The National Agricultural Law Center

University of Arkansas ● Division of Agriculture

An Agricultural Law Research Project

Requirements for Grain Dealers

State of Tennessee

Indemnity Fund

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Current with legislation from the 2014 Second Regular Sess.

T. C. A. § 43-32-202
§ 43-32-202. Assessments; referendum; grain indemnity fund

It is the purpose of this part to promote the state's welfare by improving the economic stability of agriculture. It is declared to be in the public interest and highly advantageous to the agricultural economy of the state that producers of grain be permitted, by referendum, to levy upon themselves an assessment of one cent (1¢) per bushel on soybeans and one-half cent (½ ¢) per bushel on all other grain, and provide for the collection of the assessment for the purpose of financing or contributing to the financing of the Tennessee grain indemnity fund, which is created as a separate fund within the department of agriculture to protect commodity producers in the event of the financial failure of a commodity dealer or warehouseman, and to ensure the existence of adequate funds so the commodity producers and claimants may be compensated for losses occasioned by the failure of a commodity dealer or warehouseman.

T. C. A. § 43-32-203
§ 43-32-203. Referendum; applications; procedure

(a) Any qualified producer organization may make application to the commissioner requesting a referendum of producers on forms prescribed by the commissioner for the purpose of determining whether an assessment of the amount specified in § 43-32-202 can be levied, collected and disbursed under this part.
(b) Within thirty (30) days of receipt of an application requesting a referendum, the commissioner shall make a determination of whether or not the petitioner is a qualified producer organization and, upon this determination, shall set a date for the referendum, which shall not be more than sixty (60) days after receipt of the application, and shall publish by any reasonable means, the date of the referendum, the polling places and the hours they will be open, the amount of the proposed assessment, and the date the assessment shall begin, if adopted.
(c)

(1) Any referendum held under this part shall be conducted statewide, under the control and direction of the commissioner. The polling place in each county shall be the offices of the University of Tennessee agriculture extension service. All ballots shall be provided at the polling place. All voting shall be by secret ballot.

(2)

(A) Each person seeking to vote in the referendum shall be required to file an affidavit stating that the person is a producer as defined in this chapter. Upon signing an affidavit, that person shall be eligible to vote. The question to be decided in the referendum shall be in the following form:

Shall the producers of __________ assess themselves at the rate of __________ cents per __________ of __________ sold, and use the funds so collected by the department of agriculture solely to finance the Tennessee grain indemnity fund in order to protect commodity producers in the event of the financial failure of a commodity dealer or warehouseman?

(B) The affirmative vote of the majority of the number of votes cast adopts the proposed assessment.

(3) Within ten (10) days after the referendum, the commissioner shall canvass the votes and publicly announce the result of the referendum.

T. C. A. § 43-32-205
§ 43-32-205. Applicability of part; cooperative agreements

(a) Every commodity dealer or warehouseman required to be licensed by the department, except for commodity dealers who are incidental grain dealers, unsecured, shall be subject to this part.

(b) The department shall be empowered to enter into a cooperative agreement with any commodity warehouse licensed under the United States Warehouse Act or with any federal agency to accomplish the purposes of this part.

T. C. A. § 43-32-206
§ 43-32-206. Assessments; deductions; refunds; out-of-state producers

(a) Upon an affirmative vote in the referendum, the commissioner shall notify forthwith by certified mail all persons in this state engaged in the business of purchasing commodities from producers, except for purchasers who are incidental grain dealers, unsecured, that on and after the date specified in the letter, the assessment specified in § 43-32-202 shall be deducted from the producer's payment by the purchaser or the purchaser's agent or representative from the purchase price of the commodities. The assessment so deducted shall, on or before the twentieth day of the month following the end of the month in which the commodities are sold to the purchaser, be remitted by the purchaser to the Tennessee grain indemnity fund. The books and records of all purchasers of commodities, which shall clearly indicate the producer and the amount of the assessment, shall be at all times open for inspection by the commissioner or the commissioner's agents during regular business hours. The commissioner or the commissioner's agents may take such steps as are reasonably necessary to verify the accuracy of books and records of purchasers of commodities.

