

TITLE 22
AGRICULTURE AND HORTICULTURE

CHAPTER 51
SEED INDEMNITY FUND LAW

22-5101. SHORT TITLE OF ACT. This act shall be known as the "Seed Indemnity Fund Law."

[22-5101, added 2002, ch. 256, sec. 1, p. 736.]

22-5102. DEFINITIONS. As used in this chapter:

(1) "Contract" means an agreement which may include, but is not limited to, those contracts commonly referred to as production, credit sale, bailment, deferred payment, deferred or price later contracts.

(2) "Delivery voucher" means a form, other than a receipt or scale weight ticket, authorized by rules of the department evidencing delivery of a producer's seed crop to a seed buyer.

(3) "Department" means the Idaho state department of agriculture.

(4) "Deposit for service" means the transfer of a seed crop to a seed buyer or a person not licensed under this chapter for the purpose of cleaning, mixing, conditioning or other services related to the seed crop, provided such services are not offered in conjunction with a stored for withdrawal agreement.

(5) "Director" means the director of the Idaho state department of agriculture.

(6) "Failure" means the date that one (1) or more of the following events occurred, as determined by the director:

(a) An inability to financially satisfy producers;

(b) A declaration of insolvency;

(c) A revocation of license and the leaving of an outstanding indebtedness to a producer;

(d) A failure to redeliver any seed crop stored for withdrawal or to pay producers for seed crop pursuant to the terms of an agreement; or

(e) A denial of the application for a license renewal.

(7) "Person" means any individual, firm, association, corporation, partnership or limited liability company.

(8) "Producer" means the owner, tenant or operator of land in this state who has an interest in the proceeds from the sale of seed crops grown on that same land. Producer does not include growers of seed crop who deposit their seed crop in a seed facility in which they have a financial or management interest, except members of a cooperative marketing association qualified under [chapter 26, title 22](#), Idaho Code.

(9) "Production summary" means records that include, but are not limited to, the kind and type of seed crop, producer name and address, location and number of acres, clean seed per acre, value per pound and, when applicable, the contract number and lot identity.

(10) "Receipt" means a warehouse receipt.

(11) "Scale weight ticket" means a load slip, other than a receipt, given to a producer by a seed buyer for transfer of the seed crop to the seed buyer. Each scale weight ticket shall be sequentially numbered, shall be recorded in triplicate and shall set forth the following:

(a) Name and address of seed buyer;

(b) Date of weighing;

- (c) Producer of seed crop weighed;
- (d) Kind or variety of seed crop weighed;
- (e) Gross delivery weight;
- (f) Tare;
- (g) Net delivery weight; and
- (h) Full signature of weigher or name of supervisor of scale.

(12) "Seed buyer" means any person having a commercial operation, its agents and employees, together with its elevators, mills, buildings, or other structures who owes or has any financial obligation to the producer for seed crop grown by that producer and transferred to the seed buyer.

(13) "Seed crops" means any seed crop regulated by [chapter 4, title 22](#), Idaho Code.

(14) "Seed facility" means:

- (a) That portion of the commercial operation of a seed buyer where seed crop transferred to it from an unpaid producer is stored; or
- (b) Where seed crop is stored for withdrawal.

(15) "Stored for withdrawal" means the deposit of seed crop with a seed facility by the producer for the subsequent withdrawal by that producer of the same seed crop or similar seed crop, as agreed to by the parties.

(16) "Transfer" means, unless otherwise defined by the parties in writing, the event when a producer or his agent delivers seed crop to the seed buyer who then gives the producer or his agent a scale weight ticket, receipt, or other written evidence of transfer.

(17) "Uninsurable peril" means an event or situation for which insurance coverage cannot be purchased, or for which premiums are economically prohibitive including, but not limited to, catastrophic destruction and damage that occurs gradually. Catastrophic destruction includes, but is not limited to, earthquakes, acts of terrorism and floods. Destruction that occurs gradually includes, but is not limited to, insect and rodent infestation, and mold.

(18) "Written evidence of transfer" means:

- (a) A delivery voucher;
- (b) A receipt; or
- (c) A scale weight ticket.

[22-5102, added 2002, ch. 256, sec. 1, p. 737; am. 2010, ch. 100, sec. 1, p. 192.]

