

Idaho Statutes

TITLE 22
AGRICULTURE AND HORTICULTURE
CHAPTER 4
PURE SEED LAW

22-413. STATEWIDE JURISDICTION AND PREEMPTION. (1) This chapter and its provisions are of statewide concern and occupy the whole field of regulation regarding the registration, labeling, sale, storage, transportation, distribution, notification of use, use of seeds, and planting of seeds to the exclusion of all local ordinances or regulations. Except as otherwise specifically provided in this chapter, no ordinance or regulation of any political subdivision may prohibit or in any way attempt to regulate any matter relating to the registration, labeling, sale, storage, transportation, distribution, notification of use, use of seeds, or planting of seeds.

(2) The provisions of subsection (1) of this section shall not preempt county or city local zoning ordinances governing the physical location or siting of seed facilities.

22-414. DEFINITIONS. When used in this act:

(1) "Advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of the chapter.

(2) "Agricultural seeds" includes the seeds of grass, forage, cereal and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural, turf, or field seeds, and mixtures of such seeds, but specifically does not include seed potatoes as defined in section 22-501, Idaho Code.

(3) "Blend" means seed consisting of more than one (1) variety of a kind, each in excess of five percent (5%) by weight of the whole.

(4) "Certifying agency" means:

(a) An agency authorized under laws of a state, territory, or possession to officially certify seed and which has standards and procedures approved by the U.S. secretary of agriculture to assure the genetic purity and identity of the seed certified; or

(b) An agency of a foreign country determined by the U.S. secretary of agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under paragraph (a) of this subsection.

(5) "Crop seed" means any agricultural, vegetable or flower seed, other than the pure seed, present in a lot of seed and which weighs less than five percent (5%) of the total weight of the lot.

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

(7) "Flower seeds" includes seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts, and commonly known and sold under the name of flower seeds in this state.

(8) "Grower's or collector's declaration" means a statement signed by the grower or collector giving for any lot of seed the lot number, the kind, the variety, origin, and weight.

(9) "Hard seed" means any viable agricultural, vegetable or flower seed that fails to germinate within the prescribed germination period due to an impermeable seed coat.

(10) "Hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining one (1) of three (3) combinations:

- (a) Two (2) or more inbred lines;
- (b) One (1) inbred or a single cross with an open pollinated variety; or
- (c) Two (2) varieties or species, except open pollinated varieties of corn (*Zea mays*).

The second generation or subsequent generations from such crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names.

(11) "Inert matter" means the collective parts of incomplete plants, seeds, seedlike structures and other nonseed particles present in a lot of seed.

(12) "In-state seed dealer" means any seed dealer with an established plant, warehouse or place of business in the state of Idaho.

(13) "Kind" means one (1) or more related species or subspecies which singly or collectively is known by one (1) common name, for example, as wheat, oat, vetch, sweet clover, cabbage, or cauliflower.

(14) "Labeling" includes all labels, and other written, printed, or graphic representations in any form whatsoever, accompanying and pertaining to any seed whether in bulk or in containers, and includes invoices.

(15) "Lot of seed" means a definite quantity of seed identified by a lot number or other lot identification every portion or bag of which is uniform, within permitted tolerances, for the factors which appear in the labeling.

(16) "Mixture," "mix," or "mixed" means seed consisting of more than one (1) kind, each in excess of five percent (5%) by weight of the whole.

(17) "Noxious weed seeds" means the seeds of any plant which is determined by the director to be injurious to public health, crops, livestock, land or other property. They are divided into two (2) classes:

(a) "Prohibited noxious weed seeds" are the seeds which when established are highly destructive and difficult to control in this state by ordinary good cultural practices.

(b) "Restricted noxious weed seeds" are the seeds of such weeds as are very objectionable in fields, lawns, or gardens but can be controlled by good cultural practices.

The director shall publish and maintain a list of all noxious weeds, which shall also be included in the rules of the department of agriculture. Pursuant to administrative rules, the director may add to or subtract from the list of seeds included under either definition. Any addition or subtraction is effective thirty (30) days after publication.

