including, without limitation, a lender:

(A) who possesses warehouse receipts issued

from an Illinois warehouse location covering grain owned or stored by a warehouseman;

(B) who has other written evidence of a storage obligation of a warehouseman issued from an Illinois warehouse location in favor of the holder, including, but not limited to, scale tickets, settlement sheets, and ledger cards; or

(C) who has loaned money to a warehouseman and was to receive a warehouse receipt from an Illinois location as security for that loan, who surrendered warehouse receipts as a part of a grain sale at an Illinois location, or who has delivered grain out of storage with the warehouseman as a part of a grain sale at an Illinois location and:

(i) the grain dealer or warehouseman experienced a failure within 21 days thereafter, a warehouse receipt was not issued, and payment in full was not made; or

(ii) written notice was given by the person to the Department within 21 days thereafter stating that a warehouse receipt was not issued and payment in full was not made.

(2) A producer who possesses evidence of the sale at an Illinois location of grain delivered to that failed a grain dealer, or its designee, and who was not fully paid in full.

This statutory lien arises, attaches, and is perfected at the date of delivery of grain, and is at that time deemed assigned by the operation of this Code to the Department.

(b) The lien on grain assets created under this Section shall be preferred and prior to any other lien, encumbrance, or security interest relating to those assets described in the definition of "grain assets" in Section 1-10, regardless of the time the other lien, encumbrance, or security

interest attached or became perfected. The lien on equity assets created under this Section shall also be preferred and prior to any other lien, encumbrance, or security interest relating to "equity assets" as defined in Section 1-10 ~~to the extent a creditor does not have a valid security interest in, or other lien on, the property that was perfected prior to the date of failure of the licensee.~~ The lien on equity assets created under this Section, however, shall be subordinate and subject to any other lien, encumbrance, or security interest relating to "equity assets" ~~as defined in Section 1-10~~ to the extent a creditor has a valid security interest in or other valid lien on the property that was perfected prior to the date of failure of the licensee; provided, however, that a creditor is not deemed to have a valid security interest or other valid lien on property if (i) the property can be directly traced as being from the sale of grain by the licensee or failed licensee; (ii) the security interest was taken as additional collateral on account of an antecedent debt owed to the creditor; and (iii) the security interest or other lien was perfected (A) on or within 90 days before the date of failure of the licensee or (B) when the creditor is a related person, within one year of the date of failure of the licensee.

(c) To the extent any portion of this Code conflicts with any portion of the Uniform Commercial Code, the provisions of this Code control.

(d) If an adversarial proceeding is commenced to recover "grain assets" or "equity assets" upon which a lien created under this Section is imposed and if the Department declines to take part in that adversarial proceeding, the Department, upon application to the Director by any claimant, shall assign to the claimant the statutory lien to permit the claimant to pursue the lien in the adversarial proceeding, but only if the assignment and adversarial proceeding will

not delay the Department's liquidation and distribution of grain assets, equity assets, collateral, and guarantees, including proceeds thereof, to all claimants holding valid claims.

(Source: P.A. 89-287, eff. 1-1-96.)

(240 ILCS 40/20-15)

Sec. 20-15. Liquidation procedures. When a licensee experiences a failure, the Department has the authority to and shall:

(a) Immediately post notice at all locations of the failed licensee stating that the licensee has experienced a failure and that the license has been terminated and is no longer effective.

(b) Immediately take physical control and possession of the failed licensee's facility, including but not limited to all offices and grain storage facilities, books, records, and any other property necessary or desirable to liquidate grain assets and equity assets.

(c) Give public notice and notify all known potential claimants by certified mail of the licensee's failure and the processes necessary to file grain claims with the Department as set forth in Section 25-5.

(d) Perform an examination of the failed licensee.

(e) Seize and take possession of, protect, liquidate, and collect upon all grain assets, collateral, and guarantees of or relating to the failed licensee and deposit the proceeds into the Trust Account. If at any time it appears, however, in the judgment of the Department that the costs of seizing and taking possession of, protecting, liquidating, and collecting upon any or all of the grain assets, collateral, and guarantees equals or exceeds the expected recovery to the Department, the Department may elect not to pursue seizing and taking possession of, protecting,

liquidating, and collecting upon any or all of the assets.

