

IDAHO ADMINISTRATIVE BULLETIN

November 6, 2019 – Vol. 19-11

Office of the Governor
Division of Financial Management
Office of the Administrative Rules Coordinator
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The Idaho Administrative Bulletin is published monthly by the Office of the Administrative Rules Coordinator, Division of Financial Management, Office of the Governor, pursuant to Title 67, Chapter 52, Idaho Code.

Brad Little, Governor
Alex Adams, Administrator, Division of Financial Management
Dennis Stevenson, Administrative Rules Coordinator
Bradley Hunt, Administrative Rules Specialist
Jason Shaw, Publishing Specialist/Rules Analyst

IDAHO ADMINISTRATIVE BULLETIN

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PREFACE

The Idaho Administrative Bulletin is an electronic-only, online monthly publication of the Office of the Administrative Rules Coordinator, Department of Administration, that is published pursuant to Section 67-5203, Idaho Code. The Bulletin is a compilation of all official rulemaking notices, official rule text, executive orders of the Governor, and all legislative documents affecting rules that are statutorily required to be published in the Bulletin. It may also include other rules-related documents an agency may want to make public through the Bulletin.

State agencies are required to provide public notice of all rulemaking actions and must invite public input. This is done through negotiated rulemaking procedures or after proposed rulemaking has been initiated. The public receives notice that an agency has initiated proposed rulemaking procedures through the Idaho Administrative Bulletin and a legal notice (Public Notice of Intent) that publishes in authorized newspapers throughout the state. The legal notice provides reasonable opportunity for the public to participate when a proposed rule publishes in the Bulletin. Interested parties may submit written comments to the agency or request public hearings of the agency, if none have been scheduled. Such submissions or requests must be presented to the agency within the time and manner specified in the individual “Notice of Rulemaking - Proposed Rule” for each proposed rule that is published in the Bulletin.

Once the comment period closes, the agency considers fully all comments and information submitted regarding the proposed rule. Changes may be made to the proposed rule at this stage of the rulemaking, but changes must be based on comments received and must be a “logical outgrowth” of the proposed rule. The agency may now adopt and publish the pending rule. A pending rule is “pending” legislative review for final approval. The pending rule is the agency’s final version of the rulemaking that will be forwarded to the legislature for review and final approval. Comment periods and public hearings are not provided for when the agency adopts a temporary or pending rule.

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is identified by the calendar year and issue number. For example, Bulletin **13-1** refers to the first Bulletin issued in calendar year **2013**; Bulletin **14-1** refers to the first Bulletin issued in calendar year **2014**. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. **13-1** refers to January 2013; Volume No. **13-2** refers to February 2013; and so forth. Example: The Bulletin published in January 2014 is cited as Volume **14-1**. The December 2015 Bulletin is cited as Volume **15-12**.

RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

The **Idaho Administrative Code** is an electronic-only, online compilation of all final and enforceable administrative rules of the state of Idaho that are of full force and effect. Any temporary rule that is adopted by an agency and is of force and effect is codified into the Administrative Code upon becoming effective. All pending rules that have been approved by the legislature during the legislative session as final rules and any temporary rules that are extended supplement the Administrative Code. These rules are codified into the Administrative Code upon becoming effective. Because proposed and pending rules are not enforceable, they are published in the Administrative Bulletin only and cannot be codified into the Administrative Code until approved as final.

To determine if a particular rule remains in effect or whether any amendments have been made to the rule, refer to the **Cumulative Rulemaking Index**. Link to it on the Administrative Rules homepage at adminrules.idaho.gov.

THE DIFFERENT RULES PUBLISHED IN THE ADMINISTRATIVE BULLETIN

Idaho’s administrative rulemaking process, governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, comprises distinct rulemaking actions: negotiated, proposed, temporary, pending and final rulemaking. Not all rulemakings incorporate or require all of these actions. At a minimum, a rulemaking includes proposed, pending and final rulemaking. Many rules are adopted as temporary rules when they meet the required statutory criteria and agencies must, when feasible, engage in negotiated rulemaking at the beginning of the process to facilitate consensus building. In the majority of cases, the process begins with proposed rulemaking and ends with the final rulemaking. The following is a brief explanation of each type of rule.

1. NEGOTIATED RULEMAKING

Negotiated rulemaking is a process in which all interested persons and the agency seek consensus on the content of a rule through dialogue. Agencies are required to conduct negotiated rulemaking whenever it is feasible to do so. The agency files a “Notice of Intent to Promulgate - Negotiated Rulemaking” for publication in the Administrative Bulletin inviting interested persons to contact the agency if interested in discussing the agency’s intentions regarding the rule changes. This process is intended to result in the formulation of a proposed rule and the initiation of regular rulemaking procedures. One result, however, may also be that regular (proposed) rulemaking is not initiated and no further action is taken by the agency.

2. PROPOSED RULEMAKING

A proposed rulemaking is an action by an agency wherein the agency is proposing to amend or repeal an existing rule or to adopt a new rule. Prior to the adoption, amendment, or repeal of a rule, the agency must publish a “Notice of Rulemaking - Proposed Rule” in the Bulletin. This notice must include very specific information regarding the rulemaking including all relevant state or federal statutory authority occasioning the rulemaking, a non-technical description of the changes being made, any associated costs, guidance on how to participate through submission of written comments and requests for public hearings, and the text of the proposed rule in legislative format.

3. TEMPORARY RULEMAKING

Temporary rules may be adopted only when the governor finds that it is necessary for:

- a) protection of the public health, safety, or welfare; or
- b) compliance with deadlines in amendments to governing law or federal programs; or
- c) conferring a benefit.

If a rulemaking meets one or more of these criteria, and with the Governor’s approval, the agency may adopt and make a temporary rule effective prior to receiving legislative authorization and without allowing for any public input. The law allows an agency to make a temporary rule immediately effective upon adoption. A temporary rule expires at the conclusion of the next succeeding regular legislative session unless the rule is extended by concurrent resolution, is replaced by a final rule, or expires under its own terms.

4. PENDING RULEMAKING

A pending rule is a rule that has been adopted by an agency under regular rulemaking procedures and remains subject to legislative review before it becomes a final, enforceable rule. When a pending rule is published in the Bulletin, the agency is required to include certain information in the “Notice of Rulemaking - Pending Rule.” This includes a statement giving the reasons for adopting the rule, a statement regarding when the rule becomes effective, a description of how it differs from the proposed rule, and identification of any fees being imposed or changed.

Agencies are required to republish the text of the pending rule when substantive changes have been made to the proposed rule. An agency may adopt a pending rule that varies in content from that which was originally proposed if the subject matter of the rule remains the same, the pending rule change is a logical outgrowth of the proposed rule, and the original notice was written so as to assure that members of the public were reasonably notified of the subject. It is not always necessary to republish all the text of the pending rule.

5. FINAL RULEMAKING

A final rule is a rule that has been adopted by an agency under the regular rulemaking procedures and is of full force and effect.

HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

Rulemaking documents produced by state agencies and published in the **Idaho Administrative Bulletin** are organized by a numbering schematic. Each state agency has a two-digit identification code number known as the “**IDAPA**” number. (The “IDAPA” Codes are listed in the alphabetical/numerical index at the end of this Preface.) Within each agency there are divisions or departments to which a two-digit “**TITLE**” number is assigned. There are “**CHAPTER**” numbers assigned within the Title and the rule text is divided among major sections that are further subdivided into subsections. An example IDAPA number is as follows:

IDAPA 38.05.01.200.02.c.ii.

“**IDAPA**” refers to Administrative Rules in general that are subject to the Administrative Procedures Act and are required by this act to be published in the Idaho Administrative Code and the Idaho Administrative Bulletin.

1. “**38.**” refers to the Idaho Department of Administration

“**05.**” refers to Title **05**, which is the Department of Administration’s Division of Purchasing

“**01.**” refers to Chapter **01** of Title 05, “Rules of the Division of Purchasing”

“**200.**” refers to Major Section **200**, “Content of the Invitation to Bid”

“**02.**” refers to Subsection 200.02.

“**c.**” refers to Subsection 200.02.c.

“**ii.**” refers to Subsection 200.02.c.ii.

DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. Each rulemaking that is filed with the Coordinator is assigned a “**DOCKET NUMBER.**” The docket number is a series of numbers separated by a hyphen “-”, (**38-0501-1401**). Rulemaking dockets are published sequentially by IDAPA number (the two-digit agency code) in the Bulletin. The following example is a breakdown of a typical rule docket number:

“DOCKET NO. 38-0501-1401”

“**38-**” denotes the agency’s **IDAPA** number; in this case the Department of Administration.

“**0501-**” refers to the **TITLE AND CHAPTER** numbers of the agency rule being promulgated; in this case the Division of Purchasing (**TITLE 05**), Rules of the Division of Purchasing (**Chapter 01**).

“**1401**” denotes the year and sequential order of the docket being published; in this case the numbers refer to the first rulemaking action published in **calendar year 2014**. A subsequent rulemaking on this same rule chapter in calendar year 2014 would be designated as “**1402**”. The docket number in this scenario would be 38-0501-**1402**.

Within each Docket, only the affected sections of chapters are printed. (See **Sections Affected Index** in each Bulletin for a listing of these.) The individual sections affected are printed in the Bulletin sequentially (e.g. Section “200” appears before Section “345” and so on). Whenever the sequence of the numbering is broken the following statement will appear:

(BREAK IN CONTINUITY OF SECTIONS)

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2019

Vol. No.	Monthly Issue of Bulletin	ARRF Due to DFM	Closing Date for Agency Filing	Bulletin Publication Date	21-day Comment Period End Date
19-1	January 2019		*November 30, 2018	January 2, 2019	January 23, 2019
19-2	February 2019		January 4, 2019	February 6, 2019	February 27, 2019
19-3	March 2019		February 8, 2019	March 6, 2019	March 27, 2019
19-4	April 2019		March 8, 2019	April 3, 2019	April 24, 2019
19-5	May 2019	March 22, 2019	April 5, 2019	May 1, 2019	May 22, 2019
19-6	June 2019	April 19, 2019	May 3, 2019	June 5, 2019	June 26, 2019
19-7	July 2019	May 24, 2019	June 7, 2019	July 3, 2019	July 24, 2019
19-8	August 2019	June 21, 2019	July 5, 2019	August 7, 2019	August 28, 2019
19-9	September 2019	July 19, 2019	August 2, 2019	September 4, 2019	September 25, 2019
19-10	October 2019	August 16, 2019	**August 30, 2019	October 2, 2019	October 23, 2019
19-11	November 2019	September 20, 2019	October 4, 2019	November 6, 2019	November 27, 2019
19-12	December 2019	October 18, 2019	November 1, 2019	December 4, 2019	December 25, 2019

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2020

Vol. No.	Monthly Issue of Bulletin	ARRF Due to DFM	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
20-1	January 2020	November 15, 2019	*November 29, 2019	January 1, 2020	January 22, 2020
20-2	February 2020	December 20, 2019	January 3, 2020	February 5, 2020	February 26, 2020
20-3	March 2020	January 22, 2020	February 7, 2020	March 4, 2020	March 25, 2020
20-4	April 2020	February 21, 2020	March 6, 2020	April 1, 2020	April 22, 2020
20-5	May 2020	March 20, 2020	April 3, 2020	May 6, 2020	May 27, 2020
20-6	June 2020	April 24, 2020	May 1, 2020	June 3, 2020	June 24, 2020
20-7	July 2020	May 22, 2020	June 5, 2020	July 1, 2020	July 22, 2020
20-8	August 2020	June 19, 2020	July 3, 2020	August 5, 2020	August 26, 2020
20-9	September 2020	July 24, 2020	August 7, 2020	September 2, 2020	September 23, 2020
20-10	October 2020	August 21, 2020	**August 28, 2020	October 7, 2020	October 28, 2020
20-11	November 2020	September 18, 2020	October 2, 2020	November 4, 2020	November 25, 2020
20-12	December 2020	October 23, 2020	November 6, 2020	December 2, 2020	December 23, 2020

****Last day to submit a proposed rulemaking before moratorium begins and last day to submit a pending rule to be reviewed by the legislature.***

*****Last day to submit a proposed rule in order to have the rulemaking completed and submitted for review by legislature.***

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AND CORRESPONDING IDAPA NUMBERS**

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THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2019-04

IDAHO MEDAL OF ACHIEVEMENT

WHEREAS, Idaho has numerous citizens who are demonstrating notable service to the people of our state; and

WHEREAS, it is important for the Governor of Idaho to recognize those individuals who have achieved remarkable feats with the highest civilian honor; and

WHEREAS, recognition of Idaho citizens who have exceeded levels of accomplishment deserve appreciation from the highest level of state government; and

WHEREAS, the Idaho Medal of Achievement will be made from 99.9-percent fine silver donated by the Hecla Mining Company located in Coeur d'Alene, Idaho;

NOW, THEREFORE, I, BRAD LITTLE, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution and laws of this State, do hereby order the reauthorization of the Idaho Medal of Achievement and the following:

- 1. The establishment of the Idaho Medal of Achievement Commission to evaluate and make recommendations to the Governor on potential recipients.*
- 2. The Idaho Medal of Achievement Commission shall consist of no more than seven members that will be appointed by the Governor and represent the entire state.*
- 3. Commission members and the sitting Governor are not eligible for the award.*
- 4. All Idaho Medal nominees must be current or deceased Idaho residents, who, through their lifetime, have acted in ways bringing great honor to Idaho.*
- 5. Medals may be awarded posthumously.*
- 6. More than one medal may be awarded at one time.*
- 7. Nominations will be submitted to the Governor's Office through the online application portal or by letter.*
- 8. Nomination deadlines will be posted on the Governor's website.*
- 9. The commission shall submit no more than five names to the Governor for consideration.*
- 10. The Governor will have final say on recipients of Idaho Medal of Achievement.*

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this 1st day of May in the year of our Lord two thousand and nineteen.



Brad Little

BRAD LITTLE GOVERNOR

Lawrence Denney

LAWRENCE DENNEY SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2019-05

GOVERNOR'S LEADERSHIP IN NUCLEAR ENERGY (LINE) COMMISSION

WHEREAS, the Leadership in Nuclear Energy (LINE) Commission was established to advise the Governor on policies and actions of the State of Idaho to support and enhance the long-term viability of the Idaho National Lab (INL); and

WHEREAS, the INL continues to be our nation's lead nuclear energy laboratory resulting in economic prosperity for the State of Idaho today and in the future; and

WHEREAS, Idaho is at the forefront of cutting-edge technologies resulting in economic opportunities; and

WHEREAS, continued state support and coordination is key to the success of the nuclear industry.

NOW, THEREFORE I, Governor Brad Little, Governor of the State of Idaho, hereby recognize the continuation of the Leadership in Nuclear Energy Commission, and establish the following:

- 1. The LINE Commission will advise the Governor on policies and actions of the State of Idaho that support and enhance the long-term viability and mission of the INL as well as the nuclear industry in Idaho.*
- 2. The duties of the LINE Commission are advisory, and the Commission is tasked with making recommendations to the Governor that support and enhance the mission of the INL as well as the nuclear industry in Idaho.*
- 3. The LINE Commission will focus on statewide outreach efforts to create a better understanding of the nuclear industry in the State of Idaho as well as the INL.*
- 4. Appointment to and membership on the LINE Commission does not constitute an individual's support or opposition for a specific finding, policy, or recommendation made by the Commission.*
- 5. Members of the LINE Commission shall be appointed by and serve at the pleasure of the Governor. Members include, but are not limited to:*
 - a. The Lt. Governor of Idaho;*
 - b. The Idaho Attorney General or a designee chosen by the Attorney General;*
 - c. The Director of the Idaho Department Commerce or a designee chosen by the Director;*
 - d. The Director of the Idaho National Laboratory or a designee chosen by the Director;*
 - e. The Director of the Center for Advanced Energy Studies or a designee chosen by the Director;*
 - f. A member of the Office of the Governor;*
 - g. The Administrator of the Idaho Office of Energy and Mineral Resources or a designee chosen by the Administrator;*
 - h. The Director of the Idaho Department of Environmental Quality or a designee chosen by the Director;*
 - i. A representative from each of the Idaho Public Universities;*
 - j. Two representatives from the Idaho Senate;*
 - k. Two representatives from the Idaho House of Representatives;*
 - l. A Mayor or County Commissioner;*
 - m. A representative from the Idaho Indian Tribes;*
 - n. A representative from the current Department of Energy cleanup contractor;*
 - o. A representative from a private-sector nuclear industry company;*
 - p. A representative from Idaho agriculture or water users;*

- q. *A member of the public;*
 - r. *A representative from the current Research and Development contractor at the INL; and*
 - s. *A representative from a private -sector nuclear industries company.*
6. *The Governor will appoint the Co-Chairs of the LINE Commission.*
 7. *The Office of the Governor will staff the LINE Commission.*
 8. *The LINE Commission may request information,from and technical expertise,from State of Idaho agencies on pertinent information germane to their agencies.*
 9. *The LINE Commission may request information and technical expertise,from Idaho Indian Tribes, federal agencies, representatives from the nuclear industries sector, and members of the public.*



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this 131 day of May, in the year of our Lord two thousand and nineteen and of the Independence of the United States of America the two hundred forty-third and of the Statehood of Idaho the one hundred twenty-ninth.

BRAD LITTLE GOVERNOR

LAWRENCE DENNEY SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2019-06

**CONTINUING THE BOARD OF JUVENILE CORRECTIONS, AS THE PRIMARY ADVISORY BODY FOR
THE GOVERNOR AND DIRECTOR OF THE DEPARTMENT OF JUVENILE CORRECTIONS
ON MATTERS PERTAINING TO JUVENILE CORRECTIONS**

WHEREAS, since August 15, 2012 and pursuant to Executive Order 2012-06, the Board of Juvenile Corrections (Board) has served as an independent body providing valuable recommendations on fiscal, policy, and administrative matters concerning juvenile corrections to the Governor and the Director of the Department of Juvenile Corrections (Department);

WHEREAS, since August 15, 2012 and pursuant to Executive Order 2012-06, the Board has provided a unique perspective on the development of goals, standards, and measures to evaluate the effectiveness and efficiency of the Department and its programs;

NOW, THEREFORE, I, Brad Little, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution and laws of this state, do hereby order that:

1. *The Board is hereby designated as and remains the primary advisory body for the Governor and the Department Director on matters pertaining to juvenile corrections.*
2. *The Board is and shall remain responsible for advising the Governor and the Department Director on fiscal, policy, and administrative matters concerning Idaho's juvenile corrections system.*
3. *The Board shall continue to participate in the development of goals, standards, and measures to evaluate the effectiveness and the efficiency of the Department and its programs.*
4. *The Board shall consist of the following members:*
 - a. *Three Idaho citizens, one of whom must be a county elected official or county employee;*
 - b. *The Chair of the Senate Judiciary and Rules Committee, or his or her designee; and*
 - c. *The Chair of the House Judiciary, Rules, and Administration Committee, or his or her designee.*
5. *The Board shall continue to serve without compensations but shall be reimbursed by the Department for actual travel expenses not to exceed State of Idaho guidelines.*
6. *The Chair of the Board shall continue to be selected by the Department Director subject to the approval of the Governor.*
7. *The Board shall meet not more than quarterly and not more than four (4) times a year.*
8. *Members of the board shall be appointed by and serve at the pleasure of the Governor and appointments shall be for four-year terms.*



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho in Boise on this 15th day of May, in the year of our Lord two thousand and nineteen and of the Independence of the United States of America the two hundred forty-third and of the Statehood of Idaho the one hundred twenty-ninth.

BRAD LITTLE GOVERNOR

LAWRENCE DENNEY SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2019-07

IDAHO BROADBAND TASK FORCE

WHEREAS, we live in a data-driven society and connectivity is key for a thriving economy; and

WHEREAS, we must ensure both urban and rural Idaho are connected and well- positioned to attract business and create maximum success for our communities; and

WHEREAS, adequate mapping of broadband and high-speed internet infrastructure is vital in progressing connectivity throughout the state; and

WHEREAS, properly analyzing existing resources and gaps will help advance the state in internet connectivity, high speeds, expansion plans, and adequate capacity;

NOW, THEREFORE I, BRAD LITTLE, Governor of the State of Idaho, hereby establish the Idaho Broadband Task Force and the following:

- 1. The Idaho Broadband Task Force will make recommendations to the Governor on policies and actions the state should take to dramatically improve the state in connectivity and service levels.*
- 2. The duties of the Idaho Broadband Task Force are advisory.*
- 3. The Idaho Broadband Task Force will focus on a statewide approach, ensuring Idaho is properly represented, evaluated, and alternatives analyzed.*
- 4. The Idaho Broadband Task Force will be chaired by the Director of the Idaho Department of Commerce.*
- 5. Idaho Department of Commerce will staff the Idaho Broadband Task Force.*
- 6. Members of the Idaho Broadband Task Force are appointed by and serve at the pleasure of the Governor. Members include, but are not limited to:*
 - a. Director of the Idaho Department of Commerce;*
 - b. Director of the Idaho State Department of Agriculture or their designee;*
 - c. Director of the Office of Emergency Management or their designee;*
 - d. Director of the Office of Information Technology Services or their designee;*
 - e. Two members of the Idaho State Senate;*
 - f. Two members of the Idaho House of Representatives;*
 - g. One member representing the Association of Idaho Cities;*
 - h. One member representing the Idaho Association of Counties;*
 - i. One member representing Idaho Tribes;*
 - j. Members representing internet service providers;*
 - k. Members representing satellite providers;*
 - l. Members representing cellular providers;*
 - m. Members representing various industries across the State of Idaho;*
 - n. One member representing the Idaho National Laboratory;*
 - o. One member representing the Idaho electricity providers*



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho in Boise on this 23rd day of May, in the year of our Lord two thousand and nineteen and of the Independence of the United States of America the two hundred forty-third and of the Statehood of Idaho the one hundred twenty- ninth.

BRAD LITTLE GOVERNOR

LAWRENCE DENNEY SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2019-08

**CONTINUING THE WORKFORCE DEVELOPMENT COUNCIL FOR PLANNING
AND OVERSIGHT OF THE STATE'S WORKFORCE DEVELOPMENT SYSTEM
AMENDING EXECUTIVE ORDER 2017-13**

WHEREAS, the economic future of Idaho and the prosperity of its residents depends upon the ability of businesses in Idaho to compete in the world economy; and

WHEREAS, a well-educated and highly skilled workforce provides Idaho employers with a competitive edge critical for their success; and

WHEREAS, Idaho is committed to preparing its current and future workforce with the skills necessary for the 21st century; and

WHEREAS; empowering business, labor, and community leaders to take a more active and strategic role in crafting the state's economic and workforce development policy will enhance the quality and responsiveness of these programs; and

WHEREAS, a comprehensive workforce development strategy for Idaho will improve planning and oversight functions; increase public awareness of and access to workforce development education and training opportunities; improve the effectiveness, quality and coordination of services designed to maintain a highly skilled workforce; and help provide for the most efficient use of federal, state and local workforce development resources; and

WHEREAS, the Governor's Workforce Development Task Force recommended that the State of Idaho "increase the role and responsibilities of an industry-driven Workforce Development Council to champion the development and implementation of a statewide strategic workforce development plan that meets industries' needs today and tomorrow;"

NOW, THEREFORE, I, Brad Little, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution and laws of this state do hereby order that;

- 1. The Workforce Development Council (the "Council") is established within the Executive Office of the Governor in accordance with section 101 (a) of the Workforce Innovation and Opportunity Act (WIOA) of 2014 to coordinate efforts and direct public outreach and engagement in support of improving the quality of and access to workforce education and training programs throughout Idaho.*
- 2. The Council shall consist of 37 members, consistent with federal nomination and composition requirements set forth in section 101 (b) of WIOA. The Council's membership shall be as follows:*
 - a. 17 positions appointed by the Governor representing industry and nominated by statewide and regional business organizations;*
 - b. Seven positions appointed by the Governor representing the workforce, including two labor union representatives, two registered apprenticeship program representatives, one representative of a community-based organization for veterans, one representative of a community-based organization for individuals with disabilities, and one representative of a community-based organization for out-of-school youth;*
 - c. Ten positions appointed by the Governor representing government, including representatives from the Department of Labor, State Board of Education, State Department of Education, Division of Career-Technical Education, Division of Vocational Rehabilitation, Department of Health and Welfare, Department of Commerce, an elected city official, an elected county official, and a community college representative.*

- d. *One member from each chamber of the Idaho Legislature, including a member of the Senate appointed by the Senate President Pro Tem, and a member of the House of Representatives appointed by the House Speaker;*
- e. *The Governor or his designee.*
3. *The Governor shall name the chair and vice chair from among industry members of the Council.*
4. *The Council's members shall serve at the pleasure of the Governor, and their appointments shall be for three-year terms.*
5. *The Council shall be staffed by an executive director appointed by the Governor and such additional personnel as shall be appointed by the executive director.*
6. *The Council will be responsible for advising the Governor, Legislature and appropriate executive agencies on matters related to developing and implementing a comprehensive workforce development strategy for Idaho that;*
 - a. *Increases public awareness of and access to career education and training opportunities;*
 - b. *Improves the effectiveness, quality and coordination of programs and services designed to maintain a highly skilled workforce;*
 - c. *Helps provide for the most efficient use of federal, state and local workforce development resources;*
7. *The Council will assist the Governor in fulfilling the requirements of the State Workforce Investment Board as set forth in WIOA.*
8. *The Council shall be responsible for developing and overseeing procedures criteria and performance measures for the Workforce Development Training Fund.*
9. *The Council may empanel special committees, appointed by the chair. Special committee members may include non-Council members who have special knowledge and qualifications to be of assistance to the Council.*
10. *The Council shall meet quarterly. An Executive Committee made up of the chair, vice chair, three additional Council members representing industry and a representative of a labor union should meet monthly. The Executive Committee members shall be appointed by the Governor. The Executive Committee is authorized to act on the Council's behalf as necessary and shall report its actions at the Council's next regular meeting.*

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this 31st day of May in the year of our Lord two thousand and nineteen.



BRAD LITTLE
COPY COPY

BRAD LITTLE GOVERNOR

LAWRENCE DENNEY
COPY COPY

LAWRENCE DENNEY SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2019-09

COMBATING THE OPIOID AND SUBSTANCE USE DISORDER CRISIS

WHEREAS, President Donald J. Trump has declared the opioid crisis a nationwide Public Health Emergency; and

WHEREAS, drug overdose is now the leading cause of accidental death in the United States; and

WHEREAS, opioids, including prescription pain relievers, heroin, and synthetic opioids such as fentanyl remain a driving force of drug-induced death in Idaho; and

WHEREAS, one in twelve Idaho students have misused prescription pain relievers in their lifetime; and

WHEREAS, Idaho ranked 16th in the nation in 2017 for the total number of opioid prescriptions dispensed per 100 persons, at a rate of 70.3/100, down from 77.6/100 in 2016, compared to 58.7/100 nationally; and

WHEREAS, Idaho has improved from 5th to 25th in the United States for past year prescription pain reliever misuse; and

WHEREAS, opioid misuse and untreated use disorders cause devastating health, social, and economic consequences; and

WHEREAS, Idaho has made great strides in combating the opioid crisis, particularly in use of the prescription drug monitoring program (PMP). Idaho providers have increased the number of PMP searches ten-fold from 353,000 searches in FY15 to 3.8 million in FY18; and

WHEREAS, through efforts within the Opioid Misuse and Overdose Strategic Plan the state has made progress to combat substance abuse, but we still have more work we must do;

NOW, THEREFORE, I, Brad Little, Governor of the State of Idaho, by virtue of the authority vested in me under the Constitution and the laws of the State of Idaho, do hereby order the creation of the Opioid and Substance Use Disorder Advisory Group.

- 1. The Opioid Advisory Group shall evaluate state, community workgroup, and task force efforts recently performed in Idaho and provide recommendations on streamlining prevention and recovery activities, providing efficiency in battling opioid and substance abuse, and eliminating duplicative efforts to more efficiently and effectively fight this epidemic.*
- 2. The duties of the Opioid Advisory Group are advisory, and the Group is tasked with making recommendations to the Governor that will help him and the state build more effective plans to combat opioid and other substance use and abuse in Idaho.*
- 3. Members of the Opioid Advisory Group shall be appointed by and serve at the pleasure of the Governor.*
- 4. The Opioid Advisory Group shall be chaired by the Administrator of the Office of Drug Policy.*
- 5. Members of the Opioid Advisory Group will include but are not limited to:*

- a. *A representative of the Department of Health and Welfare*
- b. *A representative of the Idaho Board of Medicine*
- c. *A representative of the Idaho Board of Dentistry*
- d. *A representative of the Board of Pharmacy*
- e. *A representative of the Department of Correction*
- f. *A representative of Idaho State Police*
- g. *A representative of the State Department of Education*
- h. *A representative of the Division of Veterans Services*
- i. *A member of the Idaho House of Representatives*
- j. *A member of the Idaho Senate*
- k. *A member of the judiciary*
- l. *A county sheriff*
- m. *A county prosecutor*
- n. *A city police chief*
- o. *A representative from the Idaho Indian Tribes*
- p. *A representative of the medical community*
- q. *A representative of the hospital community*
- r. *A representative of the pharmacy community*
- s. *A representative of the treatment and recovery community*
- t. *A representative of the insurance community*



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this thirteenth (13th) day of June in the year of our Lord two thousand and nineteen.

BRAD LITTLE GOVERNOR

LAWRENCE DENNEY SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2019-10

ORGANIZATION OF THE LEWIS AND CLARK TRAIL COMMITTEE

WHEREAS, the Lewis and Clark Trail has great historical significance to the State of Idaho; and

WHEREAS, the Trail passes through multiple state and federal jurisdictions and private property, and it is important that Idaho have an official organization to promote responsible recreational use and tourism associated with the Trail and assure the protection and stewardship of this historic resource;

NOW, THEREFORE, I, BRAD LITTLE, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of the State of Idaho do hereby continue the Idaho Governor's Lewis and Clark Trail Committee as an advisory body to state, local, and federal governments on preserving and managing the Lewis and Clark Trail and activities relating to the Lewis and Clark Expedition.

The Committee shall:

- 1. Coordinate activities among and partner with federal, state, local, and private agencies and organizations to protect the Trail and promote responsible use of the trail;*
- 2. Advise the Office of the Governor, Idaho State Legislature, Idaho Congressional Delegation, Idaho commissions, bureaus, agencies, and committees regarding activities and policies that relate to the Trail and the history of the Lewis and Clark Expedition;*
- 3. Promote educational opportunities about the Trail through financial support and technical assistance;*
- 4. Sustain the current infrastructure and programs along the Lewis and Clark Trail corridor in Idaho, many of which were initiated with Committee financial support during the Lewis and Clark bicentennial.*

The Committee shall consist of no more than nine (9) persons who are appointed by the Governor and serve at his pleasure.

The voting membership of the Committee shall include:

- 1. The President of the Idaho Chapter of the Lewis and Clark Trail Heritage Foundation, Inc.;*
- 2. A representative of the Idaho State Historical Society;*
- 3. A representative of the Idaho Department of Parks and Recreation;*
- 4. The Governor or his designee;*
- 5. Five Idaho residents with a demonstrated interest in Lewis and Clark history.*

In addition, each of the following organizations may be invited to appoint one non-voting, ex officio member:

- 1. Nez Perce Tribal Executive Council*
- 2. Shoshone-Bannock Tribal Council*
- 3. Bureau of Land Management*
- 4. National Park Service*
- 5. USDA Forest Service*

The Committee shall elect its own chairperson and have regular meetings as determined by the majority of the Committee and called by the Chairperson.

Members will serve without compensation except for travel expenses. Operating funds will be from the sale of Lewis and Clark license plates, gifts, grants or other donations.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this first (1st) day of July in the year of our Lord two thousand and nineteen.

BRAD LITTLE GOVERNOR

LAWRENCE DENNEY SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2019-11

ESTABLISHING THE GOVERNOR'S COMMISSION ON SERVICE AND VOLUNTEERISM

WHEREAS, there is a compelling need for more civic participation to solve community and state problems and to address many unmet social, environmental, educational, and disaster preparedness needs; and

WHEREAS, promoting the capability of Idaho's people, communities, and enterprises to work together is vital to the long-term prosperity of the state; and

WHEREAS, building and encouraging community collaboration and service is an integral part of the state's future well-being and requires cooperative efforts by the public and private sectors; and

WHEREAS, the development of a National Service Program in Idaho requires an administrative vehicle conforming with federal guidelines as set forth in the National and Community Service Trust Act of 1993 as reauthorized and reformed by the Serve America Act of 2009;

NOW, THEREFORE, I, Brad Little, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution and laws of this state do hereby order:

- 1. The Governor's Commission on Service and Volunteerism will be known as Serve Idaho with a tag line that states, "The Governor's Commission on Service and Volunteerism."*
- 2. Serve Idaho ("the Commission") is hereby established to advise and assist in the development and implementation of a comprehensive, statewide plan for promoting volunteer involvement and citizen participation in Idaho, as well as to serve as the state's liaison to national, state and community organizations that support the intent of the Serve America Act of 2009 ("the Act").*
- 3. The Commission will be comprised of no fewer than 15 and no more than 25 voting members to be appointed by the Governor in compliance with federal guidelines as described in the Act and as detailed below:*
 - a. The Commission's membership shall include:*
 - i. A representative from a community-based agency or organization in the state;*
 - ii. The head of the state education agency or his/her designee;*
 - iii. A representative from county or city government;*
 - iv. A representative from local labor organizations;*
 - v. A representative from the business sector;*
 - vi. A representative from a national service program;*
 - vii. A representative from the volunteer sector;*
 - viii. An individual between the ages of 16 and 25, who is a participant in or supervisor of a service program for school-age youth or a campus-based or national service program;*
 - ix. An individual with expertise in the educational, training, and development needs of youth, particularly disadvantaged youth;*
 - x. An individual with experience in promoting the involvement of older adults (age 55 and older) in service and volunteerism;*
 - xi. The Corporation for National and Community Service ("Corporation") will designate one of its employees to serve as an ex-officio member on the Commission;*
 - b. Other members may include: educators, including representatives from institutions of higher education*

- and local education agencies; experts in the delivery of human, educational, environmental, or public safety services; representatives of Indian tribes; out-of-school youth or at-risk youth; and representatives of programs that are administered or receive assistance under the Serve America Act.*
- c. All members of the Commission shall serve at the pleasure of the Governor.*
 - d. Not more than 25 percent of the Commission and members may be employees of state government, though the Governor may appoint additional state agency representatives to sit on the Commission as non-voting ex-officio members. Members may not vote on issues affecting organizations for which they have served as a staff person or volunteer at any time during the preceding 12 months.*
 - e. Not more than 50 percent of the Commission plus one member may be from the same political party. To the maximum extent predictable, membership of the Commission shall be diverse with respect to race, ethnicity, age, gender, religion and disability characteristics. Members will serve for a term of three years. One-third of the appointments to the first Commission will serve terms of one year; one-third will serve terms of two years; and one-third will serve terms of three years. Vacancies among the members shall be filled by the Governor to serve for the remainder of the unexpired term.*
 - f. The Commission will elect from among its members a chairperson.*
- 4. The Commission will have the following duties and responsibilities:*
- a. To develop a three-year comprehensive national and community service plan and establish state priorities;*
 - b. To administer a competitive process to select national service programs to be included in an application to the Corporation for National and Community Service for funding;*
 - c. To prepare an application to the Corporation to receive funding and/or educational awards for the programs designated in the Act;*
 - d. To maintain fiduciary responsibility in the administration of all funds awarded by the Corporation for National and Community Service and other entities and to oversee and monitor the performance and progress of all programs and initiatives. The Department of Labor will serve as Serve Idaho's fiscal agent;*
 - e. To implement, in conjunction with the Corporation, comprehensive, non-duplicative evaluation and monitoring systems;*
 - f. To assist in the development of programs pursuant to the Act;*
 - g. To develop mechanisms for recruitment and placement of people interested in participating in national service programs;*
 - h. To assist in the provision of health and child care benefits to eligible program participants as specified by the regulations pertaining to the Act;*
 - i. To make recommendations to the Corporation with respect to priorities within the state for programs receiving assistance pursuant to the Act;*
 - j. To coordinate with other state agencies that administer federal financial assistance programs under the Community Service Block Grant Act (42 U.S.C. 9901 et seq.) or other appropriate federal financial assistance programs;*
 - k. To coordinate its functions with any division of the Corporation, that carries out volunteer service programs in the state; and*

- l. To provide technical assistance to agencies, corporations, and other organizations seeking to develop, strengthen or expand their ability to meet critical needs of the community through service; and
 - m. To reach out to and partner with national foundations and other organizations that support the intent of the Act and Serve Idaho; and
 - n. Other activities as determined by the Governor to be necessary for the development and implementation of programs that enhance national and community service.
5. Serve Idaho shall reside within the Idaho Department of Labor, and the Department shall serve as the host agency for administration of the Commission. The Director of the Department shall appoint one (1) Commission Administrator and up to five (5) Commission staff members.
 - a. The Commission Administrator and all Commission staff shall be non- classified employees of the Department.
 - b. The Commission Administrator shall select and supervise Commission staff members according to the Department’s personnel policies and procedures.
 - c. Evaluation of Commission staff members will be the responsibility of the Commission Administrator.
 - d. Evaluation of the Commission Administrator will be the joint responsibility of the Director and the Commission Chair.
 6. The Commission and its activities shall be funded from federal, state, and other revenues appropriated to Serve Idaho. The Commission is authorized to accept funds, including public and private gifts and in-kind services from other state and private entities.
 7. The Commission shall meet at least quarterly. Failure to attend at least 75 percent of the meetings in any calendar year may result in removal from the Commission. A quorum shall consist of a simple majority of voting members.
 8. In the circumstance the Commission fails to receive funding from the Corporation for National and Community Service, the Commission will cease to exist.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho in Boise on this 3rd day of September in the year of our Lord two thousand and nineteen and of the Independence of the United States of America the two hundred forty-fourth and of the Statehood of Idaho the one hundred thirtieth



BRAD LITTLE GOVERNOR

LAWRENCE DENNEY SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2019-12

**REVIEWING THE PREPARATION AND ADMINISTRATION OF IDAHO'S PLAN
UNDER THE JUVENILE JUSTICE AND DELINQUENCY ACT;
REPEALING AND REPLACING EXECUTIVE ORDER 2015-11**

WHEREAS, the State of Idaho, in accordance with the provisions of the Juvenile Justice and Delinquency Prevention Act of 1974, 34 U.S.C. §§ 11101-11313 ("JJDP"), as most recently reauthorized on December 21, 2018 by the enactment of P.L. 115-385, is required to designate a State agency to supervise and administer Idaho's plan under the JJDP and to establish a State juvenile justice advisory group; and

WHEREAS, the first regular session of the 53rd Idaho Legislature established the Idaho Department of Juvenile Corrections ("Department") and amended existing law to create a juvenile corrections system based on principles of accountability, community protection, and competency development; and

WHEREAS, the purposes and intent of Idaho's Juvenile Corrections Act of 1995 and the JJDP was better served by transferring the Idaho Juvenile Justice Commission ("Commission") to the Department; and

WHEREAS, the Department was designated as the sole agency for supervising the preparation and administration of Idaho's plan under the JJDP, and the Office for Juvenile Justice and Delinquency Prevention was abolished effective July 1, 1995; and

WHEREAS, the Commission was transferred from the Office of the Governor to the Department effective July 1, 1995, and has functioned as the advisory group referenced in Section 34 U.S.C. 11133(a)(3); and

NOW, THEREFORE, I, Brad Little, Governor of the State of Idaho, by the authority vested in me by Article IV, Section 5, of the Idaho Constitution, and Section 67-802, Idaho Code, do hereby order that:

- 1. The membership of the Commission shall be in conformity with the JJDP. The chairman, vice-chairman, and members of the Commission shall be appointed by and serve at the pleasure of the Governor. Members shall serve a term of three years. The chairman and vice-chairman shall serve in such capacities for three years.*
- 2. The Commission shall perform the following functions:*
 - a. Advise the Department on juvenile justice and delinquency prevention issues;*
 - b. Participate in the development and review of Idaho's plan under the JJDP;*
 - c. Be afforded an opportunity to review and comment on all grant applications under the JJDP submitted by the Department;*
 - d. Ensure compliance with the core protections of the JJDP by jurisdictions with public authority in Idaho through education, technical assistance, monitoring and remedial actions for violations;*
 - e. Perform such other duties that the JJDP requires to be performed by the advisory group referenced in Section 34 U.S.C. 11133 (a)(3) and Section 28 C.F.R 31.102(b); and*
 - f. Perform such other duties as requested by the director of the Department, which may include submitting reports to the director of the Department and making decisions on grant applications under the JJDP submitted to the Department.*

This Executive Order shall cease to be effective four years after its entry into force.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho in Boise on this 5th day in September in the year of our Lord two thousand and nineteen and of the Independence of the United States of America the two hundred forty-fourth and of the Statehood of Idaho the one hundred thirtieth.

BRAD LITTLE GOVERNOR

LAWRENCE DENNEY SECRETARY OF STATE

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.01.04 – RULES GOVERNING THE IDAHO PREFERRED® PROMOTION PROGRAM

DOCKET NO. 02-0104-1901

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 22-112, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

ISDA has adopted this rule to provide user-friendly standards for producers who choose to participate in the voluntary Idaho Preferred program. Existing product qualifications for “processed food and beverage” products were not appropriate for some products. New categories were created for beer and for water. Changes were also made to beef and game meat. The beef qualifications were revised to be consistent with other meat products. ‘Game meat’ was revised to include ‘all Cervidae,’ not just elk. This rule was also reviewed for amendment or repeal of select sections to comply with the Red Tape Reduction Act.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the August 7, 2019 Idaho Administrative Bulletin, [Vol. 19-8, pages 14-17](#).

IDAHO CODE SECTION 22-101A STATEMENT: The Idaho Preferred Promotion Program is a voluntary marketing program which provides standards, not regulations, for Idaho Preferred products. Therefore, this Rule is not subject to the requirements of Idaho Code Section 22-101A.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: The agency does not anticipate any fiscal impact as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Laura Johnson at (208) 332-8533.

Dated this 3rd day of October, 2019.

Brian Oakey
Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8550
Fax: (208) 334-2710

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.02.02 – RULES GOVERNING GRADING AND CONTROLLED ATMOSPHERE STORAGE OF APPLES

DOCKET NO. 02-0202-1901 (NEW CHAPTER)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 22-702, 22-802, and 22-803, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

PUBLIC HEARING

Thursday, November 14, 2019 @ 9:00 a.m.

Idaho State Department of Agriculture
2270 Old Penitentiary Road
Boise, ID 83712

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Combining two apple rules; IDAPA 02.02.02 and 02.02.04. These two rules administered by the ISDA are related to the grading standards and storage of apples in Idaho. These rules were promulgated to carry out requirements described in Title 22, Chapters 7 and 8, Idaho Code. In order to streamline and simplify rules related to apples, the ISDA has decided to combine the two rules into a single rule. The new rule will be titled “02.02.02, Rules Governing Grading and Controlled Atmosphere Storage of Apples.” No substantive changes are being made to the two rules cited above. All rules were reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

IDAHO CODE SECTION 22-101A STATEMENT: Section 22-101A, Idaho Code, requires that in this notice of proposed rulemaking, the Director must specify whether this rule is broader in scope or more stringent than federal law or regulations, or regulates an activity not regulated by the federal government. Subchapter B—Controlled Atmosphere Storage, in its entirety, regulates an activity not already regulated by the federal government.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

The agency does not anticipate any fiscal impact as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the September 4, 2019, Idaho Administrative Bulletin, [Vol. 19-9, pages 15–19](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Laura Thomas, Bureau Chief, Ag. Inspections at (208) 332-8672.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 27, 2019.

Dated this 3rd day of October, 2019.

Brian Oakey
Deputy Director
Phone: (208) 332-8552
Fax: (208) 334-2710

Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0202-1901
(New Chapter)

02.02.02 – RULES GOVERNING GRADING AND CONTROLLED
ATMOSPHERE STORAGE OF APPLES

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 22-702, 22-802, and 22-803 Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.02.02, “Rules Governing Grading and Controlled Atmosphere Storage of Apples.” ()

02. Scope. These rules govern the criteria and grades for Idaho Apples and Idaho Summer Apples, including color requirements, defects, tolerances, packing, and marking. These rules also govern registration requirements and prescribe the maximum oxygen levels for sealed controlled atmosphere storage of apples. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

The following definitions apply in the interpretation and enforcement of this chapter: ()

01. Carefully Hand-Picked. Apples do not show evidence of rough handling or of having been on the ground. ()

02. Clean. Apples are free from excessive dirt, dust, spray residue and other foreign material. ()

03. Fairly Well Formed. Apple may be slightly abnormal in shape but not to an extent that detracts materially from its appearance. ()

04. Lot. Any group of containers of apples from one (1) grower or orchard and of one (1) variety and that is set apart or is separate from any other group or groups by some evidence such as a lot number or similar mark of identification. ()

05. Mature. Apples have reached the stage of development that will ensure the proper completion of the ripening process. Before a mature apple becomes overripe, it will show varying degrees of firmness, depending upon the stage of the ripening process. The following terms are used for describing different stages of firmness of apples: ()

- a. “Hard” means apples with a tenacious flesh and starchy flavor. ()
- b. “Firm” means apples with a tenacious flesh, but that are becoming crisp with a slightly starchy flavor, except the Delicious variety. ()
- c. “Firm ripe” means apples with crisp flesh except that the flesh of the Gano, Ben Davis, and Rome Beauty varieties may be slightly mealy. ()
- d. “Ripe” means apples with mealy flesh and soon to become soft for the variety. ()
- 06. **Overripe.** Apples that are dead ripe, with flesh very mealy or soft, and past commercial utility. ()
- 07. **Packer or Repacker.** A person other than an owner or operator of a controlled atmosphere storage plant who removes apples from the containers in which they were treated and places them into other containers or replaces them into the original containers. ()
- 08. **Seriously Deformed.** Apple is so badly misshapen that its appearance is seriously affected. ()
- 011. -- 119. **(RESERVED)**

SUBCHAPTER A – APPLE GRADES

120. GRADES.

- 01. **Idaho Extra Fancy.** “Idaho Extra Fancy” consists of apples of one (1) variety that are mature but not overripe except that Red Delicious and Delicious are not further advanced in maturity than “Firm ripe” as defined in Subsection 010.05.c. All “Idaho Extra Fancy” apples are to be carefully hand-picked, clean, fairly well formed; free from decay, internal browning, internal breakdown, scald, bitter pit, scab, Jonathan spot, freezing injury, visible water core, and broken skins and bruises except those that are slight and incident to proper handling and packing. The apple is also free from injury caused by smooth net-like russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, disease, insects, or other means; and free from damage by smooth solid, slightly rough or rough russeting, or stem or calyx cracks, and free from damage by invisible water core after January 31st of the year following the year of production. Each apple of this grade has the amount of color specified in Section 121 for the variety. ()
- 02. **Idaho Fancy.** “Idaho Fancy” consists of apples of one (1) variety that are mature but not overripe except that Red Delicious and Delicious are not further advanced in maturity than “Firm ripe” as defined in Subsection 010.05.c. All “Idaho Fancy” apples shall be carefully hand-picked, clean, fairly well formed; free from decay, internal browning, internal breakdown, bitter pit, Jonathan spot, scald, freezing injury, visible water core, and broken skins and bruises except those that are incident to proper handling and packing. The apples are also free from damage caused by russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, stem or calyx cracks, disease, insects, invisible water core after January 31st of the year following the year of production, or damage by other means. Each apple of this grade has the amount of color specified in Section 121 for the variety. ()
- 03. **Idaho No. 1.** The requirements of this grade are the same as for “Idaho Fancy” except for color, russeting, and invisible water core. In this grade less color is required for all varieties with the exception of the yellow and green varieties other than Golden Delicious. Apples of this grade are free from excessive damage caused by russeting, which means that apples meet the russeting requirements for “Idaho Fancy” as defined under the definitions of “damage by russeting,” except the aggregate area of an apple that may be covered by smooth net-like russeting does not exceed twenty-five percent (25%); and the aggregate area of an apple that may be covered by smooth solid russeting does not exceed ten percent (10%): Provided, that in the case of the Yellow Newtown or similar varieties the aggregate area of an apple that may be covered with smooth solid this grade has the amount of color specified in Subsection 010.05.c. for the variety. There is no requirement in this grade pertaining to invisible water core. ()

a. Idaho No. 1 Early consists of apples that meet the requirements of Idaho No.1 grade except as to color and maturity, and meet a minimum size requirement. Apples of this grade have no color requirements, need not be mature, grade is provided for varieties such as Duchess, Gravenstein, Red June, Twenty Ounce, Wealthy, Williams, Yellow Transparent, and Lodi, or other varieties that are normally marketed during the summer months. ()

b. Idaho No. 1 Hail consists of apples that meet the requirements of Idaho No. 1 grade except that hail marks where the skin has not been broken, and well healed hail marks where the skin has been broken, are permitted, provided the apples are fairly well formed. ()

04. Idaho Utility. “Idaho Utility” consists of apples of one (1) variety that are mature but not overripe, carefully hand-picked, not seriously deformed, free from decay, internal browning, internal breakdown, scald, and freezing injury. The apples are also free from serious damage caused by dirt or other foreign matter, broken skins, bruises, russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, stem or calyx cracks, visible water core, disease, insects, or other means. ()

05. Combination Grades. ()

a. Combinations of the above grades may be used as follows: ()

i. Combination Idaho Extra Fancy and Idaho Fancy; ()

ii. Combination Idaho Fancy and Idaho No. 1; ()

iii. Combination Idaho No. 1 and Idaho Utility; ()

b. Combinations other than these are not permitted in connection with the Idaho apple grades. When combination grades are packed, at least fifty percent (50%) of the apples in any lot will meet the requirements of the higher grade in the combination. ()

121. COLOR REQUIREMENTS.

In addition to the requirement specified for the grades set forth in Subsections 120.01 through 120.05, apples of these grades have the percentage of color specified for the variety in Table I appearing below. For the solid red varieties, the percentage stated refers to the area of the surface that must be covered with a good shade of solid red characteristic of the variety: Provided, that an apple having color of a lighter shade of solid red or striped red than that considered as a good shade of red characteristic of the variety may be admitted to a grade, provided it has sufficient additional area covered so that the apple has as good an appearance as one with the minimum percentage of good red characteristic of the variety required for the grade. For the striped red varieties, the percentage stated refers to the area of the surface in which the stripes of a good shade of red characteristic of the variety predominates over stripes of lighter red, green, or yellow. However, an apple having color of a lighter shade than that considered as a good shade of red characteristic of the variety, may be admitted to a grade, provided it has sufficient additional area covered, so that the apple has as good an appearance as one with the minimum percentage of stripes of a good red characteristic of the variety required for the grade. Faded brown stripes are not considered as color except in the case of the Gary Baldwin variety. Color standards will be determined by Official USDA Visual Aids for apples. APL-CC-1

Table 1 – Color Requirements for Specified Idaho Grades of Apples by Variety

VARIETY	IDAHO EXTRA FANCY PERCENT	IDAHO FANCY PERCENT	IDAHO NO. 1 PERCENT
ALL SOLID RED VARIETIES:	66	40	25
Other Similar Varieties - (1)	66	40	25
Red Sport Varieties - (2)	66	40	25

VARIETY	IDAHO EXTRA FANCY PERCENT	IDAHO FANCY PERCENT	IDAHO NO. 1 PERCENT
STRIPED OR PARTIALLY RED:			
Jonathan	66	33	25
McIntosh	50	33	25
Cortland	50	33	25
Other Similar Varieties - (3)	50	33	25
Rome Beauty	50	33	15
Stayman	50	33	15
York Imperial	50	33	15
Baldwin	50	25	15
Ben Davis	50	25	15
Delicious	50	25	15
Mammoth Black Twig	50	25	15
Turley	50	25	15
Wagener	50	25	15
Wealthy	50	25	15
Willow Twig	50	25	15
Northern Spy	50	25	15
Other Similar Varieties - (4)	50	25	15
Hubbardston	50	15	10
Stark	50	15	10
Other Similar Varieties	50	15	10
Red June	50	15	(5)
Red Gravenstein	50	15	(5)
Williams	50	15	(5)
Other Similar Varieties	50	15	(5)
Gravenstein	25	10	(8)
Duchess	25	10	(5)
Other Similar Varieties - (6)	25	10	(5)
RED CHEEKED OR BLUSHED:			
Maiden Blush	(7)	(5)	(8)
Twenty Ounce	(7)	(5)	(8)
Winter Banana	(7)	(5)	(8)

VARIETY	IDAHO EXTRA FANCY PERCENT	IDAHO FANCY PERCENT	IDAHO NO. 1 PERCENT
Other Similar Varieties	(7)	(5)	(8)
Green Varieties	(9)	(9)	(9)
Yellow Varieties	(9)	(9)	(9)
Golden Delicious	(10)	(10)	(9)
(1) Arkansas Black, Beacon, Detroit Red, Esopus Spitzenburg, King David, Lowry, Minjon. (2) When Red Sport varieties are specified as such, they shall meet the color requirements specified for Red Sport varieties. (3) Haralson, Kendall, Macoun, Snow (Fameuse). (4) Bonum, Early McIntosh, Limbertwig, Milton, Nero, Paragon, Melba. (5) Tinge of color. (6) Red Astrachan, Smokehouse, Summer Rambo, Dudley. (7) Blush Cheek. (8) None. (9) Characteristic ground color. (10) Seventy-five (75%) percent or more of the surface of the apple shall show white or light green predominating over the green color.			

()

122. UNCLASSIFIED DESIGNATION.

“Unclassified” consists of apples that have not been classified in conformity with any of the foregoing grades. The term “unclassified” is not a grade within the meaning of these standards, but is provided as a designation to show that no definite grade has been applied to the lot. ()

123. TOLERANCES.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances are provided as specified: ()

01. Defects. ()

a. Idaho Extra Fancy, Idaho Fancy, Idaho No. 1, Idaho No. 1 Early and Idaho No. 1 Hail grades: Ten percent (10%) of the apples in any lot may fail to meet the requirements of the grade, but not more than one-half (1/2) of this amount, or five percent (5%), is allowed for apples that are seriously damaged, including therein not more than one percent (1%) for apples affected by decay or internal breakdown. ()

b. Idaho Utility grade: Ten percent (10%) of the apples in any lot may fail to meet the requirements of the grade, but not more than one-half (1/2) of this amount, or five percent (5%), is allowed for apples that are seriously damaged by insects, and including in the total tolerance not more than one percent (1%) for apples affected by decay or internal breakdown. ()

02. Applying Tolerances to Combination Grades. When applying tolerances to combination grades, no part of any tolerance is allowed to reduce, for the lot as a whole, the fifty percent (50%) of apples of the higher grade required in the combination but individual containers will not have less than forty percent (40%) of the higher grade. ()

03. Size. When size is designated by the numerical count for a container, not more than five percent (5%) of the apples in the lot may vary more than one fourth (1/4) inch in diameter. When size is designated by minimum or maximum diameter, not more than five percent (5%) of the apples in any lot may be smaller than the designated minimum and not more than ten percent (10%) may be larger than the designated maximum. ()

04. Firmness. Not more than five percent (5%) of the apples in any lot of Red Delicious and Delicious varieties can be further advanced in maturity than “Firm ripe” as defined in Subsection 010.05.c. Provided, the Idaho No. 1, Idaho No. 1 Hail, and Idaho Utility grades are exempt from this requirement. ()

124. APPLICATION OF TOLERANCES.

The contents of individual samples in the lot are subject to the following limitation, provided that the averages for the entire lot are within the tolerances specified for the grade: ()

01. Samples That Contain More Than Ten (10) Pounds. Not more than one and one-half (1 1/2) times a specified tolerance of ten percent (10%) or more and not more than double a tolerance of less than ten percent (10%), except that at least one (1) apple that is seriously damaged by insects or affected by decay or internal breakdown may be permitted in any sample. ()

02. Samples That Contain Ten (10) Pounds or Less. Not over ten percent (10%) of the sample may have more than three (3) times the tolerance specified, except that at least one (1) defective apple may be permitted in any sample: Provided, that not more than one (1) apple or more than six percent (6%) (whichever is the larger amount) may be seriously damaged by insects or affected by decay or internal breakdown. ()

125. CALCULATION OF PERCENTAGES.

01. When Numerical Count is Marked On Container. Percentages are calculated on the basis of count. ()

02. When Minimum Diameter or Minimum and Maximum Diameters are Marked on Container. Percentages are calculated on the basis of weight. ()

03. Apples are in Bulk. Percentages are calculated on the basis of weight. ()

126. CONDITION AFTER STORAGE OR TRANSIT.

Decay, scald, or any other deterioration that may have developed on apples after they have been in storage or transit are considered as affecting condition and not the grade. ()

127. -- 129. (RESERVED)

130. PACKING REQUIREMENTS.

01. Tray or Cell Packed. Apples in cartons are arranged according to approved and recognized methods. Packs are to be at least fairly tight or fairly well filled. ()

a. “Fairly tight” apples are of the proper size for molds or cell compartments in which they are packed, and that molds or cells are filled in such a way that no more than slight movement of apples within molds or cells is possible. The top layer of apples, or any pad or space filler over the top layer of apples is to be not more than three-fourths (3/4) inch below the top of the carton. ()

b. “Fairly well filled” means that the net weight of apples in containers ranging from two thousand one hundred cubic inches (2,100 cu. in.) to two thousand nine hundred cubic inches (2,900 cu. in.) capacity is not less than thirty seven (37) pounds for Courtland, Gravenstein, Jonathan, McIntosh and Golden Delicious varieties and not less than forty (40) pounds for all other varieties. ()

02. Closed Cartons. Apples not tray or cell packed are fairly well filled or the pack is sufficiently tight to prevent any appreciable movement of the apples. ()

03. Wooden Boxes or Baskets Packs. Sufficiently tight to prevent any appreciable movement of apples within containers when the packages are closed. Each wrapped apple is to be completely enclosed by its individual wrapper. ()

04. Reasonably Representative. Apples on the shown face of any container are reasonably representative in size, color, and quality of the contents. ()

05. Tolerances. In order to allow for variations incident to proper packing, not more than ten percent (10%) of the containers in any lot may fail to meet these requirements. ()

131. MARKING REQUIREMENTS.

The numerical count or the minimum diameter of the apples packed in a closed container is indicated on the container. ()

01. When Numerical Count is not Shown. The minimum diameter will be plainly stamped, stenciled, or otherwise marked on the container in terms of whole inches, or whole inches and not less than one eighth (1/8) inch fractions thereof. ()

02. The Word "Minimum". Or its abbreviation, when following a diameter size marking, means that the apples are of the size marked or larger. ()

132. SCORABLE DEFECTS.

01. Injury. Any specific defect defined in this subsection or an equally objectionable variation of any one (1) of these defects, any other defect, or any combination of defects, that more than slightly detracts from the appearance or the edible or shipping quality of the apple. The following specific defects are considered as injury: ()

a. Russetting in the stem cavity or calyx basin that cannot be seen when the apple is placed stem end or calyx end down on a flat surface, is not considered in determining whether or not an apple is injured by russetting. Smooth net-like russetting outside of the stem cavity or calyx basin is considered as injury when an aggregate area of more than ten percent (10%) of the surface is covered, and the color of the russetting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous net-like russetting when the appearance is affected to a greater extent than the above amount permitted. ()

b. Sunburn or sprayburn, when the discolored area does not blend into the normal color of the fruit. ()

c. Dark brown or black limb rubs that affect a total area of more than one-fourth (1/4) inch in diameter, except that light brown limb rubs of a russet character are considered under the definition of injury by russetting. The area refers to that area of a circle of the specified diameter. ()

d. Hail marks, drought spots, other similar depressions or scars. ()

i. When the skin is broken, whether healed or unhealed; ()

ii. When there is appreciable discoloration of the surface; ()

iii. When any surface indentation exceeds one-sixteenth (1/16) inch in depth; ()

iv. When any surface indentation exceeds one-eighth inch (1/8) in diameter; or ()

v. When the aggregate affected area of such spots exceeds one-half (1/2) inch in diameter. The area refers to that of a circle of the specified diameter. ()

e. Disease. ()

i. Cedar rust infection that affects a total area of more than three-sixteenths (3/16) inch in diameter. The area refers to that of a circle of the specified diameter. ()

ii. Sooty blotch or fly speck that is thinly scattered over more than five percent (5%) of the surface, or dark, heavily concentrated spots that affect an area of more than one-fourth (1/4) inch in diameter. The area refers to that of a circle of the specified diameter. ()

iii. Red skin spots that are thinly scattered over more than one-tenth (1/10) of the surface, or dark, heavily concentrated spots that affect an area of more than one-fourth (1/4) inch in diameter. ()

f. Insects. ()

i. Any healed sting or healed stings that affect a total area of more than one-eighth (1/8) inch in diameter including any encircling discolored rings. The area refers to that of a circle of the specified diameter. ()

ii. Worm holes. ()

02. Damage. Any specific defect defined in this subsection or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, that materially detracts from the appearance, or the edible or shipping quality of the apple. The following specific defects are considered damage: ()

a. Russetting in the stem cavity or calyx basin that cannot be seen when the apple is placed stem end or calyx end down on a flat surface, is not considered in determining whether or not an apple is damaged by russetting, except that excessively rough or bark-like russetting in the stem cavity or calyx basin shall be considered as damage when the appearance of the apple is materially affected. The following types and amounts of russetting outside of the stem cavity or calyx basin are considered as damage: ()

i. Russetting that is excessively rough on Roxbury Russet and other similar varieties. ()

ii. Smooth net-like russetting, when an aggregate area of more than fifteen percent (15%) of the surface is covered, and the color of the russetting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous net-like russetting when the appearance is affected to a greater extent than the above amount permitted. ()

iii. Smooth solid russetting, when an aggregate area of more than five percent (5%) of the surface is covered, and the pattern and color of the russetting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous solid russetting when the appearances affected to a greater extent than the above amount permitted. ()

iv. Slightly rough russetting that covers an aggregate area of more than one-half (1/2) inch in diameter. ()

v. Rough russetting that covers an aggregate area of more than one-fourth (1/4) inch in diameter. ()

b. Sunburn or sprayburn that has caused blistering or cracking of the skin, or when the discolored area does not blend into the normal color of the fruit unless the injury can be classed as russetting. ()

c. Limb rubs that affect a total area of more than one-half (1/2) inch in diameter, except that light brown limb rubs of a russet character are considered under the definition of damage by russetting. ()

d. Hail marks, drought spots, other similar depressions or scars. ()

i. When any unhealed mark is present; ()

ii. When any surface indentation exceeds one-eighth (1/8) inch in depth; ()

iii. When the skin has not been broken and the aggregate affected area exceeds one-half (1/2) inch in diameter. The area refers to that of a circle of the specified diameter; or ()

iv. When the skin has been broken and well healed, and the aggregate affected area exceeds one-fourth (1/4) inch in diameter. ()

e. Stem or calyx cracks that are not well healed, or well healed stem or calyx cracks that exceed an aggregate length of one-fourth (1/4) inch. ()

f. Invisible water core existing around the core and extending to water core in the vascular bundles; or surrounding the vascular bundles when the affected area surrounding three (3) or more vascular bundles meet or coalesce; or existing in more than slight degree outside the circular area formed by the vascular bundles. ()

g. Disease. ()

i. Scab spots that affects a total area of more than one-fourth (1/4) inch in diameter. The area refers to that of a circle of the specified diameter. ()

ii. Cedar rust infection that affects a total area of more than one-fourth (1/4) inch in diameter. The area refers to that of a circle of the specified diameter. ()

iii. Sooty blotch or fly speck that is thinly scattered over more than one-tenth (1/10) of the surface, or dark, heavily concentrated spots that affect an area of more than one-half (1/2) inch in diameter. The area refers to that of a circle of the specified diameter. ()

iv. Red skin spots that are thinly scattered over more than one-tenth (1/10) of the surface, or dark, heavily concentrated spots that affect an area of more than one-half (1/2) inch in diameter. The area refers to that of a circle of the specified diameter. ()

h. Insects. ()

i. Any healed sting or healed stings that affect a total area of more than three-sixteenths (3/16) inch in diameter including any encircling discolored rings. The area refers to that of a circle of the specified diameter. ()

ii. Worm holes. ()

03. Serious Damage. Any specific defect defined in this subsection or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects that seriously detracts from the appearance, or the edible or shipping quality of the apple. The following specific defects are considered as serious damage: ()

a. The following types and amounts of russetting are considered as serious damage: Smooth solid russetting, when more than one-half (1/2) of the surface in the aggregate is covered, including any russetting in the stem cavity or calyx basin, or slightly rough, or excessively rough or bark-like russetting, that detracts from the appearance of the fruit to a greater extent than the amount of smooth solid russetting permitted: Provided, that any amount of russetting is permitted on Roxbury Russet and other similar varieties. ()

b. Sunburn or sprayburn that seriously detracts from the appearance of the fruit. ()

c. Limb rubs that affect more than one-tenth (1/10) of the surface in the aggregate. ()

d. Hail marks, drought spots, or scars, if they materially deform or disfigure the fruit, or if such defects affect more than one-tenth (1/10) of the surface in the aggregate: Provided, that no hail marks that are unhealed are permitted and not more than an aggregate area of one-half (1/2) inch is allowed for well healed hail marks where the skin has been broken. The area refers to that of a circle of the specified diameter. ()

e. Stem or calyx cracks that are not well healed, or well healed stem or calyx cracks that exceed an aggregate length of one-half (1/2) inch. ()

f. Visible water core that affects an area of more than one-half (1/2) inch in diameter. ()

- g.** Disease. ()
- i. Scab spots that affect a total area of more than three-fourths (3/4) inch in a circle of the specified diameter. ()
- ii. Cedar rust infection that affects a total area of more than three-fourths (3/4) inch in diameter. The area refers to that of a circle of the specified diameter. ()
- iii. Sooty blotch or fly speck that affects more than one-third (1/3) of the surface. ()
- iv. Red skin spots that affect more than one-third (1/3) of the surface. ()
- v. Bitter pit or Jonathan spot that is thinly scattered over more than one-tenth (1/10) of the surface and does not materially deform or disfigure the fruit. ()
- h.** Insects. ()
- i. Healed stings that affect a total area of more than one-fourth (1/4) inch in diameter including any encircling discolored rings. The area refers to that of a circle of the specified diameter. ()
- ii. Worm holes. ()

133. DIAMETER.

When measuring for minimum size, “diameter” means the greatest right angles to a line from stem to blossom end. When measuring for maximum size, “diameter” means the smallest dimension of the apple, determined by passing the apple through a round opening in any position. ()

134. IDAHO CONDITION STANDARDS.

These standards may be applied to domestic shipments of apples, and may be referred to as “Idaho Condition Standards.” ()

01. Maturity. Not more than five percent (5%) of the apples in any lot are further advanced in maturity than firm ripe. ()

02. Storage Scab. Not more than five percent (5%) of the apples in any lot are damaged by storage scab. ()

03. Affected by Condition Factors. Not more than a total of five percent (5%) of the apples in any lot are affected by scald, internal breakdown, freezing injury, or decay; or damaged by water core, bitter pit, Jonathan spot, or other condition factors: NOTE: “Damage by water core” means externally invisible water core existing around the core and extending to water core in the vascular bundles; or surrounding the vascular bundles when the affected areas surrounding three (3) or more vascular bundles meet or coalesce; or existing in more than slight degree outside the circular area formed by the vascular bundles; or any externally visible water core. Provided, that: ()

a. Not more than a total of two percent (2%) is allowed for apples affected by decay and soft scald; ()

b. Not more than two percent (2%) is allowed for apples affected by internal breakdown; and ()

c. Not more than two percent (2%) is allowed for apples affected by slight scald. ()

04. Container Packs. Will comply with packing requirements specified in Section 130 of this chapter. ()

05. Tolerances. Any lot of apples is considered as meeting the Idaho Condition Standards if the entire lot averages within the requirements specified: Provided, that no package in any lot has more than double the

percentages specified, except that for packages that contain ten (10) pounds or less, individual packages in any lot may have not more than three (3) times the tolerance or one (1) apple (whichever is the greater amount). ()

135. SUMMER APPLES.

Summer apples are defined as all apples such as Early McIntosh, Beacon, Tydeman Red, Lodi, Yellow Transparent, and all other similar varieties ripening before Jonathans; excluding Jonathans, Arkansas Black, Spitzenburg, King David, Winesap, Red Sport varieties, Delicious Stayman, Vanderpool, Black Twig, McIntosh and Rome Beauty. Note: Winter Banana variety may also be packed under Summer Grades. ()

136. SUMMER APPLE GRADES.

01. Idaho Summer Extra Fancy. Apples of one (1) variety that are mature, hand-picked, clean, sound, fairly well formed and free from visible watercore, broken skin and from damage caused by insects, disease, mechanical injury or other causes. Each apple has the amount of color hereinafter specified for apples in this grade. Caution: To be certified on an Export Form Certificate, all apples must meet U.S. No. 1 grade requirements. ()

a. "Fairly well formed" means that the apple has the normal shape one-half (1/2) of the apple may deviate slightly or that the apple may be slightly flattened as by frost injury. ()

b. "Damage" means any defect that materially affects the appearance or the edible or shipping qualities of the apple. ()

c. The following are not be considered damage. ()

i. Slight handling bruises or box bruises, such as are incidental to good commercial handling in the preparation of a tight pack. ()

ii. Sunburn or sprayburn when the normal color of the apple is not seriously affected, and there is no blistering or cracking of the skin, and the discolored area blends into the normal coloring of the apple. ()

iii. Dark colored limb rubs not to exceed one-half (1/2) inch in the aggregate area. Limb rubs of a light brown or russet character are governed by the definition covering solid russeting. ()

iv. Smooth russeting at the stem or calyx end provided that such russeting is not visible for more than one-half (1/2) inch when the apple is placed with the russet end down on a flat surface. ()

v. Smooth net-like russeting that does not cover an aggregate area of more than ten percent (10%) of the surface and net-like russeting on the colored portions of the apple that does not materially detract from its appearance are not counted in computing the ten percent (10%) mentioned above. ()

vi. Hail marks, drought spots or other similar depressions or scars where there is no appreciable discoloration, except as later noted, other than russeting, or when any individual indentation does not exceed one-fourth (1/4) inch in diameter or the total area affected does not exceed one-fourth (1/4) inch in diameter. One discolored unbroken area not to exceed one-eighth (1/8) inch in diameter is allowed. ()

vii. Scab spots affecting an aggregate area not to exceed three-eighths (3/8) inch in diameter. ()

viii. Any healed stings affecting an aggregate area not to exceed three-sixteenths (3/16) inch in diameter. ()

ix. Slight aphid sign on thrip marks that do not roughen or pebble the surface of the apple. ()

x. Any defect or defects not listed above that affect the appearance or quality of the apple not more than the defects listed above. ()

02. Quality of Idaho Summer Fancy Apples. Idaho Summer Fancy Apples consist of apples of one (1) variety that are mature, hand-picked, sound, not badly misshapen and free from visible watercore, serious damage

caused by insects, disease, mechanical injuries or other causes, and free from soft bruises or broken skin (except that apples may have skin punctures not exceeding one-fourth (1/4) inch diameter). ()

03. Combination Idaho Extra Fancy and Fancy. In Summer Apple Grades, when Extra Fancy and Fancy are packed together, the boxes may be marked “Combination Idaho Summer Extra Fancy and Fancy.” The package must contain at least fifty percent (50%) of the Extra Fancy Grade. Tray packs are to be well filled, having not less than thirty-six (36) pounds net weight of apples. ()

137. SCORABLE DEFECTS OF SUMMER APPLES.

01. Punctured Apples. CAUTION: Punctured apples do not meet the requirements of the Export Apple Act and cannot be certified on an export certificate. Each apple will have the amount of color hereinafter specified for apples of this grade. ()

02. Not Badly Misshapen. The apple may be more irregularly misshapen than defined above, but must not be deformed to the extent of materially affecting its utility or general appearance. ()

03. Serious Damage. Any injury or defect or a combination thereof that seriously detracts from the appearance of the apple. The following are not considered serious damage: ()

a. Sunburn or sprayburn that does not seriously detract from the appearance of the apple. ()

b. Limb rubs affecting an aggregate area not to exceed three-fourths (3/4) inch. ()

c. Smooth solid russeting affecting an area of not more than one-half (1/2) the surface in the aggregate, including russeting of the stem basin, or bark-like russeting that does not seriously detract from the appearance of the apple. ()

d. Growth cracks when no crack exceeds one-half (1/2) inch in length. ()

e. Hail marks, drought spots or other similar depressions that do not exceed an aggregate area of ten percent (10%) of the surface. Slight injury means that no individual area may exceed three-fourths (3/4) inch in diameter of discolored area. The discolored area may be a light brown or black or may be a russeted area, and the skin may or may not be broken; if broken, the area must be well healed. ()

f. Scab spots affecting an aggregate area not to exceed three-fourths (3/4) inch. ()

g. Not to exceed two (2) stings, each having an encircling hard ring or slight depression, providing no sting exceeds one-eighth (1/8) inch in diameter, exclusive of any encircling ring. ()

h. Aphis pebbling or thrip marks not seriously affecting the appearance of the apple. ()

i. Any defect or defects not listed above that does not affect the appearance of the apple more than the defects listed above. ()

138. COLOR REQUIREMENTS FOR SUMMER APPLES.

For the Idaho Summer Apple Grades, the color percentage listed below refers to color of blush, shades of red, or stripes of red characteristic of the variety. For green and yellow varieties, no color is required in Extra Fancy or Fancy.