(18) "Origin" for an indigenous stand of trees is the area on which the trees are growing; for a nonindigenous stand, it is the place from which the seeds or plants were originally introduced.

(19) "Out-of-state seed dealer" means any seed dealer selling or shipping seed into the state of Idaho without owning an established plant, warehouse or place of business in Idaho.

(20) "Person" shall include any individual, partnership, corporation, company, society or association.

(21) "Private hearing" may consist of a discussion of facts between the person charged with a violation of the provisions of this chapter and the enforcement officer.

(22) "Producer" means any person who is the owner, tenant or operator of land who has an interest in and receives all or part of the proceeds from the sale of seeds produced on that land.

(23) "Record" is all information relating to a shipment of seed and must include a file sample of each lot of seed, purity, and current germination test documentation. For tree and shrub seed, the record must also include all documents supporting the statement of origin and elevation of the seed.

(24) "Seed dealer" means any person that lets it be known by any means or manner that he has seed offered for sale.

(25) "Stop sale" means an administrative order restraining the sale, use, disposition, and movement of a designated seed lot.

(26) "Tree seed and shrub seed" includes seeds of woody plants commonly known and sold as tree seed and shrub seeds.

(27) "Variety" means a subdivision of a kind which is characterized by growth, plant, fruit, seed or other characteristics by which it can be differentiated from other sorts of the same kind.

(28) "Vegetable seeds" means the seeds of those crops which are grown in gardens or on truck farms and are generally known and sold under the name of vegetable seeds.

(29) "Weed seeds" means the seeds of all plants recognized as weeds by the director.

22-415. LABEL REQUIREMENTS -- AGRICULTURAL, VEGETABLE, FLOWER, TREE AND SHRUB SEEDS. Before each container of seed is sold, offered for sale, exposed for sale, or delivered under a contract within this state for sowing purposes, it shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language, giving the following information:

(1) For agricultural seeds and mixtures:

(a) The name of the kind or the kind and variety of each agricultural seed component in excess of five percent (5%) of the whole, and the percentage by weight of each pure seed. The name of the kind and variety shall be on the label of seeds of wheat, barley and dry-edible beans, or if any mixture containing any kinds herein listed, the names of the varieties shall be listed. When more than one (1) pure seed is present, the word "mixture" or the word "mixed" and the name of the mixture shall be shown conspicuously on the label. Hybrids shall be labeled as hybrids.

(b) Lot number or other lot identification.

(c) Origin by state or foreign country, if known. If the origin is unknown, that fact shall be stated.

(d) Percentage by weight of all other crop seeds combined, none of which individually exceeds five percent (5%) of the total weight.

If a mixture contains no crop seed, that shall be stated or shown.

(e) Percentage by weight of inert matter.

(f) Percentage by weight of all weed seeds.

(g) The name and rate of occurrence per pound of each kind of restricted noxious weed seed present. All determinations of noxious weed seeds shall be subject to tolerances and methods of determination prescribed in the rules and regulations under this chapter.

(h) Germination for each named agricultural seed:

(i) Percentage of germination, exclusive of hard seed;

(ii) Percentage of hard seed, if present;