(f) Seize, take possession of, protect, liquidate, and collect upon the equity assets of the failed licensee and deposit the proceeds into the Trust account if the Department has first obtained the written consent of all applicable secured parties or lien holders, if any. If at any time it appears, however, in the judgment of the Department that the costs of seizing and taking possession of, protecting, liquidating, and collecting upon any or all of the equity assets equals or exceeds the expected recovery to the Department, the Department may elect not to pursue seizing and taking possession of, protecting, liquidating, and collecting upon any or all of the equity assets. If the Department does not otherwise pursue seizing and taking possession of, protecting, liquidating, and collecting upon any of the equity assets, the Department may bring or participate in any liquidation or collection proceedings involving the applicable secured parties or other interested party, if any, and shall have the rights and remedies provided by law, including the right to enforce its lien by any available judicial procedure.

If an applicable secured party or lien holder does not consent to the Department seizing, taking possession of, liquidating, or collecting upon the equity assets, the secured party or lien holder shall have the rights and remedies provided by law or by agreement with the licensee or failed licensee, including the right to enforce its security interest or lien by any available judicial procedure.

(g) Make available on demand to an applicable secured party or lien holder the equity asset, to the extent the Department seized or otherwise gained possession or control of the equity asset, but the secured party or lien holder does not consent to the Department liquidating and collecting upon the equity asset.

(Source: P.A. 89-287, eff. 1-1-96.)

(240 ILCS 40/20-20)

Sec. 20-20. Liquidation expenses.

(a) The Trustee shall pay from the Trust Account all reasonable expenses incurred by the trustee on or after the date of failure in reference to seizing, preserving, and liquidating the grain assets, equity assets, collateral, and guarantees of or relating to a failed licensee, including, but not limited to, the hiring of temporary field personnel, equipment rental, auction expenses, mandatory commodity check-offs, and clerical expenses.

(b) Except as to claimants holding valid claims, any outstanding indebtedness of a failed licensee that has accrued before the date of failure shall not be paid by the Trustee and shall represent a separate cause of action of the creditor against the failed licensee.

(c) The Trustee shall report all expenditures paid from the Trust Account to the Corporation at least annually.

(d) To the extent assets are available under subsection (g) of Section 25-20 and upon presentation of documentation satisfactory to the Trustee, the Trustee shall transfer from the Trust Account to the Regulatory Fund an amount not to exceed the expenses incurred by the Department in performance of its duties under Article 20 of this Code, in reference to the failed licensee.

(Source: P.A. 89-287, eff. 1-1-96.)

(240 ILCS 40/25-5)

Sec. 25-5. Adjudication of claims. When a licensee has experienced a failure, the Department shall process the claims in the following manner:

(a) The Department shall publish once each week for 3 successive weeks in at least 3 newspapers of general

circulation within the county of the licensee, and shall mail or deliver to each claimant whose name and post office address are known or are reasonably ascertainable by the Department, a notice stating:

(1) That the licensee has experienced a failure and the date of that failure.

(2) The place and post office address where claims may be filed.

(3) The procedure for filing claims, as determined by rule.

(4) That a claimant's claims shall be barred if not filed with the Department on or before the later of:

(A) the claim date, which shall be 90 days after the date of failure of the licensee; or

(B) 7 days from the date notice was mailed to a claimant if the date notice was mailed to that claimant is on or before the claim date.

(b) Time of notice.

(1) The first date of publication of the notice as provided for in subsection (a) of this Section shall be within 30 days after the date of failure.

(2) The published notice as provided for in subsection (a) of this Section shall be published in at least 3 newspapers of general circulation in the area formerly served by the failed licensee.

(3) The notice as provided for in subsection (a) of this Section shall be mailed by certified mail, return receipt requested, within 60 days after the date of failure to each claimant whose name and post office address are known by the Department within 60 days after the date of failure.

(c) Every claim filed must be in writing, and verified, and signed by a person who has the legal authority to file a claim on behalf of the claimant and must state information

sufficient to notify the Department of the nature of the claim and the amount sought.

