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## Requirements for Grain Warehouses:

*Indiana*



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## Requirements for Grain Warehouses: Indiana

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### [Art. 3, Ch. 7; Ind. Code Ann. Art. 4, Ch. 1-8](#)

*Current through P.L. 167-2020.*

#### **26-3-7-1. Indiana grain buyers and warehouse licensing agency — Creation — Director — Employees.**

(a) The Indiana grain buyers and warehouse licensing agency is established within the Indiana state department of agriculture to administer this chapter. The director of the Indiana state department of agriculture may appoint the director of the agency, who shall serve at the pleasure of the director of the Indiana state department of agriculture. The director shall administer this chapter and shall be the ultimate authority in the administration of this chapter.

(b) The agency shall employ all necessary employees, counsel, and consultants to carry out the provisions of this chapter and is vested with the power necessary to fully and effectively carry out the provisions and objectives of this chapter.

#### **26-3-7-2. Definitions.**

The following definitions apply throughout this chapter:

(1) “Agency” refers to the Indiana grain buyers and warehouse licensing agency established under section 1 [IC 26-3-7-1] of this chapter.

(2) “Anniversary date” means the date that is ninety (90) calendar days after the fiscal year end of a business licensed under this chapter.

(3) “Bin” means a bin, tank, interstice, or other container in a warehouse in which bulk grain may be stored.

(4) “Board” means the governing body of the Indiana grain indemnity corporation created by IC 26-4-3-2.

(5) "Buyer-warehouse" means a person that operates both as a warehouse licensed under this chapter and as a grain buyer.

(6) "Claimant" means a person to whom a licensee owes a storage or financial obligation under this chapter for grain that has been delivered to the licensee for sale or for storage under a bailment.

(7) "Daily position record" means a written or electronic document that is maintained on a daily basis for each grain commodity, contains a record of the total amount of grain in inventory for that business day, and complies with any requirements established by the director.

(8) "Deferred pricing" or "price later" means a purchase by a buyer in which title to the grain passes to the buyer and the price to be paid to the seller is not determined:

(A) at the time the grain is received by the buyer; or

(B) less than twenty-one (21) days after delivery.

(9) "Delayed payment" means a purchase by a buyer in which title to the grain passes to the buyer at a determined price and payment to the seller is not made in less than twenty-one (21) days after delivery.

(10) "Depositor" means any of the following:

(A) A person that delivers grain to a licensee under this chapter for storage or sale.

(B) A person that:

(i) owns or is the legal holder of a ticket or receipt issued by a licensee for grain received by the licensee; and

(ii) is the creditor of the issuing licensee for the value of the grain received in return for the ticket or receipt.

(C) A licensee that stores grain that the licensee owns solely, jointly, or in common with others in a warehouse owned or controlled by the licensee or another licensee.

(11) "Designated representative" means the person or persons designated by the director to act instead of the director in assisting in the administration of this chapter.

(12) "Director" means the director of the Indiana grain buyers and warehouse licensing agency appointed under section 1 of this chapter.

(13) "Facility" means a permanent business location or one (1) of several permanent business locations in Indiana that are operated as a warehouse or by a grain buyer.

(14) "Failed" or "failure" means any of the following:

(A) The inability of a licensee to financially satisfy fully all obligations due to claimants.

(B) Public declaration of a licensee's insolvency.

(C) Revocation or suspension of a licensee's license, if the licensee has outstanding indebtedness owed to claimants.

(D) Nonpayment of a licensee's debts in the ordinary course of business, if there is not a good faith dispute.

(E) Voluntary surrender of a licensee's license, if the licensee has outstanding indebtedness to claimants.

(F) Involuntary or voluntary bankruptcy of a licensee.

(15) "Fund" means the Indiana grain indemnity fund established under IC 26-4-4-1.

(16) "Grain" means corn for all uses, popcorn, wheat, oats, barley, rye, sorghum, soybeans, oil seeds, other agricultural commodities as approved by the agency, and seed as defined in this section. The term does not include canning crops for processing or sweet corn.

(17) "Grain assets" means any of the following:

(A) All grain and grain coproducts owned or stored by a licensee, including the following:

(i) Grain that is in transit following shipment by a licensee.

(ii) Grain that has not been paid for.

(iii) Grain that is stored in unlicensed facilities that are leased, owned, or occupied by the licensee.

(B) All proceeds, due or to become due, from the sale of a licensee's grain.

(C) Equity, less any secured financing directly associated with the equity, in hedging or speculative margin accounts of a licensee held by a commodity or security exchange, or a dealer representing a commodity or security exchange, and any money due the licensee from transactions on the exchange, less any secured financing directly associated with the money due the licensee from the transactions on the exchange.

(D) Any other unencumbered funds, property, or equity in funds or property, wherever located, that can be directly traced to the sale of grain by a licensee. However, funds, property, or equity in funds or property may not be considered encumbered unless:

(i) the encumbrance results from valuable consideration paid to the licensee in good faith by a secured party; and

(ii) the encumbrance did not result from the licensee posting the funds, property, or equity in funds or property as additional collateral for an antecedent debt.

(E) Any other unencumbered funds, property, or equity in assets of the licensee.

(18) "Grain bank grain" means grain owned by a depositor for use in the formulation of feed and stored by the warehouse to be returned to the depositor on demand.

(19) "Grain buyer" means a person who is engaged in the business of buying grain from producers.

(20) "Grain coproducts" means any milled or processed grain, including the grain byproduct of ethanol production.

(21) "Grain standards act" means the United States Grain Standards Act, approved August 11, 1916 (39 Stat. 482; 7 U.S.C. 71-87 as amended).

(22) "License" means a license issued under this chapter.

(23) "Licensee" means a person who operates a facility that is licensed under this chapter.

(24) "Official grain standards of the United States" means the standards of quality or condition for grain, fixed and established by the secretary of agriculture under the grain standards act.

(25) "Person" means an individual, partnership, corporation, association, or other form of business enterprise.

(26) "Receipt" means a warehouse receipt issued by a warehouse licensed under this chapter.

(27) "Seed", notwithstanding IC 15-15-1, means grain set apart to be used primarily for the purpose of producing new plants.

(28) "Seed inventory" means seed for commercial sale.

(29) "Ticket" means a scale weight ticket, a load slip, or other evidence, other than a receipt, given to a depositor upon initial delivery of grain to a facility.

(30) "Warehouse act" means the United States Warehouse Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241-273 as amended).

(31) "Warehouse" means any building or other protected enclosure in one (1) general location licensed or required to be licensed under this chapter in which grain is or may be:

(A) stored for hire;

(B) used for grain bank storage; or

(C) used to store company owned grain;

and the building or other protected enclosure is operated under one (1) ownership and run from a single office.

(32) "Warehouse operator" means a person that operates a facility or group of facilities in which grain is or may be stored for hire or which is used for grain bank storage and which is operated under one (1) ownership and run from a single office.

**26-3-7-2.2. Factors for determining whether building or enclosure constitutes single warehouse that requires single license.**

For purposes of determining whether a building or other protected enclosure constitutes a single warehouse that requires a single license under this chapter, the director may consider the following:

(1) The presence of a full weighing facility at geographically diverse warehouse facilities.

(2) The traditional method of record keeping with respect to the separate facilities.

(3) The hours, number of personnel, and activities of the separate facilities.

(4) Any other factor considered relevant.

In the absence of contradictory information, any warehouses owned and operated by the same person that are located within close proximity of each other are presumed to constitute a single warehouse.

**26-3-7-3. Duties of director.**

(a) The director may do the following:

- (1) Require any reports that are necessary to administer this chapter.
- (2) Administer oaths, issue subpoenas, compel the attendance and testimony of witnesses, and compel the production of records in connection with any investigation or hearing under this chapter.
- (3) Prescribe all forms within the provisions of this chapter.
- (4) Establish grain standards in accordance with the grain standards act and federal regulations promulgated under that act that must be used by warehouses.
- (5) Investigate the activities required by this chapter including the storage, shipping, marketing, and handling of grain and complaints with respect to the storage, shipping, marketing, and handling of grain.
- (6) Inspect a facility, the grain stored in a facility, and all property and records pertaining to a facility. All inspections of an applicant or licensee under this chapter must take into consideration the proprietary nature of an applicant's or licensee's commercial information. The director may adopt rules under IC 4-22-2 regarding inspections permitted under this chapter, and the rules must take into consideration the proprietary nature of an applicant's or a licensee's commercial information. This chapter does not authorize the inspection of an applicant's or licensee's trade secret or intellectual property information.
- (7) Determine whether a facility for which a license has been applied for or has been issued is suitable for the proper storage, shipping, and handling of the grain that is stored, shipped, or handled, or is expected to be stored, shipped, or handled.
- (8) Require a licensee to terminate storage, shipping, marketing, and handling agreements upon revocation of the person's license.
- (9) Attend and preside over any investigation or hearing allowed or required under this chapter.
- (10) Impose sanctions for violations of this article.
- (11) Require a grain buyer and all persons purchasing grain to show evidence of training or licensing on the risks associated with grain marketing practices only if a grain buyer engages in a risk factor higher than a standard defined by the director. This training or licensing may include requiring the grain buyer or person purchasing grain to do any of the following:
  - (A) Provide the agency with proof of registry with the commodity futures trading commission (CFTC) as a commodity trading adviser, a futures commission merchant, an introducing broker, or an associated person.
  - (B) Demonstrate passage of the series 3 examination administered by the National Futures Association.

(C) Annually attend six (6) hours of continuing education, approved by the director, focusing on the risks to a grain buyer and seller that are associated with grain marketing practices and the communication of risks to the producer. Additionally, as part of continuing education, require a grain buyer, and all persons purchasing grain for a grain buyer, to pass a test, approved and administered by the director, that reasonably measures the grain buyer's understanding of the risks to grain buyers and sellers associated with producer marketing strategies.

(12) Require all contracts executed after August 31, 2017, for the purchase of grain from producers, except a flat price contract or a contract for the production of seed, to include the following notice immediately above the place on the contract where the seller of the grain must sign:

NOTICE - SELLER IS CAUTIONED THAT CONTRACTING FOR THE SALE AND DELIVERY OF GRAIN INVOLVES RISKS. THESE RISKS MAY INCLUDE FUTURE PAYMENTS BY YOU TO MAINTAIN THIS CONTRACT, A LOWER SALES PRICE, AND OTHER RISKS NOT SPECIFIED.