- (iii) The calendar month and year the test was completed to determine the percentages;
- (iv) A tetrazolium test is deemed sufficient to meet Germination labeling requirements if the species is included in the director's published list.
- (i) Name and address of the person who labeled the seed, or who sells or delivers seed under a contract, or his federal consumer marketing service number or agricultural marketing service number.
- (2) For vegetable seeds in packets or preplanted containers, mats, tapes or other planting devices:
 - (a) Name of kind of seed;
 - (b) Lot identification;
 - (c) The year for which the seed was packed for sale, or the percentage of germination and the calendar month and year the germination test was completed.
 - (d) For seeds which germinate less than the standard last established by the director in the rules and regulations promulgated under this chapter:
 - (i) Percentage of germination, exclusive of hard seed;
 - (ii) Percentage of hard seed, if present;
 - (iii) The calendar month and year the test was completed to determine such percentages;
 - (iv) The words "Below Standard" in not less than 8-point type;
 - (v) A tetrazolium test is deemed sufficient to meet Germination labeling requirements if the species is included in the director's published list.
 - (e) For seeds placed in a germination medium, mat, tape, or other Device in such a way as to make it difficult to determine the quantity of seed without removing the seeds, a statement to indicate the number of seeds in each container or net weight.
 - (f) Name and address of the person who labeled the seed, or who sells or delivers seed under a contract, or his federal consumer marketing service number or agricultural marketing service number.
- (3) For vegetable seeds, in mixtures, in bulk, or in containers other than packets and preplanted containers, mats, tape, or other devices:
 - (a) The name of each kind and variety present in excess of five percent (5%) of the whole, and the percentage by weight of each in order of predominance;
 - (b) Lot identification;
 - (c) Germination for each named vegetable seed:
 - (i) Percentage of germination, exclusive of hard seed;
 - (ii) Percentage of hard seed, if present;
 - (iii) The calendar month and year the germination test was completed;
 - (iv) A tetrazolium test is deemed sufficient to meet Germination labeling requirements if the species is included in the director's published list.
 - (e) The labeling requirements for vegetable seeds in containers of more than eight (8) ounces shall be satisfied if the seed is weighed from an accurately labeled container in the presence of the purchaser.
 - (f) Name and address of the person who labeled the seed, or his Federal consumer marketing service number or agricultural marketing service number.
- (4) For flower seeds:
 - (a) The name of the kind and variety or a statement of type and

- performance;
- (b) The calendar month and year the seed was tested or the year the seed was packaged;
 - (c) The name and address of the person who labeled or who sells the seed or his federal consumer marketing service number or agricultural marketing service number;
 - (d) In packets or preplanted containers, mats, tapes or other planting devices, and in addition to the requirements of paragraphs (a) through (c) of subsection (4) of this section:
 - (i) The number of seeds or net weight in the container;
 - (ii) The percentage of germination exclusive of hard seed for those seeds which germinate less than the germination standards established in the rules and regulations promulgated under this chapter; and
 - (iii) The words "Below Standard" in not less than 8-point type.
 - (e) In containers other than packets or preplanted containers, mats, tapes or other planting devices, and in addition to requirements of paragraphs (a) through (c) of subsection (4) of this section:
 - (i) Lot number or other lot identification;
 - (ii) Percentage of germination, exclusive of hard seed, and the percentage of hard seed, if present.
- (5) For tree and shrub seed:
- (a) Common name of the species;
 - (b) The scientific name of the genus and species;
 - (c) Lot number or other lot identification;
 - (d) Origin, if known. If the origin is unknown that fact shall be stated:
 - (i) For seed collected from a predominantly indigenous stand, the area of collection given by latitude and longitude, geographic description, or political subdivision;
 - (ii) For seed collected from other than a predominantly indigenous stand, identify the area of collection and the origin of the stand, or state "origin not indigenous."
 - (e) The elevation, or the upper and lower limits of elevations, within which the seed was collected.
 - (f) Purity as a percentage of pure seed by weight.
 - (f) For those species for which standard germination testing procedures are prescribed by the director:
 - (i) Percentage of germination, exclusive of hard seed;
 - (ii) Percentage of hard seed, if present;
 - (iii) The calendar year and month the germination test was completed.
 - (g) Transported in bulk, an invoice is sufficient to meet
 - (h) Labeling requirements when the container is identified with a lot number.
 - (i) The name and address of the person who sells the seed or his federal consumer marketing service number or agricultural marketing service number.
- (6) For all agricultural, vegetable, flower, tree and shrub seeds treated to prevent contamination, infection or disease:
- (a) A word or statement indicating the seed has been treated;
 - (b) The common or generic name of the applied substance, or description of the process used;
 - (c) The appropriate toxicity category signal word and

Precautionary statements which correspond to the toxicity categories set forth in title 40, code of federal regulations, effective July 1, 1989;

Signal Words for Toxicity Categories

Toxicity Category Signal Word

I DANGER

If assigned to toxicity category I on the basis of oral, inhalation or dermal toxicity, the word "Poison" shall appear in red on a background of distinctly contrasting color and the skull and crossbones shall appear in immediate proximity to the word "Poison".

