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Requirements for Grain Dealers

State of Ohio

Licensing

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Requirements for Grain Dealers

STATE OF OHIO

Current with legislation from the 130th GA (2013-2014)

R.C. § 926.04

926.04 License to handle agricultural commodities; exemption for federal licensee

(A) No person, except as provided in division (C) of this section, shall handle agricultural commodities in this state without first obtaining a handler's license issued by the director of agriculture under this chapter.

(B) All business transactions, and records of such transactions, of a handler shall be treated as if they were for one warehouse for the purposes of this chapter.

(C) Agricultural commodities that are stored under a bailment agreement in a warehouse operated by a person licensed under the "United States Warehouse Act," 39 Stat. 486 (1916), 7 U.S.C. 241, as amended, shall be exempt from sections 926.13, 926.14, 926.16, 926.17, and 926.19 to 926.27 of the Revised Code. Each person licensed under the "United States Warehouse Act" shall annually notify the director, in writing, of his licensing and shall also immediately notify the director, in writing, if his license is suspended or terminated.

R.C. § 926.05

926.05 Application; fee; rejection; expiration; director may revoke or refuse to issue or renew license

(A) Each person desiring to obtain or renew a handler's license shall file an application annually with the director of agriculture at such times, on such forms, and containing such information as the director prescribes, including, if applicable, the appointment of a statutory agent under section 926.051 of the Revised Code.

(B) Each application for a license or license renewal shall be accompanied by an application fee of two hundred dollars for the first facility operated by the applicant plus one hundred dollars for each additional facility operated by the same applicant and by an examination fee, established by rule of the director pursuant to section 926.02 of the Revised Code, for each facility operated by the applicant.

"Facility" means all warehouse storage located on one premises, including any additional warehouse storage located within one thousand yards of that premises. The director may charge fees for examinations in an amount not to exceed those fees charged by the United States department of agriculture for comparable examinations.

The director shall deposit all fees collected under this section in the commodity handler regulatory program fund created in section 926.19 of the Revised Code.

(C) The director shall approve or reject each application for a license within fifteen days after receipt thereof, provided that such application is in proper form and contains the information required under

division (A) of this section. A rejection of an application shall be accompanied by a statement from the director of the additional requirements necessary for a license. The applicant may resubmit the application without payment of any additional fee.

(D) A handler's license shall expire on the date prescribed by rule of the director. Whenever the director considers it advisable to cancel the unexpired portion of an outstanding license in order to renew it according to a new or existing system of expiration dates, the director shall refund to the handler the unexpired portion of the fees paid under division (B) of this section. Whenever the director issues an initial license on a date that does not conform to the existing system, the director shall issue the license for a period of time, not less than six nor more than eighteen months, that makes the date conform to the existing system. The application fee for that initial license shall be proportionate to the fee for a one-year license.

(E) An application for renewal of a handler's license shall be filed with the director not later than thirty days before the current license expires. An applicant who fails to file a renewal application in time shall pay a late fee of one dollar for each day the application is late or fifteen dollars, whichever is greater. A renewal license shall not be issued until a late fee that is due has been paid.

(F) The director, with the approval of the commodity advisory commission, may revoke or refuse to issue or renew a handler's license if any of the following occurred within five years before the application for the license or renewal was filed:

- (1) The applicant, or the spouse, parent, sibling, or child of the applicant, or a manager employed by the applicant, or any other individual materially involved in the agricultural commodity handling business of the applicant was a principal in a receivership or insolvency that resulted in losses to creditors or to the agricultural commodity depositors fund established in section 926.16 of the Revised Code;
- (2) The applicant pled guilty to or was convicted of any felony or charge of embezzlement under the laws of this state, any other state, or of the United States;
- (3) The applicant made a delivery of commodities not authorized under this chapter;
- (4) The applicant's license under the "United States Warehouse Act," 39 Stat. 486 (1916), 7 U.S.C. 241, as amended, was revoked or canceled due to a violation of that act.

R.C. § 926.051 **926.051 Statutory agent**

(A) An applicant for a handler's license or renewal issued under section 926.05 of the Revised Code who does not conduct business at an address in this state at which the applicant usually can be contacted shall include with the application a written appointment of an agent, sometimes referred to as a "statutory agent," upon whom any process, notice, or demand may be served. The appointment shall be accompanied by a written acceptance of the appointment signed by the agent. The agent may be a natural person who is a resident of this state or a corporation whose principal place of business is located in this state. The appointment shall be on such forms and contain such information as the director of agriculture prescribes. Failure to comply with this division is grounds for rejection of the application under division (C) of section 926.05 of the Revised Code.