COVERAGE UNDER THE INDIANA GRAIN INDEMNITY PROGRAM IS FOR GRAIN THAT HAS BEEN DELIVERED TO A FIRST PURCHASER LICENSEE WITHIN THE 15 MONTHS BEFORE THE DATE OF FAILURE AND IS LIMITED TO 100% OF A LOSS FOR STORED GRAIN AND 80% OF A LOSS FOR OTHER COVERED CONTRACTS.

BE SURE YOU UNDERSTAND THE NATURE OF THIS CONTRACT AND THE ASSOCIATED RISKS.

(13) Require all contracts executed after January 1, 2000, for the production of seed to include the following notice, in conspicuous letters, immediately above the place on the contract or an addendum where the seller of the seed must sign:

“NOTICE - IF THE TERMS OF THIS CONTRACT STATE THAT THE CONTRACTOR RETAINS OWNERSHIP OF THE SEED AND ITS PRODUCTS, YOU MAY NOT BE ELIGIBLE FOR PARTICIPATION IN THE INDIANA GRAIN INDEMNITY PROGRAM. TO BE ELIGIBLE TO PARTICIPATE IN THE INDIANA GRAIN INDEMNITY PROGRAM, FARMERS MUST OWN AND SELL GRAIN OR SEED. BE SURE YOU UNDERSTAND THE NATURE OF THIS CONTRACT AND THE ASSOCIATED RISKS.”

(14) At any time, order an unannounced audit for compliance with this article.

(15) Adopt rules under IC 4-22-2 to carry out the purposes and intent of this chapter.

(16) Require all grain buyers offering deferred pricing, delayed payments, or contracts linked to the commodity futures or commodity options market in connection with a grain purchase to document the agreement in writing not more than twenty-one (21) days after delivery.

(b) The director shall do the following:

(1) Establish standards to ensure that a grain buyer has a suitable financial position to conduct a business as a grain buyer.

(2) Require a person who conducts business as a grain buyer to first be licensed by the agency.

(3) Require any person engaged in the business of advising producers on grain marketing for hire to:

(A) register with the agency; and

(B) provide the agency with proof of registry with the commodity futures trading commission (CFTC) as a commodity trading advisor, a futures commission merchant, an introducing broker, or an associated person.

(c) The director may designate an employee to act for the director in the administration of this chapter. An employee designee may not:

(1) act in matters that require a public hearing or the temporary suspension of a license;

(2) adopt rules; or

(3) act as the ultimate authority in the administration of this chapter.

(d) The director may designate an administrative law judge to act for the director in the administration of this chapter.

(e) The director may determine whether geographically separate facilities constitute a single warehouse or grain buyer and in making the determination may consider the following:

(1) The number of facilities involved.

(2) Whether full weighing equipment is present at the geographically separate facilities.

(3) The method of bookkeeping employed by the separate facilities.

(4) The hours of operation of the separate facilities.

(5) The personnel employed at the separate facilities.

(6) Other factors the director deems relevant.

(f) The director and the director's designees shall become members of the national grain regulatory organization and shall:

(1) work in partnership with other state grain regulatory officials;

(2) participate in national grain regulatory meetings; and

(3) provide expertise and education at national meetings.

(g) The director may subpoena or require that certain records located outside Indiana, if any, be brought to a specified location in Indiana for review by the agency.

**26-3-7-4. Licensing requirements — Ineligibility — Acquiring additional storage facilities — Asset requirements.**

(a) A person may not operate a warehouse or conduct business as a grain buyer or buyer-warehouse without first having obtained the appropriate license from the agency, nor may a person or entity associated with the person continue to operate a warehouse or conduct business as a grain buyer or buyer-warehouse after the person's license has been revoked or suspended, except as provided in section 18 [IC 26-3-7-18] of this chapter.



(b) All facilities in Indiana that an applicant for a license uses to store or handle grain must qualify for and obtain a license and be licensed under this chapter before the applicant may operate a warehouse or conduct business as a grain buyer in Indiana. An applicant may not be licensed unless all of the applicant's facilities qualify for a license under this chapter. An applicant for a license must apply to the agency for a license that covers all facilities operated by the applicant for the storage or handling of grain in Indiana.

(c) If a licensee acquires an additional grain storage or handling facility in Indiana, the licensee shall promptly submit to the agency an amended application for licensure. A licensee shall promptly notify the agency of a material change to the licensee's operations, such as expansion of the amount of storage being used in the licensee's existing facilities or change of ownership of a facility, and shall provide the director with additional information the director may require. A licensee shall obtain the approval of the director before making use of increased storage or handling capacity.

(d) A licensee that acquires an additional grain storage or handling facility that is required to be licensed shall not use the facility for the storage or handling of grain until it qualifies for and is issued a license and is licensed as provided in this chapter. If a licensed grain storage or handling facility that a licensee operates in Indiana becomes ineligible for a license at any time for any reason, it shall not be used for the storage or handling of grain until the condition making it ineligible is removed.

(e) A licensee shall maintain at least eighty percent (80%) of the unpaid balance of grain payables in unencumbered assets represented by the aggregate of the following:

(1) Company owned grain.

(2) Cash on hand.

(3) Cash held on account in federally or state licensed financial institutions or lending institutions of the Federal Farm Credit Administration.

(4) Investments held in time accounts with federally or state licensed financial institutions.

(5) Direct obligations of the United States government.

(6) Balances in grain margin accounts determined by marking to market.

(7) Balances due or to become due to the licensee on deferred pricing contracts.

(8) Marketable securities, including mutual funds.

(9) Irrevocable letters of credit that are:

(A) in favor of the agency;

(B) acceptable to the agency; and

(C) in addition to any letter of credit deposited with the director to satisfy the bonding requirement of this chapter.

(10) Deferred pricing contract service charges due or to become due to the licensee.

(11) Other evidence of proceeds from or of grain that is acceptable to the agency.

(12) Seed inventory.

(13) Other assets approved by the director.

(f) A licensee must have the minimum positive net worth specified in section 16 [IC 26-3-7-16] of this chapter to hold any license or do business.

**26-3-7-4.1. License renewal applications.**

(a) The agency shall mail by first class mail or send electronically a renewal application, which must include a listing of all the licensee's facilities, to each licensee before the end of the licensee's fiscal year. The renewal application form must be completed and returned to the agency not later than ninety (90) days after the end of the licensee's fiscal year. The licensee must forward, with the renewal application, the following:

(1) Current reviewed level financial statement.

(2) Updated financial profile form supplied by the agency.

(3) Appropriate license fee.

(b) A renewal application must contain the information as required under rules adopted by the agency. The licensee shall receive an annual renewal license application form appropriate to the license issued to the licensee. The annual renewal license application forms are for a:

(1) grain bank;

(2) warehouse;

(3) grain buyer; or

(4) buyer-warehouse.

**26-3-7-4.2. Appointment of registered agent.**

(a) If an applicant for a license or a renewal of a license issued under this chapter does not regularly conduct business at an address at which the applicant usually can be contacted in Indiana, the applicant shall include with the applicant's application a written appointment of a registered agent for service of process, notice, or demand.

(b) The appointment in subsection (a) must be accompanied by a written acceptance of the appointment by the registered agent.

(c) The registered agent must be an individual who is a resident of Indiana or a corporation whose principal place of business is located in Indiana.

(d) The appointment must be made in the form and manner prescribed by the director.

(e) If a registered agent resigns or relocates from Indiana or the applicant revokes the registered agent's appointment, the applicant shall:

(1) immediately notify the director in writing not later than thirty (30) days before the resignation, relocation, or revocation; and

(2) file with the director a written appointment of another registered agent, along with a written acceptance of the appointment signed by the registered agent.

(f) If a registered agent dies or is incapacitated, the applicant shall:

(1) immediately notify the director in writing of the death or incapacity;

(2) not later than thirty (30) days after the death or incapacity, appoint another registered agent; and

(3) file with the director a written appointment of the other registered agent, along with a written acceptance of the appointment signed by the registered agent.

(g) Failure to comply with this section is grounds for denial, suspension, or revocation of a license.

**26-3-7-5. Scales — Annual testing and certification.**

All scales used to weigh grain for purchase or storage must be inspected and certified as to accuracy at least once each year.

**26-3-7-6. Types of licenses — Application — Fees — Financial statement — Inspection — Exceptions to license requirement.**

(a) The agency shall issue the following licenses:

(1) A grain bank license may be issued to a person that:

(A) stores only grain bank grain;

(B) has a storage capacity of not more than fifty thousand (50,000) bushels of grain; and

(C) purchases less than fifty thousand (50,000) bushels of grain per year.

(2) A warehouse license may be issued to a person that:

(A) stores grain for hire; and

(B) purchases less than fifty thousand (50,000) bushels of grain per year.

(3) A grain buyer license may be issued to a person that:

(A) purchases annually at least fifty thousand (50,000) bushels of grain that are not for the sole purpose of feeding the person's own livestock or poultry;

(B) chooses to obtain a grain buyer's license; or

(C) offers deferred pricing, delayed payments, or contracts linked to the commodity futures or commodity options market in connection with grain purchases.

(4) A buyer-warehouse license may be issued to a person that operates both as a warehouse and as a grain buyer.

(b) An applicant shall file with the director a separate application for each license or amendment of a license at the times, on the forms, and containing the information that the director prescribes.

(c) An initial application for a license must be accompanied by a license fee as follows:

(1) For a grain bank or for a warehouse or buyer-warehouse with a storage capacity of less than two hundred fifty thousand (250,000) bushels, one thousand dollars (\$1,000) for the first facility and two hundred fifty dollars (\$250) for each additional facility.

(2) For a warehouse or a buyer-warehouse with a storage capacity of at least two hundred fifty thousand (250,000) bushels but less than one million (1,000,000) bushels, one thousand five hundred dollars (\$1,500) for the first facility and two hundred fifty dollars (\$250) for each additional facility.

(3) For a warehouse or a buyer-warehouse with a storage capacity of at least one million (1,000,000) bushels but less than ten million (10,000,000) bushels, two thousand dollars (\$2,000) for the first facility and two hundred fifty dollars (\$250) for each additional facility.

(4) For a warehouse or buyer-warehouse with a storage capacity greater than ten million (10,000,000) bushels, two thousand five hundred dollars (\$2,500) for the first facility and two hundred fifty dollars (\$250) for each additional facility.

(5) For a grain buyer, including a grain buyer that is also licensed as a warehouse under the warehouse act, one thousand five hundred dollars (\$1,500) for the first facility and two hundred fifty dollars (\$250) for each additional facility.

The director may prorate the initial application fee for a license that is issued at least thirty (30) days after the anniversary date of the licensee's business.

