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**IDAPA 02
TITLE 02
CHAPTER 13**

02.02.13 - COMMODITY DEALERS' RULES

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 69-524, Idaho Code. (5-3-03)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.02.13, "Commodity Dealers' Rules." (5-3-03)

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 Department for non-compliance. (5-3-03)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (5-3-03)

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. (5-3-03)

004. INCORPORATION BY REFERENCE.

No documents are incorporated by reference in this chapter. (5-3-03)

005. ADDRESS, OFFICE HOURS, TELEPHONE AND FAX NUMBERS.

01. Physical Address. The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712. (5-3-03)

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. (5-3-03)

03. Mailing Address. The mailing address for the central office is Idaho State Department of Agriculture, PO Box 790, Boise, Idaho 83701. (5-3-03)

04. Telephone Number. The telephone number of the central office is (208) 332-8500. (5-3-03)

05. Fax Number. The fax number of the central office is (208) 334-2170. (5-3-03)

006. PUBLIC RECORDS ACT COMPLIANCE.

These rules are public records and are available for inspection and copying at the Department. (5-3-03)

007. -- 009. (RESERVED).

010. DEFINITIONS.

The Idaho State Department of Agriculture adopts the definitions set forth in Section 69-502, Idaho Code. In addition the following definitions apply to Sections 500 through 506. (5-3-03)

01. Cash Sale. Payment to the producer by the warehouse or dealer contemporaneously with the transfer of commodity to the warehouse or dealer. (3-15-02)

02. Commodity Indemnity Fund. Commodity Indemnity Fund is a trust fund. (3-16-04)

03. Credit-Sale Contract. An agreement in writing containing the provisions of Section 69-514 Idaho Code, and where the producer transfers a specific quantity of commodity to a warehouse or dealer with a price or

payment to the producer by the warehouse or dealer to be made at a later date or on the occurrence of a specific event expressed in the agreement. (3-15-02)

04. Dealer. Is limited to dealers licensed by the state of Idaho. (3-15-02)

05. Seed Crops. Means any seed crop regulated by Title 22, Chapter 4, Idaho Code. (3-16-04)

06. NPE. (No price established contract) A contract containing no readily calculable sale value of the commodity for the producer. (3-16-04)

07. Warehouse. Is limited to warehouses licensed by the state of Idaho. (3-15-02)

011. LICENSING.

01. Posting of License. Immediately upon receipt of the license or any renewal, extension or modification thereof under Title 69, Chapter 5, Idaho Code, the licensed commodity dealer shall post the license in a conspicuous place in each place of business or in any other place as the director may determine. The Department will issue a duplicate license for each additional facility as needed. (5-3-03)

02. Return of Suspended or Terminated License. If a license issued to a commodity dealer has lapsed or is suspended, revoked or cancelled by the Director of the Department of Agriculture, the license shall be returned to the Department. At the expiration of any period of suspension, revocation or cancellation the license shall be returned to the commodity dealer to whom it was originally issued and shall be posted as prescribed by Subsection 011.01 of these rules. (5-3-03)

03. Loss of License. Upon satisfactory proof of the loss or destruction of a license issued to a commodity dealer, a duplicate may be issued under the same number or a new number at the discretion of the Director. (7-1-93)

012. ABBREVIATIONS.

01. CIF. Commodity Indemnity Fund. (3-16-04)

02. NPE. No price established contract. (3-16-04)

03. SIF. Seed Indemnity Fund. (3-16-04)

013. -- 099. (RESERVED).

100. OFFICE RECORDS.

A commodity dealer shall maintain complete and sufficient records to show all purchases and sales, including all contracts relating to these transactions. A warehouse licensed as a commodity dealer under Title 69, Chapter 5, Idaho Code, shall maintain complete and sufficient records to show all deposits, purchases, sales contracts, storage obligations and loadouts of the warehouse in this State. Office records as set forth in Title 69, Chapter 5, Idaho Code, shall include, but not be limited to, the following: (5-3-03)

01. Daily Position Record. This shall show the total quantity of each kind and class of agricultural commodity received and loaded out, the amount remaining in storage at the close of each business day and the warehouseman's total storage obligation for each kind and class of agricultural commodity at the close of each business day. (7-1-93)

02. Settlement Sheets/Storage Ledgers. Every commodity dealer shall use settlement sheets showing the dealer's name and location in making settlement with the seller, unless otherwise approved by the Director. All settlement sheets/storage ledgers shall include, but not be limited to, the following: (7-1-93)

a. The seller's name and address. (7-1-93)