(d) A claim shall be barred and disallowed in its entirety if:

(1) notice is published and given to the claimant as provided for in subsections (a) and (b) of this Section and the claimant does not file a claim with the Department on or before the claim date; or

(2) the claimant's name or post office address is not known by the Department or cannot, within 60 days after the date of failure, be reasonably ascertained by the Department and the claimant does not file a claim with the Department on or before the later of the claim date or 7 days after the date notice was mailed to that claimant if the date notice was mailed to that claimant is on or before the claim date.

(e) Subsequent notice.

(1) If, more than 60 days after the date of failure but before the claim date, the Department learns of the name and post office address of a claimant who was previously not notified by the Department by mail, the Department shall mail by certified mail, return receipt requested, the notice to the claimant as provided for in subsection (a) of this Section.

(2) The notice mailed as provided for in item (e)(1) of this Section shall not extend the period of time in which a claimant may file its claim beyond the claim date. A claimant to whom notice is mailed under item (e)(1) of this Section, however, shall have the later of the claim date or 7 days after the date notice was mailed to file a claim with the Department.

(f) The Department shall determine the validity, category, and amount of each claim within 120 days after the date of failure of the licensee and.--(g)--The--Department

shall give written notice within that time period to each claimant and to the failed licensee of the Department's determination as to the validity, category, and amount of each claim.

(g) (h) A claimant or the failed licensee may request a hearing on the Department's determination within 30 days after receipt of the written notice and the hearing shall be held in the county of residence of the claimant and in accordance with rules. Under no circumstances shall payment to claimants who have not requested a hearing be delayed by reason of the request for a hearing by any unrelated claimant.

(h) Within 30 days after a failure of a licensee, the Director shall appoint an Administrative Law Judge for the hearings. The Director shall appoint a person licensed to practice law in this State; who is believed to be knowledgeable with regard to agriculture and the grain industry in Illinois; who has no conflict of interest; and who at the time of his or her appointment is not working for or employed by the Department in any capacity whatsoever.

(i) For the purposes of this Article, the "reasonably ascertainable" standard shall be satisfied when the Department conducts a review of the failed licensee's books and records and an interview of office and clerical personnel of the failed licensee.

(j) It is the intent of this Act that the time periods and deadlines in this Section 25-5 are absolute, and are not to be tolled, or their operation halted or delayed. In the event of a bankruptcy by a licensee, the Director shall seek to have commenced any proceedings that are necessary and appropriate to lift the automatic stay or make it otherwise inapplicable to the actions of the Department with regard to the claims determination process. In all other cases, the Department shall seek to have commenced the proceedings

necessary to expeditiously remove or lift any order of any court or administrative agency that might attempt to delay the time periods and deadlines contained in this Section 25-5.

(Source: P.A. 89-287, eff. 1-1-96.)

(240 ILCS 40/25-10)

Sec. 25-10. Claimant compensation. Within 30 days after the day on which a claim becomes a valid claim, a claimant shall be compensated to the extent of its valid claim as provided in this Section.

It is the express intent of this legislation that each undisputed portion of a claim shall be paid in accordance with the deadlines of this Code, even if there are disputed portions of the claim. For example, the amount of a valid claim calculated for an "unpriced obligation" shall be paid to the claimant despite the fact that claimant additionally seeks the amount for a "priced obligation".

Each claimant shall be compensated in accordance with the following provisions:

(a) Valid claims filed by warehouse claimants shall be paid 100% of the amount determined by the Department out of the net proceeds of the liquidation of grain assets as set forth in this subsection (a). To the extent the net proceeds are insufficient, warehouse claimants shall be paid their pro rata share of the net proceeds of the liquidation of grain assets and, subject to subsection (j) of this Section, an additional amount per claimant not to exceed the balance of their respective claims out of the Fund.

(b) Subject to subsection (j) of this Section, if the net proceeds as set forth in subsection (a) of this Section are insufficient to pay in full all valid claims filed by warehouse claimants as payment becomes due, the balance shall be paid out of the Fund in accordance with subsection (b) of

Section 25-20.

