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## Requirements for Grain Warehouses:

*Idaho*



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## Requirements for Grain Warehouses: Idaho

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#### **§ 69-202. Definitions**

As used in this chapter:

- (1) "Agricultural commodity" or "commodity" means any grain, wheat, barley, oats, corn, rye, oilseeds, dry edible beans, peas, lentils and other leguminous seeds and feeds (not including minerals or seed crops) or any other commodity as determined by the director.
- (2) "Commodity dealer" or "dealer" means any person who solicits, contracts for, or obtains from an Idaho producer or producers, title, possession or control of any agricultural commodity through his place of business located in the state of Idaho or through his place of business located outside the state of Idaho for the purposes of sale or resale or who buys, during a calendar year, at least ten thousand dollars (\$ 10,000) worth of agricultural commodities from an Idaho producer or producers of the commodities. Commodity dealer or dealer shall not mean any person who purchases agricultural commodities for his own use as seed or feed within his own operation.
- (3) "Contract" means a written agreement between two (2) or more parties for the sale of an agricultural commodity stipulating the terms and conditions of performance of the parties and includes, but is not limited to, those contracts commonly referred to as credit sales, deferred payment, delayed, production, bailment or price later contracts.
- (4) "Deliver" or "delivery" means the physical transfer of agricultural commodity from one (1) party to another.
- (5) "Department" means the Idaho state department of agriculture.

(6) "Depositor" means any person who deposits an agricultural commodity in an Idaho state licensed warehouse for storage, handling, processing, reconditioning or shipment, or who is the owner or legal holder of a negotiable warehouse receipt, outstanding scale weight ticket, nonnegotiable warehouse receipt or other evidence of such deposit, or any person whose agricultural commodity has been sold to or is under control of a warehouseman for selling, processing, reconditioning or handling whether or not such agricultural commodity is within the warehouse.

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

(8) "Failure" means the date that one (1) or more of the following events occurred, as determined by the director:

(a) An inability to financially satisfy claimants in accordance with this chapter and the time limits provided for in it;

(b) A public declaration of insolvency;

(c) A revocation of license and the leaving of an outstanding indebtedness to a depositor or producer;

(d) A failure to redeliver any commodity to a depositor or to pay depositors or producers for commodities purchased by a licensee or to pay a producer for commodity delivered under the provisions of the contract in the ordinary course of business;

(e) A failure to make application for license renewal within sixty (60) days after the annual license renewal date; or

(f) A denial of the application for a license renewal.

(9) "Historical depositor" means any person who, in the normal course of business operation has consistently made deposits in the same warehouse of commodities produced on the same land. In addition, anyone purchasing or leasing that particular land directly from the original depositor or receiving that particular land by devise, descent, bequest or gift directly from the historical depositor shall also be considered an historical depositor with regard to the commodities produced on that land.

(10) "Person" means any individual, firm, association, corporation, partnership or limited liability company.

(11) "Producer" means the owner, tenant or operator of land in this state who has an interest in the proceeds from the sale of agricultural commodities produced on that land. Producer does not include growers who deposit their commodity in a facility in which they have a financial or management interest, except members of a cooperative marketing association qualified under chapter 26, title 22, Idaho Code.

(12) "Public warehouse" or "warehouse" or "warehouseman" means any elevator, mill, warehouse, subterminal commodity warehouse, public warehouse or other structure or facility in which agricultural commodities are received for storage, shipment, processing, reconditioning or handling.

(13) "Receipt" means a warehouse receipt.

(14) "Revocation" means the permanent removal of a warehouse license following a hearing on violations of this chapter by the hearing officer or director.

(15) "Scale weight ticket" means a load slip or other evidence, other than a receipt, given to a depositor by a warehouseman licensed under the provisions of this chapter, upon initial delivery of the commodity to the warehouse.

(16) "Seed crops" means any seed crop regulated by chapter 4, title 22, Idaho Code.

(17) "Subterminal warehouse" means any warehouse at which an intermediate function is performed in which agricultural commodities are customarily received from dealers rather than producers and where the commodities are accumulated prior to shipment.

(18) "Suspension" means the temporary removal of a warehouse license by the department pending a hearing for violations of this chapter. Correction of the violations prior to a hearing may result in the reinstatement of a license without a hearing.

(19) "Termination" means the expiration of a warehouse license due to failure to meet minimum licensing requirements, failure to renew a warehouse license or as requested by the licensee, unless a complaint has been filed against the licensee alleging a violation of any provision of this chapter.

(20) "Transfer" means, unless otherwise defined by the parties in writing, the event when a producer or his agent delivers a commodity to a warehouseman, who then weighs the commodity, and gives the producer or his agent a scale weight ticket or other written evidence of transfer.

(21) "Warehouse receipt" means every receipt, whether negotiable or nonnegotiable, issued by a warehouseman, except scale weight tickets.

(22) "Warehouseman" means a person operating or controlling a public warehouse.

### **§ 69-203. License necessary to operate public warehouse**

Before a person can lawfully operate a public warehouse in this state, he must procure a license under this chapter; provided however, that the foregoing requirement as to licenses is not applicable to any warehouse or warehouseman who is licensed under an act of congress approved August 11, 1916 (39 Statutes at Large 44 [486]) and acts amendatory thereof, commonly called the "United States Warehouse Act," and who is licensed under chapter 5, title 69, Idaho Code.

### **§ 69-204. Penalty for operating without a license -- Misrepresentation**

(1) Any person operating a public warehouse without a license or in any way representing, by actions or words, that the warehouse is so licensed when such warehouse is not so licensed or any person who shall misrepresent, forge, alter, counterfeit or falsely represent a license as required by the provisions of this chapter shall be guilty of a felony and punished by imprisonment in the state prison for not more than ten (10) years, or by a fine of not more than ten thousand dollars (\$ 10,000), or by both.

(2) Any person who shall issue, utter, or aid in the issuance or utterance or attempt to issue or utter a false or fraudulent receipt for any commodity shall be guilty of a felony and punished by

imprisonment in the state prison for not more than ten (10) years, or by a fine of not more than ten thousand dollars (\$ 10,000), or by both.

**§ 69-205. Inspection and classification of warehouses, storage, warehousing, weighing and certification of commodities -- Duties of warehousemen**

Upon application by any person for license to conduct a warehouse under this chapter, the department is authorized to investigate and determine whether the public warehouse for which licenses are applied, or have been previously issued, under this chapter, is suitable for the proper storage of agricultural commodities and the department is authorized with or without application, to wit:

To inspect any warehouse licensed under this chapter; to inspect every licensed warehouse at least once every calendar year; to investigate the storage, warehousing, classifying according to grade, and otherwise weighing and certification of agricultural commodities therein conducted; to classify warehouses, licensed or applying for license, in accordance with their capacity and to prescribe, within the limitations of this chapter, the duties of the warehousemen conducting warehouses licensed under this chapter with respect to their care of and responsibility for agricultural commodities.