II WARNING

III CAUTION

IV CAUTION

(d) When more than one (1) substance is applied, each substance shall be noted on the label, and the seed shall be labeled for the substance with the higher level of toxicity category; and

(e) An expiration date of any inoculant applied to the seed.

(7) For agricultural seeds coated with any substance which changes the size, shape or weight of the original seed:

(a) Percentage of pure seeds with coating material removed;

(b) Percentage of coating material; and

(c) Percentage of germination.

(8) The arbitration requirement provided in section 22-436, Idaho Code.

22-416. PROHIBITIONS. (1) It shall be unlawful for any person to sell, offer for sale, expose for sale, or deliver under a contract any seed within the state:

(a) Unless the test to determine the percentage of germination required by section 22-415, Idaho Code, shall have been completed within a fifteen (15) month period, exclusive of the calendar month in which the test was completed immediately prior to sale, exposure for sale, or offered for sale or transportation. This prohibition does not apply to tree and shrub seeds or agricultural or vegetable seed in hermetically-sealed containers. The director may by regulation prescribe a longer period than otherwise stated herein, and the conditions and methods of treatment or packaging and labeling which he deems to be necessary to maintain the identification and viability of such seed.

(b) Not labeled in accordance with the provisions of this chapter, or having false or misleading labeling.

(c) Pertaining to which there has been a false or misleading advertisement.

(d) Containing prohibited noxious weed seeds.

(e) Containing restricted noxious weed seeds singly or collectively in excess of tolerances as provided by the rules and regulations of the department.

(f) Labeled a variety name for which a United States certificate of plant variety protection has been issued or is pending, specifying seed sale only as a class of certified seed, when the seed is in fact not certified by an official seed certifying agency.

(g) If the crop seed rye (*Secale cereal*) is present in wheat, oats or barley.

(2) It shall be unlawful for any person within this state:

(a) To detach, alter, deface, or destroy any label provided for in this chapter or the rules and regulations made and promulgated thereunder, or to alter or substitute seed, in a manner that may defeat the purposes of this chapter.

(b) To disseminate any false or misleading advertisement concerning seeds in any manner or by any means.

(c) To hinder or obstruct in any way any authorized person in the performance of his duties under this chapter.

(d) To fail to comply with a "stop-sale" order.

(f) To ship, deliver, transport, or sell seeds treated with any Substance likely to be poisonous to human beings or animals unless there is conspicuously shown on the analysis tag or label, or on a separate tag or container, the word "treated", signal word and precautionary statements for appropriate warning adequate to protect the public based on the toxicity categories set forth in title 40, code of federal regulations, effective July 1, 1989. It is unlawful to sell or divert seed so treated for use or for processing either for human or animal consumption.

(g) To transport screenings containing noxious weed seeds without Proper covering or tarping, or containerizing or boxing, to prevent noxious weed seed dissemination. All screenings containing noxious weed seeds must be processed to eliminate germination.

(h) To return to a seed dealer treated seed in open bags except For storage purposes.

(3) It shall be unlawful for any person to make any representation as to any particular lot of seeds, tubers, plants or plant parts intended to be offered for sale as "Idaho State Certified," "State Certified," "Idaho Certified," or "Certified," or similar words or phrases, without first having the written certificate of the Idaho agricultural experiment station in the college of agriculture of the university of Idaho or its agent as to the genetic purity and/or other characteristics of the particular seeds, tubers, plants or plant parts as represented.

22-417. EXEMPTIONS.

(1) The provisions of sections 22-415 and 22-416, Idaho Code, shall not apply:

(a) To seed or grain not intended for sowing purposes.

(b) To seed in storage in, or consigned to, a seed cleaning or processing establishment for cleaning or processing; provided, that any labeling or other representation which may be made with respect to the uncleaned or unprocessed seed shall be subject to this chapter.