(d) Before the anniversary date of the license, the licensee shall pay an annual fee in an amount equal to the amount required under subsection (c). The director may prorate the annual application fee for a license that is modified at least thirty (30) days after the anniversary date of the licensee's license.

(e) A licensee or an applicant for an initial license must have a minimum current asset to current liability ratio of one to one (1:1) or better.

(f) An applicant for an initial license shall submit with the person's application a review level financial statement or better financial statement that reflects the applicant's financial situation on a date not more than fifteen (15) months before the date on which the application is submitted. A financial statement submitted under this section must:

(1) be prepared by an independent accountant certified under IC 25-2.1;

(2) comply with generally accepted accounting principles; and

(3) contain:

(A) an income statement;

(B) a balance sheet;

(C) a statement of cash flow;

(D) a statement of retained earnings;

(E) an aged accounts receivable listing detailing accounts that are ninety (90) days due, one hundred twenty (120) days due, and more than one hundred twenty (120) days due;

- (F) a copy of the daily position record for the end of the licensee's fiscal year;
- (G) the preparer's notes; and
- (H) other information the agency may require.

The director may adopt rules under IC 4-22-2 to allow the agency to accept other substantial supporting documents instead of those listed to determine the financial solvency of the applicant if the director determines that providing the listed documents creates a financial or other hardship on the applicant or licensee.

- (g) If a licensee's storage capacity changes between license renewals, the agency shall charge the licensee a fee of two hundred fifty dollars (\$250).
- (h) An application for a license implies a consent to be inspected.
- (i) Fees collected under this section shall be deposited in the grain buyers and warehouse licensing agency license fee fund established by section 6.3 [IC 26-3-7-6.3] of this chapter.

#### **26-3-7-6.1. Financial statements.**

(a) Not more than ninety (90) days after the end of a licensee's fiscal year, the licensee shall file with the agency a current review level financial statement or better financial statement that reflects the licensee's financial situation for the previous fiscal year. The financial statement must be submitted with the licensee's renewal forms and fees.

(b) A financial statement submitted under this section must:

(1) be prepared by an independent accountant certified under IC 25-2.1;

(2) comply with generally accepted accounting principles; and

(3) contain:

(A) an income statement;

(B) a balance sheet;

(C) a statement of cash flow;

(D) a statement of retained earnings;

(E) an aged accounts receivable listing detailing accounts that are ninety (90) days due, one hundred twenty (120) days due, and more than one hundred twenty (120) days due;

(F) a copy of the daily position record for the end of the licensee's fiscal year;

(G) the preparer's notes; and

(H) other information the agency requires.

The director may adopt rules under IC 4-22-2 to allow the agency to accept other substantial supporting documents instead of those listed to determine the financial solvency of the applicant if the director determines that providing the listed documents creates a financial or other hardship on the applicant or licensee.

(c) If the licensee has failed to timely file the financial statement, renewal form, or renewal fee as required in subsection (a), the agency may assess a fine as follows:

(1) Fifty percent (50%) of the licensee's renewal fee for a financial statement, renewal form, or renewal fee that is at least one (1) day and not more than sixty (60) days late.

(2) One hundred percent (100%) of the licensee's renewal fee for a financial statement, renewal form, or renewal fee that is more than sixty (60) days late.

(d) The agency may file a notice of hearing for any fines assessed under subsection (c).

**26-3-7-6.3. Grain buyers and warehouse licensing agency license fee fund established.**

(a) The grain buyers and warehouse licensing agency license fee fund is established to provide funds for the administration of this chapter. The fund shall be administered by the agency. The fund consists of:

(1) the moisture testing device inspection fees collected under IC 15-11-8-3;

(2) the licensing fees collected under section 6 [IC 26-3-7-6] of this chapter;

(3) gifts and bequests; and

(4) appropriations made by the general assembly.

(b) Expenses of administering the fund shall be paid from money in the fund.

(c) 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 money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

**26-3-7-6.5. Information confidential — Exception.**

(a) The names, locations, respective counties, and license status of licensees may be disclosed.

(b) Unless in accordance with a judicial order, the director, the agency, its counsel, auditors, or its other employees or agents shall not divulge any other information disclosed by the applications or reports filed or inspections performed under the provisions of this chapter. However, information may be divulged to agents and employees of the agency, the board, as required by subsection (d), the state board of accounts or another entity retained under subsection (f), or to any other legal representative of the state or federal government otherwise empowered to see or review the information.

(c) Except as provided in subsection (d), the director may disclose the information described in subsection (b) only in the form of an information summary or profile, or statistical study based upon data provided with respect to more than one (1) warehouse, grain buyer, or buyer-warehouse that does not identify the warehouse, grain buyer, or buyer-warehouse to which the information applies.

(d) The director shall disclose to the board, while the board is in executive session, the status and inspection results of any licensee who poses a significant risk of failure or who has failed to meet the minimum requirements in section 4(e) or 16 [IC 26-3-7-4(e) or IC 26-3-7-16] of this chapter on two (2) consecutive audits. The director may not include any identifying information

regarding the licensee. The director may not disclose the information to a board member who has not executed a confidentiality agreement presented by the agency.

(e) The director shall provide the board with records of previous failures to analyze the factors that have led to previous failures.

(f) The director may use the services of the state board of accounts or retain another entity to assist the agency in investigating any audit results or other factors which indicate the potential for a licensee failure. The director may seek the advice and guidance of the board on selecting an entity or on any other matter.

#### **26-3-7-7. Issuance or amendment of license — Requirements — Representations as to licensing status.**

(a) The director may issue or amend a license after the director has:

(1) received and approved the required information and documentation; and

(2) determined that:

(A) the facility or facilities covered by the application are suitable for the proper storage or handling of the grain intended to be stored or handled in the facility or facilities; and

(B) the applicant has complied with this chapter and the rules adopted under this chapter.

(b) A person may not represent that the person is licensed under this chapter, and may not use a name or description that conveys the impression that the person is licensed, in a receipt or otherwise, unless the person holds an unsuspended and unrevoked license to conduct the business indicated by the license.

(c) An applicant for a license under this chapter must show that the applicant:

(1) has a good business reputation;

(2) has not been involved in improper manipulation of books and records or other improper business practice;

(3) has the qualifications and background essential for the conduct of the business to be licensed;

(4) employs management and principal officers that have suitable business reputations, background, and qualifications to perform their duties;

(5) has not been found guilty of a crime that would affect the licensee's ability to conduct business with integrity; and

(6) does not employ an officer, director, partner, or manager that has been found guilty of a crime that would affect the licensee's ability to conduct business with integrity.

#### **26-3-7-8. Temporary license.**

Upon receipt of an application for a permanent license, the director may issue a temporary license to the applicant for a reasonable time, not to exceed ninety (90) days, as the director deems necessary or advisable to enable the applicant to comply with the further requirements for obtaining a license under this chapter. A temporary license entitles the temporary licensee to

the same rights and subjects the temporary licensee to the same duties as if the temporary licensee had a permanent license.

**26-3-7-8.5. Successor owner — Obligation of licensee.**

If the ownership of a facility or business licensed under this chapter passes to a successor owner, the obligations under this chapter of the original licensee do not cease until the successor owner is properly licensed and has executed a successor's agreement with the agency.

**26-3-7-9. Cash deposit, letter of credit, or bond required.**

(a) Each applicant for a license under this chapter shall, as a condition of licensure, file or have on file with the director:

- (1) a cash deposit;
- (2) an irrevocable letter of credit;
- (3) a bond; or
- (4) any combination of the above;

as provided in section 10 [IC 26-3-7-10] of this chapter.

(b) A bond filed under this chapter shall:

- (1) be conditioned upon the faithful performance of all obligations of the licensee under this chapter and the rules adopted under this chapter from the effective date of the bond until the earlier of the date the license is revoked or the bond is canceled as provided in this chapter; and
- (2) be further conditioned upon the faithful performance of all obligations from the effective date of the bond and thereafter, regardless of whether the licensee's facility or facilities exist on the effective date of the bond or are thereafter assumed prior to the date the licensee's license is revoked or the bond is canceled as provided in this chapter.

(c) The bond must remain in effect during a violation, a temporary suspension of the licensee's license, or a period during which the licensee is subject to a cease and desist order.

**26-3-7-10. Amount of bond, letter of credit, or cash deposit.**

(a) The minimum amount of bond, letter of credit, or cash deposit required from a licensee is as follows:

(1) For a grain bank license or a warehouse license:

- (A) fifty thousand dollars (\$50,000); and
- (B) ten cents (\$0.10) multiplied by the licensed bushel storage capacity of the grain bank or warehouse.

(2) For a grain buyer, including a grain buyer that is also a licensee under the warehouse act:

- (A) fifty thousand dollars (\$50,000); or
- (B) five-tenths percent (0.5%) of the total amount the grain buyer paid for grain purchased from producers during the grain buyer's most recent fiscal year;



whichever is greater.

(3) For a buyer-warehouse:

(A) an amount equal to the sum of:

(i) fifty thousand dollars (\$50,000); and

(ii) ten cents (\$0.10) multiplied by the licensed bushel storage capacity of the buyer-warehouse's facility; or

(B) five-tenths percent (0.5%) of the total amount the buyer-warehouse paid for grain purchased from producers during the buyer-warehouse's most recent fiscal year;

whichever is greater.

(b) Except as provided in subsections (g) and (h), the amount of bond, letter of credit, or cash deposit required by this chapter may not exceed two hundred fifty thousand dollars (\$250,000) per license and may not exceed a total of one million dollars (\$1,000,000) per person.

(c) The licensed bushel storage capacity is the maximum number of bushels of grain that the licensee's facility could accommodate as determined by the director or the director's designated representative and shall be increased or reduced in accordance with the amount of space being used for storage from time to time.

(d) Instead of a bond or cash deposit, an irrevocable letter of credit in the prescribed amount may be provided with the director as the beneficiary. The director shall adopt rules under IC 4-22-2 to establish acceptable form, substance, terms, and conditions for letters of credit. The director may not release a party from the obligations of the letter of credit within eighteen (18) months of the termination of the licensee's license.

(e) The director shall adopt rules under IC 4-22-2 to provide for the receipt and retention of cash deposits. However, the director shall not return a cash deposit to a licensee until the director has taken reasonable precautions to assure that the licensee's obligations and liabilities have been or will be met.

(f) If a person is licensed or is applying for licenses to operate two (2) or more facilities in Indiana, the person may give a single bond, letter of credit, or cash deposit to satisfy the requirements of this chapter and the rules adopted under this chapter to cover all the person's facilities in Indiana.