**§ 69-206. Licenses to warehousemen -- Issue -- Renewal -- Conditions precedent**

The department is authorized, upon application to it, to issue or renew to any warehouseman a license for the conduct of a warehouse or warehouses in accordance with this chapter and such rules as may be made hereunder, providing the following conditions are met:

- (1) Each person, as a condition precedent to operating a warehouse in this state, shall file and maintain satisfactory evidence with the director of the existence of an effective policy of insurance issued by an insurance company authorized to do business in this state, insuring all agricultural commodities that may be stored or accepted for storage on the premises, including commodities owned by the warehouseman, for which such license is sought for the full market value of such agricultural commodities against loss by fire, internal explosion, lightning or tornado;
- (2) That each warehouse be found suitable for the proper storage of the particular agricultural commodity or commodities for which a license is requested;
- (3) A license fee is submitted to the department as prescribed by section 69-211, Idaho Code;
- (4) A current drawing of the warehouse which shows storage facilities and the capacity calculations of the warehouse which indicates commodity and seed crop storage areas, shall be approved by the department;
- (5) A sufficient and valid bond is filed and maintained as required by section 69-208, Idaho Code;
- (6) The applicant shall submit to the department an audited or reviewed financial statement prepared by an independent certified public accountant or licensed public accountant showing that the licensee has and does maintain current assets equal to or greater than current liabilities, a statement of current assets and current liabilities, and a statement of net worth, all of which shall be prepared in accordance with generally accepted accounting principles;

(7) For a warehouseman license an applicant shall have and maintain a net worth of at least fifty thousand dollars (\$ 50,000) or maintain a bond in the amount of two thousand dollars (\$ 2,000) for each one thousand dollars (\$ 1,000) or fraction thereof of net worth financial requirement; however, a person shall not be licensed as a warehouseman if the person has a net worth of less than twenty-five thousand dollars (\$ 25,000). A bond submitted for purposes of this subsection shall be in addition to any bond otherwise required under the provisions of this chapter;

(8) The applicant has complied with and abided by all the terms of this chapter and the rules prescribed hereunder;

(9) That all materials required for renewal of a license shall be received by the department prior to the expiration date of the warehouse license. A warehouse license which has expired may be reinstated by the department upon receipt of all necessary licensing materials required by the provisions of this chapter and a reinstatement fee in the amount of five hundred dollars (\$ 500), providing that this material is filed within thirty (30) days from the date of expiration of the warehouse license. At the end of the thirty (30) day reinstatement period, a warehouse license shall be terminated by the department. All license applications completed and received after the thirty (30) day reinstatement period shall be considered original applications and after the five hundred dollar (\$ 500) reinstatement fee has been remitted to the department, license fees shall be assessed as original fees according to section 69-211, Idaho Code.

#### **§ 69-207. Term of license -- Renewal**

Each license issued under sections 69-206 and 69-215, Idaho Code, shall be issued for a period to be prescribed by rule by the department.

#### **§ 69-208. Bond of applicant for license -- Additional bond -- Additional obligations -- Certificate of deposit or irrevocable letter of credit in lieu of bond -- Single bond**

Each warehouseman applying for a license to conduct a warehouse in accordance with this chapter shall, as a condition to the granting thereof, execute and file with the department a good and sufficient bond other than personal security. The bond shall be in favor of the commodity indemnity fund to secure the faithful performance of his obligations as a warehouseman under all the laws of the state, including obligations arising by operation of the commodity indemnity fund program, and the rules prescribed hereunder, and of such additional obligations as a warehouseman as may be assumed by him under contracts with the respective depositors of agricultural commodities in such warehouse. Said bond shall be in such form and amount, shall have such surety or sureties, and shall contain such terms and conditions as the department may prescribe to carry out the purposes of this chapter. Whenever the department shall determine that a bond approved by it is, or for any cause has become, insufficient, it shall require an additional bond or bonds to be given by the warehouseman concerned, conforming with the requirements of this section, and unless the same be given within the time fixed by a written demand therefor the license of such warehouseman shall be suspended or revoked.

The bond shall be approved by the department and shall be conditioned upon the faithful performance by the warehouseman of the duty to keep in the warehouse for the depositor the agricultural commodity delivered and to deliver the agricultural commodity to or for such depositors. The bond shall also be conditioned upon the faithful performance by the warehouseman of any additional obligations involving marketing transactions with a depositor.

The warehouseman may give a single bond meeting the requirements as provided in this chapter and all warehouses operated by the warehouseman shall be as one (1) warehouse for the purpose of compliance with the provisions of this section. At the discretion of the director, any person required to submit a bond to the department in accordance with this chapter, may give to the department a certificate of deposit or an irrevocable letter of credit payable to the commodity indemnity fund in lieu of the bond required herein. The principal amount of the certificate of deposit or irrevocable letter of credit shall be the same as that required for a surety bond pursuant to this chapter. Accrued interest upon the certificate of deposit shall be payable to the purchaser of the certificate. The irrevocable letter of credit or certificate of deposit shall remain on file with the department until it is released, canceled or discharged by the director or until the director is notified ninety (90) days in advance, by registered or certified mail, return receipt requested, that the irrevocable letter of credit or certificate of deposit is renewed, canceled or amended. Failure to notify the director may result in the suspension or revocation of the bonded warehouse license. The provisions of this chapter that apply to a bond required pursuant to this chapter apply to each certificate of deposit or irrevocable letter of credit given in lieu of such bond.

Under provisions of this chapter, an irrevocable letter of credit or certificate of deposit shall not be acceptable unless it is issued by a national bank or federal thrift institution in Idaho or by a state-chartered bank or thrift institution authorized to conduct business in Idaho and insured by the federal deposit insurance corporation.

Any changes in the capacity of a warehouse or installation of any new warehouses involving a change in the bond liability under the provisions of this chapter shall be reported to the department prior to the operation thereof.

If a warehouseman is licensed pursuant to chapter 51, title 22, Idaho Code, that same warehouseman may obtain a single bond, certificate of deposit or irrevocable letter of credit as surety for both chapter 2, title 69, Idaho Code, and chapter 51, title 22, Idaho Code. If a single bond, certificate of deposit or irrevocable letter of credit is written covering chapter 2, title 69, Idaho Code, and chapter 51, title 22, Idaho Code, the bond, certificate of deposit or irrevocable letter of credit shall be made out in favor of the commodity indemnity fund and the seed indemnity fund. In the event a warehouseman fails as defined in section 69-202(8), Idaho Code, and a single bond, certificate of deposit or irrevocable letter of credit is written in favor of the commodity indemnity fund and seed indemnity fund, the proceeds of the bond, certificate of deposit or irrevocable letter of credit will be allocated based on the dollar amount of the verified claims approved pursuant to chapter 2, title 69, Idaho Code, and chapter 51, title 22, Idaho Code.

#### **§ 69-208A. Amount of bond -- Cancellation**

The amount of bond to be furnished for each warehouse shall be fixed at whichever of the following amounts is greater:

- (1) The combined total indebtedness paid and owed to producers for agricultural commodity and seed crop stored for withdrawal or transferred during the previous license year; or
- (2) The indebtedness owed and estimated to be owed to producers for agricultural commodity and seed crop for the current license year.