(B)

- (1) If an agent removes from the state or resigns, or if the applicant revokes the agent's appointment, the applicant immediately shall notify the director in writing not later than thirty days prior to the removal, resignation, or revocation. If an agent dies, the applicant immediately shall notify the director in writing. Prior to the removal, resignation, or revocation and not later

than thirty days after the death, the applicant shall appoint another agent and file with the director a written appointment of the agent, along with a written acceptance of the appointment signed by the agent.

(2) If the agent's address changes from that appearing on the application, the applicant, not later than thirty days prior to the address change, shall file with the director a written statement setting forth the new address, along with any other information the director requests.

(C) Failure to comply with division (B) of this section is grounds for suspension or conditional suspension of a handler's license, without prior hearing, under section 926.10 of the Revised Code.

R.C. § 926.06

926.06 Financial responsibility; standards; evidence required; statistical abstracts

(A) The director of agriculture may issue a handler's license, or renewal thereof, upon the payment of the prescribed application fee, if the director is satisfied that the applicant meets the standards of financial responsibility required under this section and has complied with this chapter and the rules adopted under it.

(B)

(1) Each applicant for a handler's license, or renewal thereof, shall have and maintain current assets equal to or greater than current liabilities and a total net worth equal to at least fifteen cents per bushel for the total number of bushels of agricultural commodities that the applicant handled during the immediately preceding twelve-month period to cover any indebtedness arising from the applicant's operations as a licensed handler.

(2) If an applicant is applying for a handler's license for the first time and did not handle any agricultural commodities during the immediately preceding twelve-month period, the applicant shall have an allowable total net worth of at least fifty thousand dollars to cover any indebtedness arising from the applicant's operations as a licensed handler.

(3) No person shall be licensed as a handler unless the person has an allowable total net worth of at least fifty thousand dollars.

(4) Any deficiency in required total net worth may be compensated for by an indemnity agreement executed by a person pledging personal assets for the benefit of commodity creditors should the licensed handler default in the licensed handler's obligations to the creditors; a bond issued by a corporate surety company that is authorized to do business under the laws of this state; or, at the director's discretion, an irrevocable letter of credit issued by a bank or other lending institution that is authorized by this state or the United States to issue such letters of credit and is subject to service of process in this state for any suit on the bond or letter of credit. An indemnity agreement executed by a person pledging personal assets shall be accompanied by financial statements that reflect the person's financial position as an individual and comply with the requirements of division (C) of this section. A bond shall be made to the treasurer of state to be deposited in the agricultural commodity depositors fund created under [section 926.16 of the Revised Code](#) for the benefit of any person who may be injured by the handler's failure to meet obligations arising under this chapter. A letter of credit shall be issued for the benefit of the department of agriculture and the agricultural commodity depositors fund.

(5) The director shall adopt rules in accordance with Chapter 119. of the Revised Code specifying the assets for which credit may be given in determining an applicant's total net worth.

(6) Regardless of the total number of bushels of agricultural commodities that an applicant

handled during the immediately preceding twelve-month period, the applicant's total net worth need not exceed a maximum of four hundred fifty thousand dollars.

(C) In order for the director to determine if an applicant meets the standards of financial responsibility required under division (B) of this section, the applicant for a handler's license, or renewal of a handler's license, shall submit financial statements that have been prepared in accordance with generally accepted accounting principles and that have been audited or reviewed by an independent certified public accountant. The financial statements shall consist of all financial statements and footnotes required by generally accepted accounting principles as promulgated by the financial accounting standards board together with the independent accountant's report on the statements. The financial statements accompanying an applicant's original application shall be for a year ending within six months before the date of application. Thereafter, the applicant applying for renewal shall submit such statements not later than ninety days after the end of the year covered by the statements. The director may require an applicant for a handler's license, or renewal of a handler's license, to submit financial statements audited by an independent certified public accountant if the director determines that the financial statements initially submitted under this division are incomplete or otherwise unsatisfactory.

(D) The director may prepare and publish statistical abstracts of information obtained under this section without disclosing details that would identify a particular applicant with particular statistics. Such information otherwise is confidential for purposes of section 102.03 of the Revised Code, and records of the department of agriculture containing such information are not otherwise public records under section 149.43 of the Revised Code.

