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Requirements for Grain Dealers:

Ohio



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A National Agricultural Law Center Research Publication
Requirements for Grain Dealers: Ohio

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Ohio Rev. Code Ann. Ch. 926

Current through File 30 of the 133rd General Assembly (2019-2020).

576.351. Records of assessment payments

- (1) Each person required to pay or collect an assessment on a commodity under ORS 576.051 to 576.455 shall keep accurate records sufficient to enable a commodity commission to determine by inspection and audit the accuracy of assessments paid or due to the commission and of reports made or due to the commission.
- (2) For purposes of determining the accuracy of assessments paid or due to a commission, the commission or a person authorized by the commission may:
 - (a) Make an inspection during normal business hours of the business premises of a person required to pay or collect an assessment; and
 - (b) Audit the records of a person required to pay or collect an assessment.
- (3) For purposes of determining the accuracy of assessments paid or due to a commission, the commission may issue a subpoena for the production of any books, records or documents related to the payment or collection of an assessment to a person required to pay or collect the assessment.
- (4) If an audit determines that a person is delinquent in the payment or collection of an assessment, the person shall pay the cost of the audit, not to exceed an amount equal to the delinquent assessment.

926.01 Definitions

As used in this chapter:

(A) "Agricultural commodity" means corn, soybeans, wheat, or any other agricultural crop that the director of agriculture may designate by rule. "Agricultural commodity" does not mean any grain that is purchased for sale as seed.

(B) "Agricultural commodity handling" or "handling" means any of the following:

(1) Engaging in or participating in the business of purchasing from producers agricultural commodities for any use in excess of thirty thousand bushels annually;

(2) Operating a warehouse as a bailee for the receiving, storing, shipping, or conditioning of an agricultural commodity;

(3) Receiving into a warehouse an agricultural commodity purchased under a delayed price agreement;

(4) Providing marketing functions, including storage, delayed price marketing, deferred payment, feed agreements, or any other marketing transaction whereby control is exerted over the monetary proceeds of a producer's agricultural commodities by a person other than the producer.

(C) "Agricultural commodity handler" or "handler" means any person who is engaged in the business of agricultural commodity handling.

(D) "Depositor" means:

(1) Any person who delivers an agricultural commodity to a licensed handler for storage, conditioning, shipment, or sale;

(2) Any owner or legal holder of a ticket or receipt issued for an agricultural commodity who is a creditor of the licensed handler for the value of the agricultural commodity;

(3) Any licensed handler storing an agricultural commodity that the licensed handler owns solely, jointly, or in common with others in a warehouse owned or controlled by the licensed handler or any other licensed handler.

(E) "Receipt" means a warehouse receipt issued by a licensed handler.

(F) "Nonnegotiable receipt" means a receipt on which it is stated that the agricultural commodity received will be delivered to the depositor or to the order of any other person named in the receipt.

(G) "Negotiable receipt" means a receipt on which it is stated that the agricultural commodity received will be delivered to the bearer or to the order of any person named in the receipt.

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

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

(J) "Storage" means the deposit of an agricultural commodity into a warehouse either for the account of the licensed handler operating the warehouse or for the account of a depositor.

(K) "Producer" means any person who grows an agricultural commodity on land that the person owns or leases.

(L) "Agent" means any person, other than a producer, who delivers an agricultural commodity to a licensed handler, either for sale or for storage, for the account of the producer.

(M) "Agricultural commodity tester" or "tester" means a person who operates a moisture meter and other quality testing devices to determine the quality of an agricultural commodity.

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

(O) "Bailee" means a person to whom an agricultural commodity is delivered in trust for storage in a warehouse with title remaining in the name of the depositor.

(P) "Bailor" means a person who delivers an agricultural commodity to a bailee in trust for storage in a warehouse with title remaining in the name of the depositor.

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

(R) "Delayed price agreement" means a written executory contract executed by and between a licensed handler and a depositor that covers the sale and transfer of title of an agricultural commodity and states in its written terms the service charges and the method for pricing the commodity at a later date.

(S) "Delayed price marketing" means the sale and transfer of title of an agricultural commodity with the price to be established at a later date according to the terms of a delayed price agreement.

(T) "Deferred payment" means the deferral of payment to a depositor by a licensed handler for an agricultural commodity to which the licensed handler has taken title, for the purpose of deferring income of the depositor from one tax year to another.

(U) "Feed agreement" means a written contract executed by and between a licensed handler and a producer or depositor who delivers an agricultural commodity to the licensed handler for storage whereby each of the following applies:

(1) The producer or depositor transfers title to the agricultural commodity to the licensed handler in exchange for a nominal sum;

(2) The producer, upon delivery of the agricultural commodity to the licensed handler, becomes a creditor of the licensed handler due to the lien that arises under section 926.021 of the Revised Code;

(3) All or part of the agricultural commodity is returned to the producer at a later date and used for feed purposes.

(V) Notwithstanding section 1.02 of the Revised Code, “and” shall not be read “or” and “or” shall not be read “and.”

926.011 “Grain bank” defined

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

926.02 Powers of director of agriculture

The director of agriculture shall administer this chapter and may, in addition to any other powers conferred by it:

(A) Inspect, or cause to be inspected, any warehouse, or premises suspected of being a warehouse, at any reasonable time;

(B) Require the filing of reports describing any warehouse or the operation thereof;

(C) Determine whether warehouses are suitable for the storing, shipping, and conditioning of agricultural commodities;

(D) Petition the court of common pleas of the county in which the principal place of business of a licensed or unlicensed handler is situated to enforce compliance by the handler with this chapter, or any rule adopted by the director under it, by restraining order or mandatory injunction notwithstanding the existence of an adequate remedy at law;

(E) Prescribe all forms, within the limitations set forth in this chapter, including receipts, tickets, contracts, licenses, reports, and applications for licenses used by licensed handlers;

(F) Impound receipts, tickets, or other records when a handler's license is under suspension;

(G) Promulgate, adopt, and enforce rules under Chapter 119. of the Revised Code for carrying out this chapter.

926.021 Lien on assets of handler

(A) As used in this section:

(1) "Claimant" means a person to whom an agricultural commodity handler owes a financial obligation for agricultural commodities or the actual monetary proceeds from agricultural commodities that have been delivered to the handler.

(2) "Failure" means any of the following involving an agricultural commodity handler:

(a) An inability to satisfy claimants financially;

(b) A public declaration of insolvency;

(c) A revocation, suspension, or conditional suspension of license with outstanding indebtedness to claimants;

(d) Nonpayment in the ordinary course of business where a good faith dispute does not exist;

(e) No application for license renewal;

(f) Denial of license renewal;

(g) Voluntarily surrendering a license.