Subsequent to determining whichever of the preceding amounts is greater, and based on that amount, the amount of bond shall be calculated as follows:

Gross Dollars: Amount of Bond:

\$ 0 - \$ 450,000 \$ 20,000 bond or 6% of the gross

dollars, whichever is less

\$ 450,001 - \$ 1,000,000 \$ 40,000 bond

\$ 1,000,001 - \$ 8,000,000 \$ 100,000 bond

Over \$ 8,000,000 \$ 500,000 bond

Any other bond that may be required shall be separate and in addition to the bond listed here. In any case, the amount of the bond shall not be more than five hundred thousand dollars (\$ 500,000). This bond shall run continuously with the warehouse license until suspended, revoked or canceled by the bonding company. A ninety (90) day written notice shall be given to the department by the bonding company before any bond is suspended, revoked or canceled. The director reserves the right to waive the ninety (90) day cancellation period.

**§ 69-209. Action on bond, certificate of deposit or irrevocable letter of credit by producers injured**

Any producer injured by the breach of any obligation for which a bond, certificate of deposit or irrevocable letter of credit is written, under the provisions of section 69-208, Idaho Code, must petition the director to make demand upon the warehouseman, certificate of deposit, irrevocable letter of credit or bond. The director may thereupon make demand for payment of such damages and in the event such damages are not promptly paid the director may commence an action to enforce payment of such damages. The liability of the bank on a certificate of deposit or irrevocable letter of credit, and the surety upon the bond required to be given by warehousemen as provided in section 69-208, Idaho Code, for any one (1) annual licensing period shall be limited to the amount specified in the bond, certificate of deposit, or irrevocable letter of credit and in case of recoveries had by two (2) or more producers for violation of the conditions of this chapter in excess of the amount of the bond, certificate of deposit, or irrevocable letter of credit, such recovery shall be prorated and the total recovery for any one (1) annual licensing period shall not exceed the amount of the bond, certificate of deposit, or irrevocable letter of credit. In the event the director sues and obtains a judgment against the warehouseman and/or his surety or bank for payment of such damages under this chapter, he shall be entitled to recover a reasonable attorney's fee.

**§ 69-210. Designation of warehouse as bonded warehouse**

Upon the filing with and approval by the department of a bond, in compliance with this chapter, for the conduct of a warehouse, such warehouse shall be designated as bonded hereunder; but no warehouse shall be designated as bonded under this chapter, and no name or description conveying the impression that it is so bonded, shall be used, until a bond, such as provided for in section 69-208, Idaho Code, has been filed with and approved by the department, nor unless the license issued under this chapter for the conduct of such warehouse remains unsuspended and unrevoked.



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Statutes current through all legislation from the 2020 Regular Session effective before July 1, 2020

ID - Idaho Code Annotated GENERAL LAW TITLE 69. WAREHOUSES CHAPTER 2. BONDED WAREHOUSE LAW

**§ 69-211. Fees of department**

(1) The department shall charge, assess, and cause to be collected an annual fee for each warehouse license or renewal thereof, according to the following schedule:

For each original application --

Capacity in Hundredweight Rate

0 to 50,000 \$ 180.00

50,001 to 100,000 360.00

100,001 to 250,000 540.00

250,001 to 500,000 715.00

500,001 to 750,000 890.00

Over 750,000 1,070.00

For each renewal application --

Capacity in Hundredweight Rate

0 to 50,000 \$ 50.00

50,001 to 100,000 100.00

100,001 to 250,000 145.00

250,001 to 500,000 190.00

500,001 to 750,000 240.00

Over 750,000 290.00

(2) The department shall assess and collect a fee of one hundred dollars (\$ 100) for each inspection of a warehouse or station which is done for the purpose of amending a warehouse license.

(3) The department shall assess and collect a fee of two hundred fifty dollars (\$ 250) per day or fraction thereof for maintaining each employee of the department at a warehouse to oversee the correction of a violation of the provisions of this chapter or the rules promulgated hereunder.

(4) Upon approval by the department, a warehouseman may operate two (2) or more warehouses under a single warehouse license.

(5) All fees shall be deposited into the commodity indemnity fund.

#### **§ 69-212. Schedule of charges -- Posting**

Every licensed warehouseman shall annually, during the first week of July, publish by posting in a conspicuous place in his warehouse, a schedule of storage, handling, conditioning or any other charges or discounts for the ensuing year, which schedule shall be kept posted in a conspicuous place in said warehouse. Further, the warehouseman shall annually, during the first week in July, mail to the department, a copy of such charges. All charges made by any public warehouseman hereunder for the handling and storage of agricultural commodities shall be just, fair and reasonable; and the director is hereby vested with the power and authority upon the complaint of any person interested or upon his own motion, after a full hearing, to declare any existing charge for the handling or storage of any agricultural commodity to be unreasonable or unjust and to determine and order what shall be a just and reasonable charge to be imposed or enforced in place of that found to be unreasonable or unjust. Failure to file and post scheduled charges for the current year will keep in full force and effect the latest previously posted and filed schedule of rates.

#### **§ 69-213. Privilege of examining commodities stored**

Every depositor having an interest in any agricultural commodity stored in any such warehouse, and every state inspector authorized by the director, shall have the right to examine at any reasonable time during ordinary business hours any commodity so stored, and all parts of such warehouses, provided the warehouse or the agricultural commodities stored therein is not endangered by such inspection; and every warehouseman, his agents and employees shall furnish safe and reasonable access and facilities for such examination.

#### **§ 69-213A. Annual notification**

Beginning in the year 2005, on or before December 1 of each year, every licensed warehouseman shall send written notification to each individual having an interest in any agricultural commodity stored in their warehouse for a period of thirty-six (36) months or more, or having an interest in any open credit sales contract related to an agricultural commodity with the warehouseman, for the purpose of confirming said interest, which notification shall include the name of the individual, and the type and measurement of the agricultural commodity. Notification shall be sent by United States mail, postage prepaid to the last known address of each individual. Warehousemen shall maintain a record of the names and addresses of the individuals to whom notification was sent. A warehouseman may voluntarily elect to provide annual notification to any individual having an interest in any agricultural commodity stored in their warehouse for a period of less than thirty-six (36) months. Notwithstanding any other provision of this section, a warehouseman shall not be required to send annual notification to any individual having an interest in any agricultural commodity stored in their warehouse that was produced on lands owned by an Indian tribe as defined in section 67-4001, Idaho Code.

#### **§ 69-214. Employment of personnel**

The department may employ such inspectors, investigators, samplers and weighers as it may deem necessary.

**§ 69-215. Licenses to weigh commodities for storage**

Every warehouse licensed under this chapter shall have a weighmaster licensed pursuant to the provisions of the Weighmaster's Licensing Act; provided, however, that if agricultural commodities are not received or delivered by a warehouse over scales, a weighmaster's license shall not be required.

**§ 69-216. Suspension or revocation of license to classify, grade or weigh products for storage. [Repealed.]**

**§ 69-217. Right to assess and collect fees**

The department shall have the right to assess and collect such fees as may be necessary to carry out the provisions of this chapter.

