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**IDAPA 02
TITLE 02
CHAPTER 15**

02.02.15 - RULES GOVERNING THE SEED INDEMNITY FUND

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 22, Chapter 51, Section 22-5129, Idaho Code. (4-2-03)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.02.15, "Rules Governing the Seed Indemnity Fund". (4-2-03)

02. Scope. These rules clarify the procedure for licensing, collection and remittance of assessments, determining claim value, maintaining electronic records, use of electronic scales and remedies of the ISDA for non-compliance. (4-2-03)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (4-2-03)

003. ADMINISTRATIVE APPEALS.

There is no provision for administrative appeals before the Idaho State Department of Agriculture under this chapter. Hearing and appeal rights are pursuant to Title 67, Chapter 52, Idaho Code. (4-2-03)

004. INCORPORATION BY REFERENCE.

No documents are incorporated by reference in this chapter. (4-2-03)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

01. Office. The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712. (4-2-03)

02. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Standard Time, Monday through Friday, except holidays designated by the state of Idaho. (4-2-03)

03. Mailing Address. The mailing address for the central office is Idaho State Department of Agriculture, PO Box 790, Boise, Idaho 83701. (4-2-03)

04. Telephone Number. The telephone number of the central office is (208) 332-8500. (4-2-03)

05. Fax Number. The fax number of the central office is (208) 334-2170. (4-2-03)

006. PUBLIC RECORDS ACT COMPLIANCE.

These rules are public records and are available for inspection and copying at the ISDA. (4-2-03)

007. -- 009. (RESERVED).

010. DEFINITIONS.

The Idaho State Department of Agriculture adopts the definitions set forth in Section 22-5102, Idaho Code. In addition, as used in this chapter, "type" means the class of seed (i.e. foundation, certified, registered, noncertified). (4-2-03)

011. ABBREVIATIONS.

01. GAAP. Generally Accepted Accounting Principles. (4-2-03)

02. ISDA. Idaho State Department of Agriculture. (4-2-03)

03. SIF. The Idaho Seed Indemnity Fund. (4-2-03)

04. USPS. United States Postal Service. (4-2-03)

012. DELIVERY VOUCHER.

If there are no receipts or scale weight tickets issued at the time of seed crop delivery, a delivery voucher may be issued. A delivery voucher is a document that may be used as written evidence of transfer in accordance with Section 22-5102(16), Idaho Code, evidencing delivery of producer's seed crop to seed buyer and shall include but is not limited to: (4-2-03)

01. Producer. This shall include the full name, address and phone number of the producer. (4-2-03)

02. Seed Buyer. This shall include the full name, address and phone number of the seed buyer. (4-2-03)

03. Ship To. This shall include the full name, address and phone number of the seed facility that the seed crop is to be transferred. (4-2-03)

04. Transportation Company. This shall include the name, address and phone number of the transportation company delivering the seed crop to the seed facility. The truck, trailer and seal number, if applicable, driver name (printed), signature and date of transfer. (4-2-03)

05. Seed Crop Shipped. This shall include for each seed crop delivery, the type, kind, variety, estimated volume or weight and date of shipment and container identification markings. (4-2-03)

013. WAREHOUSE RECEIPTS.

Shall include but not be limited to: (4-2-03)

01. Name of Producer. (4-2-03)

02. Name and Address of Seed Buyer. (4-2-03)

03. Kind of Seed Crop. (4-2-03)

04. Date of Delivery. (4-2-03)

05. Weight of Seed Crop Delivered. (4-2-03)

06. Lot Identification. (4-2-03)

014. SCALE WEIGHT TICKETS.

Scale weight tickets for electronic scales that are recorded and maintained electronically are exempt from the sequentially numbered and in triplicate requirement. (4-2-03)

01. Pre-Numbered Scale Tickets. If a seed buyer has access to a scale which can be used for weighing seed, he shall use pre-numbered scale tickets. (3-16-04)

02. Numerical Order Requirement. A copy of each ticket shall be maintained in numerical order. (3-16-04)

03. Custom Scale Requirement. If a seed buyer does not have access to a scale and has seed crop custom weighed at various locations, the seed buyer shall maintain a copy of the scale ticket in chronological order as part of the seed crop records. (3-16-04)

015. -- 025. (RESERVED).

026. LICENSE.

01. Posting of License. Immediately upon receipt of the license or any renewal, extension or modification thereof under Title 22, Chapter 51, Idaho Code, the licensed seed buyer shall post the license in a conspicuous place in each place of business or in any other place as the director may determine. The ISDA will issue a duplicate license for each additional seed facility. (4-2-03)

02. License Fee. If an applicant is not licensed pursuant to the "Pure Seed Law," Title 22, Chapter 4, Idaho Code, the license fee shall be equal to the out-of-state license fees, pursuant to Title 22, Chapter 4, and shall be deposited to the state treasury and credited to the SIF. (4-2-03)

03. Return of Suspended or Terminated License. If a license issued to a seed buyer has lapsed or is suspended, revoked or canceled by the director, the license and all duplicates shall be returned to the ISDA. At the expiration of any period of suspension, revocation or cancellation, the license shall be returned to the seed buyer to whom it was originally issued and shall be posted as prescribed by Section 026, of these rules. (4-2-03)