(c) Valid claims filed by producers who:

(1) have delivered grain within 21 days before the date of failure, or the date of suspension if the suspension results in a failure, for which pricing of that grain has been completed before date of failure; or

(2) gave written notice to the Department within 21 days of the date of delivery of grain, if the pricing of that grain has been completed, that payment in full for that grain has not been made;

shall be paid, subject to subsection (j) of this Section, 100% of the amount of the valid claim determined by the Department. Valid claims that are included in subsection (c) of this Section shall receive no payment under subsection (d) of this Section, and any claimant having a valid claim under this subsection (c) determined by the Department to be in excess of the limits, if any, imposed under subsection (j) of this Section shall be paid only sums in excess of those limits to the extent additional money is available under subsection (d)(2) of Section 25-20.

(d) Valid claims that are not included in subsection (c) of this Section that are filed by producers where the later date of completion of ~~who-completed~~ delivery or and pricing of the grain ~~in-reference-to-the-valid-claim,~~ ~~whichever~~ is later, within 160 days before the date of failure shall be paid 85% of the amount of the valid claim determined by the Department or \$250,000 ~~\$100,000~~, whichever is less, per claimant. In computing the 160-day period, the phrase "date of completion of delivery" means the date of the last delivery of grain to be applied to the quantity requirement of the contract, and the phrase "the later date" means the date closest to the date of failure. In addition, for claims filed by producers for grain sold on a contract, ~~however,~~ the later of the date of execution of the contract or the date of

delivery of ~~grain-in-reference-to~~ the grain covered by the price later contract must not be more than 365 270 days before the date of failure in order for the claimant to receive any compensation. In computing the 365-day period, the phrase "the later of the date" means the date closest to the date of failure, and the phrase "date of delivery" means the date of the last delivery of grain to be applied to the quantity requirement of the price later contract.

(e) Valid claims filed by producers for grain sold on a price later contract, for which the final price has not been established, shall be paid 85% of the amount of the valid claims determined by the Department or \$250,000 ~~\$100,000~~, whichever is less, per claimant, if the later of the date of execution of the contract or the date of delivery of ~~grain-in-reference-to~~ the grain covered by the price later contract occurred not ~~no~~ more than 365 270 days before the date of failure. In computing the 365-day period, the phrase "the later of the date" means the date closest to the date of failure, and the phrase "date of delivery" means the date of the last delivery of grain to be applied to the quantity requirement of the price later contract.

The execution of subsequent price later contracts by the producer and the licensee for grain previously covered by a price later contract shall not extend the coverage of a claim beyond the original 365 270 days.

(f) The maximum payment to producers under subsections (d) and (e) of this Section, combined, shall be \$250,000 ~~\$100,000~~ per claimant.

(g) The following claims shall be barred and disallowed in their entirety and shall not be entitled to any recovery from the Fund or the Trust Account:

(1) Claims filed by producers where both the date of completion of delivery and the date of pricing of the grain are ~~who-completed-pricing-of-the-grain-in-reference~~

~~to their claim~~ in excess of 160 days before the date of failure.

(2) Claims filed by producers for grain sold on a price later contract if the later of the date of execution of the contract or the date of delivery of grain in reference to the grain covered by the price later contract occurred more than 365 ~~270~~ days before the date of failure. In computing the 365-day period, the phrase "the later of the date" means the date closest to the date of failure, and the phrase "date of delivery" means the date of the last delivery of grain to be applied to the quantity requirement of the price later contract.

(3) Claims filed by any claimant that are based upon or acquired by fraudulent or illegal acts of the claimant.

(h) To the extent moneys are available, additional pro rata payments may be made to claimants under subsection (d) of Section 25-20.

(i) For purposes of this Section, a claim filed in connection with warehouse receipts that are possessed under a collateral pledge of a producer, or that are subject to a perfected security interest, or that were acquired by a secured party or lien holder under an obligation of a producer, shall be deemed to be a claim filed by the producer and not a claim filed by the secured party or the lien holder, regardless of whether the producer is in default under that collateral pledge, security agreement, or other obligation.