(b) Any producer upon and against whom the assessment is levied and collected under this section, if dissatisfied with the assessment and its result, may demand of and receive from the Tennessee commodity producer indemnity fund a refund of the assessment collected from the producer. Requests for refunds shall be made within ninety (90) days of the date the amount was deducted. By voluntarily submitting to a refund, the producer foregoes any protection or compensation provided by the Tennessee grain indemnity fund.

(c)

(1) Producers who have requested and received a refund of an assessment pursuant to this part may re-enter the program by petitioning commissioner for approval of re-entry into the program and immediately upon mailing a petition for re-entry to the offices of the department,

placing an amount equal to all previous assessment refunds plus interest to that producer in an escrow account in a local bank, the previous assessments and the terms and conditions of the escrow account to be determined by the department.

(2) The commissioner shall review the producer's petition for re-entry and, if approved, the producer shall repay into the appropriate indemnity fund all previous assessment refunds as determined by the department. Producers re-entering the program pursuant to this section will be protected by the program ninety (90) days from the time all previous assessment refunds were placed in escrow.

(3) No producer will be granted protection of the grain producer indemnity program who has not been a participant in the program prior to meeting the criteria of a claimant.

(d) Commodity producers from outside Tennessee shall not be subject to the assessment if they certify to the commodity dealer or warehouseman that they are out-of-state producers. The department shall establish the form to be completed, signed and given to the commodity dealer or warehouseman in order to obtain the exemption. A copy of the form shall be kept as a part of the books and records by the commodity dealer or warehouseman and, in addition, a copy of the form shall be supplied to the department. A commodity producer from outside of Tennessee may be subject to the assessment and therefore awarded all the protection of this part if the producer so chooses and meets the requirements of this part. The commissioner may enter into a reciprocal agreement with a contiguous state having a similar program.

(e) The assessments by the department pursuant to this part are in addition to any other fees or assessments required by law.

T. C. A. § 43-32-207

§ 43-32-207. Assessments; suspension; reinstitution; adjustments; mandatory assessments

(a) The assessment shall continue on grain until the Tennessee grain indemnity fund is more than three million dollars ($3,000,000). If and when the fund is more than three million dollars ($3,000,000), the commissioner shall temporarily suspend the assessment. At such time the amount in the fund drops below three million dollars ($3,000,000), the commissioner may reinstitute the assessment; however, the assessment shall not exceed the assessment rate established by this chapter. Adjustments to the assessment can be made only once annually. At such time the fund has utilized funds from the revenue fluctuation reserve fund in accordance with § 43-32-209, and if, in the opinion of the commissioner, the assessment will not pay the state back, the commissioner may institute a mandatory assessment. This mandatory assessment shall be in effect only for as long as it takes to repay the revenue fluctuation reserve fund, and shall not be applicable to producers who were ineligible to receive benefits from the Tennessee grain indemnity fund at the time of the claim that resulted in the obligation to the revenue fluctuation reserve fund.

(b) Notwithstanding any other provisions of this part, any assessment initiated after July 1, 2011, shall continue until the balance of the fund is ten million dollars ($10,000,000), at which time the assessment shall be temporarily suspended. Assessments thereafter shall be reinstated when the fund balance is less than eight million dollars ($8,000,000).

T. C. A. § 43-32-208
§ 43-32-208. Assessments; investments

All assessments collected by the department pursuant to this part shall be in a separate fund and shall be used solely to carry out the purposes of this chapter. These funds may be invested and reinvested at the discretion of the state treasurer, and the interest from these investments shall be deposited to the credit of the fund and shall be available for the same purposes as all other money deposited in the Tennessee grain indemnity fund. The moneys in the Tennessee grain indemnity fund shall not be available for any purpose other than the payment of claims and for the administration of this chapter.