04. Loss of License. Upon satisfactory proof of the loss or destruction of a license issued to a seed buyer, a duplicate may be issued under the same number or a new number at the discretion of the director. (4-2-03)

05. License Reinstatement Fee. If license renewal material is received by the ISDA after the current license has expired, but no later than thirty (30) days past due, a reinstatement fee of one hundred dollars (\$100) shall be assessed. If license renewal material is received after the thirty (30) day late period it will be considered an original license application and will be assessed a license fee equal to the requirements of Section 026. The exemption for license fees in Section 22-5103(3a), Idaho Code, will not apply to license renewals that have been received by the ISDA later than thirty (30) days. Fees collected by this subsection shall be deposited in the state treasury and credited to the SIF account. (4-2-03)

06. Additional License Application Information. The ISDA may request additional license information that may include, but not limited to: (4-2-03)

- a.** Names of officers of corporations or limited liability companies. (4-2-03)
- b.** Company information as required in the application form. (4-2-03)
- c.** Outstanding producer financial obligations. (4-2-03)
- d.** Name and address of banks that handle business accounts. (4-2-03)

07. License Duration. Licenses issued under the provisions of Title 22, Chapter 51, Idaho Code, expire on the 30th day of June of each year. (4-2-03)

027. -- 035. (RESERVED).

036. AMOUNT OF BOND FOR SEED STORED FOR WITHDRAWAL.

For the purpose of calculating the bond required pursuant to Section 22-5105, Idaho Code, the value for seed stored for withdrawal shall be calculated by either using the commonly accepted market price of similar seed crops within the same geographic location or equal to the average value of the same kind of seed crop owned by the seed buyer, whichever is greater, as determined by ISDA. (4-2-03)

037. AMOUNT OF BOND, IRREVOCABLE LETTER OF CREDIT, CERTIFICATE OF DEPOSIT, OR SINGLE BOND.

01. Bonding Requirement. The amount of bond to be furnished shall be fixed at a rate pursuant to Section 22-5105, Idaho Code. (3-16-04)

02. Single Bond, Irrevocable Letter of Credit or Certificate of Deposit. For the purposes of licensing as a seed buyer pursuant to Title 22, Chapter 51, Idaho Code, and as a warehouseman pursuant to Title 69,

Chapter 2, Idaho Code, or as a commodity dealer pursuant to Title 69, Chapter 5, Idaho Code, a single bond, irrevocable letter of credit or certificate of deposit shall be fixed at whichever of the following amounts is greater: (3-16-04)

a. Combined total indebtedness paid and owed to producers for seed crop and agricultural commodity, without any deductions, for the previous license year; or (3-16-04)

b. The indebtedness owed and estimated to be owed to producers for seed crop and agricultural commodity, without any deductions, for the current license year. (3-16-04)

038. -- 046. (RESERVED).

047. MAINTENANCE OF RECORDS.

All records and accounts required under Title 22, Chapter 51, Idaho Code, shall be kept separate and distinct from all records and accounts of any other business of the seed buyer and shall be subject to inspection by the director at any reasonable time. Electronic records may be maintained out of Idaho provided they are available for examination by the ISDA within the state at any reasonable time. (4-2-03)

048. -- 049. (RESERVED).

050. INSURANCE REQUIREMENTS.

01. Insurance Coverage. Pursuant to Section 22-5114, Idaho Code, the seed buyer shall maintain a commercial property policy for loss against, but not limited to: (4-2-03)

a. Loss from fire; (4-2-03)

b. Loss from internal explosion; (4-2-03)

c. Loss from lightning; (4-2-03)

d. Loss from tornado. (4-2-03)

02. Insurance Deductible. The maximum deductible allowed for insurance required by Section 22-5114, Idaho Code, shall be fifty thousand dollars (\$50,000). However, a larger deductible may be allowed at the discretion of the director. The request shall be submitted in writing and kept on file. (4-2-03)

03. Seed Stored for Withdrawal. The amount of insurance coverage shall be sufficient to cover the full replacement value of similar or better kind and quality of seed crop. (4-2-03)

04. Self-Insurance. A request for self-insurance shall be submitted to the ISDA in writing and signed by the seed buyer or his representative. Supporting evidence of ability to pay seed crop obligations, in the event of a loss due to fire, internal explosions, lightning, or tornadoes, shall be attached to the self-insurance request. (4-2-03)

a. The director may accept or reject the self-insurance request. The director's findings will be in writing and kept on file. (4-2-03)

b. If a seed buyer is self-insured and the seed crop within the licensed seed buyer's facility has been damaged or destroyed, the seed buyer shall make complete settlement to all producers within thirty (30) days of the loss. Failure of the seed buyer to make such settlement shall be grounds for revocation of the seed buyer's license. If the seed buyer and producer agree to other terms, set out in writing, the settlement does not need to be made within the thirty (30) day time period. If only a portion of the seed crop is damaged, settlement may be made on a pro-rata basis to the producer. (4-2-03)

05. Insurance Settlement. When the seed crop within a licensed seed buyer's facility has been damaged or destroyed, the seed buyer shall make complete settlement to all producers having seed crops transferred to the seed buyer or stored for withdrawal within ten (10) days after settlement with the insurance company. Failure

of the seed buyer to make such settlement shall be grounds for revocation of the seed buyer's license. If the seed buyer and producer agree to other terms, set out in writing, the settlement does not need to be made within the ten (10) day time period. If only a portion of the seed crop is damaged, settlement may be made on a pro-rata basis to the producer. (4-2-03)

051. -- 059. (RESERVED).

