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Requirements for Grain Dealers

State of Indiana

Indemnity Funds

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Requirements for Grain Dealers

STATE OF INDIANA

Current with legislation from the 2014 Second Regular Sess and Second Regular Technical Sess

IC 26-4-4-2

26-4-4-2 Contents of fund; fees and expenses

- (a) The fund consists of money paid into the fund from the producers of grain under section 4 of this chapter.
- (b) The expenses of administering the fund must be paid from money in the fund. After the fund reaches an amount in excess of ten million dollars (\$10,000,000), the board may annually take not more than two hundred fifty thousand dollars (\$250,000) and allocate it to a separate administrative expenses account to pay administrative expenses. Administrative expenses under this section may include:
- (1) processing refunds;
 - (2) enforcement of the fund;
 - (3) record keeping in relation to the fund; and
 - (4) the ordinary management and investment fees connected with the operation of the fund.
- (c) Board approved legal fees and legal expenses in actions brought against the corporation, board, or fund must be paid from money in the fund. These fees and expenses are not administrative costs and may not be paid from the administrative expense account.

IC 26-4-4-3

26-4-4-3 Premiums held in trust; investment of fund; interest; reversion

- (a) All producer premiums submitted to the board by a grain buyer under section 6(b) of this chapter shall be held by the corporation in trust in the fund for carrying out the purposes of this article. The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest earned from these investments shall be credited to the fund.
- (b) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

IC 26-4-4-8

26-4-4-8 Amount of fund; basis for suspension and reinstatement of producer premium collection

- (a) The producer premiums required under section 4 of this chapter must be collected until the fund contains more than fifteen million dollars (\$15,000,000) as of June 30 of any given year.
- (b) Except as provided in subsection (c), after the fund reaches fifteen million dollars (\$15,000,000),

the board may not require the collection of additional producer premiums until the amount in the fund drops below ten million dollars (\$10,000,000), as determined under section 9 of this chapter. In a year when the board determines that the fund is at or below ten million dollars (\$10,000,000), the board shall reinstate the collection described in this chapter.

(c) The board shall reinstate the collection described in this chapter if as of May 1:

- (1) the fund contains at least ten million dollars (\$10,000,000);
- (2) the board is aware of a failure of a grain buyer; and
- (3) the amount of compensation from the fund to cover producers' claims, as determined by the board, is equal to or greater than the amount of money in the fund.

IC 26-4-4-9

26-4-4-9 Certification of fund balance; discretion of board to suspend collection

(a) At the July meeting required under IC 26-4-3-5, the board shall certify the amount of money in the fund on June 30.

(b) Except as provided in section 8(c) of this chapter, the board may not require the collection of a producer premium during a fiscal year when the board certifies under subsection (a) that the fund has money in excess of ten million dollars (\$10,000,000). If the fund is at or below ten million dollars (\$10,000,000), the board shall reinstate the collection.

IC 26-4-5-1

26-4-5-1 Refunds; form, restrictions, extension, notice

(a) A producer upon and against whom a producer premium is charged and collected under the provisions of this chapter may demand of and by complying with this chapter receive from the fund through the board a refund of the producer premiums collected from the producer.

(b) The board shall develop the form on which a demand for a refund must be filed. The board shall make the form available to grain buyers, producers, and the public upon request.

(c) Except as provided in subsection (d), a demand for a refund under this section is only valid if:

(1) made in writing and:

- (A) hand delivered; or
- (B) sent by first class mail;
to the board; and

(2) delivered or sent to the board not more than twelve (12) months after the premium was collected.

(d) The board may for good cause grant an extension for filing a demand for a refund under this chapter.

(e) A producer that requests and receives a refund under this section is not protected and will not be compensated by the grain indemnity program.

(f) Before January 1 of each year in which producer premiums were collected during the immediately preceding calendar year, the board shall send a notice to each producer who requested a refund of producer premiums in any previous year. The notice must inform the producer of the time frame in which a request for a refund must be made and the method of filing for a refund.