Characteristic Table

Extra Fancy	Fancy
33 1/3%	15%

()

139. -- 199. (RESERVED)

SUBCHAPTER B – CONTROLLED ATMOSPHERE STORAGE

200. APPLES, CONTROLLED ATMOSPHERE REGISTRATION.

01. Registration. Any person who owns or operates a controlled atmosphere room or storage building for apples in Idaho, and any person who engages in this State in the business of packing or repacking apples so treated in this State or any other state and who intends to, or does, represent such apples as having been exposed to “controlled atmosphere” storage, shall register with the Director on a form prescribed by the Director. ()

02. Registration Period. The registration period for owners or operators of controlled atmosphere rooms or storage buildings in this State commences on September 1 and end on August 31 of each year, and for packers or repackers of apples that have been held in a controlled atmosphere room or storage building in this State or in any other state, the registration period extends for a period not to exceed one (1) year. Owners or operators of such rooms or storage buildings shall register on or before September 1 of each year. ()

03. Interstate Registration. Any person who owns or operates a controlled atmosphere room or storage building located outside of Idaho or who engages at a place outside of this State in the business of packing or repacking apples that have been held in controlled atmosphere storage and who intends to, or does, market in the state of Idaho apples so treated and represented as having been exposed to “controlled atmosphere” storage, shall register with the Director in the same manner as required of any person within the State unless such person has registered with the proper authorities in the state of origin and has been assigned a comparable registration number or CA identification under authority of laws or rules of such state that at least conform to the provisions of these rules. ()

04. Written Agreement. The Director will assign each approved registrant a registration number preceded by the letters CA. The Director shall require from each applicant for registration, an agreement in writing in the form required by the Director that the apples so treated or packed or repacked by said applicant will be or have been kept in a room or storage building with not more than five percent (5%) oxygen for a minimum of not less than forty-five (45) days for Gala and Jonagold varieties and not less than sixty (60) days for other apples, and that the oxygen level in such room or storage building will be or has been reduced to five percent (5%) within twenty (20) days after the date of sealing of the storage room, and including any other pertinent facts as may be required by the Director to assure that the apples in question have been so treated. ()

05. Refusal Upon Violation. The Director may refuse to approve an application for registration and refuse to issue a registration number if the applicant previously has violated any of the provisions of these rules, or has failed or refused to furnish the information or evidence required by these rules. ()

06. Required Air Components Determinations. Each owner or operator of a controlled atmosphere room or storage building in this state shall make the required air components determinations as to the percentage of carbon dioxide and oxygen and temperature at least once each day and maintains a record in the form as required by the Director of Agriculture, including the name and address of the owner or operator, room number or numbers, room capacity, lot identification, quantity in each lot, date of sealing, date of opening; a daily record of date and time of test, percentage of carbon dioxide, percentage of oxygen and the temperature. ()

07. Written Reports. Each owner or operator of a controlled atmosphere room or storage building in this state will submit to the Idaho Director of Agriculture, within ten (10) days after the date of sealing, a written report pertaining to each room showing the owner's room number, or numbers, date of sealing, and variety and quantity of apples contained therein. ()

08. Maintaining Identity. The identity of all apples represented as having been exposed to “controlled atmosphere” storage will be maintained from the original room or storage building where they were treated through the various channels of trade to the retailer. ()

09. Investigations. Enforcing officers may investigate and examine records and invoices relating to

any transactions in order to determine the identity of apples represented as having been exposed to controlled atmosphere storage and in this connection gives consideration to the presence of CA storage registration numbers on invoices submitted in transactions by the owners or operators and a combination of both the CA storage and packer or repacker's CA registration number on invoices submitted in transactions by said packer or repacker. ()

201. APPLES REPRESENTED AS HAVING BEEN EXPOSED TO "CONTROLLED ATMOSPHERE" STORAGE.

01. Registration Number -- Owner/Operator. Each container and consumer package of such apples moved into the channels of trade by the owner or operator of a controlled atmosphere room or storage building located in Idaho or by any other person, will be marked with said owner or operator's assigned registration number. ()

02. Registration Number -- Packer/Repacker. Each container and consumer package of such apples received from an owner or operator of a controlled atmosphere room or storage building located either in Idaho or in another state and that are packed or repacked by another person in this state, will be marked with the said packer or repacker's assigned registration number. ()

03. Controlled Atmosphere (CA) Identification. Each container and consumer package of such apples moved into the channels of trade in Idaho by the owner or operator of a controlled atmosphere room or storage building located outside of Idaho or by any other person or by a packer or repacker of such apples engaged in such business outside of Idaho will be marked with the proper registration number or CA identification. Such registration number or CA identification is the registration number assigned by the Director to such owner or operator of a CA plant or to such packer or repacker as the case may be or a comparable registration number of identification assigned under authority of laws or regulations of another state that at least conform to the provisions of Subsection 200.04 above. ()

04. Labeling Requirements. The registration number or other identification required to be marked on containers is in letters or figures at least one-half (1/2) inch in height, and all such markings are clear and conspicuous and in a place readily visible to the purchaser, and shall meet the rule requirements of Sections 22-801 and 22-802, Idaho Code. ()

05. Inspection and Certification. All apples sold as Controlled Atmosphere apples must be inspected and certified as to grade and condition and be marked with a state lot number in addition to the CA number. ()

06. Conditions and Standards. At the time of shipment, all apples shipped and marked with a CA number will meet the U.S. condition and maturity standards for Export. ()

07. Reinspection. Apples not shipped within a period of two (2) weeks after inspection and certification must be reinspected. ()

08. Failure to Meet Requirements. Failure to meet any one of the requirements noted above will prohibit such apples from being sold as CA storage apples or the containers marked as such. ()

202. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.02.05 – RULES GOVERNING STONE FRUIT GRADES
DOCKET NO. 02-0205-1902 (NEW CHAPTER)
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 22-702, 22-703, and 22-803, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

PUBLIC HEARING
Thursday, November 14, 2019 @ 9:00 a.m.
Idaho State Department of Agriculture 2270 Old Penitentiary Road Boise, ID 83712

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Three rules administered by the ISDA are related to the state inspection and grading standards for prunes, sweet cherries and apricots, commonly known as stone fruits. These rules are IDAPA 02.02.05, “Prune Standards,” IDAPA 02.02.06, “Idaho Standards for Grades of Sweet Cherries,” and IDAPA 02.02.10, “Idaho Standards for Apricots.” These rules were promulgated to carry out requirements described in Title 22, Chapters 7 and 8, Idaho Code. Inspection and grading standards for stone fruits are similar in defect descriptions and grading tolerances and ISDA has decided to combine all three rules into a single rule to streamline and simplify them. The rule will be titled **“02.02.05, Rules Governing Stone Fruit Grades.”** No substantive changes are being made to the three rules cited above. All rules were reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: This rule does not impose a fee or charge.

IDAHO CODE SECTION 22-101A STATEMENT: The stone fruit grades and descriptions provided for in this Rule are standards, not regulations, for Idaho stone fruits. Therefore, this Rule is not subject to the requirements of Section 22-101A, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

The agency does not anticipate any fiscal impact as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted on September 16, 2019. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the September 4, 2019, Idaho Administrative Bulletin, [Vol. 19-9, pages 15-19](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: There are no materials incorporated by reference into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Laura Thomas, Bureau Chief, Ag Inspections at (208) 332-8672.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 27, 2019.

Dated this 3rd day of October, 2019.

Brian Oakey
Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8552
Fax: (208) 334-2710

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0205-1902
(New Chapter)

02.02.05 – RULES GOVERNING STONE FRUIT GRADES

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 22-702, 22-703, and 22-803, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.02.05, “Rules Governing Stone Fruit Grades.” ()

02. Scope. These rules specify the general requirements for the inspection and grading of prunes, sweet cherries, and apricots in the state of Idaho. ()

002. – 119. (RESERVED)

SUBCHAPTER A – PRUNES AND PLUMS

120. IDAHO HAIL GRADE, PRUNES OR PLUMS.

This grade consists of plums or prunes of one variety or similar varietal characteristics that meet all requirements of the U.S. No. 1 grade provided that not to exceed twenty-five percent (25%) by count may show hail marks that are well healed. ()

121. -- 129. (RESERVED)

130. PROCESSING GRADE, PRUNES OR PLUMS.

Grading is based on the current (March 29, 2004) U.S. Standards for Fresh Plums and Prunes as defined in paragraph 7 CFR § 51.1522, U.S. Combination including subsequent paragraphs related to U.S. Combination with the following

exceptions: ()

01. Minimum Size. The minimum size is one and one-third (1-1/3) inches diameter, meaning the shortest dimension measured through the center of the fruit at right angles to a line from stem to blossom end. All smaller fruit is to be graded as culls per Subsection 130.04 below. ()

02. Infestation. Worm damage (infestation) is limited to one percent (1%) maximum. ()

03. Fruit Sugar Content. As related to maturity the fruit sugar (soluble solids) content of eighteen (18) degrees F brix as a minimum based on samples of random sample of five (5) pounds, pits removed, using at least ten (10) whole fruit. ()

04. Cullage Tolerance. A tolerance of five percent (5%) cullage (worm infestation limited to one percent (1%)) will be accepted without dockage, but all cullage over ten percent (10%) the TOTAL WILL BE CLAIMED, further that the processor reserves the right to reject all loads over twenty percent (20%) defects or over, or to renegotiate with the grower outside of these conditions if the grower wishes to sell on this basis. ()

131. -- 139. (RESERVED)

140. ITALIAN PRUNES.

01. Idaho No. 1. Idaho No. 1 to be exactly as the specifications and definitions of the current U.S. No. 1 with the one (1) exception as follows: Subparagraph (a) of 7 CFR § 51.1521 effective March 29, 2004, delete the words “be fairly well colored” and insert in lieu thereof “have two-thirds (2/3) of the surface with purplish color,” thus sub (a) of 7 CFR § 51.1521 will read, “Italian type prunes shall have two-thirds (2/3) of the surface with purplish color and, unless otherwise specified, shall not be less than one and one-fourth (1-1/4) inches in diameter.” (See 7 CFR § 51.1525). ()

02. Nomenclature. The nomenclature, U.S. No. 1 of 7 CFR § 51.1521 will read “Idaho No. 1.” All other factors of the United States Standards for Fresh Plums and Prunes, effective March 29, 2004, remains in force and effect in defining the definitions of the rules of Idaho No. 1, as well as handbooks, administrative directives, base color minimum and applications thereof. ()

141. -- 209. (RESERVED)

SUBCHAPTER B – SWEET CHERRIES

210. DEFINITIONS.

The definitions found in Section 210 apply to the interpretation and enforcement of Subchapter B only. ()

01. Clean. The cherries are practically free from dirt, dust, spray residue, or other foreign material. ()

02. Diameter. The greatest dimension measured at right angles to a line from the stem to the blossom end of the cherry. ()

03. Fairly Well Colored. At least ninety-five (95%) percent of the surface of the cherry shows characteristic color for mature cherries of the variety. ()

04. Mature. Cherries have reached the stage of growth that will insure the proper completion of the ripening process. ()

05. Similar Varietal Characteristics. Cherries in any container are similar in color and shape. ()

06. Well Formed. The cherry has the normal shape characteristic of the variety, except that mature well developed doubles are to be considered well formed when each of the halves is approximately evenly formed. ()

211. – 219. (RESERVED)

220. IDAHO NO. 1 GRADE.

01. Idaho No. 1. Idaho No. 1 will consist of sweet cherries that meet the following requirements: Similar varietal characteristics; mature; fairly well colored; well formed and clean; free from decay, insect larvae or holes caused by them; soft, overripe or shriveled; underdeveloped doubles and sunscald; and free from damage by any other cause. ()

02. Size. Unless otherwise specified, the minimum diameter of each cherry is not less than three-fourths (3/4) inch. The maximum diameter of the cherries in any lot may be specified in accordance with the facts. ()

03. Tolerances. In order to allow for variations incident to proper grading and handling, the following tolerances, by count, are provided as specified: ()

a. For Defects at Shipping Point: Idaho No. 1. Eight percent (8%) for cherries that fail to meet the requirements for this grade: PROVIDED, that included in this amount not more than four percent (4%) is allowed for defects causing serious damage, including in this latter amount not more than one-half of one percent (.50%) for cherries that are affected by decay. ()

b. For Defects Enroute or at Destination: Idaho No. 1. Twenty-four percent (24%) for cherries in any lot that fail to meet the requirements for this grade: PROVIDED, that included in this amount not more than the following percentages are allowed for defects listed: ()

i. Eight percent (8%) for cherries that fail to meet the requirements for this grade because of permanent defects; or ()

ii. Six percent (6%) for cherries that are seriously damaged, including therein not more than four percent (4%) for cherries that are seriously damaged by permanent defects and not more than two percent (2%) for cherries that are affected by decay. ()

c. For Off-Size. Five percent (5%) for cherries that fail to meet the specified minimum diameter and ten percent (10%) for cherries that fail to meet any specified maximum diameter. ()

221. -- 229. (RESERVED)

230. APPLICATION OF TOLERANCES.

Individual samples are not to have more than double the tolerances specified, except that at least two (2) defective and two (2) off-size specimens may be permitted in any sample: PROVIDED, that the averages for the entire lot are within the tolerances specified for the grade. ()

231. -- 239. (RESERVED)

240. SCORABLE DEFECTS.

01. Damage. Any specific defect or any equally objectionable variation of any one (1) of these defects, any other defect, or any defects, that materially detracts from the appearance, or the edible or marketing quality of the fruit. The following specific defects are considered as damage: ()

a. Cracks within the stem cavity - when deep or not well healed, or when the appearance is affected to a greater extent than that of a cherry that has a superficial well healed crack one-sixteenth (1/16) inch in width extending one-half (1/2) the greatest circumference of the stem cavity. ()

b. Cracks outside of the stem cavity - when deep or not well healed, or when the crack has weakened the cherry to the extent that it is likely to split or break in the process of proper grading, packing and handling, or

when materially affecting the appearance. ()

c. Hail injury - when deep or not well healed, or when the aggregate area exceeds the area of a circle three-sixteenths (3/16) inch in diameter. ()

d. Insects - when scale or more than one (1) scale mark is present, or when the appearance is materially affected by any insect. ()

e. Limb rubs - when affecting the appearance of the cherry to a greater extent than the amount of scarring permitted. ()

f. Pulled stems - when the skin or flesh is torn, or when the cherry is leaking. ()

g. Russetting - when affecting the appearance of the cherry to a greater extent than the amount of scarring permitted. ()

h. Scars - when excessively deep or rough or dark colored and the aggregate area exceeds the area of a circle three-sixteenths (3/16) inch in diameter, or when smooth or fairly smooth, light colored and superficial and the aggregate area exceeds the area of a circle one-fourth (1/4) inch in diameter. ()

i. Skin breaks - when not well healed or when the appearance of the cherry is materially affected. ()

j. Sutures - when excessively deep or when effecting the shape of the cherry to the extent that it is not well formed. ()

02. Serious Damage. Any specific defect or an equally objectionable variation of any one (1) of these defects, any other defect, or any combination of defects that seriously detracts from the appearance or the edible or marketing quality of the fruit. The following specific defects are considered as serious damage: ()

a. Decay. ()

b. Insect larvae or holes caused by them. ()

c. Skin breaks that are not well healed. ()

d. Cracks that are not well healed. ()

e. Pulled stems with skin or flesh of cherry torn or that causes the cherry to leak. ()

241. -- 249. (RESERVED)

250. PERMANENT DEFECTS.

Defects that are not subject to change during shipping or storage, including, but not limited to, factors of shape, scarring, skin breaks, injury caused by hail or insects, and mechanical injury that is so located as to indicate that it occurred prior to shipment. ()

251. -- 259. (RESERVED)

260. CONDITION DEFECTS.

Defects that may develop or change during shipment or storage including, but not limited to, decayed or soft cherries and such factors as pitting, shriveling, sunken areas, brown discoloration and bruising that is so located as to indicate that it occurred after packing. ()

261. -- 319. (RESERVED)

SUBCHAPTER C – APRICOTS

320. DEFINITIONS.

The definitions found in Section 320 apply to the interpretation and enforcement of Subchapter C only. ()

01. Diameter. The greatest diameter, measured through the center of the apricot, at right angles to a line running from the stem to the blossom end. ()

02. Mature. Having reached the state of maturity that will ensure a proper completion of the ripening process. ()

03. Well Formed. Having the characteristic shape of the variety. ()

321. GRADES.

01. Idaho No. 1. Consists of apricots of one variety that are mature but not soft, overripe or shriveled and that are well formed, free from decay, insect holes, and damage caused by skin breaks, cuts, limb rubs, russeting, growth cracks, dirt, hail, bruises, scale or other means. ()

02. Idaho No. 2. Consists of apricots of one variety that are mature but not soft, overripe or shriveled, and that are free from decay, insect holes and serious damage caused by skin breaks, limb rubs, russeting, growth cracks, hail, bruises or other means. ()

03. Idaho Combination. Consists of a combination of Idaho No. 1 and Idaho No. 2. When such a combination is packed, at least fifty percent (50%) of the apricots in any container will meet the requirements of the Idaho No. 1. (See Section 330). ()

322. -- 329. (RESERVED)

330. TOLERANCES.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, are provided as specified. ()

01. Defects. ()

a. Idaho No. 1. A total of ten percent (10%) for apricots in any lot that fails to meet the requirements for the grade: Provided, that not more than one-half (1/2) of this tolerance, or five percent (5%), is allowed for defects causing serious damage, including therein not more than one-fifth (1/5) of this amount or one percent (1%) is allowed for apricots that are affected by decay. An additional ten percent (10%) by count of the apricots may be damaged by bruise. ()

b. Idaho No. 2. A total of ten percent (10%) for apricots in any lot that fail to meet the requirements for the grade: Provided, therein that not more than one percent (1%) be allowed for apricots that are affected by decay. ()

c. Idaho Combination. A total of ten percent (10%) for apricots in any lot that fail to meet the requirements for the grade: Provided, therein that not more than one percent (1%) will be allowed for apricots that are affected by decay. ()

02. Restrictions. When applying the foregoing tolerances to the combination grade, no part of any tolerance can be used to reduce the percentage of Idaho No. 1 apricots required in the combination, but individual containers may have not more than ten percent (10%) less than the percentage of Idaho No. 1 required, provided that the entire lot average is within the percentage specified. ()

03. Samples. Individual samples will not have more than one and one-half (1 1/2) times any tolerance specified; provided, that the averages for the entire lot are within the tolerances specified for the grade. ()

331. – 339. (RESERVED)

340. MARKING REQUIREMENTS.

01. Containers. When apricots are packed in containers, such containers will be stamped or marked thereon the variety, the net contents, and packer's name and address. ()

02. Size. The minimum size may be specified in terms of diameter or numerical count. When a minimum diameter is marked on the container, not more than ten percent (10%) by count is allowed for apricots below the marked size. ()

341. – 349. (RESERVED)

350. SCORABLE DEFECTS.

01. Damage. The apricot is injured to an extent readily apparent in the process of proper grading and handling. The following specific defects will not be considered as damage. ()

a. Hail Marks: Well healed and shallow - allow one-eighth (1/8) inch in diameter. ()

i. When skin has not been broken: ()

ii. Shallow - allow three-eighths (3/8) inch in diameter. ()

iii. Not shallow - allow one-fourth (1/4) inch in diameter. ()

b. Growth Cracks: ()

i. Well healed - allow three-eighth (3/8) inch in length. ()

ii. Riland variety - allow one-half (1/2) inch in length. ()

c. Limb Rubs: Smooth and shallow - allow one-fourth (1/4) inch in diameter. ()

d. Russeting: Allow one-fourth (1/4) surface area in aggregate. ()

e. Skin Breaks: ()

i. Punctures - allow three-sixteenths (3/16) inch in diameter. ()

ii. Stem pulls - allow three-eighths (3/8) inch in diameter. ()

iii. Riland variety - allow one-half (1/2) inch in diameter. ()

f. Bruises: Allow five percent (5%) of the surface area. ()

g. Scale: Allow two (2) scale marks. ()

h. Dirt: Allow when not readily apparent. ()

02. Serious Damage. Immaturity or any deformity, or injury that causes breaking of the skin, or that seriously affects the appearance. The following specific defects will not be considered as serious damage. ()

a. Bruises: Allow ten percent (10%) of the surface area. ()

b. Growth cracks: ()

i. Well healed - allow one-half (1/2) inch in length. ()

- ii. Riland variety - allow five-eighths (5/8) inch in length. ()
- c. Hail Marks: ()
 - i. Well healed - allow three-eighths (3/8) inch in aggregate. ()
 - ii. When skin has not been broken - allow one-half (1/2) inch in aggregate. ()
- d. Skin Breaks: ()
 - i. Stem pulls - allow one-half (1/2) inch in diameter. ()
 - ii. Other skin breaks - allow three-eighths (3/8) inch diameter. ()
- 351. – 999. (RESERVED)**

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.02.07 – RULES GOVERNING BULK PERMITS AND RETAIL SALE OF POTATOES

DOCKET NO. 02-0207-1901 (NEW CHAPTER, FEE RULE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 22-901, 22-911, and 22-2006, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

PUBLIC HEARING

Thursday, November 14, 2019 @ 9:00 a.m.

Idaho State Department of Agriculture
2270 Old Penitentiary Road
Boise, ID 83712

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Combining two potato rules; IDAPA 02.02.07 and 02.02.09. These two rules administered by the ISDA are related to the retail sale, inspection and bulk permitting of potatoes in Idaho. These rules were promulgated to carry out requirements described in Title 22, Chapters 9 and 20, Idaho Code. In order to streamline and simplify rules related to retail sale inspection and bulk permitting requirements for potatoes, the ISDA has decided to combine the two rules into a single rule to be titled “**02.02.07, Rules Governing Bulk Permits and Retail Sale of Potatoes.**” No substantive changes are being made to the two rules cited above. All rules were reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

The first handler or shipper shall apply through the nearest District Inspection Office for a permit to ship bulk potatoes. The permittee shall pay the potato advertising tax, to the Idaho Potato Commission, at combined grower-shipper rates for either fresh or processing potatoes, and inspection fees, if required, within thirty (30) days of shipment. Inspection fees are charged by and paid to the Idaho State Department of Agriculture to cover the cost of the inspection.

This fee, originally imposed by 02.02.07, Rules Governing Bulk Permits Procedure, remains in the new rule, 02.02.07, Rules Governing Bulk Permits and Retail Sale of Potatoes. This fee has not changed.

IDAHO CODE SECTION 22-101A STATEMENT: Section 22-101A, Idaho Code, requires that in this notice of proposed rulemaking, the Director must specify whether this rule is broader in scope or more stringent than federal law or regulations, or regulates an activity not regulated by the federal government. The Rules Governing Bulk Permits and Retail Sale of Potatoes, in their entirety, regulate an activity not already regulated by the federal government.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

The agency does not anticipate any fiscal impact as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the September 4, 2019, Idaho Administrative Bulletin, **Vol. 19-9, page number 15–19**.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

Federal Marketing Order Number 945 - U.S.D.A. Handling Regulations October 3, 2018, until revised. The marketing order authorizes quality regulations and container and pack regulations for potatoes grown in Idaho and Malheur County, Oregon. The marketing order authorizes grade, quality, maturity, and size regulations to maintain potato quality shipped to consumers.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Laura Thomas, Bureau Chief, Ag. Inspections at (208) 332-8672.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 27, 2019.

Dated this 3rd day of October, 2019.

Brian Oakey
Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8552
Fax: (208) 334-2710

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0207-1901
(New Chapter)

02.02.07 – RULES GOVERNING BULK PERMITS AND RETAIL SALE OF POTATOES

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 22-901, 22-911, and 22-2006, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.02.07, “Rules Governing Bulk Permits and Retail Sale of Potatoes.” ()

02. Scope. These rules govern the application for a permit to ship bulk potatoes, permit fees, and marketing order requirements and specify the general requirements for the inspection, grading, marking and retail sales of potatoes in the state of Idaho. ()

002. -- 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

The following document is incorporated by reference into this chapter: ()

01. Federal Marketing Order Number 945 - U.S.D.A. Handling Regulations October 3, 2018, Until Revised. Copies of this document may be obtained from the Idaho State Department of Agriculture. ()

005. -- 119. (RESERVED)

SUBCHAPTER A – BULK PERMITS

120. PERMIT FEES.

The first handler or shipper shall apply through the nearest District Inspection Office for a permit to ship bulk potatoes. The permittee shall pay the potato advertising tax at combined grower-shipper rates for either fresh or processing potatoes, and inspection fees, if required, within thirty (30) days of shipment. Failure to pay either fee within the prescribed time is grounds for denial of future permits, so long as the fees remain outstanding. ()

121. APPLICATION FORM.

Application for permit is to be on a form furnished by the department. Acknowledgment of receipt of processing potatoes, when leaving the Federal Marketing Order area, shall be accomplished immediately by the processor upon receipt of the shipment and forwarded to the issuing office. A copy of each permit issued is to be forwarded to the Idaho Potato Commission by the issuing officer. ()

122. MARKETING ORDER.

Permits for shipment of processing potatoes require a Marketing Order Certificate of Privilege number, issued by the Marketing Order Manager, if leaving the Marketing Order area. Inspection of bulk shipments for processing is not required. Bulk shipments for repacking or fresh sale must be graded and meet all applicable minimum Marketing Order requirements. Each shipment requires a Federal-State inspection certificate, certifying minimum standards and include the percentage of U.S. No. 1 quality. ()

123. REQUEST FOR PERMIT.

Request for permits must be made forty-eight (48) hours prior to shipment, excluding weekends and Legal Holidays. Any violation or improper use of permits will invalidate the permit and may be grounds for denial of future permits. ()

124. -- 219. (RESERVED)

SUBCHAPTER B – RETAIL SALES

220. INSPECTIONS, RESTRICTIONS, AND IDENTIFICATION REQUIRED.

All potatoes packed for resale to retail outlets in Idaho shall be inspected as outlined in Subsection 220.02 and meet the requirements of Federal Marketing Order number 945-USDA and the conditions outlined below: ()

01. Certification and Markings. Each shipment packed for resale to retail outlets in Idaho is to be accompanied by a valid inspection certificate, numbered note sheet or be marked with a positive lot identification number (PLI) number. ()

02. Inspections. For other than Idaho or Oregon, inspections may be performed by any person or persons authorized under the USDA AMS Specialty Crop Inspection Program to inspect potatoes. ()

03. Restrictions. All potatoes packed for resale to retail outlets in Idaho under the provision of this rule are inspected as outlined in Subsection 220.02 and found free from: ()

a. Potato Tuberworm (*Phthorimaea operculella* (Zeller)). ()

b. Potato Wart (*Synchytrium endobioticum*). ()

221. LOTS TAGGED NOT FOR SALE -- REMOVAL THEREOF.

Retail outlets may be periodically checked by the Idaho State Department of Agriculture. Lots found failing to grade as marked or otherwise found out of compliance with the provisions of this rule will be tagged "Not For Sale" until removed from display and regraded, destroyed or remarked to a lower grade if feasible. ()

222. COMPLIANCE OR NON-COMPLIANCE CERTIFICATE.

Each inspection at the retail outlet will be acknowledged by an inspection report showing compliance or non-compliance. ()

223. SECOND NOTICE ACTION -- NON-COMPLIANCE.

A second inspection showing evidence of non-compliance in any calendar year will constitute sufficient grounds to proceed with prosecution in accordance with Sections 22-2020 or 22-912, Idaho Code. ()

224. BULK LOTS LABELED NOT FOR SALE -- REMOVAL THEREOF.

Bulk potatoes failing to meet the grade shown or otherwise found out of compliance with the provisions of this rule are labeled "Not For Sale" until removed. They may be regraded, destroyed or re-marked to a lower grade if feasible. ()

225. RESPONSIBILITY OF PERMANENT AND CONDITION DEFECTS.

Defects of condition are those of retailers' responsibility. Permanent grade defects are those of the original packer. ()

226. RESTRICTING STANDARDS TO TABLESTOCK GRADES.

Usable grades or standards are the entire spectrum of U.S. and Idaho Grades excluding processing grades. ()

227. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.02.12 – BONDED WAREHOUSE RULES

DOCKET NO. 02-0212-1901

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 69-231, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change. The use of electronic warehouse receipts was added to the Bonded Warehouse Law in Section 69-223(1)(f)(ii), Idaho Code. In addition to paper warehouse receipts issued by the department, electronic warehouse receipts are now allowed to be issued for commodity that is stored. The rule provides additional support and guidance regarding the use of electronic warehouse receipts. The rule will describe what type of electronic warehouse receipts are allowed and what necessary requirements need to be in place with the electronic warehouse receipt provider.

This rule was reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act. There are no substantive changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 4, 2019, Idaho Administrative Bulletin, [Vol. 19-9, pages 21–29](#).

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to Section 22-101A(5), Idaho Code, for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government. The following portions of the rule are broader in scope than federal law or regulations:

02.02.12.480	Broader in scope
02.02.12.482	Broader in scope
02.02.12.483	Broader in scope
02.02.12.484	Broader in scope
02.02.12.485	Broader in scope
02.02.12.486	Broader in scope

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The agency does not anticipate any fiscal impact as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Kyle Wilmot at (208) 332-8612.

Dated this 3rd day of October, 2019.

Brian Oakey, Deputy Director
Idaho Department of Agriculture
Phone: (208) 332-8552 / Fax: (208) 334-2710

2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.03.01 – RULES GOVERNING PESTICIDE MANAGEMENT PLANS
FOR GROUND WATER PROTECTION

DOCKET NO. 02-0301-1901

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 22-3418, 22-3419 and 22-3421, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This pending rule adopts a previously approved and codified chapter under IDAPA 02, rules of the Idaho State Department of Agriculture. IDAPA 02.03.01 gives the ISDA authority to develop pesticide management plans for ground water protection. This rule establishes a process for responding to pesticide detections in ground water; development of a Pesticide Management Plan (PMP); ground water monitoring for pesticides; setting levels of response to a pesticide detection; setting pesticide use restrictions and boundaries and repealing an area of pesticide concern. This rule was reviewed for amendment or repeal of select sections to comply with the Red Tape Reduction Act.

There are no substantive changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 4, 2019, Idaho Administrative Bulletin, [Vol. 19-9, pages 30-41](#).

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(5), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government. This rule in its entirety is broader in scope than federal law or regulations.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The agency does not anticipate any fiscal impact as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Victor Mason, Administrator – Division of Ag Resources at (208) 332-8628.

Dated this 3rd day of October, 2019.

Brian Oakey, Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8550
Fax: (208) 334-2710

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.03.03 – IDAHO DEPARTMENT OF AGRICULTURE RULES GOVERNING PESTICIDE AND CHEMIGATION USE AND APPLICATION

DOCKET NO. 02-0303-1901

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 22-3418 and 22-3421, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending fee rule and a statement of any change between the text of the proposed rule and the text of the pending fee rule with an explanation of the reasons for the change:

This pending rule adopts a previously approved and codified chapter under IDAPA 02, rules of the Idaho State Department of Agriculture.” IDAPA 02.03.03 establishes the certification and training requirements for pesticide applicators and dealers. This rule in addition sets the storage, handling, use and application of pesticides, establishes pesticide registration requirements, establishes certain restrictions for the protection of pollinators, and governs the licensing and equipment requirements for Chemigation. This rule was reviewed for amendment or repeal of select sections to comply with the Red Tape Reduction Act.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 4, 2019, Idaho Administrative Bulletin, [Vol. 19-9, pages 42 – 72](#).

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(5), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government. That information is as follows:

02.03.03.050	Broader in Scope
02.03.03.100	Broader in Scope
02.03.03.101	More Stringent
02.03.03.150	Broader in Scope
02.03.03.200	Broader in Scope
02.03.03.250	More Stringent
02.03.03.300	Not regulated
02.03.03.310	More Stringent
02.03.03.320	More Stringent
02.03.03.321	Not regulated
02.03.03.323	Broader in Scope
02.03.03.324	More Stringent
02.03.03.400	More Stringent
02.03.03.450	Broader in Scope
02.03.03.500	More Stringent

02.03.03.550	More Stringent
02.03.03.600	More Stringent
02.03.03.800	Broader in Scope
02.03.03.850	Not regulated
02.03.03.961-971	Broader in Scope

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased.

This rule sets the following previously approved fees: Pesticide Registration (\$160 per product), Professional Applicator’s License (\$120 for 14 months or more, \$60 for 13 months or less), Pesticide Dealer’s License (\$100 for 14 months or more, \$50 for 13 months or less), Private Applicator’s License (\$10 for Restricted Use, \$20 for Chemigation, \$30 for both), and Examination Fee per Category (\$10).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The agency does not anticipate any fiscal impact as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Victor Mason, Administrator – Division of Ag Resources at (208) 332-8628.

Dated this 3rd day of October, 2019.

Brian Oakey
Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8550
Fax: (208) 334-2710

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.04.03 – RULES GOVERNING ANIMAL INDUSTRY
DOCKET NO. 02-0403-1901 (NEW CHAPTER, FEE RULE)
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 25-203, 25-207B, 25-212, 25-804, and 25-3704, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

PUBLIC HEARING
Thursday, November 14, 2019 @ 9:00 a.m.
Idaho State Department of Agriculture 2270 Old Penitentiary Road Boise, ID 83712

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Two rules administered by the ISDA are related to general health, disease surveillance and disease prevention requirements for domestic animals and livestock. These rules are IDAPA 02.04.03, “Rules Governing Animal Industry,” and IDAPA 02.04.22, “Rules Governing Animal Health Emergencies.” Each of these rules addresses regulations pertaining to various disease prevention, mitigation, testing and reporting requirements for domestic animals. In order to streamline and simplify all rules related to disease prevention, disease surveillance and reporting, the ISDA is proposing to combine these two rules into a single rule to be titled “**02.04.03, Rules Governing Animal Industry.**” No substantive changes are being made to the two rules cited above. All rules were reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

A license applications fee of twenty-five (\$25) dollars is required for any person desiring to practice artificial insemination of domestic animals. A license renewal fee of five (\$5) dollars is required annually thereafter.

IDAHO CODE SECTION 22-101A STATEMENT: Section 22-101A, Idaho Code, requires that in this notice of proposed rulemaking, the Director must specify whether this rule is broader in scope or more stringent than federal law or regulations, or regulates an activity not regulated by the federal government. This rule contains provisions that are broader in scope or more stringent than federal regulations. Those specific provisions are as follows:

02.04.03.200	Not regulated
02.04.03.220	Not regulated
02.04.03.257	Broader in scope
02.04.03.300-338	Broader in scope
02.04.03.400	More stringent
02.04.03.402	More stringent
02.04.03.460	More stringent
02.04.03.504-591	Broader in scope

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

The agency does not anticipate any fiscal impact as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted on September 21, 2019. The Notice of Intent to Promulgate Rules – Omnibus Negotiated Rulemaking was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, pages 15-19](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

Subchapter A:

1. The USDA Pseudorabies Eradication State-Federal-Industry Program Standards, November 1, 2003, outlines program standards to be utilized in the eradication of pseudorabies in swine. As this is a federal-state cooperative effort, it is important that this document be incorporated by reference.
2. National Poultry Improvement Plan and Auxiliary Provisions, February 12, 2008, outlines new and or modified sampling and testing procedures for management of the National Poultry Improvement Program. As these provisions may change, it is more efficient to incorporate by reference the entire document to keep the rule current.
3. Title 9, Parts 145, 146, 147, and 161, CFR, January 1, 2008. Parts 145, 146 and 147 address roles and responsibilities pertaining the National Poultry Improvement Program. Part 161 addresses roles and responsibilities of state-federal accredited veterinarians.
4. The Compendium of Animal Rabies Prevention and Control, 2008, is produced by the National Association of Public Health Veterinarian and provides guidance for the management of rabies. It is not a regulatory document for informational and guidance purposes. The document can be viewed online at: <http://www.nasphv.org/Documents/NASPHVRabiesCompendium.pdf>
5. Equine Viral Arteritis Uniform Methods and Rules, April 19, 2004. This publication, “Equine Viral Arteritis: Uniform Methods and Rules” (UM&R), contains minimum standards for detecting, controlling, and preventing EVA as well as minimum EVA requirements for the intrastate and interstate movement of equines.

Subchapter B:

1. 9 C.F.R. § 53.2, January 1, 2002 authorizes the USDA to Upon agreement of the authorities of the State to enforce quarantine restrictions and orders and directives properly issued in the control and eradication of livestock disease.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dr. Scott Leibsle, Deputy Administrator – Division of Animal Industries at (208) 332-8540.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 27, 2019.

Dated this 3rd day of October, 2019.

Brian Oakey, Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8552
Fax: (208) 334-2710

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0403-1901
(New Chapter)

02.04.03 – RULES GOVERNING ANIMAL INDUSTRY

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 22-103(20), 25-203, 25-207, 25-207B, 25-212, and 25-804, 25-3704 Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is “Rules Governing Animal Industry.” ()

02. Scope. These rules govern procedures for the prevention, control and eradication of diseases among the animals in the state of Idaho and the declaration of an animal health emergency. ()

002. -- 010. (RESERVED)

011. ABBREVIATIONS.

01. APHIS. Animal and Plant Health Inspection Service. ()

02. CFR. Code of Federal Regulations. ()

03. USDA. United States Department of Agriculture. ()

04. VS. Veterinary Services. ()

012. -- 103. (RESERVED)

SUBCHAPTER A – ANIMAL INDUSTRY

104. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference and apply only to Subchapter A, Sections 110-460: ()

01. Incorporated Documents. ()

a. The USDA Pseudorabies Eradication State-Federal-Industry Program Standards, November 1, 2003, which can be viewed online at http://www.aphis.usda.gov/animal_health/animal_diseases/pseudorabies/downloads/program_stds.pdf. ()

b. National Poultry Improvement Plan and Auxiliary Provisions, February 12, 2008, which can be viewed online at <http://edocket.access.gpo.gov/2009/E9-7240.htm>. ()

c. Title 9, Parts 145, 146, 147, and 161, CFR, January 1, 2008, which can be viewed online at http://www.access.gpo.gov/nara/cfr/waisidx_00/9cfrv1_00.html. ()

d. The Compendium of Animal Rabies Prevention and Control, 2008, which can be viewed online at <http://www.nasphv.org/Documents/NASPHVRabiesCompendium.pdf>. ()

e. Equine Viral Arteritis Uniform Methods and Rules, April 19, 2004, which can be viewed online at <http://www.aphis.usda.gov/vs/nahss/equine/eva/eva-umr.pdf>. ()

110. DEFINITIONS.

In addition to the definitions found in Idaho Code Sections 25-239 and 25-802, the definitions in Section 110 apply in the interpretation and enforcement of Subchapter A only: ()

01. Accredited Veterinarian. A veterinarian approved by the Administrator and USDA/APHIS/VS, in accordance with the provisions of Title 9, Part 161, Code of Federal Regulations, to perform functions of State-Federal animal disease control programs. ()

02. Animal. Any vertebrate member of the animal kingdom, except man. ()

03. Approved Pseudorabies Vaccine. Any pseudorabies vaccine produced under current USDA license and intended for immunizing swine against pseudorabies. ()

04. Cachexia. Weakness and emaciation caused by a serious disease such as tuberculosis or cancer. ()

05. Epithelioma. Cancer or tumor. ()

06. Equidae. Horses, ponies, mules, asses, and zebras. ()

07. Exposed Livestock. Any livestock that have been in contact with an animal infected with, or affected by, any contagious, infectious or communicable disease, including all livestock in a known infected herd. ()

08. Gamebirds. Domesticated gallinaceous fowl such as pheasants, partridge, quail, grouse, and guineas. ()

09. Garbage. Putrescible animal and vegetable waste containing animal parts resulting from the handling, preparation, processing, cooking or consumption of foods. ()

10. Hatching Eggs. Fertilized eggs. ()

11. Herd. A herd is any group of livestock maintained on common ground for any purpose, or two (2) or more groups of livestock under common ownership or supervision, geographically separated, but which have an interchange or movement of animals without regard to whether the animals are infected with or exposed to contagious, infectious, or communicable animal diseases. ()

12. Infected Livestock. Any livestock determined to be infected with a contagious infectious, of communicable disease by an official test or diagnostic procedure, or diagnosed by a veterinarian as infected. ()

13. Interstate Movement. Movements of livestock and poultry from Idaho into any other state, territory or the District of Columbia or from any other state, territory or the District of Columbia into Idaho. ()

14. Intrastate Movement. Movement of any animal from one location to another location within Idaho. ()

15. Known Infected Herd. Any herd in which any livestock has been determined to be infected with contagious, infectious, or communicable diseases by an official test or diagnostic procedure, or diagnosed by a veterinarian as being infected. ()

16. Livestock. Swine, cattle, sheep, goats, equidae, domestic bison, domestic cervidae, camelids, ratites, and other domestically raised animals. ()

17. **Necrosis.** Death of tissue. ()
18. **Negative.** An animal that has been tested with official test procedures and is found to be negative. ()
19. **Neoplastic Tissue.** New growth or tissue associated with a tumor. ()
20. **Official Pseudorabies Test.** Any test for the diagnosis of pseudorabies that has been approved by USDA/APHIS and is conducted by a state/federal approved laboratory. ()
21. **Orbital Region.** The cavity containing the eye and surrounding bones. ()
22. **Positive.** An animal that has been tested and found positive with official disease test procedures and is considered infected with any contagious, infectious, or communicable disease. ()
23. **Poultry.** Domesticated fowl, including chickens, turkeys, waterfowl, and gamebirds. ()
24. **Pseudorabies.** The contagious, infectious, and communicable disease of livestock and other animals also known as Aujeszky's disease, mad itch or infectious paralysis. ()
25. **Quarantine.** A written order, or a verbal order followed by a written order, executed by the Administrator, to confine or hold animals on a premise or any other location, and to prevent movement of animals from a premise or any other location when the Administrator has determined that the animals have been found or are suspected to be exposed to or infected with any contagious, infectious, or communicable disease, or the animals are not in compliance with the provisions of this chapter. ()
26. **Quarantined Area.** The counties, areas, or districts, portions thereof, quarantined by the Division of Animal Industries for specific contagious, infectious, or communicable animal diseases. ()
27. **Quarantined.** Isolation of all animals diseased or exposed thereto, from contact with healthy animals and exclusion of such healthy animals from enclosures or grounds where said diseased or exposed animals are, or have been kept. ()
28. **Ratites.** Large, non-flying birds including, but not limited to ostriches, emus, cassowaries, and rheas. ()
29. **Registered Veterinarians.** Veterinarians registered with, and approved by, the Division of Animal Industries to collect Trichomoniasis samples for official Trichomoniasis culture testing. ()
30. **Restrain.** The confinement of livestock, or other animals, in a chute, or other device, for the purpose of efficiently, effectively, and safely inspecting, treating, vaccinating, or testing, as approved by the Administrator. ()
31. **Stockyards.** A facility where trading in livestock is carried on, where yarding, feeding and watering places are provided by the stockyards or transportation companies, or where livestock associations or similar companies maintain corrals for feeding, shearing, dipping and separating animals. ()
32. **Suppuration.** The formation of pus. ()
33. **Suspect.** An animal that has a response to an official test, but the response is not sufficient to determine the disease status of the animal tested. ()
34. **Swine.** All breeds of domestic porcine and all wild and exotic porcine. ()
35. **Swine Feedlot.** Premises designed and used exclusively for the finish feeding of swine, from which the swine will be moved directly to slaughter. ()

- 36. **Waterfowl.** Domesticated fowl that normally swim such as ducks and geese. ()
- 37. **Wildfowl.** Wild gallinaceous fowl, turkeys, and waterfowl. ()

111. ABBREVIATIONS.

- 01. **AGID.** Agar gel immunodiffusion. ()
- 02. **c-ELISA.** Competitive Enzyme Linked Immunosorbent Assay. ()
- 03. **EIA.** Equine Infectious Anemia. ()
- 04. **NPIP.** National Poultry Improvement Plan. ()

112. -- 113. (RESERVED)

114. SAMPLES FOR OFFICIAL REGULATORY TESTS.

No person shall collect samples, in Idaho, for official regulatory tests except: ()

- 01. **Accredited Veterinarians.** ()
- 02. **State or Federal Animal Health Officials.** ()
- 03. **Persons Approved by the Administrator.** ()

115. QUARANTINE.

The Administrator and all state and federal animal health officials are authorized to quarantine any animals affected or infected with, or exposed to any contagious, infectious, or communicable disease where such animals are found, or quarantine to a place designated by the Administrator. ()

01. **Written Notice.** The owner or person in charge of the quarantined animals shall be given written notice of the quarantine. ()

02. **Acknowledgment of Quarantine.** A quarantine is valid whether or not it is acknowledged by the signature of the owner or person in charge of the quarantined animals. ()

03. **Disposition of Quarantined Animals.** No quarantined animals shall be moved, treated, or disposed of without the written approval of the Administrator. ()

04. **Hold Order.** A hold order is a form of quarantine that may be used to restrict the movement of animals while the disease status of the animals is being investigated. ()

116. -- 119. (RESERVED)

120. DISINFECTION OF PREMISES, BUILDINGS AND VEHICLES.

The Administrator is authorized to order the cleaning and disinfecting of any barns, sheds, stockyards, railroad cars, ferryboats and other vehicles, feed yards, stable, pens, corrals, lanes and premises which have been used in confining, trailing or transporting any animals exposed to, affected by, or infected with any contagious, infectious or communicable diseases. ()

01. **Supervision of Cleaning and Disinfection.** State or federal animal health officials supervise the cleaning and disinfecting of such premises or conveyances. ()

02. **Owner Responsibility.** The owner of such premises or conveyances, is responsible for cleaning and disinfecting when directed to do so by the Administrator. ()

03. **Moving Contaminated Vehicle.** Any conveyance that has contained cattle, swine or other

livestock exposed to, or affected by, any contagious, infectious or communicable disease, may not be moved for any purpose unless the Administrator has approved the movement in writing, prior to the movement occurring. ()

04. Yards and Other Premises. Yards and other premises which have contained cattle, swine or other livestock exposed to, or affected by, any contagious, infectious or communicable disease shall not be used in connection with the movement of healthy animals until the said yards and premises have been cleaned and disinfected, under state or federal supervision, as directed by the Administrator. ()

05. Disinfectants. Only disinfectants approved by USDA or the Administrator may be used. ()

121. -- 124. (RESERVED)

125. TRANSIT INSPECTION.

When deemed necessary, movements of animals will be stopped in transit for inspection. If the animals are suspected of being infected with or exposed to any contagious, infectious or communicable disease, all persons having control of the transportation or movement of the animals shall cease the movement of the animals upon receipt of an order from state or federal animal health officials. ()

126. -- 129. (RESERVED)

130. SLAUGHTERING OF DISEASED ANIMALS.

01. Authorized by Law. When, in order to prevent the spread of contagious, infectious or communicable disease, it becomes necessary to slaughter any diseased or exposed livestock, the purchase of such livestock by the state is authorized by law, and an appropriation is available therefore, the value of the livestock is ascertained and compensation made therefore in accordance with the rules hereinafter provided. ()

02. Not Authorized by Law. When, in order to prevent the spread of or to eradicate any contagious, infectious or communicable disease among any animals of this state, it becomes necessary to slaughter or destroy any diseased or exposed animals, and the purchase of such animals by the state is not authorized, and an appropriation not available therefore, the said animals shall be slaughtered under federal meat inspections rules and regulations, or destroyed and disposed of in accordance with IDAPA 02.04.17, "Rules Governing Dead Animal Movement and Disposal." ()

131. -- 139. (RESERVED)

140. INSPECTION OF ANIMALS.

When animals are being inspected by a state or federal animal health official, proper facilities for restraining the animals, and assistance shall be provided by the owner in order that a careful inspection may be made, and state and federal animal health officials shall not be interfered with in any manner. ()

141. -- 144. (RESERVED)

145. CERTIFICATES OF VETERINARY INSPECTION.

A copy of certificates issued by an accredited veterinarian, or a state or federal animal health official covering the movement of livestock shall accompany the livestock to destination, and be provided to the receiver of the livestock by the person who delivers the livestock. ()

01. Copies. Legible copies of certificates of veterinary inspection shall be submitted to the Division of Animal Industries. ()

02. Idaho Certificates. Accredited veterinarians in Idaho shall submit legible copies of all certificates that they issue to the Division of Animal Industries within five (5) business days of issuance. ()

146. -- 149. (RESERVED)

150. STATE AND FEDERAL SEALS.

No person may break, or in any way tamper with, a seal or other device applied to premises or conveyances by state or federal animal health officials, except: ()

01. State or Federal Animal Health Officials; or ()

02. Persons Designated by the Administrator. ()

151. NOTIFICATION OF BROKEN SEALS.

Any person who discovers a state or federal seal that has been broken, tampered with, or is missing shall immediately notify the Administrator. ()

152. LIVESTOCK IDENTIFICATION REMOVAL.

No person, except persons authorized by the Administrator, may remove or tamper with any state or federal livestock identification, including but not limited to: ()

01. Official Vaccination Tags. ()

02. Official Identification Tags. ()

03. Trichomoniasis Tags. ()

04. Identification Tattoos. ()

153. -- 199. (RESERVED)

200. ARTIFICIAL INSEMINATION.

01. License Application. Any person desiring to practice artificial insemination of domestic animals may file an application for a license on an application form furnished by the Administrator and accompanied by a license fee of twenty-five (\$25) dollars. ()

02. Training. Each applicant is required to take a course of training in artificial insemination at the place and time designated by the Administrator. ()

03. Examination. Examinations are in writing and focused on the skill of artificial insemination. ()

04. Passing Examination. To be granted a license to practice artificial insemination applicants must answer correctly seventy-five percent (75%) of all questions asked. ()

05. Temporary License. Temporary license to practice artificial insemination under the direct supervision of a licensed inseminator or veterinarian may be granted by the administrator, until such time as the next insemination course and examination is given. ()

06. License Expiration. Licenses expire on the 30th day of June of each year, and all persons holding a license shall renew their license on or before the 1st day of July of each year. ()

07. License Renewal. Each license renewal is to be addressed to the Administrator and accompanied by a renewal license fee of five dollars (\$5). ()

08. Renewal Delinquency. Licenses not renewed by the 1st day of October following the date of delinquency are canceled. ()

09. Issuance Denial. The Administrator may refuse to issue or renew a license pursuant to Section 25-810, Idaho Code. ()

201. -- 209. (RESERVED)

210. CANCER EYE - EPITHELIOMA.

Any animal offered for sale and found to be affected with epithelioma of the eye or of the orbital region in which the eye has been destroyed or obscured by neoplastic tissue and which shows extensive infection, suppuration and necrosis, usually accompanied with foul odor, or any animal affected with epithelioma of the eye or the orbital region which, regardless of extent, is accompanied with cachexia shall not be sold for slaughter for human consumption. All such animals shall be humanely euthanized, or disposed of for immediate slaughter directly to: ()

01. Animal Rendering Plants; or ()

02. Fur Farms. Fur or mink farm or other establishment as approved by the Administrator. ()

211. EPITHELIOMA -- PUBLIC LIVESTOCK MARKETS.

Any animal entering a public livestock market that is affected, as described in Section 210 of this rule, shall be held only in the quarantine pen and sold only there from. ()

212. -- 219. (RESERVED)

220. RABIES.

The Administrator is authorized to develop and implement a plan for rabies control in any portion of this state. ()

01. Reporting. It is hereby made the duty of all persons practicing veterinary medicine in this state, or owners or persons in charge of animals, to report to the Administrator, by telephone, facsimile, or electronic mail, all cases of rabies within forty-eight (48) hours. ()

02. Discharging Authority. State and federal animal health officials are authorized and empowered to: ()

a. Inspect, quarantine, treat, condemn, slaughter and dispose of any animals affected or infected with or exposed to rabies. ()

b. Quarantine, clean and disinfect all premises where such animals have been kept. ()

c. Call upon sheriffs, constables and other peace officers to assist them in the discharge of their duties. ()

221. -- 229. (RESERVED)

230. BIOLOGICALS.

Veterinary serums, vaccines, recombinant vaccines, bacterins, biologic remedies, diagnostic agents, immunoassay agents and diagnostic probes used in the treatment or diagnosis of disease of livestock, poultry, domestic animals, fish or fur bearing animals shall not be imported into or sold, distributed, or used within the state of Idaho unless such serum, vaccines, recombinant vaccines, bacterins, biologic remedies, diagnostic agents, immunoassay agents and diagnostic probes have been produced under a license by the United States Department of Agriculture and the manufacturers shall have a permit issued by the Idaho Department of Agriculture, Division of Animal Industries. ()

231. -- 239. (RESERVED)

240. POULTRY AND RATITES.

Any person producing poultry or ratites for any of the following uses, is required to be in compliance with the NPIP program: ()

01. Sale of Live Birds or Hatching Eggs. The sale of live birds or hatching eggs; or ()

02. Release of Live Birds. Release of live birds, such as hunting clubs, hunting preserves, or dog trials; or the release of live birds into the wild. ()

241. RECORD REQUIREMENTS.

In addition to meeting the record keeping requirements of the NPIP program, all NPIP participants shall forward a copy of their annual flock qualification test results to the Division of Animal Industries within fifteen (15) days of the completion of testing. ()

242. INSPECTIONS.

The premises where participants in the NPIP program raise poultry or ratites shall be inspected at least once each calendar year by state or federal animal health officials. ()

01. Scheduling of Inspections. State or federal animal health officials will attempt to notify the NPIP participant prior to any inspection and schedule the annual inspections in advance with the NPIP participant. ()

02. Inspecting Records. During normal business hours, state or federal animal health officials are authorized to inspect, review, and copy any poultry or ratite records deemed necessary to ensure compliance with these rules. State or federal animal health officials will attempt to notify the owner or operator of the premises where records are kept prior to inspecting records. ()

243. NPIP CERTIFICATES OF PARTICIPATION.

The Division of Animal Industries will issue NPIP participation certificates annually to the owners of poultry and ratites that meet the following requirements: ()

01. Records. Each NPIP participant must have on file records of their flock qualification testing; and ()

02. Inspection Forms. Each NPIP participant shall have on file a copy of the annual inspection form from the previous year documenting compliance with the NPIP program. ()

244. -- 249. (RESERVED)

250. EQUIDAE -- EQUINE INFECTIOUS ANEMIA.

Official tests for EIA include the AGID test, the C-ELISA test, and other EIA tests approved by USDA or the Administrator. ()

01. Blood Samples. Equine blood samples collected for official EIA tests shall be collected by a state or federal animal health official or an accredited veterinarian who is licensed in the state in which the animal being tested is located. ()

02. Official Samples. Official EIA test samples shall be accompanied to the testing laboratory by an official EIA test report on which is recorded the name and address of the owner or person in charge of the animal, the breed, sex, age and identification of the animal being tested. Identification includes identifying tattoos, brands, color and distinctive markings. The accredited veterinarian or animal health official collecting the EIA test samples shall record the date the samples were collected and affix his signature to the official EIA test report. ()

03. Official Tests. Official EIA tests shall be conducted in a laboratory approved by USDA or the state of Idaho to conduct EIA tests. ()

251. EIA IS A REPORTABLE DISEASE.

All laboratories conducting EIA tests on Idaho origin equidae and all veterinarians who diagnose EIA in Idaho equidae shall report positive results of all EIA tests and diagnoses to the Administrator of Animal Industries within twenty-four (24) hours of such test or diagnosis. Negative test results shall be reported within forty-eight (48) hours. ()

252. EIA INFECTED ANIMALS.

Any equidae which are positive to an official EIA test are to be declared infected with EIA and designated as an EIA reactor. The Administrator may require or recommend a re-test of EIA reactors in order to confirm infection or identification of the animal. In cases where a confirmatory test is conducted, the final determination of infection will be delayed until the results of the confirmatory test are available. The animal on which a confirmatory test is to be conducted will be placed under an official Hold Order until the results of the confirmatory test are available. ()

253. DISPOSITION OF EIA REACTORS.

Equidae found to be infected with EIA shall: ()

01. Quarantined. Be quarantined to the premises where the animal was found to be infected, the owner's premises, or another premises that is approved by the Administrator. ()

02. Duration of Quarantine. Remain under quarantine until it is: ()

a. Consigned to slaughter at a USDA approved equine slaughter establishment; or ()

b. Euthanized and buried or incinerated; or ()

c. Donated to a university or other research facility for use in EIA research projects. ()

254. ISOLATION OF EIA REACTORS.

The quarantine premises or area for EIA reactors shall provide no less than two-hundred (200) yards separation from all other equidae. The quarantine area and quarantined animals therein may be monitored periodically by state or federal animal health officials to ensure that provisions of the quarantine are being met. ()

255. IDENTIFICATION OF EIA REACTORS.

All equidae found to be infected with EIA shall be identified with an "82 A", at least two (2) inches high, hot iron or freeze brand on the left neck or left shoulder of the animal. Identification as an EIA reactor shall be accomplished within fifteen (15) days of notification that the animal is infected with EIA. ()

256. EXPOSED EQUIDAE.

EIA exposed equidae may include all equidae that are held within two-hundred (200) yards of the location where an EIA reactor is or was maintained. ()

01. Hold Order. Exposed equidae shall be placed under a Hold Order until the animals have been tested negative to EIA at least sixty (60) days after the last reactor animal has been removed from the premises. ()

02. Movement of Exposed Equids. Individual exposed equids, which have not had a negative sixty (60) day test, may be allowed to move under Hold Order for specific purposes if they have a negative EIA test prior to movement. Such movement shall not be for longer than fifteen (15) days. ()

257. EXTENDED VALIDITY EQUINE CERTIFICATES.

Provided there is a written agreement between the Administrator and the chief livestock sanitary official of the state of destination, Idaho origin equidae may be moved from Idaho for shows, rides or other equine events and return to Idaho on an extended validity equine certificate under a state system of equine certification acceptable to the Administrator and the state of destination. The Administrator may authorize the movement of equidae into or out of Idaho on extended validity equine certificates. ()

258. -- 299. (RESERVED)

300. FOREIGN ANIMAL AND REPORTABLE DISEASES.

It is the duty of all persons in Idaho to report to the Administrator immediately, by telephone, facsimile, or electronic mail, any lesions or symptoms resembling any of the foreign animal and reportable diseases listed in Subchapter A, that they may find existing among the animals in Idaho. The Administrator may add a foreign animal and reportable disease by issuing an administrative order explaining in writing the reasons for requiring the disease to be reported. ()

301. FOREIGN ANIMAL AND REPORTABLE DISEASES: MULTIPLE SPECIES.

- 01. Anthrax. ()
- 02. Brucellosis. ()
- 03. Foot and Mouth Disease. ()
- 04. Heartwater. ()
- 05. Leishmaniasis. ()
- 06. Plague (*Yersinia pestis*). ()
- 07. Pseudorabies. ()
- 08. Q Fever (*Coxiella burnetti*). ()
- 09. Rabies. ()
- 10. Rift Valley Fever. ()
- 11. Scabies. ()
- 12. Screw Worms. ()
- 13. Theileriosis. ()
- 14. Trypanosomiasis. ()
- 15. Tuberculosis. ()
- 16. Tularemia. ()
- 17. Vesicular Stomatitis. ()

302. FOREIGN ANIMAL AND REPORTABLE DISEASES - AVIAN DISEASES.

- 01. Avian Influenza. ()
- 02. Avian Chlamydiosis (*Psittacosis*). ()
- 03. Exotic Newcastle Disease. ()

303. FOREIGN ANIMAL AND REPORTABLE DISEASES - BOVINE DISEASES.

- 01. Babesiosis. ()
- 02. Bovine Brucellosis (*B. abortus*). ()
- 03. Bovine Spongiform Encephalopathy. ()
- 04. Bovine Tuberculosis. ()
- 05. Contagious Bovine Pleuropneumonia. ()

- 06. Crimean Congo Hemorrhagic Fever. ()
- 07. Lumpy Skin Disease. ()
- 08. Malignant Catarrhal Fever (Foreign Type). ()
- 09. Rinderpest. ()
- 10. Trichomoniasis. ()
- 304. FOREIGN ANIMAL AND REPORTABLE DISEASES - CERVIDAE DISEASES.
Chronic Wasting Disease is a reportable disease. ()
- 305. FOREIGN ANIMAL AND REPORTABLE DISEASES - EQUINE DISEASES.
 - 01. African Horse Sickness. ()
 - 02. Contagious Equine Metritis. ()
 - 03. Dourine. ()
 - 04. Equine Encephalomyelitis (Eastern, Western, Venezuelan). ()
 - 05. Equine Infectious Anemia. ()
 - 06. Equine Piroplasmosis (*Babesiosis*). ()
 - 07. Equine Viral Arteritis. ()
 - 08. Glanders. ()
 - 09. Hendra Virus. ()
 - 10. Japanese Encephalitis. ()
 - 11. Surra (*Trypanosoma evansi*). ()
- 306. FOREIGN ANIMAL AND REPORTABLE DISEASES - FISH DISEASES.
 - 01. Asian Tapeworm of Carp. ()
 - 02. Oncorhynchus Masou Virus Disease. ()
 - 03. Spring Viremia of Carp. ()
 - 04. Viral Hemorrhagic Septicemia. ()
- 307. FOREIGN ANIMAL AND REPORTABLE DISEASES - LAGOMORPH DISEASES.
Rabbit Hemorrhagic Disease is a reportable disease. ()
- 308. FOREIGN ANIMAL AND REPORTABLE DISEASES - SHEEP AND GOAT DISEASES.
 - 01. Contagious Caprine Pleuropneumonia. ()
 - 02. Nairobi Sheep Disease. ()
 - 03. Ovine Brucellosis (*B. melitensis*). ()

- 04. Peste des Petits Ruminants. ()
- 05. Scrapie. ()
- 06. Sheep and Goat Pox. ()
- 309. FOREIGN ANIMAL AND REPORTABLE DISEASES - SWINE DISEASES.
 - 01. African Swine Fever. ()
 - 02. Classical Swine Fever (Hog Cholera). ()
 - 03. Enterovirus Encephalitis (Teschen Disease). ()
 - 04. Nipah Virus Encephalitis. ()
 - 05. Porcine Brucellosis (*B. suis*). ()
 - 06. Swine Vesicular Disease. ()
- 310. -- 329. (RESERVED)
- 330. NOTIFIABLE DISEASES.