060. NONCOMPLIANCE -- REQUIREMENTS.

If a seed buyer is not meeting its obligations to producers, does not have the ability to pay producers, or refuses to submit records and papers for lawful inspection, the ISDA shall give written notice to the seed buyer and direct the seed buyer to comply with all of the following requirements within ten (10) working days or as agreed to by the ISDA. (4-2-03)

01. Additional Security Requirements. If it appears the licensee does not have the ability to pay producers for seed crops transferred, or when it appears the licensee does not have a sufficient net worth to outstanding financial obligations ratio, the ISDA may require the licensee to post a bond or other additional acceptable security in the amount of two thousand dollars (\$2,000) for each one thousand dollars (\$1,000) or fraction thereof of deficiency. (4-2-03)

02. Provide an Audited or Reviewed Financial Statement. The ISDA may require the licensee to submit an audited or reviewed financial statement prepared for the current financial accounting year by an independent certified public accountant or licensed public accountant. The audited or reviewed financial statement shall be prepared in accordance with GAAP. The ISDA may request a follow-up review of the submitted financial statement. (4-2-03)

061. -- 069. (RESERVED).

070. HOW ASSESSMENTS ARE TO BE CALCULATED.

Pursuant to Section 22-5121, Idaho Code, all seed buyers shall collect assessments from producers who transfer seed crop or store for withdrawal. Assessments are calculated as follows: (4-2-03)

01. Contract. Assessments shall be collected on the gross dollar amount, without any deduction, owed to, or paid, or to be paid, on behalf of the producer of the seed crop. (4-2-03)

02. Seed Stored for Withdrawal. On the clean or estimated clean weight at the time the seed crop is withdrawn from the seed facility: (4-2-03)

a. The initial rate of assessment for cereal grain, lentil, pea, and dry edible bean and oil seed stored for withdrawal shall not exceed one hundredth (1/100) cent per pound. (4-2-03)

b. The initial rate of assessment for all seed crops stored for withdrawal other than seed crops pursuant to Section 070, shall not exceed one half (1/2) cent per pound. (4-2-03)

c. The SIF advisory board shall review the assessment rate annually and make recommendations for change, as necessary, to the director. (4-2-03)

d. If the amount of assessment for a producer on all seed stored for withdrawal made in a calendar year is calculated to be less than fifty cents (\$.50), no assessment will be collected. (4-2-03)

03. Incidental Costs and Expenses. All incidental costs and expenses including, but not limited to transportation, cleaning, in and out charges, insurance, taxes and additional services or charges shall not be included in the calculation to determine the assessment. (4-2-03)

04. Unpaid Assessments. If any assessment is unpaid and a failure occurs, the amount of the unpaid assessment will be deducted from any SIF recovery paid to the producer. (4-2-03)

071. -- 079. (RESERVED).

080. COLLECTION AND REMITTANCE OF SIF ASSESSMENTS.

SIF assessments shall be collected from obligations owed to the producer or at the time of withdrawal by the seed buyer and remitted to the ISDA. If assessment is paid by mail the payment must be postmarked not later than the twentieth day of the month following the close of the quarter to avoid interest and penalty charges. (3-16-04)

081. -- 089. (RESERVED).

090. CLAIM FORMS AND PAYMENT FROM THE FUND.

01. Claim Forms. Claim forms will be provided either via the USPS, by electronic transfer by the ISDA, or other commercial means. (4-2-03)

02. Contract. If the seed crop is contracted, the value of the contract price of the seed crop, at the time of payment, may be used to determine payment from the SIF. (4-2-03)

03. Not Contracted or Stored for Withdrawal. If the seed crop is not contracted or stored for withdrawal, the value for payment from the SIF shall be determined by a survey of prices, for similar seed crops and similar seed facilities, within the same geographic location as the failed seed buyer. (4-2-03)

091. -- 099. (RESERVED).

100. EXEMPTIONS.

Producers are not eligible to participate in SIF and no assessments shall be collect from: (4-2-03)

01. Producers With a Financial or Management Interest. Producers that have a financial or management interest in a seed facility, except members of a cooperative marketing association qualified under Title 22, Chapter 26, Idaho Code. (4-2-03)

02. Producers That Sell or Transfer to Another Producer. Producers that sell to another producer, none of which are seed buyers. (4-2-03)

03. Deliveries or Transfers to Unlicensed Seed Facilities. Producers that deliver or transfer seed crops to an unlicensed facility. (4-2-03)

101. -- 999. (RESERVED).

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