22-5103. LICENSES. (1) Prior to beginning operation, a person intending to operate as a seed buyer shall first procure a license from the department. Each license issued pursuant to this chapter shall be issued for a period of one (1) year and the license or legible copy thereof shall be prominently displayed in each place of business.

(2) A seed facility endorsement showing the location of each seed facility in Idaho shall be attached to the seed buyer's license.

(3) The department is authorized to issue or renew a seed buyer license in accordance with this chapter, and the rules promulgated by the department provided each applicant meets the following conditions:

- (a) Pay an application fee of up to five hundred dollars (\$500) pursuant to criteria established by rule, with the exception of those persons holding a license issued pursuant to [chapter 4, title 22](#), Idaho Code;
- (b) Submit a completed application form provided by the department, with required exhibits. The application shall include:
 - (i) The name of the applicant;

- (ii) The names of the officers and directors if the applicant is a corporation or association;
 - (iii) The names of the partners if the applicant is a partnership or a limited liability company;
 - (iv) The location of the principal place of business;
 - (v) Information relating to any judgment against the applicants; and
 - (vi) Any other reasonable information the department finds necessary to carry out the provisions and purposes of this chapter.
- (c) Provide a sufficient and valid bond as required by this chapter;
 - (d) Provide a current, sufficient policy of insurance covering losses as required by this chapter;
 - (e) Provide the location of its seed facilities in Idaho;
 - (f) Provide a written schedule of conditioning, bagging and testing charges;
 - (g) Have on file a test report pursuant to sections [71-113](#) and [71-117](#), Idaho Code, from the Idaho state department of agriculture bureau of weights and measures showing approved status for any scales used for weighing received seed crops and any scales used for weighing clean weight of seed crops; and
 - (h) Provide with the initial license application an audited or reviewed financial statement prepared by an independent certified public accountant or licensed public accountant showing that the applicant has and does maintain a balance sheet with current assets not less than current liabilities, a statement of profit or loss, a statement of net worth and a statement of cash flows, all of which have been prepared according to generally accepted accounting principles not more than twelve (12) months prior to the date of the initial license application and additional financial information as determined by the director.
- (4) All fees collected, pursuant to this chapter, for license application and renewal shall be deposited in the seed indemnity fund.
- (5) All materials required for renewal of a license shall be received by the department prior to the expiration date of the current license. A license which has expired may be reinstated by the department upon receipt of all necessary licensing materials required by the provisions of this chapter and a reinstatement fee in an amount up to one thousand dollars (\$1,000) pursuant to criteria established by rule, providing that this material is filed within thirty (30) days from the date of expiration of the current license.
- (6) A delivery of seedcrop between producers, none of whom are seed buyers, shall be exempt from the provisions of this chapter.

[22-5103, added 2002, ch. 256, sec. 1, p. 738; am. 2010, ch. 100, sec. 2, p. 194.]

22-5104. BONDS -- IRREVOCABLE LETTERS OF CREDIT -- CERTIFICATES OF DEPOSIT -- SINGLE BOND. Every person applying for a license shall execute and file with the department a good and sufficient bond issued by an insurer authorized to transact such insurance in this state. The bond shall be in favor of the seed indemnity fund to secure the faithful performance of the applicant's obligations under this chapter, and of such additional unpaid obligations assumed under agreements with producers of seed crops transferred to or deposited with the applicant. Said bond shall be in such form and amount, shall have such surety or sureties, and shall contain such terms and conditions as the department may prescribe to carry out the purposes of this chap-

ter. Whenever the department determines that a previously approved bond is insufficient, it may require an additional bond or bonds conforming with the requirements of this chapter. Unless the additional bond is given within the time fixed by a written demand therefor, the license may be suspended or revoked.