~~(j) With respect to any failure occurring on or after July 17, 1998,~~ The maximum payment out of the Fund for claimants under subsection (a), (b) of this Section shall be \$1,000,000 per claimant and the maximum payment out of the Fund for claimants under subsections (c), (d), and (e) of

this Section, combined, shall be \$1,000,000 per claimant.

(k) The amounts to be paid to warehouse valid claimants and grain dealer valid claimants shall be calculated according to the following:

(1) Valid claimants who have warehouse claims, or who have grain dealer claims for grain sold, delivered but unpriced as of the date of failure, shall have "unpriced obligations", and to determine the per bushel value of these valid claims the Department shall use an average of the cash bid prices on the date of failure from grain dealers located within the market area of the failed licensee, and the cash bid price offered by the failed licensee on the date of failure, less transportation, handling costs, and discounts applicable as of that date.

(2) Valid claimants who have grain dealer claims for grain sold, delivered, and priced as of the date of failure shall have "priced obligations", and the price per bushel to be used in calculating the compensation due these valid claimants shall be that which has been agreed upon by the failed licensee and the claimant, less applicable discounts. For purposes of this item (2), a person has "priced" his or her grain if he or she has done those things necessary under the agreement to set, choose, or select a price for any portion of the grain under the agreement, without regard to whether he or she has received a check in payment for the grain, or could have received a check in payment for the grain, prior to the failure.

(l) Arrangements whereby a producer agrees with a licensee to defer receipt of payment of amounts due from the sale of grain are covered by this Code and are not to be considered loans by the producer to the licensee, despite payments to the producer as an inducement for the leaving of

moneys with the licensee, unless the licensee has executed and delivered to the producer a promissory note covering those amounts.

(Source: P.A. 91-213, eff. 7-20-99.)

(240 ILCS 40/25-20)

Sec. 25-20. Priorities and repayments.

(a) All valid claims shall be paid from the Trust Account, as provided in Section 25-10, first from the proceeds realized from liquidation of and collection upon the grain assets relating to the failed licensee, as to warehouse claimants, and the equity assets as to a secured party or lien holder who has consented to the Department liquidating and collecting upon the equity asset as set forth in subsection (f) of Section 20-15, and the remaining equity assets, collateral, and guarantees relating to the failed licensee, as to grain dealer claimants.

(b) If the proceeds realized from liquidation of and collection upon the grain assets, equity assets, collateral, and guarantees relating to the failed licensee are insufficient to pay all valid claims as provided in Section 25-10 and subsection (a) of this Section as payment on those claims becomes due, the Director shall request from the Board sufficient funds to be transferred from the Fund to the Trust Account to pay the balance owed to claimants as determined under Section 25-10. If a request is made by the Director for a transfer of funds to the Trust Account from the Fund, the Board shall act on that request within 25 days after the date of that request. Once moneys are transferred from the Fund to the Trust Account, the Director shall pay the balance owed to claimants in accordance with Section 25-10.

(c) Net proceeds from liquidation of grain assets as set forth in subsection (a) of Section 25-10 received by the Department, to the extent not already paid to warehouse

claimants, shall be prorated among the fund and all warehouse claimants who have not had their valid claims paid in full.

(1) The pro rata distribution to the Fund shall be based upon the total amount of valid claims of all warehouse claimants who have had their valid claims paid in full. The pro rata distribution to each warehouse claimant who has not had his or her valid claims paid in full shall be based upon the total amount of that claimant's original valid claims.

(2) If the net proceeds from the liquidation of grain assets as set forth in subsection (a) of Section 25-10 exceed all amounts needed to satisfy all valid claims filed by warehouse claimants, the balance remaining shall be paid into the Trust Account or as set forth in subsection (h).

(d) Subject to subsections (c) and (h):

(1) The proceeds realized from liquidation of and collection upon the grain assets, equity assets, collateral, and guarantees relating to the failed licensee or any other assets relating to the failed licensee that are received by the Department, to the extent not already paid to claimants, shall be first used to repay the Fund for moneys transferred to the Trust Account.