(g) If a licensee has a deficiency in the minimum positive net worth required under section 16(a)(2)(B), 16(a)(3)(B), 16(a)(4)(B), or 16(a)(5)(B) [IC 26-3-7-16(a)(2)(B), IC 26-3-7-16(a)(3)(B), IC 26-3-7-16(a)(4)(B), or IC 26-3-7-16(a)(5)(B)] of this chapter, the licensee shall add to the amount of bond, letter of credit, or cash deposit determined under subsection (a) an amount equal to the deficiency or provide another form of surety as permitted under the rules of the agency.

(h) Except as provided in subsections (i) and (j), a licensee may not correct a deficiency in the minimum positive net worth required by section 16(a)(1), 16(a)(2)(A), 16(a)(3)(A), 16(a)(4)(A), or 16(a)(5)(A) [IC 26-3-7-16(a)(1), IC 26-3-7-16(a)(2)(A), IC 26-3-7-16(a)(3)(A), IC 26-3-7-

16(a)(4)(A), or IC 26-3-7-16(a)(5)(A)] of this chapter by adding to the amount of bond, letter of credit, or cash deposit required by subsection (a).

(i) A buyer-warehouse that has a bushel storage capacity of less than one million (1,000,000) bushels or purchases less than one million (1,000,000) bushels of grain per year may correct a deficiency in minimum positive net worth by adding to the amount of bond, letter of credit, or cash deposit determined under subsection (a) if the buyer-warehouse has a minimum positive net worth of at least fifty thousand dollars (\$50,000), not including the amount added to the bond, letter of credit, or cash deposit.

(j) A buyer-warehouse that has a bushel storage capacity of at least one million (1,000,000) bushels, or purchases at least one million (1,000,000) bushels of grain per year, may correct a deficiency in minimum positive net worth by adding to the amount of bond, letter of credit, or cash deposit determined under subsection (a) if the buyer-warehouse has a minimum positive net worth of at least one hundred thousand dollars (\$100,000), not including the amount added to the bond, letter of credit, or cash deposit.

(k) If the director or the director's designated representative finds that conditions exist that warrant requiring additional bond or cash deposit, there shall be added to the amount of bond or cash deposit as determined under the other provisions of this section, a further amount to meet the conditions.

(l) The director may accept, instead of a single cash deposit, letter of credit, or bond, a deposit consisting of any combination of cash deposits, letters of credit, or bonds in an amount equal to the licensee's obligation under this chapter. The director shall adopt rules under IC 4-22-2 to establish standards for determining the order in which the forms of security on deposit must be used to pay proven claims if the licensee defaults.

(m) The director may require additional bonding that the director considers necessary.

#### **26-3-7-12. Certificate of insurance — Filing — Settlement of claim.**

(a) Each applicant for a license under this chapter shall, as a condition to the granting of the license, file or have on file a certificate of insurance evidencing an effective policy of insurance issued by an insurance company authorized to do business in Indiana insuring in the name of the applicant all grain that is or may be in the licensee's facilities for its full market value against loss by fire, internal explosion, lightning, and windstorm.

(b) In case fire, internal explosion, lightning, or wind-storm destroys or damages any grain in a licensed facility, the licensee shall, upon demand by the depositor and upon being presented with the receipt or other evidence of ownership, make settlement, after deducting the licensee's charges and advances, at the market value of the grain based on the value at the average price paid for grain of the same grade and quality on the date of the loss at the location of the facility. If a settlement is not made within sixty (60) days from the date of demand, the depositor is entitled to seek recovery from the insurance company.

#### **26-3-7-13. Additional bond, letter of credit, cash deposit, or insurance.**

Whenever the director determines that a previously approved bond, letter of credit, cash deposit, or previously approved insurance is insufficient, the director shall require an additional bond, letter of credit, cash deposit, or insurance to be given by the licensee in the form and upon the terms and conditions required by this chapter and rules adopted under this chapter.

**26-3-7-14. Cancellation of bond or insurance — Suspension of license.**

(a) A licensee may not cancel an approved bond or approved insurance unless the director has given prior written approval for the cancellation and has received a substitute cash deposit or has approved a substitute bond or insurance. The surety on a bond may cancel a bond required by this chapter only after the expiration of ninety (90) days from the date the surety mailed a notice of intent to cancel, by registered or certified mail, to the director. An insurance company may cancel insurance required by this chapter only after the expiration of a thirty (30) day period from the mailing, by certified mail, of notice of intent to cancel, to the director. The surety and the insurance company shall, at the time of giving notice to the director, send a copy of the notice to the licensee.

(b) Notwithstanding any other provision of this chapter, the license of a licensee shall automatically be suspended for failure to:

- (1) file a new bond, letter of credit, or cash deposit within the ninety (90) day period as provided in this section;
- (2) file new evidence of insurance within the thirty (30) day period as provided in this section; or
- (3) maintain at all times a bond or cash deposit and insurance as provided in this chapter.

The suspension shall continue until the licensee complies with the bonding and insurance requirements of this chapter.

**26-3-7-15. Maintenance of inventories.**

(a) A licensee shall maintain inventories of sufficient quantity and grade of grain to meet the licensee's storage obligations.

(b) Inventories representing grain evidenced by outstanding warehouse receipts shall be maintained in the warehouse shown on the warehouse receipt issued by the warehouse in which the grain was originally deposited.

(c) Inventories representing storage obligations other than those evidenced by warehouse receipts may be represented by:

- (1) receipts for grain stored in a facility licensed under this chapter;
- (2) receipts in a warehouse licensed and bonded under the warehouse act; or
- (3) other warehouse receipts or tickets as approved by the director.

**26-3-7-16. Warehouseman's assets and liabilities — Amount.**

(a) A licensee shall have and maintain a current asset to current liability ratio of one to one (1:1) and shall maintain, as evidenced by the financial statement required by section 6 [IC 26-3-7-6] of this chapter, the following minimum positive net worth:

- (1) For a grain bank, minimum positive net worth is at least one hundred thousand dollars (\$100,000).
- (2) For a warehouse, minimum positive net worth is at least equal to the sum of:
  - (A) one hundred thousand dollars (\$100,000); and

(B) ten cents (\$0.10) multiplied by the bushel storage capacity of the warehouse.

(3) For a grain buyer, minimum positive net worth is:

(A) one hundred thousand dollars (\$100,000); or

(B) five cents (\$0.05) multiplied by the total number of bushels of grain purchased by the grain buyer during the grain buyer's most recent fiscal year;

whichever is greater.

(4) For a buyer-warehouse that has a bushel storage capacity of less than one million (1,000,000) bushels or purchases less than one million (1,000,000) bushels of grain per year, minimum positive net worth is:

(A) the sum of:

(i) one hundred fifty thousand dollars (\$150,000); and

(ii) ten cents (\$0.10) multiplied by the bushel storage capacity of the buyer-warehouse; or

(B) five cents (\$0.05) multiplied by the total number of bushels of grain purchased by the buyer-warehouse during the buyer-warehouse's most recent fiscal year;

whichever is greater.

(5) For a buyer-warehouse that has a bushel storage capacity of at least one million (1,000,000) bushels or purchases at least one million (1,000,000) bushels of grain per year, minimum positive net worth is:

(A) the sum of:

(i) two hundred thousand dollars (\$200,000); and

(ii) ten cents (\$0.10) multiplied by the bushel storage capacity of the buyer-warehouse; or

(B) five cents (\$0.05) multiplied by the total number of bushels of grain purchased by the buyer-warehouse during the buyer-warehouse's most recent fiscal year;

whichever is greater.

(b) Except as provided in section 10 [IC 26-3-7-10] of this chapter, if a licensee is required to show additional net worth to comply with this section, the licensee may satisfy the requirement by adding to the amount of the bond, letter of credit, or cash deposit required under section 10 of this chapter an amount equal to the additional net worth required or provide another form of surety as permitted under the rules of the agency.

(c) The director may adopt rules under IC 4-22-2 to provide that a narrative market appraisal that demonstrates assets sufficient to comply with this section may satisfy the minimum positive net worth requirement.

**26-3-7-16.5. Preliminary determination of shortage — Agency hearing — Determination of losses — Depositor’s limited right of action — Proration — Director’s findings final — Distribution of interest — Claim of licensee.**

(a) Upon learning of the possibility that a shortage exists, either as a result of an inspection or a report or complaint from a depositor, the agency, based on an on-premises inspection, shall make a preliminary determination as to whether a shortage exists. If a shortage is not discovered, the agency shall treat the audit as it would any other audit.

(b) If it is determined that a shortage may exist, the director or the director’s designated representative shall hold a hearing as soon as possible to confirm the existence of a shortage as indicated by the licensee’s books and records and the grain on hand. Only the licensee, the surety company named on the licensee’s bond, the issuer of the irrevocable letter of credit, and any grain depositor who has made a claim or complaint to the agency in conjunction with the shortage shall be considered as interested parties for the purposes of that hearing, and each shall be given notice of the hearing. At the hearing, the director or the director’s designated representative shall determine whether there appears to be a reasonable probability that a shortage exists. If it is determined that a reasonable probability exists and that the bond or letter of credit proceeds or the cash deposit should be distributed, a preliminary determination shall be entered to the effect that the licensee has failed to meet its obligations under this chapter or the rules adopted under this chapter. At the hearing, the director or the director’s designated representative may order that all proceeds from grain sales are to be held in the form in which they are received and to be kept separate from all other funds held by the licensee. The order may also provide for informal conferences between agency representatives and persons who have or who appear to have grain deposited with the licensee. The surety company shall be permitted to participate in those conferences.

(c) In the event that the director determines that the bond or letter of credit proceeds or cash deposit is to be distributed, the agency shall hold a hearing on claims. Notice shall be given to the surety company named on the licensee’s bond, the issuer of the irrevocable letter of credit, and to all persons shown by the licensee’s books and records to have interests in grain deposited with the licensee. If the agency has actual knowledge of any other depositor or person claiming rights in the grain deposited with the licensee, the bond, the irrevocable letter of credit, or the cash deposit, notice shall also be provided to that person. In addition, public notice shall be provided in newspapers of general circulation that serve the counties in which licensed facilities are located, and notices shall be posted on the licensed premises. At the hearing on claims, the director or the director’s designated representative may accept as evidence of claims the report of agency representatives who in informal conferences with depositors have concluded that a claim is directly and precisely supported by the licensee’s books and records. When there is disagreement between the claims of a depositor and the licensee’s books and records, the director or the director’s designated representative shall hear oral claims and receive written evidence of claims in order to determine the validity of the claim.

(d) Any depositor who does not present a claim at the hearing may bring the claim to the agency within fifteen (15) days after the conclusion of the hearing. However, a depositor who has a claim that was involved in the probate of an estate at the time of the claims hearing has one (1) year from the conclusion of the claims hearing to present the claim to the agency.