At the discretion of the director, any person required to submit a bond to the department may give to the department an irrevocable letter of credit or certificate of deposit payable to the seed indemnity fund in lieu of the bond required herein. A certificate of deposit shall be submitted with an audited or reviewed financial statement prepared in accordance with the rules of the department by an independent Idaho certified public accountant or Idaho licensed public accountant. The principal amount of the letter of credit or certificate of deposit shall be the same as that required for a surety bond pursuant to this chapter. The letter of credit or certificate of deposit shall remain on file with the department until it is released, canceled or discharged by the director or until the director is notified ninety (90) days in advance, by registered or certified mail, return receipt requested, that the letter of credit or certificate of deposit is renewed, canceled or amended. Failure to notify the director may result in the suspension or revocation of the seed buyer license. The provisions of this chapter that apply to a bond apply to each letter of credit or certificate of deposit given in lieu of such bond. Under the provisions of this chapter, an irrevocable letter of credit or certificate of deposit shall not be accepted unless it is issued by a national bank or federal thrift institution in Idaho or by a state-chartered bank or thrift institution authorized to conduct business in Idaho and insured by the federal deposit insurance corporation.

If a seed buyer is also licensed pursuant to either chapter 2 or 5, [title 69](#), Idaho Code, that seed buyer may obtain a single bond, certificate of deposit or irrevocable letter of credit as surety for both [chapter 51, title 22](#), Idaho Code, and chapter 2 or 5, [title 69](#), Idaho Code. The bond, certificate of deposit or irrevocable letter of credit shall be made out in favor of the commodity indemnity fund and the seed indemnity fund. In the event a seed buyer fails as defined in section [22-5102](#) (6), Idaho Code, and a single bond, certificate of deposit or irrevocable letter of credit is written in favor of the commodity indemnity fund and seed indemnity fund, the proceeds of the bond, certificate of deposit or irrevocable letter of credit will be allocated based on the dollar amount of the verified claims approved pursuant to [chapter 51, title 22](#), Idaho Code, and [chapter 2, title 69](#), Idaho Code.

[22-5104, added 2002, ch. 256, sec. 1, p. 739; am. 2003, ch. 151, sec. 1, p. 434; am. 2010, ch. 100, sec. 3, p. 195.]

22-5105. AMOUNT OF BOND -- NOTICE OF CANCELLATION. The amount of bond to be furnished for each seed buyer will be fixed at whichever of the following amounts is greater:

- (1) The combined total seed buyer indebtedness paid and owed to producers for seed crop stored for withdrawal or transferred during the previous license year; or
- (2) The indebtedness owed and estimated to be owed to producers for seed crop for the current license year.

Subsequent to determining whichever of the preceding amounts is greater, and based on that amount, the amount of bond shall be calculated as follows:

Gross Dollars:	Amount of Bond:
\$0 - \$450,000	\$20,000 bond or 6% of the gross dollars, whichever is less
\$450,001 - \$1,000,000	\$40,000 bond
\$1,000,001 - \$8,000,000	\$100,000 bond
Over \$8,000,000	\$500,000 bond

In any case, the amount of the bond shall not be more than five hundred thousand dollars (\$500,000). This bond shall run concurrently with the seed buyer's license. A ninety (90) day written notice, by registered or certified mail, return receipt requested, shall be given to the director by the bonding company before it may amend or cancel any bond.

[22-5105, added 2002, ch. 256, sec. 1, p. 739; am. 2003, ch. 151, sec. 2, p. 436.]

22-5106. ACTION BY PRODUCER INJURED. Any producer injured by the breach of any financial obligation for which a bond, irrevocable letter of credit or certificate of deposit is written under this chapter, must petition the director to make demand upon the seed buyer, the certificate of deposit, irrevocable letter of credit, or on the bond to enforce payment of claims.

[22-5106, added 2002, ch. 256, sec. 1, p. 740; am. 2003, ch. 151, sec. 3, p. 436.]

22-5107. FEES. (1) The department shall assess and collect a fee of one hundred dollars (\$100) for each inspection of a licensee, which is done for the purpose of amending a seed buyer license.

(2) The department may assess and collect a fee of two hundred fifty dollars (\$250) per day or fraction thereof for maintaining each employee of the department at a seed buyer's location to oversee the correction of a violation of the provisions of this chapter or department rules.

[22-5107, added 2002, ch. 256, sec. 1, p. 740.]

22-5108. RECEIPTS -- SCALE WEIGHT TICKETS. Warehouse receipts or scale weight tickets shall be issued by the seed buyer to the producer:

- (1) At the time of deposit for storage for withdrawal of the seed crop;
- or
- (2) At the time of transfer of the seed crop.

[22-5108, added 2002, ch. 256, sec. 1, p. 740.]