R.C. § 926.07

926.07 Insurance requirements; lien clause

(A) Each applicant for a handler's license under section 926.05 of the Revised Code who operates a warehouse shall, as a condition to the granting of such license, file or have on file with the director of agriculture a certificate of insurance evidencing an effective policy of insurance issued by an insurance company authorized to do business in this state insuring in the name of the applicant all agricultural commodities which are in such warehouse for their full market value against loss by fire, internal explosion, lightning, and windstorm. Such policy of insurance shall contain a clause granting a lien in favor of the state for the benefit of the depositors of agricultural commodities in such warehouse, as their interests may appear on the records of the handler.

(B) In case fire, internal explosion, lightning, or windstorm destroys or damages any agricultural commodity in any warehouse operated by a licensed handler, the director shall cause an examination to be made to determine the extent of the damage to the agricultural commodity inventory stored in the warehouse under bailment agreements. When the director is satisfied that depositor claims against the destroyed or damaged agricultural commodity inventory stored under bailment agreements have been settled, either from the proceeds of the insurance claim or other assets of the licensee, he shall release the lien against the inventory insurance.

R.C. § 926.08

926.08 Additional insurance coverage

If the director of agriculture determines that a previously approved insurance coverage is insufficient, he may require that additional insurance coverage be given by the licensed handler, conforming with the requirements of section 926.07 of the Revised Code.

R.C. § 926.09

926.09 Cancellation of insurance coverage

No person licensed under sections 926.04 to 926.06 of the Revised Code shall cancel an approved insurance coverage without the prior written approval of the director of agriculture and his approval of a substitute insurance coverage.

No insurance company shall cancel an insurance policy covering the agricultural commodity inventory of a licensed handler without written notice to the director at least thirty days prior to the effective date of cancellation.

R.C. § 926.10

926.10 Suspension; revocation; refusal to grant license or renewal; notice

The director of agriculture, by order, may refuse to grant or may suspend or conditionally suspend a handler's license, without prior hearing, when the director determines that there is reasonable cause to believe that the applicant or licensee:

- (A) Has failed to maintain the insurance coverage required under section 926.07 of the Revised Code;
- (B) Has failed to maintain accurate and complete records and accounts as required under section 926.11 of the Revised Code;
- (C) Has failed to charge, collect, or remit the fee required under division (B) of section 926.16 of the Revised Code;
- (D) Has refused to allow the director or the director's authorized representative to examine, at a reasonable time, the applicant's or licensee's accounting records, accounts, agricultural commodity inventories, or warehouse;
- (E) Does not possess sufficient agricultural commodities to cover the outstanding receipts or tickets issued or assumed by the applicant or licensee under bailment agreements;
- (F) Has issued a receipt in violation of this chapter or any rules adopted under it;
- (G) Does not have the net assets specified in division (B) of section 926.06 of the Revised Code or has failed to obtain a bond or other protection for any deficiency in required net assets as provided in that division;
- (H) Does not have the obligations for agricultural commodities purchased under delayed price agreements secured or represented as required under division (B) or (C) of section 926.29 of the Revised Code;
- (I) Does not submit financial statements that comply with the requirements of division (C) of section 926.06 of the Revised Code within the applicable time period specified in that division;
- (J) Does not notify the director of a statutory agent's change of address or of the death, removal, resignation, or revocation of the appointment of a statutory agent or does not appoint another agent in accordance with section 926.051 of the Revised Code.

The applicant or licensee to whom a denial, suspension, or conditional suspension order is issued shall be afforded a hearing in accordance with Chapter 119. of the Revised Code, after which the director shall issue or deny the license applied for in the pending application or reinstate or revoke the suspended or conditionally suspended license. The director may suspend, conditionally suspend, or revoke a license after a hearing held in accordance with Chapter 119. of the Revised Code for any other violations of this chapter or any rules adopted under it.

The director shall cause a notice to be posted on the property of a person whose license has been suspended, conditionally suspended, or revoked stating the limitations or restrictions imposed on the person in the handling of agricultural commodities as a result of the suspension, conditional suspension, or revocation. The notice shall not be removed from the property without written authorization from the director.

If a handler's license is revoked, the handler immediately shall notify, in a manner determined by the director, all parties that are storing agricultural commodities in the handler's warehouse and all holders of receipts issued by the handler, if known. The handler shall liquidate the commodities in the manner determined by the director.