(e) Only grain that has been delivered to a first purchaser licensee for sale or storage under a bailment not more than fifteen (15) months before the date of failure of the licensee may be

considered by the director or the director's designated representative in determining the total proven storage and financial obligations due to depositors and the loss sustained by each depositor who has proven a claim.

(f) Following the hearing on claims, the director or the director's designated representative shall make a determination as to the total proven storage and financial obligations due to depositors and the loss sustained by each depositor who has proven a claim. Depositors found to have proven their claims for storage or financial loss shall be proven claimants. In arriving at that loss, in accordance with section 19 [IC 26-3-7-19] of this chapter, the director shall apply all grain on hand or its identifiable proceeds to meet the licensee's obligations to grain depositors of grain of that type. Initial determinations of loss shall be made on the amount of grain on hand, or identifiable proceeds, and shall reduce the amount to which a depositor may have a proven claim. With respect to the remaining unfulfilled obligations, the director shall, for the sole purpose of establishing each depositor's claim under this chapter, establish a date upon which the loss is discovered, shall price the grain as of that date, shall treat all outstanding grain storage obligations not covered by grain on hand or identifiable proceeds as being sold as of that date, and shall determine the extent of each depositor's loss as being the actual loss sustained as of that date. Grain of a specific type on the premises of a licensee must first be applied to meet the licensee's storage obligations with respect to that type of grain. If there is insufficient grain of a specific type on hand to meet all storage obligations with respect to that type of grain, the grain that is present shall be prorated in accordance with the procedures described in this section and section 16.8 [IC 26-3-7-16.8] of this chapter.

(g) Upon the failure of the agency to begin an audit, which would serve as the basis for a preliminary administrative determination, within forty-five (45) days of the agency's receipt of a written claim by a depositor, a depositor shall have a right of action upon the bond, letter of credit, or cash deposit. A depositor bringing a civil action need not join other depositors. If the agency has undertaken an audit within the forty-five (45) day period, the exclusive remedy for recovery against the bond, letter of credit, or cash deposit shall be through the recovery procedure prescribed by this section.

(h) When the proven claims exceed the amount of the bond, letter of credit, or cash deposit, recoveries of proven claimants shall be prorated in the same manner as priorities are prorated under section 16.8 of this chapter.

(i) The proceedings and hearings under this section may be undertaken without regard to, in combination with, or in addition to those undertaken in accordance with section 17.1 [IC 26-3-7-17.1] of this chapter.

(j) The findings of the director shall be final, conclusive, and binding on all parties.

(k) The director may adopt rules under IC 4-22-2 to determine how the agency may distribute the interest that may accrue from funds held by the agency for the payment of claims.

(l) A claim of a licensee for stored grain may not be honored until the proven claims of all other claimants arising from the purchase, storage, and handling of the grain have been paid in full.

(m) A claim is considered to be adjudicated if the claimant has:

(1) agreed with the director's determination on the claim and not filed an appeal under IC 4-21.5-3; or

(2) exhausted the claimant's administrative appeal and judicial review remedies.

(n) Subject to the requirements under this chapter, if one (1) or more claimants are not paid in full for the claimants' proven claims, the director shall forward to the Indiana grain indemnity fund board of directors a list of the claimants who are owed money and the balance due each claimant along with a copy of the final order.

**26-3-7-16.6. Procedures concerning person operating without license.**

The procedures established by this chapter also apply when the director learns or has reason to believe that a person is doing business as a grain buyer, operating a warehouse, or acting as a buyer-warehouse without the license required by this chapter.

**26-3-7-16.7. Right of licensee or claimant to appeal director's orders.**

(a) A licensee or claimant subject to the director's action may appeal under IC 4-21.5-3 from orders issued by the director under section 16.5 or 17.1 [IC 26-3-7-16.5 or IC 26-3-7-17.1] of this chapter.

(b) A licensee or claimant may request an appeal under IC 4-21.5-3 not more than fifteen (15) days after being served with the director's findings.

(c) If a licensee or claimant requests an appeal under IC 4-21.5-3, the director shall designate:

(1) an administrative law judge to preside over the appeal; and

(2) an ultimate authority for purposes of the appeal in accordance with IC 4-21.5-3.

**26-3-7-16.8. Lien against assets of licensee.**

(a) A lien against all grain assets of a licensee or a person who is required to be licensed under this chapter attaches in favor of the following:

(1) A lender or other claimant that has a receipt for grain owned or stored by the licensee.

(2) A claimant that has a ticket or written evidence, other than a receipt, of a storage obligation of the licensee.

(3) A claimant that surrendered a receipt as part of a grain sales transaction if:

(A) the claimant was not fully paid for the grain sold; and

(B) the licensee failed less than twenty-one (21) days after the surrender of the receipt.

(4) A claimant that has other written evidence of a sale to the licensee of grain for which the claimant has not been fully paid.

(b) A lien under this section attaches and is effective at the earliest of the following:

(1) the delivery of the grain for sale, storage, or under a bailment;

(2) the commencement of the storage obligation; or

(3) the advancement of funds by a lender.

(c) A lien under this section terminates when the licensee discharges the claim.

(d) If a licensee has failed, the lien that attaches under this section is assigned to the agency by operation of this section. If a failed licensee is liquidated, a lien under this section continues to attach as a claim against the assets or proceeds of the assets of the licensee that are received or liquidated by the agency.

(e) Except as provided in subsection (h), if a licensee has failed, the power to enforce the lien on the licensee's grain assets transfers by operation of this section to the director and rests exclusively with the director who shall allocate and prorate the proceeds of the grain assets as provided in subsections (g) and (i).

(f) The lien established under this section has priority over all competing lien claims asserted against the licensee's grain assets.

(g) The priority of a lien that attaches under this section is not determined by the date on which the claim arose. If a licensee has failed, the director shall enforce lien claims and allocate grain assets and the proceeds of grain assets of the licensee in the following order of priority:

(1) First priority is assigned to the following:

(A) A lender or other claimant that has a receipt for grain owned or stored by the licensee.

(B) A claimant that has a ticket or written evidence, other than a receipt, of a storage obligation of the licensee.

(C) A claimant that surrendered a receipt as part of a grain sales transaction if:

(i) the claimant was not fully paid for the grain sold; and

(ii) the licensee failed less than twenty-one (21) days after the surrender of the receipt.

If there are insufficient grain assets to satisfy all first priority claims, first priority claimants shall share pro rata in the assets.

(2) Second priority is assigned to all claimants who have written evidence of the sale of grain, such as a ticket, a deferred pricing agreement, or similar grain delivery contract, and who completed delivery less than thirty (30) days before the licensee's failure. Claimants under this subdivision share pro rata in the remaining assets if all claimants under subdivision (1) have been paid but insufficient assets remain to fully satisfy all claimants under this subdivision.

(3) Third priority is assigned to all other claimants that have written evidence of the sale of grain to the failed licensee. Claimants under this subdivision share pro rata in the distribution of the remaining grain assets.

(h) If a claimant under this section brings an action to recover grain assets that are subject to a lien under this section and the agency does not join the action, the director shall, upon request of the claimant, assign the lien to the claimant in order to allow the claimant to pursue the claim to the extent that the action does not delay the resolution of the matter by the agency, the prompt liquidation of the assets, or the ultimate distribution of assets to all claimants.

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

the director shall pay the claimant described in subdivision (1) the portion of the proceeds of grain assets under subsection (e) to which the claimant is entitled under this section by 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.

**26-3-7-17.1. Unauthorized activity — Consent agreement — Cease and desist order — Suspension, revocation or denial of license.**

(a) Whenever the director, as a result of an inspection or otherwise, has reasonable cause to believe that a person to which this chapter is or may be applicable:

(1) is conducting business contrary to this chapter or in an unauthorized manner; or

(2) has failed, neglected, or refused to observe or comply with any order, rule, or published policy statement of the agency;

then the director may undertake any one (1) of the actions prescribed by this section.

(b) Upon learning of the possibility that a licensee is acting as described in subsection (a), the director or the director's designated representative may seek an informal meeting with the licensee. At that meeting, which shall be held at a time and place agreed to by the licensee and the director, the director or the director's designated representative shall discuss the possible violations and may enter into a consent agreement with the licensee under which the licensee agrees to undertake, or to cease, the activities that were the subject of the meeting. The consent agreement may provide for a time frame within which the licensee must be in compliance.

(c) Upon learning of the possibility that a person is acting as described in subsection (a), the director or the director's designated representative, except as otherwise provided in this subsection, shall hold a hearing to determine whether a cease and desist order should issue against a licensee or an unlicensed person undertaking activities covered by this chapter. If the director or the director's designated representative determines that the violation or the prohibited practice is likely to cause immediate insolvency or irreparable harm to depositors, the director or the director's designated representative, without notice, may issue a temporary cease and desist order requiring the person to cease and desist from that violation or practice. The order shall become effective upon service on the person and shall remain effective and enforceable pending the completion of all administrative proceedings.

(d) Upon a determination, after a hearing held by the director or the director's designated representative, that a person is acting as described in subsection (a), the director may suspend, revoke, or deny a license. If the director suspends, revokes, or denies a license, the director shall publish notice of the suspension, revocation, or denial as provided in section 17.5 [IC 26-3-7-17.5] of this chapter.

(e) If the director has reasonable cause to believe that a licensee is acting as described in subsection (a) and determines that immediate action without an opportunity for a hearing is necessary in order to safeguard depositors, the director may suspend a license temporarily without a hearing for a period not to exceed twenty (20) days. When a license is suspended without a hearing, the director or the director's designated representative shall grant an opportunity for a hearing as soon as possible.

**26-3-7-17.5. Public notice of suspension, revocation or denial of license.**

(a) Whenever the license of a licensee is suspended or revoked, the director shall:

(1) for each facility operated by the licensee, publish a public notice in a newspaper of general circulation that serves the county in which the facility is located; and

(2) cause notice of the suspension or revocation to be posted at the facilities covered by the license.

(b) Whenever an application for licensure under this chapter is denied, the director may:

(1) for each facility operated by the applicant, publish a public notice in a newspaper of general circulation that serves the county in which the facility is located; and

(2) cause notice of the denial to be posted at the applicant's facilities.

(c) A notice posted under this section may not be removed without the written permission of the director.

(d) The director shall adopt rules under IC 4-22-2 to determine the content of the notices required by this section.