(2) After the Fund is repaid in full for the moneys transferred from it to pay the valid claims in reference to a failed licensee, any remaining proceeds realized from liquidation of and collection upon the grain assets, equity assets, collateral, and guarantees relating to the failed licensee thereafter received by the Department shall be prorated to the claimants holding valid claims who have not received 100% of the amount of their valid claims based upon the unpaid amount of their valid claims.

(e) After all claimants have received 100% of the amount of their valid claims, to the extent moneys are available interest at the rate of 6% per annum shall be assessed and paid to the Fund on all moneys transferred from the Fund to the Trust Account.

(f) After the Fund is paid the interest as provided in subsection (e) of this Section, then those claims barred and disallowed under subsection (g) of Section 25-10 shall be paid on a pro rata basis only to the extent that moneys are available.

(g) Once all claims become valid claims and have been paid in full and all interest as provided in subsection (e) of this Section is paid in full, and all claims are paid in full under subsection (f), any remaining grain assets, equity assets, collateral, and guarantees, and the proceeds realized from liquidation of and collection upon the grain assets, equity assets, collateral, and guarantees relating to the failed licensee, shall be returned to the failed licensee or its assignee, or as otherwise directed by a court of competent jurisdiction.

(h) If amounts in the Fund are insufficient to pay all valid claims, the Corporation shall transfer from the Reserve Fund to the Fund amounts sufficient to satisfy the valid claims, and to the extent the amounts thus transferred are insufficient to pay all valid claims, the General Assembly shall appropriate to the Corporation amounts sufficient to satisfy the valid claims. If for any reason the General Assembly fails to make an appropriation to satisfy outstanding valid claims, this Code constitutes an irrevocable and continuing appropriation of all amounts necessary for that purpose and the irrevocable and continuing authority for and direction to the State Comptroller and to the State Treasurer to make the necessary transfers and disbursements from the revenues and funds of the State for

that purpose. Subject to payments to warehouse claimants as set forth in subsection (c) of Section 25-20, the State shall be first reimbursed, and the Reserve Fund shall thereafter be reimbursed to the extent needed to restore the Reserve Fund to a level of \$2,000,000 of principal (not including income on the assets in the Reserve Fund) as soon as funds become available for any amounts paid under subsection (g) of this Section upon replenishment of the Fund from assessments under subsections subsection (d), (f), and (g) of Section 5-30 and collection upon grain assets, equity assets, collateral, and guarantees relating to the failed licensee.

(i) The Department shall have those rights of equitable subrogation which may result from a claimant receiving from the Fund payment in full of the obligations of the failed licensee to the claimant.

(Source: P.A. 91-213, eff. 7-20-99.)

(240 ILCS 40/30-5)

Sec. 30-5. Illinois Grain Insurance Corporation.

(a) The Corporation is a political subdivision, body politic, and public corporation. The governing powers of the Corporation are vested in the Board of Directors composed of the Director, who shall personally serve as president; the Attorney General or his or her designee, who shall serve as secretary; the State Treasurer or his or her designee, who shall serve as treasurer; the Director of the Department of Insurance or his or her designee; and the chief fiscal officer of the Department. Three members of the Board constitute a quorum at any meeting of the Board, and the affirmative vote of 3 members is necessary for any action taken by the Board at a meeting, except that a lesser number may adjourn a meeting from time to time. A vacancy in the membership of the Board does not impair the right of a quorum to exercise all the rights and perform all the duties of the

Board and Corporation.

(b) The Corporation has the following powers, together with all powers incidental or necessary to the discharge of those powers in corporate form:

(1) To have perpetual succession by its corporate name as a corporate body.

(2) To adopt, alter, and repeal bylaws, not inconsistent with the provisions of this Code, for the regulation and conduct of its affairs and business.

(3) To adopt and make use of a corporate seal and to alter the seal at pleasure.

(4) To avail itself of the use of information, services, facilities, and employees of the State of Illinois in carrying out the provisions of this Code.

(5) To receive funds, printer registration fees, and penalties assessed by the Department under this Code.

(6) To administer the Fund by investing funds of the Corporation that the Board may determine are not presently needed for its corporate purposes.

(7) To receive funds from the Trust Account for deposit into the Fund.