IC 26-4-5-2

26-4-5-2 Reentry into program; conditions; date coverage commences

(a) A producer who has received a refund of a producer premium under section 1 of this chapter and has made a request for reentry may reenter the grain indemnity program if the following conditions are satisfied:

(1) The producer petitions the board for approval of reentry into the grain indemnity program by hand delivering or sending by certified mail, return receipt requested, a written request in a form required by the board.

(2) The board reviews the producer's petition for reentry and approves the petition.

(3) The producer pays into the fund:

(A) all previous producer premium refunds; and

(B) interest on the refunds;

as determined by the board.

(b) A producer that reenters the grain indemnity program under subsection (a)(3) is protected by the program from the time all previous producer premium refunds and interest on the refunds are paid to the fund.

IC 26-4-6-1

26-4-6-1 Restrictions on use of fund; nonseverability of provision

(a) Except as provided in section 2 of this chapter, the money in the fund:

(1) is not available for any purpose other than the payment of claims approved by the board or refunds to producers who do not want to participate in the fund; and

(2) may not be transferred to any other fund.

(b) The limiting and nontransferability provision of subsection (a) is declared to be nonseverable from the whole of this article. If subsection (a) is held to be invalid, repealed, or substantially amended, this article shall immediately become invalid and the money remaining in the fund shall be distributed to participants in the fund in a manner that is proportional to the amount of producer premiums each producer paid to the fund.

IC 26-4-6-2

26-4-6-2 Payment of administrative and legal expenses

The board is authorized to pay the administrative expenses or the fund from the administrative expenses account established by IC 26-4-4-2(b) and to pay the fund's legal fees and legal expenses from the fund.

IC 26-4-6-3

26-4-6-3 Compensation from fund; extension of time

(a) Except as provided in subsection (b), within ninety (90) days of the board's approval of a claim, the board shall compensate from the fund, in an amount described in section 4 of this chapter and in the manner described in subsection (c), a claimant who has incurred a financial loss or storage loss due to

a failure of a grain buyer or warehouse operator licensed under IC 26-3-7.

(b) The time for payment may be extended if the board and claimant mutually agree and put the terms of the payment in writing.

(c) If:

(1) a claimant engaged in farming operations granted to one (1) or more secured parties one (1) or more security interests in the grain related to the claimant's claim under this section; and

(2) one (1) or more secured parties described in subdivision (1) have given to:

(A) the licensee prior written notice of the security interest under IC 26-1-9.1-320(a)(1) or IC 26-1-9-307(1)(a) before its repeal; and

(B) the board prior written notice of the security interest with respect to the grain described in subdivision (1) sufficient to give the board a reasonable opportunity to cause the issuance of a joint check under this subsection;

the board may compensate the claimant described in subdivision (1) in the amount to which the claimant is entitled under section 4 of this chapter by causing the issuance of a check payable jointly to the order of the claimant and any secured party described in subdivision (1) who has given the notices described in subdivision (2). If only one (1) secured party described in subdivision (1) is a payee, the rights of the secured party in the check shall be to the extent of the indebtedness of the claimant to the secured party. If two (2) or more secured parties described in subdivision (1) are payees, the nature, extent, and priority of their respective rights in the check are determined in the same manner as the nature, extent, and priority of their respective security interest under IC 26-1-9.1.

IC 26-4-6-4

26-4-6-4 Percentage of compensation

(a) A claimant who has incurred a storage loss due to the failure of a warehouse operator licensed under IC 26-3-7 is entitled to be compensated by the board from the fund for one hundred percent (100%) of the storage loss incurred less all credits and offsets and any producer premium that would have been due on the sale of the grain. The gross amount of the storage loss shall be as determined by the agency for warehouses licensed under IC 26-3-7 or by the United States Department of Agriculture for warehouses licensed under the United States Warehouse Act¹. The warehouse operator and claimants may submit to the agency evidence related to outstanding charges against stored grain. If the evidence is submitted, the agency shall determine the storage loss payable by the board.