All veterinarians licensed to practice in Idaho shall report any notifiable diseases listed in Subchapter A to the Administrator. The Administrator may add a notifiable disease by issuing an administrative order explaining in writing the reasons for requiring the disease to be reported. ()
- 331. NOTIFIABLE DISEASES: MIXED SPECIES DISEASES.

West Nile Virus is a notifiable disease. ()
- 332. NOTIFIABLE DISEASES: AVIAN DISEASES.
 - 01. Avian Mycoplasmosis (*M. gallisepticum* and *M. synoviae*). ()
 - 02. Fowl Typhoid (*Salmonella gallinarum*). ()
 - 03. Pullorum Disease (*Salmonella pullorum*). ()
- 333. NOTIFIABLE DISEASES: BOVINE DISEASES.
 - 01. Hemorrhagic Septicemia (*Pasteurella multocida*). ()
 - 02. Malignant Catarrhal Fever (Sheep Associated). ()
- 334. NOTIFIABLE DISEASES: EQUINE DISEASES.
 - 01. Equine Herpesvirus Myeloencephalopathy. ()
 - 02. Equine Rhinopneumonitis. ()
- 335. NOTIFIABLE DISEASES: FISH DISEASES.
 - 01. Epizootic Hematopoietic Necrosis. ()
 - 02. Infectious Hematopoietic Necrosis. ()

03. Whirling Disease. ()
336. **NOTIFIABLE DISEASES: LAGOMORPH DISEASES.**
Myxomatosis is a notifiable disease. ()
337. **NOTIFIABLE DISEASES: SHEEP AND GOAT DISEASES.**
01. Bluetongue. ()
02. Caprine Arthritis/Encephalitis (CAE). ()
03. Caseous Lymphadenitis. ()
04. Contagious Agalactia (*Mycoplasma spp.*). ()
05. Enzootic Abortion (*Chlamydia psittici*). ()
06. Footrot. ()
07. Haemonchus Contortus (drug-resistant). ()
08. Johne’s Disease. ()
09. Maedi-Visna/Ovine Progressive Pneumonia (OPP). ()
10. Ovine Epididymitis (*Brucella ovis*). ()
11. Toxoplasma Gondii Abortion. ()
12. Vibrionic Abortion (*Campylobacter fetus*). ()
338. **NOTIFIABLE DISEASES: SWINE DISEASES.**
01. Porcine Reproductive and Respiratory Syndrome (PRRS). ()
02. Transmissible Gastroenteritis. ()
339. -- 359. (RESERVED)
360. **ACTINOMYCOSIS (LUMP JAW).**
01. **Selling Diseased Animal.** It is unlawful for any person to knowingly sell, offer for sale, or in any manner transfer ownership to another person any animal infected or affected with the disease known as actinomycosis or lump jaw if the disease shows well-marked clinical symptoms, or is in the advanced stage, except for immediate slaughter, and then only in accordance with the meat inspection rules and regulations of the USDA. ()
02. **Public Livestock Markets.** Animals showing well marked clinical symptoms or in the advanced stage of actinomycosis or lump jaw passing through public livestock markets shall be placed and sold only from quarantine pens. ()
361. -- 399. (RESERVED)
400. **GARBAGE FEEDING.**
No person shall feed garbage to swine. ()

01. Household Wastes. Private household wastes not removed from the premises where produced is not considered garbage. ()

02. Inspection and Investigation. The Administrator is authorized to enter upon any private or public property for the purpose of inspecting and investigating conditions relating to the feeding of garbage to swine. ()

401. PSEUDORABIES -- PROCEDURES FOR CONTROL AND ERADICATION.

01. Laboratories. Blood, serum, tissues, or other samples are to be tested only by state/federal-approved laboratories. ()

02. Supervision. State or federal veterinarians will supervise pseudorabies control and eradication efforts. ()

03. Quarantines. Any herd in which any livestock has been determined to be infected with pseudorabies by an official pseudorabies test or diagnosed by a veterinarian as having pseudorabies will be placed under official state quarantine for pseudorabies. ()

a. All swine on pseudorabies-infected premises shall be sold for slaughter under permit within fifteen (15) days of diagnosis. ()

b. Livestock, other than swine, on pseudorabies infected premises shall be confined to the premises for a period of ten (10) days after the swine herd is sold for slaughter. Livestock, other than swine can, under permit, be moved to a separate holding area and be released from quarantine after a period of ten (10) days, if no signs of pseudorabies occur in the animals. ()

402. PSEUDORABIES VACCINE.

No person shall import into Idaho, possess, use, keep, buy, sell, offer for sale, barter, exchange, give away, or otherwise dispose of any pseudorabies vaccine without written permission from the Administrator. ()

403. VACCINATED SWINE.

No person shall import into Idaho any swine that have been vaccinated for Pseudorabies. ()

404. -- 419. (RESERVED)

420. ERADICATION METHODS.

USDA Program Standards apply to elimination of pseudorabies from a herd. ()

421. -- 429. (RESERVED)

430. IDENTIFICATION OF INFECTED SWINE.

All seropositive and infected swine are to be individually identified by placing a reactor ear tag in the left ear of the animal and recording the tag number on all movement documents. Identification shall be accomplished within five (5) days of the date the animals were reported as positive or infected. ()

431. IDENTIFICATION OF EXPOSED SWINE.

All exposed swine that are removed from the premises of origin shall be individually identified by placing a swine identification tag in the right ear of the animal. The identification number shall be recorded on movement documents. Individual identification may be waived for swine moving directly to slaughter, on a permit, in a sealed vehicle. ()

432. -- 449. (RESERVED)

450. QUALIFIED PSEUDORABIES-NEGATIVE HERDS.

The qualifying method and development of a pseudorabies-negative herd shall be accomplished in accordance with the USDA Program Standards for pseudorabies. ()

451. -- 459. (RESERVED)

460. CLEANING AND DISINFECTION.

All pens, wherein swine are held prior to or after their sale, shall be thoroughly cleaned and disinfected within seventy-two (72) hours following completion of the sale or before the next sale, whichever occurs first. ()

461. -- 503. (RESERVED)

SUBCHAPTER B - ANIMAL HEALTH EMERGENCIES

504. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference and apply only to Subchapter B, Sections 510-591:

01. Incorporated Documents. IDAPA 02.04.22 incorporates by reference the 9 C.F.R. § 53.2, January 1, 2002, which can be viewed online at http://edocket.access.gpo.gov/cfr_2002/janqtr/pdf/9cfr53.2.pdf. ()

510. DEFINITIONS.

The definitions in Section 510 apply in the interpretation and enforcement of Subchapter: B only:

01. Animals. All vertebrates, except humans. ()

02. Conveyance. Any type of vehicle, carrier, kennel, or trailer of any kind used to move or hold animals. ()

03. Domestic Cervidae. Elk, fallow deer, and reindeer owned by a person. ()

04. Emergency Disease. A disease, agent or parasite that could have a devastating impact on people, animals, or the economy as determined by the Director. ()

05. Epidemiology. The study of the distribution and determinants of health-related states or events in specified populations, and the application of this study to control of health problems. ()

06. Exposed. Animals that have had contact with other animals, herds, or materials that have been determined to be infected with or affected by any infectious, contagious, or communicable disease. ()

07. Federal Animal Health Official. An employee of USDA/APHIS/VS who is authorized to perform animal health activities. ()

08. Foreign Animal Disease. A transmissible disease of animals, believed to not exist in the United States and its territories, as determined by USDA that has a potential significant health or economic impact. ()

09. Infected Zone. The geographic portion of a quarantine area, which contains all animals known to be infected with or exposed to an emergency disease as designated by the Administrator. ()

10. Livestock. Cattle, swine, horses, mules, asses, sheep, goats, domestic cervidae, camelids, and ratites. ()

11. Operator. The person who has authority to manage or direct an animal premises or conveyance and the animals thereon. ()

12. Premises. The ground area, buildings, corrals, and equipment utilized to keep, hold or maintain animals. ()

13. Quarantine. A written order, executed by the Administrator, to confine or hold animals on a premises or any other location, where found, and prevent movement of animals from a premises or any other location

when the Administrator has determined that the animals are infected with or exposed to a disease, or are not in compliance with the provisions of this chapter. ()

14. Quarantine Area. A geographic designation encompassing one (1) or more premises in one (1) or more counties, and consisting of an infected zone and a surveillance zone as determined by the Administrator. ()

15. State Animal Health Official. The Administrator, or his designee, who is responsible for disease control and eradication programs. ()

16. Surveillance Zone. The geographic portion of the quarantine area surrounding the infected zone as designated by the Administrator. ()

511. -- 520. (RESERVED)

521. CIRCUMSTANCES OF AN ANIMAL HEALTH EMERGENCY.

The discovery of any emergency disease, which could have a devastating impact on the livestock, other animals, or people of this state, may constitute an animal health emergency requiring the implementation of prevention, management, control or eradication measures by state animal health officials. ()

522. DECLARATION OF AN ANIMAL HEALTH EMERGENCY.

The Director is authorized to declare an animal health emergency upon: ()

01. Foreign Disease. The discovery of any disease, parasite or agent which has been identified by the USDA/APHIS/VS as a “communicable foreign disease not known to exist in the United States”; or ()

02. Eradicated Diseases. The discovery of any disease, parasite or agent which is not naturally occurring in or has been eradicated from Idaho, as determined by the Administrator, and which, if introduced into Idaho, would have a devastating impact on the livestock or other animals of the state; or ()

03. Specific Diseases. The exposure to or infection of foot and mouth disease, bovine spongiform encephalopathy, chronic wasting disease, other transmissible spongiform encephalopathies, brucellosis, tuberculosis, or any foreign, exotic or emerging disease, as determined by the Administrator. ()

04. Disease Presence. The presence of any foreign, eradicated, or specific diseases in any state in the United States, any country contiguous to the United States, or any country from which the state of Idaho receives animals or animal products may constitute an emergency. ()

523. QUARANTINE AUTHORITY.

State or federal animal health officials are authorized to quarantine any animal infected with or exposed to an emergency disease, or any premises, county or area of the state to prevent ingress or egress of animals, people, or vehicles in the event of an emergency disease. ()

524. UTILIZATION OF VACCINATION IN ANIMAL HEALTH EMERGENCIES.

The Administrator is authorized to order the strategic use of vaccinations, treatments or other remedies to reduce the risk or spread of emergency diseases. ()

525. -- 529. (RESERVED)

530. QUARANTINE PROCEDURES FOR AN ANIMAL HEALTH EMERGENCY.

State or federal animal health officials are authorized to place under quarantine any infected animals, exposed animals, and those animals exhibiting signs of an emergency disease. The quarantine may also include susceptible animals not yet exposed. ()

01. Written Notice. Written notice of quarantine will be given to the owner of the animals, or the owner or operator of the premises or conveyance where the animals are found. ()

02. Validity of Quarantine. The quarantine is valid whether or not it is acknowledged by signature of the owner or operator. ()

03. Quarantine Release. The quarantine remains in place until a state or federal animal health official releases the quarantine in writing. ()

531. QUARANTINE AREA.

The Administrator may establish a quarantine area, which includes an infected zone encompassing the infected and exposed animals and premises, and a surveillance zone, based on the locations of said premises and the characteristics and epidemiology of the disease. The quarantine area may include one or more premises, all or part of a county, or all or part of the state. ()

532. QUARANTINE AREA SECURITY.

The Administrator may limit access of people and vehicles to the quarantine area. ()

533. QUARANTINE AREA BIO-SECURITY.

Bio-security of the quarantine area will be instituted and maintained. ()

01. Personnel. People entering or leaving the quarantine area will follow disinfection or decontamination guidelines and procedures established by state or federal animal health officials. ()

02. Vehicles and Equipment. Vehicles and equipment moving into or out of the quarantine area will be cleaned and disinfected or decontaminated according to guidelines and procedures established by state or federal animal health officials. ()

534. ANIMAL MOVEMENT IN QUARANTINE AREA.

Animals shall not be moved into, out of, through, or within the quarantine area except by permit issued by the Administrator. ()

535. SALE OF DISEASED OR EXPOSED ANIMALS NOT ALLOWED.

Animals infected with, or susceptible animals exposed to, an emergency disease shall not be set free, sold, or in any way transferred to another person without written authorization from the Administrator. ()

536. EXPOSURE OF ANOTHER'S ANIMALS NOT ALLOWED.

Animals infected with or exposed to an emergency disease or any disease not known to exist in Idaho shall not be: ()

01. Housed. Housed with, or adjacent to, another person's animals that have not been previously exposed or land used for raising such animals; or ()

02. Turned Out. Turned out with, or adjacent to, another person's animals that have not been previously exposed or land used for raising such animals. ()

537. MOVEMENT OR SALE OF ANIMAL PRODUCTS.

The Administrator may prohibit the movement or sale of products from animals infected with or exposed to an emergency disease. ()

538. -- 539. (RESERVED)

540. RESTRICTIONS ON ANIMALS FROM AREAS OR STATES AFFECTED BY EMERGENCY DISEASES.

The Administrator may impose restrictions on animal movement into Idaho from areas or states affected by an emergency disease as provided in IDAPA 02.04.21, "Rules Governing the Importation of Animals." ()

541. ANIMALS IN TRANSIT AT TIME OF DECLARED EMERGENCY.

The Administrator will determine the disposition of animals in transit at the time of the declaration of an animal health emergency. ()

542. -- 549. (RESERVED)

550. CONDEMNATION OF INFECTED, EXPOSED, OR SUSCEPTIBLE ANIMALS.

The Administrator is authorized to condemn, and order the slaughter, destruction, or other disposition of animals, infected with, exposed to, or susceptible to an emergency disease. ()

551. -- 559. (RESERVED)

560. DEPOPULATION OF ANIMALS.

Animals infected with, exposed to, or susceptible to an emergency disease may be depopulated to control and eradicate the disease. ()

01. Preventive Slaughter or Destruction. Animals, located within the quarantine area, that are susceptible to an emergency disease may be depopulated to control or eradicate the emergency disease. ()

02. Scope of Depopulation. The Administrator will determine the scope of depopulation. ()

561. METHOD OF DEPOPULATION.

The Administrator will determine the method for destruction of animals in quarantine areas. ()

562. TIME LIMIT FOR DEPOPULATION.

The Administrator will determine the time limit for depopulation of condemned animals. ()

563. -- 569. (RESERVED)

570. COMPENSATION FOR APPRAISED ANIMALS.

Owners of condemned animals will be compensated for animals ordered destroyed by the Administrator if the animals are appraised prior to depopulation, and the owner is in compliance with these rules. Compensation may be paid on animals that die or are depopulated before appraisal at the discretion of the Administrator. ()

571. COMPENSATION FOR ANIMALS DESTROYED.

State compensation is limited to appraised value less any federal indemnity and salvage value for animals condemned, and slaughtered or otherwise destroyed. ()

572. APPRAISAL PROCEDURE FOR ANIMALS DEPOPULATED.

01. Animal Appraisal. Animals to be depopulated shall be appraised by a team of three (3) persons including: ()

a. A representative of the Division of Animal Industries; ()

b. The owner; and ()

c. A person with experience marketing the species of animal as determined by the Administrator. ()

02. Dispute of Appraisal. When the appraisal price is in dispute, the Director may grant a hearing to any person, under such rules as the Department may prescribe which are in compliance with Title 67, Chapter 52, Idaho Code. ()

573. TIME LIMIT FOR APPRAISAL.

The Administrator will determine the time limit for completing the appraisal. ()

574. -- 579. (RESERVED)

580. COMPENSATION FOR LABOR EMPLOYED.

01. Disposal of Animals. The Department may pay actual costs for labor employed for disposal of animals depopulated at the direction of the Administrator. ()

02. Cleaning and Disinfection. The Department may pay actual costs for labor employed in the cleaning and disinfection of premises where infected or exposed animals were kept. ()

581. COMPENSATION FOR PROPERTY DESTROYED.
The Department will compensate owners for property ordered destroyed by the Administrator. ()

01. Property Destroyed Otherwise. The department may compensate owners for property otherwise destroyed as approved by the Administrator. ()

02. Actual Value. The Department will pay actual value of property destroyed, as determined by the Administrator, if compensation is paid. ()

582. -- 589. (RESERVED)

590. CLEANING AND DISINFECTION OF PREMISES.
Any premises or area where animals infected with or exposed to an emergency disease were held or kept shall be cleaned, disinfected, or decontaminated under the supervision and at the direction of state or federal animal health officials within the time limit established by the Administrator. ()

591. CLEANING AND DISINFECTION OF ANIMAL CONVEYANCE.
Any conveyance used to hold or transport animals infected with or exposed to an emergency disease shall be cleaned, disinfected, or decontaminated under the supervision and at the direction of state or federal animal health officials within the time limit established by the Administrator. ()

572. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.05 – RULES GOVERNING GRADE A MILK AND MANUFACTURE GRADE MILK

DOCKET NO. 02-0405-1901 (NEW CHAPTER, FEE RULE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 37-303, 37-402, 37-405, and 37-516 Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

PUBLIC HEARING

Thursday, November 14, 2019 @ 9:00 a.m.
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**Idaho State Department of Agriculture
2270 Old Penitentiary Road
Boise, ID 83712**

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Four rules administered by the ISDA are related to the inspection, production, processing, analysis and transport of Grade A and Manufacture Grade Milk and Milk Products. These rules are IDAPA 02.04.05, “Rules Governing Manufacture Grade Milk,” IDAPA 02.04.06, “Rules Governing Licensed Dairy Plants,” IDAPA 02.04.08, “Rules Governing Grade A Milk and Milk Products,” and IDAPA 02.04.09, “Rules Governing Milk and Cream Procurement and Testing.” Each of these rules addresses regulations pertaining to different variations of milk production. In order to streamline and simplify all rules related to milk production, the ISDA is proposing to combine all four rules into a single rule to be titled “**02.04.05, Rules Governing Grade A and Manufacture Grade Milk.**” No substantive changes are being made to the four rules cited above. All rules were reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

No changes were made to the fee already included in the original Rule Governing Milk and Cream Procurement in the new combined rule, 02.04.05- Rules Governing Grade A Milk and Manufacture Grade Milk. Fees under this rule are authorized pursuant to Sections 37-407 and 37-503, Idaho Code.

IDAHO CODE SECTION 22-101A STATEMENT: Section 22-101A, Idaho Code, requires that in this notice of proposed rulemaking, the Director must specify whether this rule is broader in scope or more stringent than federal law or regulations, or regulates an activity not regulated by the federal government. This rule contains a provision that is more stringent than federal regulations. That specific provision is as follows:

02.04.05.120	More stringent
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FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

The agency does not anticipate any fiscal impact as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted on September 16, 2019. The Notice of Intent to Promulgate Rules – Omnibus Negotiated Rulemaking was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, pages. 15-19](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The following materials are incorporated into the 02.04.05–Rules Governing Grade A Milk and Manufacture Grade Milk:

1. The 2004 Standard Methods for the Examination of Dairy Products (17th Edition) published by the American Public Health Association. Outlines laboratory procedures for microbiological, chemical, and physical methods for analyzing milk and dairy products.
2. The 2012 Official Methods of Analysis of AOAC International (OMA), 19th Edition. Outlines a comprehensive and reliable collection of chemical and microbiological methods available in the world and are contained many of the Codex food standards.
3. The 1977 United States Sediment Standards for Milk and Milk Products (USDA AMS Dairy Division). Outlines the standards for the examination and the various testing methods to determine the amount of sediment in raw milk.
4. The 1989 United States Standards for Grades of Butter (USDA AMS Dairy Division). Outlines the definitions, standards for butter and the inspection criteria for the grading of USDA Grade Label Butter.
5. The 2013 Appendix D “Standards for Water Sources” of the Grade “A” Pasteurized Milk Ordinance published by the U. S. Department of Health and Human Services, Public Health Service, Food and Drug Administration. Outlines the standards to be utilized in the guidance, inspection, and protection of Manufacture Grade milk producers water sources.
6. The 2011 “Subpart E -- Requirements for Licensed Dairy Plants,” of the ‘Milk for Manufacturing Purposes and Its Production and Processing, Recommended Requirements’ published by USDA, AMS, Dairy Programs. Establishes and promulgates rules and regulations for milk for manufacturing purposes, its production, transportation, grading, use, processing, and the packaging, labeling and storage of dairy products made therefrom.
7. The 2017 Grade “A” Pasteurized Milk Ordinance published by the U. S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, except the bacterial limit standard and the somatic cell count standard in Section 7 of the document. Outlines program standards to be utilized in the guidance, inspection, and processing requirements of all Grade “A” milk products in Idaho.
8. The 2017 Evaluation of Milk Laboratories, published by the U. S. Department of Health and Human Services, Public Health Service, Food and Drug Administration. Outlines procedures for the evaluation of milk laboratories required to meet the sanitation standards of the current in use edition of the Grade “A” Pasteurized Milk Ordinance (PMO).
9. The 2017 Methods of Making Sanitation Ratings of Milk Shippers, and the Certifications/Listings of Single-Service Containers and/or Closures for Milk and/or Milk Products Manufactures published by the U. S. Department of Health and Human Services, Public Health Service, Food and Drug Administration. Outlines rating methods for evaluating the sanitary quality of milk and/or milk products measures the extent to which a shipper complies with the standards contained in the Grade “A” Pasteurized Milk Ordinance (PMO).
10. The 2017 Interstate Milk Shipments; The Procedures Governing the Cooperative State-Public Health Service/ Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, published by the U. S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, and the National Conference on Interstate Milk Shipments (NCIMS). Contains the bylaws to maintain a national dairy program that is uniform and acceptable to all States, the U.S. Public Health Service and Drug Administration and the dairy industry.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dr. Scott Leibsle, Deputy Administrator – Division of Animal Industries at (208) 332-8540. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 27, 2019.

Dated this 3rd day of October, 2019.

Brian Oakey
Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8552
Fax: (208) 334-2710

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0405-1901
(New Chapter)

02.04.05 – RULES GOVERNING GRADE A MILK AND MANUFACTURE GRADE MILK

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 37-303, 37-402, 37-405, and 37-516, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is “Rules Governing Grade A Milk and Manufacture Grade Milk.” ()

02. Scope. These rules govern procedures for the design, construction, production, manufacture, distribution, handling, storage, quality, analysis and sale of Grade A Milk and Manufacture Grade Milk and Milk Products. ()

002. -- 103. (RESERVED)

SUBCHAPTER A – GRADE A MILK AND MILK PRODUCTS

104. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference in Subchapter A only: ()

01. Grade “A” Pasteurized Milk Ordinance. The Grade “A” Pasteurized Milk Ordinance, 2017 revision, published by the U. S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, except the bacterial limit standard and the somatic cell count standard in Section 7 of the document. Available online at <https://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Milk/UCM612027.pdf>. ()

02. Evaluation of Milk Laboratories. The Evaluation of Milk Laboratories, 2017 revision, published

by the U. S. Department of Health and Human Services, Public Health Service, Food and Drug Administration. Available online at <https://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Milk/UCM615021.pdf>. ()

03. Methods of Making Sanitation Ratings of Milk Shippers, and the Certifications/Listings of Single-Service Containers and/or Closures for Milk and/or Milk Products Manufactures. The Methods of Making Sanitation Ratings of Milk Shippers, and the Certifications/Listings of Single-Service Containers and/or Closures for Milk and/or Milk Products Manufactures, 2017 revision, published by the U. S. Department of Health and Human Services, Public Health Service, Food and Drug Administration. Available online at <https://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Milk/UCM600123.pdf>. ()

04. Interstate Milk Shipments. The Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, 2017 revision, published by the U. S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, and the National Conference on Interstate Milk Shipments. Available online at <https://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Milk/UCM594813.pdf>. ()

105. REGULATORY FRAMEWORK.

All Grade A and Manufacture Grade A Milk and Milk Products shall comply with the provisions set forth in the documents incorporated by reference in this Subchapter A. ()

106. -- 119. (RESERVED)

120 GRADE A MILK AND MILK PRODUCTS QUALITY STANDARDS.

The following standards are substituted for the bacterial limit standard and the somatic cell count standard for Grade A raw milk and milk products for pasteurized, ultra-pasteurization or aseptic processing in Section 7 of the Grade "A" Pasteurized Milk Ordinance. ()

01. Bacterial Limit Standard. The bacterial limit standard is eighty thousand (80,000) per mL. ()

02. Somatic Cell Count Standard. The somatic cell count standard is four hundred thousand (400,000) per mL. ()

03. Out of State Milk. Milk from other states, if processed in Idaho, shall comply with the Idaho somatic cell count standard. ()

121. -- 209. (RESERVED)

SUBCHAPTER B – MILK AND CREAM PROCUREMENT AND TESTING

210. DEFINITIONS.

In addition to the definitions found in Chapters 3 and 5, Title 37, Idaho Code, the following definitions apply to the interpretation and enforcement of Subchapter B only: ()

01. Abnormal Test. A test result from a producer sample that is dissimilar from recent producer milk component or quality parameter testing results; an anomaly. ()

02. Accuracy Check. A test made at the beginning of each testing session and once per hour thereafter to determine the continued accuracy of the testing device. ()

03. Approved Testing Methods. Methods approved by the director for testing milk or cream components and quality parameters when those components and parameters are used as a basis of payment. ()

04. Calibration. The settings established on a testing device that will result in an average number of results that are within tolerance. ()

- 05. Clearance Test.** A sample set issued to an official laboratory, by the Department, to maintain a probationary testing license or reinstate a suspended testing license. ()
- 06. Control Samples.** Milk samples used to determine or set the calibration of the testing device. ()
- 07. Component Testing.** An analysis of milk or cream constituents including milkfat, protein, lactose or solids-nonfat, which is used as a basis of payment. ()
- 08. Detailed Pricing Description.** The method used by the purchaser of milk or cream as the criteria for determining the price paid. ()
- 09. Milk Component or Component.** A unique compound within milk whose relative mass within the milk may be used to determine the payment to producers. Component parts of milk include milkfat, protein, lactose, solids-nonfat, other solids, and total solids. ()
- 10. Official Laboratory.** A facility, licensed by the department, that tests milk or cream components or quality parameters for the purpose of determining the value of the product when sold or purchased by producers or processors. ()
- 11. Outlier.** A regulatory sample result that appears to deviate markedly from other members of the sample set in which it occurs. ()
- 12. Pay Records.** Signed written or printed records, which itemize milk volume, milk component and quality parameters used as payment to a producer or other processor. ()
- 13. Performance Error.** The difference between the known percentage content of each milk component in the control sample, as determined by the sample provider, and the percentage content as measured by the testing device. ()
- 14. Producer.** A dairy farm permitted by the department to sell milk for human consumption. ()
- 15. Processor.** A creamery, milk plant, shipping or cream buying station, milk condensing plant, cheese factory, mix making plant, ice cream factory, reprocessing plant, casein plant, powdered milk plant, or factory of milk products, or other person receiving or purchasing milk or cream in bulk other than a retail vendor of milk on the basis of volume, milk components, or milk quality. ()
- 16. Quality Parameter.** The quality of milk or cream as determined by the bacteria/plate count method, somatic cell count, temperature, drug residues or other parameters as approved by the department. ()
- 17. Rolling Group of Thirteen (13).** A series of thirteen (13) consecutive sample testing dates where the lab performance error of each biweekly component test is averaged together to represent the long-term accuracy of the lab. To be considered a valid testing date, a lab must evaluate and provide results on no less than nine (9) component samples from each round of testing. ()
- 18. Testing Device.** The equipment used to determine the percentage of milk or cream components. ()
- 19. Sample Set.** A group of not less than nine (9) milk samples issued by the Department to each official laboratory to evaluate component testing accuracy. ()
- 20. Tolerance.** The acceptable performance error from the control values of each sample set as determined by the sample provider. ()
- 211 - 219. (RESERVED)**

220. MILK AND CREAM PROCUREMENT AND TESTING REQUIREMENTS.

All milk and cream produced, purchased or sold in the state of Idaho at a price based upon or determined by the milkfat, protein, lactose, solids-nonfat, somatic cell counts, or other quality parameters, shall comply with the requirements of Subchapter B. ()

221. LABORATORY LICENSING REQUIREMENTS.

01. License Required. All laboratories that test milk or cream components and quality parameters for a basis of payment must be licensed by the department as an official laboratory. ()

02. License Application. A laboratory must apply for a license on a form prescribed by the department. The laboratory must identify (on the application form) the names of all persons who will test milk or cream components and quality parameters. ()

03. License Fee. The license fee is twenty-five dollars (\$25). ()

04. License Term. The official laboratory license is valid for three (3) calendar years after issuance by the department, unless otherwise suspended or revoked in accordance with these rules. The license expires on December 31 of the third year. ()

222 - 229. (RESERVED)

230. OFFICIAL LABORATORIES - RESPONSIBILITIES AND OPERATING PROCEDURES.

01. Competency in Testing. Official laboratories are responsible for ensuring that employees who operate testing devices are competent to operate the devices, and for conducting testing according to Subchapter B. ()

02. Facility Requirements. The areas in official laboratories where component or quality parameter testing is conducted shall be well lighted, kept clean, appropriately ventilated and sufficient in size to provide for accurate testing. Laboratories that are certified under the Grade A program set forth in Subchapter B are deemed to satisfy the facility requirements for an official laboratory. ()

03. Operating Procedures. An official laboratory shall establish and follow written standard operating procedures consistent with the recommended procedures for operation and maintenance set forth by the manufacturer of the testing device. ()

231. THIRD PARTY LABORATORIES.

Procurers of milk who use official laboratories other than one owned or operated by the procurer are not responsible for that laboratory's failure to comply with Subchapter B. ()

232. - 239. (RESERVED)

240. MILK COMPONENT TESTING DEVICES.

If an automated testing device is used to perform a milk component test for any milk component, that device must be calibrated and regularly checked to ensure that it accurately tests for that milk component. ()

01. Calibration and Checks. Calibration and checks must include the utilization of calibration samples, performance checks and accuracy checks. ()

02. Calibration Standards. Calibration may be done either in accordance with the standards set forth by the manufacturer of the testing device, or as set forth in Sections 240, 241 and 243 of Subchapter B. ()

03. Calibration Record Keeping. In either case, the official laboratory must be able to demonstrate, through records kept in accordance with Section 290, that calibration and checks have been performed in accordance with Subchapter B, and that the testing device produces test results within the tolerances established in Subchapter B. ()

241. CALIBRATION OF MILK COMPONENT TESTING DEVICES.

All testing devices shall be calibrated according to the protocols set by the testing device manufacturer, or as set forth in Subchapter B. ()

01. Calibration Frequency. A milk component testing device shall be calibrated whenever the mean difference on a daily performance check under Section 242 herein exceeds plus or minus forty-four thousandths percent (.044%) for milkfat or protein, or eighty-four thousandths percent (.084%) for total solids or solids-nonfat. ()

02. Calibration Samples. A set of calibration samples may consist of commercially available samples or samples made by the official laboratory. A set of calibration samples must consist of at least nine (9) individual samples, each of which: ()

- a.** Cannot be more than twenty-one (21) days old; ()
- b.** Must be a fresh milk sample preserved with bronopol (2-bromo-2-nitro-1, 3-propanediol) or another approved preservative. Preservative methods, formulations and concentrations must be approved by the department. ()
- c.** Must have a known percentage content of each relevant milk component, determined by the sample provider. ()
- d.** Must meet the requirements of Section 250 of this rule. ()

03. Calibration Procedure. To calibrate a testing device, the official laboratory must use the device to test a set of calibration samples. The testing device shall be adjusted, as necessary, to satisfy each of the following requirements: ()

- a.** The performance error on each calibration sample shall be as near as practicable to zero (0). ()
- b.** The mean difference for the entire set of calibration samples shall be as near as practicable to zero (0), and not exceed plus or minus forty-four thousandths percent (.044%) for milkfat or protein, or eighty-four thousandths percent (.084%) for total solids or solids-nonfat. The mean difference is the sum of the performance errors for the individual calibration samples, divided by the number of samples in the set. ()
- c.** The standard deviation of test results, calculated for the set of calibration samples shall not exceed forty-four thousandths percent (.044%) for milkfat or protein, or eighty-four thousandths percent (.084%) for total solids or solids-nonfat. ()

242. DAILY PERFORMANCE CHECKS.

All testing devices must be subjected to a daily performance check before each day's testing, in accordance with the standards set by the testing device manufacturer, or as set forth in this Subchapter B. ()

01. Daily Performance Check Samples. ()

- a.** Source. A set of daily performance check samples must be obtained from a sample provider approved by the department, or may be made by the official laboratory. ()
- b.** Number. Unless otherwise specified by the manufacturer of the testing device, a minimum of two (2) control milk samples must be analyzed before daily component testing begins. ()
- c.** Requirements. The control samples must comply with the requirements set forth in Section 241 of Subchapter B and fall within the component ranges typically found in the samples to be tested. ()

02. Procedure. To conduct a daily performance check, the official laboratory must test a set of daily performance check samples. Based on the daily performance check, the official laboratory must do the following: ()

a. Determine the performance error of the testing device with respect to each daily performance check sample. The performance error is the difference between the known percentage content of each milk component in that sample, as determined by the sample provider, and the percentage content as measured by the testing device; and ()

b. Calculate the mean difference for the set of daily performance check samples. The mean difference is the sum of the performance errors for the individual samples, divided by the number of samples in the set. ()

03. Calibration Based On Daily Performance Check. If the mean difference calculated on a daily performance check exceeds plus or minus forty-four thousandths percent (.044%) for milkfat or protein, or eighty-four thousandths percent (.084%) for total solids or solids-nonfat, the testing device shall not be used until it is recalibrated in accordance with Section 241. ()

243. ACCURACY CHECKS.

All testing devices shall be subjected to daily and hourly accuracy checks in accordance with the protocols set by the testing device manufacturer, or as set forth in this Section of Subchapter B. ()

01. Daily Accuracy Check. A daily accuracy check must be conducted for each relevant milk component before each day's testing at the same time that the daily performance check is conducted. The official laboratory must perform ten (10) tests on a reference sample. The reference sample may be a homogenized milk sample prepared by the official laboratory, or it may be a daily performance check sample obtained from an approved sample provider. The ten (10) test results must be averaged, and the average result will be used as a comparison value for the hourly accuracy checks required in Subsection 243.02. ()

02. Hourly Accuracy Check. An hourly accuracy check must be conducted for each milk component before each hour's testing for that component. ()

a. To conduct an hourly accuracy check, the official laboratory must test the same reference sample used for the daily accuracy check. ()

b. For each relevant milk component, the hourly accuracy check result must be compared to the average result obtained on the daily reference check under Subsection 243.01. If an hourly accuracy check result differs from the average result on the daily accuracy check by more than thirty-four thousandths percent (.034%) for milkfat or protein, or sixty-four thousandths percent (.064%) for total solids or solids-nonfat, the testing device shall not be used until the condition causing the difference is found and corrected. ()

c. Test results obtained before the device is corrected, and subsequent to the last previous conforming accuracy check, must not be used in determining the amount paid to milk producers. ()

244 - 249. (RESERVED)

250. SAMPLE INTEGRITY.

Milk or cream samples must be handled, stored, and shipped in a manner that maintains the integrity of the samples. Samples must be maintained in a temperature range of thirty-three degrees (33°) to forty-five degrees (45°) Fahrenheit (zero point fifty-five hundredths degrees (0.55°) to seven point twenty-two hundredths degrees (7.22°) Celsius). ()

251. -- 259. (RESERVED)

260. ABNORMAL TESTS.

Whenever an abnormal test occurs on a producer's sample, that result may not be used as a basis of payment. ()

01. Alternate Tests. In the case of an abnormal test, the official laboratory will use an average of the previous three (3) tests from that producer or another department approved method. ()

02. Accidents and Sampling Errors. Laboratory accidents or sampling errors on milk or cream to be

tested will not be used as official results and the criteria in Subsection 260.01 will be instituted. ()

03. Documentation. All abnormal tests must be documented by the person conducting the test. ()

261. -- 269. (RESERVED)

270. DETAILED PRICING DESCRIPTION.

On each pay record to the seller, purchasers or procurers of milk or cream must provide the seller with all pricing detail needed to determine the net payment for the product sold. At a minimum, the detail must include the following: ()

01. Pricing Method and Pounds Purchased. If more than one (1) pricing method is used, the detail must include the pounds purchased at each method. The pricing method may include: ()

a. The value of each component per pound; ()

b. The total value of total component pounds; ()

c. The yield formula type and value of the end product(s); or ()

d. Fixed pricing type. ()

02. Total Weight or Volume. If weight is used, it must be expressed by pounds. If volume is used, it must be expressed in U.S. gallons. ()

03. Component Information. All relevant component testing averages or pounds of solids for each component. ()

04. Bonuses and Deductions. All quality bonuses or deductions and the applicable quality parameters used to calculate the bonuses or deductions. ()

05. Hauling Charges. All hauling charges and any applicable surcharges. ()

06. Other Deductions. All other payment deductions including check-offs, administrative fees, and laboratory fees. ()

07. Other Factors. All other factors affecting net payment. ()

08. Availability. Pay records must be made available to the department upon request, and be maintained by the procurer or processor for at least one (1) year. ()

271. -- 279. (RESERVED)

280. REGULATORY COMPLIANCE - INSPECTIONS AND RECORDS REVIEW.

The department shall have access at any time to official laboratories to review testing procedures, records, or to conduct other inspections or tests to determine compliance with Subchapter B and Title 37, Chapter 5, Idaho Code. Any time a testing device is being operated to test for milk components or other quality parameters, the department may provide samples to an official laboratory, and require the official laboratory to immediately process those samples in order to ensure compliance with Subchapter B of this rule. ()

281. REGULATORY SAMPLES.

01. Sample Set. ()

a. The department will provide sample sets to official laboratories, on a bi-weekly basis or at a frequency determined by the department to be necessary to ensure accurate component testing results. ()

b. The samples will be obtained from the company or entity that provides calibration samples to the official laboratory, if available. The department may provide regulatory samples from other sources if necessary. ()

c. The official laboratory must immediately process the samples, while being observed by a department employee or agent, for those components used by the processor or procurer as a basis of payment. ()

d. The official laboratory must evaluate the sample set using identical control standards and device settings which are used to routinely evaluate Idaho producer milk components for basis of payment. ()

e. If the official laboratory is unable to process the samples due to maintenance or mechanical issues, the department employee or agent who is delivering the samples may wait for the testing device to become operable. If the integrity of the regulatory samples is compromised due to the delay, the department may obtain and deliver an additional set of regulatory samples. ()

02. Regulatory Sample Results. The regulatory sample results will be compiled and evaluated by the department in rolling groups of thirteen (13). ()

03. Outliers. Sample results that have been identified as outliers will not be used in the calculation of tolerance for regulatory test results. ()

04. Regulatory Sample Tolerances. Each group of rolling thirteen (13) average shall be within the following tolerances for those components used as a basis of payment by the processor or procurer: ()

a. Plus or minus two hundredths percent (.02%) for milkfat and protein. ()

b. Plus or minus sixty-five thousandths percent (.065%) for solids, other than milkfat or protein. ()

282. LICENSE SUSPENSION AND REVOCATION BASED ON REGULATORY SAMPLES.

01. Two (2) Out of Four (4) Violation. Whenever the average performance error of two (2) of the last four (4) rolling groups of thirteen (13) exceed the tolerance for milkfat, protein, or solids as set forth in Subsection 281.04 of this rule, the Department will issue a written notice to the official laboratory. This notice is in effect as long as two (2) of the last four (4) rolling groups of thirteen (13) exceed the allowable tolerance for component testing. ()

02. License Suspension. If two (2) out of four (4) of an official laboratory's rolling groups of thirteen (13) average are out of tolerance pursuant to Subsection 281.04 of this rule, the Department will evaluate the following items prior to suspending the testing license. ()

a. Records Review. The Department shall review records kept by the official laboratory pursuant to Section 290 of this rule. ()

b. Clearance Test. The average performance error of the official laboratory must be within plus or minus thirty-one thousandths percent (.031%) protein, thirty-three thousandths percent (.033%) milkfat and sixty-five thousandths percent (.065%) other solids on all scheduled sample sets, until the official laboratory no longer exceeds the performance tolerance on two (2) out of four (4) rolling groups of thirteen (13) average. If an official laboratory does not meet these performance requirements on each component of the clearance test, the testing license will be suspended. ()

c. Probation. The Department may place an official laboratory on probation for two (2) weeks if: ()

i. The records demonstrate all calibration and performance checks of all testing devices were performed, as required under these rules, and are operating within the tolerances set forth in Sections 240, 241, and

243 of this rule; and ()

ii. The average performance error in the clearance test sample set was within plus or minus thirty-one thousandths percent (.031%) protein, thirty-three thousandths percent (.033%) milkfat, and sixty-five thousandths percent (.065%) other solids. Clearance test results from laboratories on probationary status shall be included in the calculation of the rolling group of thirteen (13) average. ()

03. License Reinstatement. An official laboratory may seek reinstatement of a suspended license by completing the following: ()

a. **Written Request.** The official laboratory shall provide the Department a written request for reinstatement of their testing license. The request shall include documentation detailing the procedural corrections that have been made to the testing device(s), as well as a minimum of two (2) weeks of component testing results demonstrating that the testing device(s) have been and will remain in tolerance. ()

b. **Clearance Test.** The average performance error of the official laboratory must be within plus or minus thirty-one thousandths percent (.031%) protein, thirty-three thousandths percent (.033%) milkfat, and sixty-five thousandths percent (.065%) other solids on a sample set issued by the Department. If the request for reinstatement does not coincide with the normal biweekly sample set issued by the Department, the official laboratory will be solely responsible for the cost of procuring and shipping the additional sample set. Clearance test results used for license reinstatement shall not be included in the calculation of the rolling group of thirteen (13) average. ()

04. License Revocation for Repeated Out of Tolerance Test Results. If the regulatory sample results are repeatedly out of tolerance, the department may initiate steps to revoke the official laboratory's license to conduct component testing for three (3) months or more. ()

283. – 289. (RESERVED)

290. RECORD KEEPING.

Records must be maintained by the official laboratory in accordance with this section, and must be made available for examination by the department, upon the department's request. ()

01. General Provisions. ()

a. No record may be altered except that errors may be corrected by striking through the original entry and inserting the correct entry immediately adjacent to the original. A corrected entry shall be initialed by the person who made the corrected entry. ()

b. Records may be maintained in paper or electronic format. In either case, the records must: ()

i. Be effectively secured against loss or tampering. ()

ii. Be readily retrievable for inspection by the dairy plant operator and the department. ()

iii. If corrected, have the correction identified so that the reader may easily compare the corrected version to the original. ()

02. Calibration Check Equipment Records. All calibration check and equipment maintenance records must be documented and provided during an inspection by the department. The documentation must include the following: ()

a. Instrument identification. ()

b. Name of the laboratory technician or maintenance person who performed the calibration or maintenance. ()

c. Time and date of the calibration check or maintenance. ()

- d. Type of analytical test or maintenance performed. ()
- e. Results of the analytical test or maintenance. ()
- f. Details of action taken to correct calibration tolerances or mechanical problems. ()

03. Records Retention - Time Limit. The dairy plant operator or the official laboratory must maintain the records required under this section of Subchapter B for at least one (1) year. ()

291. ENFORCEMENT.

01. License Suspension. The director may suspend official laboratory component testing from any laboratory not meeting the requirements set forth in Subchapter B until the official laboratory has satisfactorily demonstrated compliance with Subchapter B. ()

02. Effect of License Suspension. If an official laboratory's license is suspended, the official laboratory cannot conduct component testing for use as a basis of payment and must use a licensed third-party laboratory. Procurers of milk who must use a licensed third-party laboratory must pay any associated component testing fees. ()

292. -- 303. (RESERVED)

SUBCHAPTER C – MANUFACTURE GRADE MILK

304. INCORPORATION BY REFERENCE.
The following documents are incorporated by reference into Subchapter C only. ()

01. Standard Methods for the Examination of Dairy Products (Standard Methods). (17th Edition, June 1, 2004) published by the American Public Health Association. ()

02. Official Methods of Analysis of AOAC International (OMA), 19th Edition, 2012. ()

03. United States Sediment Standards for Milk and Milk Products (September 1, 1977) (USDA AMS Dairy Division). This document is available online at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELDEV3004474>. ()

04. United States Standards for Grades of Butter (August 31, 1989) (USDA AMS Dairy Division). This document is available online at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELDEV3004470>. ()

05. Appendix D “Standards for Water Sources” of the Grade “A” Pasteurized Milk Ordinance. The Grade “A” Pasteurized Milk Ordinance, 2013 revision, published by the U. S. Department of Health and Human Services, Public Health Service, Food and Drug Administration. ()

305. -- 309. (RESERVED)

310. DEFINITIONS.
In addition to the definitions found in Chapters 3, 4, and 5, Title 37, Idaho Code, the following definitions apply to the interpretation and enforcement of Subchapter C only: ()

01. 3-A Sanitary Standards. The standards for dairy equipment formulated by the 3-A Sanitary Standards, Inc. (3-A SSI). 3-A SSI is comprised of equipment fabricators, Dairy Processors, and regulatory sanitarians, which include state milk regulatory officials, USDA Agricultural Marketing Service Dairy Programs, the US. Public Health Service, the Food and Drug Administration, academic representatives, and others. ()

02. Acceptable Milk. Milk that qualifies as to appearance and odor and that is classified No. 1 or No. 2

- for sediment content. ()
- 03. Atmosphere Relatively Free From Mold.** No more than ten (10) mold colonies per cubic foot of air as determined in Standard Methods. ()
- 04. Bulk Milk Hauler or Bulk Milk Sampler.** A person licensed by the Department who is qualified and trained for the grading or sampling of raw milk in accordance with the quality standards and procedures of these rules and the Universal Sample. ()
- 05. C-I-P or Cleaned-in-Place.** The procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation. ()
- 06. Commingled Milk.** Milk that has left the Dairy Farm and has been mixed with other individual Producer milk in a Transportation Tank or at a Dairy Plant. ()
- 07. Dairy Farm or Farm.** A place or premise certified by the Department where one (1) or more milking cows, sheep, goats, or water buffalo are kept, and from which all or a portion of the milk produced thereon is delivered, sold, or offered for sale to a Dairy Plant. ()
- 08. Dairy Certification.** Certification by an Inspector or Approved Fieldman that a Producer's herd, milking facility and housing, milking procedure, cooling, milkhouse or milkroom, utensils and equipment and water supply have been found to meet the applicable requirements of Section 360 for the production of milk to be used for manufacturing purposes. ()
- 09. Dairy Plant or Dairy Processor.** Any place, premise, or establishment licensed by the Department where milk or dairy products are transported, graded, received or handled for processing or manufacturing and/or prepared for distribution. ()
- 10. Dairy Products.** Butter, cheese (natural or processed), dry whole milk, nonfat dry milk, dry buttermilk, dry whey, evaporated milk (whole or skim), condensed whole milk and condensed skim milk (plain or sweetened), and such other products, for human consumption, as may be otherwise designated. ()
- 11. Excluded Milk.** All of a Producer's milk excluded from the market by the provisions of Section 341. ()
- 12. Farm Tank.** A tank used to cool, store or cool, and store milk prior to transportation to the processing plant. ()
- 13. Fieldman.** A person qualified and trained in the sanitary methods of production and handling of milk as set forth herein, and generally employed by a Dairy Plant for the purpose of making Dairy Farm surveys and doing quality control work. ()
- 14. Fieldman, Approved.** A Fieldman qualified, trained, and approved by the Department to perform Dairy Farm inspections and raw milk grading or sampling. ()
- 15. Inspector.** A qualified, trained person employed by the Department to perform Dairy Farm or Dairy Plant inspections and raw milk grading or sampling. ()
- 16. Milk.** The lacteal secretion practically free from colostrum obtained by the complete milking of one (1) or more healthy cows, goats, sheep, or water buffalo for manufacturing purposes. ()
- 17. Milk for Manufacturing Purposes.** Milk produced from a Department certified Dairy Farm for processing and manufacturing into products for human consumption but not subject to Grade A or comparable requirements. ()
- 18. Probational Milk.** Milk classified No. 3 for sediment content. ()

19. Producer. The person or persons who exercise control over the production of the milk delivered to a Dairy Plant. ()

20. Rejected Milk. Milk rejected from the market according to the provisions of Section 340. ()

21. Sanitizing Treatment. Application of any effective method or sanitizing agent to clean surface for the destruction of pathogens and other organisms as far as is practicable. The sanitizing agents used shall comply with the Standard Methods. ()

22. Transportation Tank. A tank used to transport milk or supply milk from a Dairy Farm to a Dairy Plant. ()

23. Universal Sample. A single milk sample taken for the purpose of chemical, biochemical, or bacterial analyses typically used for regulatory purposes. ()

311. -- 319. (RESERVED)

320. RAW MANUFACTURE GRADE MILK OR CREAM.

All raw milk or cream for manufacturing purposes from all sources shall be based on the following quality specifications. ()

01. Raw Milk. The appearance and odor of acceptable raw milk is normal, fresh, and sweet and free from objectionable feed and other off odors that would adversely affect the finished dairy product. ()

02. Milk or Cream. Milk or cream is unacceptable which: ()

a. Is other than the lacteal secretion obtained by the complete milking of one (1) or more healthy cows, goats, sheep, or water buffalo properly kept and fed; ()

b. Contains added water; ()

c. Contains colostrum, is ropy, bloody or gives any indication of having come from diseased or injured udders; ()

d. Contains filth, is contaminated with flies, earwigs or other insects, dirt, oil, economic poisons, pesticides or other foreign matter which renders it unfit for human consumption; ()

e. Tests positive for antibiotics or inhibitors as tested by the accepted methods of the Standard Methods or by tests approved by the Department; ()

f. Has more than seventeen one hundredths of one percent (.17%) acid calculated as lactic and does not meet the criteria in Subsection 320.01; ()

g. In the case of cream, is rancid, putrid, or actively foaming; ()

h. In the case of cream, contains more than eight tenths of one percent (.8%) acid calculated as lactic; ()

i. Is more than three (3) days or seventy-two (72) hours old when picked up at the Dairy Farm; ()

j. Does not meet the quality standards as set forth in Subchapter C. ()

321. QUALITY REQUIREMENTS FOR MILK FOR MANUFACTURING PURPOSES.

01. Basis. The quality classification of raw milk for manufacturing purposes from each Producer shall be based on an organoleptic examination for appearance and odor, a drug residue test and quality control tests for

sediment content, bacterial estimate and somatic cell count. ()

a. At least once each month the Bulk Milk Haulers shall bring in not less than a two (2) ounce sample of mixed milk from a Producer's Farm Tank. The sample shall be taken in accordance with recommended procedures outlined in the Standard Methods. ()

02. Appearance and Odor. The appearance of acceptable raw milk shall be normal and free of excessive coarse sediment when examined visually or by an acceptable test procedure. The milk shall not show any abnormal condition (including but not limited to curdles, ropy, bloody or mastitic condition), as indicated by sight or other test procedures. The odor shall be fresh and sweet. The milk shall be free from objectionable feed and other off-odors that would adversely affect the finished dairy product. ()

03. Sediment Content Classification. Milk shall be classified for sediment content, regardless of the results of the appearance and odor examination described in Subsection 321.02. The USDA Sediment Standard is as follows. ()

- a.** No. 1 (acceptable) - not to exceed five tenths (.5) milligram or equivalent. ()
- b.** No. 2 (acceptable) - not to exceed one and five tenths (1.5) milligram or equivalent. ()
- c.** No. 3 (probational, not over ten (10) days) - not to exceed two and five tenths (2.5) milligram or equivalent. ()
- d.** No. 4 (reject) - over two and five tenths (2.5) milligram or equivalent. ()

04. Method of Testing. Methods for determining the sediment content of the milk of individual Producers shall be those described in the Standard Methods. Sediment content shall be based on comparison with applicable charts of the United States Sediment Standards for Milk and Milk Products as incorporated by reference. ()

05. Frequency of Test. At least once each month, at irregular intervals, the milk from each Producer shall be tested as follows: ()

- a.** Milk in Cans. One (1) or more cans of milk selected at random from each Producer. ()
- b.** Milk in Farm Tanks. A sample taken from each Farm Tank. ()

06. Acceptance or Rejection of Milk. If the sediment disc is classified as No. 1, No. 2, or No. 3, the Producer's milk may be accepted. If the sediment disc is classified No. 4 the milk shall be rejected: provided, that if the shipment of milk is commingled with other milk in a Transport Tank the next shipment shall not be accepted until its quality has been determined at the Dairy Farm before being picked up; however, if the person making the test is unable to get to the farm before the next shipment it may be accepted but no further shipments shall be accepted unless the milk meets the requirements of No. 3 or better. In the case of milk classified as No. 3 or No. 4, if in cans, all cans shall be tested. Producers in No. 3 or No. 4 (milk cans or bulk) shall be notified immediately, and furnished applicable sediment discs and the next shipment will be tested. ()

07. Retests. On test of the next shipment (if in cans, all cans shall be tested) milk classified as No. 1, No. 2, or No. 3, may be accepted, but No. 4 milk shall be rejected. Retests of bulk milk classified as No. 4 shall be made at the Dairy Farm before pickup. The Producers of No. 3 or No. 4 milk shall be notified immediately, furnished applicable sediment discs and the next shipment tested. This procedure of retesting successive shipments and accepting probational (No. 3) milk and rejecting No. 4 milk may be continued for not to exceed ten (10) calendar days. If at the end of this time all of the Producer's milk does not meet the acceptable sediment content classification (No. 1 or No. 2) the milk shall be excluded from market. ()

322. -- 329. (RESERVED)

330. BACTERIAL ESTIMATE CLASSIFICATION.

A laboratory examination to determine the bacterial estimate shall be made on each Producer's milk at least once each month at irregular intervals. Samples shall be analyzed at a laboratory approved by the Department. ()

01. Methods of Testing. Milk shall be tested for bacterial estimate by using one (1) of the following methods or any other method approved by Standard Methods or a test approved by the Department: ()

- a. BactoScan FC. ()
- b. Direct microscopic clump count. ()
- c. Standard plate count. ()
- d. Plate loop count. ()
- e. Petrifilm aerobic count. ()
- f. Spiral plate count. ()

02. Bacterial Estimate Procedures. Whenever the bacterial estimate indicates the presence of more than two hundred thousand (200,000) bacteria per milliliter, the following procedures shall be applied: ()

- a. The Producer will be notified with a warning of the excessive bacterial estimate. ()
- b. Whenever two (2) of the last four (4) consecutive bacterial estimates exceed two hundred thousand (200,000) per milliliter, the Department shall be notified and a written warning notice given to the Producer. The notice is in effect so long as two (2) of the last four (4) consecutive samples exceed two hundred thousand (200,000) per milliliter. ()

c. An additional sample will be taken after a lapse of three (3) days but within twenty one (21) days of the notice required in Subsection 330.02.b. If this sample also exceeds two hundred thousand (200,000) per milliliter, subsequent milkings shall be excluded from the market until satisfactory compliance is obtained. Shipment may be resumed and a temporary status assigned to the Producer by the Department when an additional sample of herd milk is tested and found satisfactory. The Producer will be assigned a full reinstatement status when three (3) out of four (4) consecutive bacterial estimate test do not exceed two hundred thousand (200,000) per milliliter. ()

331. -- 339. (RESERVED)

340. REJECTED MILK.

A plant shall reject specific milk from a Producer if the milk fails to meet the requirements for appearance and odor, if it is classified No. 4 for sediment content, or if it tests positive for drug residue. All reject milk shall be identified with a reject tag and/or colored with harmless food coloring. ()

341. EXCLUDED MILK.

A Dairy Plant shall not accept milk from a Producer if: ()

01. Probational Sediment Content. The milk has been in a probational (No. 3) sediment content classification for more than ten (10) calendar days. ()

02. Exceeding Maximum Bacteria. Three (3) of the last five (5) milk samples have exceeded the maximum bacteria estimate of two hundred thousand (200,000) per milliliter. ()

03. Insanitary Conditions. If the milk is produced in unclean conditions such as, but not limited to, unclean milk contact surfaces, unclean conditions in the parlor or milk room, poor milking procedures, or poor animal housing conditions. ()

04. Maximum Somatic Cell Count. Three (3) of the last five (5) milk samples have exceeded the maximum somatic cell count level of seven hundred fifty thousand (750,000) per milliliter or one million (1,000,000) ()

per milliliter for goat or sheep milk. ()

05. Positive Drug Test. The Producer's milk shipments to either the Grade A or the manufacturing grade milk market currently are not permitted due to a positive drug residue test. ()