**§ 69-218. Warehousemen to receive commodities according to capacity**

Every warehouseman conducting a warehouse licensed under this chapter shall receive for storage therein, so far as its capacity permits, any agricultural commodity of the kind customarily stored therein by him which may be tendered to him by historical depositors, bearing certificate, when required, of an official inspector showing suitable condition, for warehousing, in the usual manner in the ordinary and usual course of business. A warehouseman may accept agricultural commodities from new depositors who qualify to the extent of the capacity of the warehouse.

**§ 69-219. Commodities deemed delivered subject to law**

Any person who delivers agricultural commodities to a warehouse licensed under this chapter, for storage or under terms of a contract, shall be deemed to have delivered the same subject to the terms of this chapter and the rules prescribed hereunder.

**§ 69-220. Inspection and grading of diseased or insect infested commodities**

Any diseased or insect infested agricultural commodity complained of by the department or any person having interest in the warehouse or agricultural commodities stored in a warehouse licensed under this chapter shall be inspected and graded by a representative of the department or a person duly licensed to grade the same under this chapter, and if such inspection or grading shows such agricultural commodity to be in a condition that its continued storing or retention would injure or damage the warehouse or other commodities stored therein the owner shall, by order of the director, forthwith remove and dispose of such agricultural commodity as directed. If the owner of such commodity is unknown to the inspector or warehouseman, the warehouseman shall proceed to remove or make disposition of such commodity in a manner that will tend to save and realize the values contained in such commodity by the owner, under such rules and regulations as may be promulgated under this chapter or the uniform commercial code.

**§ 69-221. Fungible products of different grades to be kept separate. [Repealed.]**

**§ 69-222. Receipts -- Scale weight tickets**

For all agricultural commodities delivered to a warehouse licensed under this chapter original negotiable or nonnegotiable warehouse receipts, or scale weight tickets, shall be issued by the warehouseman conducting the same, but no receipts, or scale weight tickets, shall be issued except for agricultural commodities delivered to the warehouse at the time of the issuance

thereof; provided, however, that no negotiable receipt need be issued except when requested by the depositor.

**§ 69-223. Negotiable warehouse receipts for commodities stored -- Contents --  
Conditions -- Penalties**

Every negotiable warehouse receipt issued for agricultural commodities stored in a warehouse licensed under the provisions of this chapter shall be issued in accordance with, but not limited to, the following:

(1) Every negotiable warehouse receipt issued for agricultural commodities stored in a warehouse licensed under the provisions of this chapter shall embody within its written or printed terms:

(a) All the requirements of a negotiable warehouse receipt under the Uniform Commercial Code--Documents of Title.

(b) A description of the agricultural commodities received, showing the quantity thereof, or, in case of agricultural commodities customarily put up in bales or packages, a description of such bales or packages by marks, numbers, or other means of identification and the weight of such bales or packages.

(c) The grade or other class of the agricultural commodities received and the standard or description in accordance with which such classification has been made: provided that such grade or other class shall be stated according to the official standards of the state applicable to such agricultural commodities as the same may be fixed and promulgated under authority of law; provided further that until such official standards of the state for any agricultural commodity or commodities have been fixed and promulgated, the grade or other class thereof may be stated in accordance with any recognized standard; provided that unless otherwise required by law, when requested by the depositor of other than fungible agricultural commodities, a receipt omitting compliance with this subdivision may be issued if it has plainly and conspicuously embodied in its written or printed terms a provision that such negotiable warehouse receipt is not graded.

(d) A statement that the negotiable warehouse receipt is issued subject to the provisions of this chapter and the rules prescribed hereunder.

(e) Such other terms and conditions within the limitations of this chapter as may be required by the department.

(f) All negotiable warehouse receipts issued under the provisions of this chapter shall be:

(i) Upon forms prepared and supplied by the department and issued upon requisition of the warehouseman at a reasonable cost; or

(ii) In electronic form, through a system approved by the United States department of agriculture, accessible by the Idaho state department of agriculture, and all costs of implementation and other related costs shall be borne by the public warehouse, warehouseman, or commodity dealer. Such electronic negotiable warehouse receipts shall have the same validity and enforceability as those in nonelectronic form and the terms "written" and "printed," and derivatives thereof, when used in relation to negotiable warehouse receipts, shall

include such receipts created or displayed electronically. The department is authorized to promulgate rules necessary for the implementation and operation of such electronic system.

(2) Any warehouseman, agent, employee or manager of a public warehouse licensed under the provisions of this chapter who shall remove or allow to be removed any commodities from the facility on which the negotiable warehouse receipt was issued, except to preserve the same from fire or other damage, or except when an emergency storage situation exists as determined by the director, without the return and cancellation of any and all outstanding negotiable warehouse receipts that may have been issued to represent such commodities shall be guilty of a felony and be punished by imprisonment in the state prison not to exceed ten (10) years, or by a fine of not more than ten thousand dollars (\$ 10,000), or by both.

#### **§ 69-224. Standards for agricultural commodities**

The department is authorized, from time to time, to establish and promulgate standards for agricultural commodities by which their quality or value may be judged or determined.

So far as practicable such standards shall conform to the official standards of the United States or the state of Idaho applicable to such agricultural commodities as the same may from time to time be fixed and promulgated.

No warehouseman in this state shall insert in any receipt issued by him any language in any way limiting or modifying his liabilities, or responsibilities, as imposed by the laws of this state.

#### **§ 69-225. Loss of receipts -- Conditions of reissue**

While an original receipt issued under this chapter is outstanding and uncanceled by the warehouseman issuing the same no other or further receipt shall be issued for the agricultural commodity covered thereby or for any part thereof. In order to issue a new warehouse receipt supplementing one that has been lost or destroyed or to cancel an outstanding warehouse receipt that has been lost or destroyed, the licensed warehouseman shall require the depositor or other applicant to submit to the warehouseman: (1) an affidavit stating that he is lawfully entitled to possession of the original receipt, that he has not negotiated or assigned it and how the original receipt was lost or destroyed, and (2) a bond in an amount double the market value of the agricultural commodity represented by the lost or destroyed receipt. The market value shall be determined at the time this bond is submitted for the lost receipt. A warehouse receipt issued in lieu of a lost or destroyed receipt shall duplicate the original and bear a statement that it is issued in lieu of the lost or destroyed receipt. A duplicate receipt must clearly state on its face that it is a duplicate receipt, the number of the receipt it is replacing and the license number under which the original receipt was issued.

#### **§ 69-226. Records of warehouses -- Conduct of warehouses**

Every warehouseman conducting a warehouse licensed under the provisions of this chapter shall keep in a place of safety complete and correct records and shall conduct said warehouse in all other respects in compliance with this chapter and the rules promulgated hereunder.

#### **§ 69-227. Examination of commodities or seed crops -- Records -- Publication of findings**

The department is authorized to cause examination to be made of any agricultural commodity or seed crop deposited, or any record pertaining to commodities or seed crops deposited therein, in any warehouse licensed under the provisions of this chapter. Whenever, after opportunity for hearing is given to the warehouseman conducting such warehouse, it is determined that he is

not performing fully the duties imposed on him by this chapter and the rules promulgated hereunder, the department may publish its findings in a local daily or weekly newspaper in the area where the warehouse is located.