22-5109. MAINTENANCE OF RECORDS -- EXAMINATION OF RECORDS -- AUTHORIZATION TO COPY. The seed buyer shall maintain current and complete records at all times with respect to all seed crops handled, deposited, shipped or merchandised by it, including seed crops owned by it. Such records shall include, but are not limited to, records showing the total quantity of each kind and class of seed crop received and loaded out and the amount remaining on deposit at the close of each business day.

Records required by this section shall be legible and kept in a place of safety in this state for a period of five (5) years. If a person operates at

more than one (1) location, records of each location's transactions must be identifiable.

The department is authorized to examine records to confirm the proper collection and remittance of seed indemnity fund assessments and payments. The records subject to examination shall include, but are not limited to, receipts, scale weight tickets, conditioning records, production summaries, and payments to producers. The department is authorized to make copies of any documents or records relevant to compliance with the provisions of this chapter.

[22-5109, added 2002, ch. 256, sec. 1, p. 740; am. 2003, ch. 151, sec. 4, p. 437.]

22-5110. VIOLATIONS -- PENALTIES -- DISCRETION OF DIRECTOR TO HANDLE ADMINISTRATIVELY. (1) Any person who violates any provision of this chapter or the rules promulgated hereunder, or who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent the director or his duly authorized representative in the performance of his duty in connection with the provisions of this chapter shall be guilty of a misdemeanor and be punished by imprisonment in a county jail not to exceed six (6) months, or by a fine of not more than one thousand dollars (\$1,000), or by both.

(2) Any person operating as a seed buyer without a license or in any way representing, by actions or words, that they are so licensed when they are not, or any person who shall misrepresent, forge, alter, counterfeit or falsely represent a license as required by the provisions of this chapter shall be guilty of a felony and punished by imprisonment in the state prison for not more than ten (10) years, or by a fine of not more than ten thousand dollars (\$10,000), or by both.

(3) Any person who shall issue, utter, or aid in the issuance or utterance or attempt to issue or utter a false or fraudulent receipt or scale weight ticket for any seed crop shall be guilty of a felony and punished by imprisonment in the state prison for not more than ten (10) years, or by a fine of not more than ten thousand dollars (\$10,000), or by both.

(4) Any person violating any provision of this chapter, or rules promulgated under this chapter, may be assessed a civil penalty by the department equal to the loss for each offense or five hundred dollars (\$500) a day for continuing violations. Persons against whom civil penalties are assessed shall be liable for the department's reasonable attorney's fees. Civil penalties may be assessed in conjunction with any other department administrative action. Moneys collected for violations of this section or rules promulgated under this section shall be deposited in the state treasury and credited to the seed indemnity fund.

(5) Nothing in this chapter shall be construed as requiring the director to report minor violations for prosecution when he believes that the public interest will be best served by suitable warnings or other administrative action. The director shall maintain a record of any administrative action involving a seed buyer with that seed buyer's license file.

[22-5110, added 2002, ch. 256, sec. 1, p. 740.]

22-5111. SUSPENSION OR REVOCATION OF LICENSE. Pursuant to [chapter 52, title 67](#), Idaho Code, the department may suspend or revoke any license issued under the provisions of this chapter, for any violation of, or failure to comply with, any provision of this chapter or [chapter 7, title 28](#), Idaho

Code. Pending investigation, the department, whenever it deems necessary, may suspend a license temporarily without a hearing.

[22-5111, added 2002, ch. 256, sec. 1, p. 741; am. 2004, ch. 42, sec. 34, p. 134.]

22-5112. DUTY TO PROSECUTE. It shall be the duty of each prosecuting attorney to whom a violation is reported by the department, to cause appropriate proceedings to be instituted and prosecuted without delay in a court of competent jurisdiction.

[22-5112, added 2002, ch. 256, sec. 1, p. 741.]