(8) Upon the request of the Director, to make payment from the Fund and the Reserve Fund to the Trust Account when payment is necessary to compensate claimants in accordance with the provisions of Section 25-20 or for payment of refunds to licensees in accordance with the provisions of this Code.

(9) To authorize, receive, and disburse funds by electronic means.

(10) To make any inquiry and investigation deemed appropriate with regard to the failure of any licensee, including but not limited to analyzing the causes of and reasons for the failure; determining the adequacy and accuracy of Department examinations and other regulatory

measures with regard to the failed licensee; and analyzing whether the handling of the liquidation and payment process by the Department was done in a manner that served the interests of those persons whose interests this Code was designed to protect.

(11) (9) To have those powers that are necessary or appropriate for the exercise of the powers specifically conferred upon the Corporation and all incidental powers that are customary in corporations.

(c) A committee of advisors shall be created to provide technical assistance and advice and make recommendations to the Board. The advisory committee shall assist the board in understanding pertinent developments in grain production and marketing and the grain industry. The advisory committee shall be composed of one grain producer designated by the Illinois Farm Bureau; one grain producer designated by the Illinois Farmers Union; one grain producer designated by the Illinois Corn Growers Association; one grain producer designated by the Illinois Soybean Association; 2 representatives of the grain industry, designated by the Grain and Feed Association of Illinois; and 2 representatives of the lending industry, one each designated by the Illinois Bankers Association and the Community Bankers of Illinois. Members of the advisory committee shall serve terms of 2 years from the date of their designation. Members of the advisory committee shall have the right to attend all meetings of the Board and participate in Board discussions, but shall not have a vote.

(Source: P.A. 91-213, eff. 7-20-99.)

(240 ILCS 40/30-10)

Sec. 30-10. Participants in the Fund.

(a) A licensee under this Code is subject to this Article and shall collect and pay assessments into the Fund

as provided in Section 5-30.

(b) Except as provided in subsection (c) of this Section, a person engaged in the business of a grain dealer or warehouseman but not licensed under this Code shall not participate in or benefit from the Fund and its claimants shall not receive proceeds from the Fund.

(c) Participation of federal warehousemen.

(1) A federal warehouseman may participate in the Fund. If a federal warehouseman chooses to participate in the Fund, it shall to the extent permitted by federal law:

(A) pay assessments into the Fund;

(B) be deemed a licensee and a warehouseman under this Code;

(C) be subject to this Code; and

(D) execute a cooperative agreement between itself and the Department.

(2) The cooperative agreement shall, at a minimum, provide each of the following to the extent permitted by federal law:

(A) Authorization for the Department to obtain information about the federal warehouseman including, but not limited to, bushel capacity of storage space, financial stability, and examinations performed by employees of the United States Department of Agriculture.

(B) That the federal warehouseman submits itself to the jurisdiction of the Department and that it agrees to be subject to and bound by this Code and deemed a licensee under this Code.

(C) That in the event of a failure of the federal warehouseman, the Department shall have authority to seize, liquidate, and collect upon all grain assets, collateral, and guarantees relating to

the federal warehouseman as in the case of any other licensee.

(D) Such other requirements as established by rule.

(3) A federal warehouseman that participates in the Fund shall at a minimum meet the licensing requirements of this Code and shall comply with all requirements of a licensee and a warehouseman under this Code to the extent permitted by federal law.

(d) A federal warehouseman that participates in the Fund or a warehouseman that desires to or has become a federal warehouseman cannot withdraw from participation in the Fund for the benefit of existing depositors until the occurrence of all of the following:

(1) Payment in full by the federal warehouseman or withdrawing warehouseman of all assessments under subsection (a) of Section 5-30.

(2) Payment in full by the federal warehouseman or withdrawing warehouseman of all assessments instituted under subsection (d) of Section 5-30 on or after an assessment determination date that occurs before ~~if--the Fund--is--under--\$3,000,000--at--any--time--after~~ the federal warehouseman or withdrawing warehouseman notifies the Department that it desires to withdraw from participation in the Fund and before the issuance by the Department of a certificate of withdrawal from the Fund.