**§ 69-228. Suspension or revocation of license**

The department may, after opportunity for hearing has been afforded to the licensee concerned, suspend or revoke any license issued to any person under the provisions of this chapter, for any violation of or failure to comply with any provision of this chapter, chapter 7 of the uniform commercial code or the rules promulgated hereunder or upon the ground that the licensee has used his license or allowed it to be used for any improper purpose. Pending investigation the department, whenever it deems necessary, may suspend a license temporarily without hearing.

**§ 69-229. Publication of reports**

The department from time to time may publish the results of any investigations made under the provisions of this chapter; and it may publish the names and addresses of persons licensed under this chapter and a list of all licenses terminated under this chapter and the causes therefore [therefor].

**§ 69-230. Examination of books -- Authorization to copy**

The department is authorized through officials, employees, or agents of the department designated by it, to examine and make copies of all books, records, papers, and accounts of warehouses relating thereto, including those described in section 69-227, Idaho Code.

**§ 69-231. Rules**

The department shall from time to time promulgate such rules as it may deem necessary for the efficient execution of the provisions of this chapter.

**§ 69-232. Cooperation with governmental agencies and private associations**

The director may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, and private associations in order to carry out the purpose and provisions of this chapter and the United States warehouse act (7 U.S.C.A. section 241, et seq.). Notwithstanding any other provisions of this chapter, such agreements may also relate to a joint program for licensing, bonding and inspecting stations. Such a program should be designed to avoid duplication of effort on the part of the licensing authority and requirements for operation, and promote more efficient enforcement of the provisions of this chapter and comparable provisions of the laws of the states of Oregon, Washington, Montana, Wyoming, Utah and Nevada and the province of British Columbia, Canada.

**§ 69-233. Violation of law -- Penalty**

Any person who violates any provision of this chapter or the rules promulgated hereunder, or who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent the director or his duly authorized representative in the performance of his duty in connection with the provisions of this chapter, except as provided in sections 69-204, 69-212, 69-223 and 69-248, Idaho Code, shall be guilty of a misdemeanor and be punished by imprisonment in a county jail not to exceed six (6) months, or by a fine of not more than one thousand dollars (\$ 1,000), or by both.

**§ 69-234. Rent of quarters -- Employment of assistants**

The department is authorized to rent quarters and to employ persons as it may deem necessary, and it is authorized, in its discretion, to employ qualified persons not regularly in the service of the state for temporary assistance in carrying out the purposes of this chapter.

**§ 69-235. Effect of partial invalidity of law**

If any clause, sentence, paragraph, or part of this chapter shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.

**§ 69-236. Noncompliance -- Failure -- Remedies of department**

(1) Whenever it appears, after any investigation, that a warehouseman does not have in his possession sufficient agricultural commodities to cover the outstanding warehouse receipts, scale weight tickets, or other evidence of storage liability issued or assumed by him, or the ability to pay producers for contract obligations, or when the warehouseman refuses to submit his books, papers, or property to lawful inspection, the department shall give notice to the warehouseman to comply with all or any of the following requirements:

- (a) Cover such shortage;
- (b) Give an additional bond as requested by the department; or
- (c) Submit to such inspection as the department may deem necessary.

(2) If the warehouseman fails to comply with the terms of such notice within twenty-four (24) hours from the date of issuance of the notice, or within such further time as the department may allow, not to exceed ten (10) working days, the department shall petition the district court in the county where the licensee's principal place of business is located (as shown by the license application) for an order:

(a) Authorizing the department to seize and take possession of any or all agricultural commodities in the warehouse or warehouses owned, operated, or controlled by the warehouseman, and of all books, papers and property of all kinds used in connection with the conduct or the operation of the warehouse business, and any materials which pertain in any way to that business; and

(b) Enjoining the warehouseman from interfering with the department in the discharge of its duties as required by the provisions of this section.

(3) Upon taking possession, the department shall give written notice of its action to the surety on the bond of the warehouseman and shall notify the holders or producers of record, as shown by the warehouseman's records, of all negotiable or nonnegotiable warehouse receipts, scale weight tickets, or contracts issued for agricultural commodities, to present their warehouse receipt or other evidence of deposits or obligation for inspection or to account for the same. The department shall thereupon cause an audit to be made of the affairs of such warehouse including, but not limited to, the agricultural commodities in which there is an apparent shortage, to determine the amount of such shortage and compute the shortage as to each depositor as shown by the warehouseman's records, if possible. The department shall notify the

warehouseman and the surety on his bond of the approximate amount of such shortage and notify each depositor thereby affected by sending notices to the depositor's last known address as shown by the records of the warehouseman.

(4) The department shall retain possession of the agricultural commodities in the warehouse or warehouses, and the books, papers, and property of the warehouseman, until such time as the warehouseman or the surety on the bond shall have satisfied the claims of all holders of warehouse receipts or other evidence of deposits or obligations, in case the obligations exceed the amount of the bond, the surety on the bond shall have satisfied such claims pro rata, or until such time as the department is ordered by the court to surrender possession.

(5) If during or after the audit provided for in this section, or at any other time the department has evidence that the warehouseman is insolvent or is unable to satisfy the claims of all holders of warehouse receipts or other evidence of obligations, the department shall petition the district court for the appointment of a receiver to operate or liquidate the business of the warehouseman in accordance with the law.

(6) At any time within ten (10) days after the department takes possession of any agricultural commodities, or the books, papers, or property of any warehouse, the warehouseman may serve notice on the department to appear in the district court of the county in which the warehouse is located, at a time to be fixed by the court, and show cause why the agricultural commodities, books, papers and other property should not be restored to his possession.

(7) All court costs, attorney's fees, other professional fees and necessary expenses incurred by the department in carrying out the provisions of this section may be recovered in any civil action brought by the department in district court or recovered at the same time and as part of the receivership or seizure action filed under the provisions of this chapter.

(8) As a part of the expenses so incurred, the department or the receiver is authorized to include the cost of adequate liability insurance necessary to protect the department, its officers, and others engaged in carrying out the provisions of this section.

(9) The provisions and remedies of this section are not limited to a warehouse shortage.

**§ 69-237. Partial withdrawal of commodities -- Adjustment or substitution of receipt -- Duties of warehouseman**

When partial withdrawal of an agricultural commodity is made by a depositor, the warehouseman shall make appropriate notation thereof on the depositor's nonnegotiable receipt or on other records. If the warehouseman has issued a negotiable receipt to the depositor he shall claim, cancel, and replace it with a negotiable receipt showing the amount of the depositor's agricultural commodity remaining in the warehouse. For failure to claim and cancel a negotiable receipt which has been issued by him, a warehouseman shall be liable to anyone who purchases such receipt for value and in good faith, for failure to deliver all the agricultural commodity specified in the receipt, whether such purchaser acquired title to the negotiable receipt before or after delivery of any part of the agricultural commodity by the warehouseman.