22-5113. NOTICE OF NONCOMPLIANCE -- REQUIREMENTS -- FAILURE TO COMPLY -- REMEDIES OF DEPARTMENT. (1) Whenever a seed buyer is not meeting its obligations to producers, does not have the ability to pay producers, or refuses to submit records and papers to lawful inspection, the department shall give written notice to the seed buyer and direct the seed buyer to comply with all or any of the following requirements:

(a) The department may require additional security or the posting of a bond in an amount sufficient to satisfy any financial obligation to producers. The additional security may exceed the maximum bonding requirements of this chapter. Failure to timely post the additional bond or other security constitutes grounds for suspension or revocation of a license. The seed buyer may request a hearing regarding the decision to increase the amount of security required or the revocation or suspension of a license and may appeal such decisions pursuant to [chapter 52, title 67](#), Idaho Code.

(b) Submit to such inspection as the department may deem necessary.

(2) If the seed buyer fails to comply with the terms of such notice within twenty-four (24) hours from the date of issuance of the notice, or within such further time as the department may allow, the department may petition the district court in the county where the seed buyer's principal place of business is located, as shown by the license application, for an order, according to section [22-106](#), Idaho Code.

(3) The department may give written notice of its action to the seed buyer's surety.

(4) The department may require an audited or reviewed financial statement.

(5) If at any time the department has evidence that the seed buyer is insolvent or is unable to satisfy the claims of producers, the department may petition the district court for the appointment of a receiver to operate or liquidate the business of the seed buyer.

(6) All court costs, attorney's fees, other professional fees, and necessary expenses incurred by the department in carrying out the provisions of this chapter may be recovered in any civil action brought by the department.

[22-5113, added 2002, ch. 256, sec. 1, p. 741.]

22-5114. INSURANCE -- CANCELLATION PROCEDURE -- SUSPENSION OF LICENSE -- SELF-INSURANCE. (1) Every seed buyer who has a seed facility where seed crops are stored for withdrawal or transferred, shall maintain a "commercial property policy" of insurance, or its equivalent, issued by a company qualified to do business in the state in which the facility is located. The amount

of insurance shall be sufficient to cover the property loss of the insured and such additional amounts that are: (a) greater than or equal to the total seed buyer indebtedness and the value of seed crop stored for withdrawal during the previous license year, or (b) estimated current calendar year seed crop indebtedness to producers and the value of seed crop to be stored for withdrawal. The department rules shall enumerate the perils to be covered by the policy.

(2) The insurance company issuing the policy of insurance shall give ninety (90) days' advance notice to the department by registered or certified mail, return receipt requested, of cancellation of the policy.

(3) When the insurance policy of a seed buyer is canceled, the department shall immediately suspend the license of the seed buyer, and the suspension shall be in effect until satisfactory evidence exists that an effective policy of insurance complying with the requirements of this chapter has been submitted to the department.

(4) Seed buyers desiring to be self-insured shall apply to the department for authorization to self-insure. Application shall be made on forms prescribed by the department.

[22-5114, added 2002, ch. 256, sec. 1, p. 742.]

22-5115. LICENSE REISSUANCE FOLLOWING REVOCATION. A seed buyer license shall not be issued to any person whose license has been revoked within a period of three (3) years from the date of such revocation. Upon application for a license following revocation, the department shall hold a hearing within thirty (30) days from receipt of the application to determine if such license shall be issued. A change in a person's business name shall not absolve that person of a prior revocation of his seed buyer license.

[22-5115, added 2002, ch. 256, sec. 1, p. 742.]

22-5116. DEPARTMENT'S AUTHORITY. The department may, whenever it has reason to believe the provisions of this chapter have been violated or upon verified complaint of any person in writing, investigate the actions of any seed buyer, and if it finds cause to do so, file before the director, a complaint pursuant to [chapter 52, title 67](#), Idaho Code, against the seed buyer requesting relief as authorized by this chapter. Notwithstanding any administrative processes, the director may apply to the appropriate court to enjoin the operations of the seed buyer.

[22-5116, added 2002, ch. 256, sec. 1, p. 743.]

22-5117. LICENSE DENIAL. (1) Any seed buyer against whose bond a claim has been ordered collected or has actually been collected shall not be licensed by the department for a period of three (3) years from the date of such order or collection. License denial may be waived if the person can show, to the satisfaction of the director, that full settlement of all claims against the bond have been made. Full settlement does not include seed indemnity fund settlements. A change in a person's business name shall not absolve any unsettled claim against that person's prior bond.

