Commodity Warehouses, Dealers and Producers

TENNESSEE COMMODITY DEALER AND WAREHOUSE LAW

43-32-101. Short title.

This part shall be known and may be cited as the "Tennessee Commodity Dealer and Warehouse Law."

43-32-102. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Claimant" means:

(A) Any producer or person, possessing warehouse receipts covering commodities owned or stored by the warehouseman;

(B) Any person with written evidence of ownership, other than warehouse receipts, disclosing a storage obligation of a commodity warehouseman, including scale tickets, settlement sheets and ledger cards;

(C) Any person who has lent money to a commodity warehouseman and who was to receive a warehouse receipt as security for that loan, but the commodity dealer or warehouseman failed within twenty-one (21) days after receiving the loan moneys and no warehouse receipt was issued;

(D) Any person who has surrendered warehouse receipts as a part of a commodities sale transaction, the commodity warehouseman failed within twenty-one (21) days thereafter and the person surrendering the warehouse receipt did not get fully paid therefor; or

(E) Any producer who possesses written evidence of the sale of commodities to a failed commodity dealer not limited to scale tickets, settlement sheets, price later contracts, basis contracts or similar commodities delivery contracts, but did not get fully paid therefor and who is unable to secure satisfaction of financial obligations due from a person licensed by the department in accordance with this chapter;

(2) "Commissioner" means the commissioner of agriculture, or the commissioner's designated representatives;

(3) "Commodity" means grain;

(4) "Commodity assets" means all commodities owned or stored by a failed commodity dealer or warehouseman, including commodities in transit that were shipped by the failed commodity dealer or warehouseman or failed warehouseman and for which payment has not been received; proceeds from sale or commodities due or to become due; the equity (net of any secured financing directly associated therewith) in assets in commodity exchange commodities margin accounts; any moneys due or to become due (net of any secured financing directly associated therewith) from any future contracts on any recognized commodity exchange; any other unencumbered funds or property or equity of the failed commodity dealer or warehouseman in funds or property wherever located that can be directly traced as being from the sale of commodities by the failed commodity dealer or warehouseman or failed warehouseman; provided, that any such funds, property, or equity in funds or property shall not be deemed to be encumbered unless the encumbrance results from good and valuable consideration advanced by any secured party on a bona fide basis; and provided further, that the encumbrance is not the result of the taking of the funds, property, or equity in funds or property as additional collateral for an antecedent debt; or other unencumbered funds, property, or equity in assets;

(5) "Commodity dealer" means any person engaged in the business of buying commodities from producers thereof for resale or for milling or processing. A producer of commodities buying commodities for the producer's own use as seed or feed shall not be considered as being engaged in the business of buying commodities for resale or for milling or processing;

(6) "Cooperative agreement" means any agreement made by the department with a person, local unit of

government, or state or federal agency as may be reasonable and proper to carry out this chapter;

(7) "Department" means the Tennessee department of agriculture;

(8) "Failure" means:

(A) An inability to financially satisfy a claimant in accordance with applicable statute or regulation and the time limits provided therein, if any;

(B) A declaration of insolvency;

(C) A revocation of license and leaving of outstanding indebtedness to claimants;

(D) A failure to pay claimants in the ordinary course of business where a bona fide dispute does not exist between a commodity dealer or warehouseman and a customer;

(E) A failure to apply for license renewal;

(F) A denial of license renewal; or

(G) A voluntary surrendering of a license;

(9) "Grain" means corn, wheat, oats, rye, soybeans, rape seed, canola and grain sorghums;

(10) "Incidental commodity dealer" means any commodities dealer who purchases commodities from producers and whose total purchases of commodities during any fiscal year do not exceed one hundred thousand dollars ($100,000);

(11) "Incidental commodity dealer, nonsecured" means a commodities dealer who purchases commodities from producers and whose total purchases during any fiscal year do not exceed one hundred thousand dollars ($100,000), and who has notified the commissioner on the dealer's license application or renewal application that the dealer has opted not to maintain a security instrument;