**§ 69-238. Warehouseman's obligations -- Duty to deliver deposited commodities -- Damages**

(1) The duty of the warehouseman to deliver agricultural commodities deposited shall be governed by the provisions of this chapter and the requirements of the uniform commercial



code. Upon the return of a properly endorsed negotiable warehouse receipt to the warehouseman, and upon payment or tender of all advances and legal charges, agricultural commodities of the grade and quantity named therein shall be delivered to the holder of the negotiable warehouse receipt, except as provided by the uniform commercial code.

(2) A warehouseman's duty to deliver any agricultural commodity is fulfilled if delivery is made pursuant to the contract with the depositor, or if no contract exists, then to the several owners in the order of demand as rapidly as it can be done by ordinary diligence. When delivery is made within thirty (30) days from date of demand, or as agreed upon in writing by all parties concerned, such delivery is deemed to comply with the provisions of this section. An extension of the delivery period may be granted by the department upon written request.

(3) A warehouseman shall not fail to deliver an agricultural commodity as provided in this section, and delivery shall be made at the warehouse or station where the agricultural commodity was received, unless otherwise agreed.

(4) In addition to being subject to penalties provided in this chapter for a violation of the provisions of this section, any warehouseman failing to deliver agricultural commodities within the time provided in this section is subject to suit by the person entitled to delivery of the agricultural commodities and may be ordered by a court of competent jurisdiction to pay actual damage or liquidated damages of one percent (1%) of the value for each day's delay.

#### **§ 69-239. Duties of warehouseman -- Contents of records**

(1) The warehouseman shall maintain current and complete records at all times with respect to all agricultural commodities handled, deposited, shipped or merchandised by him, including agricultural commodities owned by him. Such records shall include, but are not limited to, a daily position record showing the total quantity of each kind and class of agricultural commodity received and loaded out and the amount remaining on deposit at the close of each business day, and the warehouseman's total deposit obligation, including agricultural commodities owned by him, for each kind and class of agricultural commodity at the close of each business day.

(2) Every warehouseman purchasing any agricultural commodity from a depositor thereof shall promptly make and keep for five (5) years a correct record showing in detail the following information:

(a) The name and address of the depositor;

(b) The date purchased;

(c) The terms of the sale; and

(d) The quality and quantity purchased by the warehouseman and, where applicable, the dockage, tare, grade, size and net weight.

(3) Records required by this section shall be legible and kept in a place of safety in this state. If a person operates at more than one (1) location, records of each location's transactions must be identifiable.

**§ 69-240. Director's discretionary action**

Nothing in this chapter shall be construed to require the director or his authorized representative to report for prosecution or for the institution of civil action a violation of the provisions of this chapter when he believes that public interest will best be served by a suitable warning.

**§ 69-241. Insurance -- Cancellation procedure -- Suspension of license**

With the existence of an effective policy of insurance as required by section 69-206(1), Idaho Code, the insurance company involved shall be required to give ninety (90) days' advance notice to the department by registered or certified mail, return receipt requested, of cancellation of the policy. In the event of any cancellation, the department shall immediately terminate the license of such person without a hearing, and the termination shall be in effect until satisfactory evidence of the existence of an effective policy of insurance complying with the requirements of this chapter has been submitted to the department.

**§ 69-242. Injunction**

Any violation of the provisions of this chapter or the rules promulgated hereunder may be enjoined upon complaint by the director.

**§ 69-243. Duty to prosecute**

It shall be the duty of each prosecuting attorney to whom any violation is reported by the department to cause appropriate proceedings to be instituted and prosecuted without delay in a court of competent jurisdiction.

**§ 69-244. License reissuance following revocation**

A warehouse license shall not be issued to any person whose license has been revoked within a period of three (3) years from the date of such revocation. Upon proper application for a license following three (3) years from the date of revocation, the department shall hold a hearing within thirty (30) days from receipt of the application to determine if such license shall be issued. If, after the hearing, the department determines that it is in the best interests of the public, it may deny the issuance of a license to the applicant. Judicial review of the department's action may be sought. A change in a person's business name shall not absolve that person of a prior revocation of his warehouse license.

**§ 69-245. Director's authority**

The director may, upon his own motion, whenever he has reason to believe the provisions of this chapter have been violated, or upon verified complaint of any person in writing, investigate the actions of any warehouseman licensed under the provisions of this chapter, and if he finds probable cause to do so, shall file a complaint against the warehouseman which shall be set down for hearing before the director upon thirty (30) days' notice served upon such license holder by personal service, registered mail or facsimile.

The director shall have the power to administer oaths, certify to all official acts and shall have the power to subpoena any person in this state as a witness; to compel through subpoena the production of books, papers, and records; and to take the testimony of any person on deposition in the same manner as prescribed by law in the procedure before the courts of this state. A subpoena issued by the director shall extend to all parts of the state and may be served by any person authorized to do so.

All powers of the director herein enumerated in respect to administering oaths, power of subpoena, and other powers in hearings on complaints shall likewise be applicable to hearings held on applications for the issuance, reinstatement or renewal of a warehouse license.

**§ 69-246. Appeals from decision of director**

The director shall keep a complete transcript of all proceedings and evidence presented in any hearing before him. The applicant, warehouseman or any complainant formally appearing in a hearing before the director for a license, or the holder of any warehouse license suspended or revoked, or any party to a transfer application may appeal to the district court in accordance with the terms of chapter 52, title 67, Idaho Code.

**§ 69-247. License denial**

(1) Any person against whose warehouse bond or the commodity indemnity fund a claim has been ordered collected or has actually been collected shall not be licensed by the department for a period of three (3) years from the date of such order or collection. License denial may be waived if the person can show to the satisfaction of the director that full settlement of all claims against the bond and the commodity indemnity fund has been made. A change in a person's business name shall not absolve any unsettled claim against that person's prior bond or the commodity indemnity fund.

(2) The director shall, after a public hearing, have the right to deny or refuse to issue a license, reinstatement or renewal thereof to an applicant when it is determined that public interest is best served by that denial or refusal.

(3) Upon refusal or denial pursuant to subsection (2) above, an applicant may reapply for a license, reinstatement or renewal after a period of ninety (90) days, at which time a new hearing will be held to review the application.

(4) The applicant shall have the right of appeal on any decision to refuse or deny a license under subsection (2) above to a court of competent jurisdiction.

**§ 69-248. Drawing checks insufficiently covered a violation**

Any person engaged in business as a warehouseman, as defined in this chapter, who shall make, draw, utter or deliver any check, draft or order for the payment of money upon any bank or other depository, in payment to the seller of the purchase price of any agricultural commodity or any part thereof or in compliance with a contract or to the department in payment of any fee, assessment or penalty, upon obtaining possession or control thereof, when at the time of such making, drawing, uttering or delivery the maker or drawer does not have sufficient funds in or credit with such bank or other depository for the payment of such check, draft or order in full upon its presentation, shall violate the provisions of this chapter. The word "credit" as used herein shall mean an arrangement or understanding with the bank or depository for the payment of such check, draft or order.

**§ 69-249. Credit-sale contracts**

(1) A warehouseman who purchases agricultural commodities by credit-sale contracts shall maintain books, records and other documents as required by the department to establish compliance with the provisions of this section.