(3) "Agricultural commodity assets" involving an agricultural commodity handler means any of the following:

(a) All agricultural commodities owned or stored, including agricultural commodities in transit shipped by the handler but not yet paid for;

(b) Redeposited agricultural commodities;

(c) Proceeds from the sale of agricultural commodities due or to become due to the depositor;

(d) The equity less any secured financing directly associated therewith in assets in hedging or speculative margin accounts held by commodity or security exchanges or dealers representing the exchanges, and any moneys due or to become due less any secured financing directly associated therewith from any transactions on the exchanges;

(e) Any other unencumbered funds, property, or equity in funds or property, wherever located, that can be directly traced to the sale of agricultural commodities by the handler, provided both that the funds, property, or equity in funds or property shall not be considered to be encumbered unless the encumbrance results from good and valuable considerations advanced by any secured party on a good faith basis and that the encumbrance is not the result of the taking of funds, property, or equity in funds or property as additional collateral for an antecedent debt;

(f) Any other unencumbered funds, property, or equity in assets.

(B) A lien shall exist on all agricultural commodity assets of an agricultural commodity handler in favor of any of the following:

(1) Claimants, including lenders, who possess receipts covering grain owned or stored by the handler;

(2) Claimants who possess written evidence of ownership other than a receipt disclosing a storage obligation of the handler, including tickets;

(3) Claimants who surrendered receipts as part of an agricultural commodity sales transaction but were not paid fully for the agricultural commodity and the handler failed within twenty-one days after the surrender;

(4) Claimants who possess any other written evidence of the sale of agricultural commodities to the handler for which they were not paid fully, including the sale of agricultural commodities for a nominal sum under a feed agreement.

(C) The lien that shall secure all claims described in division (D) of this section, shall arise, attach to the agricultural commodity assets of an agricultural commodity handler, and become effective at the time of the delivery of the agricultural commodity for sale or for storage under a bailment agreement, commencement of the storage obligation, or when funds are advanced by the lender, and shall terminate when the liability of the agricultural commodity handler to the claimant is discharged, provided that the priority of each lien among the respective claimants shall not relate to the date the claim arises but shall be governed by the priorities established in division (D) of this section. In the event of a failure, the lien claims of all claimants shall be considered to be assigned by operation of this section to the department of agriculture, and in the event of a failure and subsequent liquidation, the lien shall transfer over to assets or proceeds of assets either received or liquidated by the department. The lien established under this section shall have priority over all competing lien claims asserted against the agricultural commodity assets.

(D) Except as provided in division (E) of this section, in the event of a failure, the director of agriculture shall possess exclusive authority to enforce the lien claims and allocate the proceeds as follows:

(1) First priority against all agricultural commodity assets shall be the following:

(a) Claimants, including lenders, who possess receipts covering grain owned or stored by the agricultural commodity handler;

(b) Claimants who possess written evidence of ownership other than receipts disclosing a storage obligation of the handler, including tickets;

(c) Claimants who surrendered receipts as part of an agricultural commodity transaction, but were not paid fully for the agricultural commodity and the handler failed within twenty-one days after the surrender.

(2) Second priority against all agricultural commodity assets shall be to claimants who possess written evidence of the sale of an agricultural commodity, including, but not limited to, tickets, delayed price agreements, or similar agricultural commodity delivery contracts who completed delivery and pricing within thirty days immediately prior to the failure of the handler.

(3) To the extent not necessary to satisfy first and second priority claimants, all other claimants who possess written evidence of the sale of agricultural commodities to the handler shall participate in the pro rata distribution of the remainder of the agricultural commodity assets in an amount not to exceed the value of each claim.

(E) In the event that any adversary proceeding is commenced to recover agricultural commodity assets upon which the lien imposed in this section is imposed and the department declines to enter the proceeding, the director, upon application to the director by any claimant, shall assign to the claimant the applicable lien to permit the claimant to pursue the claimant's lien in the adversary proceeding to the extent the action will not delay the resolution of the proceeding, the prompt liquidation of the assets, or the ultimate distribution of the assets to all claimants.

926.03 Compliance with rules

No person shall fail to comply with any rule adopted by the director of agriculture under this chapter.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

926.11 Records; examination

(A) Each licensed handler shall keep in a place of safety complete and correct records and accounts of:

- (1) Agricultural commodities received in the handler's warehouse and withdrawn therefrom;
- (2) Unissued receipts and tickets in the handler's possession;
- (3) Receipts and tickets issued by the handler;

(4) Receipts and tickets returned to and canceled by the handler;

(5) Agricultural commodities handled by the handler recorded on a position record that is updated daily showing the types of marketing transactions including storage under bailment, delayed price, grain bank, sold and priced, or any other types of transactions through which the handler is handling the commodities.

(B) The records and accounts required under division (A) of this section shall be retained by the licensed handler for such period as may be prescribed by the director of agriculture; except that copies of receipts or other documents evidencing ownership of any agricultural commodity, or liability as a licensed handler, shall be retained so long as such documents are outstanding, and any such document that has been canceled shall be retained for a period of not less than three years from the date of cancellation.

(C) All records and accounts required under this section shall be kept separate and distinct from records and accounts of any other business and shall be subject to inspection by the director or his representative at all reasonable times. A licensed handler who keeps false records and accounts is guilty of the offense of falsification under section 2921.13 of the Revised Code.

(D) The director may examine, or cause to be examined, at any reasonable time, the records and accounts, agricultural commodity inventory, or warehouse of a licensed handler, applicant for a handler's license, or unlicensed person suspected of being an agricultural commodity handler. If the director or the director's designated representative is unable to conduct or complete an examination of a licensed handler's records, inventory, or warehouse due to inadequate, incomplete, or noncurrent records, as required under this chapter and the rules adopted under it, the director or designated representative shall assess a charge against the licensed handler for necessary meals and lodging, mileage, hourly costs, and any other expense incurred or required by the director or the director's designated representative to complete the examination. The charge shall become a claim of the state.

(E) Each licensed handler shall keep separate records and accounts of all agricultural commodities that are delivered to the handler for storage under bailment agreements and shall not include those commodities in any accounting or computation of his assets.

(F) A commodity marketing transaction between a licensed handler and a depositor, except a transaction in which commodities are sold at the current market price at the time of delivery, is presumed to be a deposit under bailment unless a written contract executed by and between the handler and the depositor clearly indicates otherwise. Such written contract shall state who has title to the commodities, how the commodities are to be priced, any service charges for

which the depositor is liable, and any other terms or conditions that would affect the net value of the commodities and the settlement to the depositor.

(G) A licensed handler who receives commodities from a depositor shall indicate the nature of the marketing transaction on the scale ticket. If no indication is made or if the indication is unclear, the transaction is presumed to be a deposit under bailment. If the scale ticket conflicts with a previously or subsequently executed contract of the type described in division (F) of this section, the contract prevails.

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.

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.

926.14 Shortage in commodities; procedure

(A) Whenever the director of agriculture determines that a licensed handler does not have in his possession sufficient agricultural commodities to cover the outstanding receipts and tickets issued or assumed by him under a bailment agreement, or when the licensed handler refuses to submit his records or property to lawful inspection as provided under this chapter, the director may give notice to the licensed handler to:

(1) Cover such shortage;

(2) Furnish bond as required by the director;

(3) Submit to such inspection as the director considers necessary.