(12) "Person" includes an individual, corporation, partnership and all associations of two (2) or more persons having a joint or common interest;

(13) "Producer" means the owner, tenant or operator of land in this state who has an interest in and receives all or any part of the proceeds from the sale of the commodities produced thereon;

(14) "Program" means the Tennessee commodity producer indemnity program;

(15) "Stored commodities" means any commodities received in any commodities warehouse, located in this state, if such commodities are not purchased and beneficially owned by the commodities warehouseman;

(16) "United States Warehouse Act" means the United States Warehouse Act, enacted August 11, 1916, as amended;

(17) "Valid claim" means a claim arising from a failure of a commodity dealer or warehouseman that occurs after July 1, 1989, and adjudicated valid by the commissioner, net of all credits and offsets, and in accordance with § 43-32-210;

(18) "Warehouse" or "commodities warehouse" means any building, structure, or other protected enclosure in this state used for the purpose of storing commodities for a consideration;

(19) "Warehouse receipt" means:

(A) A warehouse receipt issued under this chapter in accordance with the Uniform Commercial Code; or

(B) A warehouse receipt issued under the United States Warehouse Act; and

(20) "Warehouseman" or "commodities warehouseman" means any person who owns, controls or manages a public commodities warehouse in which commodities are stored for compensation and who is authorized to issue warehouse receipts, and includes any grain warehouse licensed under the United States Warehouse Act that has entered into a cooperative agreement.

43-32-103. Federally licensed commodity warehouses -- Applicability.

Any commodity warehouse licensed under the United States Warehouse Act shall be subject to this chapter. However, any federally licensed commodity warehouse that meets the minimum requirements of the federal act shall be in compliance with the requirements of this part. All public commodity warehouses licensed under the United States Warehouse Act shall file with the commissioner a copy of their current license and a copy of all subsequent licenses or renewals so as to always have a copy of a current license on file with the commissioner.

43-32-104. Warehouse receipts.

(a) The commissioner shall prescribe the form of all warehouse receipts, and no other character or form of warehouse receipt shall be issued except those so authorized.

(b) Receipts must be issued for all commodities stored in a warehouse. Receipts need not be issued against nonstorage commodities, but each warehouseman shall keep accurate records of the weights, kinds, and grades, if graded, of all lots of nonstorage commodities received into and delivered from the warehouseman's warehouse.

(c) (1) No warehouse receipt shall be issued except on actual delivery of commodities into storage in the warehouse from which it purports to be issued, nor shall any receipt be issued for a greater quantity of commodities than was contained in the lot or parcel so received from storage, nor shall more than one (1) receipt be issued for the same lot of commodities, except in cases where a receipt for a part of a lot is desired, and then the aggregate receipts for a particular lot shall cover that lot and no more.

(2) No warehouseman shall issue or aid the issuance of a receipt for commodities knowing that the commodities for which the receipt is issued and has not actually been received by the warehouseman or that the commodities are not under the warehouseman's actual control at the time of issuing the receipt.

43-32-105. Licensing requirements -- Application.

(a) No person shall engage in business as a commodity dealer or warehouseman in the state of Tennessee without a license therefor issued by the department.

(b) Application for a license to engage in business as a commodity dealer or warehouseman shall be filed with the department and shall contain information and be in a form as prescribed by the department by lawfully promulgated rule.

(c) The application for an initial license may be filed at any time prior to beginning business as a commodity dealer or warehouseman. However, the license shall terminate ninety (90) days after the close of the commodity dealer's or warehouseman's fiscal year.

(d) The application for a renewal of a license shall be filed with the department annually within ninety (90) days after the close of the commodity dealer's or warehouseman's last completed fiscal year or within such further time, not exceeding sixty (60) days, as the department, upon application, may allow.