(2) In addition to other information as may be required, a credit-sale contract shall contain or provide, but not be limited to:

(a) The seller's name and address;

(b) The conditions of delivery;

(c) The amount, kind and class of agricultural commodities delivered;

(d) The price per unit or basis of value;

(e) The date payment is to be made; and

(f) Any enhancements to the value of the contract, which may include, but are not limited to, transportation, premiums of any nature, or producer provided services, must be listed separately and apart from the price per unit of the commodity.

(3) Title to all agricultural commodities sold by credit-sale contract is in the purchaser as of the time the contract is executed, unless the contract provides otherwise. The contract must be signed by both parties and executed in duplicate. One (1) copy shall be retained by the warehouseman and one (1) copy shall be delivered to the seller. Upon revocation or termination of a warehouseman's license, the payment date for all credit-sale contracts shall be advanced to a date not later than thirty (30) days following the effective date of the revocation or termination and the purchase price for all agricultural commodities without a price shall be determined as of the effective date of revocation or termination in accordance with all other provisions of the contract. In the event claims are submitted to the commodity indemnity fund following a declared failure, the value determination of contracts will be controlled by the provisions of section 69-262, Idaho Code, and the rules promulgated pursuant to the provisions of this chapter. However, if the business of the warehouseman is sold to another licensed warehouseman, credit-sale contracts may be assigned to the purchaser of the business.

#### **§ 69-250. Confidential and protected records**

Records required by the department including, but not limited to, production summaries, receiving records, conditioning reports, records relating to the payment of agricultural commodities, commodity indemnity fund and seed indemnity fund reporting forms of a warehouseman, and financial records that are required pursuant to section 69-206(6), Idaho Code, shall be held confidential and will be protected as production records according to chapter 1, title 74, Idaho Code. These records shall not be subject to disclosure unless specifically authorized in writing by the licensee or as otherwise authorized pursuant to the provisions of chapter 1, title 74, Idaho Code.

#### **§ 69-251. Payment of purchase price**

A warehouseman shall pay to the depositor the purchase price for agricultural commodities upon deposit or demand by the depositor, but not later than thirty (30) days after deposit unless otherwise agreed by the parties in writing. As used in this section, "payment" means the actual payment or tender of payment by the warehouseman to the depositor of the agreed purchase price.

**§ 69-255. Short title -- Indemnity fund program**

(1) The provisions of this section and sections 69-256 through 69-267, Idaho Code, together with any definitions in this chapter, constitute the "Commodity Indemnity Fund Program."

(2) The commodity indemnity fund program shall apply to entities governed by this chapter or governed by the provisions of the commodity dealer law as provided for in chapter 5, title 69, Idaho Code, referred to as "warehouses and/or dealers."

**§ 69-256. Creation of indemnity fund -- Uses**

(1) There is hereby established within the dedicated fund a fund to be known as the commodity indemnity fund. The commodity indemnity fund shall consist of assessments remitted by producers pursuant to the provisions of this chapter and any interest or earnings on the fund balance.

(2) All assessments shall be paid to the department and shall be deposited in the commodity indemnity fund. Assessments shall be paid solely by producers who deposit or deliver a commodity with a warehouse or sell to a dealer or warehouse. A delivery of commodity between producers, none of which are commodity dealers or warehousemen, is exempt from the collection and payment of assessment. The state treasurer shall be the custodian of the commodity indemnity fund. Disbursements shall be on authorization of the director. No appropriation is required for disbursements from this fund.

(3) The commodity indemnity fund and accruing interest shall be used exclusively for purposes of paying claimants pursuant to this chapter and chapter 5, title 69, Idaho Code, and paying necessary expenses and costs of administering the commodity indemnity fund. Provided however, that each year, accrued interest for that year shall be applied to pay necessary expenses and costs of administering the fund, regardless of the amount, to the extent of available accrued interest. In the event the accrued interest is insufficient to pay the necessary expenses and costs of administering the fund in any particular year, then accrued interest shall first be applied to those costs and expenses. The remaining costs and expenses will be paid with principal from the commodity indemnity fund. In no event, however, shall payments from principal in any given year exceed the sum of two hundred fifty thousand dollars (\$ 250,000). The interest accumulated by the fund may be paid to the department and to the state treasurer to defray costs of administering the warehouse and dealer program and the commodity indemnity fund. The interest accumulated by the fund and, if necessary, a portion of the fund, may be used to defray the cost of reinsuring the fund at the discretion of the director. The state of Idaho shall not be liable for any claims presented against the fund.

**§ 69-257. Assessment -- Rate -- Minimum and maximum assessment**

(1) Every producer shall pay an assessment to the department for deposit in the commodity indemnity fund according to the provisions of this chapter and rules promulgated by the department to implement the provisions of this chapter.

(2) Except as provided in this subsection, the rate of the assessment shall be established by rules promulgated by the department. The producer's annual assessment shall not exceed two-tenths of one percent (.2%) of the total gross dollar amount, without deductions, due the producer, as determined at the time of first sale, of the commodities.

**§ 69-258. Collection and remittance of assessments -- Principal amount held in trust -- Interest earned -- Failure to collect or remit assessments constitutes a violation -- Interest and penalties for unpaid assessments**

(1) The department shall promulgate rules to provide a procedure for the collection and remittance of the producer's assessments. Any warehouseman or dealer who owes producers for the sale or transfer of a commodity, or have stored for withdrawal a commodity, shall be responsible for the collection of the producer's assessments and the remittance of the assessments collected to the department.

(2) Warehousemen or dealers shall remit to the department assessments collected according to the provisions of this chapter. Payments will be made no later than the twentieth day of the month following the close of the calendar quarter on a form prescribed by the department. There are four (4) calendar quarters in the year, beginning on the first day of the months of January, April, July and October. Assessment reports shall be submitted even though assessments for the period have not been collected. Failure to do so will result in a penalty of one hundred dollars (\$ 100).

(3) The principal amount of assessments paid by, or deducted from, payments to producers by warehousemen or dealers, are held in trust for the commodity indemnity fund immediately upon collection by any warehouseman or dealer and are not property of the warehouseman or dealer.

(4) Interest earned on assessments prior to remittance to the department belongs to the warehouseman or dealer.

(5) If a warehouseman or dealer fails to collect or remit assessments as required, it shall be considered a violation of this chapter and shall subject the warehouseman or dealer to suspension or revocation of any license issued to the warehouseman or dealer under the provisions of this chapter.

(6) The department shall collect, on assessments unpaid within the time limits specified in this chapter, interest at the rate of ten percent (10%) per annum until the assessments are remitted together with a penalty of five percent (5%) each month on the unpaid assessment due until the maximum penalty of twenty-five percent (25%) is reached.

**§ 69-259. Funding and limits of fund**

The maximum amount of the commodity indemnity fund shall be maintained between ten million dollars (\$ 10,000,000) and twelve million dollars (\$ 12,000,000).