(b) A claimant who has incurred a financial loss due to the failure of a grain buyer is entitled to be compensated by the board from the fund for eighty percent (80%) of the loss incurred less all credits and offsets and any producer premium that should have been due on the sale of the grain. The agency shall determine the loss incurred in the following manner:

(1) For grain that has been priced, the loss shall be the value of the priced grain less any outstanding charges against the grain.

(2) For grain sold to a grain buyer who is also a warehouse operator and that has not been priced, the loss shall be established using the price determined for the storage obligations.

(3) For grain sold to a grain buyer who is not a warehouse operator and that has not been priced, the loss shall be established using a price determined by the agency using the same procedures used by the agency to determine the price at the warehouse.

IC 26-4-6-6
26-4-6-6 Subrogation of claim

A claimant compensated under this chapter may be required to subrogate to the board or corporation all the claimant's rights to collect on a bond issued under IC 26-3-7 or the United States Warehouse Act¹ and all the claimant's rights to any other compensation arising from the failure of the grain buyer or warehouse operator. If so required, the claimant shall assign all the claimant's rights, title, and interest in any judgment concerning the failure to the board or corporation.

IC 26-4-6-7
26-4-6-7 Denial of claim

The board shall deny the payment of compensation under this chapter to a claimant who has incurred a financial loss or storage loss due to the failure of a warehouse or grain buyer when the board determines the existence of any of the following:

- (1) The claimant as payee has failed to present for payment a negotiable instrument issued as payment for grain within ninety (90) days from the date the negotiable instrument is tendered to the claimant in satisfaction of obligations for grain purchased by the licensed grain establishment.
- (2) The claimant has engaged in conduct or practices that differ from generally accepted marketing practices within the grain industry to an extent that the claimant's actions have substantially contributed to the claimant's loss. The Indiana grain indemnity board may consider whether contracts not excluded under IC 26-3-7-4 are to be generally accepted marketing practices within the grain industry.

IC 26-4-6-8
26-4-6-8 Duties of board following warehouse or grain buyer's failure to pay

After the agency has determined that a grain buyer or warehouse has defaulted payment or failed, the board shall have the following duties:

- (1) Determine the valid claims and the amount of such claims to be paid to claimants for financial losses that were incurred due to the failure of a grain buyer or warehouse operator.
- (2) Authorize payment of money from the fund when necessary for the purpose of compensating claimants in accordance with the provisions of this chapter.
- (3) Collect money through subrogated claims against bonds filed under IC 26-3-7 in the place of claimants who collected for a loss incurred due to a warehouse or grain buyer failure.
- (4) Borrow money as authorized under IC 26-4-3-9 if the fund has insufficient money to cover approved claims.
- (5) Deposit into the fund any remaining grain assets of a failed grain buyer or warehouse operator for the purpose of repayment to the fund the money used to pay claimants, subject to any priority lien right a holder of a mortgage, security interest, or other encumbrance may possess under any other applicable law. Any repayment into the fund may not exceed the principal amount paid to claimants plus interest at the rate paid on ninety (90) day United States Treasury bills.
- (6) If the amount in the fund is insufficient to pay all approved claims in accordance with this chapter and the board is unable to borrow funds for whatever reason, authorize payment of all the approved claims on a pro rata basis.

IC 26-4-7-2
26-4-7-2 Disciplinary action

This article does not limit the authority of the director of the agency to take disciplinary action against a grain buyer or warehouse operator licensed under IC 26-3-7 for a violation of IC 26-3-7, this article, or the rules of the agency.

IC 26-4-7-3
26-4-7-3 Effect of repayment to fund

The repayment in full of all obligations to the fund by a grain buyer or warehouse operator does not nullify or modify the effect of any other disciplinary proceeding brought under IC 26-3-7 or this article.