(B) If the licensed handler fails to comply with the terms of the notice within twenty-four hours from the date of its issuance, or within such further time as the director may allow, the director may petition the court of common pleas of the county where the licensed handler's principal place of business is located, as shown by the license application, for an order authorizing the director to seize and take possession of all or a portion of the agricultural commodities located in the warehouse operated by the licensed handler and of all pertinent records and other property.

(C) Upon taking possession as provided in division (B) of this section, the director shall notify the holders of record, as shown by the licensed handler's records, of all receipts and tickets issued for agricultural commodities, to present their receipts or tickets for inspection, or to account for the same. The director may thereupon cause an audit and other investigation to be made of the affairs of the licensed handler, especially with respect to the agricultural commodities in which there is an apparent shortage, to determine the amount of such shortage and compute the shortage as to each depositor as shown by the licensed handler's records, if practicable.

(D) The director shall retain possession obtained under this section until such time as the licensed handler or the surety on any bond, required by the director under authority of division (A)(2) of this section, has satisfied the claims of all depositors, or until such time as the director is ordered by the court to surrender possession.

(E) If during or after the audit or other investigation provided for in this section, or at any other time, the director has evidence that the licensed handler is insolvent or is unable to satisfy the claims of all depositors, the director may petition the court of common pleas for the appointment of a receiver to operate or liquidate the business of the licensed handler.

(F) At any time within ten days after the director takes possession, the licensed handler may serve notice upon the director to appear in the court of common pleas of the county in which such warehouse is located at a time to be fixed by such court, which shall not be less than five, nor more than fifteen, days from the date of the service of such notice, and show cause why such possession should not be restored to the licensed handler.

(G) All necessary expenses incurred by the director or any receiver appointed under division (E) of this section may be recovered from the licensed handler in separate civil action brought by the director in the court of common pleas or recovered at the same time and as a part of the seizure or receivership action filed under this section. As a part of the expenses so incurred, the cost of adequate liability insurance necessary to protect the director, the receiver, and others engaged in carrying out this section may be included.

926.141 Appointment of receiver to operate or liquidate business of unlicensed handler

If the director of agriculture obtains evidence that an unlicensed handler is insolvent or is unable to satisfy the claims of all depositors, the director may petition the court of common pleas of the county in which the unlicensed handler is located for the appointment of a receiver to operate or liquidate the business of the unlicensed handler.

All necessary expenses incurred by the director or a receiver appointed under this section may be recovered from the unlicensed handler in a separate civil action brought by the director in the court of common pleas or recovered at the same time and as a part of the receivership action filed under this section. As a part of the expenses so incurred, the cost of adequate liability insurance necessary to protect the director, the receiver, and others engaged in carrying out this section may be included.

926.15 Temporary or permanent injunction

The director of agriculture may apply for, and the courts of this state may issue, a temporary or permanent injunction against the operations of a licensed handler who is violating this chapter or any rule adopted under it, the performance of agricultural commodity handling by any person without a license, or the issuance of receipts or tickets by any person without a license, and against interference by any person with the carrying out by the director, or by any receiver appointed under division (E) of section 926.14 of the Revised Code, of the duties and powers stated in this chapter notwithstanding the existence of an adequate remedy at law.

926.16 Agricultural commodity depositors fund; fees to be remitted by handlers; indemnification of depositors; management of moneys

(A) There is hereby created in the state treasury the agricultural commodity depositors fund. The state shall not be held liable for any claims presented against the fund under section 926.18 of the Revised Code. The fund shall consist of a per-bushel fee remitted by licensed handlers under this section, any sums that the director of agriculture may collect by any legal action on behalf of the fund, and any property or securities acquired through the use of moneys in the fund. All investment earnings of the fund shall be credited to the fund. The moneys in the fund shall be used exclusively to indemnify depositors as provided in section 926.18 of the Revised Code and to pay the examination and administrative costs of this chapter as provided in division (E) of this section.

(B) All licensed handlers shall remit the fee determined by the director in accordance with section 926.17 of the Revised Code on:

(1) All agricultural commodities delivered to them for storage under a bailment agreement or for sale, exchange, or negotiation or solicitation of sale by depositors who produced them or caused them to be produced;

(2) All agricultural commodities delivered to them for storage under a bailment agreement, regardless of who produced the commodities, if a receipt is to be issued for the commodities;

(3) All agricultural commodities that are being stored by licensed handlers who own them solely, jointly, or in common with others and who are issuing a receipt for them in accordance with section 926.25 of the Revised Code. The maximum number of bushels on which a licensed handler shall be required to pay the fee under division (B)(3) of this section between the first day of July and the thirtieth day of June of any marketing year shall be the greatest number of bushels of all commodities for which receipts are outstanding at any one time during that period.

(4) All agricultural commodities that are not involved in a transaction described in division (B)(1), (2), or (3) of this section and the monetary proceeds of which are controlled by a handler who is not involved in the production of the commodities and who serves as an intermediary between the producer and a handler receiving the commodities. In such a situation, the handler responsible for paying the producer shall remit the fee.

(C) All licensed handlers shall account for and remit moneys under division (B) of this section to the director in such manner and using such forms as the director shall prescribe by rule.

(D) All disbursements from the fund shall be paid by the treasurer of state pursuant to vouchers authorized by the director.

(E) At the request of the director of agriculture, the director of budget and management shall transfer not more than five hundred thousand dollars per fiscal year from the agricultural commodity depositors fund to the commodity handler regulatory program fund created in section 926.19 of the Revised Code to pay the examination and administrative costs of this chapter.

926.17 Maintenance of fund; annual estimate of fees

(A) The director of agriculture shall annually review the debits of and credits to the agricultural commodity depositors fund created in section 926.16 of the Revised Code and shall make any adjustments in the fee required under that section that are necessary to maintain the fund within the limits established under this section. Not later than the first day of March of each year, the director shall determine the proposed amount of the fee based on the expected volume of agricultural commodities on which the fee is to be collected and that are likely to be handled under this chapter. The director shall make any changes in the previous year's fee in accordance with Chapter 119. of the Revised Code. The fee shall become effective on the following first day of June. It shall in no case exceed one-half of one cent per bushel on all agricultural commodities on which the fee is to be paid.

(B)(1) If, at the end of any fiscal year, the fund balance exceeds fifteen million dollars, less any encumbered balances or pending or unsettled claims, the fee required under division (B) of section 926.16 of the Revised Code shall be waived until the director, with the consent of the commodity advisory commission created in section 926.32 of the Revised Code, reinstates the fee to maintain the liquidity of the fund as provided in division (B)(2) of this section.

(2) If, at any time, the director determines that the fund balance, less any encumbered balances or pending or unsettled claims, is less than ten million dollars, the director, with the consent of the commodity advisory commission, may reinstate the fee required under division (B) of section 926.16 of the Revised Code. If the director reinstates the fee, the director shall notify all licensed handlers by certified mail, return receipt requested, to begin collecting the fee not later than ninety days after being notified.