- b.** The date of deliveries. (7-1-93)
- c.** The scale ticket numbers. (7-1-93)
- d.** The amount, kind and grade of commodity delivered. (7-1-93)
- e.** The price per bushel or unit. (7-1-93)
- f.** The date and amount of payment. (7-1-93)
- g.** The contract number if a deferred payment, deferred pricing or other sale contract is used. A copy of each settlement sheet shall be maintained in alphabetical order by the commodity dealer as part of the pay records. (7-1-93)
- h.** Electronic Records. If any electronic records are maintained outside of the state of Idaho, the Department must be allowed to examine them at any reasonable time and place as determined by the Department. (5-3-03)

03. Scale Weight Tickets. Scale weight tickets, except tickets for electronic scales that are recorded and maintained electronically, shall be pre-numbered and one (1) copy of each ticket shall be maintained in numerical order. All scale weight tickets shall show the time when the commodities were delivered, the quantities delivered, who delivered the commodities, the ownership of the commodities and the condition of the commodities upon delivery. (3-16-04)

- a.** Tickets in the commodity dealer's possession which have not been issued. (5-3-03)
- b.** Tickets issued by the commodity dealer. (5-3-03)
- c.** Tickets returned to and cancelled by the commodity dealer. (5-3-03)

101. -- 149. (RESERVED).

150. INSPECTION.

For the purpose of inspection the hours of 8 a.m. to 5 p.m., Monday through Friday, except holidays, shall be considered as ordinary business hours. All financial records, commodity records and payment records shall be available for inspection by the Department during ordinary business hours and any other reasonable time specified by the Department in writing. All records shall be made available within the state of Idaho upon request. (7-1-93)

151. -- 199. (RESERVED).

200. LICENSING APPLICATION FORMAT.

01. License -- Application. Application for a license to operate as a commodity dealer under the provisions of Title 69, Chapter 5, Idaho Code, shall be on a form prescribed by the Department and shall include: (7-1-93)

- a.** The full name of the person applying for the license and whether the applicant is an individual, partnership, association, corporation or other entity. (7-1-93)
- b.** The full name of each member of the firm or partnership, or the names of the officers and directors of the company or limited liability company, association, or corporation. (5-3-03)
- c.** The address of the principal place of business. (7-1-93)
- d.** The names of any businesses previously owned or operated by the applicant or any members, officers or directors if the applicant is a corporation, partnership or association. (7-1-93)

e. Information relating to any prior adjudication of bankruptcy relating to the business or any members, officers or directors thereof. (7-1-93)

f. Information relating to any judgments against the applicants. (7-1-93)

g. The location of each office the applicant intends to operate. (7-1-93)

h. Any other reasonable information the Department finds necessary to carry out the purpose and provisions of Title 69, Chapter 5, Idaho Code. (7-1-93)

02. License Conditions of Issuance. An application for license under Title 69, Chapter 5, Idaho Code, shall include: (7-1-93)

a. Application on a form prescribed by the Director. (7-1-93)

b. A current financial statement as specified by Section 69-503 and 69-521, Idaho Code. (5-3-03)

c. A bond or bonds as required by Section 69-506, Idaho Code. (5-3-03)

d. The license fee as prescribed by Section 69-508, Idaho Code. (7-1-93)

e. Compliance with all rules adopted pursuant to Title 69, Chapter 5, Idaho Code. (5-3-03)

f. Any other reasonable information the Department finds necessary to carry out the purpose and provisions of Title 69, Chapter 5, Idaho Code. (7-1-93)

03. License Modification. At the request of the license holder a license may be modified to change existing license classification, providing all requirements of Section 69-508, Idaho Code, are met. (7-1-93)

201. -- 249. (RESERVED).

250. RECORDS -- SEPARATE.

All records and accounts required under Title 69, Chapter 5, Idaho Code, shall be kept separate and distinct from all records and accounts of any other business and shall be subject to inspection by the Director at any reasonable time. (7-1-93)

251. -- 299. (RESERVED).