342. -- 349. (RESERVED)

350. RECORDS OF TESTS.

Accurate records of the results of the milk quality and drug residue tests for each Producer shall be kept on file for a period of not less than twelve (12) months. The records shall be available for examination by the Department. ()

351. SOMATIC CELL COUNT.

01. Level of Somatic Cells. A laboratory examination to determine the level of somatic cells shall be made on each Producer's milk at least four (4) times in each six (6) month period at irregular intervals. Samples shall be analyzed at a laboratory and by a method approved by the Department. ()

02. Procedures. Whenever the confirmatory somatic cell count indicates the presence of more than seven hundred fifty thousand (750,000) somatic cells per milliliter, (one million (1,000,000) per milliliter for goat and sheep) the following procedures shall be applied: ()

a. The producer will be notified with a warning of the excessive somatic cell count. ()

b. Whenever two (2) of the last four (4) consecutive somatic cell counts exceed seven hundred fifty thousand (750,000) per milliliter, (one million (1,000,000) per milliliter for goat and sheep) the Department shall be notified and a written warning notice given to the Producer. The notice will be in effect so long as two (2) of the last four (4) consecutive samples exceed seven hundred fifty thousand (750,000) per milliliter, (one million (1,000,000) per milliliter for goat and sheep). ()

c. An additional sample shall be taken after a lapse of three (3) days but within twenty-one (21) days of the notice required in Subsection 351.02.b. If this sample also exceeds seven hundred fifty thousand (750,000) per milliliter, (one million (1,000,000) per milliliter for goat and sheep) subsequent milkings shall be excluded from the market until satisfactory compliance is obtained. Shipment may be resumed and a temporary status assigned to the producer by the Department when an additional sample of herd milk is tested and found satisfactory. The Producer will be assigned a full reinstatement status when three (3) out of four (4) consecutive somatic cell count tests do not exceed seven hundred fifty thousand (750,000) per milliliter, (one million (1,000,000) per milliliter for goat and sheep). ()

352. DRUG RESIDUE LEVEL.

01. Dairy Plant's Sampling and Testing Responsibilities. All milk shipped for processing or intended to be processed on the Dairy Farm where it was produced will be sampled and tested, prior to processing, for beta lactam drug residue or other drugs as determined by the Department. Collection, handling and testing of samples shall be done according to procedures established by the Department. ()

a. When so specified by the US. Food and Drug Administration (FDA), all milk shipped for processing, or intended to be processed on the Dairy Farm where it was produced, will be sampled and tested, prior to processing, for other drug residues under a random drug sampling program. A random drug sampling program may be conducted at a frequency determined by the Department. ()

b. When the Commissioner of the FDA determines that a potential problem exists with an animal drug residue or other contaminant in the milk supply, a sampling and testing program will be conducted, as determined by the FDA. ()

c. Dairy Plants shall analyze samples for beta lactams and other drug residues by methods evaluated by OMA and accepted by the FDA as effective in determining compliance with established "safe levels" or tolerances. "Safe levels" and tolerances for particular drugs are established and amended by the FDA. ()

- d.** Individual Producer sampling. ()

 - i. Bulk Milk. A milk sample for beta lactam drug residue testing shall be taken at each farm and will include milk from each Dairy Farm Tank. ()
 - ii. Can Milk. A milk sample for beta lactam drug residue testing shall be performed separately at the receiving Dairy Plant for each can milk Producer included in a delivery, and be representative of all milk received from the Producer. ()
 - iii. Producer Dairy Plant. For those Producers who also have a licensed Dairy Plant, a milk sample for beta lactam drug residue testing shall be performed on each batch of milk to be processed. ()
 - e.** Load sampling and testing. ()

 - i. Bulk milk. A load sample shall be taken from the Transport Tank after its arrival at the Dairy Plant and prior to further commingling. ()
 - ii. Can milk. A load sample representing all of the milk received on a shipment shall be formed at the plant, using a sampling procedure that includes milk from every can on the vehicle. ()
 - iii. Producer Dairy Plant. A load sample shall be tested at the Dairy Plant using a sampling procedure that includes all milk produced and received. ()
 - f.** Sample and record retention. A load sample that tests positive for drug residue shall be retained according to guidelines established by the Department. The records of all sample test results shall be retained for a period of not less than twelve (12) months. ()
 - g.** Dairy Plant follow-up. ()

 - i. When a load sample or individual Producer sample tests positive for drug residue, Dairy Plant personnel shall notify the Department immediately, of the positive test result and of the intended disposition of the shipment of milk containing the drug residue. All milk testing positive for drug residue shall be disposed of in a manner that removes it from the human or animal food chain, except when acceptably reconditioned under FDA compliance policy guidelines. ()
 - ii. Each individual Producer sample represented in the positive-testing load sample shall be individually tested as directed by the Department to determine the Producer of the milk sample testing positive for drug residue. Identification of the Producer responsible for producing the milk testing positive for drug residue, and details of the final disposition of the shipment of milk containing the drug residue, shall be reported immediately to the Department. ()
 - iii. Milk shipment from the Producer identified as the source of milk testing positive for drug residue shall cease immediately and may resume only after a sample from a subsequent milking does not test positive for drug residue. ()
- 02. Department's Monitoring and Surveillance Responsibilities.** The Department will monitor the Dairy Plant's drug residue program by conducting unannounced on-site inspections to observe testing and sampling procedures and to collect samples for comparison drug residue testing. In addition, the Department will review industry records for compliance with these rules. The review will seek to determine that: ()
- a.** Each Producer is included in a routine, effective drug residue milk monitoring program utilizing AOAC-evaluated and FDA-approved methods to test samples for the presence of drug residue; ()
 - b.** The Department receives prompt notification from industry personnel of each occurrence of a sample testing positive for drug residue, and of the identity of each Producer identified as a source of milk testing positive for drug residue; ()

c. The Department receives prompt notification from industry personnel of the intended and final disposition of milk testing positive for drug residue, and that disposal of the load is conducted in a manner that removes it from the human or animal food chain, except when acceptably reconditioned under FDA compliance policy guidelines; and ()

d. Milk shipment from a Producer identified as a source of milk testing positive for drug residue completely and immediately ceases until a milk sample taken from the dairy herd does not test positive for drug residue. ()

03. Enforcement. If a Producer ships milk testing positive for drug residue three (3) times within a twelve (12) month period, the Department may initiate procedures to suspend the Producer's milk shipping privileges. ()

353. RADIONUCLIDES.

Composite milk samples from selected areas within in the state of Idaho should be tested for biologically significant radionuclides at a frequency which the FDA determines to be adequate to protect the consumer. ()

354. PESTICIDES AND HERBICIDES.

Composite milk samples should be tested for pesticides and herbicides at a frequency the FDA determines is adequate to protect the consumer. The test results from the samples shall not exceed established FDA limits. ()

355. ADDED WATER.

Milk samples from each Producer should be tested for added water at a frequency the Department determines is adequate to prevent the addition of water to the milk. ()

356. -- 359. (RESERVED)

360. FARM REQUIREMENTS OF MILK FOR MANUFACTURING.

01. Health of Herd. ()

a. General Health. All animals in the herd shall be maintained in a healthy condition, properly fed and kept. ()

b. Tuberculin Test. The cows and water buffalo shall be located in a Modified Accredited Area, an Accredited Free State, or an Accredited Free Herd as determined by the US. Department of Agriculture (USDA). The goats shall be located in States meeting the current USDA Uniform Methods and Rules and for Bovine Tuberculosis Eradication or an Accredited Free Goat Herd. If the animals are not located in such areas, they shall be tested annually under the jurisdiction of the aforesaid program. All additions to the herd shall be from an area or from herds meeting those same requirements. ()

c. Brucellosis Test. The cows shall be located in States meeting Class B status, or Certified-Free Herds, or shall be involved in a milk ring test program or state of Idaho blood testing program. All additions to the herd shall be from an area or from herds meeting these same requirements. ()

d. Abnormal Milk. Milk from animals known to be infected with mastitis or milk containing residues of antibiotics or others drugs, or milk containing pesticides or other chemical residues in excess of the established limits shall not be sold or offered for sale for human consumption. The milk shall be disposed of in a method approved by the Department. ()

02. Milking and Facility Housing. ()

a. A milking barn or milking parlor of adequate size and arrangement shall be provided to permit normal sanitary milking operations. It shall be well lighted and ventilated, and the floors and gutters in the milking area shall be constructed of concrete or other impervious material. The facility shall be kept clean, the manure removed daily and stored to prevent access of animals to accumulation thereof. No swine or fowl are permitted in any

part of the milking area. ()

b. If milk is exposed during straining or transferring in the milking areas it shall be protected from falling particles from areas above milk facility. ()

c. The yard or loafing area shall be of ample size to prevent overcrowding, drained to prevent forming of standing water pools, insofar as practicable, and kept clean. ()

03. Milking Procedure. ()

a. The udders and flanks of all milking animals shall be kept clean. The udders and teats shall be washed or wiped immediately before milking with a clean, damp cloth or paper towel moistened with a sanitizing solution and wiped dry, or by any other sanitary method. ()

b. The milker's outer clothing shall be clean and hands clean and dry. No person with an infected cut or open sores on their hands or arms shall milk animals, or handle milk or milk containers, utensils or equipment. ()

c. Animals that secrete abnormal milk shall be milked last or with separate equipment. This milk shall be excluded from the supply as required in Subsection 360.01.d. ()

d. Milk stools, surcingles and antikickers shall be kept clean and properly stored. Dusty operations should not be conducted immediately before or during milking. Strong flavored feeds should only be fed after milking. ()

04. Cooling. ()

a. Milk in cans shall be cooled immediately after milking to forty-five (45) degrees Fahrenheit or lower unless delivered to the Dairy Plant within two (2) hours after milking. The devices, such as cooler, tank, or refrigerated unit to cool milk can or canned milk, shall be kept clean. ()

b. Milk in Dairy Farm Tanks shall be cooled to forty (40) degrees Fahrenheit or lower within two (2) hours after the first milking and maintained at forty-five (45) degrees Fahrenheit or lower until transferred to the Transport Tank. ()

05. Milkhouse or Milkroom. ()

a. A milkhouse or milkroom conveniently located and properly constructed, lighted, and ventilated shall be provided for handling and cooling milk and for washing, handling, and storing the utensils and equipment. Other products shall not be handled in the milkroom which would be likely to contaminate milk, or otherwise create a public health hazard. ()

b. It shall be equipped with wash and rinse vat, utensil rack, milk cooling facilities and have an adequate supply of hot water available for cleaning milking equipment. If a part of the barn or other building, it shall be partitioned, screened, and sealed to prevent the entrance of dust, flies, or other contamination. A milking parlor used strictly as a milking facility in combination with a milkhouse or milkroom, when properly equipped, arranged and maintained, need not be partitioned. Concentrates and feed, if stored in the building, shall be kept in a tightly covered box or bin. The floor of the building shall be of concrete or other impervious material and graded to provide proper drainage. The walls and ceilings shall be constructed of smooth easily cleaned material. All outside doors shall open outward and be self-closing, unless they are provided with tight-fitting screen doors that open outward or unless other effective means are provided to prevent the entrance of flies. ()

c. If a Dairy Farm Tank is used, it shall be properly located in the milkhouse or milkroom for access to all areas for cleaning and servicing. It shall not be located over a floor drain or under a ventilator. ()

d. A small platform or slab constructed of concrete or other impervious material shall be provided outside the milkhouse, properly centered under a suitable port opening in the wall for milkhouse connections. The

opening shall be fitted with a tight, self-closing door. The truck approach to the milkhouse or milkroom shall be properly graded and surfaced to prevent mud or pooling of water at point of loading. ()

e. The milkhouse or milkroom shall be kept clean and free of trash. Animals and fowl are not allowed access to the milkhouse or milkroom at any time. ()

06. Farm Chemicals and Animal Drugs. ()

a. Animal biologics and other drugs intended for treatment of animals, and insecticides approved for use in dairy operations, shall be properly labeled and used in accordance with label instructions, and stored in a manner which will prevent accidental contact with milk and milk contact surfaces. ()

b. Only drugs that are approved by the FDA or biologics approved by the USDA for use in dairy animals that are properly labeled according to FDA or USDA regulations shall be administered to such animals. ()

c. When drug storage is located in the milkroom, milkhouse, or milking area, the drugs shall be segregated in such a way so that drugs labeled for use in lactating dairy animals are separated from drugs labeled for use in non-lactating dairy animals. ()

d. Herbicides, fertilizers, pesticides, and insecticides that are not approved for use in dairy operations shall not be stored in the milkhouse, milkroom, or milking area. ()

07. Utensils and Equipment. ()

a. Utensils, milk cans, milking machines (including pipeline systems), and other equipment used in the handling of milk shall be maintained in good condition, shall be free from rust, open seams, milkstone, or any unsanitary condition, and shall be washed, rinsed, and drained after each milking, stored in suitable facilities, and sanitized immediately before use with at least fifty (50) parts per million chlorine solution or its equivalent. New or replacement can lids shall be umbrella type. All new utensils and equipment shall comply with applicable 3-A Sanitary Standards. ()

b. Dairy Farm Tanks shall meet 3-A Sanitary Standards for construction at the time of installation and shall be installed in accordance with regulations of the Department. ()

c. Single service articles shall be properly stored and not reused. ()

08. Water Supply. The Dairy Farm water supply shall meet the requirements in Appendix D of the Pasteurized Milk Ordinance as incorporated herein by reference. A source that does not conform with the construction requirements of Appendix D, but is tested annually by an approved laboratory and found to be safe and of sanitary quality, shall be satisfactory: provided any new sources of water supply or any farm water supply requiring repairs or reconstruction or any source from which tested samples have been found unsatisfactory shall meet the construction requirements of the Department. ()

09. Sewage Disposal. House, milkhouse or milkroom and toilet wastes shall be disposed of in a manner that will not pollute the soil surface, contaminate any water supply, or be exposed to insects. ()

10. Qualifications for Dairy Farm Certification. Dairy Farm certification requires satisfactory compliance with the requirements in Section 360. ()

361. -- 369. (RESERVED)

370. DAIRY FARM CERTIFICATION.

No milk for manufacturing purposes produced on an uncertified Dairy Farm shall be bought or sold for human consumption. ()

01. Initial Inspection. Certified Dairy Farms shall be inspected at least annually after initial

certification to determine eligibility for recertification. The inspection criteria for recertification is the same as that for initial certification. ()

02. Inspection. Each Dairy Farm shall be inspected by an Inspector or Approved Fieldman. When evidence indicates that it is advisable to do so, the Department may require an examination of the herd by a licensed veterinarian. If the Dairy Farm meets the applicable requirements for Dairy Farm certification described in Section 360, as indicated by the Farm Certification Report Form, the Dairy Farm shall be certified as described in Subsection 370.03. If the Dairy Farm does not meet the requirements for certification, the Dairy Farm shall be reinspected within thirty (30) days after the initial inspection. If the Dairy Farm then meets the requirements for certification, the Dairy Farm shall be certified. If the Dairy Farm does not meet the requirements for certification, the Dairy Farm shall not be certified, and the Producer's authorization to sell milk for human consumption from that Dairy Farm will be withheld by the Department until such time as the Dairy Farm qualifies for certification. Repeat violations on any item may cause a Dairy Farm to lose certification. Provided that, if the Inspector determines during any of these inspections that corrections on the Dairy Farm will require some capital investment, a reasonable extension of the prescribed time limits may be granted by the Department. ()

03. Certification. An Inspector or Approved Fieldman will certify Dairy Farms that meet the requirements of Section 360, as applicable, based upon the inspection criteria described in Subsection 370.02. The scoring criteria approved by the Department will be utilized in determining compliance with the provisions of Section 360. Dairy Farm certification shall authorize the sale from that Dairy Farm of milk for manufacturing purposes that meets the quality standards. ()

04. Probationary Period. If at any time an Inspector or Approved Fieldman determines that a certified Dairy Farm does not meet the requirements for certification, the Department may allow a reasonable probationary period for the Producer to bring the Dairy Farm within the requirements for certification. If at the end of this time the Dairy Farm does not meet the requirements for certification, the Department may revoke the Dairy Farm certification. ()

05. Reinstatement. If, after a period of withholding, probation, or revocation of Dairy Farm certification, a Producer makes the necessary corrections at the Dairy Farm, the Producer may apply for reinspection. When conditions have been corrected, the Dairy Farm will be reinspected by an inspector or Approved Fieldman. When the Inspector or Approved Fieldman determines that requirements for certification have been met, the Dairy Farm will be certified. ()

371. -- 379. (RESERVED)

380. STANDARDS FOR BULK MILK HAULERS.

01. Permits. All Bulk Milk Haulers must possess a permit issued by the Department. The permit will cost twenty-five dollars (\$25) and will be issued to the applicant after a training session on proper procedures and successfully passing an examination administered by the Department. ()

a. No permit will be issued unless a score of seventy percent (70%) or better is made on the examination. ()

b. A training and refresher course conducted by the Department will be given in each area of the state of Idaho once each year. ()

c. Every holder of a permit must attend a training and refresher course every third year. ()

d. Each new Bulk Milk Hauler shall apply to the Department for a permit. The bulk milk hauling company shall provide basic instructions on bulk milk protocols, including milk sample collection, pick-up procedures, and safety measures. A permit will be issued upon satisfactory completion of a special training and licensing session held by the Department. ()

e. A substitute Bulk Milk Hauler in case of emergency can haul milk for three (3) days without a permit provided the Department has been notified and the substitute Bulk Milk Hauler is provided instruction on

approved milk pickup and delivery requirements by the bulk milk hauling company. At the end of three (3) days the substitute Bulk Milk Hauler must apply for a permit. ()

02. Adulteration. If the truck is left unattended, Bulk Milk Haulers shall affix a seal or lock on all Transportation Tank ports, covers, and doors to protect the milk from possible adulteration. ()

03. Authorization. No Bulk Milk Hauler shall grade, measure or sample his own milk without written authorization from the Dairy Plant receiving the milk. ()

04. Permit Revocation. The permit may be revoked if: ()

a. The Bulk Milk Hauler fails to grade milk in a Dairy Farm Tank to its odor and appearance and fails to reject all milk that is abnormal in odor or flavor or that contains visible garget or other extraneous matter. ()

b. The Bulk Milk Hauler does not accurately take and record the temperature of milk or if he fails to reject the milk in excess of forty-five (45) degrees Fahrenheit. ()

c. The Bulk Milk Hauler fails to wash his hands before he proceeds to measure and sample the milk. ()

d. The Bulk Milk Hauler fails to follow acceptable procedures in measuring the amount of milk in the Farm Tank or if he does not, immediately after taking the reading convert the reading to pounds or gallons using the chart of the Farm Tank manufacturer and record it on duplicate forms, with one (1) copy to be posted in the milk house and one (1) transmitted to the Dairy Plant. ()

e. The Bulk Milk Hauler fails to agitate the milk for at least five (5) minutes in Farm Tanks less than one thousand (1,000) gallons and ten minutes in Farm Tanks over one thousand (1,000) gallons before taking a sample or if he withdraws any part of the milk from the Farm Tank before the sample is taken. ()

f. The Bulk Milk Hauler does not take a sample for component testing and/or milk quality analysis in an approved manner or sufficient size in an approved container properly labeled, and that the sample has been cooled and maintained between thirty-two (32) degrees Fahrenheit to forty (40) degrees Fahrenheit. ()

g. The Bulk Milk Hauler rinses the bulk Farm Tank before disconnecting and capping the hose. ()

h. The Bulk Milk Hauler siphons milk from milk cans, water troughs or other containers other than the Farm Tank. Milk poured into the bulk Farm Tank from other than regular milking machine pails will not be allowed. ()

381. -- 389. (RESERVED)

390. STANDARDS OF IDENTITY, LABELING, AND QUALITY STANDARDS FOR ICE CREAM AND FROZEN DAIRY PRODUCTS AND DESSERTS.

01. Definitions. The standards of identity for ice cream and frozen custards, frozen yogurt, frozen yogurt dessert mix, frozen yogurt dairy products, frozen dairy dessert, ice milk, sherbet and water ices are as defined by the Food and Drug Administration, United States Department of Health Education and Welfare, in Title 21, Part 135, of the Code of Federal Regulations. ()

02. Labeling. Each of the products required to be labeled by Section 37-1202, Idaho Code shall also bear on each container an identifiable code identifying the lot and/or date in which the product was manufactured. ()

03. Quality Standards. The following quality standards must be met: ()

a. Coliform Standard. Compliance with the coliform standard is deemed to have been met if the

coliform count does not exceed ten (10) colonies per gram in two (2) of the last four (4) consecutive samples. No enforcement action will be taken if the last sample is within the standard. ()

b. Bacteria Standard. Compliance with the bacteria standard is deemed to have been met if the bacteria count per gram does not exceed twenty thousand (20,000) bacteria per gram in two (2) of the last four (4) consecutive samples. Whenever the dairy product is cultured, the bacteria test, using the standard plate count or equivalent method would not be applicable. ()

c. Frequency of Tests. During any consecutive six (6) months, at least four (4) samples of ice cream and frozen dairy products and deserts will be collected and tested. If the test or tests exceed the coliform or bacteria limit three (3) out of five (5) consecutive tests, the dairy product cannot be sold for human consumption. For the dairy product to be eligible for human consumption, a subsequent sample must meet the quality standards. ()

04. Licensed Manufacturers. All frozen dessert mixes except nondairy frozen dessert shall be secured from a licensed manufacturer and manufactured into a semifrozen state without adulteration. Freezing device salvage shall not be reused as a mix. ()

05. Violations. The Director will issue and enforce a written stop sale order to the owner or custodian of any quantity of frozen desserts or frozen novelties which are in violation of Title 37 Chapters 3, 5, and 12, Idaho Code, or Subchapter C of these rules. Disposition of products not in compliance will be at the discretion of the Director. ()

391. STANDARDS FOR BUTTER.

01. Grading. Butter grading will be performed in accordance with the United States Standards for grades of butter as incorporated by reference. ()

02. Quality Standards. The following quality standards must be met: ()

a. Coliform Standard. Compliance with the coliform standard is deemed to have been met if the coliform count does not exceed ten (10) colonies per gram in two (2) of the last four (4) consecutive samples. ()

b. Bacteria Standard. Compliance with the bacteria standard is deemed to have been met if the bacteria count per gram does not exceed twenty thousand (20,000) bacteria per gram in two (2) of the last four (4) consecutive samples. Whenever the butter is cultured, the bacteria test using the standard plate count or equivalent method would not be applicable. ()

c. Frequency of Tests. During any consecutive six (6) months, at least four (4) samples of butter will be collected and tested. If the test or tests exceed the coliform or bacteria limit three (3) out of five (5) consecutive tests, the butter cannot be sold for human consumption. For the butter to be eligible for human consumption, a subsequent sample must meet the quality standards. ()

392. STANDARDS FOR WHEY BUTTER.

01. Basis for Determining the Acceptability of Whey Butter. The acceptability of whey butter is determined on the basis of classifying first the flavor characteristics and then the characteristics in body, color and salt. Flavor is the basic quality factor in grading whey butter and is determined organoleptically by taste and smell. The flavor characteristic is identified and together with its relative intensity, is rated according to the applicable classification. When more than one flavor characteristic is discernible in a sample of whey butter, the flavor classification of the sample is established on the basis of the flavor that carries the lowest rating. Body, color and salt characteristics are then noted and any defects are disrated in accordance with the established classification. Acceptability for the sample is then established in accordance with the flavor classification, subject to disratings for body, color and salt. When the disratings for body, color and salt exceed the permitted amount or if the flavor is not acceptable, the whey butter will not be allowed to be sold or distributed within the state of Idaho unless the packages are labeled as provided. ()

02. Specifications for Acceptability of Whey Butter. Whey butter shall be free of foreign materials

and visible mold. It shall possess a fine and highly pleasing whey butter flavor. May possess any of the following flavors to a slight degree: flat, malty, musty, neutralized, scorched, utensil, stale, and woody. May possess the following flavors to a definite degree: cooked, aged, bitter, coarse-acid, smothered, storage and old cream. May possess feed flavor to a pronounced degree. The permitted total disratings in body, color and salt characteristics are limited to one and one-half (1 1/2). ()

03. Whey Butter Label Requirements. It is hereby declared to be unlawful to sell or offer for sale any whey butter within the state of Idaho unless the wrappers and containers in which said butter is packaged are conspicuously labeled as herein provided: ()

- a. The name of the product is whey butter or whey cream butter or “Butter made from whey cream.” ()
- b. The name of the product is placed on the principal display panel(s) and shall be of uniform type and prominence. ()
- c. The manufacturer identification number is conspicuously placed on each wrapper and container of whey butter. ()
- d. Labels of whey butter sold or distributed within Idaho shall be approved by the Department. ()

04. Quality Standards. The following quality standards must be met: ()

- a. Coliform Standard. Compliance with the coliform standard is deemed to have been met if the coliform count does not exceed ten (10) colonies per gram in two (2) of the last four (4) consecutive samples. ()
- b. Bacteria Standard. Compliance with the bacteria standard shall be deemed to have been met if the bacteria count per gram does not exceed twenty thousand (20,000) bacteria per gram in two (2) of the last four (4) consecutive samples. Whenever the whey butter is cultured, the bacteria test using the standard plate count or equivalent method would not be applicable. ()
- c. Frequency of Tests. During any consecutive six (6) months, at least four (4) samples of whey butter will be collected and tested. If the test or tests exceed the coliform or bacteria limit three (3) out of five (5) consecutive tests, the Butter cannot be sold for human consumption. For the whey butter to be eligible for human consumption, a subsequent sample must meet the quality standards. ()

05. Enforcement. Whey butter which fails to meet flavor or body, color and salt requirements as defined in Section 392.01 may be sold or distributed within the state of Idaho, provided the word, “undergrade” is placed on the principal display panel(s) immediately preceding or following the product name and is of uniform type size and prominence. ()

06. Table I -- Classification of Flavor Characteristics.

Identified Flavors	Acceptable	Unacceptable
Flat	S	D
Malty	S	D
Musty	S	D
Neutralized	S	D
Scorched	S	D
Utensil	S	D
Cooked	D	P

Identified Flavors	Acceptable	Unacceptable
Aged	D	P
Bitter	D	P
Smothered	D	P
Storage	D	P
Old Cream	D	P
Feed	P	-
Acid	D	P
Weed	S	D

()

07. Table II -- Characteristics and Disratings in Body, Color, and Salt.

Characteristics	Body Disratings		
	S	D	P
Crumbly	1/2	1	
Gummy	1/2	1	
Leaky		1/2	1
Mealy or grainy		1/2	1
Short		1/2	1
Weak	1/2	1	
Sticky	1/2	1	
Ragged boring	1	2	

S -- Slight; D -- Definite; P -- Pronounced

()

08. Explanation of Terms with Respect to Flavor, Intensity, and Characteristics:

()

a. Slight: Detected only upon critical examination.

()

b. Definite: Detectable but not intense.

()

c. Pronounced: Readily detectable and intense.

()

d. Aged: Characterized by lack of freshness.

()

e. Bitter: Astringent, similar to taste of quinine and produces a puckery sensation.

()

f. Coarse-acid: Lacks a delicate flavor or aroma and is associated with an acid condition but there is no indication of sourness.

()

g. Cooked (fine): Smooth, nutty-like character resembling a custard flavor.

()

h. Feed: Aromatic flavor characteristic of feeds eaten by cows.

()

- i.** Flat: Lacks natural butter flavor. ()
- j.** Malty: A distinctive, harsh flavor suggestive of malt. ()
- k.** Musty: Suggestive of the aroma of a damp vegetable cellar. ()
- l.** Neutralizer: Suggestive of a bicarbonate of soda flavor or the flavor of similar compounds. ()
- m.** Old Cream: Aged cream characterized by lack of freshness and imparts a rough aftertaste on the tongue. ()
- n.** Scorched: A more intensified flavor than cooked (coarse) and imparts a harsh aftertaste. ()
- o.** Sour: Characterized by an acid flavor and aroma. ()
- p.** Smothered: Suggestive of improperly cooled cream. ()
- q.** Storage: Characterized by a lack of freshness and more intensified than “aged” flavor. ()
- r.** Utensil: A flavor suggestive of unclean cans, utensils and equipment. ()
- s.** Weed: Aromatic flavor characteristic of the weeds eaten by cows. ()
- 09. With Respect to Body:** ()
 - a.** Crumbly: The particles lack cohesion. The intensity is described as “slight” when the trier plug tends to break and the butter lacks plasticity; and “definite” when the butter breaks roughly or crumbles. ()
 - b.** Gummy: Gummy-bodied-butter does not melt readily and is inclined to stick to the roof of the mouth. The intensity is described as “slight” when the butter tends to become chewy and “definite” when it imparts a gum-like impression in the mouth. ()
 - c.** Leaky: Present when on visual examination there are beads of moisture on the surface of the trier plug and on the back of the trier or when slight pressure is applied to the butter on the trier plug. The intensity is described as “slight” when the droplets or beads of moisture are barely visible and about the size of a pinhead; “definite” when the moisture drops are somewhat larger or the droplets are more numerous and tend to run together; and “pronounced” when the leaky condition is so evident that drops of water drip from the trier plug. ()
 - d.** Mealy or grainy: Condition that imparts a granular consistency when the butter is melted on the tongue. The intensity is described as “slight” when the mealiness or graininess is barely detectable on the tongue and “definite” when the mealiness or graininess is readily detectable. ()
 - e.** Ragged boring: In contrast to solid boring, ragged boring is when a sticky-crumbly condition is presented to such a degree that a full trier of butter cannot be drawn. The intensity is described as “slight” when there is a considerable adherence “definite” when it is practically impossible to draw a full plug of the butter. ()
 - f.** Short: The texture is short-grained, lacks plasticity and tends toward brittleness. The intensity is described as “slight” when the butter lacks pliability and tends to be brittle; and “definite” when sharp and distinct breaks form as pressure is applied against the plug. ()
 - g.** Sticky: The butter adheres to the trier as a smear and possesses excessive adhesion. The intensity is described as “slight” when the smear is present only on a portion of the back of the trier and “definite” when the trier becomes smeary throughout its length. ()
 - h.** Weak: Body lacks firmness and tends to be spongy. The intensity is described as “slight” when the plug of butter, under slight pressure, tends to depress and is not firm and compact; and “definite” when the plug of butter, under slight pressure, tends to depress easily and definitely lacks firmness and compactness. ()

10. With Respect to Color: ()

a. Mottled: Appears as a dappled condition with spots of lighter and deeper shades of yellow. The intensity is described as “slight” when the small spots of different shades of yellow, irregular in shape, are barely discernible on the plug of butter and “definite” when the mottles are readily discernible on the plug of butter. ()

b. Specks: Usually appear in butter as small white or yellow spots, however, the latter may be of variable size. The intensity is described as “slight” when the spots are few in number and “definite” when they are noticeable in large numbers. ()

c. Streaked: Appears as light colored portions surrounded by more highly colored portions. The intensity is described as “slight” when only a few are present and “definite” when they are more numerous on the trier plug. ()

d. Wavy: Uneven in the color in the butter that appears as waves of different shades of yellow. The intensity is described as “slight” when the waves are barely discernible and “definite” when they are readily noticeable on the trier plug. ()

11. With Respect to Salt: ()

a. Sharp: Characterized by taste sensations suggestive of salt. The intensity is described as “slight” when the salt taste predominates in flavor; and “definite” when the salt taste distinctly predominates in flavor. ()

b. Gritty: Condition detected by the gritty feel of the grains of undissolved salt, imparting a sand-like feeling on the tongue. The intensity is described as “slight” when only a few grains of undissolved salt are detected and “definite” when the condition is more readily noticeable. ()

393. -- 394. (RESERVED)

395. NEW DAIRY PRODUCTS.

01. General. Upon request of any interested person, the Director may establish a temporary definition and standard for a new dairy product provided, all the following conditions exist: ()

a. Research in the uses of milk and the products or by products of milk has developed a new dairy product for which no definition or standard is prescribed. ()

b. The new dairy product cannot be produced or marketed because no definition in standard is prescribed for it. ()

c. The public interest would be served by the dairy product. ()

d. The quality, wholesomeness and manufacturing requirements of the dairy product are at least equal to established standards for similar dairy products. ()

e. The dairy product is labeled in accordance to guidelines for a food product and approved by the Department. ()

02. Permits. The Director may issue a special permit to the manufacturer/distributor for the production and sale of a new dairy product(s). The fee for this permit will be twenty five dollars (\$25) per dairy product. Such manufacturer/distributor is subject to the provisions of Title 37 Idaho Code and regulations adopted pursuant thereto applicable to Dairy Plants and milk products. ()

03. Expiration. After two (2) years from the date a temporary permit has been issued for a new dairy product(s), the Department will promulgate rules to establish definitions and standards for the new, nonstandardized

dairy product(s). ()

396. -- 403. (RESERVED)

SUBCHAPTER D – LICENSED DAIRY PLANTS

404. INCORPORATION BY REFERENCE.

The following document is incorporated by reference in this subchapter D only:

01. “Subpart E -- Requirements for Licensed Dairy Plants,” of the ‘Milk for Manufacturing Purposes and Its Production and Processing, Recommended Requirements’ published by USDA, AMS, Dairy Programs and made effective July 21, 2011. Copies of this document may be obtained from the Idaho State Department of Agriculture or accessed online at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELDEV3004791>. ()

405. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.15 – RULES GOVERNING BEEF CATTLE ANIMAL FEEDING OPERATIONS

DOCKET NO. 02-0415-1901

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 22-110 and 22-4903, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This pending rule adopts a previously approved and codified chapter under IDAPA 02, rules of the Idaho State Department of Agriculture. This rule establishes standards for the storage, management and application of manure on Beef Cattle Animal Feeding Operations. This rule was reviewed for amendment or repeal of non-substantive sections to comply with the Red Tape Reduction Act.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, pages 73-81](#).

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(5), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government. That information is as follows:

02.04.15.013	Broader in scope
02.04.15.030	More stringent
02.04.15.031	Broader in scope
02.04.15.032	Broader in scope
02.04.15.040	Broader in scope
02.04.15.050	Broader in scope
02.04.15.051	Broader in scope
02.04.15.080	Broader in scope
02.04.15.090	Broader in scope

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The agency does not anticipate any fiscal impact as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Dr. Scott Leibsle, Deputy Administrator – Division of Animal Industries at (208) 332-8540.

Dated this 3rd day of October, 2019.

Brian Oakey
Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8550
Fax: (208) 334-2710

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.17 – RULES GOVERNING DEAD ANIMAL MOVEMENT AND DISPOSAL

DOCKET NO. 02-0417-1901

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 25-203 and 25-237, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This pending rule adopts a previously approved and codified chapter under IDAPA 02, rules of the Idaho State Department of Agriculture. The Rules Governing Dead Animal Movement and Disposal establish standards for the management and disposal of livestock carcasses to best protect the environment and human health. This rule was reviewed for amendment or repeal of select sections to comply with the Red Tape Reduction Act.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 4, 2019 Idaho Administrative Bulletin, **Vol. 19-9, pages 82-88.**

IDAHO CODE SECTION 22-101A(5) STATEMENT AND NOTICE TO STANDING COMMITTEE: Pursuant to 22-101A(5), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government. That information is as follows:

This rule in its entirety regulates an activity not regulated by the federal government.

To view ISDA's complete Idaho Code § 22-101A analysis and a comprehensive list of studies supporting and directly relevant to this Rule, please see the IDAPA 02.04.17 Rulemaking Record located at: <https://agri.idaho.gov/main/i-need-to-see-lawsrules/rulemaking/isda-rulemaking-2019-2020/animal-industries-temporary-rulemaking-2019-2020/>.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The agency does not anticipate any fiscal impact as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Dr. Scott Leibsle, Deputy Administrator – Division of Animal Industries at (208) 332-8540.

Dated this 3rd day of October, 2019.

Brian Oakey, Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8550
Fax: (208) 334-2710

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.20 – RULES GOVERNING BRUCELLOSIS

DOCKET NO. 02-0420-1901

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 25-203 and 25-601, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This rule change will reduce the Brucellosis test eligible age of cattle/bison from 18 months to 12 months. This recommendation was made following the 2018 USDA audit of Idaho’s brucellosis program. The age reduction is necessary to minimize restrictions on interstate market access for Idaho cattle producers and maintain eligibility for federal cooperative funding to operate the program. The second rule change will remove “Idaho origin” as a prerequisite for adult brucellosis vaccination of cattle/bison. This “Idaho origin” designation is an unnecessary regulation that no longer poses a risk to the cattle industry. All rules were reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, pages 89-93](#).

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(5), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government. Various provisions of this rule are either broader in scope than federal laws or regulations or regulate an activity not regulated by the federal government. Those provisions are as follows:

02.04.20.027	Not regulated
02.04.20.028.03-04	Not regulated
02.04.20.029	Broader in scope
02.04.100-102	Not regulated
02.04.20.105	Broader in scope
02.04.20.120-123	Broader in scope
02.04.20.200-204	Not regulated
02.04.20.250-256	Not regulated
02.04.20.321	Broader in scope
02.04.20.421	Broader in scope

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The agency does not anticipate any fiscal impact as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Dr. Scott Leibsle, Deputy Administrator – Division of Animal Industries at (208) 332-8540.

Dated this 3rd day of October, 2019.

Brian Oakey
Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8552
Fax: (208) 334-2710

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.04.21 – RULES GOVERNING THE IMPORTATION OF ANIMALS
DOCKET NO. 02-0421-1901
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 25-203, 25-305, 25-401, and 25-601, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The first rule change will amend the Extended Validity Equine Certificate to allow participation in an electronic equine program and modify the requirements of the certificate. The second rule change will amend entry permit language to allow for the use of Idaho’s online livestock entry permit database. The third rule change will remove the brucellosis testing requirement for import of domestic cervidae that originate from a state/region that is declared free of brucellosis. This is an unnecessary entry requirement for domestic cervidae producers, as the only remaining reservoir of brucellosis left in the United States is located in Yellowstone Park. IDAPA 02.04.21 was also reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, pages 94-106](#).

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(5), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government. Various provisions of this rule are either more stringent than federal laws or regulations or broader in scope than federal laws or regulations. Those provisions are as follows:

02.04.21.100.03	More stringent
02.04.21.104-105	Not regulated
02.04.21.108	More stringent
02.04.21.109	Not regulated
02.04.21.111	More stringent
02.04.21.201	More stringent
02.04.21.202	More stringent
02.04.21.210	More stringent
02.04.21.260	Not regulated
02.04.21.300	More stringent
02.04.21.301	More stringent

02.04.21.302	More stringent
02.04.21.500	Not regulated
02.04.21.600	More stringent
02.04.21.601	More stringent
02.04.21.603	More stringent
02.04.21.604	More stringent
02.04.21.605	More stringent
02.04.21.650	More stringent
02.04.21.660-670	More stringent
02.04.21.705-707	More stringent
02.04.21.710	More stringent
02.04.21.720	More stringent

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The agency does not anticipate any fiscal impact as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Dr. Scott Leibsle, Deputy Administrator – Division of Animal Industries at (208) 332-8540.

Dated this 3rd day of October, 2019.

Brian Oakey
Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8550
Fax: (208) 334-2710

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.23 – RULES GOVERNING COMMERCIAL LIVESTOCK TRUCK WASHING FACILITIES

DOCKET NO. 02-0423-1901

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 22-103(15) and 22-110, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This pending rule adopts a previously approved and codified chapter under IDAPA 02, rules of the Idaho State Department of Agriculture. This rule establishes standards for the permitting and management of commercial livestock truck washing facilities in Idaho. This rule was reviewed for amendment or repeal of select sections to comply with the Red Tape Reduction Act.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, pages 107-114](#).

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(5), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government. This rule in its entirety regulates an activity not regulated by the federal government.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The agency does not anticipate any fiscal impact as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Dr. Scott Leibsle, Deputy Administrator – Division of Animal Industries at (208) 332-8540.

Dated this 3rd day of October, 2019.

Brian Oakey
Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8550
Fax: (208) 334-2710

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.26 – RULES GOVERNING THE PUBLIC EXCHANGE OF LIVESTOCK

DOCKET NO. 02-0426-1901 (NEW CHAPTER, FEE RULE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 25-203, 25-305, 25-401, 25-601, 25-1723, and 25-3520, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

PUBLIC HEARING
Thursday, November 14, 2019 @ 9:00 a.m.
Idaho State Department of Agriculture 2270 Old Penitentiary Road Boise, ID 83712

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Two rules administered by the ISDA are related to the sale, trade, exchange, identification and movement of livestock through public livestock markets, buying stations or trader lots. These rules are IDAPA 02.04.26, “Rules Governing Livestock Marketing,” and IDAPA 02.04.28, “Rules Governing Livestock Dealers, Buying Stations, and Livestock Trader Lots.” Each of these rules addresses regulations pertaining to how livestock must be properly identified, quarantined and have their movement documented when being bought, sold or exchanged. In order to streamline and simplify all rules related to disease prevention, disease surveillance and reporting, the ISDA is proposing to combine both rules into a single rule to be titled “**02.04.26, Rules Governing the Public Exchange of Livestock.**” No substantive changes are being made to the two rules cited above. All rules were reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: No changes were made to the fee already included in the Rules Governing Livestock Marketing now found in the new combined rule, 02.04.26, Rules Governing the Public Exchange of Livestock. These fees are authorized pursuant to Section 25-1724, Idaho Code.

IDAHO CODE SECTION 22-101A STATEMENT: Section 22-101A, Idaho Code, requires that in this notice of proposed rulemaking, the Director must specify whether this rule is broader in scope or more stringent than federal law or regulations, or regulates an activity not regulated by the federal government. This rule contains provisions that are broader in scope than federal regulations. Those specific provisions are as follows:

02.04.26.100-570	Broader in scope
02.04.26.700	Broader in scope
02.04.26.701	Broader in scope
02.04.26.710	Broader in scope
02.04.26.715	Broader in scope

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

The agency does not anticipate any fiscal impact as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted on September 16, 2019. The Notice of Intent to Promulgate Rules – Omnibus Negotiated Rulemaking was published in the September 4, 2019 Idaho Administrative Bulletin, **Vol. 19-9, pages. 15-19.**

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

No documents are incorporated by reference into Subchapter A of this Rule.

The following materials are incorporated by reference into Subchapter B:

1. Code of Federal Regulations, Title 9, Parts 71, 75, 77, 78, 85 and 161, January 1, 2003. Include requirements for the interstate movement of livestock, approval and maintenance of livestock marketing facilities, control of communicable diseases, tuberculosis, brucellosis and pseudorabies, requirements and standards for accredited veterinarians.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dr. Scott Leibsle, Deputy Administrator – Division of Animal Industries at (208) 332-8540. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 27, 2019.

Dated this 3rd day of October, 2019.

Brian Oakey
Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8552
Fax: (208) 334-2710

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0426-1901
(New Chapter)

02.04.26 – RULES GOVERNING THE PUBLIC EXCHANGE OF LIVESTOCK

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 25-203, 25-305, 25-401, 25-601, 25-1723(b), and 25-3520, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is “Rules Governing the Public Exchange of Livestock.” ()

02. Scope. These rules govern the record keeping of livestock dealers and facilities, record keeping, identification, quarantine and movement of livestock through buying stations, trader lots and livestock markets. ()

002. -- 109. (RESERVED)

SUBCHAPTER A – LIVESTOCK DEALERS, BUYING STATIONS, AND LIVESTOCK TRADER LOTS

110. DEFINITIONS.

The definitions apply in the interpretation and enforcement of Subchapter A only. ()

01. Accredited Veterinarian. A veterinarian approved by the Administrator and the USDA/APHIS/VS, in accordance with provisions of Title 9, Part 161, Code of Federal Regulations, to perform functions of State-Federal animal disease control programs. ()

02. Approved Slaughter Establishment. A USDA inspected slaughter establishment where ante-mortem and post-mortem inspection is conducted by USDA inspectors. ()

03. Cattle. All domestic bovidae including domestic bison. ()

04. Domestic Bison. All animals in the genus *Bison* owned by a person. ()

05. Domestic Cervidae. Elk, fallow deer, and reindeer owned by a person. ()

06. Epithelioma of the Eye. A carcinoma of the eye of cattle commonly known as cancer eye. ()

07. Federal Animal Health Official. An employee of USDA/APHIS/VS who is authorized to perform animal health activities. ()

08. Interstate Movement. Movement of livestock from Idaho into any other state, territory or the District of Columbia, or from any other state, territory or the District of Columbia into Idaho. ()

09. Livestock. Cattle, domestic bison, swine, horses, mules, asses, domestic cervidae, sheep, goats, camelids, and ratites. ()

10. Lump Jaw. Condition also known as actinomycosis in cattle. ()

11. Official Ear Tag. APHIS approved identification ear tags conforming to the alphanumeric national uniform ear tagging system including official brucellosis vaccination ear tags, or NAIS compliant ear tags, that provide unique identification for each animal. ()

12. Official Identification. Official USDA approved ear tag, USDA Backtag, breed registration tattoo, or identification method approved by the Administrator. ()

13. Official Brucellosis Vaccination Ear Tag. An APHIS approved identification ear tag conforming to the alphanumeric national uniform ear tagging system that provides unique identification for each animal. ()

14. Operator. The person who has authority to manage or direct a buying station or livestock trader lot. ()

15. Owner. The person who owns or has financial control of a buying station, livestock trader lot or cattle. ()

16. Parturient. Visibly prepared to give birth or within two (2) weeks before giving birth. ()

17. Postparturient. Having already given birth. ()

18. Premises. The ground, area, buildings, corrals, and equipment utilized to keep, hold, or maintain animals. ()

19. Previous Location. The premises where cattle were confined immediately prior to delivery to a buying station, livestock trader lot, or purchase by a livestock dealer. ()

20. Restraint. The confinement of cattle in a chute, or other device, for the purpose of efficiently, effectively, and safely inspecting, treating, vaccinating, or testing. ()

21. State Animal Health Official. The Administrator, or his designee, responsible for disease control and eradication activities. ()

22. Test Eligible. Unless otherwise specifically provided in these rules, all sexually intact cattle and domestic bison eighteen (18) months of age and over, and all parturient, and postparturient cattle and domestic bison regardless of age. ()

23. USDA Backtag. A backtag issued by APHIS that conforms to the eight-character alphanumeric National Backtagging System that provides unique identification for each animal. ()

111. ABBREVIATIONS.

01. APHIS. Animal and Plant Health Inspection Service. ()

02. AVIC. Area Veterinarian In Charge. ()

03. CAFO. Concentrated Animal Feeding Operation. ()

04. CFR. Code of Federal Regulations. ()

05. NAIS. National Animal Identification System. ()

06. USDA. United States Department of Agriculture. ()

07. VS. Veterinary Services. ()

112. -- 119. (RESERVED)

120. APPLICABILITY.

Subchapter A applies to livestock dealers, buying stations, and livestock trader lots operating in Idaho. ()

121. -- 129. (RESERVED)

130. INSPECTIONS.

To prevent the introduction and dissemination, or to control and eradicate diseases, state and federal animal health officials are authorized to inspect livestock records, premises, facilities, and livestock to ensure compliance with the provisions of this chapter and other state or federal laws or rules applicable to livestock dealers, buying stations and livestock trader lots. ()

01. Entering Premises. In order to conduct activities authorized by this chapter, state or federal animal health officials are authorized to enter buying stations or livestock trader lots. State or federal officials will attempt to notify the owner or operator of the premises prior to conducting an inspection. ()

02. Inspecting Records. To ensure compliance with the provisions of this chapter, state or federal animal health officials are authorized to access, inspect, review, and copy any records deemed necessary during normal business hours. State or federal animal health officials will attempt to notify the owner or operator of the premises prior to inspecting records. ()

03. Emergencies. In the event of an emergency, as determined by the Administrator, the notification requirements of this section are not required. ()

131. -- 139. (RESERVED)

140. LIVESTOCK TREATMENT.

Each livestock dealer, buying station and livestock trader lot shall humanely treat all livestock. All non-ambulatory livestock shall be: ()

01. Returned. Returned to premises of origin; or ()

02. Fed and Watered. Provided adequate feed and clean water; or ()

03. Euthanized. Humanely euthanized. ()

141. -- 149. (RESERVED)

150. DEAD ANIMAL DISPOSAL.

The movement and disposal of all dead animals shall be pursuant to the provisions of IDAPA 02.04.17, "Rules Governing Dead Animal Movement and Disposal." ()

151. -- 159. (RESERVED)

160. ENVIRONMENTAL REQUIREMENTS.

All buying stations and livestock trader lots shall meet the provisions of IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations." ()

161. -- 199. (RESERVED)

200. LIVESTOCK DEALERS.

Livestock dealers that do not operate buying stations or livestock trader lots shall keep complete and accurate records such that cattle purchased may be traced to the previous location, previous owner and the subsequent owner. ()

201. -- 209. (RESERVED)

220. CONTENT OF RECORDS.

Livestock dealer records shall include, but are not limited to: ()

01. Name, Telephone Number, and Address. The name, telephone number, and address of the owner of the cattle prior to purchase by the livestock dealer. ()

02. Identification. All cattle shall be identified to their previous location with a form of identification approved by the Administrator. ()

03. Previous Location. The location where cattle were held prior to purchase by the livestock dealer shall be either the NAIS premises identification number or the physical address. ()

04. The Date of Purchase. The date individual cattle were purchased. ()

05. Date of Sale. Date individual cattle were sold or changed ownership. ()

06. Name, Telephone Number, and Address of the Purchaser of Cattle. The name, telephone number, and address of the person that purchased cattle from the livestock dealer. ()

07. Death Loss. An accurate account of all death loss, including identification, and disposition of the dead cattle. ()

221. -- 229. (RESERVED)

230. RECORDS RETENTION.

Livestock dealers shall retain all records relating to cattle for a period of not less than two (2) years. Records must be made available to the administrator upon request. ()

231. -- 239. (RESERVED)

240. APPROVED FORMS OF IDENTIFICATION.

The following are approved forms of identification. ()

01. USDA Approved Backtag. ()

02. Official USDA Ear Tag. ()

03. Registration Tattoo. Breed registration tattoo and corresponding registration papers. ()

04. Brand Inspection. Statement of ownership such as a brand inspection certificate. ()

05. Administrator Approval. The Administrator may approve other forms of individual identification on a case-by-case basis. ()

06. Removal of Animal Identification. No approved or official animal identification shall be removed, tampered with or otherwise altered. ()

241. -- 299. (RESERVED)

300. APPROVED BUYING STATIONS.

No livestock dealer shall operate a buying station prior to receiving approval from the Administrator. All cattle entering the buying station shall be shipped to an approved slaughter establishment within seven (7) days of arrival at the buying station. ()

301. APPLICATION FOR DESIGNATION AS AN IDAHO APPROVED BUYING STATION.

Application for designation as an Idaho approved buying station shall be made on application forms available from the Administrator. ()

302. ADMINISTRATOR APPROVAL.

State or federal animal health officials will inspect all buying stations prior to approval by the Administrator. The Administrator may take any past enforcement or violation history of the owner or operator of the buying station into consideration when making the final approval determination. ()

303. APPROVED BUYING STATION NUMBER.

The license number issued to the livestock dealer by the State Brand Board will be used to identify the approved buying station. ()

304. EXPIRATION OF APPROVED STATUS.

Approved buying station status will remain in effect unless the status is revoked by the Administrator or there is a change in ownership or operator. If there is a change in ownership or operator, it is the responsibility of the new buying station owner or operator to apply for reinstatement of approved status. ()

305. REVOCATION OF APPROVED BUYING STATION STATUS.

In addition to any other Department administrative or civil action, the Administrator may withdraw or deny the approval of any buying station, by notifying the owner in writing, when one (1) or more of the following conditions exist: ()

01. Recordkeeping Requirements. There is evidence that the owner or operator of the buying station violated the recordkeeping requirements of this rule, or animal health regulations. ()

02. Inability to Trace Animals. There is a repeated history of an inability to trace the affected, ()

exposed or reactor cattle handled by the buying station to the previous location and owner. ()

03. Violations. A buying station violates any of the provisions of Subchapter A. ()

04. Owner Request. Owners may have the approved status revoked by emptying the buying station and requesting in writing that the status be revoked. ()

05. Regulation Changes. Idaho approved buying station status may be revoked as required by changes in state or federal rules or regulations. ()

306. DISPOSITION OF CATTLE.

When approved buying station status is revoked, cattle still in the buying station shall be removed directly to an approved slaughter establishment within seven (7) days. ()

307. -- 314. (RESERVED)

315. IDENTIFICATION.

All cattle shall be individually identified with an official USDA backtag immediately upon arrival at a buying station. Animal identification is to be maintained to slaughter and shall not be removed, tampered with or otherwise altered. ()

316. -- 319. (RESERVED)

320. BUYING STATION RECORDS.

Each buying station shall keep sufficient records of all livestock that enter, leave, or die on the premises to enable state or federal animal health officials to trace such animals satisfactorily to their previous location. ()

321. CONTENT OF RECORDS -- BUYING STATIONS.

Buying station records shall include, but are not limited to: ()

01. Name, Telephone Number, and Address. The name, telephone number, and address of: ()

a. The owner of the livestock entering the buying station; and ()

b. The person delivering the livestock to the buying station. ()

02. Individual Identification. Individual USDA Backtag number for each animal entering the buying station. ()

03. Previous Location. The location where cattle were held prior to purchase by the buying station shall be either the NAIS premises identification number or the physical address. ()

04. The Date of Entry. The date individual cattle enter a buying station. ()

05. Date of Shipment to Slaughter. ()

06. Approved Slaughter Establishment Destination. Name and address of the approved slaughter establishment. ()

07. Death Loss. An accurate account of all death loss, including individual identification number and disposition of the dead cattle. ()

08. Dead Animals. An accurate description, including any forms of identification, of any dead animals that are left at the buying station by other persons. ()

322. BUYING STATION RECORDS RETENTION.

All records relating to cattle that have been in the buying station facility shall be retained for a period of not less than

two (2) years. Records must be made available to the administrator upon request. ()

323. -- 329. (RESERVED)

330. CATTLE SUBJECT TO QUARANTINE -- BUYING STATIONS.

No cattle that have reacted to the brucellosis or tuberculosis test, or cattle affected with, or suspected of being affected with a foreign animal disease, shall be allowed to enter, occupy, or be sold from a buying station. ()

331. -- 339. (RESERVED)

340. PREMISES REQUIREMENTS.

An approved buying station shall meet the following requirements: ()

01. Restraint System. A restraint system, approved by the Administrator, for humanely, efficiently and effectively restraining livestock for the purpose of inspecting, identifying or testing of animals by state or federal animal health officials. ()

02. Feed and Water. Provide access to a clean source of water sufficient for the number of animals present, and an adequate quality and quantity of feed for all cattle that are on the premises for over twelve (12) hours. ()

03. Pens. Comply with IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," and pens that contain cattle on the premises for over twelve (12) hours provide adequate pen space for the cattle to rest and ruminate, and provide adequate drainage. ()

04. Fences. Construct fences sufficient to prevent the escape of livestock from the premises, as determined by the Administrator. ()

05. Condition. Maintain premises in good repair. ()

341. -- 349. (RESERVED)

350. SANITATION.

All buying stations shall be maintained in a sanitary condition. The buying station shall provide the necessary equipment to clean and disinfect the premises, and the owner or operator of the buying station shall clean and disinfect the premises at the direction of the Administrator. ()

351. -- 359. (RESERVED)

360. SIGNAGE.

Each buying station shall comply with the following signage requirements: ()

01. Wording. Signs state "ALL CATTLE ENTERING THIS FACILITY SHALL GO DIRECTLY TO SLAUGHTER." ()

02. Color. Lettering in red and not less than four (4) inches in height on a white background. ()

03. Location. Signs placed prominently at each entrance, exit and cattle loading or unloading facility. ()

361. -- 369. (RESERVED)

370. LOCATION OF BUYING STATIONS.

All buying stations shall be located separate and apart from any other cattle handling facilities, as determined by the Administrator, that handle any cattle not destined to slaughter within seven (7) days. ()

371. -- 499. (RESERVED)

500. APPROVED LIVESTOCK TRADER LOTS.

All livestock dealers licensed by the Idaho State Brand Board shall receive approval from the Administrator as an Idaho approved feedlot or approved livestock trader lot if the following conditions exist: ()

01. Cattle Are Received. Cattle of unknown disease status are received from the farm or ranch of origin. ()

02. Sold to Individuals. Brucellosis test eligible cattle are sold and transported to destinations other than an approved slaughter establishment, a specifically approved livestock market, an Idaho approved feedlot, or out of the state of Idaho. ()

501. APPLICATION FOR APPROVED LIVESTOCK TRADER LOT STATUS.

Application for approved livestock trader lot status is made on application forms available from the Administrator. ()

502. ADMINISTRATOR APPROVAL.

The Administrator may approve livestock trader lot applications after state or federal animal health officials have inspected the trader lot facility and: ()

01. Adequate Facilities. The livestock dealer has demonstrated that cattle can be secured and restrained in the facility. ()

02. Adequate Records. The livestock dealer's records are adequate to show the origin and disposition of the cattle that enter the facility. ()

03. Past History. The Administrator may take any past enforcement or violation history of the owner or operator of the livestock trader lot into consideration when making the final approval determination. ()

503. APPROVED LIVESTOCK TRADER LOT NUMBER.

The license number issued by the State Brand Board to livestock dealers shall be used to identify the livestock trader lot. ()

504. EXPIRATION OF APPROVED STATUS.

Approved livestock trader lot status remains in effect unless there is a material change in operation, as determined by the Administrator, or the status is revoked by the Administrator. If there is a material change in operation, as determined by the Administrator, it is the responsibility of the livestock dealer to apply for reinstatement of approved status. ()

505. -- 519. (RESERVED)

520. IDENTIFICATION.

All cattle shall be identified, to their previous location, with a form of identification approved by the Administrator immediately upon arrival at a livestock trader lot. Animal identification is to be maintained and not be removed, tampered with, or otherwise altered at the livestock trader lot. ()

521. APPROVED FORMS OF IDENTIFICATION.

The following are approved forms of individual identification. ()

01. USDA Approved Backtag. All brucellosis test eligible cattle shipped to approved slaughter establishments must be individually identified with an approved USDA Backtag. ()

02. Official USDA Ear Tag. ()

03. Registration Tattoo. A breed registration tattoo accompanied by registration papers. ()

04. Brand Inspection. Statement of ownership such as a brand inspection certificate. ()

05. Administrator Approval. The Administrator may approve other forms of identification on a case-by-case basis. ()

06. Removal of Individual Animal Identification. No approved animal identification shall be removed, tampered with or otherwise altered. ()

522. CONTENT OF RECORDS FOR APPROVED LIVESTOCK TRADER LOTS.

All approved livestock trader lots shall keep accurate and complete records of all cattle that enter, leave or die on the premises. These records shall readily show: ()

01. Name, Telephone Number, and Address. The name, telephone number, and address of: ()

a. The owner of the cattle prior to acquisition by the livestock dealer; and ()

b. The person delivering the cattle to the livestock trader lot. ()

02. Identification. Identification, approved by the Administrator, for the cattle entering the livestock trader lot. ()

03. Previous Location. The location where cattle were held prior to entering the livestock trader lot shall be either the NAIS premises identification number or the physical address of the premises. ()

04. The Date of Entry. The date the cattle enter a livestock trader lot. ()

05. Date of Shipment Out of the Livestock Trader Lot. ()

06. Name, Telephone Number, and Address of Shipment Destination. ()

07. Death Loss. An accurate account of all death loss, including identification and disposition of the dead cattle. ()

08. Dead Animals. An accurate description of any dead animals, including any forms of identification, that are left at the livestock trader lot by other persons. ()

09. Requirements. That all applicable state and federal permit, test, examination, identification and vaccination requirements have been met. ()

523. TRADER LOT RECORDS RETENTION.

Livestock trader lots shall retain their records for a period of not less than two (2) years following removal of the cattle from the premises. Records must be made available to the administrator upon request. ()

524 -- 529. (RESERVED)

530. CATTLE SUBJECT TO QUARANTINE -- TRADER LOTS.

No cattle that have reacted to the brucellosis or tuberculosis test, or animals affected with, or suspected of being affected with a foreign animal or reportable disease shall be allowed to enter, occupy, or be sold from a livestock trader lot. ()

531. -- 539. (RESERVED)

540. REMOVAL REQUIREMENTS.

All brucellosis test eligible cattle that are removed from an approved livestock trader lot shall be accompanied by a certificate of veterinary inspection issued by an accredited veterinarian prior to removal, except: ()

01. Livestock Markets. Cattle shipped directly to a specifically approved livestock market. ()

02. Slaughter. Cattle shipped directly to an approved slaughter establishment must be individually identified with an approved USDA Backtag. ()

03. Approved Feedlots. Cattle shipped directly to an Idaho approved feedlot. ()

541. LIVESTOCK DEALER'S DUTY.

It is the duty of a livestock dealer to ensure that all livestock removed from a livestock trader lot are in compliance with the animal health requirements of the state of Idaho and the point of destination. ()

542. -- 549. (RESERVED)

550. LIVESTOCK TRADER LOT PREMISES.

Approved livestock trader lots shall meet the following requirements: ()

01. Restraint System. A restraint system, approved by the Administrator, for humanely, efficiently and effectively restraining cattle for the purpose of inspecting, identifying, treating or testing of animals by state or federal animal health officials. ()

02. Feed and Water. Provide access to a clean source of water sufficient for the number of cattle present, and an adequate quality and quantity of feed for all cattle on the premises for over twelve (12) hours. ()

03. Pens. Comply with IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," and pens that contain cattle on the premises for over twelve (12) hours provide adequate pen space for the cattle to rest and ruminate and be adequately drained. ()

04. Fences. Construct fences sufficient to prevent the escape of cattle from the premises, as determined by the Administrator. ()

05. Condition. Maintain premises in good repair. ()

551. -- 559. (RESERVED)

560. SANITATION.

All livestock trader lots shall be maintained in a sanitary manner. The livestock dealer shall provide the necessary equipment to clean and disinfect the premises, and the livestock dealer shall clean and disinfect the premises at the direction of the Administrator. ()

561. -- 569. (RESERVED)

570. REVOCATION OF APPROVED STATUS.

In addition to any other Department administrative or civil action, the Administrator may withdraw or deny the approval of any livestock trader lot by notifying the dealer in writing when one or more of the following conditions exist: ()

01. Recordkeeping Requirements. There is evidence that the livestock dealer violated the recordkeeping requirements of this rule or animal health regulations. ()

02. Inability to Trace Animals. There is a repeated history of inability to trace to the affected, exposed, or reactor cattle that enter the livestock trader lot to the previous location and owner. ()

03. Violations. A livestock dealer violates any of the provisions of Subchapter A. ()

04. Dealer Request. The livestock dealer may have the approved status revoked by emptying the livestock trader lot and requesting in writing that the status be revoked. ()

05. Regulation Changes. Approved trader lot status may be revoked as required by changes in state or federal rules or regulations. ()

571. -- 603. (RESERVED)

SUBCHAPTER B – LIVESTOCK MARKETING

604. INCORPORATION BY REFERENCE.

The following document is incorporated by reference into Subchapter B, sections 604-770 only: ()

01. Incorporated Documents. The following documents are incorporated by reference: Code of Federal Regulations, Title 9, Parts 71, 75, 77, 78, 85, and 161, CFR, January 1, 2003, which can be viewed online at <https://www.govinfo.gov/content/pkg/CFR-2003-title9-vol1/pdf/CFR-2003-title9-vol1-chapI.pdf>. ()

605. -- 609. (RESERVED)

610. DEFINITIONS.

In addition to the definitions found in Idaho Code sections 25-239 and 25-1721, the following definitions apply in the interpretation and enforcement of Subchapter B only: ()

01. Accredited Veterinarian. A veterinarian approved by the Administrator and the USDA/APHIS/VS, in accordance with the provisions of Title 9, Part 161, Code of Federal Regulations, to perform functions of State-Federal animal disease control programs. ()

02. Approved Slaughter Establishment. A USDA inspected slaughter establishment where ante-mortem and post-mortem inspections are conducted by USDA inspectors. ()

03. Brucellosis. An infectious disease of animals and humans caused by bacteria of the genus *Brucella*. ()

04. Cattle. All domestic bovidae, including domestic bison. ()

05. Domestic Bison. All animals in the genus *Bison* owned by a person. ()

06. Domestic Cervidae. Elk, fallow deer, and reindeer owned by a person. ()

07. Epithelioma of the Eye. Carcinoma of the eye of cattle commonly known as cancer eye. ()

08. Federal Animal Health Official. An employee of USDA/APHIS/VS who is authorized to perform animal health activities. ()

09. Herd. Any group of livestock maintained on common ground, or two (2) or more groups of livestock under common ownership or supervision that are geographically separated from other groups but can have an interchange or movement without regard to health status. ()

10. Interstate Movement. Movements of livestock from Idaho into any other state, territory or the District of Columbia or from any other state, territory or the District of Columbia into Idaho. ()

11. Livestock. Cattle, domestic bison, swine, horses, mules, asses, domestic cervidae, sheep, goats, camelids, and ratites. ()

12. Lump Jaw. A condition known as actinomycosis or actinobacillosis in cattle. ()

13. Official Ear Tag. An APHIS approved identification ear tag conforming to an alphanumeric national uniform ear tagging system, that provides unique identification for each animal. ()

14. Official Individual Identification. Official USDA approved ear tag, USDA back tag, registration tattoo, or identification approved by the Administrator. ()

15. Official Vaccination Ear Tag. An APHIS approved identification ear tag conforming to the alphanumeric national uniform ear tagging system that provides unique identification for each animal. ()

16. Operator. The person who has authority to manage or direct a public livestock market. ()

17. Owner. The person who owns or has financial control of a public livestock market. ()

18. Restraint. The confinement of livestock in a chute, or other device, for the purpose of efficiently, effectively, and safely inspecting, treating, vaccinating, or testing. ()

19. State Animal Health Official. The Administrator, or his designee, responsible for disease control and eradication activities. ()

20. Tuberculosis. An infectious disease of humans and animals caused by *Mycobacterium bovis*. ()

21. USDA Back Tag. A back tag issued by APHIS that conforms to the eight (8) character alphanumeric National Back Tagging System and that provides unique identification for each animal. ()

611. -- 619. (RESERVED)

620. APPLICABILITY.
This subchapter of rules applies to chartered public livestock markets operating in Idaho. ()

621. -- 629. (RESERVED)

630. INSPECTIONS.
To prevent the introduction and dissemination, or to control and eradicate diseases, state and federal animal health officials are authorized to inspect livestock records, premises, facilities, and livestock to ensure compliance with the provisions of Subchapter B and other state or federal laws or rules applicable to public livestock markets. ()

01. Entering Premises. In order to conduct activities authorized by Subchapter B, state or federal animal health officials are authorized to enter public livestock market premises during normal business hours. ()

02. Inspecting Records. To ensure compliance with the provisions of Subchapter B, state or federal animal health officials are authorized, during normal business hours, to have access to, inspect, review, and copy any livestock records deemed necessary. ()

631. -- 639. (RESERVED)

640. LIVESTOCK TREATMENT.
Each public livestock market shall humanely treat all livestock. All non-ambulatory livestock shall be: ()

01. Returned. Returned to the owner; or ()

02. Feed and Water. Provided adequate feed and clean water; or ()

03. Euthanized. Humanely euthanized, and disposed of in accordance with IDAPA 02.04.17 "Rules Governing Dead Animal Movement and Disposal." ()

641. -- 649. (RESERVED)

650. DEAD ANIMAL DISPOSAL.
The movement and disposal of all dead animals shall be pursuant to the provisions of IDAPA 02.04.17 "Rules Governing Dead Animal Movement and Disposal." ()

651. -- 659. (RESERVED)

660. ENVIRONMENTAL REQUIREMENTS.

All public livestock markets shall meet the provisions of IDAPA 02.04.15 "Rules Governing Beef Cattle Animal Feeding Operations." ()

661. -- 699. (RESERVED)

700. PUBLIC LIVESTOCK MARKET CHARTER.

No person shall conduct or operate a public livestock market without first securing a charter from the Department. Charters expire on April 30 of each year. It is the responsibility of the public livestock market operator to apply each year for charter renewal on a form prescribed by the Department. The charter renewal form must be accompanied by an annual market charter fee of one hundred dollars (\$100) and be received by the Department on or before May 1 of each year. ()

701. PUBLIC LIVESTOCK MARKET MINIMUM SALE REQUIREMENT.

Each chartered public livestock market shall conduct a minimum of one (1) sale during each calendar year. ()

702. -- 709. (RESERVED)

710. MARKET RELEASE.

Prior to any livestock being released from a public livestock market, the following conditions shall be fulfilled: ()

01. Veterinary Inspection. A visual inspection, of each animal, made by an accredited veterinarian authorized to provide veterinary services to the market. ()

02. Affected Animals. Immediate isolation of animals affected by any infectious or contagious disease in quarantine pens subject to the market's bio-security protocol or any animals determined to be affected by any infectious or contagious disease. ()

03. Removal of Animals. Animals may not be removed from the livestock market until all animals determined to be affected with a contagious or infectious disease have been examined by an accredited veterinarian authorized to provide veterinary services to the market. ()

04. Saleyard Release Form. Complete an accurate and legible "saleyard release" form, certificate of veterinary inspection, or other market release mechanism, approved by the Administrator certifying that the animals meet the health requirements for movement to the point of destination. ()

711. -- 714. (RESERVED)

715. BIO-SECURITY PLAN.

All public livestock markets shall submit a bio-security plan to the Administrator for approval. All approved bio-security plans shall be implemented by the public livestock market. Each bio-security plan includes, but is not limited to, the following elements: ()

01. Identification. Procedures for identifying animals that are affected by any contagious or infectious disease. ()

02. Diagnosis. Procedures for examination and diagnosis, by an accredited veterinarian, of any animals affected by any contagious or infectious disease. ()

03. Disposition. Procedures for the disposition of any livestock diagnosed as affected by any contagious or infectious disease. ()

04. Records. Keep complete and accurate records on site at the livestock market, showing that the market's bio-security plan is being implemented. ()

716. -- 719. (RESERVED)

720. IDENTIFICATION.

All livestock entering a public livestock market shall be individually identified to the herd of origin. ()

721. APPROVED FORMS OF IDENTIFICATION.

The following are approved methods of identification. ()

01. Back Tag. USDA approved back tag; or ()

02. Ear Tag. Official USDA ear tag; or ()

03. Registration Tattoo; or ()

04. Brand Inspection. Statement of ownership such as a brand inspection certificate. ()

05. Administrator Approval. The Administrator may approve other forms of identification on a case by case basis. ()

06. Removal of Identification. No animal identification may be intentionally removed, tampered with, or otherwise altered, except as approved by the Administrator. ()

722. -- 729. (RESERVED)

730. QUARANTINE PENS.

A quarantine pen or pens shall be provided at all public livestock markets and such pens used only to hold animals that have reacted to the brucellosis or tuberculosis test or animals affected with, or suspected of being affected with a contagious or infectious disease, epithelioma of the eye, or lump jaw. The pens shall comply with the following requirements: ()

01. Hard Surface. Hard surfaced with concrete or similar impervious material in good repair; and ()

02. Feed and Water. Adequate feed and clean water facilities that are completely separate from all other livestock; and ()

03. Signage. Identified with the word "QUARANTINE" in red letters, not less than four (4) inches high, on a white background on the pen gate; and ()

04. Cleaning and Disinfection. Cleaned and disinfected no later than the day following date of sale; and ()

05. Fence Construction. Solid fences, constructed by boards or other material approved by the Administrator, and be a minimum of five and one-half (5 ½) feet high; and ()

06. Drainage. Drainage shall not be onto adjoining pens, restraint facilities or alleys. ()

731. -- 749. (RESERVED)

750. RESTRAINT FACILITIES.

Each public livestock market shall have a restraint system, approved by the Administrator, for humanely, efficiently, and effectively restraining livestock for the purpose of inspecting, identifying, treating, or testing of animals by state or federal animal health officials. ()

751. -- 759. (RESERVED)

760. SANITARY CONDITIONS.

All pens, alleys, troughs, restraint facilities, and runways shall be kept in a sanitary condition. Operators of public livestock markets shall clean and disinfect livestock market facilities, under the supervision of a state or federal animal health official, upon request by the Administrator. ()

761. -- 769. (RESERVED)

770. RECORDS.

Each public livestock market shall keep sufficient records of animals presented for sale to enable state or federal animal health officials to trace such animals satisfactorily to their herd of origin, and such records shall be maintained for a minimum of five (5) years. ()

771. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.30 – RULES GOVERNING ENVIRONMENTAL AND NUTRIENT MANAGEMENT

DOCKET NO. 02-0430-1903 (NEW CHAPTER)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 67-6529F, 37-401, 37-405, 22-4903, 25-4012(2), 37-603(1), 25-3802, and 22-110, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

PUBLIC HEARING

Thursday, November 14, 2019 @ 9:00 a.m.