926.18 Claims of depositors for indemnification; procedures; liability limits; attorney's fees

(A) When a depositor has made a demand for settlement of an obligation concerning an agricultural commodity on which a fee was required to be remitted under section 926.16 of the Revised Code and the licensed handler is experiencing failure, as "failure" is defined in section 926.021 of the Revised Code, and has failed to honor the demand, the depositor, after providing the director of agriculture or the director's authorized representative with evidence of the depositor's demand and the dishonoring of that demand, may file a claim with the director not later than six months after dishonor of the demand for indemnification of the depositor's damages, from the agricultural commodity depositors fund, to be measured as follows:

(1) The commodity advisory commission created in section 926.32 of the Revised Code shall establish the dollar value of the loss incurred by a depositor holding a receipt or a ticket for agricultural commodities on which a fee was required and that the depositor delivered to the handler under a delayed price agreement, bailment agreement, or feed agreement, or that the depositor delivered to the handler before delivery was due under a contract or other agreement between the depositor and handler. The value shall be based on the fair market price being paid to producers by handlers for the commodities on the date on which the director received notice that the receipt or ticket was dishonored by the handler. All depositors filing claims under this division shall be bound by the value determined by the commission.

(2) The dollar value of the loss incurred by a depositor who has sold or delivered for sale, exchange, or solicitation or negotiation for sale agricultural commodities on which a fee was required and who is a creditor of the handler for all or a part of the value of the commodities shall be based on the amount stated on the obligation on the date of the sale.

(B) The agricultural commodity depositors fund shall be liable to a depositor for any moneys that are owed to the depositor for commodities deposited with a licensed handler pursuant to a transaction for which the handler must remit a fee under division (B) of section 926.16 of the Revised Code and that are not recovered through other legal and equitable remedies as follows:

(1)(a) The liability of the fund shall equal one hundred per cent of the depositor's loss as determined under division (A)(1) of this section if any of the following applies:

(i) The commodities were stored with the handler under a bailment agreement.

(ii) Payment for the commodities was tendered by the handler and subsequently dishonored, such as payment by a check for which there were insufficient funds or by a check that was written on an account that was frozen by the financial institution.

(iii) The commodities were priced not more than thirty days prior to the director's suspension of the handler's license under division (E), (G), or (H) of section 926.10 of the Revised Code, and the handler failed to pay for the commodities on or before the date on which the suspension occurred.

(iv) The commodities were priced not more than ninety days prior to the director's suspension of the handler's license under division (E), (G), or (H) of section 926.10 of the Revised Code, the commodities were subject to a written agreement for deferred payment by the handler not later than ninety days following the date of delivery, and the handler failed to pay for the commodities on or before the payment date established in the written agreement.

(b) If the deposit of commodities that were the subject of the depositor's loss involves circumstances other than those described in division (B)(1)(a) of this section, the liability of the fund shall equal one hundred per cent of the first ten thousand dollars of the loss and eighty per cent of the remaining dollar value of that loss as determined under divisions (A)(1) and (2) of this section.

(2) The aggregate amount recovered by a depositor under all remedies shall not exceed one hundred per cent of the value of the depositor's loss. If the moneys recovered by a depositor under all remedies exceed one hundred per cent of the value of the depositor's loss, the depositor shall reimburse the fund in the amount that exceeds the value of that loss.

(C) The director, with the recommendation of the commodity advisory commission, shall determine the validity of all claims presented against the fund. A claim filed under this section

for losses on agricultural commodities other than commodities stored under a bailment agreement shall not be valid unless the depositor has made a demand for settlement of the obligation within twelve months after the commodities are priced. Any depositor whose claim has been refused by the director and the commission may appeal the refusal either to the court of common pleas of Franklin county or the court of common pleas of the county in which the depositor resides.

The director shall provide for payment from the fund to any depositor whose claim has been found to be valid.

(D) If at any time the fund does not contain sufficient assets to pay valid claims, the director shall hold those claims for payment until the fund again contains sufficient assets. Claims against the fund shall be paid in the order in which they are presented and found to be valid.

(E) If a depositor files an action for legal or equitable remedies in a state or federal court having jurisdiction in those matters that includes a claim against agricultural commodities upon which the depositor may file a claim against the fund at a later date, the depositor also shall file with the director a copy of the action filed with the court.

In the event of payment of a loss under this section, the director shall be subrogated to the extent of the amount of any payments to all rights, powers, privileges, and remedies of the depositor against any person regarding the loss.

The depositor shall render all necessary assistance to aid the director in securing the rights granted in this section. No action or claim initiated by the depositor and pending at the time of payment from the fund may be compromised or settled without the consent of the director.

(F) If, prior to June 20, 1994, a lawsuit, adversary proceeding, or other legal proceeding is brought against a depositor to recover money or payments from funds to which a depositor has a right of indemnification under this section, and the depositor retains legal counsel resulting in a cost or expense to the depositor, upon the rendering of a judgment or other resolution of the lawsuit, adversary proceeding, or other legal proceeding, the director, in the director's discretion and with the approval of the commodity advisory commission, may authorize indemnification from the fund for attorney's fees paid by the depositor. Any claim made by a depositor for the payment of attorney's fees under this division shall be made in the same manner as a claim under division (A) of this section.

Attorney's fees payable under this division shall be limited to the actual hourly fee charged or one hundred dollars per hour, whichever is less, and to a total maximum amount of three hundred dollars.

926.19 Commodity handler regulatory program fund

(A) There is hereby created in the state treasury the commodity handler regulatory program fund. The moneys in the fund shall be used to pay the examination and administrative costs of this chapter and shall consist of:

(1) All revenues collected by the director of agriculture from distribution of the receipt forms under division (B) of section 926.20 of the Revised Code and such other forms and registration books as the director may require by rule for the administration of this chapter;

(2) The application and examination fees collected under division (B) of section 926.05 of the Revised Code;

(3) The agricultural commodity tester certificate fees collected under division (B) of section 926.30 of the Revised Code;

(4) Any moneys transferred from the agricultural commodity depositors fund under section 926.16 of the Revised Code;

(5) All fines, penalties, and costs, except court costs, that are collected under section 926.99 of the Revised Code in consequence of a violation of this chapter;

(6) All sums collected by the director of agriculture under a contract described in section 926.36 of the Revised Code.

(B) The examination and administrative costs of this chapter shall be computed by the director not later than the thirty-first day of December of each even-numbered year to cover the biennium that begins on the following first day of July. The commodity advisory commission created in section 926.32 of the Revised Code shall approve, and may amend, the examination and administrative costs. The commission's decision shall be binding on the director. The commission also at any time may approve for presentation to the controlling board a request to increase or decrease the appropriation authority for the biennial examination and administrative costs if it determines that an increase or decrease in the cost is necessary to carry out the purpose of this chapter.

(C) If at any time the moneys deposited in the fund, including moneys transferred from the agricultural commodity depositors fund under section 926.16 of the Revised Code, are not sufficient to pay the examination and administrative costs of this chapter, the director shall request an appropriation from the general revenue fund to pay those costs.