(2) No person shall be subject to the penalties of this chapter for having sold or offered for sale any seeds which were incorrectly labeled or misrepresented as to kind, variety, type, or origin and elevation, when the seeds cannot be differentiated by examination, unless he has failed to obtain reasonable documentation as an invoice, grower's declaration or other labeling to verify the contents.

22-418. DUTIES AND AUTHORITY OF DIRECTOR. The duty of enforcing the provisions of this chapter and carrying out its provisions and requirements shall be vested in the director pursuant to section 22-103, Idaho Code. Additional duties of the director or his authorized agents shall include, but are not limited to, the following:

(1) To establish and maintain or make provision for seed testing

facilities.

(2) To have analyses and tests of samples of seed made as necessary.

(3) To make or provide for making purity and germination tests of seeds for farmers and dealers on request.

(4) The director of the department of agriculture may by rule set the service and license fees to be collected. Fees so collected shall be paid into the state treasury and credited to the agriculture department inspection account, created in section 22-104, Idaho Code, and such fees shall be used only to pay the costs of operating the state seed laboratory.

(5) To enter upon any public or private premises during regular business hours in order to have access to seeds subject to this chapter.

(6) To sample and inspect agricultural, vegetable, flower, tree and shrub seeds transported, sold, offered or exposed for sale, or delivered under a contract within this state for sowing purposes, at such time and place and to such extent as he may deem necessary to determine whether the seeds are in compliance with the provisions of this chapter, and to notify promptly the person who transported, sold, offered or exposed the seed for sale of any violation.

(7) To issue and enforce a "stop-sale" order to the owner or custodian of any lot of seed which is in violation of any of the provisions of this chapter, which order shall prohibit further sale or delivery under a contract of the seed until such officer has evidence that the law has been complied with; provided, that in respect to seeds which have been denied sale as provided in this paragraph, the owner or custodian of such seeds shall have the right to appeal from such order to the district court of the county in which the seeds are found, praying for a judgment as to the justification of the order and for the discharge of such seed from the order prohibiting the sale in accordance with the findings of this court; and provided further, that the provisions of this paragraph shall not be construed as limiting the right of the enforcement officer to proceed as authorized under other sections of this chapter.

(8) To cooperate with the United States department of agriculture and other agencies in seed law enforcement.

(9) To notify in writing, the proprietor of any plant variety protected under the United States plant variety protection act when any sample of a proprietor's variety is received for testing at the Idaho state seed laboratory.

(10) To cooperate fully with the proprietor of any plant variety which is protected under the United States plant variety protection act to secure for the proprietor the full protection afforded under the United States plant variety protection act or the federal seed act, or both, by releasing to the proprietor any and all knowledge as may come to the attention of the director or his authorized agents in regard to the illegal use of any United States protected variety.

(11) To prescribe and adopt rules governing:

(a) The methods of sampling, inspecting, analysis tests and examination of seed, and the tolerances to be followed in the administration of this chapter, which shall be in general accord with officially prescribed practice in interstate commerce;

(b) Reasonable standards of germination for vegetable seeds and flower seeds;

(c) Labeling of flower seeds;

- (d) A list of the kinds of flower seeds subject to the flower seed germinations labeling requirements;
- (e) A list of the tree and shrub species subject to germination labeling requirements;
- (f) A list of species that may be tetrazolium tested in lieu of germination testing.

22-419. RECORDS. Each person whose name appears on the label as handling agricultural, vegetable, flower or tree and shrub seeds subject to the provisions of this chapter shall keep for a period of two (2) years complete records of each lot of agricultural, vegetable, flower or tree and shrub seed handled and keep for one (1) year a file sample of each lot of seed after final disposition of the lot. All such records and samples pertaining to every shipment shall be accessible for inspection by the director or his agent during customary business hours.

22-420. SEIZURE. Any lot of seed not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the director to a court of competent jurisdiction in the locality in which the seed is located. In the event that the court finds the seed does not meet the requirements set out in this chapter and orders the condemnation of the seed, it shall be denatured, processed, destroyed, relabeled, or otherwise disposed of in compliance with the laws of this state; provided, that in no instance shall the court order such disposition of said seed without first having given the defendant an opportunity to apply to the court for release of the seed or permission to process or relabel it for compliance with the provisions of this chapter. Release of said seed shall be made only upon proof of compliance.