**Idaho State Department of Agriculture
2270 Old Penitentiary Road
Boise, ID 83712**

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Four rules administered by the ISDA are related to general environmental issues associated with agricultural and livestock facilities. These rules are IDAPA 02.04.16, “Rules Governing Agriculture Odor Management,” IDAPA 02.04.18, “Rules Governing CAFO Site Advisory Team,” IDAPA 02.04.30, “Rules Governing Nutrient Management,” and IDAPA 02.04.31, “Rules Governing Stockpiling of Agricultural Waste.” These rules address the inspection of regulated facilities, regulation of odor, waste stockpiling, nutrient management, and CAFO site approval for regulated facilities and the various environmental factors associated with each. In order to streamline and simplify all rules related to general environmental regulations on agriculture and livestock facilities, the ISDA is proposing to combine all four rules into a single rule titled “**02.04.30, Rules Governing Environmental and Nutrient Management.**” No substantive changes are being made to the four rules cited above. All rules were reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: This rule does not impose a fee or charge.

IDAHO CODE SECTION 22-101A STATEMENT: Section 22-101A, Idaho Code, requires that in this notice of proposed rulemaking, the Director must specify whether this rule is broader in scope or more stringent than federal law or regulations, or regulates an activity not regulated by the federal government. This Rule, in its entirety, regulates an activity not regulated by the federal government.

02.04.30.000-999	The entirety of this rule regulates an activity not regulated by the federal government
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FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

The agency does not anticipate any fiscal impact as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted on September 16, 2019. The Notice of Intent to Promulgate Rules – Omnibus Negotiated Rulemaking was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, pages 15-19](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

1. The 1999 publication by United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590 outlines standards for managing the amount, source, placement, form and timing of the application of nutrients and soil amendments to agricultural fields.
2. The 2001 Best Management Practices listed in the “Idaho Agricultural Pollution Abatement Plan” are recommendations for the control of nonpoint sources of pollution from agriculture that may benefit facilities generating significant odor.
3. The November 1997 publication of the “ASAE Standard EP379.2”, Sections 5 and 6 in their entirety, are construction guidelines for structures built to contain and store nutrients and byproduct.
4. The 2001 NRCS Conservation Practice Standard 317 are guidelines to facilitate an aerobic microbial ecosystem for the decomposition of manure and/or other organic material into a final product that is stable for storage, on farm use and application to land as a soil amendment.
5. The August 1997 University of Idaho, Soil Sampling Bulletin 704 (revised) are requirements and practices for certified soil samplers to accurately collect, process and submit soil for nutrient testing from fields that have receive land applied nutrients.
6. The 2007 publication by United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590 outlines standards for managing the amount, source, placement, form and timing of the application of nutrients and soil amendments to agricultural fields.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dr. Scott Leibsle, Deputy Administrator – Division of Animal Industries at (208) 332-8540.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 27, 2019.

Dated this 3rd day of October, 2019.

Brian Oakey, Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8552
Fax: (208) 334-2710

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0430-1903
(New Chapter)

02.04.30 – RULES GOVERNING ENVIRONMENTAL AND NUTRIENT MANAGEMENT

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 22-110, 22-4903, 25-3802, 25-4012(2), 37-401(1), 37-405, 37-603(1), 67-6529F(4), Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.04.16, “Rules Governing Environmental and Nutrient Management.” ()

02. Scope. This rule governs the certification process for soil samplers and nutrient management planners, the process for collecting and handling soil samples, the contents of a request to form a CAFO Site Advisory Team, formation of a CAFO Site Advisory Team, development of a site suitability determination, submission of the suitability determination to the appropriate county officials, the management of odor generated on agricultural operations, except beef cattle animal feeding operations and large swine and poultry operations and the stockpiling of agricultural waste at agricultural operations to safeguard and protect animals, man, and the environment. ()

002. -- 103. (RESERVED)

SUBCHAPTER A – NUTRIENT MANAGEMENT

104. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into Subchapter A, Sections 104-203 only: ()

01. August 1997 University of Idaho, Soil Sampling Bulletin 704 (revised). This document can be viewed online at <http://www.extension.uidaho.edu/publishing/pdf/EXT/EXT0704.pdf>. ()

02. Nutrient Management Standard (NMS). ()

a. The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient_Management_code_590.pdf. ()

b. The 2007 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/10/june_2007_NRCS_590.pdf. ()

105. -- 109. (RESERVED)

110. DEFINITIONS.

In addition to the definitions found in Sections 22-4904, 25-4002, and 37-604, Idaho Code, the following definitions apply in the interpretation and enforcement of Subchapter A, Sections 104-203 only: ()

01. Certified Soil Sampler. A person who has completed a Department approved soil sampler certification program and has received written certification from the Department. ()

02. Nutrient Management Plan. A plan prepared in conformance with the Nutrient Management Standard for managing the amount, source, placement, form, and timing of the land application of nutrients and soil amendments for plant production. ()

03. Nutrient Management Standard. For dairies and beef cattle animal feeding operations, the Nutrient Management Standard is the 1999 publication by the United States Department of Agriculture Natural Resources Conservation Service Conservation Practice Standard, Nutrient Management Code 590 or other standard approved by the Director. For poultry concentrated animal feeding operations, the Nutrient Management Standard is the 2007 publication by the United States Department of Agriculture Natural Resources Conservation Service Conservation Practice Standard, Nutrient Management Code 590 or other standard approved by the director. ()

04. Operation(s). Animal feeding operation(s). ()

05. Representative Soil Sample. A representative soil sample is a soil sample obtained as outlined by the August 1997 University of Idaho, Soil Sampling Bulletin 704 (revised) or other equivalent method as approved by the Department. ()

06. Resource Concerns. Surface water runoff that leaves the operation from normal storm events, rain or snow, frozen ground or irrigation; and ground water concerns on the operation from a high water table, fractured bedrock, cobbles, gravel, coarse textured soils or other environmental considerations such as tile drains or shallow soils that are conducive for the downward movement of water and associated nutrients. ()

111. ABBREVIATIONS.

The following abbreviations apply in the interpretation and enforcement of Subchapter A, Sections 104-203 only:

01. CNMP. Certified Nutrient Management Planner. ()

02. CSS. Certified Soil Sampler. ()

03. NMP. Nutrient Management Plan. ()

04. NMS. Nutrient Management Standard. ()

05. NRCS. United States Department of Agriculture, Natural Resources Conservation Service. ()

06. SSB. August 1997 University of Idaho Soil Sampling Bulletin 704 (revised). ()

07. USDA. United States Department of Agriculture. ()

112. -- 119. (RESERVED)

120. APPLICABILITY.

These rules apply to nutrient management on the following operations: ()

01. Dairies. All Manufactured Grade and Grade A dairies located in Idaho licensed to sell milk for human consumption, pursuant to Title 37, Chapter 6, Idaho Code. ()

02. Beef Cattle Animal Feeding Operations. All beef cattle animal feeding operations in Idaho required to implement a NMP pursuant to Title 22, Chapter 49 Idaho Code. ()

03. Poultry Concentrated Animal Feeding Operations. All poultry operations required to implement an NMP pursuant to Title 25, Chapter 40, Idaho Code. ()

121. -- 129. (RESERVED)

130. NUTRIENT MANAGEMENT PLANS.

All NMPs required by IDAPA 02.04.14, "Rules Governing Dairy Byproduct," IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," and IDAPA 02.04.32, "Rules Governing Poultry Operations," must be written by nutrient management planners who have been certified by the Department. ()

131. -- 139. (RESERVED)

140. NUTRIENT MANAGEMENT PLANNER CERTIFICATION.

All persons who develop NMPs must be certified through the Department Certification Program. ()

01. Certification. The Nutrient Management Planner Certification will be valid unless revoked by the Department. ()

02. Development. Any person may develop an NMP for his own operation provided the person possesses a valid Nutrient Management Planner Certification issued by the Department. ()

03. Continuing Education. The Department may require a CNMP to complete periodic continuing education training to retain certification. ()

141. REVOCATION OF NUTRIENT MANAGEMENT PLANNER CERTIFICATION.

CNMP Certification may be revoked by the Department if the CNMP: ()

01. Submits Inaccurate Information. Submits NMPs that contain falsified or materially inaccurate information. ()

02. Fails to Submit Plans. Fails to submit an NMP to the ISDA within thirty (30) days after being paid by a producer. ()

03. Fails to Follow Provisions. Fails to meet any requirement in Subchapter A of this rule. ()

142. -- 149. (RESERVED)

150. SOIL SAMPLES.

Dairies, beef cattle operations, and poultry operations implementing nutrient management plans pursuant to IDAPA 02.04.14, "Rules Governing Dairy Byproduct," IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," and IDAPA 02.04.32, "Rules Governing Poultry Operations," must have soil samples collected each year from all fields owned or operated by the dairy, beef, or poultry operation to which livestock waste, manure, or process wastewater from the operation was land applied. In addition, a poultry operation must have soil samples collected each year from all fields owned or operated by the poultry operation to which soil amendments from the operation were land applied. ()

151. SOIL SAMPLE COLLECTION.

01. CSS. All soil samples collected pursuant to this chapter must be collected by a CSS. ()

02. Representative Samples. All soil samples collected by a CSS must be representative samples pursuant to the provisions of the SSB. ()

03. Sampling Depth. The soil samples shall be obtained from depths outlined in each operation's NMP unless soil survey data or site specific situations warrant alternative sampling depths. ()

04. Alternative Sampling Depths. If the CSS determines that an alternative sampling depth is necessary due to resource concerns, the CSS must indicate such deviation in sampling depths on soil samples and laboratory soil sample submission forms. ()

152. SOIL SAMPLE SUBMISSION.

All soil samples collected pursuant to this chapter must be appropriately handled to protect the integrity of the sample and submitted to an approved laboratory by the CSS who collected the soil sample. ()

153. -- 159. (RESERVED)

160. APPROVED LABORATORIES.

Only laboratories that hold a current valid certification from the North American Laboratory Proficiency Testing Program or equivalent method approved by the Department are approved laboratories for the purposes of this chapter. ()

161. RECORDS OF NUTRIENT ANALYSIS.

Owners or operators of facilities who are required to implement NMPs pursuant to IDAPA 02.04.14, "Rules Governing Dairy Byproduct," IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," and IDAPA 02.04.32, "Rules Governing Poultry Operations," must retain records of nutrient analysis for a minimum of five (5) years. ()

01. Complete Records. Records must be complete, readily available, and identified to the fields listed in the facility's NMP. ()

02. Available to the Director. Records must be made available to the director for inspection and copying upon request. ()

162. -- 169. (RESERVED)

170. SOIL SAMPLER CERTIFICATION.

All persons who collect soil samples pursuant to Subchapter A must be certified through the Department Certification Program. ()

01. Certification. The Soil Sampler Certification will be valid unless revoked by the Department. ()

02. Sampling. Any person may sample their own operation as outlined in Subchapter A of these rules provided the person possesses a valid Soil Sampler Certification issued by the Department. ()

03. Continuing Education. The Department may require CSS to complete continuing education training to ensure compliance within the provisions of this chapter. ()

171. REVOCATION OF SOIL SAMPLER CERTIFICATION.

Soil Sampler Certification is subject to revocation by the Department if the Certified Soil Sampler fails to meet the soil sampling criteria set forth in Subchapter A. ()

172. -- 179. (RESERVED)

180. PENALTIES.

Any person violating any of the provisions of Subchapter A may be subject to the penalty provisions of Title 22, Chapter 1 and 49, Title 37, Chapter 4 and 6, and Title 25, Chapter 40, Idaho Code. ()

01. Monetary Penalties. The imposition or computation of monetary penalties shall take into account the seriousness of the violation, good faith efforts to comply with the law, the economic impact of the penalty on the violator and such other matters as justice requires. ()

02. Minor Violations. The Director may issue suitable warnings or other administrative actions for minor violations. ()

181. -- 203. (RESERVED)

SUBCHAPTER B – CAFO SITE ADVISORY TEAM

204. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into Subchapter B, Sections 204-303: ()

01. Nutrient Management Standard (NMS). ()

a. The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient_Management_code_590.pdf. ()

b. The 2007 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/10/june_2007_NRCS_590.pdf. ()

210. DEFINITIONS.

In addition to the definitions found in Section 67-6529C, Idaho Code, the following definitions apply in the interpretation and enforcement of Subchapter B, Sections 204-303: ()

01. Best Management Practices. Practices, techniques, or measures that are determined by the Department to be a cost-effective and practicable means of preventing or reducing pollutants from point or non-point sources from entering waters of the state and managing odor generated on an agriculture operation to a level associated with accepted agriculture practices. ()

02. Land Application. The spreading on, or incorporation into the soil of agricultural by-products such as manure, process wastewater, compost, cull potatoes, cull onions, or crop residues into the soil primarily for beneficial purposes. ()

03. Nutrient Management Plan. A plan prepared in conformance with the nutrient management standard. ()

04. Nutrient Management Standard. For dairies and beef cattle animal feeding operations, the 1999 publication by the United States Department of Agriculture Natural Resources Conservation Service, Conservation Practice Standard, Nutrient Management Code 590, or other equally protective standard approved by the Director. For poultry concentrated animal feeding operations, the 2007 publication by the United States Department of Agriculture Natural Resources Conservation Practice Standard, Nutrient Management Code 590, or other equally protective standard approved by the Director. ()

05. Odor Management Plan. A site-specific plan approved by the Director to manage odor from a CAFO to a level associated with accepted agricultural practices by utilizing best management practices. ()

211. ABBREVIATIONS.

The following abbreviations apply in the interpretation and enforcement of Subchapter B, Sections 204-303: ()

01. BMP. Best Management Practices. ()

02. CAFO. Concentrated Animal Feeding Operation. ()

03. DEQ. Idaho Department of Environmental Quality. ()

04. FEMA. Federal Emergency Management Agency ()

05. IDWR. Idaho Department of Water Resources. ()

06. NRCS. The United States Department of Agriculture, Natural Resources Conservation Service. ()

- ()
- 07. NMP. Nutrient Management Plan. ()
- 08. OMP. Odor Management Plan. ()
- 09. USGS. United States Geological Survey. ()

212. -- 219. (RESERVED)

220. APPLICABILITY.

01. Site for a Proposed CAFO. A CAFO site advisory team shall review and make a site suitability determination for all proposed CAFO sites, as defined in Subchapter B of these rules, submitted by a board of county commissioners pursuant to Subchapter B. ()

02. Sites That Do not Meet the Definition of a CAFO. The Director may form a CAFO site advisory team, as requested by a board of county commissioners, for a site that does not meet the animal numbers in the definition of a CAFO provided that: ()

a. The county demonstrates that the site is in an environmentally sensitive area or is in close proximity to streams, lakes, or other bodies of surface water; or ()

b. The state agencies have personnel and other resources available to conduct the site suitability determination. ()

221. -- 229. (RESERVED)

230. FORMATION OF A SITE ADVISORY TEAM.

A board of county commissioners may request the formation of a CAFO site advisory team to provide a site suitability determination by submitting to the Director a written request supported by the adoption of a resolution by the county. ()

01. Designation of the Team Leader. Upon receipt of a request to form a site advisory team, the Director shall designate a team leader. ()

02. Notification of Team Members. The team leader shall provide a copy of the request to form a site advisory team to DEQ and IDWR. After receiving notification, DEQ and IDWR shall notify the Team Leader of their respective representatives to the team. ()

240. CAFO SITE ADVISORY TEAMS

01. Site for a Proposed CAFO. A CAFO site advisory team shall review and make a site suitability determination for all proposed CAFO sites, as defined in Subchapter B, submitted by a board of county commissioners pursuant to this Subchapter. ()

02. Sites That Do not Meet the Definition of a CAFO. The Director may form a CAFO site advisory team, as requested by a board of county commissioners, for a site that does not meet the animal numbers in the definition of a CAFO provided that: ()

a. The county demonstrates that the site is in an environmentally sensitive area or is in close proximity to streams, lakes, or other bodies of surface water; or ()

b. The state agencies have personnel and other resources available to conduct the site suitability determination. ()

241. FORMATION OF A SITE ADVISORY TEAM.

A board of county commissioners may request the formation of a CAFO site advisory team to provide a site suitability determination by submitting to the Director a written request supported by the adoption of a resolution by the county. ()

01. Designation of the Team Leader. Upon receipt of a request to form a site advisory team, the Director will designate a team leader. ()

02. Notification of Team Members. The team leader will provide a copy of the request to form a site advisory team to DEQ and IDWR. After receiving notification, DEQ and IDWR will notify the Team Leader of their respective representatives to the team. ()

242. CONTENTS OF A REQUEST TO FORM A SITE ADVISORY TEAM.
The information contained in a request includes, but is not limited to, the following: ()

01. County Definition of CAFO. The county’s definition of “CAFO” as set forth in any applicable county ordinance. ()

02. Legal Description and Address. Legal description and address of the proposed CAFO. ()

03. One-Time Unit Capacity. The one-time animal capacity of the proposed CAFO. ()

04. Type of Animals. The type of animals to be confined at the proposed CAFO. ()

05. Water Right Information. All requests shall include one (1) of the following: ()

a. Evidence that a valid water right exists to supply adequate water for the operation of the proposed CAFO; or ()

b. A copy of an application for a permit to appropriate water that has been filed with IDWR, that if approved, will supply adequate water for operation of the proposed CAFO; or ()

c. A copy of an application to change the point of diversion, place, period, and nature of use of an existing water right that has been filed with IDWR, that if approved, will supply adequate water for the operation of the proposed CAFO. ()

06. Vicinity Map with Site Location. A detailed sketch of the proposed CAFO site location, on an aerial photograph if available, that includes the following: ()

a. Building locations; ()

b. Waste storage facilities and general areas for any land application including a narrative description of the waste system; ()

c. FEMA flood zones or other appropriate flood data for the proposed CAFO site and land application sites owned or leased by the applicant; ()

d. Private and community domestic water wells, irrigation wells, existing monitoring wells, and existing injection wells as documented by IDWR or other sources, including the associated well logs if available, that are within a one (1) mile radius of the proposed CAFO; ()

e. Irrigation canals, irrigation laterals, rivers, streams, springs, lakes, reservoirs, and designated wetlands, that are within a one (1) mile radius of the proposed CAFO. ()

07. Site Characterization. A characterization of the proposed CAFO site and any land application sites owned or leased by the applicant, that includes the following information, if available: ()

a. Annual precipitation and prevailing wind direction as contained in the Idaho Waste Management

- Guidelines, 1997; ()
- b.** Soil characteristics from NRCS; ()
 - c.** Hydrologic characteristics from IDWR and USGS including:
 - i. Depth to first water yielding zone and first encountered water; ()
 - ii. Direction of ground water movement and gradient; ()
 - iii. Sources and estimates of recharge; ()
 - iv. Seasonal variations in water level and recharge characteristics; ()
 - v. Susceptibility to contamination; and ()
 - vi. Relation of ground water to surface water. ()
 - d.** Water quality data from DEQ, the Department, IDWR, or USGS, including:
 - i. Microorganisms; ()
 - ii. Nutrients; and ()
 - iii. Pharmaceuticals and organic compounds. ()
- 08. Required OMPs or NMPs.** Any OMPs or NMPs that are required by the county to be submitted by the applicant at the time of application. ()

243. -- 249. (RESERVED)

250. REVIEW OF REQUEST.

Team members review the information provided in the request for the formation of a site advisory team to determine if it includes the required elements of Section 242. ()

01. Insufficient Information. If the team determines that the information provided by the county does not include the required elements of Section 242, the team leader will contact the county and request additional information. ()

02. Sufficient Information. When the team has determined that the information submitted by the county contains the required elements of Section 242, the team leader schedules an onsite review of the information with the team members. The team leader informs the county requesting the formation of the site advisory team of the date and time of the onsite review and the county may have a representative present. ()

251. -- 259. (RESERVED)

260. SITE SUITABILITY DETERMINATION.

Within thirty (30) days of receiving a request for the formation of a CAFO site advisory team that includes the required elements of Section 242, the team develops and submits to the county a site suitability determination, based on the elements of Section 242 or other relevant information, that contains: ()

01. Risk Category. A determination of an environmental risk category: high, moderate; low; or insufficient information to make a determination; ()

02. Description of Factors. A description of the factors that contribute to the environmental risks; ()

- 03. Mitigation.** Any possible mitigation of the environmental risks. ()
- 261. -- 303. (RESERVED)**

SUBCHAPTER C – AGRICULTURE ODOR MANAGEMENT

- 304. INCORPORATION BY REFERENCE.**
The following documents are incorporated by reference into Subchapter C, Sections 304-409 only: ()
- 01. Idaho NRCS Nutrient Management Standard 590, June 1999.** ()
- 02. Best Management Practices listed in the “Idaho Agricultural Pollution Abatement Plan,” August 2001.** ()
- 03. ASAE Standard EP379.2 Sections 5 and 6 in their entirety, November 1997.** ()
- 04. NRCS Conservation Practice Standard 317, March 2001.** ()
- 305. -- 309. (RESERVED)**

- 310. DEFINITIONS.**
In addition to the definitions found in Section 25-3803, Idaho Code, the following definitions apply in the interpretation and enforcement of Subchapter C, Sections 304-409: ()
- 01. Animal.** Livestock and agricultural animals. ()
- 02. BAT.** The best application of science that is accessible and obtainable to achieve a desired objective. ()
- 03. Beef Cattle.** All cattle except those located on a dairy farm that have been permitted by the Idaho State Department of Agriculture pursuant to IDAPA 02.04.14, “Rules Governing Dairy Byproduct.” ()
- 04. Beef Cattle Animal Feeding Operation.** Those operations regulated pursuant to IDAPA 02.04.15, “Rules Governing Beef Cattle Animal Feeding Operations.” ()
- 05. Compost.** A biologically stable material derived from the biological decomposition of organic matter. ()
- 06. Composting.** The aerobic degradation of manure and other organic material to a biologically stable form. ()
- 07. Land Application.** The spreading on, or incorporation into the soil of agricultural by-products including, but not limited to, manure, wastewater, compost, cull potatoes, cull onions, or crop residues. ()
- 08. Large Swine And Poultry Operations.** Those swine operations regulated pursuant to IDAPA 58.01.09, “Rules Regulating Swine Facilities,” and those poultry operations regulated pursuant to IDAPA 02.04.32, “Rules Governing Poultry Operations.” ()
- 09. Liquid-Solid Separation.** The removal of solid manure from water through mechanical or settling means. ()
- 10. Waste Collection and Conveyance Systems.** The areas and systems used in the collection and transfer of manure from the point of generation to the wastewater storage and containment facilities, prior to land application. ()
- 11. Wastewater Treatment.** A process by which wastewater is treated through aerobic or anaerobic

degradation or other means. ()

311. ABBREVIATIONS.

The following abbreviations apply in the interpretation and enforcement of Subchapter C, Sections 304-409: ()

- 01. ASAE.** American Society of Agricultural Engineers. ()
- 02. BAT.** Best Available Technology. ()
- 03. BMP.** Best Management Practice. ()
- 04. DEQ.** Idaho Department of Environmental Quality. ()
- 05. NMP.** Nutrient Management Plan. ()
- 06. NOV.** Notice Of Violation. ()
- 07. NRCS.** The United States Department of Agriculture, Natural Resources Conservation Service. ()
- 08. OMP.** Odor Management Plan. ()

312. -- 319. (RESERVED)

320. ACCEPTED AGRICULTURAL PRACTICES.

Management practices conducted in accordance with applicable laws, rules and best management practices, as referenced in Subsections 320.01 and 320.02, or in the absence of referenced best management practices, management practices conducted in a manner that demonstrates reasonable efforts to minimize odors, are considered accepted agricultural practices for purposes of Subchapter C. ()

- 01. Applicable Rules.** The following are applicable rules for the purpose of Section 320: ()
 - a.** IDAPA 02.04.14, "Rules Governing Dairy Byproduct." ()
 - b.** IDAPA 02.03.03, "Rules Governing Pesticide and Chemigation Use and Application." ()
 - c.** IDAPA 02.06.17, "Rules Concerning Disposal of Cull Onion and Potatoes." ()
 - d.** IDAPA 02.04.17, "Rules Governing Dead Animal Movement and Disposal." ()
- 02. Applicable Best Management Practices.** The following practices, or other management practices approved by the Director that are conducted in a manner that demonstrates reasonable efforts to minimize odors are considered accepted agricultural practices for purposes of this rule. ()
 - a.** Idaho NRCS Nutrient Management Standard 590, June 1999. ()
 - b.** Best Management Practices listed in the "Idaho Agricultural Pollution Abatement Plan," August 2001. ()
 - c.** "Control of Manure Odors," ASAE Standard EP379.2 Sections 5 and 6 in their entirety, November 1997. ()
 - d.** "Composting Facility," NRCS Conservation Practice Standard 317, March 2001. ()
- 03. Excess Odors.** An agricultural operation using an accepted agricultural practice that generates odors in excess of levels normally associated with such practice, as determined by the Department on a site specific basis, shall develop and submit an odor management plan to the Director in accordance with Section 340. ()

321. -- 329. (RESERVED)

330. APPLICABILITY.

Subchapter C applies to all agricultural operations, except: ()

01. Beef Cattle. Beef cattle animal feeding operations regulated pursuant to IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations." ()

02. Swine and Poultry. Large swine operations regulated pursuant to IDAPA 58.01.09, "Rules Regulating Swine Facilities," and large poultry operations regulated pursuant to IDAPA 02.04.32, "Rules Governing Poultry Operations." ()

331. -- 319. (RESERVED)

320. LIQUID WASTE SYSTEMS.

No person shall begin construction of a new or modified liquid waste system prior to approval of such system by the Director. ()

01. Department Review. The Director may order the construction to cease if the construction of a new or modified liquid waste system has commenced prior to the Director's approval. In doing so, the Director will consider a review and assessment of such systems made by Department staff. ()

02. Design Requirements. All new or modified liquid waste systems shall be designed by licensed professional engineers, approved in writing by the Director, and constructed in accordance with standards and specifications approved by the Director for management of odors. ()

a. If construction is commenced prior to the Director's written approval, the Director may order construction activities to be ceased. ()

b. Material deviations from the approved plans and specifications are not allowed without the prior written approval of the director. ()

c. Within thirty (30) days of completion of construction, alteration or modification of any new or modified liquid waste system, complete and accurate plans and specifications depicting the actual construction, alteration, or modification performed must be submitted by the operator to the Director. ()

d. If construction does not materially deviate from the plans approved by the Director, a statement to that effect shall be filed by the agricultural operation with the Director. ()

321. STANDARDS AND SPECIFICATIONS FOR LIQUID WASTE SYSTEMS.

All new or modified liquid waste systems shall be designed and constructed in accordance with applicable laws and rules, and for the purpose of managing odors. The Director shall require techniques and management practices as standards and specifications of liquid waste systems for the management of odors. These techniques and management practices may include but are not be limited to the following: ()

01. Wastewater Storage and Containment Facilities: ()

a. Liquid-solid separation. ()

b. Wastewater treatment. ()

c. Use of chemical or biological additives. ()

d. Dilution of wastewater. ()

e. Impermeable or permeable storage covers. ()

- f. Biofilters. ()
- g. Enhancing dispersion. ()
- h. Location of wastewater discharge into storage and containment facilities. ()
- 02. Wastewater Collection and Conveyance Systems.** ()
- a. Wastewater Treatment. ()
- b. Use of chemical or biological additives. ()
- c. Dilution of wastewater. ()
- d. Impermeable or permeable covers of collection areas. ()
- e. Timing of collection and conveyance system operation. ()
- f. Frequency and duration of collection and conveyance system operation. ()
- g. Enhancing dispersion. ()

322. -- 329. (RESERVED)

330. INSPECTIONS.

The Director or Director's designee is authorized to enter and inspect any agricultural operation, and during normal business hours have access to or copy any facility records deemed necessary to ensure compliance with Subchapter C of these rules. ()

01. Notification of County Commissioners. Prior to conducting an inspection, the Department will notify the board of county commissioners for the county in which the agricultural operation is located and the board of county commissioners may have a designee accompany the department during the inspection. ()

331. -- 339. (RESERVED)

340. ODOR MANAGEMENT PLANS.

OMPs shall be designed to work in conjunction with any required NMP and shall be submitted to the Director in writing, and upon approval by the Director, signed by owner or operator of the agricultural operation. ()

01. OMP Development. Within sixty (60) days of receiving a NOV for a first time violation, the owner or operator of the agriculture operation receiving the NOV shall submit to the Director an OMP for approval. ()

02. Interim Measures. The Department will work with the owner or operator of an agriculture operation that has received a NOV for a first time violation to identify interim measures that can be implemented in a timely manner to begin the process of reducing odors while the OMP is being developed. ()

03. Department Approval. The Director will approve, reject, or request additional information within thirty (30) days of receiving an OMP from the owner or operator of an agricultural operation deemed to have committed a first time violation and provide to the owner or operator of the agricultural operation the approval, rejection, or request for additional information in writing. ()

a. If the Director rejects an OMP or requests additional information, the owner or operator of the agricultural operation shall submit to the Director the additional information or a rewritten OMP that address the reasons for the rejection within thirty (30) days of receiving written notification from the Director. ()

b. Within fifteen (15) days of receiving the additional information or a rewritten OMP, the Director will approve or reject the OMP. If the OMP is rejected, the Director may issue a subsequent violation under Section 351 and assess the penalty provisions specified in Subchapter C, Section 350 and Section 25-3808, Idaho Code. ()

c. The Director may, on a case by case basis, grant extensions to the deadlines contained in Section 340. ()

04. Implementation. OMPs shall be implemented as approved by the Director. ()

05. Review of OMP. The Department will review OMPs no less than annually for three (3) years after the Director approves the OMP. If the Department determines an approved OMP has not reduced odors to a level associated with accepted agricultural practices after a reasonable period of time, as determined by the Department, the Department will review the OMP with the owner or operator of the agricultural operation and adjust the OMP to meet the goals of the Agriculture Odor Management Act. ()

341. CONTENTS OF AN ODOR MANAGEMENT PLAN.

Contents of an OMP for an agricultural operation may include, but are not limited to the following: ()

01. Owner's Name. Name and telephone number of the owner of the operation. ()

02. Address. Physical address of the operation. ()

03. Location. County in which the operation is located. ()

04. Operation Description. A description of the operation that includes, as applicable: ()

a. Type of operation. ()

b. General description of operation. ()

c. Number and type of any animals including age groups. ()

d. Any plans for expansion. ()

e. Type of housing used related to age groups of animals. ()

f. General description of nearby residential areas, public use areas, and pertinent agricultural operations. ()

g. Type of crop and number of acres grown. ()

05. Scaled Vicinity Map. A map that shall include all residences, public use areas, roads, general topography of the area, and other pertinent agricultural operations within a two (2) mile radius of the facility. ()

06. Manure Management System. A detailed description of the present manure handling systems including timing, frequency, duration, volumes, dimensions, and flow rates where applicable for the following: ()

a. Manure cleaning systems. ()

b. Manure transfer systems. ()

c. Manure separation systems. ()

07. Scaled Site Plan. A site plan showing all buildings, housing facilities, waste/manure storage areas, piping, feed storage areas, and roadways. ()

08. Land Application System. A detailed description of the present management practices and methods used to make land application including: ()

- a. Timing, frequency, and duration of practices. ()
- b. Proximity of land application sites to residential and public use areas. ()

09. Climatic Data. A description of the typical climatic conditions for a minimum period of two (2) years that exist in the geographical area of the operation or have been recorded on-site for the operation including: ()

- a. Wind Speed and direction(s). ()
- b. Temperature range. ()
- c. Relative humidity range. ()
- d. Precipitation data. ()

10. Facility Odor Sources. A list of all primary odor sources located on the operation with a general ranking of low, moderate, or high with respect to overall odor production along with an explanation of why it is listed as a source and the reasoning for the overall ranking. ()

11. Tiered Implementation. A three-tier process shall be used to reduce odor production from the facility with each tier containing a list of the primary BMPs and BATs that are going to be implemented by the facility. For each tier BMP and BAT listed, the plan shall include, but not be limited to: ()

- a. Process of how the BMP or BAT will be designed or managed. ()
- b. Implementation schedule that defines when the BMP or BAT will be implemented on the facility and justification for why this time frame was chosen. ()
- c. Monitoring program that will be implemented to evaluate the effectiveness of the BMP or BAT, with quantitative or qualitative reduction goals. ()

12. Public Involvement. This section shall describe how the public in the area of the facility will be involved in the implementation or evaluation of the OMP. ()

13. Timeframe for Review of OMP. A designated period of time when each tier of the plan will be evaluated to determine if further implementation is necessary, how each tier will be evaluated, which Department staff will conduct the review, and a period of time in which the agricultural operation will attain full compliance with the plan. ()

342. -- 349. (RESERVED)

350. FIRST TIME VIOLATIONS.

If the Department determines that an agricultural operation is generating odors in excess of levels of odors normally associated with accepted agricultural practices, the agricultural operations shall be deemed to have committed a first time violation of Subchapter C. The Department shall require agricultural operations deemed to have committed a first time violation to cooperate with the Department to develop and submit to the Director for approval an OMP. ()

351. SUBSEQUENT VIOLATIONS.

Agricultural operations have committed a subsequent violation if the operation is determined to have committed a subsequent violation within three (3) years, has failed to comply with a required OMP, or the Department determines that the owner or operator of the agriculture operation has not cooperated with the Department by failing to submit an

OMP that meets Department approval requirements. ()

352. EXCEPTIONS.

Events contemplated in Idaho Code Section 25-3805(7) are not considered violations of this subchapter. Idaho Code Section 25-3805 is applicable whether or not an agricultural operation is required to have an OMP. ()

353. -- 409. (RESERVED)

SUBCHAPTER D – STOCKPILING OF AGRICULTURAL WASTE

410. DEFINITIONS.

The following definitions apply in the interpretation and enforcement of Subchapter D, Sections 410-999: ()

01. Agricultural Operation. Facilities that generate or receive and stockpile agricultural waste and that are not regulated under IDAPA 02.04.14, “Rules Governing Dairy Byproduct,” or IDAPA 02.04.15, “Rules Governing Beef Cattle Animal Feeding Operations.” ()

02. Agricultural Waste. Agricultural waste means livestock waste. ()

03. Duration. The length of time agricultural waste is stockpiled. ()

04. Dwelling. The house, residence, abode, or other structure where a person lives. ()

05. Livestock. Bovidae, suidae, equidae, captive cervidae, camelidae, ratitidae, gallinaceous birds, and captive waterfowl. ()

06. Livestock Waste. Manure that may also contain bedding, spilled feed, feathers, water, or soil. It also includes wastes not particularly associated with manure, such as milking center or washing wastes, milk, feed leachate, or livestock carcasses or parts thereof. ()

07. Non-Compliance. A practice or facility condition that does not comply with Section 22-110, Idaho Code, or the provisions of these rules. ()

08. Public Highway. All highways open to public use in the state, whether maintained by the state or by any county, highway district, city, or other political subdivision. ()

09. Responsible Party. A person who generates or receives and stockpiles agricultural waste on property the person owns, leases, or otherwise has permission to use as a stockpile site. ()

10. Setbacks for a Stockpile Site. The distance from a stockpile site to a location identified in Section 420 of Subchapter D. ()

11. Stockpile Staging Site. A physical area where stockpiling occurs for a duration of no longer than thirty (30) days. ()

12. Stockpile Site. A physical location where agricultural waste is stockpiled for a duration of more than thirty (30) days and that stockpiles more than fifty (50) cubic yards of agricultural waste. ()

13. Stockpiling. The accumulation of agricultural waste on an agricultural operation. ()

14. Surface Waters of the State. All accumulations of surface water, natural and artificial, public and private, or parts thereof that are wholly or partially within, that flow through or border upon the state. ()

411. -- 419. (RESERVED)

420. SETBACKS FOR STOCKPILE SITES.

Stockpile sites at agricultural operations must meet the following setback requirements. ()

01. Setback Distances. Stockpile sites shall maintain the following setbacks: ()

a. Three hundred (300) feet from a non-responsible party's dwelling. ()

b. Five hundred (500) feet from a hospital, church, or school. ()

c. One hundred (100) feet from a domestic or irrigation well. ()

d. One hundred (100) feet from surface waters of the State. ()

e. Fifty (50) feet from a public highway. ()

02. Responsible Party's Dwellings. Stockpile sites do not have setbacks from a responsible party's dwelling or dwellings owned by the responsible party. ()

03. Stockpile Staging Sites. Stockpile staging sites are not subject to the setbacks set forth in Subchapter D. ()

421. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.32 – RULES GOVERNING POULTRY OPERATIONS

DOCKET NO. 02-0432-1901

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 25-4012, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending fee rule and a statement of any change between the text of the proposed rule and the text of the pending fee rule with an explanation of the reasons for the change:

This pending fee rule adopts a previously approved and codified chapter under IDAPA 02, rules of the Idaho State Department of Agriculture. The Rules Governing Poultry Operations establish standards for the storage, management and application of nutrients from commercial poultry facilities. This rule was reviewed for amendment or repeal of select sections to comply with the Red Tape Reduction Act.

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, pages 115-127](#).

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(5), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government. That information is as follows:

02.04.32.100	Broader in scope
02.04.32.110	Broader in scope
02.04.32.120	Broader in scope
02.04.32.130	Broader in scope
02.04.32.140	Broader in scope
02.04.32.150	Broader in scope
02.04.32.160	Broader in scope
02.04.32.170	Broader in scope
02.04.32.250	Broader in scope
02.04.32.251	Broader in scope
02.04.32.252	Broader in scope
02.04.32.253	Broader in scope
02.04.32.260	Broader in scope
02.04.32.300	Broader in scope
02.04.32.310	Broader in scope
02.04.32.400	Broader in scope
02.04.32.500	Broader in scope
02.04.32.550	Broader in scope

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

An annual fee or assessment for each permittee of no more than three cents (\$0.03) per square foot of containment area.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The agency does not anticipate any fiscal impact as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Dr. Scott Leibsle, Deputy Administrator – Division of Animal Industries at (208) 332-8540.

Dated this 3rd day of October, 2019.

Brian Oakey
Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8550
Fax: (208) 334-2710

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.06.01 – RULES GOVERNING THE PRODUCTION AND DISTRIBUTION OF SEED

DOCKET NO. 02-0601-1901 (NEW CHAPTER, FEE RULE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 22-108(2), 22-418(4), 22-418(11), 22-2004, and 22-2006, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

PUBLIC HEARING

Thursday, November 14, 2019 @ 9:00 a.m.

Idaho State Department of Agriculture
2270 Old Penitentiary Road
Boise, ID 83712

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: Three rules administered by the ISDA are related to the regulation of seed production. These rules are IDAPA 02.06.01, “Rules Governing the Pure Seed Law,” and IDAPA 02.06.13, “Rules Relating to Rapeseed Production and Establishment of Rapeseed Districts in the State of Idaho,” and IDAPA 02.06.14, “Rules Governing Bluegrass.” The rules were promulgated to carry out the requirements described in Title 22, Chapters 1, 4, and 20, Idaho Code. In order to streamline and simplify rules related to seed production, the ISDA has decided to combine all three rules into a single rule to be titled “*02.06.01, Rules Governing the Production and Distribution of Seed.*” No substantive change are being made to the rules cited above. All rules were reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Fees included in the original rules have not been changed in the new combined rule. Fees associated with these rules are imposed pursuant to Sections 22-108 and 22-2006, Idaho Code.

IDAHO CODE SECTION 22-101A STATEMENT: Section 22-101A, Idaho Code, requires that in this notice of proposed rulemaking, the Director must specify whether this rule is broader in scope or more stringent than federal law or regulations, or regulates an activity not regulated by the federal government. This Rule, in its entirety, regulates an activity not regulated by the federal government.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no change in fiscal impact as a result of this consolidation rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted on September 18, 2019. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, Page 15-19](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: This section is not applicable because there are no materials incorporated by reference into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd Knight, (208) 332-8664.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 27, 2019.

Dated this 3rd day of October, 2019.

Brian Oakey
Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8552
Fax: (208) 334-2710

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0601-1901
(New Chapter)

02.06.01 – RULES GOVERNING THE PRODUCTION AND DISTRIBUTION OF SEED

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 22-108(2), 22-418(4), 22-418(11), 22-2004 and 22-2006, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is “Rules Governing the Production and Distribution of Seed.” ()

02. Scope. These rules govern procedures for sale or distribution of seed in Idaho, including rapeseed and bluegrass. These rules will also establish seed service testing fees for purity, germination, tetrazolium and special tests. ()

002. -- 109. (RESERVED)

SUBCHAPTER A – PURE SEED

110. DEFINITIONS.

In addition to the definitions set forth in Section 22-414, Idaho Code, the definition in Section 110 apply to the interpretation and enforcement of Subchapter A only: ()

01. Condition. “Condition” means drying, cleaning, scarifying and other operations that could change the purity or germination of the seed and require the seed lot to be retested to determine the label information. ()

111. (RESERVED)

112. METHODS OF SAMPLING -- GENERAL PROCEDURE.

01. Sample. In order to secure a representative sample, equal portions are taken from evenly distributed parts of the quantity of seed or screenings to be sampled with access to all parts of that quantity. When more than one (1) trierful of seed is drawn from a bag, different paths will be followed. When more than one (1) handful is taken from a bag, the handfuls will be taken from well-separated points. ()

02. Free Flowing Seed. For free-flowing seed in bags or bulk, a probe or trier is used. For small free-flowing seed in bags a probe or trier long enough to sample all portions of the bag is used. ()

03. Non-Free Flowing Seed. Non-free-flowing seed, such as certain grass seed, uncleaned seed or screenings difficult to sample with a probe or trier, is sampled by thrusting the hand into the bulk and withdrawing representative portions. The hand is inserted in an open position and the fingers are held closely together while the hand is being inserted and the portion withdrawn. ()

04. Composite Samples. Composite samples will be obtained to determine the quality of a lot of seed (i.e., percentages of pure seed, other crop seed, weed seed, inert matter and germination). Individual bag samples may be obtained to determine if the lot of seed is uniform. ()

a. To determine if there is an obvious lack of uniformity of seed from which a composite sample is being obtained, each portion will be examined and the portions then combined to form a composite sample or samples. ()

b. If the lot is found not to be uniform when obtaining a composite sample to determine its quality then additional individual bag samples are taken for the purpose of testing for uniformity. ()

c. Such individual bag samples may also be taken for the purpose of testing for uniformity even though a composite sample has not previously been obtained. The identity of each individual bag sample must be maintained. ()

05. Bulk. Bulk seed or screenings are sampled by inserting a long probe or thrusting the hand into the bulk, as circumstances require, in at least seven (7) uniformly distributed parts of the quantity being sampled. At least as many trierfuls or handfuls are taken as the minimum that would be required for the same quantity of seed or screenings in bags of a size customarily used for such seed or screenings. ()

06. Bags. ()

a. For lots of six (6) bags or less, each bag will be sampled with a total of at least five (5) trierfuls taken. ()

b. For lots of more than six (6) bags, five (5) bags plus at least ten percent (10%) of the number of bags in the lots will be sampled. (Round off numbers with decimals to the nearest whole number, raising five tenths (.5) to the next whole number.) Regardless of the lot size it is not necessary that more than thirty (30) bags be sampled. ()

c. Samples are drawn from unopened bags except under circumstances where the identity of the seed has been preserved. ()

07. Packets. In sampling seed in packets, entire unopened packets are taken. ()

08. Size of Sample. ()

a. For composite sample to test for quality, the following are minimum weights for samples of seed to be submitted for analysis, test or examination ()

i. Two (2) ounces (approximately fifty five (55) grams) of grass seed not otherwise mentioned, white or alsike clover, or seeds not larger than these. ()

- ii. Five (5) ounces (approximately one hundred fifty (150) grams) of red or crimson clover, alfalfa, lespedezas, ryegrasses, bromegrasses, millet, flax, rape, or seeds of similar size. ()
 - iii. One (1) pound of Sudangrass, sorghum, proso, hemp seed, or seeds of similar size. ()
 - iv. Two (2) pounds (approximately one thousand (1,000) grams) of cereals, vetches, or seeds of similar or larger size. ()
 - b. For individual bag samples to test for uniformity. ()
 - i. The size of any individual bag sample to determine uniformity in a lot of seed is not less than the quantities set out in the “Rules and Regulations, under the Federal Seed Act” (53 Statute 1275) (Subsection 201.46). ()
 - ii. If the sample drawn is larger than desired, it is thoroughly mixed before it is divided to the desired size. ()
- 09. Forwarding and Receipt of Official Samples.** Before being forwarded for analysis test or examination, the containers of official samples shall be properly sealed and identified with the containers of official samples initialed and dated and the sample weighed by the person who breaks the seals. ()

113. -- 119. (RESERVED)

120. GERMINATION STANDARDS FOR VEGETABLE SEEDS.
 Includes hard seed.

	Percent
Artichoke	60
Asparagus	70
Asparagusbean	75
Bean, garden	70
Bean, lima	70
Bean, runner	75
Beet	65
Broadbean	75
Broccoli	75
Brussels sprouts	70
Burdock, great	60
Cabbage	75
Cabbage, tronchuda	75
Cantaloupe (See muskmelon)	
Cardoon	60
Carrot	55
Cauliflower	75

	Percent
Eggplant	60
Endive	70
Kale	75
Kale, Chinese	75
Kohlrabi	75
Leek	60
Lettuce	80
Muskmelon	75
Mustard, India	75
Mustard, spinach	75
Okra	50
Onion	70
Onion, Welsh	70
Pak-choi	75
Parsley	60
Parsnip	60
Pea	80

	Percent
Celeriac	55
Celery	55
Chard, Swiss	65
Chicory	65
Chinese Cabbage	75
Chives	50
Citron	65
Collards	80
Corn, sweet	75
Cornsalad	70
Cowpea	75
Cress, garden	75
Cress, upland	60
Cress, water	40
Cucumber	80
Dandelion	60

	Percent
Pepper	55
Pumpkin	75
Radish	75
Rhubarb	60
Rutabaga	75
Salsify	75
Sorrel	65
Soybean	75
Spinach	60
Spinach, New Zealand	40
Squash	75
Tomato	75
Tomato, husk	50
Turnip	80
Watermelon	70

()

121. -- 129. (RESERVED)

130. GERMINATION STANDARDS FOR FLOWER SEEDS.

The kinds of flower seeds listed below are those for which standard testing procedures have been prescribed by the Association of Official Seed Analysts (AOSA) and that are required by the labeling provisions of Section 22-415, Idaho Code. The percentage listed opposite each kind is the germination standard for that kind. For the kinds marked with an asterisk, the percentage is arrived at by totaling the percent germination and percent hard seed. ()

01. Table 1.

Kind	Percent
Achillea (The Pearl) - <i>Achillea ptarmica</i>	50
African Daisy - <i>Dimorphotheca aurantiaca</i>	55
African Violet - <i>Saintpaulia</i> spp.	30
Ageratum - <i>Ageratum mexicanum</i>	60
Agrostemma (rose champion) - <i>Agrostemma coronaria</i>	65
Alyssum - <i>Alyssum campactum</i> , <i>A. maritimum</i> , <i>A. procumbens</i> , <i>A. saxatile</i>	60
Amaranthus - <i>Amaranthus</i> spp.	65
Anagalis (pimpernel) - <i>Anagalis arvensis</i> , <i>Anagalis coerulea</i> , <i>Anagalis grandiflora</i>	60

Kind	Percent
Anemone - <i>Anemone coronaria</i> , <i>A. pulsatilla</i>	55
Angel's Trumpet - <i>Datura arborea</i>	60
Arabis - <i>Arabis alpina</i>	60
Arctotis (African lilac daisy) - <i>Arctotis grandis</i>	45
Armeria - <i>Armeria formosa</i>	55
Asparagus, fern - <i>Asparagus plumosus</i>	50
Asparagus, sprenger - <i>Asparagus sprengeri</i>	55
Aster, China - <i>Callistephus chinensis</i> ; except Pompon, Powderpuff, and Princess types	55
Aster, China - <i>Callistephus chinensis</i> ; Pompon, Powderpuff, and Princess types	50
Aubretia - <i>Aubretia deltoides</i>	45
Baby Smilax - <i>Asparagus asparagoides</i>	25
Balsam - <i>Impatiens balsamina</i>	70
Begonia - <i>Begonia fibrous rooted</i>	60
Begonia - <i>Begonia tuberous rooted</i>	50
Bells of Ireland - <i>Molucella laevis</i>	60
Brachycome (swan river daisy) - <i>Brachycome iberidifolia</i>	60
Browallia - <i>Browallia elata</i> and <i>B. speciosa</i>	65
Buphthalmum (sunwheel) - <i>Buphthalmum salicifolium</i>	60
Calceolaria - <i>Calceolaria</i> spp.	60
Calendula - <i>Calendula officinalis</i>	65
California Poppy - <i>Eschscholtzia californica</i>	60
Calliopsis - <i>Coreopsis bicolor</i> , <i>C. drummondii</i> , <i>C. elegans</i>	65
Campanula: Canterbury Bells - <i>Campanula medium</i>	60
Cup and Saucer Bellflower - <i>Campanula medium calycanthemata</i>	60
Carpathian Bellflower - <i>Campanula carpatica</i>	50
Peach Bellflower - <i>Campanula persicifolia</i>	50
Candytuft, Annual - <i>Iberis amara</i> , <i>I. umbellata</i>	65
Candytuft, Perennial - <i>Iberis gibraltarica</i> , <i>I. sempervirens</i>	55
*Castor Bean - <i>Ricinus communis</i>	60
Cathedral Bells - <i>Cobaea scandens</i>	65
Celosia - <i>Celosia argentea</i>	65

Kind	Percent
Centaurea: Basket Flower - <i>Centaurea americana</i> , Cornflower - <i>C. cyanus</i> , Dusty Miller - <i>C. candidissima</i> , Royal Centaurea - <i>C. imperialis</i> , Sweet Sultan - <i>C. moschata</i> , Velvet Centaurea - <i>C. gymnocarpa</i>	60
Cerastium (snow-in-summer) - <i>Cerastium biebersteini</i> and <i>C. tomentosum</i>	65
Chinese Forget-me-not - <i>Cynoglossum amabile</i>	55
Chrysanthemum, Annual - <i>Chrysanthemum carinatum</i> , <i>C. coronarium</i> , <i>C. segetum</i>	40
Cineraria - <i>Senecio cruentus</i>	60
Clarkia - <i>Clarkia elegans</i>	65
Cleome - <i>Cleome gigantea</i>	65
Coleus - <i>Coleus blumei</i>	65
Columbine - <i>Aquilegia</i> spp.	50
Coral Bells - <i>Heuchera sanguinea</i>	55
Coreopsis, Perennial - <i>Coreopsis lanceolata</i>	40
Corn, ornamental - <i>Zea mays</i>	75
Cosmos: Sensation, Mammoth and Crested types - <i>Cosmos bipinnatus</i> ; Klondyke type - <i>C. sulphureus</i>	65
Crossandra - (<i>Crossandra infundibuliformis</i>)	50
Dahlia - <i>Dahlia</i> spp.	55
Daylily - <i>Hemerocallis</i> spp.	45
Delphinium, Perennial: Belladonna and Bellamosum types; Cardinal Larkspur - <i>Delphinium cardinale</i> ; Chinensis types; Pacific Giant, Gold Medal and other hybrids of <i>D. elatum</i>	55
Dianthus: Carnation - <i>Dianthus caryophyllus</i> China Pinks - <i>Dianthus chinensis</i> , <i>heddewigi</i> , <i>heddensis</i> Grass Pinks - <i>Dianthus plumarius</i> Maiden Pinks - <i>Dianthus deltoides</i> Sweet William - <i>Dianthus barbatus</i> Sweet Wivelsfield - <i>Dianthus allwoodi</i>	60 70 60 60 70 60
Didiscus - (blue lace flower) - <i>Didiscus coerulea</i>	65
Doronicum (leopard's bane) - <i>Doronicum caucasicum</i>	60
Dracaena - <i>Dracaena indivisa</i>	55

Kind	Percent
Dragon Tree - <i>Dracaena draco</i>	40
English Daisy - <i>Bellis perennis</i>	55
Flax - Golden flax (<i>Linum flavum</i>); Flowering flax <i>L. grandiflorum</i> ; Perennial flax, <i>L. perenne</i>	60
Flowering Maple - <i>Abutilon</i> spp.	35
Foxglove - <i>Digitalis</i> spp.	60
Gaillardia, Annual - <i>Gaillardia pulchella</i> ; <i>G. picta</i> ; Perennial - <i>G. grandiflora</i>	45
Gerbera (transvaal daisy) - <i>Gerbera jamesoni</i>	60
Geum - <i>Geum</i> spp.	55
Gilia - <i>Gilia</i> spp.	65
Gloriosa daisy (<i>rudbeckia</i>) - <i>Echinacea purpurea</i> and <i>Rudbeckia hirta</i>	60
Gloxinia - (<i>Sinningia speciosa</i>)	40
Godetia - <i>Godetia amoena</i> , <i>G. grandiflora</i>	65
Gourds: Yellow Flowered - <i>Cucurbita pepo</i> ; White Flowered - <i>Lagenaria siceraria</i> ; Dishcloth - <i>Luffa cylindrica</i>	70
Gypsophila: Annual Baby's Breath - <i>Gypsophila elegans</i> ; Perennial Baby's Breath - <i>G. paniculata</i> , <i>G. pacifica</i> , <i>G. repens</i>	70
Helenium - <i>Helenium autumnale</i>	40
Helichrysum - <i>Helichrysum monstrosum</i>	60
Heliopsis - <i>Heliopsis scabra</i>	55
Heliotrope - <i>Heliotropium</i> spp.	35
Helipterum (<i>Acroclinium</i>) - <i>Helipterum roseum</i>	60
Hesperis (sweet rocket) - <i>Hesperis matronalis</i>	65
*Hollyhock - <i>Althea rosea</i>	65
Hunnemania (Mexican tulip poppy) - <i>Hunnemania fumariaefolia</i>	60
*Hyacinth bean - <i>Dolichos lablab</i>	70
Impatiens - <i>Impatiens holstii</i> , <i>I. sultani</i>	55
*Ipomea - Cypress Vine - <i>Ipomea quamoclit</i> ; Moonflower - <i>I. noctiflora</i> ; Morning Glories, Cardinal Climber, Hearts and Honey Vine - <i>Ipomea</i> spp.	75

Kind	Percent
Jerusalem cross (maltese cross) - <i>Lychnis chalcedonica</i>	70
Job's Tears - <i>Coix lacrymajobi</i>	70
Kochia - <i>Kochia childsii</i>	55
Larkspur, Annual - <i>Delphinium ajacis</i>	60
Lantana - <i>Lantana camara</i> , <i>L. hybrida</i>	35
Lilium (regal lily) - <i>Lilium regale</i>	50
Linaria - <i>Linaria</i> spp.	65
Lobelia, Annual - <i>Lobelia erinus</i>	65
Lunaria, Annual - <i>Lunaria annua</i>	65
*Lupine - <i>Lupinus</i> spp.	65
Marigold - <i>Tagetes</i> spp.	65
Marvel of Peru - <i>Mirabilis jalapa</i>	60
Matricaria (feverfew) - <i>Matricaria</i> spp.	60
Mignonette - <i>Reseda odorata</i>	55
Myosotis - <i>Myosotis alpestris</i> , <i>M. oblongata</i> , <i>M. palustris</i>	50
Nasturtium - <i>Tropaeolum</i> spp.	60
Nemesia - <i>Nemesia</i> spp.	65
Nemophila - <i>Nemophila insignis</i>	70
Nemophila, spotted - <i>Nemophila maculata</i>	60
Nicotiana - <i>Nicotiana affinis</i> , <i>N. sanderae</i> , <i>N. sylvestris</i>	65
Nierembergia - <i>Nierembergia</i> spp.	55
Nigella - <i>Nigella damascena</i>	55
Pansy - <i>Viola tricolor</i>	60
Penstemon - <i>Penstemon barbatus</i> , <i>P. grandiflorus</i> , <i>P. laevigatus</i> , <i>P. pubescens</i>	60
Petunia - <i>Petunia</i> spp.	45
Phacelia - <i>Phacelia campanularia</i> , <i>P. minor</i> , <i>P. tanacetifolia</i>	65
Phlox, Annual - <i>Phlox drummondii</i> all types and varieties	55
Physalis - <i>Physalis</i> spp.	60
Platycodon (balloon flower) - <i>Platycodon grandiflorum</i>	60
Plumbago, cape - <i>Plumbago capensis</i>	50
Ponytail - <i>Beaucarnea recurvata</i>	40

Kind	Percent
Poppy: Shirley Poppy - <i>Papaver rhoeas</i> ; Iceland Poppy - <i>P. nudicaule</i> ; Oriental Poppy - <i>P. orientale</i> ; Tulip Poppy - <i>P. glaucum</i>	60
Portulace - <i>Portulace grandiflora</i>	55
Primula (Primrose) - <i>Primula</i> spp.	50
Pyrethrum (painted daisy) - <i>Pyrethrum coccineum</i>	60
Salpiglossis - <i>Salpiglossis gloxinaeflora</i> , <i>S. sinuata</i>	60
Salvia: Scarlet Sage - <i>Salvia splendens</i> ; Mealycup Sage (blue bedder) - <i>Salvia farinacea</i>	50
Saponaria - <i>Saponaria ocymoides</i> , <i>S. vaccaria</i>	60
Scabiosa, Annual - <i>Scabiosa atropurpurea</i>	50
Scabiosa, Perennial - <i>Scabiosa caucasica</i>	40
Schizanthus - <i>Schizanthus</i> spp.	60
*Sensitive plant (mimosa) - <i>Mimosa pudica</i>	65
Shasta Daisy - <i>Chrysanthemum maximum</i> , <i>C. leucanthemum</i>	65
Silk Oak - <i>Grevillea robusta</i>	25
Snapdragon - <i>Antirrhinum</i> spp.	55
Solanum - <i>Solanum</i> spp.	60
Statice - <i>Statice sinuata</i> , <i>S. suworonii</i> (flower heads)	50
Stocks: Common - <i>Mathiola incana</i> ; Evening Scented - <i>Mathiola bicornis</i>	65
Sunflower - <i>Helianthus</i> spp.	70
Sunrose - <i>Helianthemum</i> spp.	30
*Sweet Pea, Annual and Perennial other than dwarf bush - <i>Lathyrus odoratus</i> , <i>L. latifolius</i>	75
*Sweet Pea, dwarf bush - <i>Lathyrus odoratus</i>	65
Tahoka daisy - <i>Machaeanthera tanacetifolia</i>	60
Thunbergia - <i>Thunbergia alata</i>	60
Torch Flower - <i>Tithonia speciosa</i>	70
Torenia (wishbone flower) - <i>Torenia fournieri</i>	70
Tritoma Kniphofia spp.	65
Verbena, Annual - <i>Verbena hybrida</i>	35
Vinca - <i>Vinca rosea</i>	60

Kind	Percent
Viola - Viola cornuta	55
Virginian stocks - Malcolmia maritima	65
Wallflower - Cheiranthus allioni	65
Yucca (Adam's needle) - Yucca filamentosa	50
Zinnia (except Linearis and Creeping) - Zinnia angustifolia, Z. elegans, Z. grandiflora, Z. gracillima, Z. haegeana, Z. multiflora, Z. pumila	65
Zinnia, Linearis and Creeping - Zinnia linearis, Sanvitalia procumbens	50
All other kinds	50

()

02. Below Standard. A mixture of kinds of flower seeds will be considered to be below standard if the germination of any kind or combination of kinds constituting twenty-five percent (25%) or more of the mixture by number is below standard for the kind or kinds involved. ()

131. -- 139. (RESERVED)

140. GERMINATION STANDARDS FOR SEED IN HERMETICALLY SEALED CONTAINERS.

The period of validity of germination tests is extended to the following period for seed packaged in hermetically sealed containers under conditions and label requirements set forth in Subchapter A. ()

01. Germination Tests. The germination test for agricultural and vegetable seed shall have been completed within the following period, exclusive of the calendar month in which the test was completed, immediately prior to shipment, delivery, transportation or sales: ()

a. In the case of agricultural or vegetable seeds shipped, delivered, transported or sold to a dealer for resale, eighteen (18) months; ()

b. In the case of agricultural or vegetable seeds for sale or sold at retail, thirty-six (36) months. ()

02. Conditions of Packaging. The following standards, requirements, conditions must be met before seed is considered to be hermetically sealed under the provisions of Subchapter A: ()

a. The seed was packaged within nine months after harvest. ()

b. The container used does not allow water vapor penetration through any wall, including the seals, greater than five hundredths (0.05) gram of water per twenty-four (24) hours per one hundred (100) square inches of surface at one hundred degrees F. (100F) with a relative humidity on one side of ninety percent (90%) and on the other of zero percent (0%). Water vapor penetration or WVP is measured by the standards of the U.S. Bureau of Standards as-gm. H₂O/24 hr./100 sq. in./100 F/ 90% RHV. 0% RH. ()

03. Moisture. The seed in the container does not exceed the percentage of moisture, on a wet weight basis, as listed below: ()

a. Table 1.