(e) For all commodity dealer or warehouseman licenses, with the exception of incidental commodity dealers, nonsecured, the application shall be accompanied by a financial statement setting forth information as prescribed by the commissioner by lawfully promulgated rule.

(f) The application for a license to operate as a commodity dealer or warehouseman, as defined in this chapter, or a renewal thereof, shall be accompanied by a filing fee of one hundred fifty dollars ($150). The application for a license to operate as an incidental commodity dealer as defined in this chapter, or a renewal thereof, shall be

accompanied by a filing fee of fifty dollars ($50.00).

(g) The license or renewal thereof issued by the department under this section shall be posted in the principal office of the licensee in this state. A certificate shall be posted in each location listed on a licensee's application where the licensee engages in the business of buying or storing commodities. In the case of a licensee operating a truck or tractor trailer unit, the licensee is required to have a certificate that the license is in effect, and that a bond or certificate of deposit has been filed, carried in each truck or tractor trailer unit used in connection with the purchase of commodities from producers. Upon request of a licensee and payment of the fee therefor, the department shall issue to the licensee a certificate that a license has been issued or renewed and a bond filed as required by this chapter.

(h) The license issued to an incidental commodity dealer, nonsecured shall clearly state: "Producers are not eligible to receive indemnification from the Tennessee grain indemnity fund if payment is not made for commodities delivered to this dealer." Additionally, this statement shall also be posted adjacent to the license issued to the dealer in the location required by this part. The notice shall be in print no smaller than two inches (2'') in letter height. This statement shall also be placed on the receipt or scale ticket issued to the seller, with a place for the seller's signature provided on each receipt or scale ticket. The signature of the seller or the seller's representative shall be affixed to each receipt or scale ticket.

43-32-106. Financial requirements -- Security bonds -- Insurance.

(a) With the exception of incidental commodity dealers, nonsecured, every person licensed as a commodity dealer or warehouseman shall have a surety bond and a fire and extended coverage insurance policy, or proof thereof, both of which shall be noncancellable for the term of the license.

(b) The surety bond shall provide a reasonable level of protection for those persons storing commodities in the warehouse or selling commodities to a dealer in the event of bankruptcy, fraud, or other occurrence that would deprive the person storing or selling commodities from recovering its value. This surety bond shall be in an amount established by the commissioner by duly promulgated rules. These bonding requirements are subject to a twenty thousand dollar ($20,000) minimum and a five hundred thousand dollar ($500,000) maximum limit.

(c) The fire and extended coverage insurance policy shall be in an amount set by the commissioner by rule and regulation.

(d) The bond and insurance policy shall be for the benefit of the persons storing commodities with the warehouseman, and shall be conditioned to provide the protection described in this section.

(e) The premiums on the bond or insurance shall be paid by the licensee.

(f) Any commodity dealer or warehouseman may file with the department, in lieu of a surety bond, a certificate of deposit or an irrevocable letter of credit payable to the department with the commissioner as trustee. The principal amount of the certificate shall be the same as that required for a surety bond under this chapter and the interest thereon shall be made payable to the purchaser thereof.

(g) The surety bond or certificate of deposit in effect on the date of a warehouseman's license revocation, license suspension, cessation of operation or date of default as determined by the department shall be liable for and accrue liabilities not to exceed the principal of the surety bond or certificate of deposit.

(h) When the department determines that an applicant's or licensee's ability to pay producers for commodities purchased is in question, or when it determines that a commodity dealer or warehouseman does not meet the financial requirements of this chapter, it may require additional collateral security. Such collateral security may include, but is not limited to, irrevocable letters of credit, certificates of deposit, commercial surety bonds, and, on a negotiated basis, mortgages or deeds of trust on real property, personal or corporate guarantees or other guarantees. Failure to post collateral security shall constitute grounds for suspension or revocation of a license issued under this chapter.