22-421. VIOLATIONS, PROSECUTIONS AND PENALTIES. (1) Any person who violates or fails to comply with any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than three thousand dollars (\$3,000) or be imprisoned in the county jail for not more than twelve (12) months or be subject to both such fine and imprisonment.

Violations shall include, but are not limited to, mislabeling of variety, mislabeling prohibited noxious weed seeds, exceeding restricted noxious weed tolerances, failure to keep records as specified in section 22-419, Idaho Code, mislabeling purity or germination percentages, and any other intentional mislabeling.

When the director or his authorized agents shall find that any person has violated any of the provisions of this chapter, he or his duly authorized agents may institute proceedings in a court of competent jurisdiction in the county in which the violation occurred, or the director may file with the attorney general such evidence as may be deemed necessary; provided, however, that the director may permit the defendant to appear before the director to introduce evidence either in person or by agent or attorney at a private hearing. If, after such hearing, or without such hearing in case the defendant or his agent or attorney fails or refuses to appear, the director is of the opinion that the evidence warrants prosecution, he shall proceed as herein provided.

It shall be the duty of the prosecuting attorney of the county in which the violation occurred to institute proceedings at once against any person charged with a violation of this chapter, if, in the judgment of the officer the information submitted warrants action.

After judgment by the court in any case arising under this chapter, the director shall publish any information pertinent to the issuance of the judgment by the court in such media as he may designate from time to time.

(2) Any person who violates or fails to comply with any of the provisions of this chapter or any regulations promulgated under this chapter may be assessed a civil penalty by the department or its duly authorized agent of not more than two thousand dollars (\$2,000) for each offense and shall be liable for reasonable attorney fees. Assessment of a civil penalty may be made in conjunction with any other department administrative action. No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act. If the department is unable to collect such penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court. Any person against whom the department has assessed a civil penalty under the provisions of this section may, within thirty (30) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred. Moneys collected for violation of a rule or regulation shall be remitted to the agricultural inspection seed testing account.

(3) Nothing in this chapter shall be construed as requiring the director to report minor violations for prosecution when the director believes that the public interest will be best served by suitable warnings or other administrative action.

22-421A. INJUNCTION.

When in the performance of his duties the director applies to any court for a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rules and regulations promulgated under this chapter, the injunction is to be issued without bond.

22-434. SEED DEALER'S LICENSE.

An in-state seed dealer or an out-of-state seed dealer who conditions or labels or sells, for the use of others any seed, shall obtain a license from the department authorizing him to condition or label or sell such seed. A dealer shall not be entitled to a license unless he has an established plant, warehouse or place of business.

(1) A separate license shall be required for each place of business from which seed regulated under this chapter is sold. Application for licenses shall be on a form provided by the director.

(2) Applications shall be renewed no later than July 1 of each year.

(3) Fees so collected shall be paid into the state treasury and credited to the state agricultural inspection account.

(4) In-state producers selling their own crop shall be exempt from this section.

(5) Any person selling seed who has total annual gross seed sales not exceeding five hundred dollars (\$500) is exempt from this section.

(6) An in-state seed dealer or an out-of-state seed dealer, who sells, offers for sale, exposes for sale or delivers seed only in packages of less than eight (8) ounces shall be exempt from this section.

(7) The department may suspend, revoke, or refuse to issue or renew the license of any person when it is satisfied that:

(a) The applicant or licensee has been guilty of fraud, deception, or misrepresentation in the procurement of a license; and/or

(b) The licensee was guilty of violating any of the provisions of this chapter.

22-435. STATE SEED ADVISORY BOARD.