**26-3-7-18. Operation upon revocation or suspension of license.**

(a) When a license is revoked, the licensee shall terminate in the manner prescribed by the director all arrangements covering the grain in the facility covered by the license, but shall be permitted, under the direction and supervision of the director or the director's designated representative, to deliver grain previously received.

(b) During any suspension of a license, the licensee may, under the direction and supervision of the director or the director's designated representative, operate the facility, but shall not incur any additional obligations to producers.

**26-3-7-19. Receipt of grain — Procedure — License as bailee.**

(a) A licensee shall issue a receipt or ticket for grain received. Grain received by a licensee shall be credited to the depositor on the books of the licensee within seven (7) days from the date of its delivery. If a ticket is issued on delivery of the grain for storage, a receipt shall be issued on demand, but no receipt shall be issued on grain bank grain.

(b) The licensee is a bailee with respect to all stored grain. The person whose name appears on a receipt or a ticket has title to the stored grain evidenced by the receipt or ticket.

**26-3-7-20. Issuance of receipt for grain owned by licensee.**

A licensee may issue a receipt for grain owned by the licensee in whole or in part, located in the licensee's facility. The negotiation, transfer, sale, or pledge of the receipt shall not be defeated by reason of the licensee's ownership.

**26-3-7-21. Application of Uniform Warehouse Receipts Act.**

Except as provided by this chapter, and regardless of whether the grain was received for storage, shipping, or handling, IC 26-3-2 applies to all transactions involving or incidental to the issuance, negotiation, transfer, sale, endorsement, or other dealings with receipts, to transactions involving delivery or other disposition of grain, and to the rights, duties, liabilities, and privileges of licensees or others dealing with licensees.

**26-3-7-22. Commingling of different lots.**

Different lots of the same type of grain delivered to a licensee may be commingled by type of grain unless the receipt or ticket states that the identity of the lot of grain is to be preserved.

**26-3-7-23. Return of grain to depositor.**

Upon demand, after payment of all applicable charges, grain shall be returned to the depositor at the licensed facility where the grain was received unless agreed otherwise in writing.

**26-3-7-24. Duplicate receipts or tickets.**

While a receipt or ticket issued under this chapter is outstanding and uncanceled by the issuing licensee, no other receipt or ticket shall be issued for the grain or any part of the grain that is covered by the receipt or ticket. However, if a receipt or ticket is lost, stolen, or destroyed the owner of the receipt or ticket is entitled to a new receipt that is a duplicate of the missing receipt or a new ticket that is a substitute for the missing ticket. The duplicate receipt or substitute ticket entitles the owner to all rights appertaining to the document for which it was issued, and shall state that it is in lieu of the former receipt or ticket and give the number and date of the former receipt or ticket. If the missing document was a negotiable receipt, the issuing licensee shall require an indemnity bond of double the market value of the grain covered by the missing receipt in a form and with the surety that the director may prescribe to fully protect all rights under the missing receipt.

**26-3-7-25. Receipts — Contents.**

Every warehouse receipt issued, whether paper or electronic, shall embody within its terms the following:

(1) The type, grade, and quantity of the grain stored as established by the official grain standards of the United States, unless:

(A) the identity of the grain is preserved in a special pile or special bin or otherwise; and

(B) a mark identifying the preserved grain appears on the face of the receipt.

(2) A statement that the receipt is issued subject to the Indiana Grain Buyers and Warehouse Licensing and Bonding Law, IC 26-3-7, and rules adopted under the Indiana Grain Buyers and Warehouse Licensing and Bonding Law.

(3) A clause that reserves to the licensee the right to terminate storage and collect outstanding charges against any lot of grain that remains in storage after June 30 following the date of the receipt.

(4) A clause that reserves to the licensee the right to terminate storage, shipping, and handling arrangements and collect outstanding charges upon the revocation of the licensee's license.

(5) Other terms and conditions as provided in the Uniform Warehouse Receipts Acts. However, nothing contained in the Uniform Warehouse Receipts Act shall require a receipt issued for grain to specifically state the variety of the grain by name.

(6) A clause that terminates storage on the date the license held by the licensee when the receipt was issued expires and reserves to the licensee the right to collect outstanding charges against any lot of grain.

(7) Other provisions prescribed by the director.

**26-3-7-26. Tickets — Contents — Exemptions.**

Every ticket issued shall embody within its terms:

(1) the name of the licensee to whom the grain was delivered;

(2) the date the grain was delivered;

(3) exact information concerning the type, net weight, and grade factors of the grain received;

(4) a statement that the grain described in the ticket is to be taken into storage, is being delivered on contract, or is to be sold under other arrangements;

(5) the name of the owner of the grain; and

(6) other provisions prescribed by the director.

The director may adopt rules under IC 4-22-2 to exempt certain types of grain from these requirements.

**26-3-7-28. Keeping of records and accounts.**

A licensee shall keep in a place of safety complete and correct records and accounts pertaining to the licensee's grain business. The licensee shall retain records and accounts for not less than six (6) years from the date of the final settlement of the transaction.

**26-3-7-29. Display of license, schedule of charges and charts and diagrams.**

A licensee shall:

(1) conspicuously display the licensee's license in the licensee's main office and at each facility included under the license;

(2) conspicuously display in each operational office the approved schedule of charges for services; and

(3) conspicuously display at each facility all charts and diagrams provided to the facility by the agency.

**26-3-7-30. Supply of receipt forms.**

All receipt forms shall be supplied by the director except where the director, in writing, approves the form and gives permission to a warehouse operator to have receipts printed. Requests for receipts shall be on forms furnished by the director and shall be accompanied by payment to cover the estimated cost of printing, packaging, and shipping, as determined by the director. Where privately printed, the printer shall furnish the director an affidavit showing the amount of the receipts printed, and the serial numbers thereof. All receipts remaining unused shall be recovered by the director or the director's designated representative if the license required by this chapter is terminated or suspended.

**26-3-7-31. Grain shortages — Notices by director — Appointment of receiver.**

(a) Whenever it appears to the satisfaction of the director that a licensee cannot meet the licensee's outstanding grain obligations owed to depositors, or when a licensee refuses to submit the licensee's records or property to lawful inspection, the director may give notice to the licensee to do any of the following:

- (1) Cover the shortage with grain that is fully paid for.
- (2) Give additional bond, letter of credit, or cash deposit as required by the director.
- (3) Submit to inspection as the director may deem necessary.

(b) If the licensee fails to comply with the terms of the notice within five (5) business days from the date of its issuance, or within an extension of time that the director may allow, the director may petition the circuit court, superior court, or probate court of the Indiana county where the licensee's principal place of business is located seeking the appointment of a receiver. If the court determines in accordance with IC 32-30-5 that a receiver should be appointed, upon the request of the licensee the court may appoint the agency or its representative to act as receiver. The agency or its representative shall not be appointed as receiver except upon the request of the licensee. If the agency or its representative is appointed, any person interested in an action as described in IC 32-30-5-2 may after twenty (20) days request that the agency or its representative be removed as receiver. If the agency or its representative is not serving as receiver, the receiver appointed shall meet and confer with representatives of the agency regarding the licensee's grain related obligations and, before taking any actions regarding those obligations, the receiver and the court shall consider the agency's views and comments.

(c) The director shall inform the corporation of any:

- (1) notice or order issued; or
- (2) action taken;

under this section.

**26-3-7-32. Injunctions — Temporary restraining order.**

(a) The director may apply for, and the courts of this state are vested with jurisdiction to issue, a temporary or permanent injunction against the business operation of a licensee, or the issuance of receipts or tickets without a license and against interference by any person with the director,

the director's designated representative, or a receiver appointed under section 31 [IC 26-3-7-31] of this chapter, in the performance of their duties and powers under this chapter.

(b) Upon a determination by the director that there is reasonable cause to believe that a licensee is unable to meet the licensee's storage or other grain obligations, and that the licensee is removing, or the director has reasonable cause to believe that the licensee may remove, grain from the licensed premises, the director may, under the conditions provided in, and in accordance with, the Indiana Rules of Trial Procedure, seek from the circuit court, superior court, or probate court of the Indiana county in which the licensee has the licensee's principal place of business a temporary restraining order preventing the further sale or movement of any grain and requiring that proceeds from grain sales received after the issuance of the temporary restraining order should be held in the form in which they are received by the licensee and kept separate from all other funds held by the licensee.

### **26-3-7-33. Examination of warehouses.**

In addition to all other inspections and investigations authorized by this chapter, the director or the director's designated representative may, upon request of any person having an interest in grain in a licensed warehouse, cause the warehouse to be examined. The director or the director's representative may check the outstanding receipts and tickets against the grain on hand and advise each depositor of any shortage with respect to any grain in which the person has an interest. If the cost of the examination is more than twenty-five dollars (\$25.00), the person requesting the examination shall pay the additional cost to the director unless a shortage is found to exist.

### **26-3-7-34. Violations — Penalties.**

(a) A person who knowingly or intentionally violates or fails to comply with this chapter commits a Class A misdemeanor. Each day a person violates this chapter constitutes a separate violation.

(b) A person who knowingly or intentionally issues a receipt or ticket, knowing that the grain for which the receipt or ticket is issued has not been actually received at the licensed warehouse, commits a Class A misdemeanor. A person who issues a duplicate, or additional negotiable receipt for grain, knowing that a former negotiable receipt for the same grain or any part of the grain is outstanding and uncanceled, except in the case of a lost, stolen, or destroyed receipt, as provided in section 24 [IC 26-3-7-24] of this chapter, commits a Class A misdemeanor. A person who fraudulently represents, alters, or counterfeits any license provided for in this chapter commits a Level 6 felony.

(c) Except in case of sale or other disposition of the grain in lawful enforcement of the lien on grain that attaches under this chapter or on a licensee's lawful termination of storage, shipping, or handling agreements, or except as permitted by the rules adopted by the director under IC 4-22-2 to effectuate the purposes of this chapter:

(1) a person who knowingly or intentionally delivers grain out of a licensed facility, knowing that a negotiable receipt, the negotiation of which would transfer the right of possession of the grain is outstanding and uncanceled, without obtaining the possession of the receipt at or before the time of delivery, commits a Level 6 felony; and

(2) a person who knowingly or intentionally delivers grain out of a licensed facility, knowing that a non-negotiable receipt or ticket is outstanding and uncanceled, without the prior written approval of the person lawfully entitled to delivery under the non-negotiable receipt or ticket and without delivery being shown on the appropriate records of the licensee, commits a Level 6 felony.

(d) A person who fraudulently issues a receipt, a ticket, or a weight or grade certificate, knowing that it contains a false statement, or who issues a receipt for grain owned solely or jointly by the person and does not state the fact of the person's ownership in the receipt, commits a Class A misdemeanor.