(2) The director may deny the issuance or renewal of a license to an applicant after a public hearing and based on the following criteria:

(a) The applicant failed or refused to make prior claimants whole due to a previous failure;

(b) The applicant misrepresented material facts in the application for a license;

(c) The industry required to pay into the seed indemnity fund presents relevant objections; or

(d) Any material fact provided by a seed producer that demonstrates license denial would serve the best interest of the public.

(3) Any person adversely affected by the director's final determination may secure judicial review as prescribed under the provisions of [chapter 52, title 67](#), Idaho Code.

[22-5117, added 2002, ch. 256, sec. 1, p. 743; am. 2018, ch. 153, sec. 1, p. 311.]

22-5118. PAYMENT AND VIOLATION. (1) A seed buyer shall pay the producer the purchase price for seed crops in legal tender within ninety (90) days of sale unless otherwise agreed to in writing.

(2) Any seed buyer that violates the provisions of section [18-3106](#), Idaho Code, in making payment to the producer for any seed crop without sufficient funds in, or credit with, such bank or other depository, also violates the provisions of this chapter. The word "credit" as used herein shall mean an arrangement or understanding with the bank or depository for such payment.

[22-5118, added 2002, ch. 256, sec. 1, p. 743; am. 2011, ch. 173, sec. 1, p. 494.]

22-5119. CONFIDENTIAL AND PROTECTED RECORDS. Records required by the department to validate the collection and remittance of assessments, including, but not limited to, production summaries, receiving records, conditioning reports, records relating to the payment of seed crops and seed indemnity fund reporting forms of a seed buyer, and financial records that may be required pursuant to section [22-5113](#)(4), Idaho Code, shall be held confidential and will be protected as production records according to [chapter 1, title 74](#), Idaho Code. These records shall not be subject to disclosure unless specifically authorized in writing by the licensee or as otherwise authorized pursuant to the provisions of [chapter 1, title 74](#), Idaho Code.

[22-5119, added 2002, ch. 256, sec. 1, p. 743; am. 2015, ch. 141, sec. 36, p. 412.]

22-5120. SEED INDEMNITY FUND. (1) There is hereby established, within the dedicated account, a fund to be known as the seed indemnity fund. The seed indemnity fund shall consist of assessments remitted pursuant to the provisions of this chapter and any interest or earnings on the fund balance.

(2) All assessments shall be paid to the department and shall be deposited in the seed indemnity fund. Assessments shall be paid solely by or on behalf of producers who transfer or deposit for storage a seed crop with a seed buyer. The state treasurer shall be the custodian of the seed indemnity fund. Disbursements shall be authorized by the director. No appropriation is required for disbursements from this fund.

(3) The seed indemnity fund shall be used exclusively for paying valid claims as authorized by this chapter and the necessary fees and expenses of the department in carrying out its responsibilities under this chapter. If

necessary a portion of the fund may be used to defray the cost of reinsuring the fund at the discretion of the director. The state of Idaho shall not be liable for any claims presented against the fund.

[22-5120, added 2002, ch. 256, sec. 1, p. 743.]

22-5121. ASSESSMENTS. Every producer shall pay an assessment for deposit in the seed indemnity fund according to the provisions of this chapter and rules promulgated by the department. A delivery of seed crop between producers, none of whom are seed buyers, is exempt from the collection and payment of assessments. Assessments shall be collected on the gross dollar amount, without any deduction, owed to, or paid, or to be paid, on behalf of the producer of the seed crop.

(1) The initial rate of the assessment shall be five-tenths of one percent (.5%). Changes in the rate will be established by criteria in the rules of the department. However, the producer's annual assessment shall not exceed five-tenths of one percent (.5%).

(2) If seed crop is stored for withdrawal, the assessment shall not exceed one-half cent (1/2¢) per pound, based on clean weight or, if not available, estimated clean weight, per twelve (12) month period, payable at time of withdrawal.

(3) There are no indemnity fund assessments on seed crops deposited for service.

[22-5121, added 2002, ch. 256, sec. 1, p. 744; am. 2010, ch. 100, sec. 4, p. 196.]