926.20 Bailment agreements; receipts; responsibility of handler

(A) Upon the request of a depositor, a licensed handler shall issue a receipt for any agricultural commodity that the handler has received from the depositor for storage under a bailment agreement. Even if the depositor has not requested that a receipt be issued, the agricultural commodity delivered for storage under a bailment agreement shall be considered to be in "open storage," and the responsibility of the bailee to the bailor shall remain the same as if a nonnegotiable receipt had been issued upon deposit of the commodity into the handler's warehouse.

No licensed handler shall receive an agricultural commodity for storage under a bailment agreement until the handler has weighed, inspected, and graded the commodity.

(B) The director of agriculture shall provide and print on distinctive paper, paper warehouse receipts. If the director considers it necessary, the director may authorize electronic warehouse receipts in accordance with guidelines established in rules adopted under section 926.02 of the Revised Code. Each receipt, paper or electronic, shall contain within its printed terms spaces for at least the following information:

(1) The location of the warehouse where the agricultural commodity is stored;

(2) The date of issuance of the receipt;

(3) The rate of storage charges or the basis for the charges;

(4) The net weight, the percentage of dockage or foreign material, and the grade of the commodity;

(5) "Negotiable" or "nonnegotiable" according to the nature of the receipt, conspicuously indicated on it;

(6) The signature of the licensed handler or the handler's authorized agent;

(7) A statement of the amount of advances made or liability incurred for which the handler claims a lien or, if the precise amount of advances made or liabilities incurred at the time of issuance of the receipt is unknown to the handler or to the agent who issues it, a statement of the fact that advances have been made or liabilities incurred;

(8) If the receipt is for a commodity that the handler owns, either wholly, jointly, or in common with others, the facts about the ownership;

(9) Any other information that the director may require by rule.

The director shall cause receipt forms to be distributed to licensed handlers at cost. The revenue from the distribution shall be remitted to the director and credited to the commodity handler regulatory program fund created in division (A) of section 926.19 of the Revised Code in the same manner as other fees collected under that division.

(C) All receipts issued by a licensed handler shall be numbered and issued consecutively.

(D) Before issuing any receipt, a licensed handler shall file with the director a certified copy of the handler's signature and the signature of any person the handler has authorized to issue receipts.

(E) No licensed handler shall fail to return to the director all receipts and tickets remaining unused on the date of revocation or termination of the handler's license.

(F) No person shall issue a receipt for any agricultural commodity except upon a receipt form furnished or authorized by the director under this section.

(G) No person, with intent to defraud, shall falsely make, alter, forge, counterfeit, or photograph a receipt.

926.21 Receipts; effects; limits

A receipt issued by a licensed handler is a legal document evidencing the obligation of the handler to deliver an agricultural commodity according to its terms and the requirements of this chapter.

All original receipts issued under this chapter are valid for a term of one year unless redeemed before the end of that year, exchanged for the appropriate commodity or another receipt, or held in trust or endorsed to an agency of the United States. Any receipt issued to consolidate or replace an earlier receipt under section 926.22 or 926.23 of the Revised Code is valid for only the remainder of the one-year term of the original receipt that it consolidates or replaces.

The holder of a receipt may renew its validity for another term of one year by presenting it, within thirty days prior to the date of its expiration, to the handler who issued the original receipt. After the holder has settled any charges that have become due against the agricultural commodity, the handler shall cancel the unexpired receipt and issue a new receipt to the holder. In addition to the information required under section 926.20 of the Revised Code, the new receipt shall contain the serial number and date of issuance of the receipt that it replaces.

If a receipt has expired and has not been renewed, the handler holding the agricultural commodity evidenced by the receipt may, not sooner than forty-five days following the date of its expiration, proceed with the sale of the commodity in accordance with section 926.26 of the Revised Code. Until the handler holding the commodity has sold it as provided in that section, he shall honor the expired receipt if it is offered for redemption.

926.22 Conditions upon issuance and dealing with receipts

(A) No licensed handler shall issue a receipt except upon the actual delivery of an agricultural commodity into storage in the warehouse from which the receipt is to be issued. No licensed handler shall issue a receipt for a quantity of a commodity greater than that which was contained in the lot or parcel received for storage or issue more than one receipt for the same lot of a commodity unless a receipt for a part of the lot is desired, in which case the aggregate receipts issued for a particular lot shall cover only that lot.

(B) If a licensed handler delivers out of storage a part of a lot of an agricultural commodity for which he has issued a negotiable receipt, he shall cancel the original receipt and issue a new receipt in accordance with rules adopted by the director of agriculture for the undelivered portion of the commodity that is still in storage. The new receipt shall show the date of its issuance and the number and date of the original receipt.

(C) If one receipt is divided into two or more receipts or two or more receipts are consolidated into one receipt, the original receipt or receipts shall be canceled in the same manner as if the

agricultural commodity had been delivered from storage. The new receipt or receipts shall indicate whether the new receipt or receipts represent a part of another receipt or the consolidation of other receipts. The number and date of the original receipt or receipts shall also appear on the new receipt or receipts. No person shall consolidate receipts that were issued more than thirty days apart.

(D) The date of issuance of an original receipt shall be the date used for determining the oldest receipt for the purposes of division (B) of section 926.13 of the Revised Code. The date of any consolidation, replacement, or renewal receipt shall not be considered.

(E) All receipts issued for agricultural commodities stored in special bins for the purpose of preserving identity shall bear the number of the bin and the notation "Special Bin." All divisions or consolidations of receipt shall bear the bin number of the original receipt or receipts and the notation "Special Bin."

926.23 Lost receipts; duplicate issued; conditions and procedures

If a negotiable receipt has been lost or destroyed, the licensed handler shall issue a new receipt on the same terms as, subject to the same conditions as, and bearing on its face the number and date of, the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate receipt issued in lieu of a lost or destroyed receipt, upon the claimant's filing with him:

(A) An affidavit stating that the claimant is lawfully entitled to the possession of the original receipt, that he has not negotiated or endorsed the original receipt, how the original receipt was lost or destroyed, and, if the receipt was lost, that diligent effort has been made without success to find the receipt;

(B) A bond double the value, at the time the bond is given, of the agricultural commodity represented by the lost or destroyed receipt. The bond shall be in a form approved by the director of agriculture and shall be conditioned to indemnify the agricultural commodity depositors fund, the handler, and any other person entitled to the commodity against all loss, liability, or expense that it or he may sustain by reason of the issuance of a duplicate receipt. The bond shall have as surety a corporate surety company that is authorized to do business under the laws of this state.

A receipt that is plainly marked "DUPLICATE" is a representation and warranty by the licensed handler that the receipt is an accurate copy of an original receipt properly issued and then canceled on the date of issuance of the duplicate and imposes on him no liability other than his obligation under the original receipt.

926.24 Delivery of commodity by handler upon demand; conditions; cancellation of receipt; liabilities for error in delivery

(A) A licensed handler, in the absence of any excuse permitted in this chapter, shall deliver an agricultural commodity upon a demand made by the holder of a receipt for the commodity or by its depositor if the demand is accompanied with:

(1) An offer to satisfy any lien arising under section 1307. 209 of the Revised Code; and

(2) An offer to surrender the receipt with the necessary endorsement.