R.C. § 926.101

926.101 Operation of handler under court order, department held harmless from liability or financial obligations

If any court of competent jurisdiction issues any order restraining, overturning, or modifying any order of the director of agriculture that suspends or conditionally suspends or revokes an agricultural commodity handler's license or that refuses to issue an agricultural commodity handler's license, the department of agriculture, its officers, employees, and agents and the agricultural commodity depositors fund created in section 926.16 of the Revised Code shall be held harmless from any liabilities or financial obligations arising out of the operations of the handler while operating under the court order.

R.C. § 926.102

926.102 License holders in default on child support orders

On receipt of a notice pursuant to section 3123.43 of the Revised Code, the director of agriculture shall comply with sections 3123.41 to 3123.50 of the Revised Code and any applicable rules adopted under section 3123.63 of the Revised Code with respect to a license, certificate, or permit issued pursuant to this chapter.

R.C. § 926.12
926.12 Posting of license

Each licensed agricultural commodity handler shall keep posted in a location at his facility where it shall be accessible for observation and reading by persons marketing agricultural commodities:

- (A) His license as an agricultural commodity handler;
- (B) The certificates of persons who are certified under section 926.30 of the Revised Code as testers of agricultural commodities delivered to the handler.

R.C. § 926.13
926.13 Care exercised as to commodities; duties when discovered to be out of condition

(A) As used in this section, “licensed handler” includes a receiver, trustee, or other custodian of agricultural commodities appointed for a licensed handler by a court of this state or the United States.

(B) Each licensed handler shall at all times, including any period of suspension of his license, exercise the care in regard to the agricultural commodities in his custody as a bailee as a reasonably prudent owner would exercise under the same circumstances and conditions. Any licensed handler guilty of any action or neglect, the effect of which is to depreciate the value of commodities stored under bailment agreements in a warehouse under his control, shall be liable to the depositor damaged by his action or neglect. Nothing in divisions (B) and (C) of this section shall be construed to indicate otherwise.

(C) If a licensed handler discovers that any agricultural commodity stored in his warehouse, other than an identity-preserved commodity in a special bin as described in division (E) of section 926.22 of the Revised Code, is out of condition or is in danger of becoming so, and if he is unable to preserve the commodity, he shall immediately so notify the owner of the commodity, if known, and the director of agriculture. The director, unless otherwise requested by the owner of the commodity, shall cause an inspection to be made of the commodity. If his inspection reveals that the commodity is out of condition or is becoming so, and if the owner of the commodity fails promptly to remove it, the handler may sell the commodity upon giving the same notice of sale as required under section 926.26 of the Revised Code for the sale of a commodity to satisfy a lien. The commodity may be sold at either public or private sale without advertising if, in the opinion of the director, the commodity should be sold without delay and the director gives the handler written authority to make the sale without advertisement. For the purposes of this section, the owners of the commodity shall be considered to be, in order:

- (1) The licensed handler to the extent of any commodity that he owns and stores in his warehouse;
- (2) The holders of uncanceled receipts or tickets for commodities in the warehouse in the order in which the receipts or tickets are dated.

Nothing in this section shall relieve any licensed handler from exercising due care and vigilance in preserving any agricultural commodity after he discovers that the commodity is out of condition or is becoming so.

(D) After an agricultural commodity has been sold as authorized under division (C) of this section, neither the licensed handler nor the director shall be liable for any actions that they took under that division. Proceeds of the sale shall be administered as provided in divisions (C), (D), and (E) of section 926.26 of the Revised Code.

R.C. § 926.27

926.27 Discontinuance of operations by handler

Any licensed handler who intends to discontinue his operations at the expiration of his license or at any other time shall, at least thirty days prior to the date of the expiration or cancellation of his license, notify the director of agriculture, all parties storing agricultural commodities in the handler's warehouse, and all holders of receipts issued by him, if known. If all holders of receipts are not known, he shall advertise his intention by public notice in a newspaper of general circulation in the place in which the warehouse is situated or, if no newspaper is published in that place, in a newspaper of general circulation in the county in which the warehouse is situated. The owners or depositors of the commodities shall remove, or cause to be removed, the commodities from the warehouse before the expiration or cancellation of the license. If for any reason the commodities are not removed from the warehouse, the handler shall sell them for the account of the depositors in accordance with section 926.26 of the Revised Code.