22-5122. COLLECTION AND REMITTANCE OF ASSESSMENTS -- PRINCIPAL AMOUNT HELD IN TRUST -- INTEREST EARNED -- FAILURE TO COLLECT OR REMIT ASSESSMENTS CONSTITUTES A VIOLATION -- INTEREST AND PENALTIES FOR UNPAID ASSESSMENTS. (1) The department shall promulgate rules to provide a procedure for the collection and remittance of the producer's assessments. Seed buyers who owe producers for the transfer of seed crop or have stored for withdrawal seed crop shall be responsible for the collection of the producer's assessments and the remittance of the assessments collected to the department.

(2) Seed buyers shall remit to the department assessments collected according to the provisions of this chapter. Payments will be made no later than the twentieth day of the month following the close of the calendar quarter on a form prescribed by the department. There are four (4) calendar quarters in the year, beginning on the first day of the months of January, April, July and October. Assessment reports shall be submitted even though assessments for the period have not been collected. Failure to do so will result in a penalty of one hundred dollars (\$100).

(3) The principal amount of assessments paid by, or deducted from, payments to producers by seed buyers, is held in trust for the seed indemnity fund immediately upon collection by seed buyers and is not property of the seed buyer.

(4) Interest earned on assessments prior to remittance to the department belongs to the seed buyer.

(5) If a seed buyer fails to collect or remit assessments as required it shall be considered a violation of the provisions of this chapter and shall subject the seed buyer to suspension or revocation of any license issued to the seed buyer under the provisions of this chapter.

(6) The department shall collect, on assessments unpaid within the time limits specified in this chapter, interest at the rate of ten percent (10%) per annum until the assessments are remitted together with a penalty of five percent (5%) each month on the unpaid assessment due until the maximum penalty of twenty-five percent (25%) is reached.

[22-5122, added 2002, ch. 256, sec. 1, p. 744.]

22-5123. FUNDING AND LIMITS OF FUND. The maximum amount of the seed indemnity fund shall be maintained between ten million dollars (\$10,000,000) and twelve million dollars (\$12,000,000).

[22-5123, added 2002, ch. 256, sec. 1, p. 745.]

22-5124. ADVISORY COMMITTEE. (1) There is hereby created a seed indemnity fund advisory committee appointed by the director consisting of nine (9) members representing the diversity of the industry. Appointments shall be for up to three (3) year terms, each term ending on the same day of the same month as did the term preceding it. 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 predecessor's term.

(2) The committee shall be composed of seven (7) producers engaged in producing seed crops and two (2) seed buyers or seed buyer representatives.

(3) The terms of the appointees will be staggered and the initial appointments shall be three (3) producers and one (1) seed buyer for one (1) year terms, two (2) producers for two (2) year terms, and two (2) producers and one (1) seed buyer for three (3) year terms.

(4) The committee shall meet annually at such place and time as it determines and may meet as often as necessary to discharge the duties imposed upon it. Each committee member shall be compensated in accordance with section [59-509](#)(o), Idaho Code, for travel and subsistence expense. The expenses of the committee and its operation shall be paid from the seed indemnity fund.

(5) The committee shall have the power and duty to advise the director concerning assessments, administration of the seed indemnity fund, and payment of claims from the fund. Every two (2) years the committee will review the maximum limits of the fund and give advice to the director.

[22-5124, added 2002, ch. 256, sec. 1, p. 745; am. 2004, ch. 173, sec. 1, p. 551.]

22-5125. PROOF OF CLAIMS -- PROCEDURE -- HEARING. After the director has declared a failure, the department shall process the claims of producers having paid or owing assessments who: (a) produce written evidence of transfer together with the amounts of their unpaid claims, and (b) have "stored for withdrawal" and provide written evidence of deposit.

(1) The department shall give written notice to and provide a reasonable time of not less than thirty (30) days and not more than sixty (60) days for producers to file their written verified claims, including any written evidence, with the department.

(2) The department shall investigate each claim and prepare a staff report and recommendation as to the validity and amount of each claim. The department shall provide a copy of the staff report and recommendation to

the seed indemnity fund advisory committee, and make available for review by the advisory committee any documentation upon which the department relied in preparing the staff report and recommendation. No later than two (2) weeks following issuance of the staff report and recommendation, the advisory committee shall provide the director with the committee's written comments regarding the staff report, recommendation and payment of claims from the fund.

(3) Following the receipt of the staff report, recommendation and the seed indemnity fund advisory committee's written comments, if any, the director shall issue a determination regarding the validity and amount of each claim.