T. C. A. § 43-32-209
§ 43-32-209. Revenue fluctuation reserve funds; reimbursement

In the event that the amount in the Tennessee grain indemnity fund is insufficient to pay the approved claims from that fund, the commissioner of agriculture, with the approval of the commissioner of finance and administration and the appropriate standing committees of the general assembly, shall have access to the revenue fluctuation reserve fund for an amount sufficient to satisfy the unpaid claims. This access shall not exceed a maximum amount of one million five hundred thousand dollars ($1,500,000). The state shall be reimbursed, with interest, at the rate paid on ninety-day United States treasury bills, for any amounts paid under this section upon replenishment of the fund from the assessments on the appropriate commodity made pursuant to this part.

T. C. A. § 43-32-210
§ 43-32-210. Financial losses; compensation

(a) Within ninety (90) days of the commissioner's approval of a valid claim, the department shall, in accordance with this section, compensate from the Tennessee grain indemnity fund any claimant who has incurred a financial loss due to a failure of a commodity dealer or warehouseman.

> (1) Any claimant who has incurred a financial loss due to a failure of a commodity dealer shall be entitled to be compensated for eighty-five percent (85%) of a valid claim, to a maximum of one hundred thousand dollars ($100,000), with moneys from the Tennessee grain indemnity fund. To the maximum extent that funds are or may be made available for such purpose, the remaining balance of the claims shall be paid by the department from the assets and other security of the failed dealer.
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> (2) Any claimant who has incurred a financial loss due to the failure of a warehouseman and who has surrendered a warehouse receipt for payment or holds a warehouse receipt and cannot receive value shall be compensated for one hundred percent (100%) of the claim.

(b) To the extent that the balance of the grain indemnity fund increases as a result of § 43-32-207(b), the maximum amount per claimant set forth in subsection (a) shall be adjusted proportionately, so that the maximum amount per claimant shall be maintained at three and one-third percent (3 ⅓ %) of the balance of the grain indemnity fund at the time of a failure of a commodity dealer.

T. C. A. § 43-32-211
§ 43-32-211. Defaults; powers and duties of commissioner

The commissioner, upon determining that a commodity dealer or warehouseman has defaulted payment or failed, has the duty under this part, in addition to any other duties granted to the commissioner by law, to:
(1) Request the transfer of moneys from the Tennessee grain indemnity fund when necessary for the purpose of compensating claimants in accordance with § 43-32-210;
(2) Hold in trust any assets of a failed commodity dealer or warehouseman for the purposes of repayment of the Tennessee grain indemnity fund moneys used to pay claimants; any repayment to the appropriate indemnity fund shall not exceed the principal amount paid to claimants; and
(3) In the event that the amount in the Tennessee grain indemnity fund is insufficient to pay all valid claims in accordance with § 43-32-210, pay valid claims based on a pro rata share of available funds.

T. C. A. § 43-32-212
§ 43-32-212. Agriculture department; powers and duties

The department has the duty under this chapter to:
(1) Collect and deposit all fees and assessments authorized under this part into the Tennessee grain indemnity fund for investment by the fund;
(2) Transfer, at the discretion of the commissioner, any moneys from the department to the Tennessee grain indemnity fund for investment;
(3) Subrogate all the rights of the claimant. The claimant shall assign all rights, title and interest in any judgment to the department;
(4) Initiate any action it may deem necessary to compel the commodity dealer or warehouseman against whom an awarded claim arose to repay the Tennessee grain indemnity fund; and
(5) Initiate any action it may deem necessary to compel the claimant whose claim arose due to a failure to participate in any legal proceeding in relation to that claim.

T. C. A. § 43-32-213
§ 43-32-213. Rules and regulations

In accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, the commissioner shall promulgate such rules as may be necessary to effectively and efficiently administer and enforce this chapter.