(1) In order to maintain close contact between the department and the seed industry, there is hereby created a state seed laboratory advisory board which shall consist of eight (8) official members and eight (8) ex officio alternates appointed by the director of the department of agriculture from a list provided by the Idaho seed council. The Idaho seed council will nominate a member and an alternate for each vacancy on the advisory board to represent the following seed commodities:

- (a) Cereal grains
- (b) Grasses - turf
- (c) Grasses - forage
- (d) Small seeded legumes
- (e) Corn and small seeded vegetables
- (f) Garden beans
- (g) Field beans
- (h) Oil crops.

The executive secretary of the Idaho crop improvement association shall serve as a permanent ninth official member of the board. The president of the Idaho seed analysts association, or his representative, shall serve as a permanent tenth official member of the board. Additionally, without the need for any nominations, the director shall appoint one

(1) grower member who shall serve as the eleventh official member of the board and serve a three (3) year term.

(2) The members first appointed shall determine by lot the length of their terms: Four (4) to serve for three (3) years, and four (4) to serve for two (2) years, each term beginning July 1, 1989. A member and his alternate shall serve the same length of term. Vacancies in office shall be filled by an alternate for the unexpired term.

(3) Official members or an alternate present in the absence of his respective representative will have the right to vote. A member and his respective alternate are not to work for the same employer.

(4) Members or alternates of the board shall be compensated as provided in section 59-509(a), Idaho Code.

(5) The functions of the board shall be to advise and counsel with the department in the administration of the provisions of sections 22-414 through 22-436, Idaho Code.

(6) The board shall meet at the call of the chairman or the director of the Idaho department of agriculture or his designee. A majority of the members present at any meeting shall constitute a quorum, and a majority vote of the quorum at any meeting shall constitute an official act of the board.

(7) At the first meeting after July 1, in each year, the board shall select a chairman. The director of the Idaho department of agriculture and the bureau chief of the Idaho state seed laboratory in the department of agriculture or their representatives, shall be ex officio members without the right to vote.

22-436. SEED ARBITRATION.

(1) Requirement of arbitration. When any buyer claims to have been damaged by the failure of any seed for planting to produce or perform as represented by the required label to be attached to such seed under section 22-415, Idaho Code, or by warranty, or as a result of negligence, as a prerequisite to the buyer's right to maintain a legal action against the dealer or any other seller of such seed, the buyer shall first submit the claim to arbitration as provided in this section. The monetary value of the claim must exceed three thousand dollars (\$3,000). Any applicable period of limitations with respect to such claim shall be tolled until ten (10) days after the filing of the report of arbitration with the director of the department of agriculture as provided in subsection (5)(i) of this section.

(2) Notice of arbitration requirement. Conspicuous language calling attention to the requirement for arbitration under this section shall be referenced or included on the analysis label required under section 22-415, Idaho Code, or otherwise attached to the seed bag or package. Arbitration shall not be required unless this notice is included. A notice in the following form, or equivalent language, shall be sufficient:

NOTICE OF REQUIRED ARBITRATION

Under the seed laws of some states, arbitration is required as a precondition of maintaining certain legal actions, counterclaims or defenses against a seller of seed. The buyer must file a complaint along with the filing fee with the Idaho Department of Agriculture within such time as to permit inspection of the crops, plants or trees. The buyer shall notify and serve a copy of the complaint upon the seller by certified mail.

(3) Effect of arbitration.

(a) Agreement to arbitrate. The report of arbitration shall be binding upon all parties to the extent, if any, that they have so agreed in any contract governing the sale of the seed.

(b) Commencement of legal action. In the absence of an agreement to be bound by arbitration, a buyer may commence legal proceedings against a seller or assert such claim as a counterclaim or defense in any action brought by the seller, at any time after the receipt of the report of arbitration.

(c) Use as evidence. In any litigation involving a complaint which has been the subject of arbitration under this section, any party may introduce the report of arbitration as evidence of the findings of the report, and the court may give such weight to the arbitration council's findings and recommendations as to damages and costs, as the court may see fit based upon all the evidence before the court. The court may also take into account any finding of the arbitration council with respect to the failure of any party to cooperate in the arbitration proceedings including, any finding as to the effect of delay in filing the arbitration claim upon the arbitration council's ability to

determine the facts of the case.