(4) The director shall notify in writing each claimant, the seed buyer and the advisory committee of the department's determination as to the validity and amount of each claim. A claimant or seed buyer may request a hearing on the department's determination within twenty (20) days of receipt of written notification of the determination pursuant to [chapter 52, title 67](#), Idaho Code. Upon determining the amount and validity of the claim, the director shall pay to the claimant an amount equal to ninety percent (90%) of the approved claim from the seed indemnity fund. Prior to any payment from the fund to a claimant, the claimant shall be required to subrogate and assign to the department his right to any recovery from any other source. The claimant shall be entitled to seek recovery of the remaining ten percent (10%), which was not assigned to the department. The procedure to determine the value of any claim will be established by rules.

(5) In the event of a shortage or inability to meet financial obligations, the department shall determine each producer's pro rata share of available seed crops and any deficiency shall be the claims of the producers. Each type of seed crop shall be treated separately for the purpose of determining shortages.

(6) The director shall not approve or pay any claim based on losses resulting from transactions with persons unlicensed pursuant to this chapter. The director shall not approve or pay any claim made on the seed indemnity fund if the claim is for the payment of interest, attorney's fees, ancillary costs, or punitive damages. The director shall not approve or pay any claim based on losses resulting from uninsurable perils.

(7) If a producer's claim reveals that the assessment has not been paid or collected, and the claim is otherwise valid, the amount of the assessment shall be deducted from the claim payment.

[22-5125, added 2002, ch. 256, sec. 1, p. 745; am. 2010, ch. 100, sec. 5, p. 196; am. 2014, ch. 285, sec. 1, p. 723.]

22-5126. FAILURE TO FILE -- LOSS OF CLAIM ON FUND. No claim shall be paid from the fund to a producer who refuses or neglects to file a verified claim against a seed buyer:

(1) Within ninety (90) days from the date prescribed in the "notice of failure," or within the time limits of section [22-5125](#)(1), Idaho Code, whichever is later; or

(2) If the claim is filed more than two (2) years from the date of transfer. Claims for seed crops used for lawns, turf and land reclamation including, but not limited to, bluegrass, ryegrass, native grasses, sagebrush and other native and nonnative shrubs, may not exceed two (2) years from the date of transfer or the date of sale, whichever occurs later.

[22-5126, added 2002, ch. 256, sec. 1, p. 746; am. 2011, ch. 173, sec. 2, p. 495.]

22-5127. MINIMUM BALANCE FOR CLAIMS -- TERMINATION OF LIABILITY. No claims of producers shall be paid when the balance in the seed indemnity fund is reduced to two hundred fifty thousand dollars (\$250,000). If the director cannot fully pay producers' claims without exceeding the minimum balance, he shall pay claims pro rata until the seed indemnity fund contains sufficient funds to pay claims in full. In no case shall the fund be liable for those claims not fully paid within three (3) years of submission of the claim.

[22-5127, added 2002, ch. 256, sec. 1, p. 746.]

22-5128. PAYMENT FROM FUND -- DEBT OF SEED BUYER OR SURETY -- REIMBURSEMENT -- ACCRUAL OF CAUSE OF ACTION. Amounts paid from the seed indemnity fund in satisfaction of any approved claims shall constitute a debt and obligation of the seed buyer against whom the claim was made and its surety. The director may bring suit on behalf of the seed indemnity fund and in the name of any claimant paid from the fund in district court of Ada county to recover from the seed buyer and its surety the amount of the payment made from the seed indemnity fund, together with costs and attorney's fees incurred in maintaining the suit. In the event the department initiates an action against a seed buyer or surety, the department's claim is deemed to accrue and relate back to the time that each producer who received a seed indemnity fund payment incurred a loss with the seed buyer. Any recovery for reimbursement of the fund shall bear interest at the statutory rate from the date of failure.

[22-5128, added 2002, ch. 256, sec. 1, p. 746.]

22-5129. RULES. The department may, from time to time, make such rules as it deems necessary for the efficient execution of the provisions of this chapter.

[22-5129, added 2002, ch. 256, sec. 1, p. 747.]

CHAPTER 52
CARBON SEQUESTRATION ADVISORY COMMITTEE -- [REPEALED]