(B) The licensed handler is justified in delivering the agricultural commodity, subject to divisions (C), (D), and (E) of this section, to:

(1) The person who is lawfully entitled to the possession of the commodity or the person's agent;

(2) The person who is entitled to the delivery by the terms of a nonnegotiable receipt issued for the commodity or who has written authority from a person so entitled, either endorsed on the receipt or written on another paper;

(3) A person in possession of a negotiable receipt by the terms of which the commodity is deliverable to the person possessing the receipt, or order or bearer, or that has been endorsed to the person possessing the receipt, or in blank, by the person to whom delivery was promised by the terms of the receipt or by the immediate or remote endorsee of the person to whom delivery was so promised.

Upon delivery of an agricultural commodity from storage upon presentation of any receipt issued by the licensed handler, the receipt shall be surrendered to the handler, be plainly marked across its face "CANCELED" together with the date and name of the person canceling it, and be void and not put back into circulation. No commodity shall be delivered twice upon the same receipt.

(C) If the licensed handler delivers the agricultural commodity to a person who is not in fact lawfully entitled to the possession of the commodity or the person's agent, the handler is liable as for a conversion to all persons that have a right of property or possession in the commodity if:

(1) The handler delivered the commodity otherwise than as authorized by divisions (B)(2) and (3) of this section;

(2) The handler delivered the commodity as authorized by those divisions, but prior to delivery the handler had either been requested by or on behalf of the person whom the handler knew to be lawfully entitled to a right of property or possession in the commodity not to make delivery or had information that the delivery would be made to a person not lawfully entitled to possession of the commodity.

(D) Except as provided in section 926.26 of the Revised Code, when a licensed handler delivers an agricultural commodity for which the handler has issued a negotiable receipt, the negotiation of which would transfer the right to possession of the commodity, and fails to cancel the receipt, the handler is liable to anyone who purchases for value in good faith the receipt for failure to deliver the commodity to the person, whether the person acquired title to the receipt before or after the delivery of the commodity by the handler. No provision shall be inserted in a negotiable receipt that is intended to make it nonnegotiable. The provision, if inserted, shall be void.

(E) If a person other than the depositor or person claiming under the depositor asserts a claim or title to the agricultural commodity and the licensed handler has information of the claim, the handler shall be excused from liability for refusing to deliver the commodity to the depositor, to the person claiming under the depositor, or to the adverse claimant until the handler has had reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings compelling all claimants to arrive at a settlement.

926.25 Sale or pledge of receipt; filing of certain receipts with director

(A) Any licensed handler operating a warehouse in this state may make a valid sale or pledge of any receipt issued for an agricultural commodity of which he is the owner either solely, jointly, or in common with others. The recital of ownership on the receipt shall constitute notice of the right to sell or pledge it and of the title or specific lien of the transferee or pledgee on the handler's commodity represented by the receipt.

(B) A licensed handler shall file with the director of agriculture a copy of every negotiable receipt issued by him for agricultural commodities of which he is the owner either solely, jointly, or in common with others. Each licensed handler issuing such a negotiable receipt shall at the same time file with the director a report containing such information as the director requests showing the liability and an inventory of the warehouse operated by him as of the date on which the receipt was issued and shall remit the fee required under division (B) of section 926.16 of the Revised Code.

926.26 Rights as between handler and third-party claimants

(A) If an agricultural commodity is delivered to a licensed handler by the owner or by a person whose act in conveying the title to the purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for it, the commodity cannot, while in the possession of the handler, be attached by garnishment or otherwise or be levied under an execution unless the receipt is first surrendered to the handler or its negotiation is enjoined. The handler shall in no case be compelled to deliver the actual possession of the commodity until the receipt is surrendered to the handler or impounded by the court. A handler's claim for a lien that has arisen under section 1307.209 of the Revised Code and that has come due shall be satisfied as follows:

(1) The handler shall give a written notice to the person on whose account the commodity is held and to any other person known by the handler to claim an interest in the commodity. The notice shall be delivered in person or by certified mail addressed to the last known place of business or residence of the person to be notified. The notice shall contain:

(a) An itemized statement of the handler's claim showing the sum due at the time of the notice and the date that it became due;

(b) A brief description of the commodity against which the lien exists;

(c) A demand that the amount of the claim as stated in the notice, and of any further claim accruing, shall be paid on or before the date specified in the notice, which shall be not fewer than ten days from the delivery of the notice if it is personally delivered or from the time when the notice reaches its destination if it is sent by mail;

(d) A statement that, unless the claim is paid within the time specified, the commodity will be advertised for sale and sold at an auction at a specified time and place.

(2) In accordance with the terms of a notice so given, a sale of the commodity at auction may be had to satisfy any valid claim of the handler under which the handler has a lien on the commodity. The sale shall be held in the place where the commodity is held or, if that place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of claims that is specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the commodity to be sold and stating the name of the owner or person on whose account the commodity is held and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper of general circulation published in the place where the sale is to be held or, if no newspaper is published in that place, in a newspaper of general circulation published in the county in which the sale is to take place. No sale shall be held before fifteen days from the date of the first publication.

(B) At any time before the agricultural commodity is sold, any person claiming a right of property or possession in it may pay the licensed handler the amount necessary to satisfy the handler's lien and pay the reasonable expenses and liabilities incurred in advertising and preparing for the sale up to the time of payment. The handler shall deliver the commodity to the person making payment only if the person is a person entitled under this chapter to the possession of the commodity on payment of the existing charges.

(C) After the agricultural commodity has been lawfully sold to satisfy a lien arising under section 1307.209 of the Revised Code or has been lawfully sold or disposed of for any other reason, neither the licensed handler nor the agricultural commodity depositors fund created in section 926.16 of the Revised Code shall be liable for failure to deliver the commodity to the depositor or owner of the commodity or to the holder of a receipt given for the commodity when it was deposited even if the receipt was negotiable. The proceeds of the sale, after deducting the amount of any lawful lien, shall be held in accordance with this section for the benefit of the owner or the holder of the receipt. The proceeds shall be considered full satisfaction of any receipt issued for the commodity so sold and of any bailment agreement between the handler and the depositor.

(D) After the licensed handler has satisfied the handler's lien and after the handler's expenses for advertising have been met, the handler shall forward to the director of agriculture the remaining proceeds of the sale, together with such information concerning the sale and outstanding receipt or receipts as the director requires by rule. Upon the payment of the proceeds to the director, the handler shall be relieved of further responsibility for the safekeeping of them and shall be held harmless by the state for any liabilities for any claim arising out of the transfer of the proceeds to the director. The director shall deposit the proceeds into the state treasury to be held for the benefit of the person who would be rightfully entitled to possession of the commodity had it not been sold under this section.

(E) Any person claiming an interest in proceeds delivered to the director under this chapter may file a claim for them on a form prescribed by the director. The director shall consider any claim filed under this section and render a decision in writing, stating the substance of any evidence considered and the reasons for allowance or disallowance of the claim. If the claim is allowed, the director shall provide for payment of the claim from the agricultural commodity depositors fund.