(4) Seed arbitration council. The director of the department of agriculture shall appoint an arbitration council composed of six (6) members and five (5) alternate members. An Idaho department of agriculture representative and an alternate shall serve as permanent members. One (1) member and one (1) alternate shall be appointed upon the recommendation of each of the following:

(a) The associate dean of the college of agriculture; director of the Idaho agricultural experiment stations, College of Agriculture, University of Idaho.

(b) The department head of plant, soil and entomological sciences, college of agriculture, university of Idaho.

(c) The president of Idaho-eastern Oregon seed association.

(d) The president of the Idaho crop improvement association.

(e) The president of the Idaho farm bureau.

Initially, three (3) members and their alternates shall be appointed for four (4) year terms and three (3) members and their alternates shall be appointed for two (2) year terms. Thereafter, members and alternates shall be appointed for four (4) year terms.

Each alternate member shall serve only in the absence of the member for whom the person is an alternate. No member or alternate shall be involved in an investigation of a complaint if he, his employer or employee is named in the filed complaint.

Either the buyer or the seller may challenge any member or alternate of the council if there is reason to believe that a conflict of interest exists. In the event that a member or alternate is challenged, the director of the department of agriculture shall appoint, with the consent of the buyer and seller, a replacement, who shall be knowledgeable about agricultural husbandry.

The council shall elect a chairman and a secretary from its membership. The chairman shall conduct meetings and deliberations of the council and direct all of its other activities. The secretary shall keep accurate records of all such meetings and deliberations and perform such other duties for the council as the chairman may direct.

The purpose of the council is to conduct arbitration as provided in this section. The council may be called into session by or at the direction of the director or upon direction of its chairman to consider matters referred to it by the director or such chairman in accordance with this section.

(5) Procedures.

(a) Commencement. A buyer may invoke arbitration by filing a sworn complaint with the director together with a filing fee of one hundred dollars (\$100) which is nonrefundable. The buyer shall serve a copy of the complaint upon the seller by certified mail within such time as to permit inspection of the crops, plants or trees by the seed arbitration council or its representatives and by the dealer or seller from whom the seed was purchased. If the seeds are not planted, the buyer shall serve a copy of the complaint upon the seller by certified mail not later than two (2) years after the purchase of the seed lot.

(b) Seller's answer. Within twenty (20) days after receipt of a copy of the complaint, the seller shall file with the director an answer to the complaint and serve a copy of the answer upon the buyer by certified mail.

(c) Referral to arbitration council. The director shall refer the complaint and answer to the council for investigation, findings and

recommendation.

- (d) Investigation. Upon referral of a complaint for investigation the council shall make a prompt and full investigation of the matters complained of and report its findings and recommendations to the director within sixty (60) days of such referral or such later date as parties may determine.
- (e) Scope of report. The report of the council shall include findings and recommendations as to investigation costs, if any, for settlement of a complaint.
- f) Authority of council. In the course of its investigation, the council or any of its members may:
 - (i) Examine the buyer and the seller on all matters which the council considers relevant.
 - (ii) Grow to production a representative sample of the seed through the facilities of the director or a designated university.
 - (iii) Submit seed samples for testing by state seed laboratory or appropriate laboratory.
 - (iv) Hold informal hearings at such time and place as the Chairman may direct upon reasonable notice to all parties.
 - (v) Upon the chairman's request, call any person in for comments knowledgeable on any matter under investigation.
 - (vi) Assess the cost of conducting the investigation to the nonprevailing party or between the parties of a given complaint when deemed appropriate.
 - (vii) Include as the cost of investigation: travel, lodging and meals as established by the state, for any witness called by the council, and other administrative and secretarial expenses.
- (g) Delegation. The council may delegate all or any part of any investigation to one (1) or more of its members. Any such delegated investigation shall be summarized in writing and considered by the council in its report.
- (h) Compensation. The members of the council shall be compensated as provided in section 59-509(b), Idaho Code.
- (i) Distribution of report. After the council has made its report the director shall promptly transmit the report by certified mail to all parties.