Agricultural Seeds	Percent
Beet, field	7.5
Beet, sugar	7.5
Bluegrass, Kentucky	6.0
Clover, crimson	8.0
Fescue, red	8.0
Ryegrass, annual	8.0
Ryegrass, perennial	8.0
All other agricultural seeds	6.0
Mixtures of above	8.0

()

b. Table 2.

Vegetable Seeds	Percent
Bean, garden	7.0
Bean, lima	7.0
Beet	7.5
Broccoli	5.0
Brussels sprouts	5.0
Cabbage	5.0
Carrot	7.0
Cauliflower	5.0
Celeriac	7.0
Celery	7.0
Chard, Swiss	7.5
Chinese cabbage	5.0
Chives	6.5
Collards	5.0
Corn, sweet	8.0
Cucumber	6.0
Eggplant	6.0
Kale	5.0
Kohlrabi	5.0
Leek	6.5

Vegetable Seeds	Percent
Lettuce	5.5
Muskmelon	6.0
Mustard, India	5.0
Onion	6.5
Onion, Welsh	6.5
Parsley	6.5
Parsnip	6.0
Pea	7.0
Pepper	4.5
Pumpkin	6.0
Radish	5.0
Rutabaga	5.0
Spinach	8.0
Squash	6.0
Tomato	5.5
Turnip	5.0
Watermelon	6.5
All other vegetable seeds	6.0

()

04. Labeling. The container is conspicuously labeled in not less than eight (8) point type to indicate that the container is hermetically sealed, that the seed has been preconditioned as to moisture content, and the calendar month and year in which the germination test was completed. ()

05. Germination. The percentage of germination of seed at the time of packaging was equal to or above the standards specified elsewhere in Subchapter A of these rules. ()

141. -- 149. (RESERVED)

150. NOXIOUS WEEDS.

01. Prohibited Noxious Weed Seeds -- Table 1.

Common Name	Scientific Name
1. Beancaper, Syrian	1. <i>Zygophyllum fabago L.</i>
2. Bindweed, Field	2. <i>Convolvulus arvensis L.</i>
3. Buffalobur	3. <i>Solanum rostratum Dun.</i>
4. Bursage, Skeleton leaf	4. <i>Ambrosia tomentosa Nutt.</i>
5. Camelthorn	5. <i>Alhagi camelorum Fisch.</i>

Common Name	Scientific Name
6. Carrot, Wild	6. <i>Daucus carota</i> L.
7. Cress, Hoary	7. <i>Cardaria draba</i> (L.) Desv.
8. Crupina, Common	8. <i>Crupina vulgaris</i> Cass.
9. Fieldcress, Austrian	9. <i>Rorippa austriaca</i> (Crantz) Bess.
10. Goatgrass	10. <i>Aegilops cylindrica</i> Host
11. Groundcherry, Smooth	11. <i>Physalis subglabrata</i> Mackenz. & Bush
12. Henbane, Black	12. <i>Hyoscyamus niger</i> L.
13. Johnsongrass	13. <i>Sorghum halepense</i> L.
14. Knapweed, Diffuse	14. <i>Centaurea diffusa</i> Lam.
15. Knapweed, Russian	15. <i>Centaurea repens</i> L.
16. Knapweed, Spotted	16. <i>Centaurea maculosa</i> Lam.
17. Lythrum, Purple	17. <i>Lythrum salicaria</i> L.
18. Nightshade, Silverleaf	18. <i>Solanum elaeagnifolium</i> Cav.
19. Pepperweed, Perennial	19. <i>Lepidium latifolium</i> L.
20. Poison-Hemlock	20. <i>Conium maculatum</i> L.
21. Puncturevine	21. <i>Tribulus terrestris</i> L.
22. Quackgrass	22. <i>Elytrigia repens</i> ; <i>Agropyron repens</i> (L.) Beauv.
23. Ragwort, Tansy	23. <i>Senecio jacobaea</i> L.
24. Skeletonweed, Rush	24. <i>Chondrilla juncea</i> L.
25. Sowthistle, Perennial	25. <i>Sonchus arvensis</i> L.
26. Spurge, Leafy	26. <i>Euphorbia esula</i> L.
27. St. Johnswort, Common	27. <i>Hypericum perforatum</i> L.
28. Starthistle, Yellow	28. <i>Centaurea solstitialis</i> L.
29. Swainsonpea	29. <i>Sphaerophys salsula</i> (Pall.) DC; <i>Swainsona salsula</i> (Pallas) Taubert
30. Thistle, Canada	30. <i>Cirsium arvense</i> (L.) Scop.
31. Thistle, Musk	31. <i>Carduus nutans</i> L.
32. Thistle, Scotch	32. <i>Onopordum acanthium</i> L.
33. Toadflax, Dalmatian	33. <i>Linaria genistifolia</i> spp. <i>dalmatica</i> (L.) Maire & Petitmengin
34. Toadflax, Yellow	34. <i>Linaria vulgaris</i> Mill.
35. Woad, Dyers	35. <i>Isatis tinctoria</i> L.

()

02. Restricted Noxious Weed Seeds -- Table 2.

Common Name	Scientific Name
1. Dodder	1. <i>Cuscuta</i> spp.
2. Halogeton	2. <i>Halogeton glomeratus</i> (Stephen ex Bieb.) C.A. Mey
3. Lettuce, Blue	3. <i>Lactuca pulchella</i> (Pursch) DC.
4. Oats, Wild	4. <i>Avena fatua</i> L.
5. Plantain, Buckhorn	5. <i>Plantago lanceolata</i> L.
6. Ragweed, Western and Perennial	6. <i>Ambrosia psilostachya</i> DC., (T. & G.) Farw.
7. Rye, Medusahead	7. <i>Taeniatherum caput-medusae</i> (L.) Nevski; <i>Elymus caput-medusae</i> (L.)
8. Sumpweed, Poverty	8. <i>Iva axillaris</i> Pursh

()

03. Restricted Noxious Weed Tolerances.

()

a. Seven (7) seeds in fifty (50) grams of Agrotis species, Poa species, Rhodes grass, Bermudagrass, timothy, celery, and other agricultural or vegetable seeds of similar size and weight, within this group. ()

b. Seven (7) seeds in each fifty (50) grams of Dallisgrass, ryegrass, fescue species, foxtail millets, alfalfa, red clover, sweetclover, lespedeza, bromegrass, Brassica species, carrot, onion, and other agricultural or vegetable seeds of similar size and weight or mixtures within this group, or mixtures of this group with those in group A. ()

c. Seven (7) seeds in fifty (50) grams of alsike clover, white clover, and other agricultural or vegetable seeds of similar size and weight or mixtures within this group, with those in group A or group B. ()

d. Eight (8) seeds in one hundred fifty (150) grams of Proso millet, Sudangrass, and seeds of similar size and weight, or mixtures of seed within this group. ()

e. Forty-five (45) seeds in each pound for all wheatgrass species. ()

f. Four (4) seeds in each five hundred (500) grams of wheat, oats, rye, barley, buckwheat, sorghums, vetches, field peas, and other seeds of a size and weight similar to or greater than those within this group, or any mixtures within this group. ()

g. Containing more than one percent (1%) by weight of weed seeds including restricted noxious weed seeds referred to in Section 22-414(18)(b), Idaho Code, provided, that three percent (3%) of cheat, chess, or downy brome will be allowed in grass seed in which these weeds are found. ()

151. – 159. (RESERVED)

160. LABEL REQUIREMENTS OF SEEDS FOR SPROUTING.

The following information shall be indicated on all labels of seeds sold for sprouting in health food stores or other outlets: ()

01. Name. Commonly accepted name of kind. ()

02. Lot. Lot number. ()

03. Percentage. Percentage by weight of the pure seed, crop seeds, inert matter, and weed seeds if required. ()

04. Germination Percentage. Percentage of germination. ()

05. Date. The calendar month and year the test was completed to determine such percentage. ()

161. -- 169. (RESERVED)

170. VIABILITY BY TZ%.

A TZ (tetrazolium) test may be used in lieu of germination for the following species with the label reading “viability by TZ%”: Bitterbrush; Saltbush; Sagebrush; Indian Ricegrass; and Winterfat. ()

171. -- 179. (RESERVED)

180. METHODS OF TESTING.

All methods used in testing and analyzing seed subject to Subchapter A and the tolerances used in the enforcement of Subchapter A shall conform as nearly as practicable to the current “Rules for Testing Seed adopted by the Association of Official Seed Analysts” (AOSA) file at the Idaho Department of Agriculture, State Seed Lab located at 2240 Kellogg Lane, Boise, Idaho 83712. ()

181. -- 189. (RESERVED)

190. SERVICE TESTING FEES -- PURITY, GERMINATION AND TETRAZOLIUM FEES.

Purity, Germination, and Tetrazolium Fees			
Kind of Seeds	Purity* \$/Unit	Germination \$/Unit	Tetrazolium** \$/Unit
AGRICULTURAL GRASS SEED			
Bluegrasses	\$45	\$25	\$40
Bromegrasses	\$38	\$24	\$40
Fescues	\$35	\$22	\$40
Orchardgrass	\$38	\$25	\$40
Ryegrasses	\$38	\$23***	\$40
Timothy	\$28	\$23	\$40
For all others the hourly rate will apply			
FIELD SEED			
Alfalfa, clovers and trefoils	\$20	\$17	\$40
Cereals (Barley, Oats, Rice, Rye, Triticale and Wheat	\$25	\$17	\$40
Beans	\$18	\$16	\$40
Corn (all types)	\$20	\$17	\$40
Peas, and Lentils	\$18	\$17.50	\$40
For all others the hourly rate will apply			

Purity, Germination, and Tetrazolium Fees			
Kind of Seeds	Purity* \$/Unit	Germination \$/Unit	Tetrazolium** \$/Unit
VEGETABLES, FLOWERS AND HERB SEED			
Brassica (Canola, Cauliflower, Broccoli, Radish, etc.)	\$40	\$17	\$50
Beets and Swiss chard	\$29	\$32	\$40
Carrots, celery, dill and parsley	\$27	\$20	\$40
Curcubits (Squash, melons, etc.)	\$25	\$20	\$40
Flowers (Bachelors button, poppy, etc.)	\$40	\$25	\$50
Lettuce, tomato, and pepper	\$25	\$20	\$40
Onion and Chives	\$25	\$20	\$40
For all others the hourly rate will apply			
TREE AND SHRUB SEED			
Bitterbrush	\$40	\$30	\$50
Saltbush	\$60	\$30	\$50
Chokecherry and Woods' rose	\$25	\$60	\$60
Serviceberry, cliff-rose and mahogany	\$30	\$30	\$40
Trees (Firs, pines, spruces, etc.)	\$25	\$30	\$40
For all others the hourly rate will apply			
RANGE AND NATIVE SEED			
Bluestems and grammas	Hourly Rate	\$30	\$50
Globemallow and penstemons	\$40	\$30	\$50
Kochia and forage Kochia	\$30	\$30	\$40
Rushes and Sedges	Hourly Rate	\$30	\$50
Sagebrush and Rabbitbrush	Hourly Rate	\$30	\$40
Wheatgrasses, wildryes, and squirreltail	\$40	\$25	\$40
Winterfat	Hourly Rate	\$30	Hourly Rate
For all others the hourly rate will apply			

* Samples with high levels of impurities (i.e. other crops, weeds, multiple florets, inert materials) requiring more than one (1) hour analyst time for purity testing will be charged the standard hourly rate of forty dollars (\$40) for each additional hour.

** For all samples submitted for a TZ or Germination test requiring more than one (1) hour for cleaning and/or preparing will be charged at the standard hourly rate of forty dollars (\$40) for each additional hour.

*** With germination fluorescence testing thirty dollars (\$30). ()

191. SERVICE TESTING FEES -- SPECIAL TESTS.

Special Testing Fees	
Test Procedures:	Fees \$/Unit
All States Noxious	\$25
Canada:	
Purity	\$13 - Added to purity fee
Germination	\$2.50 - Added to germination fee
Certified Grains	\$13 - Added to purity fee
Cold Test	\$23.50
Crop & Weed Check	\$24.50
Dormancy Percentage	\$10 - Minimum or Dormant % found x germination fee
E.C. Norms	\$20
Ergot Check	\$13.50
Noxious Weed Germination (Compost/Mulch, etc.)	\$18
Noxious Weed Purity (Hay, Straw, etc.)	\$40
Identification	\$5 - Minimum or hourly if necessary
Inventory Germinations (For Carryover Seed Only, when requested)	20% discount of listed germination fee; Available only for the months of March through July.
ISTA:	
Purity	\$13 - Added to purity fee
Germination	\$2.50 - Added to germination fee
Mixtures:	
Purity	\$12.50 - Added per kind exceeding 5%
Germination	\$12.50 - Added per kind exceeding 5%
Tetrazolium	\$18 - Added per kind exceeding 5%
Moisture Test	\$14
Round-Up-Ready Trait Test (Alfalfa, Canola, Corn)	\$40
Sand Germination	\$25
Seed Count	\$13.50
Soil Exam	\$13.50
Sod Quality:	
Bentgrass	\$66
Bermudagrass	\$64
Bluegrass	\$64

Special Testing Fees	
Test Procedures:	Fees \$/Unit
Soil Germination	\$23.50
Species Exam	\$24.50
Undesirable Grass Species	\$25.50

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192. SERVICE TESTING FEES -- MISCELLANEOUS FEES.

Miscellaneous Fees	
Type of Service:	Fees \$/Unit
Administrative Charge per Test for Internet Access and Data Processing.	Not to exceed \$2 per test
Hourly Charge	\$40
Reports:	
Merge Records	\$4
Rush Service	\$25

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193. -- (RESERVED)

194. SEED DEALER'S LICENSE FEES.

Seed dealers shall obtain a seed dealer's license for each location in Idaho before they can sell, offer for sale, expose for sale or deliver agricultural seeds in packages of eight (8) ounces or more or bulk under contract within the state of Idaho. Seed dealers pay only for the service or services they render according to the following fee schedule: ()

- 01. In-State Seed Dealer's License Fees:** ()
 - a.** License to condition or clean agricultural seeds in Idaho - one-hundred dollars (\$100). ()
 - b.** License to label container or bulk agricultural seeds for sale in Idaho - fifty dollars (\$50). ()
 - c.** License to sell, offer for sale, expose for sale, or deliver agricultural seeds in packages of eight (8) ounces or more or in bulk under a contract in Idaho: ()
 - i.** For annual gross sales of five hundred dollars (\$500) or more, but less than one thousand dollars (\$1,000) - fifty dollars (\$50). ()
 - ii.** For annual gross sales of one thousand dollars (\$1,000) or more - one hundred dollars (\$100). ()
- 02. Out-of-State Seed Dealer's License Fee.** Three hundred fifty dollars (\$350). ()
- 03. Exemptions.** ()
 - a.** Any person selling seed who has total annual gross seed sales not exceeding five hundred dollars

(\$500) is exempt from Section 194. ()

b. An in-state dealer or out-of-state dealer who sells, offers for sale, exposes for sale or delivers seed only in packages of less than eight (8) ounces is exempt from Section 194. ()

195. -- 209. (RESERVED)

SUBCHAPTER B – RAPESEED

210. DEFINITIONS.

The definitions in Section 210 apply to the interpretation and enforcement of Subchapter B only. ()

01. Producer. Any person who is the owner, tenant, or operator of land who has an interest in and is entitled to receive all or any part of the proceeds from the sale of any commodity produced on that land. ()

02. Rapeseed. Those species of *Brassica napus*, *Brassica rapa* (formerly *Brassica campestris*), and *Brassica juncea*. ()

03. Types. Those species and varieties of rapeseed classified as follows: ()

a. Edible: ()

i. Low Erucic Acid Rapeseed -- Low Glucosinolates (LEAR-LG), commonly called “canola,” is the seed of the species *Brassica napus*, *Brassica juncea*, or *Brassica rapa*, the oil components of which seed contain less than two percent (2.0%) erucic acid and the seed meal will contain less than thirty (30) micromoles of any one (1) or any mixture of 3-butenyl glucosinolate, 4-pentenyl glucosinolate, 2-hydroxy - 3-butenyl glucosinolate, and 2-hydroxy - 4 pentenyl glucosinolate per gram ($\mu\text{m/g}$) of air dry, oil free solid as determined by any approved method. ()

ii. Low Erucic Acid Rapeseed -- High Glucosinolates (LEAR-HG) Rapeseed varieties shall contain less than two percent (2.0%) erucic acid in the oil of the rapeseed and more than thirty (30) micromoles per one (1) gram ($\mu\text{m/g}$) glucosinolates in the rapeseed meal. ()

b. Industrial: ()

i. High Erucic Acid Rapeseed -- Low Glucosinolates (HEAR-LG) Rapeseed are rapeseed varieties used for production of industrial oil that shall contain erucic acid levels above forty percent (40%) in the oil of the rapeseed and less than thirty (30) micromoles per one (1) gram ($\mu\text{m/g}$) glucosinolates in the meal of the rapeseed. ()

ii. High Erucic Acid Rapeseed -- High Glucosinolates (HEAR-HG) Rapeseed are rapeseed varieties used for production of industrial oil that shall contain erucic acid levels above forty percent (40%) in the oil of the rapeseed and more than thirty (30) micromoles per one (1) gram ($\mu\text{m/g}$) glucosinolates in the meal of the rapeseed. ()

04. Volunteer Rapeseed. A plant that arises from accidental or unintentional scattering of seed. ()

05. Condiment Mustard. Varieties of *Brassica juncea* produced for seed to be used for spice or condiment. ()

06. Green Manure Rapeseed. Varieties of rapeseed used as a cover crop to be plowed down prior to flowering and maturity. ()

211. (RESERVED)

212. PRODUCTION DISTRICTS.

01. District I. All land in Idaho not listed under District II in Subsection 212.02 of Subchapter B. ()

02. District II. All land within the boundaries of Ada, Canyon, Gem, Owyhee (north of Murphy) and Payette counties. ()

213. -- 219. (RESERVED)

220. RESTRICTIONS.

01. District I. Except as otherwise provided in Subchapter B, industrial and edible types of rapeseed may be planted in District I. ()

02. District II. Except as otherwise provided in Subchapter B, no rapeseed of either variety may be planted in District II. ()

03. Restrictions: ()

a. Industrial types of rapeseed planted in District I must adhere to the following conditions: ()

i. It is the responsibility of the person planting industrial types of rapeseed in District I to consult with and obtain the written approval from all farmers bordering the fields to be planted with industrial types of rapeseed. ()

ii. Industrial types of rapeseed planted in District I must be at least one (1) mile from a field planted to edible types of rapeseed. ()

221. -- 229. (RESERVED)

230. REQUIREMENTS FOR ALL BRASSICA SEEDS TO BE PLANTED IN IDAHO.

01. Requirements. All *Brassica* seeds to be planted in Idaho shall meet the following requirements. ()

a. *Brassica* seeds shall be treated with an EPA and State registered fungicide for the control of blackleg (*Leptosphaeria maculans*). ()

b. *Brassica* seed lots produced outside Idaho shall be accompanied by a phytosanitary certificate stating that the seed is free (zero tolerance) from blackleg based on a laboratory test of a minimum of two point nine (2.9) grams or one thousand (1,000) seeds. ()

02. Exemptions. The following are not subject to the provisions of Subsections 230.01.a. and 230.01.b. ()

a. *Brassica* seeds sold in lots of two (2) pounds or less. ()

b. *Brassica* seeds produced in Idaho. ()

231. -- 239. (RESERVED)

240. RAPESEED GROWING OUTSIDE CULTIVATED FIELDS ENFORCEMENT AND PENALTIES.

Volunteer rapeseed plants within designated production districts shall be destroyed prior to flowering. The Director has the authority to require destruction of any rapeseed prior to flowering that has not met the provisions of Subchapter B. In the event that the person responsible for planting the rapeseed does not comply with the destruction order, the Director is authorized to have the rapeseed destroyed by a third party and the cost of destruction charged to

the party responsible for planting the rapeseed. ()

241. -- 249. (RESERVED)

250. TRANSPORTATION OF BRASSICA SEEDS INTO AND THROUGHOUT IDAHO.

Any transport of *Brassica* seeds shall be accomplished in suitably packaged, covered or sealed containers or vehicles in order to avoid the accidental spread of seed in non-production and prohibited areas. ()

251. -- 309. (RESERVED)

SUBCHAPTER C – BLUEGRASS

310. DEFINITIONS.

In addition to the definitions found in Section 22-2005, Idaho Code, the definitions found in Section 310 apply to the interpretation and enforcement of Subchapter C only. ()

01. Annual Bluegrass. *Poa annua* and all related species off-types or sub-species of *Poa annua*, hereinafter referred to as annual bluegrass. ()

02. Annual Bluegrass Analysis Certificate. A test report from an official laboratory showing freedom from annual bluegrass. ()

03. Grass Species. All bluegrass (*Poa*) species, fescue (*Festuca*) species, ryegrass (*Lolium*) species and all bentgrass (*Acrostic*) species. ()

04. Official Seed Laboratory. A seed testing laboratory approved by the Director. ()

05. Annual Bluegrass Quarantine Release Tag. A numbered tag printed and issued by the Idaho Department of Agriculture to be attached to each bag showing said seed has met quarantine requirements and giving the following information: “This lot of seed was tested and found to be apparently free of annual bluegrass and is eligible for planting in Idaho.” ()

06. Rough Bluegrass Quarantine Release Tag. A numbered tag printed and issued by the Idaho State Department of Agriculture to be attached to each bag showing said seed has met quarantine requirements and giving the following information: “This lot of seed was tested and found to be apparently free of rough bluegrass and is eligible for planting in Idaho.” ()

07. Regulated Pest. The seeds of *Poa annua* (Annual bluegrass) and all related off-types or sub-species of *Poa annua* hereinafter referred to as Annual bluegrass that are objectionable in grass seed stock, are considered weeds for the purposes of this chapter. ()

08. Representative Sample. A sample of seed drawn in accordance to Subchapter A of this rule. ()

09. Rough Bluegrass. *Poa trivialis* and all related off-types or sub-species of *Poa trivialis*, hereinafter referred to as rough bluegrass. ()

10. Rough Bluegrass Analysis Certificate. A test report from an official laboratory showing freedom from rough bluegrass. ()

11. Seed Stock. Those seeds of grass species that are to be planted for seed increase or with intent of seed increase. ()

311. -- 319. (RESERVED)

320. ANNUAL BLUEGRASS REGULATED AREA.

The regulated area is the entire state of Idaho. ()

321. ROUGH BLUEGRASS REGULATED AREA.

The regulated areas are the Idaho counties of Benewah, Bingham, Blaine, Bonner, Camas, Clark, Clearwater, Elmore, Idaho, Jerome, Kootenai, Latah, Lewis, Madison, Nez Perce, Power, Shoshone and Twin Falls. ()

322. ROUGH BLUEGRASS QUARANTINE – RESTRICTIONS.

No rough bluegrass shall be planted for seed production in the regulated areas. ()

323. -- 329. (RESERVED)

330. REGULATED ARTICLES.

Those articles that are regulated are seed stocks as defined in Subsection 310.11. ()

331. -- 339. (RESERVED)

340. RULES GOVERNING PLANTING OF REGULATED ARTICLES (ANNUAL BLUEGRASS).

01. Requirements. Prior to any person planting any grass species seed stock in Idaho, that person shall comply with the following requirements: ()

a. Submit for an official laboratory analysis a representative sample showing freedom from annual bluegrass based on a five (5) gram sample for bentgrass or redtop, a twenty-five (25) gram sample for bluegrass, or a fifty (50) gram sample for other grasses; or ()

b. Have a representative sample submitted for testing. ()

02. Tags. Upon receipt by the Director of an official seed laboratory analysis showing freedom from annual bluegrass, sequentially numbered tags will be issued for each bag found free of annual bluegrass from those lots according to Subsection 310.06. ()

03. Analysis Certificate. In lieu of tags, a seed analysis certificate from an official seed laboratory showing each lot being planted to be free from annual bluegrass must be kept on file for a minimum of one (1) year after all of the inventory of that lot's harvested seed has been sold. ()

341. QUALIFICATIONS OF REGULATED ARTICLES FOR QUARANTINE RELEASE (ROUGH BLUEGRASS).

01. Planting Seed Stock of Regulated Articles. Any person planting seed stock of regulated articles shall comply with the following requirements: ()

a. Submit to the Director an official laboratory analysis of a representative sample showing freedom from rough bluegrass based on a five (5) gram sample for bentgrass or redtop, a twenty-five (25) gram sample for bluegrass, or a fifty (50) gram sample for other grasses; or ()

b. Submit to the Director a representative sample for laboratory analysis. ()

02. Quarantine Release Tag. Upon receipt of an official seed laboratory analysis, the Director may upon request issue sequentially numbered tags for each bag of regulated article found free of rough bluegrass. ()

03. Analysis Certificate. In lieu of tags, a seed analysis certificate from an official seed laboratory showing each lot being planted to be free from rough bluegrass must be kept on file for a minimum of one (1) year after all of the inventory of that lots harvested seed has been sold. ()

342. -- 349. (RESERVED)

350. INFESTED SEED STOCK (ANNUAL BLUEGRASS).

Each lot of seed found to contain annual bluegrass shall be placed under a “Hold Order” pursuant to Section 22-103(20), Idaho Code, to be released only for shipment out of Idaho or for planting in nurseries of two (2) acres or less under supervision of the Director. The nursery shall be seeded in rows spaced twenty-four (24) inches apart and it is the duty of the person receiving such seed to rogue this increase area or chemically treat to eradicate the annual bluegrass. Seed increases shall be inspected by the department or the Idaho Crop Improvement Association at least three (3) times during the seedling year. Any areas not passing inspection shall not be harvested but is destroyed upon the order of the Director at the owner’s expense. ()

351. ROUGH BLUEGRASS QUARANTINE - INSPECTIONS.

The Director will cause inspections to be made in accordance with the provisions of Section 22-2007, Idaho Code. ()

01. Infested Seed Stock. Lots of turf seed stock contaminated with rough bluegrass seeds may be planted in an approved nursery of two (2) acres or less under the supervision of the Director. The nursery shall be seeded in rows spaced twenty-four (24) inches apart and it is the duty of the person receiving such seed stock to rogue the planting or chemically treat to eradicate the rough bluegrass. The approved nursery will be inspected by the Department or the Idaho Crop Improvement Association at least three (3) times during the seedling year. Any approved nursery not passing inspection shall not be harvested but will be destroyed upon the order of the Director at the owner’s expense. ()

352. -- 359. (RESERVED)

360. APPLICATION FOR NURSERY INSPECTION.

A person shall make application for nursery inspection to the Idaho Department of Agriculture or the Idaho Crop Improvement Association at least fourteen (14) days prior to planting. ()

361. -- 369. (RESERVED)

370. EXEMPTIONS (ANNUAL BLUEGRASS).

- 01. Forage.** These rules do not apply to seed sown for forage. ()
- 02. Experiments.** These rules do not apply to:
 - a.** Experiments or trial grounds of the United States Department of Agriculture; or ()
 - b.** Experiments or trial grounds of the Idaho State Experiment Station; or ()
 - c.** Trial grounds of any person, firm, or corporation provided said trial ground plantings are approved by the Director and under supervision of technically-trained personnel familiar with annual bluegrass control. ()

371. EXEMPTIONS (ROUGH BLUEGRASS).

- 01. Experiments or Trial Grounds.** This quarantine shall not apply to: experiments or trial grounds of the United States Department of Agriculture, experiments or trial grounds of the University of Idaho Agriculture Experiment Station, or trial grounds of any person, provided said trial ground plantings are approved by the Director and under supervision of technically-trained personnel familiar with rough bluegrass. ()
- 02. Rough Bluegrass.** Rough bluegrass may be planted in the regulated areas for turf but shall not be allowed to mature to the seed producing stage. ()

372. -- 379. (RESERVED)

380. FEES AND CHARGES.

- 01. Sampling.** Fees for official sampling drawn by the Director are twelve dollars (\$12) per sample. ()

02. Seed Analysis. Fees for seed analysis are that fee provided in the fee schedule of the official Seed Testing Laboratory. ()

03. Inspection. Inspection fees for nursery plantings are fifty dollars (\$50) per acre or portion thereof for each inspection. Any field of less than one acre is a minimum fee of fifty dollars (\$50). ()

04. Quarantine Release Tags. Quarantine release tags will be twenty-five cents (\$0.25) per tag and charged to person(s) when issued. ()

381. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.06.02 – RULES GOVERNING REGISTRATIONS AND LICENSES
DOCKET NO. 02-0602-1902 (NEW CHAPTER, FEE RULE)
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 22-604, 22-2204, 22-2303(5), 22-2511, and 25-2710, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

PUBLIC HEARING
Thursday, November 14, 2019 @ 9:00 a.m.
Idaho State Department of Agriculture 2270 Old Penitentiary Road Boise, ID 83712

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: Five rules administered by the ISDA either require a license or registration of certain agricultural activities or agricultural products. These rules are IDAPA 02.06.03, “Rules Pertaining to the Idaho Nurseries and Florists Law,” IDAPA 02.06.30, “Rules Under the Idaho Bee Inspection Law,” IDAPA 02.06.02, “Rules Pertaining to the Idaho Commercial Feed Law,” IDAPA 02.06.12, “Rules Pertaining to the Idaho Fertilizer Law,” and IDAPA 02.06.41, “Rules Pertaining to the Soil and Plant Amendment Act.” The rules were promulgated to carry out the requirements described in Title 22, Chapters 6, 22, 23, and 25; and Title 25, Chapter 27, Idaho Code. In order to streamline and simplify rules related to licenses and registration, the ISDA has decided to combine all five rules into a single rule to be titled “**02.06.02, Rules Governing Registrations and Licenses.**” No substantive changes are being made to the five rules cited above. All rules were reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Fees included in the original rules have not been changed in the new combined rule. Fees associated with these rules are imposed pursuant to Sections 22-608, 22-2208, 22-2305, 22-2503, and 25-2704, Idaho Code.

IDAHO CODE SECTION 22-101A STATEMENT: Section 22-101A, Idaho Code, requires that in this notice of proposed rulemaking, the Director must specify whether this rule is broader in scope or more stringent than federal law or regulations, or regulates an activity not regulated by the federal government. This Rule, in its entirety, regulates an activity not regulated by the federal government.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no change in fiscal impact as a result of this consolidation rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted on September 18, 2019. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, Page 15-19](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

1. The Association of American Feed Control Officials (AAFCO) Official Publication. The Terms, Ingredient Definitions and Policies as published in the “2019 Official Publication” of AAFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 25, Chapter 27, Idaho Code, and any rule promulgated thereunder.
2. The Merck Index. The “2013 Merck Index,” 15th Edition, as published by Merck Research Laboratories Division of Merck & Co., Incorporated. The Merck Index is a copyrighted publication and not available in an electronic format.
3. The Association of American Plant Food Control Officials (AAPFCO) Official Publication. The Terms, Ingredient Definitions, and Policies, as published in the “2020 Official Publication” of AAPFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 22, Chapter 6, Idaho Code, and any rule promulgated thereunder.
4. The Association of Official Agricultural Chemists (AOAC) International. The “2019 Official Methods of Analysis (OMA) of the AOAC,” 21st Edition, a copyrighted publication, is maintained and published by the AOAC International.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd Knight, Administrator, at (208) 332-8664.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 27, 2019.

Dated this 3rd day of October, 2019.

Brian Oakey, Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8552
Fax: (208) 334-2710

**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0602-1902
(New Chapter)**

02.06.02 – RULES GOVERNING REGISTRATIONS AND LICENSES

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 22-604, 22-2204, 22-2303(5), 22-2503, 22-2511, and 25-2710, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.06.02, “Rules Governing Registrations and Licenses.” ()

02. Scope. These rules specify general commercial feed, fertilizer, and soil and plant amendment product registration and label requirements, and provide inspection authorities. These rules establish a fee schedule for special nursery and florist services and set forth conditions under which a shipping permit will be issued. These rules are also to prevent the introduction or further dissemination of certain bee diseases by providing authority to enter, inspect, and control bee pests and levy penalties. ()

002. -- 103. (RESERVED)

SUBCHAPTER A – COMMERCIAL FEED

104. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into this Subchapter A: ()

01. The Association of American Feed Control Officials (AAFCO) Official Publication. The Terms, Ingredient Definitions and Policies as published in the “2020 Official Publication” of AAFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 25, Chapter 27, Idaho Code, and any rule promulgated thereunder. A copy may be purchased online from the AAFCO website at: www.aafco.org. ()

02. The Merck Index. The “2013 Merck Index,” 15th Edition, as published by Merck Research Laboratories Division of Merck & Co., Incorporated. The Merck Index is a copyrighted publication and not available in an electronic format. A copy may be purchased online from Merck & Co., Inc at: <http://www.rsc.org/merckindex>. ()

105. -- 109. (RESERVED)

110. DEFINITIONS AND TERMS.

In addition to the definitions found in Section 25-2703, Idaho Code, the following definitions apply in the interpretation and enforcement of Subchapter A only: ()

01. All Life Stages. Gestation/lactation, growth, and adult maintenance life stages. ()

02. Family. A group of products, which are nutritionally adequate for any or all life stages based on their nutritional similarity to a lead product, that has been successfully test-fed according to an AAFCO feeding protocol(s). ()

03. Hay. The aerial portion of grass or herbage especially cut, cured and baled or stacked for animal feeding, without further processing. ()

04. Immediate Container. The unit, can, box, tin, bag, or other receptacle or covering in which a pet food or specialty pet food is displayed for sale to retail purchasers, but does not include containers used as shipping containers. ()

05. Ingredient Statement. A collective and contiguous listing on the label of the ingredients of which the pet food or specialty pet food is composed. ()

06. Principal Display Panel. The part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale and may include the front, back, or side panels of the package. ()

07. Viable Noxious Weed Seed. Any seed or propagule of a noxious weed, as identified or listed by Title 22, Chapter 24, Idaho Code, or any rules promulgated thereunder, that has not been ground fine enough or otherwise treated to destroy the ability to germinate. ()

111. -- 114. (RESERVED)

115. REGISTRATION AND FEES.

01. Product Registration Fee. Whenever a commercial feed is registered for distribution in the state of Idaho, a fee of forty dollars (\$40) per product will be collected. ()

a. The Department will utilize these funds for the operation of all program activities, including but not limited to, registration, label review, inspection and sampling, and laboratory analysis. ()

b. The fee will be set by the Department such that all costs associated with the commercial feed program will be covered by the registration fee without the need for additional state general or dedicated funding. ()

02. Product Registration Fee Exemption. Sellers who are not regularly engaged in the business of manufacturing or selling commercial feed and whose total amount of gross annual sales does not exceed five hundred dollars (\$500) are exempt from payment of the registration fee. However, the Department retains the right to inspect any feed in the possession of those persons exempted by Subsection 115.02 at any time. ()

a. This exemption pertains to the registration fee only, and does not exempt a person or business from other sections of Subchapter A and/or the Idaho Commercial Feed Law. ()

b. The Department reserves the right to review the records of sellers who are claiming or who have claimed that they are exempt from the payment of the registration fee, in order to ensure that they qualify for the exemption. ()

c. The Department further reserves the right to conduct any and all inspections allowed under Section 25-2709, Idaho Code, in order to ensure compliance with Subchapter A and/or the Idaho Commercial Feed Law. ()

116. -- 119. (RESERVED)

120. LABEL FORMAT.

01. Label Format. Commercial feeds shall be labeled with the information prescribed in Subchapter A on the principal display panel of the product and in the following general format. ()

a. Net Weight. ()

b. Product name and brand name if any. ()

c. If a drug is used, the required directions for use and precautionary statements or reference to their location if the detailed feeding directions and precautionary statements appear elsewhere on the label. ()

d. The guaranteed analysis of the feed as required under the provisions of Section 25-2705(1)(c) of the Commercial Feed Law includes the following items, unless exempted, and in the order listed: ()

i. Minimum percentage of crude protein. ()

ii. Maximum or minimum percentage of equivalent protein from non-protein nitrogen. ()

iii. Minimum percentage of crude fat. ()

iv. Maximum percentage of crude fiber. ()

v. Minerals, to include, in the following order: minimum and maximum percentages of calcium (Ca),

minimum percentage of phosphorus (P), minimum and maximum percentages of salt (NaCl), and other minerals. ()

vi. Vitamins. ()

vii. Total sugars as invert on dried molasses products or products being sold primarily for their sugar content. ()

viii. Exemptions. Guarantees for minerals are not required when there are no specific label claims and when the commercial feed contains less than six and one-half percent (6 1/2%) of Calcium, Phosphorus, Sodium, or Chloride. Guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin supplement. Guarantees for crude protein, crude fat, and crude fiber are not required when the commercial feed is intended for purposes other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, such as drug premixes, mineral or vitamin supplements, and molasses. ()

e. Feed ingredients, collective terms for the grouping of feed ingredients, or appropriate statements as provided under the provisions of Section 25-2705(1)(d) of the Commercial Feed Law shall be listed in decreasing order of predominance by weight: ()

i. The name of each ingredient as defined in the Official Publication of the Association of American Feed Control Officials, common or usual name, or one approved by the Director. ()

ii. Collective terms for the grouping of feed ingredients as defined in the Official Definitions of Feed Ingredients published in the Official Publication of the Association of American Feed Control Officials in lieu of the individual ingredients; provided that when a collective term for a group of ingredients is used on the label, individual ingredients within that group shall not be listed on the label. The manufacturer shall provide the feed control official, upon request, with a list of individual ingredients within a defined group, that are or have been used at manufacturing facilities distributing in or into the state. ()

iii. The registrant may affix the statement, "ingredients as registered with the State" in lieu of the ingredient list on the label. The list of ingredients must be on file with the Director. This list shall be made available to the feed purchaser upon request. ()

f. Name and principal mailing address of the manufacturer or person responsible for distributing the feed. The principal mailing address shall include the street address, city, state, and zip code; however, the street address may be omitted if it is shown in the current city directory or telephone directory. ()

g. The information required in Section 25-2705 of the Commercial Feed Law must appear in its entirety on the principal display panel of the container. ()

h. Labeling shall include all statements and promotion on company websites or other internet based customer interfaces. ()

02. Customer Formula Invoice and Tag Requirements. ()

a. Bulk shipments of customer-formula feed shall be accompanied by an invoice, delivery slip or other shipping documents identifying the shipment as customer-formula feed and the name and address of the customer to whose order it is made. ()

b. Bagged customer-formula feed will be labeled with a tag identifying each bag as such. The total bags in each customer's shipment will be segregated from other bagged feed and identified with the name and address of the customer to whose order it is made. ()

c. Nutritional guarantees and guarantees of other analytes, and a list of ingredients, in descending order of predominance by weight, of a customer-formula feed may be used in lieu of specific weights or volumes of each ingredient, as required in Section 25-2705(2)(d), Idaho Code, when so ordered by the customer. ()

121. -- 124. (RESERVED)

125. BRAND AND PRODUCT NAMES.

01. Intended Use. The brand or product name must be appropriate for the intended use of the feed and must not be misleading. If the name indicates the feed is made for a specific use, the character of the feed must conform therewith. A mixture labeled "Dairy Feed," for example, must be suitable for that purpose. ()

126. -- 129. (RESERVED)

130. EXPRESSION OF GUARANTEES.

01. Percentage by Weight. The guarantees for crude protein, equivalent protein from non-protein nitrogen, crude fat, crude fiber and mineral guarantees (when required) will be in terms of percentage by weight. ()

02. Commercial Feeds. Commercial feeds containing six and one-half percent (6 1/2%) or more Calcium, Phosphorus, Sodium or Chloride shall include in the guaranteed analysis the minimum and maximum percentages of calcium (Ca), the minimum percentage of phosphorus (P), and if salt is added, the minimum and maximum percentage of salt (NaCl). Minerals, except salt (NaCl) shall be guaranteed in terms of percentage of the element. When calcium and/or salt guarantees are given in the guaranteed analysis such shall be stated and conform to the following: ()

a. When the minimum is five percent (5%) or less, the maximum will not exceed the minimum by more than one (1) percentage point. ()

b. When the minimum is above five percent (5%), the maximum will not exceed the minimum by more than twenty percent (20%) and in no case shall the maximum exceed the minimum by more than five (5) percentage points. ()

03. Vitamin Content. Guarantees for minimum vitamin content of commercial feeds and feed supplements, when made, shall be stated on the label in milligrams per pound of feed except that: ()

a. Vitamin A, other than precursors of vitamin A, shall be stated in International or USP units per pound. ()

b. Vitamin D, in products offered for poultry feeding, shall be stated in International Chick Units per pound. ()

c. Vitamin D for other uses shall be stated in International or USP units per pound. ()

d. Vitamin E shall be stated in International USP units per pound. ()

e. Guarantees for vitamin content on the label of a commercial feed shall state the guarantee as true vitamins, not compounds, with the exception of the compounds, Pyridoxine Hydrochloride, Choline Chloride, Thiamine, and d-Pantothenic Acid. ()

f. Oils and premixes containing vitamin A or vitamin D or both may be labeled to show vitamin content in terms of units per gram. ()

131. -- 134. (RESERVED)

135. NON-PROTEIN NITROGEN.

01. Urea. Urea and other non-protein nitrogen products defined in the Official Publication of the Association of American Feed Control Officials or by the Director are acceptable ingredients only in commercial

feeds for ruminant animals as a source of equivalent crude protein. If the commercial feed contains more than eight and seventy-five hundredths percent (8.75%) of equivalent crude protein from all forms of non-protein nitrogen, added as such, or the equivalent crude protein from all forms of non-protein nitrogen, added as such, exceeds one-third (1/3) of the total crude protein, the label shall bear adequate directions for the safe use of feeds and a precautionary statement: "CAUTION: USE AS DIRECTED." The directions for use and the caution statement shall be in type of such size so placed on the label that they will be read and understood by ordinary persons under customary conditions of purchase and use. ()

02. Non-Protein Nitrogen Defined. Non-protein nitrogen defined in the Official Publication of the Association of American Feed Control Officials, when so indicated, are acceptable ingredients in commercial feeds distributed to non-ruminant animals as a source of nutrients other than equivalent crude protein. The maximum equivalent crude protein from non-protein nitrogen sources when used in non-ruminant rations shall not exceed one and twenty-five hundredths percent (1.25%) of the total daily ration. ()

03. Labels for Medicated Feeds. On labels such as those for medicated feeds that bear adequate feeding directions and/or warning statements, the presence of added non-protein nitrogen shall not require a duplication of the feeding directions or the precautionary statements as long as those statements include sufficient information to ensure the safe and effective use of this product due to the presence of non-protein nitrogen. ()

136. -- 139. (RESERVED)

140. DRUG AND FEED ADDITIVES.

01. Satisfactory Evidence. Satisfactory evidence of safety and efficacy of a commercial feed may be: ()

a. When the commercial feed contains such additives, the use of which conforms to the requirements of the applicable regulation in the Code of Federal Regulations, Title 21, or which are "prior sanctioned" or "generally recognized as safe" for such use; or ()

b. When the commercial feed is itself a drug and is generally recognized as safe and effective for the labeled use or is marketed subject to an application approved by the Food and Drug Administration under Title 21 U.S.C. 360(b). ()

141. -- 144. (RESERVED)

145. ADULTERANTS.

01. Substances. For the purpose of Section 25-2707, Idaho Code, of the Commercial Feed Law, the terms "poisonous or deleterious substances" include, but are not limited to, the following: ()

a. Fluorine and any mineral or mineral mixture that is to be used directly for the feeding of domestic animals and in which the fluorine exceeds two tenths percent (0.2%) for breeding and dairy cattle; three tenths percent (0.3%) for slaughter cattle; three tenths percent (0.3%) for sheep; thirty-five hundredths percent (0.35%) for lambs; forty-five hundredths percent (0.45%) for swine; and six tenths percent (0.6%) for poultry. ()

b. Fluorine bearing ingredients when used in such amounts that they raise the fluorine content of the total ration (exclusive of roughage) above the following amounts: four thousandths percent (0.004%) for breeding and dairy cattle; nine thousandths percent (0.009%) for slaughter cattle; six thousandths percent (0.006%) for sheep; one hundredths percent (0.01%) for lambs; fifteen thousandths percent (0.015%) for swine and three hundredths percent (0.03%) for poultry. ()

c. Fluorine bearing ingredients incorporated in any feed that is fed directly to cattle, sheep or goats consuming roughage (with or without) limited amounts of grain, that results in a daily fluorine intake in excess of fifty (50) milligrams of fluorine per one hundred (100) pounds of body weight. ()

d. Soybean meal, flakes or pellets or other vegetable meals, flakes or pellets that have been extracted

with trichlorethylene or other chlorinated solvents. ()

e. Sulfur dioxide, Sulfurous acid, and salts of Sulfurous acid when used in or on feeds of feed ingredients that are considered or reported to be a significant source of vitamin B1 (Thiamine). ()

02. Screenings or By-Products. All screenings or by-products of grains and seeds containing weed seeds, when used in commercial feed or sold as such to the ultimate consumer, shall be ground fine enough or otherwise treated to destroy the viability of such weed seeds. ()

03. Viable Noxious Weed Seed. Viable noxious weed seed as defined in Subsection 110.07. ()

146. -- 149. (RESERVED)

150. ADOPTIONS AND PROMULGATION.

All rules heretofore adopted and promulgated August 16, 1971 pertaining to the Idaho Commercial Feed Law, Title 25, Chapter 27, Idaho Code, are hereby repealed, and are replaced by Subchapter A. ()

151. -- 159. (RESERVED)

160. COTTONSEED.

01. Certification. Prior to entry into the state of Idaho all shipments of cottonseed or cottonseed seed products destined for animal feed shall be certified as having been sampled and analyzed and no greater amount than twenty (20) ppb of aflatoxin shall be contained within the product or products, except that cottonseed meal intended for use as an animal feed or feed ingredient for beef cattle, swine and poultry, may be certified to contain more than twenty (20) ppb but less than three hundred (300) ppb of aflatoxin. ()

02. Storage Location and Destination. Whole cottonseed, cottonseed meal or cottonseed seed products entering the state certified to contain no greater than twenty (20) ppb aflatoxin, or cottonseed meal certified to contain more than twenty (20) ppb but less than three hundred (300) ppb aflatoxin shall be accompanied by the certification document aboard carrier, be identified with a storage location at destination, and the certification document shall be maintained on file at the shipment destination for no less than one (1) year. In the case of bulk rail car shipments, the certification document shall accompany the invoice or bill-of-lading and be identified with a storage location at destination. The certification document shall be maintained on file at the shipment destination for no less than one (1) year. ()

03. Registration. Idaho firms wishing to import into the state and/or handle cottonseed meal containing more than twenty (20) ppb but less than three hundred (300) ppb aflatoxin for distribution or sale shall register annually with the Department their intent to do so. Feedlots and other end user operations importing the cottonseed meal as defined above in this paragraph for their own use are exempted from registration requirement. The importing firm shall also register the cottonseed meal (if not already registered by another firm) with the Department and pay any applicable registration fees (Sections 25-2704, Idaho Code). As a condition of registration, firms importing and/or handling cottonseed meal certified to contain more than twenty (20) ppb but less than three hundred (300) ppb aflatoxin, shall enter into a compliance agreement with the Department agreeing to: ()

a. Store and label cottonseed meal certified to contain more than twenty (20) ppb but less than three hundred (300) ppb aflatoxin separately from cottonseed meal certified to contain less than twenty (20) ppb aflatoxin; ()

b. Inform the purchaser in writing of the certified aflatoxin level in the meal purchased; and ()

c. Submit to periodic record and facility inspections, and product testing by the Department. ()

04. Certification Performance. Required certification will be performed by any state government or Federal government engaged in this type of certification. In the event that a state government or Federal government laboratory is not available, an independent or company laboratory may upon request be approved by the Department. Requests and approval shall be made in advance of the shipment entering the state. ()

161. -- 169. (RESERVED)

170. COTTONSEED -- EXEMPTIONS.

Cottonseed hulls are exempted from laboratory certification requirements as stated in Subsections 160.01 through 160.04, provided that, cottonseed hulls shall not contain greater than twenty (20) ppb aflatoxin as required by the U. S. Food and Drug Administration. Any invoice or bill of lading accompanying or sent in regard to a shipment of cottonseed hulls shall state the level of aflatoxin in parts per billion contained in the shipment. ()

171. -- 179. (RESERVED)

180. DETAINED COMMERCIAL FEEDS.

01. Stop Sale, Use, or Removal. Any commercial feed or identified lot of commercial feed that is the subject of a “stop sale, use, or removal” order under Section 25-2711(1), Idaho Code, may be released from such an order by the following means: ()

a. A commercial feed detained for nutritional violation(s) may be: ()

i. Remanufactured, using ingredients listed on the approved label, to meet label guarantees. The remixed feed shall be resampled and analyzed to ensure compliance prior to its return to sale. ()

ii. Relabeled to reflect actual values, upon approval of a new label and registration, provided that these values are appropriate for their intended use. ()

iii. Returned to the manufacturer if the seller and manufacturer are not the same. ()

iv. Diverted to an alternate use such as inclusion into another feed, or feeding to the manufacturer’s own livestock, provided that it is appropriate for the diverted use and that it does not conflict with labeling or other State or Federal requirements for the diverted use. ()

v. Destroyed. ()

b. A commercial feed detained for a drug or antibiotic violation may be: ()

i. Remanufactured to meet label guarantees. The remixed feed shall be resampled and analyzed prior to its return to sale. ()

ii. Returned to the manufacturer if the seller and manufacturer are not the same. ()

iii. Diverted to an alternate use, provided that it is appropriate for the diverted use labeling or other State or Federal requirements for the diverted use. ()

iv. Destroyed. ()

c. A commercial feed deemed to be adulterated under Section 25-2707(1), Idaho Code, or that cannot safely be remanufactured, relabeled, or diverted to an alternate use may be: ()

i. Returned to the manufacturer if the seller and manufacturer are not the same. ()

ii. Destroyed. ()

02. Appropriate Compliance Procedure. The Department will indicate which of the above listed compliance procedures are appropriate for the particular “withdrawal from sale” order. The seller shall indicate which procedure is to be followed and, upon approval from the Department, shall carry out the procedure within thirty (30) days. Other procedures may be considered upon application by the state inspector or seller to the Department, Bureau of Feeds and Plant Services, Idaho Department of Agriculture, Boise, Idaho. ()

03. Violation of Stop Sale, Use, or Removal Order. Any violation of the terms or conditions of a Stop Sale, Use, or Removal Order is considered a prohibited act. ()

181. -- 211. (RESERVED)

SUBCHAPTER B – NURSERIES AND FLORISTS

212. SPECIAL SERVICE.

When nurseries or florists require additional inspections and special services, a special service fee will be charged. Refer to IDAPA 02.06.04, "Rules Governing Plant Exports," Section 195, "Fees and Charges," for a complete schedule of services and fees. ()

213. -- 219. (RESERVED)

220. SHIPPING PERMIT NUMBER.

Upon request, a licensed nurseryman who holds a valid certificate of inspection from the Idaho Department of Agriculture for his nursery will be issued a shipping permit number. Application for a number must be made annually, and the use of the number is subject to the following conditions: ()

01. Accompaniment. The shipping permit number shall accompany all shipments and deliveries of nursery stock. ()

02. Changes. Once issued, the shipping permit number will not change unless request is made for a new number. ()

03. Application Deadline. Application for a number or renewal of a number must be made by January 1 of each year. Failure to do so will result in suspension of the shipping permit number. ()

04. Fees. A number will be issued or renewed only after the proper nursery license fees have been paid for the current license year. A shipping permit number will be held in abeyance until the proper license fees are paid. ()

05. Reissue Application. If the business entity of a licensee is changed, or if the membership of a partnership is changed, irrespective of whether or not the business name is changed, application for reissuance of the shipping permit number must be made to the Idaho Department of Agriculture. ()

06. Permit Number. The shipping permit number, if printed on containers or cartons, will read as follows:

(SEAL)

IDAHO DEPARTMENT OF AGRICULTURE
DIVISION OF PLANT INDUSTRIES
BOISE, IDAHO 83701

SHIPPING
PERMIT NO.

The nursery doing business under the above permit number has been regularly inspected and, to the best of our knowledge, is free from dangerous insect pests and diseases.

()

07. No Other Statements. No other statements, other than the business name and address, may appear

on the side of the container on which the shipping permit number and accompanying statement are printed. The printing of the shipping permit number is the responsibility of the licensee and all costs incurred in printing are his responsibility. ()

221. -- 309. (RESERVED)

SUBCHAPTER C – BEE INSPECTION

310. DEFINITIONS.

The Department adopts the definitions set forth in Section 22-2502, Idaho Code for the interpretation and enforcement of Subchapter C only. ()

311. -- 314. (RESERVED)

315. REGULATED BEE DISEASES.

Specifically, American foulbrood, European foulbrood, sac brood and bee paralysis, Varroa mite, tracheal mite, or any other disease or abnormal condition of egg, larval, pupal, or adult stages of honey bees, hereinafter is referred to as bee diseases. ()

316. -- 329. (RESERVED)

330. REGULATED PRODUCTS AND RELATED EQUIPMENT.

Subchapter C concerns any stage of the common honey bee, *Apis mellifera* L., all equipment used in handling and manipulation of bees, wax, and hives, and includes any containers for honey and wax that may be used in any apiary or in transporting bees and their products and apiary supplies that are located within the state of Idaho. ()

331. -- 339. (RESERVED)

340. REGISTRATION AND COLLECTION OF FEES.

On or before July 1 of each year any person engaging in the activities of apicultural shall file with the Idaho Department of Agriculture a “Registration” form provided by the Idaho Department of Agriculture specifying the name, residence, place of apiaries, number of hives or colonies of bees owned or controlled, and such other information as may be required, accompanied by the applicable registration fee. ()

341. -- 349. (RESERVED)

350. INSPECTION PROCEDURES.

01. Request for Inspection. All beekeepers requiring an apiary inspection shall complete the “Request for Inspection” form provided by the Department of Agriculture that includes name, address, telephone number of the applicant, number of colonies to be inspected and the state(s) to which entry is desired. The applicant agrees to pay the costs of the inspection according to the fee schedule in Section 370. The request for inspection must be returned to the Department of Agriculture no later than August 15 of each year. Late requests will be accepted through August 31, after which no requests for inspection will be accepted. No inspections will be conducted after November 15 of each year. Apiaries found free of disease will be entitled to receive a health certificate valid for one (1) year from date of issuance permitting access to those states that require and recognize Idaho certification. ()

02. Disease Inspection. The apiary inspector will inspect for all diseases and pests cited in Section 315, specifically for American foulbrood and Varroa mite or other bee diseases as specified by the importing state regulatory agency. ()

03. Posting of Registration. All apiaries located within the state of Idaho shall be conspicuously posted with the name, address and telephone number and state registration number of the owner. ()

04. Necessary Precautions. The apiary inspector will take all necessary precautions to properly disinfect all tools and any other thing that may have come into contact with diseased bees or equipment to prevent spread of the disease. ()

351. -- 359. (RESERVED)

360. DUTY OF OWNER OF BEES.

01. Compliance With Rules. Upon receipt of disease notification, the owner shall control the disease through the use of registered and approved agents in accordance with label directions or eradicate the disease by burning, then burying under not less than eighteen (18) inches of soil, the contaminated bees and equipment. ()

02. Quarantined Apiary. Bees shall not be removed from an infested or quarantined apiary without permission, in writing, from the Director or the Director's agents. ()

361. -- 369. (RESERVED)

370. FEES AND CHARGES.

01. Inspection, Sampling and Other Field Work: ()

a. Inspection time: fifteen dollars (\$15) per hour. ()

b. Travel costs: mileage, meals and lodging will be charged according to established state rates. ()

02. Laboratory Examination. Twenty-five dollars (\$25) per worker hour. ()

371. -- 403. (RESERVED)

SUBCHAPTER D – FERTILIZER

404. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into Subchapter D: ()

01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication. The Terms, Ingredient Definitions, and Policies, as published in the "2020 Official Publication" of AAPFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 22, Chapter 6, Idaho Code, and any rule promulgated thereunder. A copy may be purchased online from the AAPFCO website at: www.aapfco.org. ()

02. The Merck Index. The "2013 Merck Index," 15th Edition as published by Merck Research Laboratories Division of Merck & Co., Incorporated. The Merck Index is a copyrighted publication and not available in an electronic format. A copy may be purchased online from Merck & Co., Inc. (now hosted by the Royal Society of Chemistry) at: <http://www.rsc.org/merckindex>. ()

03. The Association of Official Agricultural Chemists (AOAC) International. The "2019 Official Methods of Analysis (OMA) of the AOAC," 21st Edition, a copyrighted publication, is maintained and published by the AOAC International. The AOAC OMA is available in electronic format at: www.EOMA.AOAC.org. A copy may be purchased online from AOAC International. ()

405. -- 409. (RESERVED)

410. DEFINITIONS.

In addition to the definitions found in Section 22-603, Idaho Code, the definitions in Subsection 410 apply in the interpretation and enforcement of Subchapter D only. ()

01. Guarantee. An affirmation or promise made by the seller to the buyer that relates to the goods and becomes part of the basis of the bargain and creates an express warranty that the fertilizer shall conform to the

affirmation or promise. ()

02. Ultimate Dealer. The person who distributes fertilizer product to the end-user. ()

411. -- 419. (RESERVED)

420. SAMPLING AND ANALYSIS.

The methods of sampling and analysis are those of the Association of Official Analytical Chemists (AOAC) or other methods as approved by the department. ()

421. -- 429. (RESERVED)

430. RULES REGARDING THE REGISTRATION OF FERTILIZERS CONTAINING PLANT NUTRIENTS IN ADDITION TO NITROGEN, PHOSPHATE, AND POTASH.