(e) A person who recklessly changes a receipt or ticket subsequent to issuance, except for notation by the licensee of partial delivery, commits a Class B misdemeanor.

(f) A person who knowingly or intentionally deposits grain to which the person does not have title or upon which there is a lien or mortgage and who accepts for the grain a receipt or ticket, without disclosing the lack of title or the existence of the lien or mortgage, commits a Level 6 felony.

(g) A person commits a Class A misdemeanor who knowingly or intentionally:

(1) engages in the business of being a grain buyer or operates a warehouse without a valid license issued by the director;

(2) engages in the business of being a grain buyer or operates a warehouse without a sufficient cash deposit, letter of credit, or surety bond on file with and in a form approved by the director; or

(3) engages in the business of being a grain buyer or operates a warehouse while in violation of the rules adopted by the director.

(h) A person commits a Class A misdemeanor who willfully makes or causes to be made a false entry or statement of fact in an application or report filed with the director.

(i) A person who is not in compliance with section 3(a)(11) [IC 26-3-7-3(a)(11)] of this chapter may be subject to a fine imposed by the agency of not more than twenty thousand dollars (\$20,000), or the suspension of the grain buyer's license for not more than five (5) years, or both.

(j) The director may suspend or revoke the license of a licensee that uses an unlicensed facility to store or handle grain or commits another violation of this chapter.

**26-3-7-35. Grain buyer license required.**

A person licensed under the warehouse act must also have a valid grain buyer license to do business in Indiana as a grain buyer.

**26-3-7-36. Deposit of fees.**

All fees received by the director under this chapter shall be deposited within thirty (30) days of receipt.

**26-3-7-37. Considerations of director — List of claimants owed money — Statement of loss — Payment of claimants. [Expired]**

**26-4-1-1. Applicability of article.**

This article applies to a grain buyer (as defined in section 14 [IC 26-4-1-14] of this chapter).

**26-4-1-2. Applicability of definitions.**

The definitions in this chapter apply throughout this article.

**26-4-1-3. Agency.**

“Agency” refers to the Indiana grain buyers and warehouse licensing agency established under IC 26-3-7.

**26-4-1-4. Board.**

“Board” means the governing body of the Indiana grain indemnity corporation created by IC 26-4-3-2.

**26-4-1-5. Claimant.**

“Claimant” means a producer that:

- (1) is a participant in the grain indemnity program;
- (2) possesses a claim resulting from a failure of a licensed grain buyer or warehouse; and
- (3) has a claim that has been adjudicated by the agency under IC 26-3-7-16.5.

**26-4-1-6. Cooperative agreement.**

“Cooperative agreement” means an agreement made by the board as may be reasonable and proper to carry out the provisions of this article.

**26-4-1-7. Corporation.**

“Corporation” means the Indiana grain indemnity corporation established by IC 26-4-3-1.

**26-4-1-8. Deferred pricing.**

“Deferred pricing” means a purchase by a buyer where title to the grain passes to the buyer, in which the actual dollar price to be paid to the seller is not to be determined at the time the grain is received by the buyer or less than twenty-one (21) days of that receipt.

**26-4-1-9. Director.**

“Director” means the director of the agency (as defined in section 3 [IC 26-4-1-3] of this chapter).

**26-4-1-10. Failed — Failure.**

“Failed” or “failure” means any of the following:

- (1) An inability of a licensee to financially satisfy fully all obligations due a claimant.
- (2) A public declaration of a licensee’s insolvency.
- (3) The nonpayment of a licensee’s debts in the ordinary course of business if there is not a good faith dispute.



(4) Revocation or suspension of a licensee's license, if the licensee has outstanding indebtedness owed to claimants.

(5) Voluntary surrender of a licensee's license, if the licensee has outstanding indebtedness to claimants.

(6) Involuntary or voluntary bankruptcy of a licensee.

**26-4-1-11. Financial loss.**

"Financial loss" means a loss resulting from a producer not being fully paid for grain that has been delivered and sold to a grain buyer, net of any outstanding charges against the grain.

**26-4-1-12. Fund.**

"Fund" means the Indiana grain indemnity fund established under IC 26-4-4-1.

**26-4-1-13. Grain.**

"Grain" means corn for all uses, popcorn, wheat, oats, rye, soybeans, barley, sorghum, oil seeds, other agricultural commodities as approved by the agency, and seed (as defined in IC 26-3-7-2(27)). The term does not include canning crops for processing or sweet corn.

**26-4-1-14. Grain buyer.**

"Grain buyer" means a person licensed under IC 26-3-7 who is engaged in Indiana in the business of buying grain from producers.

**26-4-1-15. Grain indemnity program.**

"Grain indemnity program" means the system created by this article to have the board pay money out of the fund to producers having losses due to a failure.

**26-4-1-15.5. Licensee.**

"Licensee" has the meaning set forth in IC 26-3-7-2(23).

**26-4-1-16. Participant in grain indemnity program.**

"Participant in the grain indemnity program" means a producer who has:

- (1) not requested and received a refund under IC 26-4-5-1 after June 30, 2015; or
- (2) reentered the program under IC 26-4-5-2.

**26-4-1-17. Person.**

"Person" means a natural person, partnership, firm, association, corporation, limited liability company, or other business organization.

**26-4-1-18. Producer.**

"Producer" means an owner of land, a tenant on land, or an operator of a farm that has an interest in and receives all or any part of the proceeds from the sale to a first purchaser licensee of the grain produced.

**26-4-1-19. Producer premium.**

"Producer premium" means the amount of money charged to and collected from a producer under IC 26-4-4-4 that qualifies the producer to be a part of the grain indemnity program.

**26-4-1-19.5. Seed.**

“Seed”, notwithstanding IC 15-15-1, means grain set apart to be used primarily for the purpose of producing new plants.

**26-4-1-20. Storage loss.**

“Storage loss” means a loss to a storage depositor resulting from a failed warehouse operator not fully satisfying the warehouse operator’s storage obligation to the depositor, net of any outstanding charges against the grain.

**26-4-1-21. United States Warehouse Act.**

“United States Warehouse Act” means the United States Warehouse Act, enacted August 11, 1916, as amended.

**26-4-1-23. Warehouse.**

“Warehouse” means any building or other protected enclosure in one (1) general location that is licensed or required to be licensed under IC 26-3-7 in which grain is or may be:

- (1) stored for hire;
- (2) used for grain bank storage; or
- (3) used to store company owned grain;

and the building or other protected enclosure is operated under one (1) ownership and run from a single office.

**26-4-1-24. Warehouse operator.**

“Warehouse operator” means a person who operates a facility or group of facilities:

- (1) in which grain is or may be stored for hire; or
- (2) that is used for grain bank storage;

and that is operated under one (1) ownership and run from a single office that holds a valid license under IC 26-3-7 or the United States Warehouse Act.

**26-4-1-25. Warehouse receipt.**

“Warehouse receipt” means any of the following:

- (1) A warehouse receipt issued under the Public Grain Warehouse and Warehouse Receipts Act in accordance with the Uniform Commercial Code.
- (2) A warehouse receipt issued under IC 26-3-7.
- (3) A warehouse receipt issued under the United States Warehouse Act.

**26-4-3-1. Indiana grain indemnity corporation.**

The Indiana grain indemnity corporation is established. The corporation is a public body corporate and politic, and though it is separate from the state, the exercise by the corporation of its powers constitutes an essential governmental function. The corporation may sue and be sued and plead and be impleaded.

### **26-4-3-2. Creation of board — Membership.**

(a) The corporation's board is created. The governing powers of the corporation are vested in the board, which is composed of thirteen (13) members as described in subsections (b) and (c).

(b) The board consists of the following ten (10) voting members:

(1) Two (2) members appointed by the largest Indiana organization representing the interests of grain and feed dealers in Indiana.

(2) Two (2) members appointed by the largest Indiana organization representing general farm interests in Indiana.

(3) One (1) member appointed by the second largest Indiana organization representing general farm interests in Indiana.

(4) One (1) member appointed by the largest Indiana organization exclusively representing the interests of corn producers.

(5) One (1) member appointed by the largest Indiana organization exclusively representing the interests of soybean producers in Indiana.

(6) Two (2) members appointed by the largest Indiana organization representing the interests of bankers in Indiana.

(7) One (1) member appointed by the largest Indiana organization representing the interests of the seed trade in Indiana.

The members appointed under subdivisions (2) through (5) must be producers.

(c) The board consists of the following three (3) nonvoting members:

(1) The attorney general.

(2) The treasurer of state.

(3) The director of the agency, who shall serve as the chairperson.

(d) The attorney general and treasurer of state may each designate a representative to serve on the board.

### **26-4-3-3. Board — Appointment of members — Vacancies.**

(a) A member of the board appointed under section 2(b) [IC 26-4-3-2(b)] of this chapter:

(1) Serves for a four (4) year term;

(2) Is entitled to the same per diem and mileage allowances provided by law for state employees; and

(3) May be reappointed.

(b) A vacancy created by a member described in subsection (a) shall be filled by the appointing body of the person who created the vacancy. The replacement board member shall fill the vacancy for the unexpired term of the previous member.

(c) A vacancy in the membership of the board does not impair the right of a quorum to exercise all the rights and perform all the duties of the board and corporation.

**26-4-3-4. Quorum.**

(a) Except as provided in subsection (b), six (6) voting members constitute a quorum. The affirmative votes of at least six (6) voting members are necessary for any action to be taken by the board.

(b) A meeting may be adjourned by less than six (6) members

**26-4-3-5. Meetings.**

The board shall meet at least two (2) times each year. One (1) meeting of the board must be held in July.

**26-4-3-6. Meetings — Attendance.**

(a) Except as provided in subsection (b), a member of the board must be given at least five (5) days written notice of the meetings.

(b) A member of the board may waive any notice required by this section or bylaws of the corporation before or after the date and time stated in the notice. The waiver by the board member entitled to the notice must be in writing and be hand delivered or mailed to the corporation for inclusion in the minutes or filing with the corporate records.

(c) A board member's attendance at a meeting waives any objection:

(1) To the lack of a notice or a defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(2) To consideration of a particular matter at the meeting that is not within the purpose or purposes described in the notice, unless the member objects to considering the matter when it is presented.

**26-4-3-7. Duties of board.**

The board shall do the following:

(1) Adopt rules, create forms, and establish guidelines to implement this article.

(2) Collect and deposit all producer premiums authorized under IC 26-4-4-4 into the fund for investment by the board.

(3) Initiate any action it may consider necessary to compel the grain buyer against whom an awarded claim arose to repay to the fund the sums that are disbursed from the fund in relation to each claim.