(i) Any commodity dealer or warehouseman who is of the opinion that such person's net worth and assets are sufficient to guarantee payment to producers for commodities purchased or stored by that person may request the

department to be relieved of the obligation of filing a bond in excess of the minimum bond of twenty thousand dollars ($20,000). The conditions under which such requests shall be granted shall be established by the commissioner in duly promulgated rules.

43-32-107. Inspections -- License suspension or revocation.

(a) The department shall examine or inspect each licensed commodity dealer or warehouseman at least once each calendar year. The department may inspect the premises used by any commodity dealer or warehouseman in the conduct of business at any time, and the books, accounts, records and papers of every licensed commodity dealer or warehouseman shall at all times during business hours be subject to inspection by the department. Each commodity dealer or warehouseman may also be required to make such reports of activities, obligations, and transactions as deemed necessary by the department to protect the producer as set forth in the rules and regulations.

(b) If a commodity dealer or warehouseman violates any of the provisions of this chapter, that person's license and certificate of license may be removed from that person's premises by any department employee charged with the enforcement of this chapter and returned to the department. This removal shall constitute a suspension of the license, and the licensee may request a hearing before the commissioner within ten (10) days in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) If the department finds that a commodity dealer is licensed as a commodities warehouse under the United States Warehouse Act and does not satisfy the requirements of part 2 of this chapter, the commissioner shall suspend or revoke the dealer's license until such time as the commodities warehouse complies with the Tennessee Commodity Producer Indemnity Act, compiled in part 2 of this chapter.

(d) If any court of competent jurisdiction issues any order restraining, overturning or modifying any order of the department that suspends or revokes a commodity dealer's or warehouseman's license, the department, its officers, employees and agents shall be held harmless from any liabilities or financial obligations arising out of the operations of the commodity dealer or warehouseman while operating under the court order.

43-32-108. Insolvency -- Payment defaults.

(a) If it is discovered that any commodity dealer or warehouseman is insolvent, or that its continuance in business will seriously jeopardize the interest of its creditors or commodities depositors, it is the duty of the commissioner to close that dealer or warehouseman and to take charge of all the property and effects thereof, and to notify the surety. Upon taking charge of any such dealer or warehouseman, the commissioner shall, as soon as practicable, ascertain by a thorough examination into its affairs, its actual financial condition, and whenever the commissioner becomes satisfied that the commodity dealer or warehouseman cannot resume business or liquidate its indebtedness to the satisfaction of its creditors, the commissioner shall report the fact of its insolvency to the attorney general and reporter, who shall immediately upon receipt of this notice institute proper proceedings in the proper court for the purpose of having a receiver appointed.

(b) With the exception of incidental commodity dealers, nonsecured, if a commodity dealer or warehouseman fails or refuses to make payment for or deliver to a producer for commodities when requested, the producer shall notify the commissioner in writing of the failure or refusal within one hundred sixty (160) days of the date of sale or the date of delivery of the commodities to the commodity dealer or warehouseman, whichever is later, but in case of deferred pricing, delayed pricing, priced later, or similar contractual arrangements, no more than two hundred seventy (270) days after the date of delivery. The commissioner, upon receiving this notice, shall take whatever action is necessary. The producer furnishing written notice within the prescribed length of time is entitled to the benefits of the commodity dealer's or warehouseman's bond. However, if a producer fails to furnish written notice to the commissioner within the prescribed time, then that producer is not entitled to any benefits under the commodity dealer's or warehouseman's bond and part 2 of this chapter. Commodity dealer liability under price later contracts, open price contracts, deferred price contracts, or similar agreements shall accrue under the bond in effect at the date of default as determined by the commissioner.

(c) With the exception of incidental commodity dealers, nonsecured, when the commissioner has determined that a commodity dealer has defaulted payment to producers for commodities that the dealer has purchased from them, or that a warehouseman failed to deliver value for commodities stored, the commissioner shall determine through

appropriate legal procedures the producers and the amount of defaulted payment, and as trustee of the bond, shall immediately after such determination call for the commodity dealer's surety bond or bonds to be paid to the commissioner for distribution to those producers who should receive the benefits. Should the defaulted amount owed producers be less than the principal amount of the bond or bonds, then the surety shall be obligated to pay only the amount of the default.