01. Other Plant Nutrients. A fertilizer may contain plant nutrients in addition to nitrogen, phosphate and potash. When these other nutrients are mentioned on the label in any form or manner, the fertilizer shall be registered. In addition, each nutrient amount shall be guaranteed, with the guarantee reported on the label on an elemental basis. Sources of the nutrients subjected to the guaranteed analysis, and proof of availability shall be provided to the department upon request. Any additional nutrients, contained in a fertilizer submitted for registration, must be present in the following minimum concentrations:

Element	Percent
Calcium (Ca)	1.0000
Magnesium (Mg)	0.5000
Sulfur (S)	1.0000
Boron (B)	0.0200
Chlorine (Cl)	0.1000
Cobalt (Co)	0.0005
Copper (Cu)	0.0500
Iron (Fe)	0.1000
Manganese (Mn)	0.0500
Molybdenum (Mo)	0.0005
Nickel (Ni)	0.0010
Sodium (Na)	0.1000
Zinc (Zn)	0.0500

()

02. Labeling. The label shall constitute a guarantee regarding the nutrient content of the fertilizer. No nutrients, other than those listed in Subsection 430.01, will be accepted by the department as guaranteed. Proposed labels and directions for the use of the fertilizer shall be furnished with the application for registration upon request. Any of the above listed elements that are guaranteed shall appear in the order listed immediately following guarantees for the primary nutrients of nitrogen, phosphate and potash. ()

03. Exemptions. Guarantees for water soluble nutrients labeled for ready-to-use foliar fertilizers, ready-to-use specialty liquid fertilizers, hydroponic or continuous liquid feed programs, and potting soils, are exempted from the minimum element percentages listed in Subsection 430.01. ()

431. -- 439. (RESERVED)

440. WARNING OR CAUTION STATEMENTS.

A warning or cautionary statement is required on any fertilizer product: ()

01. Containing Boron. If the fertilizer product contains one tenth of a percent (.10%) or more boron in a water soluble form, the statement shall include: ()

a. The word “Warning” or “Caution” conspicuously displayed; ()

b. The crops for which the fertilizer is recommended; and ()

c. That the use of the fertilizer on any crop(s) other than those recommended may result in serious injury to the crop(s). ()

02. Containing Molybdenum. If the fertilizer product contains one thousandths of a percent (.001%) or more molybdenum, the statement shall include: ()

a. The word “Warning” or “Caution” conspicuously displayed; and ()

b. That the application of fertilizers containing molybdenum may result in forage crops containing levels of molybdenum that are toxic to ruminant animals. ()

03. Other Fertilizer Products. The department may require a registrant to include a warning or caution statement for any other fertilizer product that contains a micro-nutrient in water soluble form for which there is evidence that application of the micro-nutrient may be harmful to certain crops or where there are unusual environmental conditions. ()

04. Examples. The following are examples of warning or caution statements: ()

a. Directions: Apply this fertilizer at a maximum rate of (number of pounds) per acre for (name of crop). ()

b. CAUTION: Do not use on other crops. The (name of micro-nutrient) may cause injury to them. ()

c. CAUTION: Apply this fertilizer at a maximum rate of (number of pounds) per acre for (name of crop). Do not use on other crops; the (name of micro-nutrient) may cause serious injury to them. ()

d. WARNING: This fertilizer carries added (name(s) of micro-nutrient(s)) and is intended for use only on (name of crop). Its use on any other crops or under conditions other than those recommended may result in serious injury to the crops. ()

e. CAUTION: This fertilizer is to be used only on soil that responds to (name of micro-nutrient). Crops high in (name of micro-nutrient) are toxic to grazing animals (ruminants). ()

f. Caution: (Name of micro-nutrient) is recommended for all crops where (name of micro-nutrient) may be deficient; however excessive application to susceptible crops may cause damage. ()

441. -- 449. (RESERVED)

450. FERTILIZER LABELS.

The following information, in the format presented, is the minimum required for all fertilizer labels. For packaged products, this information shall either appear on the package, or be printed on a tag and attached to the package. This information shall be in a readable and conspicuous form. For bulk products, this same information in written or printed form shall accompany delivery and be supplied to the purchaser at time of delivery. ()

01. Net Weight or Net Volume, If Liquid. Weight per gallon shall be included on the label of liquid fertilizers if net volume is stated. ()

02. Brand. ()

03. Grade. Grade (provided that the grade shall not be required when no primary nutrients are claimed). ()

04. Guaranteed Analysis. A fertilizer label must contain the results of the guaranteed analysis. Zero (0) guarantees should not be made and shall not appear in any statement except in nutrient guarantee itemizations. The sliding scale method of expressing a guaranteed analysis on fertilizer labels (for example, "Available Phosphate fifteen to eighteen percent (15-18%)") is prohibited. If chemical forms of nitrogen are claimed or required, said form shall be set forth on the label. Nutrients other than nitrogen, phosphate and potash shall be set forth, on an elemental basis, as required by Subsection 430.01. The results of the guaranteed analysis required by Subchapter D of this rule shall be in the following form:

Total Nitrogen	(N). _____%
_____%	Ammoniacal Nitrogen
_____%	Nitrate Nitrogen
_____%	Water Insoluble Nitrogen
_____%	Urea Nitrogen
_____%	(Other recognized and determinable forms of N)
Available Phosphate (P ₂ O ₅)	_____%
Soluble Potash (K ₂ O)	_____%
(Other nutrients, elemental basis)	_____%

()

05. Sources. Sources of nutrients shall be listed below the completed guaranteed analysis statement. ()

06. Name and Address. Name and address of manufacturer, guarantor or registrant. ()

07. Specialty Fertilizers. For specialty fertilizers distributed to the end user, the label shall set forth adequate directions for use. Such directions may include, but are not limited to: ()

a. The recommended application rate or rates in units of weight or volume per unit of area coverage (where application rates are given in volume, the manufacturer shall provide the bulk density for the product on the label); ()

b. Proper seasonal times and minimum intervals to apply the product when plants can rapidly utilize nutrients and loss to the environment can be minimized; and ()

c. The statement "Apply Only As Directed" or a statement of similar designation. ()

08. Packaging. Refer to Idaho Department of Agriculture rules, IDAPA 02.02.14, "Rules for Weights and Measures," for the specific requirements relating to product identity, declaration of quantity and prescribed units. ()

451. -- 454. (RESERVED)

455. PRODUCT REGISTRATION.

01. Registration. All fertilizer companies, including companies engaged in custom-formula mixing of dry or liquid fertilizers, shall comply with the product registration requirements of the Idaho Fertilizer Act of 2000, Section 22-605, Idaho Code, subject to the provisions of this Subchapter D. ()

02. Alteration From Original State. When a fertilizer is mixed, added to, or in any way changed from its original grade or its content of secondary or minor nutrients, it is a different product, and must be registered as provided under Section 22-605, Idaho Code. ()

03. Registering -- Altered Fertilizers. When a registered grade is altered by any commercial fertilizer manufacturer or ultimate dealer, such manufacturer or ultimate dealer, shall register the altered grade as provided under Section 22-605, Idaho Code. ()

04. Brand Name. The addition of another prominent name or graphic design to the brand displayed on the label, other than descriptive words associated with the grade, constitutes a different brand and thus, must be registered as provided under Section 22-605, Idaho Code. For example, changing "Rose Bud 5-10-5" to "Kilmer's Rose Bud 5-10-5" would constitute a change in brand. ()

05. Sale of Fertilizer. When a commercial fertilizer is removed from the package or vehicle in which it was placed by the original registrant and then offered for sale by a person other than the original registrant, it is a different product and shall be registered in accordance with Section 22-605, Idaho Code, except that it is not subject to an additional inspection fee as provided under Section 22-608, Idaho Code, provided that said fee was paid on the product by the original or prior registrant. ()

456. -- 459. (RESERVED)

460. SLOWLY RELEASED PLANT NUTRIENTS.

01. Slow Release. No fertilizer label shall bear a statement that connotes or implies that certain plant nutrients contained in a fertilizer are released slowly over a period of time, unless the slow release components are identified and guaranteed at a level of at least fifteen percent (15%) of the total guarantee for that nutrient(s). ()

02. Slow Release Properties. Types of products with slow release properties currently recognized by the department for the purposes of a guarantee include: ()

a. Water insoluble, such as natural organics, ureaform materials, urea-formaldehyde products, isobutylidene diurea, oxamide, etc.; ()

b. Coated slow release, such as sulfur coated urea and other encapsulated soluble fertilizers; ()

c. Occluded slow release, where fertilizers or fertilizer materials are mixed with waxes, resins, or other inert materials and formed into particles; and ()

d. Products containing water soluble nitrogen such as ureaform materials, urea-formaldehyde products, methylenediurea (MDU), dimethylenetriura (DMTU), dicyanodiamide (DCD), etc. ()

03. Additional Products May Be Added to List of Slow Release Nutrients. The department may add additional products to the list of recognized slow release nutrients upon an appropriate showing by a registrant. The terms, "water insoluble," "coated slow release," "slow release," "controlled release," "slowly available water soluble," and "occluded slow release," are accepted as descriptive of these products, provided the manufacturer can show a testing program substantiating the claim. Testing shall be under guidance of Experiment Station personnel or a recognized researcher acceptable to the department. A laboratory procedure, acceptable to the department for evaluating the release characteristics of the product(s), must also be provided by the manufacturer. ()

04. Methods. Unless otherwise specified by the department, AOAC International Method 970.04 (15th Edition) is to be used to confirm the coated slow release and occluded slow release nutrients and others whose slow release characteristics depend on particle size. AOAC International Method 945.01 (15th Edition) shall be used to determine the water insoluble nitrogen of organic materials. ()

461. -- 469. (RESERVED)

470. INVESTIGATIONAL ALLOWANCES.

01. Use of Investigational Allowances. Investigational Allowances will be used in determining whether a fertilizer is deficient. Fertilizers that are deemed deficient are subject to penalty. Penalties for deficient fertilizers are found in Section 22-611, Idaho Code. ()

02. Deeming a Fertilizer Deficient. A fertilizer will be deemed deficient if the analysis of any nutrient is below the guarantee by an amount exceeding the values in the following schedules, or if the overall index value of the fertilizer is below ninety-seven percent (97%). Note: For these investigational allowances to be applicable, the recommended AOAC International procedures for obtaining samples, preparation and analysis must be used. These are described in Official Methods of Analysis of the Association of Official Analytical Chemists, 13th Edition, 1980, and in succeeding issues of the Journal of the Association of Official Analytical Chemists. In evaluating replicate data, Table 19, page 935, Journal of the Association of Official Analytical Chemists, Volume 49, No. 5, October, 1966, should be followed. ()

03. Investigational Allowances for Nitrogen, Phosphate and Potash. For guaranteed percentages not listed in the following table, calculate the appropriate investigational allowance by interpolation.

Guaranteed Percent	Nitrogen Percent	Available Phosphate Percent	Potash Percent
04 or less	0.49	0.67	0.41
05	0.51	0.67	0.43
06	0.52	0.67	0.47
07	0.54	0.68	0.53
08	0.55	0.68	0.60
09	0.57	0.68	0.65
10	0.58	0.69	0.70
12	0.61	0.69	0.79
14	0.63	0.70	0.87
16	0.67	0.70	0.94
18	0.70	0.71	1.01
20	0.73	0.72	1.08
22	0.75	0.72	1.15
24	0.78	0.73	1.21
26	0.81	0.73	1.27
28	0.83	0.74	1.33
30	0.86	0.75	1.39

Guaranteed Percent	Nitrogen Percent	Available Phosphate Percent	Potash Percent
32 or more (*)	0.88	0.76	1.44

(*For DAP and MAP, the Investigational Allowance for Available Phosphate is zero point seventy (0.70); for TSP, the Investigational Allowance shall be: one point fifty-two (1.52)). For dry custom mix fertilizers, an additional five percent (5%) of the guaranteed percentage shall be granted in addition to the allowances made in Subsection 470.03. ()

04. Investigational Allowance for Other Nutrients. Secondary and minor elements shall be deemed deficient if any element is below the guarantee by an amount exceeding the values in the following schedule:

Element	Investigational Allowance
Calcium	) 0.2 unit + 5% of guarantee
Magnesium	) 0.2 unit + 5% of guarantee
Sulfur	) 0.2 unit + 5% of guarantee
Boron	) 0.003 unit + 15% of guarantee
Cobalt	) 0.0001 unit + 30% of guarantee
Chlorine	) 0.005 unit + 10% of guarantee
Copper	) 0.005 unit + 10% of guarantee
Iron	) 0.005 unit + 10% of guarantee
Manganese	) 0.005 unit + 10% of guarantee
Molybdenum	) 0.0001 unit + 30% of guarantee
Sodium	) 0.005 unit + 10% of guarantee
Zinc	) 0.005 unit + 10% of guarantee

The maximum allowance when calculated as specified shall be one (1) unit (one percent (1%)). For dry custom mix fertilizers, an additional five percent (5%) of the guarantee shall be granted in addition to the allowances made above in this section. ()

05. Overall Index Value. The overall index value is calculated by comparing the commercial dollar value guaranteed with the commercial dollar value found (Commercial Dollar Value found / Commercial dollar value guaranteed) x 100). Unit dollar values of the nutrients used are those referred to in Section 22-612, Idaho Code. The Department will conduct periodic surveys of the industry to determine unit dollar values. ()

06. Examples. The following are examples of calculations for a custom mixed fertilizer of a 12-16-14 grade. For the purpose of these examples, the nutrient unit dollar values for all of the examples are assumed to be twenty-three cents (\$.23) per pound of nitrogen, twenty-seven cents (\$.27) per pound of available phosphate (P2O5), and eighteen cents (\$.18) per pound of potash (K2O).

Example 1. A ten thousand (10,000) pound batch of customer formula fertilizer guaranteed at 12.0-16.0-14.0 is analyzed and found at 10.6-16.4-14.3

Nutrient	Guaranteed	x price/lb	Found	x price/lb
N	12.0	\$2.76 (\$.23 x 12.0)	10.6	\$2.438 (\$.23 x 10.6)

Nutrient	Guaranteed	x price/lb	Found	x price/lb
P ₂ O ₅	16.0	\$4.32 (\$.27 x 16.0)	16.4	\$4.428 (\$.27 x 16.4)
K ₂ O	14.0	\$2.52 (\$.18 x 14.0)	14.3	\$2.574 (\$.18 x 14.3)
Total		\$9.60		\$9.44

Overall Index Value = $(\$9.44/\$9.60) \times 100 = 98.3\%$

However, the nitrogen value is in violation. The investigational allowance for a nitrogen guarantee of 12.0% is 0.61% (see the chart in section 02.06.12.050.03 above) plus an additional 5% of the guarantee for customer formula mixes. Therefore the nitrogen value must be at least 10.79%: $(12.0 - [.61 + 12.0(.05)] = 10.79\%)$ in order to be within permissible values.

To find the amount (Lbs.) of N deficiency multiply the percent guaranteed by the weight of the lot minus the percentage found multiplied by the weight of the lot.

$$(.12) (12\%) \text{ guaranteed} \times 10,000 \text{ lbs} - (.106) (10.6\%) \text{ found} \times 10,000 \text{ lbs} = 140 \text{ pounds}$$

The penalty will be calculated as three times the value of a deficiency of 140 pounds of nitrogen in the 10,000 pound batch. $3 \times [140 (\$.23)] = \96.60

Example 2. A ten thousand (10,000) pound batch of customer formula fertilizer guaranteed at 12.0-16.0-14.0 is analyzed at 11.1-15.3-13.1.

Nutrient	Guaranteed	x price/lb	Found	x price/lb
N	12.0	\$2.76 (\$.23 x 12.0)	11.1	\$2.553 (\$.23 x 11.1)
P ₂ O ₅	16.0	\$4.32 (\$.27 x 16.0)	15.3	\$4.131 (\$.27 x 15.3)
K ₂ O	14.0	\$2.52 (\$.18 x 14.0)	13.1	\$2.358 (\$.18 x 13.1)
Total		\$9.60		\$9.042

Overall Index Value = $(\$9.042/\$9.60) \times 100 = 94.2\%$

Although each of the individual nutrients is within the investigational allowance, the cumulative deficiency is reflected in the Overall Index Value.

The investigational allowance table shows for a nitrogen guarantee of 12%, the allowance is 0.61%. An additional allowance of 5% of the guarantee is 0.60%. The minimum nitrogen value is then $12.0 - [0.61 + (.05 \times 12)] = 10.79$.

The minimum acceptable values for P₂O₅ and K₂O will be 14.50 and 12.43, respectively.

The penalty will be calculated as follows:

Nutrient	Guaranteed lbs	-	Found lbs	=	Deficient lbs	x	price/lb
N	1200 (.12 x 10,000)	-	1110 (.111 x 10,000)	=	90	x	\$20.70 (\$.23 x 90 lbs)
P ₂ O ₅	1600 (.16 x 10,000)	-	1530 (.153 x 10,000)	=	70	x	\$18.90 (\$.27 x 70 lbs)

Nutrient	Guaranteed lbs	-	Found lbs	=	Deficient lbs	x	price/lb
K ₂ O	1400 (.14 x 10,000)	-	1310 (.131 x 10,000)	=	90	x	\$16.20 (\$.18 x 90 lbs)
Total							\$55.80

3 (\$55.80) = \$167.40

If the examples were specialty fertilizers rather than customer formula mixes, the penalties will be assessed in accordance with Section 22-611, Idaho Code. ()

471. -- 479. (RESERVED)

480. ITEMIZATION OF PLANT FOOD ELEMENTS WITHIN THE GUARANTEED ANALYSIS.

When a product label sets forth the different components of plant nutrients, the percentage for each component shall be shown before that component's name.

EXAMPLES:	
Total Nitrogen (N)	_____ %
_____ %	Ammoniacal Nitrogen
_____ %	Nitrate Nitrogen
Magnesium (Mg)	_____ %
_____ %	Water Soluble Magnesium (Mg)
Sulfur (S)	_____ %
_____ %	Free Sulfur (S)
_____ %	Combined Sulfur (S)
Iron (Fe)	_____ %
_____ %	Chelated Iron (Fe)

EXAMPLES:	
Manganese (Mn)	_____ %
_____ %	Water Soluble Manganese (Mn)

()

481. -- 489. (RESERVED)

490. ORGANIC NITROGEN.

If an amount of nitrogen is designated as organic then the water insoluble nitrogen or the slow release nitrogen guarantee must not be less than sixty percent (60%) of the nitrogen so designated. Coated urea shall not be included in meeting the sixty percent (60%) requirement. ()

491. -- 503. (RESERVED)

SUBCHAPTER E – SOIL AND PLANT AMENDMENTS

504. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into Subchapter E: ()

01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication.

The Terms, Ingredient Definitions, and Policies, as published in the “2020 Official Publication” of AAPFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 22, Chapter 6, Idaho Code, and any rule promulgated thereunder. A copy may be purchased online from the AAPFCO website at: www.aapfco.org. ()

02. The Merck Index.

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03. The Association of Official Agricultural Chemists (AOAC) International.

The “2019 Official Methods of Analysis (OMA) of the AOAC,” 21st Edition, a copyrighted publication, is maintained and published by the AOAC International. The AOAC OMA is available in electronic format at: www.EOMA.AOAC.org. A copy may be purchased online from AOAC International. ()

505. -- 509. (RESERVED)

510. DEFINITIONS.

In addition to the definitions found in Section 22-2203, Idaho Code, the following definitions apply in the interpretation and enforcement of this Subchapter E only: ()

01. Animal Manure. The excreta of animals together with whatever bedding material is present. ()

02. Dried Animal Manure. Animal manure resulting from confined animal feeding operations manipulated only to reduce the moisture content. ()

511. ABBREVIATIONS.

01. AAPFCO. Association of American Plant Food Control Officials. ()

02. **AOAC.** Association of Official Analytical Chemists, International. ()

03. **ISDA.** Idaho State Department of Agriculture. ()

512. -- 519. (RESERVED)

520. SOIL AMENDMENT AND PLANT AMENDMENT REGISTRATION.

Each separately identifiable soil amendment or plant amendment product shall be registered pursuant to Section 22-2205, Idaho Code. ()

01. Product Registration. All soil amendment and plant amendment companies, including companies engaged in custom-formula mixing of dry or liquid soil amendments or plant amendments, will comply with the product registration requirements of the Idaho Soil and Plant Amendment Act, Section 22-2205, Idaho Code, subject to the provisions of this chapter. ()

02. Exemptions from Registration. ()

a. Dried animal manure without nutrient claims and not commercially packaged or labeled. ()

b. Horticultural growing media containing live plant material. ()

03. Alteration from Original State. When a soil amendment or plant amendment that has been registered is mixed, added to, or in any way changed from its original content, it is a different product, and must be registered as provided under Section 22-2205, Idaho Code. ()

04. Sale of Soil Amendment or Plant Amendment. When a commercial soil amendment or plant amendment is removed from the package or container in which it was placed by the original registrant and then offered for sale by a person other than the original registrant, it is a different product and shall be registered in accordance with Section 22-2205, Idaho Code, except that it is not subject to an additional inspection fee as provided under Section 22-2208, Idaho Code, provided that said fee was paid on the product by the original or prior registrant. ()

521. -- 529. (RESERVED)

530. SOIL AMENDMENT AND PLANT AMENDMENT LABELS.

01. Content or Guaranteed Analysis Exemptions. ()

a. The labeling requirements of the Idaho Soil and Plant Amendments Act, Section 22-2207(1)(c), Idaho Code, requiring that soil and plant amending ingredients and other ingredients shall be stated in terms of percentage is required except the following single ingredient soil amendments, when clearly and conspicuously identified as such on the label, are exempt from the content or guaranteed analysis: ()

i. Mulch; ()

ii. Peat; ()

iii. Perlite; ()

iv. Vermiculite; and ()

v. Vermicompost. ()

b. In lieu of a content or guaranteed analysis as required in Section 22-2207(1)(c), Idaho Code, the label of the following soil amendments when clearly and conspicuously identified as such on the label may include an ingredient statement: ()

- i. Compost; ()
- ii. Garden Soil; ()
- iii. Landscape Soil; ()
- iv. Mulch; ()
- v. Planting Mix; and ()
- vi. Potting Mix. ()

c. In lieu of a content or guaranteed analysis as required in Section 22-2207(1)(c), Idaho Code, a product that claims the presence of a microbe(s), other than naturally occurring microbes, shall guarantee the microbe(s) as follows: ()

- i. Minimum number of each claimed viable organism at the genus and species level in colony forming units (CFU), spores or propagules per gram or milliliter (cm³); ()
- ii. Expiration date; and ()
- iii. Storage & handling instructions. ()

02. Nutrient Claims and the Use of the Term “Fertilizer.” ()

a. The term “fertilizer” and like terms shall not be used in labeling or literature to describe a soil amendment or plant amendment. ()

b. Nutrient claims do not change the primary intended use of a soil or plant amendment product. Any nutrient claim shall be provided on the labeling and literature as an estimated range and stated as a percentage. Nutrient claims and estimates must be supported by lab analysis or documentation acceptable by the ISDA. ()

c. Labeling or literature that makes nutrient claims or estimates is required to contain the following statement: “This product is recognized for its soil amendment characteristics. It is recognized that it has nutrient value. Any nutrient claims, verbal or written, are estimates and not guaranteed.” ()

d. At the discretion of the registrant, labeling or literature that does not make nutrient claims or estimates may contain the following statement: “This product is recognized for its soil amendment characteristics. It is recognized that it has nutrient value. Any nutrient claims, verbal or written, are estimates and not guaranteed.” ()

e. A guaranteed analysis of plant nutrients will be permitted on potting soils, landscape and garden soils, and related amendment products containing only levels of fertilizer sufficient to initiate growth. ()

03. Microbiological Product. If the soil amendment or plant amendment is a microbiological product intended as an inoculum, the product label shall include an expiration date and state the number and kind of viable organisms per milliliter or, if the product is other than liquid, state the number and kind of viable organisms per gram. However, if the soil amendment or plant amendment is derived from a microbiological process or culture but is not intended as an inoculum, then the product label shall state that the product is not a viable culture. ()

04. Ninety-Five Percent Rule. When a soil amendment or plant amendment is labeled as a specific material, such as peat moss or leaf mold, the product shall consist of not less than ninety-five percent (95%) of that specific material. ()

05. Other Ingredients. When the name of an ingredient(s) appears on the label of a soil amendment or plant amendment and is not one of the ingredients required to be listed, the percentage of that ingredient(s) shall

appear prominently in print of the same size and color. ()

06. Warning or Caution Statements. The ISDA may require a registrant to include a warning or caution statement to ensure safety to handlers, crops, and the environment. ()

07. Precautionary Statements. ISDA may require precautionary statements when needed for safe and effective use of the soil amendment or plant amendment. ()

531. -- 539. (RESERVED)

540. SAMPLING AND ANALYSIS.

The methods of sampling and analysis shall be those of AAPFCO, AOAC, or other methods as approved by the ISDA. ()

541. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.06.04 – RULES GOVERNING PLANT EXPORTS
DOCKET NO. 02-0604-1901 (NEW CHAPTER, FEE RULE)
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 22-107, 22-112, and 22-2303(5), Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

PUBLIC HEARING
Thursday, November 14, 2019 @ 9:00 a.m.
Idaho State Department of Agriculture 2270 Old Penitentiary Road Boise, ID 83712

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: Three rules administered by the ISDA are related to plant exports. These rules are IDAPA 02.06.34, “Rules Concerning Virus-Free Certification of Nursery Stock,” IDAPA 02.06.40, “Rules Governing Ginseng Export,” and IDAPA 02.06.04, “Phytosanitary and Post-Entry Seed Certification Rules.” These rules were promulgated to carry out requirements described in Title 22, Chapters 1, 7, and 23. In order to streamline and simplify rules related to plant exports, the ISDA has decided to combine all three rules into a single rule to be titled “**02.06.04, Rules Governing Plant Exports.**” No substantive changes are being made to the three rules cited above. All rules were reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Fees included in the original rules have not been changed in the new combined rule. Fees associated with these rules are imposed pursuant to Sections 22-107, 22-112, and 22-2305, Idaho Code.

IDAHO CODE SECTION 22-101A STATEMENT: Section 22-101A, Idaho Code, requires that in this notice of proposed rulemaking, the Director must specify whether this rule is broader in scope or more stringent than federal law or regulations, or regulates an activity not regulated by the federal government. This Rule, in its entirety, regulates an activity not regulated by the federal government.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no change in fiscal impact because of this consolidation rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted on September 18, 2019. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, Pages 15-19](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: This section is not applicable as there are no materials incorporated by reference in this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd Knight, Administrator, at (208) 332-8664.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 27, 2019.

Dated this 3rd day of October, 2019.

Brian Oakey, Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249, Boise, Idaho 83707
Phone: (208) 332-8552 / Fax: (208) 334-2710

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0604-1901
(New Chapter)

02.06.04 – RULES GOVERNING PLANT EXPORTS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 22-107, 22-112, and 22-2303(5), Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is “Rules Governing Plant Exports.” ()

02. Scope. These rules govern the production of pest-free plants and plant products, and provide procedures for compliance with phytosanitary regulations of other states and foreign countries, in order to protect Idaho agriculture from the introduction of foreign pests on imported plant materials. These rules also govern procedures for voluntary certification of virus-free nursery stock for export. ()

002. – 109. (RESERVED)

SUBCHAPTER A – PHYTOSANITARY AND POST-ENTRY SEED CERTIFICATION

110. DEFINITIONS.

The definitions found in Section 110 apply to the interpretation and enforcement of Subchapter A only: ()

01. Applicant. Any person applying for an inspection or certification under Subchapter A. ()

02. Federal Phytosanitary Certificate. This certificate is issued by the Department pursuant to a “Memorandum of Understanding” with the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, in accordance with the Code of Federal Regulations, Title 7, Part 353, Sections 353.1 - 353.7 as amended. This type certificate may only be issued for domestic plants and plant products being exported into a foreign country. ()

03. Federal Phytosanitary Certificate for Reexport. This certificate is issued by the Department pursuant to a “Memorandum of Understanding” as referenced in Subsection 110.02 above. This type certificate may only be issued for plants and plant products of foreign origin to certify that, based on the original foreign phytosanitary certificate and/or an additional inspection, the plants and plant products entered the United States in conformance with the phytosanitary regulations of the importing country and have not been subjected to the risk of infestation or infection during storage in the United States. Shipments transiting the United States under a Customs bond are not eligible for reexport certification. ()

04. Post-Entry Quarantine Certification. This program is carried out pursuant to a “Memorandum of

Understanding” between the Department and the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, in accordance with the Code of Federal Regulations, Title 7, Part 319.37-7 as amended. The purpose of this program is to prevent the accidental introduction of plant pests in living plants that are imported into the United States and Idaho under permit. ()

05. Rush Service. This service is to accommodate phytosanitary certification applications that must be issued earlier than the routine three (3) to four (4) day turn-around. This service will be carried out only after a mutual agreement between the applicant and the Department. ()

06. State Phytosanitary Certificate. This certificate may be issued for shipments of Idaho produced plants and plant products to foreign or domestic locations. This certificate is issued to confirm a field or commodity inspection for foreign destinations. This certificate must be issued to the same standard as a federal certificate as outlined in Subsection 110.02. Idaho Crop Improvement Association field inspections may serve as the basis for the issuance of a state phytosanitary certificate for domestic markets only. This certificate will also bear any notation or comment the Director may make as to any findings concerning the inspection or import requirements of the products being certified. ()

111. -- 119. (RESERVED)

120. DESIGNATED INSPECTION AREAS.

The land mass of the state has been divided into fourteen (14) “inspection areas” to facilitate the inspection of all seed-producing localities and to confine the loci of disease infestations when they arise. These areas will be numbered serially and the boundaries of each remain fixed as described below. The cultural conditions, i.e., weather, elevation, soil type and general farming practices, are relatively uniform within each area; therefore, the disease content of the seed produced within each respective area may be expected to be uniform. ()

01. Area 1. Kootenai County. ()

02. Area 2. Benewah County. ()

03. Area 3. That portion of Latah County above two thousand (2,000) feet elevation and that portion of Nez Perce County north of the Clearwater River and above two thousand (2,000) feet elevation. ()

04. Area 4. That portion of Latah County below two thousand (2,000) feet elevation and all of the Clearwater River and below two thousand (2,000) feet elevation ()

05. Area 5. Lewis County. ()

06. Area 6. Canyon, Ada, Owyhee, Payette, Washington and Gem Counties. ()

07. Area 7. Gooding, Jerome, Lincoln and Elmore Counties. ()

08. Area 8. Twin Falls County. ()

09. Area 9. Cassia County. ()

10. Area 10. That portion of Minidoka County lying south of the main line of the Union Pacific Railroad. ()

11. Area 11. That portion of Minidoka County lying north of the main line of the Union Pacific Railroad. ()

12. Area 12. Bingham, Bonneville, Power and Bannock Counties. ()

13. Area 13. Jefferson, Madison, Fremont, Teton, Clark and Butte Counties. ()

14. Area 14. All other agricultural areas of the state not specifically designated above. ()

121. -- 129. (RESERVED)

130. CROP/COMMODITY, DISEASE AND PEST(S) INSPECTIONS.

01. Minimum Field Inspection(s). Unless otherwise requested by the applicant, minimum field inspections for diseases will be as follows: ()

a. Corn: Stewart's wilt, - *Erwinia stewartii* ((E.F.Sm.)Dye), head smut - *Sphacelotheca reiliana*, common smut - *Ustilago zeae* (*U. maydis*), and maize dwarf mosaic virus. ()

b. Peas: Bacterial blight, *Pseudomonas* species. ()

c. Beans: Halo Blight, caused by *Pseudomonas syringae* pv. *phaseolicola* (Burkholder 1926) Young, Dye & Wilkie 1978, (synonym *P. phaseolicola* (Burkholder 1926) Dawson 1943); common blight caused by *Xanthomonas campestris* pv. *phaseoli* (Smith 1897) Dye 1978, (synonyms *X. phaseoli* (Smith 1897) Dawson 1939, *X. phaseoli* var. *fuscans* (Burkholder 1930) Starr and Burkholder 1942); brown spot, caused by *Pseudomonas syringae* pv. *syringae*, van Hall 1902, (synonym *P. syringae*, van Hall 1902) only strains virulent to *Phaseolus* sp.; bacterial wilt, caused by *Corynebacterium flaccumfaciens* (Hedges 1922) Dawson 1942; or any variations or new strains of these bacteria, which are recognized as virulent to and seedborne in *Phaseolus* spp., and are a potential threat to seed production, all of which are hereafter referred to as bacterial diseases of beans. Anthracnose, *Colletotrichum lindemuthianum* (Sacc. and Magn.) Scrib. ()

d. Alfalfa: Verticillium Wilt - *Verticillium albo-atrum*, stem and bulb nematode - *Ditylenchus dipsaci*. ()

e. Lettuce: Lettuce mosaic virus. ()

f. Radish: Bacterial spot - *Xanthomonas campestris* pv. *vesicatoria*, Anthracnose -- *Colletotrichum higginsianum*, blackleg - *Leptosphaera maculans*. ()

g. Onion: Stem and bulb nematode -- *Ditylenchus dipsaci*, Onion white rot -- *Sclerotium cepivorum*, onion smut -- *Urocystis cepulae*, neck rot -- *Botrytis alli*, purple blotch -- *Alternari porri*. ()

h. Carrot: Bacterial blight *Xanthomonas campestris* pv. *carotae*, soft rot - *Erwinia carotovera*. ()

02. Special Inspection Requests. Requests for inspection of plants and plant products for plant diseases or pests not specifically listed in Subchapter A will be performed subject to the availability of Department inspectors and the biology of the pest and plant or plant products for which the request is being made. Procedures for conducting the special field or commodity inspections, the time the inspection is to be made, and any charges or fees will be made at the discretion of the Department and may be in addition to those listed in Section 195. ()

131. -- 139. (RESERVED)

140. APPLICATION FOR INSPECTION - PROCEDURES.

01. Application for Field Inspection. Application(s) must include but will not be limited to the following: company name, grower name, crop, variety, lot number (if available), pest(s)/disease(s) inspections being requested, field location, number of acres and type of irrigation. Application(s) must be filed with the Idaho Department of Agriculture, Division of Plant Industries, P.O. Box 7249, Boise, ID 83707 or Idaho Department of Agriculture, Division of Plant Industries, P.O. Box 401, 434 Shoshone St. West, Twin Falls, Idaho 83303-0401, on forms provided by the Department. ()

02. Application for Area Inspection (Peas and Corn Only). Application shall be made in writing on company letterhead listing crop, grower name, variety, lot number, acres, and area grown in as outlined in Subsections 120.01 through 120.14. A minimum of two hundred (200) acres per company per designated inspection area must be submitted to be eligible for an area inspection. Applicants submitting under two hundred (200) acres

within a designated inspection area must do so pursuant to Subsection 140.01 above. ()

03. Deadlines. Applications for individual and/or area field inspections are to be submitted no later than: April 30 for Alfalfa, May 1 for peas and mint, May 15 for lettuce, radish, onion, or other vegetable crops, and July 1 for beans and corn. Applications submitted after these dates will be performed only at the discretion of the Director. ()

04. Special Field Inspection Requests. Requests for field inspections of plants and plant products for diseases or pests not listed in Subsections 130.01.a. through 130.01.h. above shall be written in on the application as provided in Subsection 140.01 above and be subject to the conditions as outlined in Subsection 130.02. ()

141. -- 149. (RESERVED)

150. INSPECTION AUTHORITY.

The Director will authorize the crop inspections and will delegate competent agents or agencies to conduct the work. Phytosanitary certificates will be issued only by the Director. ()

151. -- 159. (RESERVED)

160. INSPECTION PROCEDURES.

01. Mechanics of Inspection. The mechanics of inspection for a particular crop(s) will be left to the discretion of the Department, but will take into account sound sampling procedures, the biology of the pest, and the crop being inspected. A crop will be inspected a minimum of, but not limited to, one (1) time during the growing season, depending on the biology of the pest or disease being inspected. ()

02. Reports of Inspection Summaries and Requests for Inventory. Written reports of the field and area inspections will be filed and retained in the office of the Director, for a minimum of five (5) years after the inspection of the fields is completed. At the end of each inspection season, each applicant will be sent a summary of the inspections performed with a request for any corrections or adjustments to be made as far as lot numbers, varietal names, or other information is concerned. A request will also be made at that time for the clean weights of the product harvested from each lot inspected. No phytosanitary certificate will be issued for any inspected lot for which there is incomplete documentation. ()

03. Notification of the Detection of Disease(s) or Pest(s). The Department will notify the applicant in writing upon the confirmation of the presence of a disease or pest. Notification will be limited to those disease(s) or pest(s) outlined in Subsections 130.01.a. through 130.01.h. above or as specifically requested on the applicant's application for inspection for phytosanitary certification pursuant to Subsection 140.04. ()

161. -- 169. (RESERVED)

170. PROCEDURE FOR OBTAINING PHYTOSANITARY CERTIFICATES.

01. Requests for Phytosanitary Certificates. Application shall be made in writing to the Department on the appropriate application form(s) provided by the Department for the certificate(s) being requested. Only fully completed applications will be accepted. Applications can be submitted to either the State of Idaho, Department of Agriculture, Plant Industries Division, P.O. Box 7249, Boise, ID 83707, or State of Idaho, Department of Agriculture, P.O. Box 401, Twin Falls, Idaho 83301. ()

02. Application Information. Applications for phytosanitary certificates must include, but will not be limited to the following information: variety, crop (including scientific name), lot number (in the case of blends, all lots used in the blend must be included), number of pounds in each lot, name of grower, area and year in which crop was grown, state number, consignor and consignee, and chemical treatment applied. ()

03. "Rush" Service. As defined in Subsection 110.05 must be requested before or upon submission of an application for phytosanitary certification. The request may be made by telephone. "Rush" service will be subject to the fees as outlined in Subsection 195.02.d. ()

171. -- 179. (RESERVED)

180. SIZE OF SAMPLES.

Size of samples for visual inspection for phytosanitary seed inspection certificates shall be: When shipment is: under two hundred (200) pounds - one half (1/2) pound sample (minimum); two hundred (200) pounds up to one thousand (1,000) pounds - two (2) pound samples; over one thousand (1,000) pounds - five (5) pound samples (maximum); or as may be required by the importing state or country. ()

181. -- 189. (RESERVED)

190. POST-ENTRY QUARANTINE CERTIFICATION.

Applications shall be made on forms provided by the Department and accompanied by the fee as stated in Subsection 195.05. The applicant must allow inspection by the Department as a condition of application approval, and additional inspections as required by the Department or the United States Department of Agriculture. The United States Department of Agriculture has final approval authority. The minimum period of the quarantine is two (2) years, with a minimum of one (1) inspection being performed during each of the two (2) years. ()

191. -- 194. (RESERVED)

195. FEES AND CHARGES.

01. Phytosanitary Certificates. ()

a. Federal Phytosanitary Inspection Certificates or like documents: sixty dollars (\$60) per certificate. ()

b. State Phytosanitary Inspection Certificates or like documents: twenty-five dollars (\$25) per certificate. ()

02. Phytosanitary Certification and Like Inspections and Official Treatment Observations.()

a. Officially Drawn Samples: (i.e., purity and germ samples, referee samples, lab analysis) - twenty dollars (\$20) per sample. ()

b. Submitted Samples: twenty dollars (\$20) per item submitted. ()

c. Treatment Observations: for official verification of seed and plant treatment, seed lot fumigation, cold storage treatments, and treatment of agricultural products brought into the state in violation of a state quarantine, fees are thirty dollars (\$30) per hour (including travel time), and any per diem incurred. Per diem will be at established state rates. ()

d. Rush service fees will be one hundred dollars (\$100) per certification, which will be in addition to the normal phytosanitary certification charges outlined in this Section 195. ()

e. Request for phytosanitary or treatment observation services after normal working hours, on weekends, or holidays are subject to overtime and state per diem charges in addition to the normal charges outlined in this section. ()

03. Area Inspections. Area Inspection: fourteen cents (\$.14) per hundred-weight. ()

04. Field or Lot Inspections. ()

a. Application for Field Inspection: five dollars (\$5) per application. ()

b. Acreage Inspection Fee: three dollars and fifty cents (\$3.50) per acre per inspection. A minimum of fifty dollars (\$50) per inspection will be charged when the total acreage submitted by any one (1) applicant is fifteen (15) acres or less. ()

05. Post-Entry Quarantine Inspections. The inspection fee is two hundred dollars (\$200) for the required two (2) year quarantine and an additional one hundred dollars (\$100) per year for each year beyond the initial two (2) years, if required. For rejected applications, twenty-five dollars (\$25) of the two hundred dollar (\$200) inspection fee is non-refundable, and will be retained to cover administrative costs. ()

06. Plant Pathological Laboratory Services. Fees available upon request. ()

07. Special Project Fee. ()

a. Special projects not covered by the existing fee schedule may be billed at twenty-five dollars (\$25) per hour with a minimum twenty-five dollar (\$25) fee. Special projects include, but are not limited to, the following: ()

i. Research; ()

ii. Lot history verification; ()

iii. Data entry; ()

iv. Sales and purchases; ()

v. Transfer of lots into ISDA database; ()

vi. ISDA training of private company personnel; ()

vii. Special plant pest detection surveys; or ()

viii. Any other circumstance approved by the Director. ()

b. This fee does not include any laboratory analysis fees that might be required as part of a special plant pest detection survey. ()

195. -- 209. (RESERVED)

SUBCHAPTER B - VIRUS-FREE NURSERY STOCK CERTIFICATION

210. DEFINITIONS.

In addition to the definitions found in Section 22-2302, Idaho Code, the definitions in Section 210 apply in the interpretation and enforcement of Subchapter B only: ()

01. Certification. Verification that proper field sampling procedures were followed and that the indexing results as outlined in this rule are those determined by an approved laboratory designated to test for virus diseases under Subchapter B. ()

02. Idaho Certified Nursery Seed. Seed produced from registered seed trees or commercial seed having been tested and found to have a transmissible virus content that does not exceed five percent (5%). ()

03. Idaho Certified Nursery Stock. Nursery-grown, true seedlings, clonal rootstocks originating from certified virus-free trees, and nursery-grown trees or seedlings propagated by using top-stock from certified virus-free trees and rootstock originating from certified virus-free trees except as herein provided for certain rootstocks. ()

04. Index. To determine virus infection by means of inoculation from the plant to be tested to an indicator plant or by any other acceptable method as designated by the Director. ()

05. Indicator Plant. Any herbaceous or woody plant used to index or determine virus infection.

- ()
- 06. Interstock.** Scionwood used for compatibility purposes to graft between a particular top-stock and rootstock. ()
- 07. Nursery Stock.** For purposes of this rule includes the plants and plant parts of the genera *Prunus*, *Malus*, *Pyrus*, *Chaenomeles* and *Cydonia*. ()
- 08. Off-Type.** Not true-to-name (phenotype) as registered under Subchapter B. ()
- 09. Registered Tree.** A tree or clonal planting that has been inspected and tested in accordance with the provisions of this program and assigned a registration number by the Department. ()
- 10. Rootstock.** That part of a plant including the roots on which another variety of plant material may be grafted. ()
- 11. Scion-Block.** A planting of certified virus-free trees that serves as a source of scionwood for the propagation of “Idaho certified nursery stock.” ()
- 12. Scion (Scionwood).** A detached shoot or other portion of a plant consisting of one or more buds used in propagation by grafting. ()
- 13. Seed Block.** A planting of certified virus-free trees that serves as a source of seed for producing rootstock used in the propagation of “Idaho certified nursery stock.” ()
- 14. Stool Bed.** A clonal planting of self-rooted, certified virus-free trees for the specific purpose of producing vegetatively propagated rootstock used in the propagation of “Idaho certified nursery stock.” ()
- 15. Top-Stock.** Usually scionwood used for grafting onto interstock or rootstock, may include seed. ()
- 16. True Seedling.** A tree that has been grown from seed. ()
- 17. Virus-Infected.** The presence of a harmful virus(es) in a plant or plant part. ()
- 18. Virus-Like.** A disorder of genetic or non-transmissible origin and also includes mycoplasma-like organisms and rickettsia-like organisms. ()

211. – 219. (RESERVED)

220. REQUIREMENTS.

- 01. Participation.** Participation is open only to those nurseries registered under Title 22, Chapter 23, Idaho Code, and is voluntary. ()
- 02. Application.** Application forms for the establishment of new blocks will be provided by the Idaho Department of Agriculture. The applicant nurseryman shall furnish to the Department all information pertinent to the operation of this program, including a diagram of each block and give consent to the Department to take plant parts (buds, leaves, roots, etc.) from any tree for testing purposes. ()
- 03. Registration.** Trees may be registered as rootstock, top-stock, or seedstock sources for the propagation of certified nursery stock when inspected, tested, and found to be true-to-name and discernibly free from known harmful virus and virus-like diseases by procedures outlined in this program. ()
- 04. Responsibility.** The applicant nurseryman is responsible, subject to the approval of the Director, for the selection of the location and the proper maintenance of registered plantings grown under the provisions of Subchapter B. The applicant nurseryman is responsible for maintaining the identity of all nursery stock entered into

this program in a manner approved by the Department. Any planting entered into this program shall be kept in a healthy growing condition and free of plant pests. ()

05. Filing Date. Application for inspection and testing of new or existing blocks of registered scion, seed, and stool-bed trees and for inspection of nursery stock for certification shall be filed by June 1 of each year with the Idaho Department of Agriculture. ()

06. Nematode Sampling. The ground being submitted for planting with virus-free stock as outlined in Subchapter B shall be officially sampled, using established procedures acceptable to the Director, tested, and found free of virus transmitting nematodes prior to planting of any stock. Subsequent sampling for the presence of nematodes after planting may be carried out at the discretion of the Director, to ensure that a nematode-free status is maintained. ()

07. Grafting. There shall be no budding, grafting, or top-working of registered trees in any scion-block, seed-block, or stool-block. ()

08. Inspection. Maintenance of virus-free integrity of all plants entered into this program will be by inspection and spot-testing at a minimum of every three (3) years or as stated elsewhere in this rule. ()

09. Diseased Plants. Immediately following notice from the Director or his agent, any plant found to be infected by a virus or virus-like disease or if off-type, the plant(s) shall be removed and destroyed. Any ground found to be infested with virus transmitting nematodes must be fumigated with a fumigant registered and approved by the Idaho Department of Agriculture prior to planting, at the grower's expense. ()

221. -- 229. (RESERVED)

230. SCION-BLOCKS.

01. Location. A scion-block shall be located not less than one hundred (100) feet away from any non-registered cultivated plant of the Rosaceae family. The ground in a scion-block and for a distance of twenty (20) feet surrounding it shall be kept either clean-cultivated or in an approved, properly controlled ground cover. Registered scion-block trees shall be planted and maintained in a manner and at sufficient distance so that branches of different varieties do not overlap. Care shall be taken in the use of pollenizing insects and pollen application to prevent the transmission and spread of virus diseases through the use of infected pollen or its application. Registered scion-block trees may not be used for propagation purposes until trueness-to-name or variety has been established. Each tree will bear a permanent registration number. The ground in the scion-block will be sampled, using established procedures acceptable to the Director, and be tested and found free of virus transmitting nematodes prior to planting of any stock. ()

02. Acceptability. The rootstock and top-stock sources of the scion-block trees shall have originated from foundation trees established under this program or from virus-tested trees originating through the USDA-ARS Inter-Regional Project No. 2 (IR-2) or other approved programs. If the tree is scion-rooted, its source shall have met the requirements stated in Subchapter B. Only registered trees are permitted in the scion-block. ()

231. -- 234. (RESERVED)

235. SEED-BLOCKS.

01. Location. A Prunus seed-block shall be located not less than three hundred (300) feet from any non-registered flowering plant of the Prunus species. The ground in a seed-block and for a distance of twenty (20) feet surrounding it shall be kept clean-cultivated or in an approved, controlled ground cover. Care shall be taken in the use of pollenizing insects and pollen application to prevent the transmission and spread of virus diseases through the use of infected pollen or its application. Each tree will bear a permanent registration number. ()

02. Acceptability. The rootstock and top-stock sources of the seed-tree shall have originated from foundation trees established under this program or from virus-tested trees originating through the USDA-ARS Inter-Regional Project No. 2 (IR-2) or other approved program. If the tree is scion-rooted, its source shall have met the

requirements stated in Subchapter B. Only registered trees are permitted in the seed-block. ()

236. -- 239. (RESERVED)

240. STOOL-BEDS.

01. Location. A stool-bed shall be located not less than fifty (50) feet from any non-registered cultivated plant of the Rosaceae family. The following exception will apply: Non-registered stool-beds may be located not less than ten (10) feet from registered stool-bed plantings. The ground in a stool-bed and for a distance of ten (10) feet surrounding it shall be kept clean-cultivated. ()

02. Acceptability. Existing stool-beds that index clean on the commonly used virus indicators will qualify as Registered Stool-Beds. New stool-beds (those planted after the effective date of Subchapter B) shall have originated from foundation stock established under this program or from virus-tested plants originating through the USDA-ARS Inter-Regional No. 2 (IR-2) or other approved program. If the tree is scion-rooted, its source shall have met the requirements stated in Subchapter B. Only registered trees are permitted in the stool-beds. ()

241. -- 244. (RESERVED)

245. NURSERY STOCK.

01. Rootstocks. All nursery stock being grown for certification, shall be on rootstock from registered trees except for stone fruit trees grown on peach seedlings and pome fruit trees grown on apple and pear seedlings. These seedling rootstocks, when grown from commercial seed, will be acceptable if seed transmissible virus content does not exceed five percent (5%). Clonal rootstock used in the production of Idaho Certified Nursery Stock must originate from Registered Stool-Beds. ()

02. Location. The isolation distances between certified and non-certified nursery stock shall be: ()

a. Not less than fifty (50) feet from non-certified plants of the Rosaceae family; ()

b. Not less than twenty (20) feet from other non-certified nursery stock; ()

c. Program participants shall maintain a twenty (20) foot clean-cultivated area around all certified nursery stock beds. Nursery stock shall be designated as to rootstock, top-stock, and inter-stock sources. There shall be no re-budding or re-grafting of nursery raw stock unless such stock is re-worked with scions from the original registered scion-tree. ()

03. Identity Maintenance. The maintenance of certified stock identity shall be a tagging program identifying trees produced from: ()

a. Registered rootstock produced from registered seed or stool-beds; ()

b. Registered scion source trees. The tracking system involves a numbering diagram system of each participant's nursery stock beds in the program. ()

04. Seed. Certified seed shall have been produced on Registered Seed Trees or commercial seed having been tested and found to have a transmissible virus content that does not exceed five percent (5%). ()

05. Tagging. An Idaho Certified Nursery Stock Tag designates trees produced from registered scion-source trees and that have been propagated on rootstocks produced from registered seed-source or stool-bed trees, or that are self-rooted. All nursery stock meeting the requirements of this program when sold shall have the variety, inter-stock, and rootstock designated where applicable as follows: variety/inter-stock/rootstock. ()

06. Acceptability. All nursery stock meeting the requirements of this program are known as Idaho Certified Nursery Stock. ()

246. -- 249. (RESERVED)

250. BLOCK EXPANSION.

Expansion within a scion or stool-bed will be allowed with no restriction regarding the number of generations, provided accepted tissue culture methods are employed. Only two (2) propagative steps will be allowed between “mother plants” and foundation trees for scion, seed, and stool-bed blocks. ()

251. -- 259. (RESERVED)

260. INSPECTION PROCEDURES.

01. Time of Inspection. Inspections will be made at the discretion of the Department and at times when specific disease symptoms are most likely to be expressed. ()

02. Inspection of Nursery Stock for Certification. At least one (1) visual inspection will be made of nursery rootstock in a planting being grown for certification during the first growing season. At the request of the Department, any undesirable rootstock will be rogued before propagation. At least two (2) visual inspections will be made of nursery stock during the growing season following bud or graft placement. ()

03. Refusal of Certification. The Department will refuse certification if plants have been propagated from registered trees determined to be affected by a virus or virus-like disease or if other requirements of this program have not been met. ()

261. -- 264. (RESERVED)

265. TESTING PROCEDURES.

Testing standards prescribed in this program will conform to USDA-ARS Inter-Regional Project No. 2 (IR-2) standards or to any other acceptable and approved procedures developed and used for determining the presence of virus diseases in nursery stock. All testing results shall be made available directly to the Department by the approved agency or laboratory. ()

266. -- 269. (RESERVED)

270. TAGGING, IDENTITY, AND RECORDS.

01. Official Certification Tags. The Department will authorize the use of official certification tags for identification of nursery stock or seed that meet the requirements of this program. These tags will be supplied at cost to all program cooperators by the Department. ()

02. Identity. Any person selling Idaho Certified Nursery Stock is responsible for the identity of the stock bearing each tag and for such nursery stock meeting the requirements of this program. ()

03. Records. Any person selling Idaho Certified Nursery Stock shall keep record on a form prescribed by the Director that includes but is not limited to the source of the stock, quantity, and disposition. ()

271. -- 279. (RESERVED)

280. FEES.

01. Application Fees. A fee of fifty dollars (\$50) per application submitted plus ten cents (\$.10) per tree being certified shall be submitted with each application. ()

02. Laboratory Fees. Laboratory fees are established by a Department approved testing facility and will be paid directly to the facility. ()

03. Service Fees. Fees for plant or soil sampling and inspection services provided by the Idaho

Department of Agriculture are in accordance with the following schedule. ()

- a. A fee of twenty-five dollars (\$25) per hour for inspection and travel time with a minimum charge of fifty dollars (\$50). ()
- b. Per diem costs will be charged according to established state rates. ()
- c. The fees charged for tags will be at cost plus an administrative fee of ten percent (10%) for each order. ()

281. -- 309. (RESERVED)

SUBCHAPTER C - GINSENG EXPORT

310. DEFINITIONS.

In addition to the definitions found in Section 22-2005, Idaho Code, the definitions in Subchapter C apply in the interpretation and enforcement of Subchapter C, only. ()

01. Cultivated Ginseng. Any part of a ginseng plant that is growing or grown in managed beds under artificial or natural shade and cultivated according to recognized ginseng horticultural practices. Cultivated ginseng includes woodsgrown ginseng. ()

02. Dealer. Anyone who buys ginseng for resale, or grows and sells it for export. This definition does not apply to persons who buy ginseng solely for the purpose of final retail sale to consumers in the United States. ()

03. Dealer Registration. An annual registration issued by the department authorizing a dealer to buy, collect, or otherwise acquire ginseng for resale or export. ()

04. Dry Weight. The weight in pounds and ounces of harvested or collected ginseng root that is dried and is no longer viable. ()

05. Export. Outside the boundaries of the United States. ()

06. Ginseng. Any and all parts of the plant known as American ginseng (*Panax quinquefolius*) including, but not limited to: plants; whole roots; essentially intact roots; root chunks; slices; seeds; and tissue. ()

07. Green Ginseng. A ginseng root from which the moisture has not been removed by drying. ()

08. Green Weight. The weight in pounds and ounces of freshly harvested or collected ginseng root that is not dried and is still viable. ()

09. Grower. A person who grows “cultivated,” “wild simulated,” and or “woodsgrown” ginseng, and sells it to a dealer. ()

10. Grower Registration. An annual registration issued by the department that enables a grower to sell cultivated ginseng that the grower has produced. ()

11. Out-of-State Ginseng. Ginseng that is grown or originated outside the state of Idaho. ()

12. Wild Ginseng. Ginseng growing naturally within its native range. ()

13. Wild Simulated Ginseng. Wild ginseng seeds or roots planted in natural habitat, within the natural range, in suitable ginseng habitat that is not further cultivated. ()

14. Woodsgrown Ginseng. Ginseng grown in managed beds under natural shade. ()

311. -- 319. (RESERVED)

320. REGULATED PRODUCTS.

American ginseng (*Panax quinquefolius*). ()

321. -- 329. (RESERVED)

330. COLLECTION OF WILD GINSENG.

No grower's or dealer's registration will be issued for the collection, sale or distribution of wild ginseng. ()

331. DEALERS AND GROWERS ANNUAL REGISTRATION WITH THE DEPARTMENT.

No person may act as a dealer or grower without first registering with the department. Any person who acts as a dealer and a grower shall register as both. The department will assign a registration number to each person registered. Registration with the applicable fee will be made annually no later than January 15 of each year on a form provided by the department and the registration will expire on December 31. ()

332. --339. (RESERVED)

340. GROWER RECORDS.

A grower selling cultivated ginseng shall do all of the following when selling to a dealer: ()

01. Record of Sale. Provide to the dealer a record of sale containing all of the following information: grower's name and address; grower's registration number; ginseng certificate number; ginseng dry weight; year harvested; county of harvest; and date of transaction. ()

02. Certificate of Origin. Certify that the ginseng was grown in the state of Idaho. The certificate of origin form is prescribed by the department. ()

03. Records. Maintain records of all ginseng production and sales. Records must be maintained for a period of three (3) years. ()

341. -- 349. (RESERVED)

350. DEALER RECORDS.

Dealers shall keep true and accurate records of transactions, including both sales and purchase records, in a format prescribed by the department. Records must be maintained for a period of three (3) years. ()

01. Purchase Records. Purchase records include dealer's name, address and registration number; grower/seller name and registration number; ginseng weight in pounds and ounces; designation of green or dry ginseng; designation of wild or cultivated ginseng; harvest year of ginseng; county in which the ginseng was harvested; and date of transaction. ()

02. Sales Records. Sales records shall include the following information: dealer's name, address and registration number; buyer's name, address and registration number; ginseng weight in pounds and ounces; designation of green or dry ginseng; designation of wild or cultivated ginseng; harvest year; county in which the ginseng was harvested; and date of transaction. ()

351. -- 359. (RESERVED)

360. OUT-OF-STATE GINSENG.

01. Certificate of Origin. No dealer may purchase, receive or import out-of-state ginseng unless it is accompanied by a valid certificate of origin issued by the state or country of origin. The certificate must include the state or country of origin, the source (wild or cultivated), year of harvest, and dry weight of the out-of-state ginseng. ()

02. Recordkeeping. The dealer shall retain for a period of three (3) years a copy of each written certificate of origin received. ()

03. Uncertified Ginseng. If a dealer receives ginseng not accompanied by a valid certificate of origin, the uncertified ginseng must be returned within thirty (30) days to the state or country of origin. Failure to do so renders the ginseng illegal for commerce. ()

361. SELLING OR SHIPPING OF GINSENG -- CERTIFICATES.

01. Export. Except as described in Subsection 361.06, no person may sell or ship ginseng out-of-state or export Idaho grown ginseng unless it is accompanied by a valid, prenumbered certificate of origin on a form issued by the department. The department will, upon request and receipt of the required fee(s), provide each registered grower or dealer with forms for certificates of origin. The department will identify each certificate of origin form with a serial number, and the registration number of the grower or dealer. Registered growers or dealers may certify their own cultivated ginseng by filling out and signing a certificate of origin form. The certificate of origin contains the following information: ()

- a. State of origin; ()
- b. Serial number of certificate; ()
- c. Dealer's and/or grower's state registration number; ()
- d. Year of harvest of ginseng being certified; ()
- e. Designation as cultivated roots or plants; ()
- f. Designation as dried or fresh (green) roots, or live plants; ()
- g. Weight of roots or plants (or number of plants) separately expressed both numerically and in writing; ()
- h. Date of certification; and ()
- i. Signature of grower or dealer making certification. ()

02. Idaho Certificate of Origin. All of the following conditions must be met in order for an Idaho certificate of origin to be valid: ()

- a. The grower or dealer whose registration number was entered on it by the department shall sign the certificate; and ()
- b. The ginseng is cultivated ginseng grown in Idaho. ()

03. Forms. Forms for certificates of origin are issued by the department in triplicate. The original is designated for the dealer's use in commerce; the first copy is for the dealer's records; and the grower or dealer shall send the second copy, within two (2) weeks of issuance, to the Division of Plant Industries, Idaho State Department of Agriculture, P.O. Box 7249, Boise, ID 83707. ()

04. Out-of-State Issued Certificates. No person may export ginseng grown in Idaho using an out-of-state issued certificate. ()

05. Wild Ginseng Certificates. Certificates of origin will not be issued for wild ginseng. ()

06. Final Retail Sales. Subsection 361.01 does not apply to a person who sells or ships cultivated ginseng out-of-state to a person who is buying or receiving it solely for the purpose of final retail sale to consumers in the United States, if the person selling or shipping keeps a record for a period of three (3) years that includes: name

and address of the buyer or receiver; weight of the ginseng in pounds and ounces; date of the sale or shipment; county of harvest of the ginseng; and year of harvest of the ginseng. ()

362. -- 369. (RESERVED)

370. MAINTAINING SEPARATE LOTS OF GINSENG.

Dealers shall maintain separation between lots of out-of-state ginseng and that harvested in Idaho until a certificate of origin has been issued for the ginseng harvested in Idaho. ()

371. DEALER OR GROWER HOLDING GINSENG AFTER DECEMBER 31 OF THE YEAR.

Any grower or dealer holding ginseng on or after December 31 shall report all carryover stocks on a form provided by the department. The form shall list the name and address of the grower or dealer; location of the lot; lot identification; county of harvest; dry or green weight in pounds and ounces; and year of harvest. ()

372. -- 379. (RESERVED)

380. INSPECTION AND DISCLOSURE OF RECORDS.

01. Inspection. All records required to be kept under Subchapter C shall be made available to the department upon request for inspection and copying. ()

02. Disclosure. The department will not disclose information obtained regarding purchases, sales, or production of an individual ginseng dealer, except for providing reports to the United States Fish and Wildlife Service. ()

381. -- 389. (RESERVED)

390. EXPORT PROCEDURES.

Valid federal Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) documents are necessary to export ginseng. ()

391. FEES - HOURLY, OVERTIME.

Fees will be charged to cover the department's cost of implementing Subchapter C. ()

01. Certification and Overtime Rate. Ginseng certification services will be provided at an hourly and overtime rate as provided in Section 392 of Subchapter C. The overtime rate will apply for service provided subsequent to a regularly scheduled eight (8) hour week day shift or on Saturdays, Sundays, and state legal holidays. No service will be performed on Thanksgiving Day, Christmas Day or New Year's Day, beginning at 5 p.m., on the previous day. ()

02. Minimum Charges. Charges will be for a minimum of one (1) hour. Additional time will be charged in one-half (1/2) hour increments. ()

392. SCHEDULE OF FEES AND CHARGES.

The following schedule for ginseng certification services apply: ()

01. Registration. Registration (grower or dealer or grower and dealer), twenty-five dollars (\$25). ()

02. Certificate of Origin Form. Certificate of origin form, each, ten dollars (\$10). ()

03. Hourly Rate. Hourly rate for certification services, twenty-eight dollars (\$28). ()

04. Overtime Rate. Overtime rate for certification services, thirty-three dollars (\$33). ()

393. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.06.05 – RULES GOVERNING PLANT DISEASE AND QUARANTINES
DOCKET NO. 02-0605-1901 (NEW CHAPTER, FEE RULE)
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-2004 and 22-2006, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

PUBLIC HEARING
Thursday, November 14, 2019 @ 9:00 a.m.
Idaho State Department of Agriculture 2270 Old Penitentiary Road Boise, ID 83712

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: Eleven rules administered by the ISDA are related to the regulation and quarantine of certain crops to prevent the spread of plant disease and pests. These rules are IDAPA 02.06.05, “Rules Governing Diseases of Hops,” IDAPA 02.06.11, “Rules Governing European Corn Borer,” IDAPA 02.06.15, “Rules Governing Peach Tree Diseases,” IDAPA 02.06.18, “Rules Governing Mint Rootstock and Clone Production,” IDAPA 02.06.20, “Rules Governing Grape Planting Stock,” IDAPA 02.06.24, “Rules Governing the Japanese Beetle,” IDAPA 02.06.32, “Rules Concerning the Anthracnose Disease of Lentil,” IDAPA 02.06.38, “Rules Governing Plum Curculio,” IDAPA 02.06.08, “Quarantine Rules Pertaining to Apples and Cherries,” IDAPA 02.06.07, “Rules Governing White Rot Disease of Onion,” and IDAPA 02.06.17, “Rules Governing the Disposal of Cull Onion and Potatoes.” These rules put in place a number of restrictions, as requested by the regulated industry, to ensure that quarantine and disease free areas within and outside the state of Idaho are maintained and protected. These rules were promulgated to carry out requirements described in Title 22, Chapters 19, 20 and 38, Idaho Code. In order to streamline and simplify rules related to plant disease and quarantines, the ISDA is proposing to combine all eleven rules into a single rule to be titled “**02.06.05, Rules Governing Plant Disease and Quarantines.**” No substantive changes are being made to the eleven rules cited above. All rules were reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Fees included in the original rules (Rules Governing Diseases of Hops and Rules Governing Mint Rootstock and Clone Production) have not been changed in the new combined rule. Fees associated with these rules are imposed pursuant to Sections 22-107, 22-112 and 22-2006, Idaho Code.