(F) The remedy for enforcing a lien provided in this section does not preclude any other remedies allowed by law for the enforcement of a lien or bar the handler's right to recover any amount of the handler's claim that is not paid by the proceeds of the sale held under this section.

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.

926.28 Deposit of commodity by one not having clear title

(A) No person shall knowingly deposit any agricultural commodity to which he does not have title or upon which there is a lien or mortgage, either for sale or for storage under a bailment agreement, without disclosing his lack of title or the existence of the lien or mortgage.

(B) Each licensed handler shall post in a conspicuous place in his office a copy of division (A) of this section together with the penalty imposed on the depositor for failure to comply with the requirement for disclosure. The notice shall be in large type that is easily readable for depositors in the conduct of business with the licensed handler.

926.29 Delayed price agreements

(A) A delayed price agreement is an executory contract that shall be in such a form and contain such terms as the director of agriculture shall adopt by rule under Chapter 119. of the Revised Code. The agreement shall be executed by and between the licensed handler and the depositor or by their authorized representatives not later than fifteen days after the first delivery of an agricultural commodity is received for delayed pricing under the agreement. The handler shall maintain a file of executed agreements that are available for inspection at any reasonable time by the director or the director's designated representative. The handler also shall keep records and ledgers the director considers necessary to document the handler's obligation to the depositor under a delayed price agreement. The handler also shall provide reports, forms, and other evidence the director shall adopt by rule to document the storage and marketing of commodities under the delayed price agreement.

(B) Subject to the lien that attaches under section 926.021 of the Revised Code and except as otherwise provided in division (C) of this section, a licensed handler who purchases any agricultural commodity under a delayed price agreement at all times shall maintain the commodity, rights in the commodity, proceeds from the sale of the commodity, or a combination of the commodity, rights, and proceeds equal to at least ninety per cent of the value of the

handler's obligation for all commodities that the handler has purchased that are not priced under delayed price agreements. The obligation shall be secured or represented by one or more of the following:

(1) Maintenance of the commodity in storage in the handler's warehouse;

(2) Rights in commodities as evidenced by a receipt or ticket for storage of the commodities under a bailment agreement in another warehouse approved by the director;

(3) Proceeds from the sale of commodities as evidenced or represented by one or more of the following:

(a) Cash on hand or held on account in a state or federally licensed financial institution or a lending agency of the farm credit administration;

(b) Short-term investments held in time accounts with state or federally licensed financial institutions or a lending agency of the farm credit administration;

(c) Balances in commodity margin accounts;

(d) Commodities sold and shipped by the handler under delayed price agreements that have not been priced less any payments or advances that have been received by the handler;

(e) Such other evidence of unencumbered assets as may be acceptable to the director, including an irrevocable letter of credit.

(C) In addition to the lien that attaches under section 926.021 of the Revised Code, a depositor who sells an agricultural commodity to a licensed handler under a delayed price agreement, upon giving notice to the handler either at or prior to the time of delivery, may demand as security for payment for the commodity an amount that, at the time of delivery, is equal to one hundred per cent of the national loan rate value of the commodity under the United States department of agriculture price support program, or seventy-five per cent of the average price being paid for the commodity in the state on the date of demand as published by the market news service of the department of agriculture, whichever is less. The handler shall satisfy a demand for security on a commodity sold under a delayed price agreement at the handler's option by one of the following:

(1) Payment to the depositor by cash or draft on the account of the handler;

(2) Causing an irrevocable letter of credit to be issued to the depositor by a financial institution designated by the handler securing payment in the specified amount. The letter of credit shall be subject to Chapter 1305. of the Revised Code and rules adopted by the director pursuant to Chapter 119. of the Revised Code.

926.30 Quality tests; qualified personnel

(A) No licensed handler or employee of a licensed handler who receives an agricultural commodity from a producer, either for sale or for storage under a bailment agreement, shall perform a quality test on the commodity for the purpose of applying a premium, discount, or conditioning charge unless the person making the test has passed an examination on the subject that is approved by the director of agriculture. Upon application by a person who has passed the examination, the director shall issue to the person an agricultural commodity tester certificate that shall be valid for a period of three years. Except as otherwise provided in this division, an agricultural commodity tester shall pass an examination on agricultural commodity testing approved by the director prior to each renewal of a certificate. The director may exempt from the examination requirement for certificate renewal an agricultural commodity tester who, during the year prior to expiration of the certificate, successfully completes training on agricultural commodity testing that has been approved by the director. The director shall establish by rule standards that such training must meet in order to be approved by the director. The rules shall require the training to include instructions in the use of the official grain standards of the United States as a basis for determining the quality of the commodities tested by an agricultural commodity tester. An agricultural commodity tester certificate issued prior to the effective date of this amendment shall be considered to be valid until the date on which, at the time of issuance, it was scheduled to expire. Upon expiration of the certificate, the examination requirement for renewal shall apply.

(B) The director may determine that retraining or review is necessary for the tester as a result of changes in or amendments to the official grain standards of the United States, or if the director has reason to believe that retraining is necessary as a result of complaints relating to the tester's inability to accurately test commodities according to the official grain standards. A fee to cover the cost of issuing certificates and administering the educational program shall be established by rule of the director adopted under Chapter 119. of the Revised Code and shall be deposited into the commodity handler regulatory program fund created in section 926.19 of the Revised Code.

(C) The director may suspend or revoke the certificate of an agricultural commodity tester in accordance with Chapter 119. of the Revised Code for failure or inability of the tester to apply

the official grain standards of the United States in testing the quality of an agricultural commodity.

926.31 Sample to be drawn for testing

(A) Upon receipt of any shipment of an agricultural commodity from a depositor or a depositor's agent, either for sale or for storage under a bailment agreement, the licensed handler shall cause a representative sample to be drawn for testing by an agricultural commodity tester to determine the quality of the commodity. At the request of the depositor or the depositor's agent, the tester shall immediately test the sample and shall notify the depositor or the depositor's agent of the results of the test and of any price discount, premium, or conditioning charge that is applicable to the value of the commodity. Upon notification of the test and the value adjustment to be applied, the depositor or the depositor's agent shall do one of the following:

(1) Refuse to sell or store the commodity unless the depositor or agent has unloaded the commodity prior to testing;

(2) Agree to sell or store the commodity and accept the agricultural commodity tester's results of the testing of the shipment and the applicable value adjustment;

(3) Agree to sell or store the commodity but reject the agricultural commodity tester's results of the testing of the shipment and order the handler to forward the sample to a federally licensed grain inspector immediately for a final testing of the shipment. The depositor, the depositor's agent, or the handler may specify in writing which testing factor or factors the depositor, depositor's agent, or handler wishes the federal inspector to test.

(B) If, either prior to or during the unloading of the shipment, the licensed handler believes that the original sample drawn is not representative of the shipment, or if the depositor or the depositor's agent requests a second sample to be drawn, the handler shall cause a second sample to be drawn and used for the testing of the shipment.