(4) Initiate any action it may consider necessary to compel the claimant whose claim arose due to a failure to participate in any legal proceeding in relation to the claim.

(5) Within five (5) business days of receiving notice of failure of a grain buyer, publish notice of the failure in a manner described in IC 5-3.

**26-4-3-8. Liability of board members.**

A member of the board or other person acting on behalf of the corporation is not personally liable for damage or injury resulting from the performance of the member's or person's duties under this article.

**26-4-3-9. Powers and duties of corporation.**

(a) The corporation may do or shall have any of the following:

- (1) Perpetual succession by its corporate name as a corporate body.
- (2) Adopt and make use of an official seal and alter the same at pleasure.
- (3) Adopt, amend, and repeal bylaws consistent with the provisions of this article for the regulation and conduct of the corporation's affairs and prescribe rules and policies in connection with the performance of the corporation's functions and duties.
- (4) Use the services of the agency and the attorney general when considered necessary in the execution of the duties of the board.
- (5) Accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance, and any other aid from any source and agree to and comply with any attached conditions.
- (6) Procure insurance against any loss in connection with its operations in the amounts and from the insurers as it considers necessary or desirable.
- (7) Borrow money from a bank, an insurance company, an investment company, or any other person. The corporation may negotiate the terms of a loan contract. The contract must provide for repayment of the money in not more than forty (40) years and that the loan may be prepaid. The loan contract must plainly state that it is not an indebtedness of the state but constitutes a corporate obligation solely of the corporation and is payable solely from revenues of the corporation or any appropriations from the state that might be made to the corporation for that purpose.
- (8) Include in any borrowing amounts considered necessary by the corporation to pay financing charges, interest on the obligations, consultant, advisory, and legal fees, and other expenses necessary or incident to such borrowing.
- (9) Employ personnel as may be required in the judgment of the corporation, and fix and pay compensation from money available to the corporation from the administrative expenses account.
- (10) Make, execute, and carry out any and all contracts, agreements, or other documents with any governmental agency or any person, corporation, limited liability company, association, partnership, or other organization or entity necessary or convenient to accomplish the purposes of this article.
- (11) Upon the request of the director of the agency and the approval of the board, make payment from the fund when the payment is necessary for the purpose of compensating claimants in accordance with the provisions of IC 26-4-6.

(12) Have powers necessary or appropriate for the exercise of the powers specifically conferred upon the corporation and all incidental powers customary in corporations.

(b) The corporation or the board may use the services of a person other than the attorney general to collect money owed to the fund or to litigate claims concerning money owed to the fund.

**26-4-4-1. Purpose of fund — Administration and operation.**

(a) The Indiana grain indemnity fund is established for the purpose of providing money to pay producers for losses incurred due to the failure of a grain buyer or warehouse operator licensed under IC 26-3-7. The fund shall be administered by the board of the corporation.

(b) The fund consists of money collected under this chapter.

(c) The fund shall operate on a fiscal year of July 1 to June 30.

**26-4-4-2. Source of money — Expenses and fees.**

(a) The administrative expense account is created within the fund.

(b) The expenses of administering the fund and paying administrative expenses must be paid from money in the administrative expense account.

(c) The board may transfer annually not more than two hundred fifty thousand dollars (\$250,000) from the fund to the administrative expense account.

(d) Administrative expenses under this section may include:

(1) processing refunds;

(2) enforcement of the fund;

(3) record keeping in relation to the fund;

(4) the ordinary management and investment fees connected with the operation of the fund;

(5) legal fees and legal expenses in actions brought against the corporation or board and that have been approved by the board; and

(6) the use of supplemental consulting services.

(e) The agency may not use money in the administrative expense account for expenses other than the expenses described in subsection (d).

**26-4-4-3. Producer premiums to be held in trust — Investments — Interest — Surplus.**

(a) All producer premiums submitted to the board by a grain buyer under section 6(b) [IC 26-4-4-6(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.

#### **26-4-4-4. Producer premiums.**

(a) Except as provided in section 8 [IC 26-4-4-8] of this chapter, beginning on July 1, 2015, the producers of grain shall be charged a producer premium equal to two-tenths percent (0.2%) of the price on all marketed grain that is sold to a first purchaser licensee.

(b) The producer premiums required under this section are in addition to any other fees or assessments required by law.

#### **26-4-4-5. Producer premiums — Notice.**

The agency shall notify each grain buyer licensed under IC 26-3-7 that producer premiums described in section 4 [IC 26-4-4-4] of this chapter shall be deducted from the purchase price of the grain on and after the date specified in the notice. The notice must be sent by first class mail.

#### **26-4-4-6. Duties of grain buyer.**

(a) When purchasing grain, a grain buyer, a grain buyer's agent, or a grain buyer's representative shall:

(1) Deduct the producer premium described in section 4 [IC 26-4-4-4] of this chapter from the producer's payment; and

(2) Document the producer premium paid by the producer.

(b) A grain buyer shall submit producer premiums collected under subsection (a) to the board for the purpose of financing or contributing to the financing of the fund by:

(1) October 31 for producer premiums collected during the months of July, August, and September;

(2) January 31 for producer premiums collected during the months of October, November, and December;

(3) April 30 for producer premiums collected during the months of January, February, and March; and

(4) July 31 for producer premiums collected during the months of April, May, and June.

#### **26-4-4-7. Books and records — Producer premiums.**

(a) The:

(1) Books and records of each grain buyer must clearly indicate the producer premiums collected by the grain buyer; and

(2) Portion of the books and records reflecting the premiums collected must be open for inspection by the corporation, board, board's authorized agents, director, or the director's designee during regular business hours.

(b) The corporation, board, board's authorized agent, director, or the director's designee may take steps reasonably necessary to verify the accuracy of the portion of a grain buyer's books and records that reflect the premiums collected. The information obtained under this section is confidential for purposes of IC 5-14-3-4(a)(1). Unless otherwise required by judicial order, the information obtained under this section may be disclosed only to parties empowered to see or

review the information. The corporation, board, or director may respond to inquiries or disclose information obtained under this section only in accordance with guidelines set forth in IC 26-3-7-6.5.

(c) Notwithstanding subsections (a) and (b), the verification permitted under subsection (b) must be completed by the agency unless two-thirds ( $\frac{2}{3}$ ) of the board vote to have the verification completed by an independent auditor.

**26-4-4-8. Producer premiums — When collection not required — Reinstatement.**

(a) The producer premiums required under section 4 [IC 26-4-4-4] of this chapter must be collected until the fund contains more than twenty-five million dollars (\$25,000,000), as of June 30 of any given year.

(b) Except as provided in subsection (c), after the fund reaches twenty-five million dollars (\$25,000,000), the board may not require the collection of additional producer premiums until the amount in the fund drops below twenty million dollars (\$20,000,000), as determined under section 9 [IC 26-4-4-9] of this chapter. In a year when the board determines that the fund is at or below twenty million dollars (\$20,000,000), 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 twenty million dollars (\$20,000,000);

(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.

**26-4-4-9. Certification of money in fund.**

(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) [IC 26-4-4-8(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 twenty million dollars (\$20,000,000). If the fund is at or below twenty million dollars (\$20,000,000), the board shall reinstate the collection.

**26-4-4-10. [Repealed.]**

**26-4-5-1. Refund of producer premiums.**

(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 after June 30, 2015, is not protected and will not be compensated by the grain indemnity program. The board may not consider any refunds claimed before July 1, 2015, in determining whether a producer is covered by the fund.

(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.

#### **26-4-5-2. Reentry into fund.**

(a) A producer who has received a refund of a producer premium under section 1 [IC 26-4-5-1] of this chapter after June 30, 2015, 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 that were claimed after June 30, 2015, and interest on the refunds, are paid to the fund.

(c) A producer who reenters the grain indemnity program may not make a claim on the fund that arises from a failure that occurs before the producer meets the requirements for reentry described in subsection (a).

**26-4-5-4. Educational information for producers, grain buyers, and warehouse operators.**

The board, in coordination with the agency, shall develop educational information to be made available electronically to producers, grain buyers, and warehouse operators, explaining the following:

- (1) The purpose of the fund.
- (2) How the fund is operated.
- (3) An explanation of coverage under the program, including the duration of coverage and limits on losses.
- (4) The process for claiming a refund.
- (5) The process for reentering the program.
- (6) Where a producer may locate information about the producer's status in the program.

**26-4-6-1. Use of fund money.**

(a) 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.

**26-4-6-2. Administrative fees — Legal fees and expenses. [Repealed]**

**26-4-6-3. Compensation of claimants — 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 [IC 26-4-6-4] 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.

#### **26-4-6-4. Claimants' compensation — Storage loss — Financial loss.**

(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 Act. 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.

(c) If a producer appeals under IC 4-21.5-3 an order issued by the director under IC 26-3-7-16.5 that postpones the agency from notifying the board of the amount of loss for proven claimants under IC 26-3-7-16.5(n), the board may issue partial payments to any claimants who have not appealed their claims.

#### **26-4-6-6. Subrogation.**

A claimant compensated under this chapter is 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 Act and all the claimant's rights to any other compensation arising from the failure of

the grain buyer or warehouse operator. The claimant shall assign all the claimant's rights, title, and interest in any judgment concerning the failure to the board or corporation.

**26-4-6-7. Denial of compensation.**

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.

**26-4-6-8. Agency duties after default or failure.**

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.

**26-4-7-1. Authority to publish and adopt rules.**

The agency, corporation, and board have authority to publish and adopt rules consistent with this article.

**26-4-7-2. Disciplinary action against grain buyer or warehouse operator.**

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.

**26-4-7-3. Repayment not to nullify other disciplinary proceeding.**

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.

**26-4-8-1 Failure to collect or pay premiums**

A person who knowingly or intentionally refuses or fails to:

- (1) collect from producers under the program; or
- (2) pay producer premiums collected from producers under the program;

commits a Class A misdemeanor. In addition to the criminal penalty under this section, the grain buyer must also pay to the fund money collected from producers and owed to the fund.

**26-4-8-2 Other violations**

A person who knowingly makes any false statement, representation, or certification, or who knowingly fails to make any statement, representation, or certification, in any record, report, or other document filed or required to be filed or maintained by the director, agency, board, or corporation commits a Class A misdemeanor.

**26-4-8-3 Interference with board's or corporation's performance of duties**

Except as permitted by law, a person who willfully or knowingly resists, prevents, impedes, or interferes with the board or other agents or employees of the corporation or the board in the performance of the duties assigned under this article commits a Class A misdemeanor.