(3) The expiration of 30 days following the later of:

(A) the date the federal warehouseman or withdrawing warehouseman has ceased providing its depositors with coverage under the Fund;

(B) the date the federal warehouseman or withdrawing warehouseman has posted at each of its locations a notice stating when it will cease

providing its depositors with coverage under the Fund;

(C) notification of all potential claimants by the federal warehouseman or withdrawing warehouseman of the date on which it will cease providing its depositors with coverage under the Fund; and

(D) Completion of an audit and examination satisfactory to the Department as provided for in this Code and by rule, which is to be the Department's final examination.

(4) Obtaining releases of liability from all existing depositors or posting collateral with the Department for 270 days after withdrawing from the Fund in an amount equal to the liability to existing depositors who have not executed releases before the completion of the Department's final examination.

(5) Compliance with all notification requirements as provided for in this Code and by rule.

(6) Issuance by the Department of a certificate of withdrawal from the Fund when the federal warehouseman or withdrawing warehouseman has met all requirements for withdrawal from participation in the Fund.

(e) Before a federal warehouseman or a warehouseman that desires to or has become a federal warehouseman may withdraw from participation in the Fund, it must pay for an audit and examination and must provide to the Department all names and addresses of potential claimants for the purposes of notification of withdrawal of participation in the Fund.

(Source: P.A. 89-287, eff. 1-1-96.)

(240 ILCS 40/30-25 new)

Sec. 30-25. Grain Insurance Reserve Fund. Upon payment in full of all money that has been transferred to the Fund prior to June 30, 2003 from the General Revenue Fund as

provided for under subsection (h) of Section 25-20, the State of Illinois shall remit \$2,000,000 to the Corporation to be held in a separate and discrete account to be used to the extent the assets in the Fund are insufficient to satisfy claimants as payment of their claims become due as set forth in subsection (h) of Section 25-20. The remittance of the \$2,000,000 reserve shall be made to the Corporation within 60 days of payment in full of all money transferred to the Fund as set forth above in this Section 30-25. All income received by the Reserve Fund shall be deposited in the Fund within 35 days of the end of each calendar quarter.

(240 ILCS 40/Art. 35 heading new)

ARTICLE 35. REGULATORY FUND

(240 ILCS 40/35-5 new)

Sec. 35-5. Regulatory Fund.

(a) The Regulatory Fund is created as a trust fund in the State Treasury. The Regulatory Fund shall receive license, certificate, and extension fees under Sections 5-10, 5-15, and 5-20 and funds under subsection (g) of Section 25-20 and shall pay expenses as set forth in this Article 35.

(b) Any funds received by the Director under Sections 5-10, 5-15, and 5-20 and funds disbursed for deposit to the Regulatory Fund under subsection (g) of Section 25-20 shall be deposited with the Treasurer as ex officio custodian and held separate and apart from any public money of this State, with interest accruing on moneys in the Regulatory Fund deposited into the Regulatory Fund. Disbursement from the Fund for expenses as set forth in this Article 35 shall be by voucher ordered by the Director, accompanied by documentation satisfactory to the Treasurer and the Comptroller supporting the payment warrant drawn by the Comptroller and countersigned by the Treasurer. Moneys in the Regulatory Fund

shall not be subject to appropriation by the General Assembly but shall be subject to audit by the Auditor General. Interest earned on moneys deposited into the Regulatory Fund shall be deposited into the Regulatory Fund.

(c) Fees deposited into the Regulatory Fund under Sections 5-10, 5-15, and 5-20 shall be expended only for the following program expenses of the Department;

(1) Implementation and monitoring of programs of the Department solely under this Code, including an electronic warehouse receipt program.

(2) Employment or engagement of certified public accountants to assist in oversight and regulation of licensees in the course of an intermediate or advanced examination under Section 1-15.

(3) Training and education of examiners and other Department employees in reference to Department programs established to implement the Department's duties solely under the Code.

(d) Any expenses incurred by the Department in performance of its duties under Article 20 of the Code shall be reimbursed to the Department out of the net assets of a liquidation to the extent available under subsection (g) of Section 25-20 and shall be deposited into the Regulatory Fund and shall be expended solely for program expenses under the Code.

Section 99. Effective date. This Act takes effect upon becoming law.