(C) Any determination of a federally licensed grain inspector under this section shall be binding on both the licensed handler and the depositor or the depositor's agent as the basis for determining the premium or discount and settlement price, if the shipment was delivered for sale, or the conditioning charge, if the shipment was received for storage under a bailment agreement. The cost of the federal inspection and the actual cost of forwarding the sample for such inspection shall be borne by the handler, if the test increases the value of the agricultural commodity as originally determined by the agricultural commodity tester, or by the depositor, if the test does not change or lowers the value of the commodity.

(D) Any licensed handler and any depositor or the agent of a depositor may enter into an agreement whereby representative samples of each of several shipments of the same agricultural commodity that arrive at the handler's warehouse or facility during any one business day shall be combined to obtain a single result of the testing of the combined shipments of the commodity.

(E) No person shall offer for sale or storage any agricultural commodity that is:

(1) Treated with any poisonous material or that contains rodent excreta or any other material in such amounts as to render the commodity unfit for animal or human consumption;

(2) Knowingly or purposely loaded unevenly so as to conceal amounts of the commodity that are inferior.

(F) Nothing in this section shall be construed to relieve any contractual obligations in effect between the licensed handler or the depositor.

926.32 Commodity advisory commission

(A) There is hereby created the commodity advisory commission consisting of seven members to be appointed by the director of agriculture. Not later than January 1, 1983, the director shall make appointments to the commission. Of the initial appointments, three shall be for terms ending January 1, 1984, two shall be for terms ending January 1, 1985, and two shall be for terms ending January 1, 1986. Thereafter, terms of office shall be for three years, each term ending on the same day of the same month of the year as did the term that it succeeds. Each member shall hold office from the date of appointment until the end of the term for which the member was appointed. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of the term. Any member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office or until a period of sixty days has elapsed, whichever occurs first.

(B) The commission shall at all times be composed of three farmers who are engaged primarily in the production of agricultural commodities, one licensed handler who is the manager of a farmers cooperative, one licensed handler who is the owner and operator of a warehouse located in a rural area, one licensed handler representing a warehouse located at a major agricultural commodity transportation center, and one banker who is an officer of a rural bank. The director shall designate annually one member of the commission to serve as its chairperson and, after notice and public hearing, may remove any member only for neglect of duty or malfeasance in office.

(C) A vacancy on the commission shall not impair the right of the other members to exercise all of the commission's powers. Four members shall constitute a quorum for the conduct of business of the commission.

(D) The commission shall meet at least three times annually at times that the commission shall set by rule and may meet at other times that the chairperson or a majority of the commission members considers appropriate, provided that no meeting shall be held on the call of the chairperson unless at least seven days' written notice is first given to all members of the commission.

(E) Each member shall be reimbursed for the member's actual and necessary expenses incurred in the discharge of duties as a commission member.

(F) The commission may adopt, amend, or rescind rules or procedures governing the conduct of its internal affairs.

(G) The commission may request from the director, and the director shall provide, meeting space, assistance, services, and data to enable it to carry out its functions.

(H) All costs of the commission, including all of the expenses of its members and consultants authorized in this section, shall be paid from the commodity handler regulatory program fund created in section 926.19 of the Revised Code pursuant to itemized vouchers approved by the chairperson of the commission and the director.

(I) The director shall designate an official or employee of the department of agriculture to act as the executive secretary of the commission. The director also may request the attendance at meetings of the commission consultants with expertise in agricultural law, marketing, statistics, or any other subject to advise and consult with the commission on matters on the agenda of any regular or special meeting of the commission. The expenses incurred by consultants attending those meetings shall be reimbursed according to division (H) of this section. The executive secretary shall keep or cause to be kept a permanent journal of all meetings, proceedings, findings, determinations, and recommendations of the commission, including an itemized statement of the expenses allowed to each member of the commission and consultants under this section. The journal shall be a public record.

(J) In addition to the authority granted in division (F) of section 926.05, division (B) of section 926.17, divisions (A) and (C) of section 926. 18, and division (B) of section 926.19 of the Revised Code, the commission shall advise and counsel the director on all matters relating to:

(1) The administration of this chapter;

(2) The development of rules authorized by section 926.02 of the Revised Code;

(3) Any other matters that the commission and the director consider appropriate in carrying out this chapter.

926.33 Precedence over warehouse receipts act; immunity of state and officers

(A) Any provisions of this chapter that conflict with Chapters 1307. and 1309. of the Revised Code shall take precedence over those chapters.

(B) This chapter is enacted for the benefit of the state, and neither the state, its departments, agencies, or commissions, or its employees and officials, either elected or appointed, shall be held liable for any injuries to third parties, for the exercise of their authority, or for the use of their discretion on the matters to which this chapter relates.

926.34 Misapplication or conversion of inventory, funds, or credits prohibited

No person shall knowingly misapply or convert for personal use the inventory, funds, or credits of a corporation licensed as a handler under this chapter.

926.35 Insolvent handler, acceptance of deposits of agricultural commodities prohibited

No handler licensed under this chapter who is insolvent shall accept deposits of agricultural commodities except in payment of or as security for an existing debt.

926.36 Contracts with marketing associations

The director of agriculture may enter into a contract with a marketing association that is involved in a program designed to improve or expand the market for an agricultural commodity and funded by an assessment that is levied on producers of the agricultural commodity and calculated on the basis of the volume of agricultural commodities produced by the producer. Under the contract, the marketing association may agree to pay the director a mutually acceptable sum and in exchange the director may agree to furnish the marketing association with information that the director obtains under section 926.11 of the Revised Code regarding

the volume of commodities produced by producers who participate in the marketing program, and related financial information.

The marketing association may use the information to determine whether a producer has truthfully disclosed the volume of agricultural commodities produced by the producer and whether the marketing association has received the correct amount in assessments.

Any sum paid to the director under a contract entered into under this section shall be deposited in the commodity handler regulatory program fund created in section 926.19 of the Revised Code.

926.99 Penalties

(A)(1) Except as provided in division (A)(2) of this section, whoever violates section 926.04 of the Revised Code is guilty of a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense.

(2) A person who violates section 926.04 of the Revised Code and who is insolvent and financially unable to satisfy a claimant as defined in section 926.021 of the Revised Code is guilty of a felony of the fifth degree if the financial obligation owed by the offender to the claimant is one thousand dollars or more and is less than seven thousand five hundred dollars. If the financial obligation is seven thousand five hundred dollars or more and is less than one hundred fifty thousand dollars, the offender is guilty of a felony of the fourth degree. If the financial obligation is one hundred fifty thousand dollars or more, the offender is guilty of a felony of the third degree.

(B) Whoever violates division (E) or (F) of section 926.20 or division (A) of section 926.22 of the Revised Code is guilty of a minor misdemeanor on a first offense and a misdemeanor of the second degree on each subsequent offense.

(C) Whoever violates division (G) of section 926.20 or section 926.34 or 926.35 of the Revised Code is guilty of a felony of the fourth degree.

(D) Whoever violates division (A) of section 926.28 or division (B) of section 926.29 of the Revised Code is guilty of a felony of the fifth degree.

(E) Whoever violates section 926.31 of the Revised Code is guilty of a misdemeanor of the fourth degree.