300. FINANCIAL STATEMENT.

01. Financial Statements. In order to obtain a commodity dealer's license, the applicant shall submit a current financial statement. This statement shall have been prepared not more than ninety (90) days prior to the date of application and shall conform to the applicable requirements of Title 69, Chapter 5, Idaho Code, as to annual financial statements. (7-1-93)

02. Statement Compliance. Each licensed commodity dealer shall submit to the Department an annual financial statement which shall have been audited or reviewed by an independent certified public accountant or independent licensed public accountant. The statement shall be submitted to the Department no later than ninety (90) days after the end of the commodity dealer's fiscal year. The commodity dealer license may be suspended or revoked for failure to comply with licensing requirements stated in Subsection 300.01 of these rules and Section(s) 69-503(6) and 69-521, Idaho Code. (5-3-03)

a. The Department may grant an extension of no more than sixty (60) days, provided cause of an exceptional nature is provided, in writing, to the Department. (5-3-03)

b. The request must be made by a certified public accountant or a licensed public accountant. (5-3-03)

- c.** The request is made prior to the date the financial statement is due. (5-3-03)
- d.** The director may make exceptions to the financial statement requirements provided sufficient cause is provided and to do so would be in the best interest of the state. (5-3-03)
- 03. Statement Content.** The statement shall include: (7-1-93)

 - a.** A balance sheet. (7-1-93)
 - b.** An income statement which includes annual gross sales of commodities purchased from producers covered under the act. (7-1-93)
 - c.** A statement of cash flows. (7-1-93)
 - d.** All accompanying notes to the financial statement. (7-1-93)

301. -- 349. (RESERVED).

350. SHIPPING RECORDS.

Every dealer who ships by truck shall maintain a truck shipping record and every dealer who ships by rail shall maintain a rail or car shipping record. Each shipping record shall include, but not be limited to, the following: (7-1-93)

- 01. Name and Address.** The name and address of the seller or shipper. (7-1-93)
- 02. Buyer and Destination.** The buyer and destination of the commodity shipped. (7-1-93)
- 03. Date.** The date the agricultural commodities were shipped. (7-1-93)
- 04. Amount and Type.** The amount and type of agricultural commodities shipped. (7-1-93)
- 05. Identification Number.** The truck identification or car number. (7-1-93)

351. -- 399. (RESERVED).

400. SCALE TICKETS.

If a dealer has access to a scale which can be used for weighing commodity, he shall use pre-numbered scale tickets showing the dealer's name and location. A copy of each ticket shall be maintained in numerical order as part of the commodity records. If a dealer does not have access to a scale and purchases commodity by having it custom weighed at various locations or at destination, the dealer shall maintain a copy of the scale ticket in chronological order as part of the commodity records. If agricultural commodities are settled on destination weights, copies of the destination weights are to be kept as part of the records. (7-1-93)

401. -- 450. (RESERVED).

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

- 01. Bonding Requirement.** The amount of bond to be furnished for each class 1 dealer and each class 2 dealer shall be fixed at a rate pursuant to Section 69-506, Idaho Code. (3-16-04)
- 02. Single Bond, Irrevocable Letter of Credit or Certificate of Deposit.** For the purposes of licensing as a commodity dealer pursuant to Title 69, Chapter 5, Idaho Code, and a seed buyer pursuant to Title 22, Chapter 51, 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 agricultural commodity and seed crop, without any deductions, for the previous license year; or (3-16-04)

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

03. Additional Bonding Requirements. If it appears the licensee does not have the ability to pay producers for commodities purchased, or when it appears the licensee does not have a sufficient net worth to outstanding financial obligations ratio, the licensee may be required 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. (3-15-02)

452. -- 499. (RESERVED).

500. COMMODITY INDEMNITY FUND.

The Commodity Indemnity Fund shall apply to entities governed by Chapter 2, Title 69, Idaho Code, and Chapter 5, Title 69, Idaho Code, warehouses and dealers, respectively, unless otherwise specified. (3-16-04)

01. Rate of Assessment. The rate of assessment shall be two-tenths of one percent (.2%) gross dollar amount, without deductions, due the producer pursuant to Section 69-257(2), Idaho Code. The Director may establish a lower rate of assessment whenever he deems it advisable or as recommended by the advisory committee established by Section 69-261, Idaho Code. (5-3-03)

02. Exemptions to Assessment. Producers are not eligible to participate in CIF and no assessments shall be collected in the following cases. (5-3-03)

a. If a producer has a financial or management interest in a licensed warehouse or licensed commodity dealer, except members of a cooperative marketing association qualified under Title 22, Chapter 26, Idaho Code. (5-3-03)

b. If a producer sells to another producer, none of which are a licensed warehouseman or a licensed commodity dealer. (5-3-03)

c. If a producer deposits or delivers commodity to an unlicensed entity pursuant to Title 69, Chapters 2 or 5, Idaho Code. (5-3-03)

d. Non-producers or producers delivering commodity that was grown on land not situated within the borders of the state of Idaho are exempt from paying assessments. (5-3-03)