**§ 69-260. Financial difficulties -- Additional bond or security required**

The department may, when it has reason to believe that a licensee does not have the ability to pay producers for commodities purchased, or when it determines that the licensee does not have a sufficient net worth to outstanding financial obligations ratio, require from the licensee the posting of a bond or other additional security in an amount to be prescribed by rule. The additional security may exceed the maximum amount set forth in this chapter. Failure of the licensee to timely post the additional bond or other security constitutes grounds for suspension or revocation of a license issued under this chapter. The licensee may request a hearing regarding the decision to increase the amount of security required or the revocation or suspension of a license pursuant to this section and may appeal such decisions pursuant to the procedure set out in section 69-246, Idaho Code.

**§ 69-261. Advisory committee -- Terms -- Compensation**

(1) There is hereby created a commodity indemnity fund advisory committee consisting of nine (9) members to be appointed by the director. Appointments shall be for up to three (3) year terms, each term ending on the same day of the same month as did the term preceding it. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of the predecessor's term.

(2) The committee shall be composed of six (6) producers primarily engaged in the production of commodities, and three (3) licensed bonded warehousemen or licensed commodity dealers.

(3) The committee shall meet at such places and times as it shall determine and as often as necessary to discharge the duties imposed upon it, provided, it shall meet not less than twice per year. Each committee member shall be compensated in accordance with section 59-509(o), Idaho Code, for travel and subsistence expense. The expenses of the committee and its operation shall be paid from the commodity indemnity fund.

(4) The committee shall have the power and duty to advise the director concerning assessments, administration of the commodity indemnity fund, and payment of claims from the fund. Every two (2) years the committee will review the maximum limits of the fund and give advice to the director.

**§ 69-262. Proof of claims -- Procedure -- Hearing -- Inspection of warehouse**

In the event a warehouse or dealer fails, as defined in section 69-202(8), Idaho Code, the department shall process the claims of producers who have paid or owe assessments as required by this chapter. Claims against a failed warehouse or dealer shall include written evidence disclosing a storage obligation or a sale or delivery of commodities.

(1) The department shall give notice and provide a reasonable time of not less than thirty (30) days and not more than sixty (60) days to producers to file their written verified claims, including any written evidence, with the department.

(2) The department shall investigate each claim and prepare a staff report and recommendation as to the validity and amount of each claim. The department shall provide a copy of the staff report and recommendation to the commodity indemnity fund advisory committee, and make available for review by the advisory committee any documentation upon which the department relied in preparing the staff report and recommendation. No later than two (2) weeks following issuance of the staff report and recommendation, the advisory committee shall provide the director with the committee's written comments regarding the staff report, recommendation and payment of claims from the fund.

(3) Following the receipt of the staff report, recommendation and the commodity indemnity fund advisory committee's written comments, if any, the director shall issue a determination regarding the validity and amount of each claim.

(4) The director shall notify each claimant, the warehouseman or dealer, and the advisory committee of the department's determination as to the validity and amount of each claimant's claim. A claimant or warehouseman or dealer may request a hearing on the department's determination within twenty (20) days of receipt of written notification and a hearing shall be held by the department pursuant to chapter 52, title 67, Idaho Code. Upon determining the

amount and validity of the claim, the director shall pay to the claimant an amount equal to ninety percent (90%) of the approved claim from the commodity indemnity fund. Prior to any payment from the fund to a claimant, the claimant shall be required to subrogate and assign his right to recover from any other source. The department may then pay up to ninety percent (90%) of the approved claim to the claimant. The department shall have a priority claim for that amount. The claimant shall be entitled to seek recovery of the remaining ten percent (10%) which was not originally assigned to the department. For the purpose of determining the amount of the producer's claim, the value of a producer's commodity shall be the lesser of: (a) the value of the commodity on the date the director declared the warehouse or dealer to have failed or to have failed to comply with the provisions of this chapter or rules promulgated thereunder; (b) the contract price as listed on a valid contract; or (c) the value of the commodity represented on the contract on the date the contract was signed. The value shall be determined by a survey of the available market price reports or markets of similar facilities within the same geographic location as the failed facility.

(5) The department may inspect and audit a failed warehouseman or dealer. In the event of a shortage, the department shall determine each producer's pro rata share of available commodities and the deficiency shall be considered as a claim of the producer. Each type of commodity shall be treated separately for the purpose of determining shortages.

(6) The director shall not approve or pay any claim made on the commodity indemnity fund if the claim is based on losses resulting from the deposit, sale or storage of commodities in an unlicensed warehouse or dealer.

(7) The fund shall not be liable for claims filed against a warehouse or dealer in good standing who has voluntarily relinquished their license if such claims are not filed with the department within six (6) months of the closing.

(8) The fund shall not be liable for claims that result from losses due to uninsurable physical perils.

#### **§ 69-263. Failure to file -- Loss of claim on fund**

If a producer, after notification, refuses or neglects to file in the office of the director his verified claim against a warehouseman or dealer as requested by the director within ninety (90) days from the date of the notice, the director shall thereupon be relieved of responsibility for taking action with respect to such claim later asserted and no such claim shall be paid from the commodity indemnity fund. No claim shall be paid from the fund if a producer files his claim more than two (2) years from the date of sale of the commodity. Provided however, for those claims that are based on contracts containing no readily calculable sale value of the commodity for the producer, no claim shall be paid from the fund if a producer files his claim more than one hundred eighty (180) days from the date the contract is executed.

#### **§ 69-264. Minimum balance -- Subsequent payments**

The minimum balance in the commodity indemnity fund, which shall be used exclusively for purposes of paying claimants pursuant to this chapter and chapter 5, title 69, Idaho Code, shall be two hundred fifty thousand dollars (\$ 250,000). At no time shall the balance be allowed to fall below the minimum balance. The director may pay claims, on a pro rata basis if necessary, until the minimum balance is reached. If the director cannot fully pay a claim before the minimum balance is reached, he shall, when the commodity indemnity fund contains sufficient funds, pay



off the claim. After three (3) years from the date a claim is approved, the fund shall not be liable for any unpaid amounts.

**§ 69-266. Payment from fund -- Debt of warehouseman or dealer or surety --  
Reimbursement -- Accrual of cause of action**

Amounts paid from the commodity indemnity fund in satisfaction of any approved claim shall constitute a debt and obligation of the warehouseman, dealer, or surety against whom the claim was made. The director may bring suit on behalf of the commodity indemnity fund in the district court of Ada county to recover from the warehouseman, dealer, or surety the amount of the payment made from the commodity indemnity fund, together with costs and attorney's fees incurred in maintaining the suit. In the event the department initiates an action against a warehouseman, dealer, or surety the department's claim is deemed to accrue and relate back to the time that each producer who received a commodity indemnity fund payment incurred a loss in the facility. In no event shall a commodity indemnity fund payment be deemed to be beyond the reimbursement from the warehouseman, dealer, or surety merely because the payment may have occurred after the facility closed. Any recovery for reimbursement to the fund shall bear interest at the statutory rate from the date of failure.

**§ 69-267. Claim against warehouseman or dealer -- Director's remedies**

The department may deny, suspend, or revoke the license of any warehouseman or dealer against whom a claim has been made, approved, and paid from the commodity indemnity fund. Proceedings for the denial, suspension, or revocation shall be subject to the provisions of title 67, chapter 52, Idaho Code.