(d) Notwithstanding subsections (b) and (c), an incidental commodity dealer, nonsecured, by opting not to maintain a security instrument, causes the producers from whom the dealer purchases commodities to be ineligible to receive indemnification from the Tennessee grain indemnity fund in the event the dealer fails to make payment for the commodities delivered to the dealer.

43-32-109. Violations -- Penalties.

(a) With the exception of incidental commodity dealers, nonsecured, failure of a commodity dealer or warehouseman to file a bond or certificate of deposit and to keep the bond or certificate of deposit in force or to maintain assets adequate to assure payment to producers for commodities purchased from or stored for them shall be grounds for the suspension or revocation of a license issued under this chapter.

(b) Any person who engages in business as a commodity dealer or warehouseman without securing a license, or who does not have a valid license or is in violation of this chapter or the rules and regulations promulgated under this chapter, or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the commissioner or the commissioner's duly authorized agent in the performance of that officer's duty in connection with this chapter or its rules and regulations, or any commodity dealer or warehouseman, or any officer, agent or employee of a commodity dealer or warehouseman, who refuses to permit inspection of that person's premises, books, accounts, or records as provided in this chapter commits a Class A misdemeanor. In case of a continuing violation or violations, each day that each violation occurs constitutes a separate and distinct offense.

(c) Any commodity dealer or warehouseman, or officer, agent, or employee of a commodity dealer or warehouseman, who withholds records, keeps or files false records or who inaccurately alters records or presents to the department any materially false records commits a Class E felony.

(d) It is the duty of each district attorney general to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in the appropriate court without delay. Before the commissioner reports a violation for prosecution, the commissioner may give the commodity dealer or warehouseman, or the officer, agent or employee of the commodity dealer or warehouseman, an opportunity to present such person's views at a hearing.

(e) The commissioner may file a complaint and apply for, and the appropriate court may grant, a temporary restraining order or preliminary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rules and regulations promulgated under this chapter, notwithstanding the existence of other judicial remedies. Any such injunction may be entered without notice and without bond.

(f) The commissioner may prohibit a commodity dealer or warehouseman from disposing of any commodities owned, in whole or in part, or held or in that person's possession, whether owned in whole or in part, or may prohibit anyone from removing any commodities in which the commodity dealer or warehouseman or producers from which that person has purchased commodities have an interest; and shall have authority for the disposition of the commodities to carry out the intent of this chapter.

43-32-110. Use of price later contracts -- Rules and regulations.

The commissioner may regulate the use of price later contracts by the promulgation of any rule or regulation the commissioner may deem necessary.

TENNESSEE COMMODITY PRODUCER INDEMNITY LAW

43-32-201. Short title.

This part shall be known and may be cited as the "Tennessee Commodity Producer Indemnity Law."

43-32-202. Purpose -- Tennessee 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 (1cent(s)) per bushel on soybeans and one-half cent (1/2cent(s)) 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.

43-32-203. Referendum of producers -- 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.

43-32-204. [Repealed.]

43-32-205. Applicability -- Department powers.

(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.

43-32-206. Assessments -- Notice -- Refunds -- Applicability.

(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.

43-32-207. Assessment -- Suspension -- Reinstatement.

(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).

43-32-208. Assessments -- Collection -- Fund management.

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.

43-32-209. Access to reserve funds.

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.

43-32-210. Compensation of claimants.

(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.

(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 (31/3%) of the balance of the grain indemnity fund at the time of a failure of a commodity dealer.

43-32-211. Commission -- Duties.

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.

43-32-212. Department of agriculture -- 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.

43-32-213. Rules.

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.