501. NPE CONTRACT CLAIMS ON THE FUND.

NPE contracts shall be executed in writing, dated, and signed by all parties to the contract. (3-16-04)

01. NPE Clause. An NPE contract shall have the following statement: "No claim shall be paid from the CIF pursuant to Section 69-263, Idaho Code, if a producer files his claim more than one hundred eighty (180) days from the date the contract is executed." (3-16-04)

02. NPE Contract List. A commodity dealer shall maintain a list of all NPE contracts written in a calendar year and shall reflect the producers name, contract number, agricultural commodity and date of the contract. (3-16-04)

03. NPE Contract Renewal Period. A producer may renew an NPE contract; but no claim shall be paid from the CIF if a producer files his claim more than three hundred sixty-five (365) days from the date the original NPE contract was executed. (3-16-04)

502. HOW ASSESSMENTS ARE TO BE CALCULATED.

Assessments shall be collected by all warehouses licensed as commodity dealers from all producers who deposit commodities for storage or sale. Assessments are calculated as follows: (5-3-03)

01. Cash Sale or Credit Sale Contract. In a cash sale or credit sale contract on the contract price of the commodity at the time of sale. (3-15-02)

02. Unpaid Assessments. If any assessment is unpaid and a failure occurs, the amount of the unpaid assessment will be deducted from any CIF recovery paid to the producer. (3-15-02)

03. Incidental Costs and Expenses. All incidental costs and expenses including, but not limited to transportation, cleaning, in and out charges, insurance, taxes or additional services or charges are not included in the calculation to determine the assessment. (3-15-02)

503. RECORDKEEPING AND PAYMENT SCHEDULE.

01. Permanent Record. Each warehouse and dealer shall maintain a permanent record showing producer's name and address, lot or identification number, date assessment collected, amount of assessment, commodity assessed, quantity of commodity, gross dollars of settlement and check number issued to producer. (3-15-02)

02. Payment Due Dates. On or before the twentieth day of the month following the close of the quarter, on a form prescribed by the Department, the assessments imposed by Title 69, Chapters 2 and 5, Idaho Code, collected by warehouses and dealers, are due and payable to the Department. A quarter will consist of three (3) months beginning on the first day of January, April, July, and October. 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)

03. Notice. The notice and rate of assessment or a copy of the official notice of suspension of assessment shall be posted in a conspicuous place in the warehouse or dealer facility. (3-15-02)

504. TRUST FUNDS.

All assessments collected by warehouses and dealers in compliance with Title 69, Chapters 2 and 5, Idaho Code, shall, immediately upon payment to and collection by the warehouse or dealer, be trust fund money and held for payment to the Department for the CIF. Such money shall not, for any purpose, be considered to be a part of the proceeds of any transaction between a depositor and warehouse or dealer for which the collection and payment of the assessment was related and shall not be subject to an encumbrance, security interest, execution or seizure on account of any debt owed by the warehouse or dealer to any of their creditors. (5-3-03)

505. PENALTIES FOR FAILURE TO COLLECT, ACCOUNT FOR, OR REMIT ASSESSMENTS -- OTHER VIOLATIONS.

Failure to collect, account for, or remit assessments, or violations of the statutory requirements of Title 69, Chapters 2 and 5, Idaho Code, as it relates to the CIF are grounds for the immediate demand on the warehouse, dealer bond, or certificate of deposit, and the undertaking by the Director of any other remedy provided by law. (5-3-03)

506. RETURN OF COMMODITY DUE TO FAILURE.

In the event of failure the Department may: (3-15-02)

01. Identifiable Commodity. Return specifically identifiable commodity or as much as is available to its producer in full or partial satisfaction of indebtedness; or (3-15-02)

02. Fungible Commodity. If the commodity is fungible, an amount equal to the producer's original deposit or if insufficient fungible commodity is available, a pro-rata share to all producers of the commodity; and (3-15-02)

03. Shortfall in Commodity Distribution. Any shortfall in commodity distribution may be submitted as a claim against the CIF. (3-15-02)

507. -- 599. (RESERVED).

600. UNLAWFUL PRACTICES.

It shall be unlawful for a commodity dealer to alter, falsify or withhold records from the warehouse examiner. (7-1-93)

601. -- 999. (RESERVED).

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