IDAHO CODE SECTION 22-101A STATEMENT: Section 22-101A, Idaho Code, requires that in this notice of proposed rulemaking, the Director must specify whether this rule is broader in scope or more stringent than federal law or regulations, or regulates an activity not regulated by the federal government. This Rule, in its entirety, regulates an activity not regulated by the federal government.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no change in fiscal impact as a result of this consolidation rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted on September 18, 2019. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, Pages 15-19](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: This section is not applicable, as there are no materials incorporated by reference in this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd Knight, Administrator, at (208) 332-8664.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 27, 2019.

Dated this 3rd day of October, 2019.

Brian Oakey
Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8552
Fax: (208) 334-2710

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0605-1901
(New Chapter)

02.06.05 – RULES GOVERNING PLANT DISEASE AND QUARANTINES

000. LEGAL AUTHORITY.

This chapter is adopted under legal authority of Sections 22-2004, and 22-2006, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.06.05, “Rules Governing Plant Disease and Quarantines.” ()

02. Scope. This rule establishes regulated pests, regulated products, regulated articles, control areas, quarantine areas and special permits for certain crops to prevent the spread of plant disease and pests. This rule will provide regional consistency for plant pest quarantines. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

The definitions set forth in Section 22-2005, Idaho Code, apply in the interpretation and enforcement of this rule. ()

SUBCHAPTER A – DISEASES OF HOPS

011. -- 111. (RESERVED)

112. REGULATED PESTS.

01. Verticillium Wilt. Plant Material infected with the disease caused by the fungus *Verticillium nonalfalfae* (formerly known as *Verticillium albo-atrum Reinke and Berth*) and any species or strains of the genus *Verticillium* pathogenic to hops. ()

02. Powdery Mildew. Plant Material infected with the disease caused by the fungus *Podosphaera macularis* (Wallr. Fr.), synonyms *Sphaerotheca macularis* (Wallr. Fr.) Lind and *Sphaerotheca humuli* (Burril) Lind. ()

03. Hop Stunt Viroid. Plant Material infected with the disease caused by the viroid *Hostuviroid hop stunt viroid* and all strains and genetic variants associated with the genus. ()

04. Ilarvirus Species. Plant Material infected with the disease caused by virus species within the Genus Ilarvis, including but not limited to Apple Mosaic Virus and Prunus Necrotic Ringspot Virus. ()

113. -- 119. (RESERVED)

120. REGULATED ARTICLES.

01. Plant Material. Plants and all plant parts of hops, except kiln dried cones. ()

02. Machinery. Machinery, vehicles, tools, equipment, trellis poles, wire, anchor irons, and any other appurtenances used in the culture and/or production of hops. ()

121. -- 129. (RESERVED)

130. QUARANTINE AREA.

All areas outside of the territorial borders of Idaho, Oregon, and Washington. ()

131. -- 139. (RESERVED)

140. RESTRICTIONS ON IMPORT.

No person may import restricted articles from the quarantined area into Idaho unless the person importing the regulated articles first obtains a special permit from the department as set forth in Section 160. ()

141. --149. (RESERVED)

150. MOVEMENT OF USED FARMING EQUIPMENT.

01. Clean and Free. Used farm equipment including, but not limited to, tillage equipment, vehicles, and hop yard appurtenances moving into Idaho from the quarantine area, must be clean and free of soil and plant material including, but not limited to, hop debris. ()

02. Requirements. Freedom from plant material and soil may be accomplished by washing, steam cleaning, and/or use of a disinfectant appropriately labeled for the purpose. ()

151. -- 159. (RESERVED)

160. SPECIAL PERMITS.

Any person(s) or agencies wishing to import covered commodities from the area under quarantine must apply in writing for a special permit as authorized by the director of the department. ()

01. Application. Application for special permits must list the prospective buyer and seller; the number, and origin of stock; location of proposed planting site; and any other relevant information. ()

02. Conditions. Special permits, when granted, may include such conditions as may be necessary to prevent disease establishment. All permitted material must be found free from regulated pests by the Clean Plant Center at Washington State University, Prosser, Washington, or an equivalent lab approved by the department. ()

161. -- 169. (RESERVED)

170. PEST DETECTION.

01. Inspection. If evidence of a regulated pest is detected by visual inspection, the Department, in cooperation with the University of Idaho, Department of Plant, Soil and Entomological Sciences, will perform laboratory procedures sufficient to determine the causal organism. ()

02. Consequences. Positive identification of the presence of Verticillium wilt, hop stunt viroid, ilar viruses, or powdery mildew virulently pathogenic to hops will result in loss of eligibility for sale or transfer for those rootstocks within the infected field. The director may also order that the infested area be removed from hop production and the soil be disinfested. ()

171. -- 179. (RESERVED)

180. AUTHORITY TO ENTER AND INSPECT.

The Director of the Idaho State Department of Agriculture or his designated agent is authorized to enter and inspect any and all hop plantings within the state of Idaho. ()

181. -- 189. (RESERVED)

190. FEES AND CHARGES.

01. Special Permits. For special permits for importation of hops from areas under quarantine, the fee will be sixty dollars (\$60) per permit. ()

02. General Fees and Charges. The fees and charges for inspection, certificates, and permits are as set forth in IDAPA 02.06.04, "Idaho Department of Agriculture, Rules Governing Plant Exports," Section 195. ()

191. -- 211. (RESERVED)

SUBCHAPTER B – WHITE ROT DISEASE OF ONION

212. REGULATED PEST.

Onion white rot (*Sclerotium cepivorum*). ()

213. -- 219. (RESERVED)

220. DESIGNATED COUNTIES.

Ada, Bingham, Blaine, Boise, Bonneville, Canyon, Cassia, Elmore, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Owyhee, Payette, Power, Twin Falls, and Washington Counties, state of Idaho. ()

221. -- 229. (RESERVED)

230. REGULATED PRODUCTS.

Bulbs, sets, or seedlings of onion, garlic, leek, chive, shallot or other *Allium* species, including all ornamental *Allium* species, for planting purposes, and all machinery, tools, and equipment used in the production of *Allium* species. ()

231. -- 249. (RESERVED)

250. RULES GOVERNING SHIPMENTS.

01. Shipment for Planting Purposes. No person may import into the designated counties bulbs, sets or seedlings of onion, garlic, leek, chives, shallots or other Allium species, including ornamentals, for planting purposes except as provided in Subsections 250.02 through 250.04. ()

02. Designated Counties. Allium production within the designated counties shall be limited to production from seed, or from vegetative propagative material produced from seed within the designated counties. Bulbs, sets or seedlings of Allium species produced within the designated counties then exported from the designated counties for processing or other purposes cannot be returned to the designated counties for planting purposes. ()

03. Vegetative Propagative Material. Vegetative propagative material, produced under aseptic conditions, may be brought into the designated counties if an exemption is granted by the Director, or the Director's designated agent. ()

04. Allium Exemption. Bulbs, sets, or seedlings of Allium species, for planting purposes, produced in Malheur County, Oregon, and regulated by similar rules are exempt from the restrictions of Subsection 250.01. ()

05. Machinery, Tools and Equipment. Except as provided in Subsections 250.06 and 250.07, no person shall, in any manner, import or move into the designated counties any machinery, tools, or equipment that have been previously used in any manner on fields outside the designated counties where the host plants named in Section 230 have ever been cultivated. ()

06. Cleaning Machinery, Tools and Equipment. Machinery, tools, or equipment may be imported or moved into the designated counties if they are first steam cleaned and disinfested to the satisfaction of, and with the prior approval of, the Director. The cleaning shall include the complete removal of all soil by the use of steam under pressure. Disinfestation is accomplished as specified by the Director. For the purpose of Subchapter B, machinery, tools and equipment includes, but is not limited to, farm trucks, harvesters, and tillage equipment. ()

07. Exemptions. Machinery, tools or equipment utilized in Malheur County, Oregon, are exempt from the prohibition in Subsections 250.05 and 250.06. ()

08. Authority of Director. The Director may stop the movement into or within any designated county of any machinery, tools, or equipment that have not been cleaned and disinfested as provided for in Subsection 250.06 until such machinery, tools and equipment are so cleaned and disinfested. ()

251. -- 259. (RESERVED)

260. DISPOSITION OF VIOLATIONS.

Any plant material, plant products or machinery, tools or equipment, imported into any designated county in violation of Subchapter B shall immediately be sent out of the county and all counties specified in Section 220 or destroyed at the option and expense of the owner or owners, his or their agents and under the direction of the Director. ()

261. -- 269. (RESERVED)

270. INSPECTION AND CONTROL PROCEDURES.

01. Inspection. The Director may inspect any regulated product or regulated product planting areas within the designated counties during any time of the year to determine if the disease organism is present therein. If the Director finds that any of the regulated products enumerated in Section 230, whether or not being transported, or any fields are infested with the disease organism, the Director will, by written control order, delivered or mailed to the grower and/or land owner, direct the control of the infestation, and may, prior to issuance of the order, seize any infected regulated products that are separated from the land on which grown. ()

02. Movement. Movement of such regulated products within the designated counties or removal of such from the designated counties may be carried out only with the Director's prior approval and under the Director's

supervision. ()

03. Controls. Control methods used are only those approved by the Director and may include, but are not limited to, the following directives: ()

a. Any infected regulated products will be destroyed. ()

b. A directive that a specific part or all of any infested area will be taken out of Allium species production. ()

c. Any infested area will be fenced, properly diked to prevent runoff or irrigation or rainwater, and planted to an approved crop that will prevent soil erosion and will not require annual tillage. ()

d. The pasturing of animals on any infested area is prohibited. ()

e. Equipment, tools and machinery used on an infested area will be cleaned and disinfested prior to removal from said area. ()

271. -- 279. (RESERVED)

280. SPECIAL EXEMPTIONS.

The Director may, with the consent of the owner, allow use of an infested growing area as an experimental plot in cooperation with the University of Idaho for onion white rot research. ()

281. -- 309. (RESERVED)

SUBCHAPTER C – APPLE AND CHERRY PESTS

310. DEFINITIONS.

The definitions found in section 310 apply to the interpretation and enforcement of Subchapter C only: ()

01. Commercial Fruit. Fruit harvested from a commercial orchard and destined to a commercial processing plant, packing plant, or for retail or wholesale sales. ()

02. Commercial Orchard. An orchard in which fruit is grown for commercial purposes under accepted industry, university agricultural extension service, and regulatory guidelines. ()

03. Graded Culls. Apples that have failed to meet industry quality standards for fresh markets, yet meet industry quality standards for processing purposes. ()

04. Infested Area. An area where a regulated pest is known to be present and is capable of reproducing and maintaining a viable population. ()

05. Threatened with Infestation. The entire commercial orchard is threatened with infestation when an outside boundary is within one-half (1/2) mile of an established regulated pest even if a portion of the commercial orchard is beyond one-half (1/2) mile of an established regulated pest. ()

311. -- 319. (RESERVED)

320. REGULATED PESTS.

01. Apple Maggot (*Rhagoletis pomonella*). ()

02. Cherry Fruit Fly (*Rhagoletis cingulata* complex, including *R. indifferens* and *R. fausta*). ()

321. REGULATED ARTICLES.

01. Apple Maggot. All fresh fruit of apple (including crabapple), cherry (except cherries that are commercial fruit), hawthorn (haw), pear (except pears that are commercial fruit from California, Idaho, Oregon, Utah, and Washington), plum, prune, quince, and rose hips are regulated under quarantine for apple maggot. ()

02. Cherry Fruit Fly. All domestic and wild cherries and cherry trees. ()

322. --329. (RESERVED)

330. REGULATED AREAS - APPLE MAGGOT.

01. Non-Infested Areas -- Within Idaho. The entire counties of Canyon, Owyhee and Payette; portions of the counties of Gem and Washington lying south of the quarantine areas as outlined in Subsections 330.02.a. and 330.02.b. ()

02. Infested Areas -- Within Idaho. The following areas are declared by the director to be under quarantine for Apple maggot: the counties of Franklin, Oneida, Caribou, Ada, Boise and Gooding; and portions of Gem and Washington counties as outlined in Subsections 330.02.a. and 330.02.b. ()

a. Gem County Quarantine Area. Those portions of Gem county lying northerly of a line described as follows: Commencing at the Northwest corner of Section 3, T.7N, R.2W; thence East along section lines to the Northwest corner of Section 6, T.7N, R.1W; thence South along section lines to the Southwest corner of Section 7; thence East along section lines to the Northeast corner of Section 15, T.7N, R.1W; thence South along section lines to the middle of the main channel of the Payette River; thence easterly along said river to the East line of the county. ()

b. Washington County Quarantine Area. Those portions of Washington county lying northerly of a line described as follows. Commencing at the Snake River at the Southern boundary of T.12N, R.7W; thence East along section lines to the Southwest corner of Section 35, T.12N, R.5W; thence North along section lines to the Northwest corner of Section 23, T.12N, R.5W; thence East along section lines to the Northwest corner of Section 21, T.12N, R.4W; thence South along section lines to the Southwest corner of Section 33, T.12N, R.4W; thence East along section lines to the Southwest corner of Section 31, T.12N, R.1E; thence East along section lines to the East line of the county. ()

03. Infested Areas -- Outside of Idaho. All states or foreign countries or portion thereof where Apple maggot is known to occur. ()

331. -- 339. (RESERVED)

340. RESTRICTIONS - APPLE MAGGOT.

01. Certification Required. Regulated articles described in this quarantine that are produced in or shipped from infested areas are prohibited movement into or within the state of Idaho unless a certificate accompanies the shipment evidencing compliance with Subsections 340.03, 340.04, 340.05, or 340.07. No certificate is required for regulated articles meeting the requirements of Subsections 340.02 or 340.06. ()

02. Reshipments in Original Containers. Regulated articles in original unopened containers, each bearing labels or other identifying marks evidencing origin outside an infested area, may be reshipped to the regulated area from any point within the area under quarantine. ()

03. Repacked Regulated Articles. Regulated articles may be repacked and shipped by common carrier from any point within an infested regulated area provided that each lot or shipment is accompanied by a certificate stating that the regulated articles have been grown outside an infested regulated area and have had their identity continuously maintained while in an infested regulated area. The certificate shall contain the following information: ()

a. The county in which the regulated articles were grown. ()

- b.** The point of repacking and reshipment. ()
- c.** The amount and kind of regulated articles comprising the lot or shipment. ()
- d.** The names and addresses of the shipper and consignee. ()

04. Apples Exposed to Controlled Atmosphere Storage. Apples exposed for a continuous period of ninety (90) days, during which period the temperature within the storage room has been maintained at thirty-eight (38) degrees Fahrenheit or less, may be admitted into the regulated area, provided that the storage room or building is approved by the Director as a controlled atmosphere facility, and each lot or shipment of such apples to the regulated area is accompanied by a certificate, as provided in Subsection 340.01. ()

05. Shipments From Cold Storage. Regulated articles described in Subsection 321.01 that are held in cold storage for a continuous period of forty (40) days or more, during which period the temperature within the storage room is maintained at thirty-two (32) degrees Fahrenheit or less, may be admitted into the regulated area, provided that each lot or shipment is accompanied by a certificate as stated in Subsection 340.01 evidencing compliance with the minimum temperature requirements. ()

06. Solid Frozen Fruits Exempt. No restrictions are placed on the movement of fruits that upon arrival are frozen solid and that are under refrigeration to assure their solid frozen state. ()

07. Regulatory and Control Measures. Regulatory and control measures may be prescribed by the Director within designated areas to prevent or minimize the possible movement of Apple maggot from commercial orchards. When it has been determined that commercial fruit of apple (including crabapple), hawthorn (both native and ornamental), plum, prune, peach and apricot trees (except graded culls – see Subsection 340.07.b.iii.) may be infested with or threatened with infestation by Apple maggot, the fruit will be sampled by an investigator, following accepted industry procedures for sampling and inspection for presence of Apple maggot. ()

a. If found to be free from Apple maggot, a certificate as provided for in Subsection 340.01 will be issued. ()

b. If found to be infested with Apple maggot, one (1) or more of the following procedures will be prescribed before fresh fruit of apple (including crabapple) and hawthorn (both native and ornamental) are moved from designated or regulated areas. ()

- i.** Fresh fruit to be exposed to controlled atmosphere storage as provided in Subsection 340.04. ()
- ii.** Fresh fruit to be exposed to cold storage as provided in Subsection 340.05. ()
- iii.** Graded culls are subject to Subsections 340.07.b.i. or 340.07.b.ii. ()

08. Infested or Damaged Regulated Articles. All regulated articles as described in Section 321.01 known, or found to be infested with, or damaged by Apple maggot shall not be sold, held for sale, or offered for sale, except as provided for in Subsections 340.04 and 340.05. ()

341. -- 349. (RESERVED)

350. REGULATED AREAS - CHERRY FRUIT FLY.

01. Canyon County, Idaho. The following is hereby designated an area of mandatory control for Cherry fruit fly: Commencing at the corner common to Sections 22, 23, 26 and 27 of Township 4 North, Range 5 West, Boise, Meridian; thence South to the Snake River to the point formed by section line between Sections 11 and 14 in Township 2 North, Range 4 West, Boise, Meridian; then East along said section line projected to where said line meets Lake Lowell; thence northwesterly across Lake Lowell to a point on the section line between Sections 26 and 27 of Township 3 West, Range 3 North, Boise, Meridian where said line meets Lake Lowell; then North along said

section line to a point which is the corner common to Sections 10, 11, 14 and 15 of Township 3 North, Range 3 West, Boise, Meridian; thence West to a point, the west corner common to Sections 7, 12, 13 and 18, Township 3 North, Range 3 West Boise, Meridian; thence North to a point the east corner common to Sections 1 and 12, Township 3 North, Range 4 West, Boise, Meridian; thence West to a point the corner common to Sections 2, 3, 10 and 11, Township 3 North, Range 4 West, Boise, Meridian; thence North to a point which is the section corner common to Sections 26, 27, 34 and 35 of Township 4 North, Range 4 West, Boise, Meridian; thence West to a point which is the section corner common to Sections 27, 28, 33 and 34 of Township 4 North, Range 4 West, Boise, Meridian; thence North to a point which is the section corner common to Sections 21, 22, 27 and 28, Township 4 North, Range 4 West, Boise, Meridian; thence West to the point of beginning. ()

02. Gem County, Idaho. The following is hereby designated an area of mandatory control for Cherry fruit fly: Commencing at the corner common to Sections 4 and 5 of T. 6 N., R. 3 W. B. M. and Sections 32 and 33 of T. 7 N., R. 3 W., B. M., which corner is on the West line of Gem County, Idaho; thence South along said county line to a point which is the Southwest corner of Section 33 of T. 6 N., R. 3 W., B. M.; thence East along the South line of said Section 33 to its Southeast corner; thence North along the East line of said Section 33; and continuing North along the extension of said line to a point which is the corner common to Sections 15, 16, 22 and 23 of T. 6 N., R. 3 W., B. M.; thence East along the section line between Sections 15 and 22 of T. 6 N., R. 3 W., B. M. to a point on the division line between Ranges 2 and 3 W., T. 6 N., B. M.; thence South along the division line between the said Ranges 2 and 3 W., T. 6 N., B. M., to the East corner common to Sections 24 and 25, T. 6 N., R. 3 W., B. M.; thence East to a point which is the East corner common to Sections 19 and 30 of T. 6 N., R. 2 W., B. M.; thence South to a point which is the East corner common to Sections 30 and 31, T. 6 N., R. 2 W., B. M.; thence East along the section line between said Sections 30 and 31, extended to a point which is the East corner common to Sections 29 and 32, T. 6 N., R. 1 W., B. M.; thence North to a point which is the East corner common to Sections 20 and 29, T. 6 N., R. 1 W., B. M.; thence East to a point which is the East corner common to Sections 21 and 28, T. 6 N., R. 1 W., B. M.; thence North to a point which is the East corner common to Sections 16 and 21, T. 6 N., R. 1 W., B. M.; thence East to a point which is the East corner common to Sections 15 and 22, T. 6 N., R. 1 W., B. M.; thence North to a point which is the East corner common to Sections 8 and 10, T. 6 N., R. 1 W., B. M.; thence East to a point which is the East corner common to Sections 2 and 11, T. 6 N., R. 1 W., B. M.; thence North to a point which would be the East corner common to Sections 23 and 26, T. 7 N., R. 1 W., B. M.; thence West to a point which is the Northwest corner of Section 25, T. 7 N., R. 2 W., B. M.; thence South to a point which is the Northwest corner of Section 1, T. 6 N., R. 2 W., B. M.; thence West to the point of beginning. ()

351. -- 359. (RESERVED)

360. RESTRICTIONS - CHERRY FRUIT FLY.

01. Treatments Required. Each person, or person's agent, located in Cherry fruit fly regulated areas as stated in Section 350 shall treat, or cause to be treated at his own expense, each of the regulated articles as listed in Subsection 321.02 on their property in order to minimize the population of the Cherry fruit fly. ()

02. Chemical Treatments. Chemical treatments shall be carried out utilizing proper timing, methods and pesticides as recommended by the University of Idaho Cooperative Extension Service, approved for use on the commodity by the Environmental Protection Agency, and registered with the Idaho State Department of Agriculture. The regulated articles will be treated so as to effect the best control of the Cherry fruit fly, as per the pesticide label and University recommendations. ()

03. Emergence. The date of the emergence of the first Cherry fruit fly in the county will be made public in the Cherry fruit fly regulated areas by the Department. The date of first emergence is determined by historical evidence, a population model utilizing degree-day accumulations or by actual trapping of adult individuals. ()

04. Additional Spraying Responsibilities. The duty to treat cherry trees includes a similar duty to treat all parts of any type of tree within twenty (20) feet of any portion of a cherry tree, using methods specified in Subsection 360.02. ()

05. Failure to Treat. In the event that the person or person's agent fails or refuses to effect the treatment specified in Subsection 360.02, the Director will carry out the treatment at the expense of the person in

charge or possession of the tree(s), as provided under Section 22-2010, Idaho Code. ()

361. – 369. (RESERVED)

370. SPECIAL PERMITS.

The Director may issue special permits admitting regulated articles covered in this quarantine not otherwise eligible for entry from the area under quarantine, subject to conditions and provisions, that the Director may prescribe to prevent introduction, escape or spread of the quarantine pests. ()

371. -- 411. (RESERVED)

SUBCHAPTER D – EUROPEAN CORN BORER

412. REGULATED PEST.

European corn borer (*Ostrinia nubilalis*). ()

413. -- 419. (RESERVED)

420. AREA AND ARTICLES UNDER QUARANTINE.

01. Infested Area. ()

a. Alabama, Arkansas, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, Wyoming, and the District of Columbia. ()

b. In Florida, the counties of Calhoun, Escambia, Gadsden, Hamilton, Holmes, Jackson, Jefferson, Madison, Okaloosa, and Santa Rosa. ()

c. In Louisiana, the parishes of Bossier, Caddo, Concordia, East Carroll, Franklin, Madison, Morehouse, Natchitoches, Ouachita, Red River, Richland, Tensas, and West Carroll. ()

d. In Texas, the counties of Bowie, Carson, Castro, Dallam, Deaf Smith, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, and Sherman. ()

02. Noninfested Area. All parishes, counties, states, districts, and territories of the United States not named in the infested area are known as the non-infested area. ()

03. Articles and Commodities Covered. ()

a. Corn, broomcorn, sorghum, and sudan grass plants and all parts thereof (including shelled grain and stalks, ears, cobs, and all other parts, fragments, or debris of said plants); ()

b. Beans in the pod and pepper fruits; ()

c. Plants of aster, chrysanthemum, geranium, hollyhock, dahlia, and gladiolus. ()

421. -- 429. (RESERVED)

430. RESTRICTIONS AND EXEMPTIONS.

01. Restrictions. ()

a. Articles and commodities covered are prohibited entry into Idaho from the infested area unless

accompanied by a certificate, issued by an authorized representative of the origin state Department of Agriculture, as provided below in Subsections 430.01.a.i. and 430.01.a.ii. ()

i. Shelled grain certificate of treatment stating that the grain has passed through a one-half (1/2) inch or smaller size mesh screen. ()

ii. Shelled grain not screened as in Subsection 430.01.a.i. or other articles and commodities certificate of processing and inspection specifying that all of the commodities and articles in the lot or shipment were processed and inspected in conformity with a method and in a manner prescribed by the Director, or the Director's agent. Such methods are obtainable on request from the Department. ()

iii. Articles and commodities covered originating in the parishes of Louisiana and the counties of Florida and Texas that are not infested with European corn borer may enter Idaho if accompanied by a certificate of origin issued by an authorized representative of the origin state Department of Agriculture specifying that no portion of the articles or commodities in the lot or shipment was grown in an area where the European corn borer is known to occur. Origin certification is not required for entry into Idaho of articles and commodities covered that originated in states, districts, and territories in the noninfested area. ()

b. All certificates must be dated and set forth the kind and quantity of articles or commodities constituting the lot or shipment covered thereby, the initials and number of the railway car or license number of the truck, and the names and addresses of the shipper and consignee. ()

02. Exemptions. Certification requirements are waived on the following articles and commodities covered, with the stipulation that such articles and commodities are subject to inspection by the Director and must be free of plant portions or fragments capable of harboring European corn borer. ()

a. Shelled popcorn, seed for planting or clean sacked grain for human consumption. ()

b. Beans in the pod or pepper fruits in lots or shipments of ten (10) pounds or less. ()

c. Seedling plants or divisions without stems of the previous year's growth of aster, chrysanthemum or hollyhock. ()

d. Dahlia tubers without stems. ()

e. Gladiolus corms without stems. ()

f. Very pungent types of pepper fruits. ()

g. Articles and commodities covered when they have been processed or manufactured in a manner that in the judgement of the Director eliminates all danger of carrying European corn borer. ()

h. The Director may, upon application, issue a permit to a recognized research agency to import specified quantities of the quarantined articles listed in Subsection 420.03 for experimental purposes. ()

431. -- 439. (RESERVED)

440. VIOLATIONS.

01. Incoming Shipments. ()

a. Any or all shipments of lots of the quarantined articles enumerated in Subsection 420.03 arriving in Idaho in violation of this quarantine shall immediately be sent out of the state, destroyed, or treated by a method and in a manner prescribed by the Director at the option and expense of the owner or owners, or responsible agents. ()

b. If any lot or shipment certified by the state of origin as prescribed in Subsection 430.01 is found to

contain materials capable of harboring an infestation, the Director may review the program of the state of origin to determine if it meets the requirements of Subchapter D. ()

441. -- 511. (RESERVED)

SUBCHAPTER E – PEACH TREE DISEASES

512. REGULATED PESTS.

The viral diseases known as Peach Yellows, Peach Rosette, and Little Peach. ()

513. -- 516. (RESERVED)

517. AREA UNDER QUARANTINE.

The entire states of Alabama, Arkansas, (except counties of Benton, Clark, Columbia, Garland and White), Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland (except counties of Worcester and Somerset), Massachusetts, Michigan, Mississippi, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia. ()

518. -- 521. (RESERVED)

522. REGULATED ARTICLES.

All trees, cuttings, grafts, scions, or buds of all species and varieties including the flowering forms of peach, nectarine, apricot, almond, plum, and prune, and any trees budded or grafted on peach stock or peach roots, coming from a regulated area. ()

523. -- 531. (RESERVED)

532. RESTRICTIONS GOVERNING SHIPMENTS.

The regulated articles will not be admitted into Idaho from the regulated areas unless the state of origin certifies that they were produced in a county free from infection with the regulated pests, as determined by adequate annual surveys satisfactory to the Director, and from disease-free bud sources, rootstocks, and environs. ()

533. -- 541. (RESERVED)

542. OFFICIAL CERTIFICATE REQUIREMENTS.

The certificates required by Section 532 will state the names and addresses of the shipper and consignee, the number and kind of regulated articles in the shipments, and the area where grown. A copy of the certificate accompanies the shipment, and one (1) copy is forwarded at the time of shipment to the Division of Plant Industry, Idaho State Department of Agriculture, Boise, Idaho. ()

543. -- 551. (RESERVED)

552. EXEMPTIONS.

This quarantine does not apply to experiments of the United States Department of Agriculture in the state of Idaho nor to experiments of the College of Agriculture, Department of Pathology of the University of Idaho. ()

553. -- 556. (RESERVED)

557. PENALTY.

Any or all shipments or lots of the regulated articles enumerated in Section 522 arriving in Idaho in violation of this chapter shall immediately be sent out of the state or destroyed at the option and expense of the owner or owners, or responsible agents and under the direction of the Director. ()

558. -- 561. (RESERVED)

562. COMMON CARRIER AGENTS MUST HOLD SHIPMENTS.

Any and all lots of shipments of commodities covered by this quarantine must be held and not delivered to consignee or agent until inspected and passed by the Director. ()

563. – 609. (RESERVED)

SUBCHAPTER F – DISPOSAL OF CULL ONIONS AND POTATOES

610. DEFINITIONS.

The definitions found in section 610 apply to the interpretation and enforcement of Subchapter F only. ()

01. Cull Onions. Refers to those onions that are not marketable or useable for consumption or are generally considered waste, and includes the residue left in the field from the production of onion seed as well as commercial onions. ()

02. Cull Potatoes. Refers to those potatoes that are not marketable or useable for consumption or as seed potatoes and includes the residue left in the field from commercial or seed potato production, or as a result of spoilage while in storage. ()

611. -- 619. (RESERVED)

620. REGULATED AREA.

01. Onions. Ada, Canyon, Gem, Payette, Owyhee, and Washington Counties, state of Idaho. ()

02. Potatoes. The entire state of Idaho. ()

621. -- 629. (RESERVED)

630. REGULATED PRODUCTS.

01. Cull Onions. All cull onions produced as a result of market conditions, the grading process, or as a result of breakdown in storage or sorted out in the field during harvest and bulbs and waste left over from seed production. ()

02. Cull Potatoes. All cull potatoes produced as a result of market conditions, the grading process, or as a result of breakdown in storage, or sorted out in the field during harvest and tubers and waste left over from potato seed production. ()

631. -- 639. (RESERVED)

640. DISPOSITION OF CULL ONIONS.

All cull onions existing in the control area shall be disposed of by a method approved of in Section 641 of this rule, to prevent sprouting. Disposal of all existing cull onions and debris must be completed prior to March 15th, of each year; provided; however, that in the case of onions sorted on or after March 15th of each year, the cull onions resulting therefrom shall be disposed of within one (1) week after such sorting regardless of the disposal method. The Department only enforces the cull onion disposal portions of this rule from March 15th through July 1st of each year. ()

641. DISPOSAL METHODS.

To control the spread of the onion maggot and related onion diseases, all disposal methods listed in Section 641 must be carried out to the extent that control of the regulated pest(s) is achieved in order to be in compliance with Subchapter F. ()

01. Disposal by Covering in Dumps or Pits. ()

a. Cull onions disposed of by being dumped in pits shall be managed and covered as recommended by the University of Idaho Agricultural Extension Service. ()

b. Covering shall be accomplished by March 15th of each year or as provided in Section 640 of this rule. ()

02. Disposal by Feeding After March 15th of Each Year. ()

a. Sheep or goats shall be fed no more than fifty-three (53) pounds of cull onions per individual animal per day. Cull onions shall be fed from either bunks or by spreading throughout the pasture or feedlot. Cull onions may not be fed from piles. ()

b. Cattle may be fed a ration containing no more than twenty-five percent (25%) cull onions on a dry matter basis. ()

c. Onion debris shall be completely removed from feeding areas and buried under twelve (12) inches or more of onion-free soil by March 15th of each year. ()

d. In the case of residues of onion debris two (2) inches or less in depth, or onions tramped into the soil so that they cannot be removed, such areas shall be disked and plowed as deep as possible, and such that all onions and debris are buried under eight (8) inches or more of onion-free soil by March 15th of each year. ()

e. Feeding areas and areas where onions are buried shall be treated in the manner set out in Section 641. ()

f. Cattle and sheep being finished for market or dairy cattle shall not be fed forage or grains grown on feeding areas treated in the manner set forth in Section 641. ()

03. Disposal by Composting. Cull onions being composted shall be covered by twelve (12) inches or more of onion-free soil or composting material until the onions have turned to compost. ()

04. Disposal of Residue in Onion Producing Fields. ()

a. Commercial onion fields where sort-out bulbs are left at harvest shall be disked and plowed as deep as possible, and such that all onions and debris are buried under eight (8) inches or more of onion-free soil by March 15th of each year. ()

b. Following final seed harvest, seed bulbs shall be disked and plowed as deep as possible, and such that all onions and debris are buried under eight (8) inches or more of onion-free soil by March 15th of each year. ()

05. Disposal by Chopping or Shredding. Cull onions that have been chopped or shredded to the point that they are incapable of sprouting, shall be disked and plowed as deep as possible, and such that all onions and debris are buried under eight (8) inches or more of onion-free soil by March 15th of each year. ()

06. Disposal by Spreading. Cull Onions may be disposed of by being spread on agricultural fields destined to be planted to a crop other than onions provided the onions are disked and plowed as deep as possible, and such that all onions and debris are buried under eight (8) inches or more of onion-free soil. ()

642. INCLEMENT WEATHER.
If inclement weather prevents disposal by the methods in Subsections 641.01 through 641.06, culls shall be treated with an EPA-labeled insecticide at prescribed intervals as recommended by the University of Idaho Agricultural Extension Service until proper disposal as prescribed in Subsections 641.01 through 641.06 can be carried out.()

643. (RESERVED)

644. NOTIFICATION REQUIRED.

Any person or entity delivering cull onions for disposal in the area regulated for cull onion disposal shall provide written notification to the recipient of those cull onions advising the recipient of this rule and the recipient's obligations for the disposal of the cull onions under this rule. If the recipient is not the property owner, written notification shall also be made to the owner of the property where the onions are to be disposed of. Failure to make such notification in writing is a violation of Subchapter F. ()

645. -- 649. (RESERVED)

650. DISPOSITION OF CULL POTATOES.

All cull potatoes existing west of the Raft River shall be rendered non-viable by April 15th of each year and all cull potatoes generated after April 15th shall be rendered non-viable on a daily basis until September 20th. All cull potatoes existing east of the Raft River shall be rendered non-viable by May 15th of each year and all cull potatoes generated after May 15th shall be rendered non-viable on a daily basis until September 20th. ()

651. CULL POTATO DISPOSAL METHODS.

Cull potatoes shall be disposed of in a manner as to render them non-viable. Disposal methods are those as recommended by the University of Idaho Agricultural Extension Service. ()

652. -- 659. (RESERVED)

660. AUTHORITY TO ENTER AND INSPECT.

The Director or Director's agents are authorized to enter and inspect all onion and potato cull dumps and disposal sites in the state of Idaho for the purpose of insuring compliance with Subchapter F. ()

661. – 709. (RESERVED)

SUBCHAPTER G - MINT ROOTSTOCK AND CLONE PRODUCTION

710. DEFINITIONS.

The definitions found in section 710 apply in the interpretation and enforcement of Subchapter G only: ()

01. Certified Defined Generation. The origin of mint rootstock is in the restricted area and its history may be directly traced, not to exceed five (5) generations, to its source as healthy clones. ()

02. Healthy Clones (HC). Those plants, which are cloned, having been cleansed, tested and maintained in an approved greenhouse and under the supervision of the state of origin's agricultural regulatory authority. The origin of all clones shall be listed on all clone transfer permits. ()

03. Nuclear Planting Stock (NPS). Those rootstocks originating from healthy clones. ()

04. Certified Defined Generation 1 (CDG-1). Those rootstocks one (1) generation removed from nuclear planting stock, and fulfilling the requirements as herein provided. ()

05. Certified Defined Generation 2 (CDG-2). Those rootstocks one (1) generation removed from CDG-1 planting stock and fulfilling the requirements as herein provided. ()

06. Certified Defined Generation 3 (CDG-3). Those rootstocks one (1) generation removed from CDG-2 planting stock and fulfilling the requirements as herein provided. ()

07. Certified Defined Generation 4 (CDG-4). Those rootstocks one (1) generation removed from CDG-3 planting stock and fulfilling the requirements as herein provided. ()

08. In-State Defined Generation. The roots have been grown in the commercial production area and their history may be directly traced, not to exceed five (5) generations, to their source as healthy clones. ()

09. In-State Defined Generation 1 (SDG-1). Those rootstocks one (1) generation removed from nuclear planting stock, and fulfilling the requirements as herein provided. ()

10. In-State Defined Generation 2 (SDG-2). Those rootstocks one (1) generation removed from SDG-1 or CDG-1 planting stock and fulfilling the requirements as herein provided. ()

11. In-State Defined Generation 3 (SDG-3). Those rootstocks one (1) generation removed from SDG-2 or CDG-2 planting stock and fulfilling the requirements as herein provided. ()

12. In-State Defined Generation 4 (SDG-4). Those rootstocks one (1) generation removed from SDG-3 or CDG-3 planting stock and fulfilling the requirements as herein provided. ()

13. Field. A parcel of land submitted to the department for inspection of the mint being grown thereon, and physically separated by a minimum of five (5) feet of bare ground, or irrigation ditch, or road, or other physically discernible barrier separating it from an adjacent parcel of land planted with mint. ()

711. (RESERVED)

712. REGULATED PESTS.

01. Diseases. Verticillium wilt (*Verticillium dahliae* Kleb) a persistent soil-borne fungal disease of mint and any virulently pathogenic, persistent disease known to be detrimental to the production of mint rootstock in the restricted area and the commercial production area. ()

02. Insects. ()

a. Restricted area as defined in Subsection 720.02: Mint stem borer (*Pseudobaris nigrina*), insect pests of mint rootstocks and any persistent insect pest known to be detrimental to the production of mint rootstocks and without effective control options. ()

b. Commercial production area as defined in Subsection 720.01: Mint stem borer (*Pseudobaris nigrina*), insect pest of mint rootstocks and any persistent insect pest known to be detrimental to the production of mint rootstocks and without effective control options. ()

03. Noxious Weeds. ()

a. In both the commercial production area and restricted area as defined in Subsections 720.01 and 720.02: those weeds declared noxious by authority of Title 22, Chapter 24, Idaho Code (Noxious Weed Law) and Rules. ()

b. Growers will be notified by the Department of existing noxious weed problems. If noxious weeds have not been effectively controlled as determined by the Department, prior to the second inspection, the field will be rejected for certification by the Department. ()

713. -- 714. (RESERVED)

715. REGULATED PRODUCTS.

01. Mentha. Rootstocks of all species of the genus *Mentha*. ()

02. Mentha Production Equipment. Machinery, tools, and equipment used in the production of *Mentha* species. ()

716. -- 719. (RESERVED)

720. CONTROL AREAS.

To facilitate inspection and control, the land mass of the state of Idaho is divided into two (2) areas, currently defined as: ()

01. Commercial Production Area. Ada, Canyon, Elmore, Gem, Gooding, Payette, Owyhee, and Washington Counties. ()

02. Restricted Area. That land mass of the state of Idaho not included in the commercial production area. ()

a. Certified defined generation mint shall not be grown when the specific location is within five (5) miles of uncertified mint unless there are adequate physical and cultural barriers. ()

721. -- 729. (RESERVED)

730. REQUIREMENTS FOR MINT ROOTSTOCK TO BE PLANTED IN IDAHO.

01. Restricted Area as Defined in Subsection 720.02. ()

a. Healthy clones shall be accompanied by a phytosanitary certificate issued by a regulatory agency of the state of origin with zero (0) tolerance for regulated disease(s), insect(s) and noxious weed(s); or ()

b. Certified rootstock from the restricted area shall be accompanied by a certified defined generation transfer permit with the parent rootstock number and with zero (0) tolerance for stem borer, or insect(s) without effective control options (i.e. stem borer), regulated disease(s) and noxious weed(s). ()

02. Commercial Production Area. As defined in Subsection 720.01, has no restrictions except for those wishing to participate in the inspection program who will adhere to the following rules: ()

a. Healthy clones shall be accompanied by a phytosanitary certificate, issued by a regulatory agent of the state of origin with zero (0) tolerance for regulated disease(s), insect(s) and noxious weeds; or ()

b. Certified rootstock from the restricted area shall be accompanied by a certified defined generation transfer permit with the parent rootstock number, level of mint root borer infestation and zero (0) tolerance for stem borer, or, insect(s) without effective control options (i.e., stem borer) regulated disease(s) and weed(s); or ()

c. In-state defined generation rootstock from the commercial production area shall be accompanied by a transfer permit with the parent rootstock number, level of mint root borer infestation and zero (0) tolerance for stem borer, regulated disease(s) and weed(s). ()

731. -- 739. (RESERVED)

740. INSPECTION PROCEDURES.

01. Inspection Requests. All requests for inspection shall be made prior to May 1 of each year on forms provided by the Department. ()

a. Incomplete applications for inspection will not be accepted. ()

b. No application for field inspection will be accepted after June 1 of each year except in the case of healthy clones. ()

02. First Field Inspection. Mint fields submitted for inspection will be inspected during active growth prior to oil harvest, but not earlier than the third week of July and not later than the first week of August, by the Idaho Department of Agriculture inspector. The inspection protocol is as follows: ()

a. Inspectors will walk the entire field at ten (10) row intervals. ()

b. The inspector will wear rubber boots that are sanitized between each field. A ten percent (10%) solution of sodium hypochlorite will be used to sanitize boots. ()

- c.** The site of any sample taken for a Verticillium wilt determination will be marked. ()
- d.** Fields found with Verticillium wilt during the first inspection will result in the entire field being disapproved and permanently ineligible for certification purposes by the Department. ()
- 03. Second Field Inspection.** Mint fields submitted for inspection will be sampled after oil harvest or removal of foliage in early to mid September for the presence of the mint root borer. The sampling protocol is as follows: ()

 - a.** Three (3) samples per five (5) acres will be collected. ()
 - b.** Sampling sites will include areas of plant stress. ()
 - c.** In each sampling site one (1) square foot samples of mint roots and two (2) to three (3) inches of soil will be selected. ()
 - d.** The mint roots and the soil in each sample will be examined for evidence of regulated pests. ()
 - e.** The site of any sample taken will be appropriately marked. ()
 - f.** Fields found with Verticillium wilt during the second inspection will result in the entire field being disapproved by the Department and permanently ineligible for certification purposes, by the Department. ()
 - g.** Fields with stem borer or other insects without control options (i.e., stem borer), will be disapproved by the Department for certification but, if proven clean at a later date, could again be considered for certification. ()
- 04. Notification of Infestation.** The Idaho Department of Agriculture will notify the grower immediately upon the completion of any test results for regulated pest(s). ()
- 05. Issuance of Certified Defined Generation and In-State Defined Generation Transfer Permits.** ()

 - a.** Restricted area as defined in Subsection 740.02: a certified defined generation transfer permit with the parent rootstock number will be issued for rootstock that meets the following requirements: ()

 - i.** Roots shall be grown in restricted areas. ()
 - ii.** Field submitted and inspected per Subsections 740.01 through 740.04. ()
 - iii.** Zero (0) tolerance for regulated disease(s), insect(s) without effective control options (i.e., stem borer), and noxious weed(s). ()
 - iv.** Levels of mint root borer infestation will be listed in the transfer permit. ()
 - b.** Commercial production area as defined in Subsection 720.01: an in-state defined generation transfer permit with the parent rootstock number and level of mint root borer infestation issued for rootstock that meets the following requirements: ()

 - i.** Field submitted and inspected per Subsections 740.01 through 740.04. ()
 - ii.** Zero (0) tolerance for regulated disease(s), insect(s) without effective control options (i.e., stem borer), and noxious weed(s). ()
 - iii.** Levels of mint root borer infestation will be listed in the transfer permit. ()
- 06. Exemptions -- Issuance of In-State Transfer Numbers.** ()

a. Restricted area as defined in Subsection 720.02: rootstock found to be infested with noxious weed(s), shall not be eligible for a certified defined generation transfer permit for the current year. The Department of Agriculture will issue an in-state transfer number to allow the grower to plant rootstock within their farm for the purpose of controlling the infestation. The field must be submitted for inspection per Subsections 740.01 through 740.04. If the rootstock is found to be free of the noxious weed(s), the rootstock will be eligible for a certified defined generation transfer permit with parent rootstock number. The eligible rootstock will be assigned a certified defined generation transfer permit with parent rootstock number corresponding to the next generation had it not been denied certification the previous year. Rootstock denied certification two consecutive years shall not be eligible for future certification. ()

b. Commercial production area as defined in Subsection 720.01: rootstock found to be infested with a noxious weed(s) or insect(s) shall not be eligible for an in-state defined generation transfer permit for the current year. The Department of Agriculture will issue an in-state transfer number to allow the grower to plant the rootstock within their farm for the purpose of controlling the infestation. The field must be submitted for inspection per Subsections 740.01 through 740.04. If the rootstock is found to be free from the noxious weed(s) the rootstock will be eligible for an in-state defined generation transfer permit with parent rootstock number. The eligible rootstock will be assigned an in-state defined generation transfer permit corresponding to the next generation had it not been denied certification the previous year. Rootstock denied certification two consecutive years is not eligible for future certification. ()

07. Laboratory Tests. In the event visual examination reveals evidence of a regulated pest, laboratory tests, if necessary to determine the causal organism, will be conducted by the Idaho Department of Agriculture laboratory on official samples in addition to the field inspection. In the case of a disagreement between the state Department of Agriculture and the interested party concerning the identity of the regulated pest in question, the state Department of Agriculture will submit an official sample to any lab of the University of Idaho, for a final determination. ()

08. Transfer Permits and Resale. ()

a. It is the responsibility of each grower producing certified or in-state defined generation mint rootstock originating within the state to obtain transfer permits from the Department prior to moving planting stocks for resale. ()

b. Each time a transfer permit is issued, the Idaho Department of Agriculture will send a copy and/or notification to the office of the Idaho Mint Commission. ()

741. MOVEMENT OF FARM EQUIPMENT.

Farm equipment, including but not limited to tillage equipment, planters and digging equipment moving from the infested area into the restricted area shall be clean and free of soil to the satisfaction of the Director or the Director's designated agent. ()

742. -- 744. (RESERVED)

745. GREENHOUSES.

Greenhouses shall be screened and tightly constructed to preclude the entry of any regulated insect or noxious weed as defined in Subsections 712.02 and 712.03 above. Planting media shall be sterilized prior to planting, and not re-used for planting of any mint destined to be entered in the mint certification process as outlined in this rule. Greenhouses shall be disinfected annually with a ten percent (10%) sodium hypochlorite solution and licensed as such under Chapter 23, Title 22, Idaho Code. ()

746. -- 749. (RESERVED)

750. POSTING OF FIELDS.

01. Posting. All mint fields within the restricted area shall be posted to prevent entry of unauthorized personnel. ()

02. Approval by Department. Signs and method of placement shall be of a type and manner approved by the Department with the advice of the Idaho Mint Commission. ()

751. -- 759. (RESERVED)

760. AUTHORITY TO ENTER, INSPECT, AND CONTROL REQUIREMENTS.

01. Agent Authorization. The Idaho Director of Agriculture or the Director's designated agents are authorized to enter and inspect any and all mint plantings in the restricted area and any and all mint plantings that have been submitted for inspection. ()

02. Submission for Inspection. Additionally, all mint planted in the restricted area shall be submitted to the Idaho Department of Agriculture for annual inspection. ()

761. -- 769. (RESERVED)

770. PENALTY.

Restricted area as defined in Subsection 720.02: any field of mint rootstock determined to be infected with a regulated pest including those without control options may be destroyed to eliminate the regulated pest by or at the expense of the grower or landlord. Except if the county, or any portion thereof, as determined by the Department, in which a field of mint rootstock determined to be infected with the regulated disease(s) or infested with insects without control options is to be made part of the commercial production area, then destruction of the field shall not be required. The method of destruction includes but is not limited to uprooting to expose and desiccate the rootstocks. All destruction must be completed by November 1st of each year. ()

771. -- 779. (RESERVED)

780. EXEMPTIONS.

01. Government Agencies. Subchapter G does not apply to any governmental agency growing mint in experimental plots approved by the Director of the Idaho Department of Agriculture and under the supervision of qualified plant scientists. ()

02. Private, Non-Commercial Home Use. These rules do not apply to species of the genus *Mentha* intended for private, non-commercial home use. However, species of the genus *Mentha* intended for private, non-commercial home use entering Idaho shall be accompanied by a phytosanitary certificate issued by the state of origin's department of agriculture certifying them free of pests and diseases listed under Section 712. ()

781. -- 789. (RESERVED)

790. FEES AND CHARGES.

Under provisions of Section 22-2006, Idaho Code, the fees and charges for inspections, certificates, and permits under Subchapter G are as follows: ()

01. Transfer Permits. For in-state sale or movement of certified or in-state defined generation rootstock: ten dollars (\$10) per permit. ()

02. Field Inspections. ()

a. Application for field inspection: five dollars (\$5) per field. ()

b. Field inspection, collection of samples and examination of samples will be assessed at a rate of fifteen dollars (\$15) per acre per inspection. ()

c. Travel costs and lodging will be charged according to established state rates and policy. ()

d. Every effort will be made to schedule field inspections to insure the most efficient use of travel

time. Charges for travel time will be charged on a prorated basis when more than one (1) farm is inspected during a trip. ()

791. -- 819. (RESERVED)

SUBCHAPTER H – GRAPE PLANTING STOCK

820. REGULATED AREAS.

All areas outside of the territorial borders of the state of Idaho. ()

821. -- 829. (RESERVED)

830. REGULATED COMMODITIES.

Planting stock of grape (*Vitis* species) including live plants, hardwood cuttings, softwood cuttings, rootstocks, and any other parts of the grape plant, except fruit, capable of propagation (except fruit). ()

831. REGULATED PESTS.

Regulated pests include, but are not limited to: ()

- 01. Grapevine Fanleaf Virus.** ()
- 02. Grapevine Leaf Roll - Associated Viruses.** ()
- 03. Red Blotch Virus.** ()
- 04. Grapevine Corky Bark Disease.** Which include, but may not be limited to: ()
 - a. Grapevine virus A.** ()
 - b. Grapevine virus B.** ()
- 05. Grape Phylloxera.** (*Daktulosphaira vitifoliae*); ()
- 06. Pierce's Disease.** As caused by the bacterium *Xylella fastidiosa*; ()
- 07. Vine Mealybug.** (*Planococcus ficus*) ()
- 08. Glassy-Winged Sharpshooter.** (*Homalodisca vitripennis*). ()
- 09. European Grapevine Moth.** (*Lobesia botrana*) ()
- 10. Xiphinema Index.** ()

832. -- 834. (RESERVED)

835. RULES GOVERNING SHIPMENTS.

01. Admittance into Idaho. Each shipment of a regulated article from a regulated area must be accompanied by a certificate issued by the state or country of origin's plant protection organization, stating that the grape planting stock to be imported has been certified in accordance with the regulations of an official grapevine certification program of the state or country of origin's plant protection organization, that includes annual inspections at all certification levels and testing at the foundation level for regulated pests and: ()

a. The grapevines, rootstock and/or softwood cuttings were grown in and shipped from an area known to be free from regulated pests; or ()

b. For small shipments (five hundred (500) or less) of un-rooted softwood cuttings, were individually inspected by an authorized inspector and were found to be free from regulated pests; or ()

c. The grapevines, rootstock or softwood cuttings were grown under a sterile soil-less media and treated with a soil or systemic insecticide and a hot water dip treatment, as outlined in Section 840 of this rule, proven to be effective against vine mealybug and any other pests that may be present on the roots; or ()

d. The grapevines, rootstock, and/or softwood cuttings were subject to one (1) of the two (2) treatments outlined in Section 840 of this rule, or such additional methods as may be determined to be effective and are approved by the director and were stored in a manner after treatment that would prevent re-infestation. ()

02. Marking Contents. All shipments of grape planting stock must be plainly marked with the contents on the outside of the package or container. ()

03. Shipment Notification. Persons shipping or transporting grape planting stock into this state from areas under regulation shall notify the department by electronic mail, regular mail or fax prior to shipment including the nature of the grape planting stock (such as live plants, hardwood cuttings, softwood cuttings, rootstocks, or other similar categories), the quantity in each shipment, the expected date of arrival, the name of the intended receiver and the destination. An official certificate issued by the plant protection organization of the state of origin certifying that the grapevines meet the requirements of this chapter must accompany the grape planting stock into the state. All treatments and inspections must have been witnessed or performed by an official of the state of origin's plant protection organization. ()

836. -- 839. (RESERVED)

840. ACCEPTABLE TREATMENTS.

01. Hot Water Treatment. Dormant, rooted grapevines or rootstock shall be washed to remove all soil or other propagative media by immersing in a hot water bath for a period of not less than three (3) minutes, nor more than five (5) minutes, at a temperature of not less than one hundred twenty-five degrees Fahrenheit (125° F.) or fifty-two degrees Celsius (52° C.), nor more than one hundred thirty degrees Fahrenheit (130° F.) or fifty-five degrees Celsius (55° C.) at any time during immersion; or ()

02. Fumigation. Grapevines, rootstock or softwood cuttings may be treated with a fumigant approved for the regulated pests. ()

03. Other Methods. Upon written application to the Director, variations to the above mentioned acceptable treatments or additional treatment methods may be considered. ()

841. -- 844. (RESERVED)

845. DISPOSITION OF COMMODITIES IN VIOLATION OF RULES.

Any commodity set forth in Section 835 of Subchapter H or any grape plants or parts thereof, not meeting the requirements of Subchapter H shall immediately be sent out of the state of Idaho or destroyed at the option and expense of the owner or owners, or responsible agents and under the direction of the Director. ()

846. -- 849. (RESERVED)

850. AUTHORITY TO ENTER, INSPECT, AND CONTROL.

01. Entry and Inspection. The Director is authorized to enter and inspect any or all grape plantings in the state of Idaho. ()

02. Control and Destruction of Infected Plants. Whenever the Director finds that there is imminent peril that virus diseases or plant pests will spread from infected grape plantings to and contaminate other uninfected grape plantings because of refusal, failure, or neglect to control the already infected grape plantings, the Director may at once give notice in writing to control or destroy in part or total the infected grape plantings under the provisions of

Title 22, Chapter 20, Idaho Code, and may thereafter, if necessary, proceed to destroy such infected grape plantings under the terms and provisions of Title 22, Chapter 20, Idaho Code. ()

851. – 854. (RESERVED)

SUBCHAPTER I – JAPANESE BEETLE

855. REGULATED PEST.

Japanese beetle (*Popillia japonica*). ()

856. -- 859. (RESERVED)

860. AREAS UNDER QUARANTINE.

01. States. The entire states of Alabama, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and the District of Columbia. ()

02. Canada. In Canada: ()

a. In the Province of Ontario: Lincoln, Welland and Wentworth. ()

b. In the Province of Quebec: Missiquoi and St. Jean. ()

03. Other Areas. Any areas not mentioned above and subsequently found to be infested. ()

861. -- 869. (RESERVED)

870. ARTICLES AND COMMODITIES UNDER QUARANTINE.

01. Possible Hosts and Carriers. The following are hereby declared to be hosts and possible carriers of the Japanese beetle: ()

a. Soil, humus, compost, and manure (except when commercially packaged); ()

b. All plants with roots (except bareroot plants free from soil); ()

c. Grass sod; ()

d. Plant crowns or roots for propagation (except when free from soil); ()

e. Bulbs, corms, tubers, and rhizomes of ornamental plants (except when free from soil); ()

f. Any other plant, plant part, article, or means of conveyance when it is determined by the Director or authorized agent to present a hazard of spreading live Japanese beetle due to infestation or exposure to infestation by Japanese beetle. ()

02. Soil. For the purposes of this quarantine, soil is defined as all growing media in which the plants are actually rooted. Packing material other than soil, added to bareroot plants after harvesting would not normally pose a pest risk. Packing material would be covered under (Subsection 930.01.f.), at the inspector's discretion. ()

03. Free from Soil. For the purposes of this quarantine, free from soil is defined as soil in amounts that could not contain concealed Japanese beetle larvae or pupae. ()

871. -- 879. (RESERVED)

880. RESTRICTIONS.

All articles and commodities under quarantine are prohibited entry into Idaho from an area under quarantine with the following exceptions: ()

01. Certificate of Treatment. All of the articles and commodities covered are approved for entry into Idaho when accompanied by a certificate issued by an authorized state agricultural official at origin stating that the article or shipment was treated for Japanese beetle or grown in accordance with methods and procedures approved and prescribed by the Director. A Certificate of Treatment shall include the date of treatment. Shipment of the articles or commodities shall not take place sooner than ten (10) days after the date of treatment, but no later than thirty (30) days after treatment. ()

02. Certificate of Origin. Commercial plant shipments with soil may be shipped from an area under quarantine into Idaho provided such shipments are accompanied by a certificate issued by an authorized state agricultural official at origin. Such certificates shall be issued only if the shipment confirms fully with either Subsections 880.02.a., 880.02.b., or 880.02.c. of Subchapter I: ()

a. The greenhouse in which the plants were produced was tightly constructed so that adult Japanese beetles would not gain entry, the plants and greenhouses were inspected and found to be free from all stages of Japanese beetle, and the plants and soil were protected from subsequent infestation while being stored, packed and shipped; or ()

b. The plants were not produced in the regulated area, were transported into the regulated area in a closed conveyance or closed containers and at all times thereafter were protected from becoming infested with Japanese beetle; or ()

c. States or portions of states listed in the area under quarantine may have counties that are not infested with Japanese beetle. Shipments of articles and commodities covered will be accepted from these noninfested counties if annual surveys are made in such counties and the results of such surveys are negative for Japanese beetle. A list of counties so approved will be maintained by the Director. Agricultural officials of other states may recommend a noninfested county be placed on the approved county list by writing for such approval and stating how the surveys were made giving the following information: ()

i. Area surveyed. ()

ii. How survey was carried out. ()

iii. Personnel involved. ()

iv. If county was previously infested, give date of last infestation. ()

v. The recommendation for approval of such counties will be evaluated by the Department of Feeds and Plant Services, Division of Plant Industries, Idaho Department of Agriculture. ()

03. Denial of Approval. If heavy infestations occur in neighboring counties, approval may be denied. To be maintained on the approved list, each county will be reapproved every twelve (12) months. Shipments of articles and commodities under quarantine from noninfested counties will only be allowed entry into Idaho if the noninfested county has been placed on the approved list prior to the arrival of the shipment to Idaho. ()

04. Privately Owned House Plants. Up to twenty-five (25) privately owned house plants grown indoors may be inspected and approved for entry by the Director or Director's authorized agent if found free from Japanese beetle. ()

881. -- 889. (RESERVED)

890. PENALTY.

Any or all shipments or lots of quarantined articles or commodities listed in Section 870 above arriving in Idaho in

violation of this quarantine shall immediately be sent out of the state, destroyed, or treated by a method and in a manner as directed by the Director. Treatment shall be performed at the expense of the owner, or owners, or their duly authorized agent. ()

891. -- 919. (RESERVED)

SUBCHAPTER J - ANTHRACNOSE DISEASE OF LENTIL

920. REGULATED DISEASE.

The anthracnose disease of lentil, caused by the fungi identified as *Colletotrichum truncatum* (Schwein) Andrus & W.D. Moore and *Colletotrichum destructivum*. ()

921. -- 929. (RESERVED)

930. REGULATED PRODUCTS.

The seeds and vegetative parts of lentil, *Vicia sp.*, faba beans, peas, Tangier pea, vetch, and other host of the regulated disease. ()

931. -- 934. (RESERVED)

935. AREA UNDER QUARANTINE.

The Canadian provinces of Manitoba and Saskatchewan and all states and territories of the United States and foreign countries known to have confirmed the presence of the anthracnose of lentil. ()

936. -- 939. (RESERVED)

940. SHIPMENTS.

No person shall import any regulated products into Idaho for planting purposes from any area under quarantine. ()

941. -- 949. (RESERVED)

950. INSPECTION AND CONTROL PROCEDURES.

01. Inspection. The Department may inspect any regulated product or planting of regulated products during any time of the year to determine if the regulated disease is present therein. If the Department finds that any regulated product or planting of the same is infected or otherwise in violation of Subchapter J, it shall direct the control and/or the eradication of the infection. ()

02. Control. The control and/or the eradication methods shall be only those approved by the Director, at the expense of the owner, and may include but are not limited to: ()

a. Any infected regulated product will be destroyed. ()

b. The infected crop will be sprayed with fungicide(s) registered with the United States Environmental Protection Agency and the state of Idaho. ()

c. Any infested field will not be planted to any regulated products cited in Section 930. ()

d. Volunteer regulated products cited in Section 930 growing in any infested field shall be destroyed by a method(s) approved by the Director. ()

951. -- 959. (RESERVED)

SUBCHAPTER K - PLUM CURCULIO

960. REGULATED PEST.

Plum curculio (*Conotrachelus nenuphar* (Coleoptera: Curculionidae)). ()

961. -- 969. (RESERVED)

970. AREA UNDER QUARANTINE.

In the eastern United States and Canada, all states and provinces east of and including Manitoba, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma and Texas. In Utah, Box Elder County. ()

971. -- 979. (RESERVED)

980. ARTICLES AND COMMODITIES COVERED.

01. Fresh Fruit of All Plants Listed Below: ()

a. Apple (*Malus spp.*); ()

b. Apricot (*Prunus armeniaca*); ()

c. Cherry, black (*P. serotina*); ()

d. Cherry, choke (*P. virginiana*); ()

e. Cherry, pin (*P. pensylvanica*); ()

f. Cherry, sand (*P. pumila*); ()

g. Cherry, sour (*P. cerasus*); ()

h. Cherry, sweet (*P. avium*); ()

i. Crabapple (*Malus spp.*); ()

j. Hawthorn or haw (*Crataegus spp.*); ()

k. Nectarine (*Prunus persica nectarina*); ()

l. Peach (*P. persica*); ()

m. Pear (*Pyrus communis*); ()

n. Plum, American (wild) (*Prunus alleghaniensis*); ()

o. Plum, beach (*P. maritima*); ()

p. Plum, European (*P. domestica*); ()

q. Plum, Japanese (*P. salicina*); ()

r. Prune (*P. spp.*); ()

s. Quince (*Cydonia oblonga*). ()

02. Soil. Soil or other growing medium within the drip zone of plants producing or that have produced fruit as listed in Subsection 980.01. ()

981. -- 989. (RESERVED)

990. RESTRICTIONS.

01. Certification Required. Articles and commodities covered that are produced in or shipped from the area under quarantine are prohibited entry into the state of Idaho unless each lot or shipment is accompanied by a certificate issued by and bearing the original or facsimile signature of the authorized agricultural official of the state from which the article or commodity is shipped evidencing compliance with Subsections 990.03, 990.04, 990.06 or 990.07 of Subchapter K. No certificate is required for commodities meeting the requirements of Subsections 990.02 or 990.05 of Subchapter K. ()

02. Reshipments in Original Containers from Area Under Quarantine of Commodities Grown Outside Thereof. Commodities in original unopened containers, each bearing labels or other identifying marks evidencing origin outside the area under quarantine, may be reshipped to this state from any point within the area under quarantine. ()

03. Repacked Commodities Admissible from Area Under Quarantine If Certified Grown Outside Thereof. Provided each lot or shipment is certified by an authorized agricultural official to have been grown outside the area under quarantine and that continued identity has been maintained while within the area under quarantine, the commodities may be repacked and shipped by common carrier from any point within the area under quarantine to this state. The certificate shall set forth the state in which commodities were grown, point of repacking and reshipment, amount and kind of commodities comprising the lot or shipment, and the names and addresses of the shipper and consignee. ()

04. Apples Exposed to Controlled Atmosphere (CA) Storage Admissible Under Certificate. Apples that are exposed to controlled atmosphere (CA) storage for a continuous period of ninety (90) days, during which period the temperature within the storage room is maintained at thirty-eight degrees Fahrenheit (38° F), three point three degrees Celsius (3.3° C) or less, may be admitted into Idaho provided said storage room or building is approved by the proper authorities in the state of origin as a controlled atmosphere facility and further provided each lot or shipment of such apples to Idaho is accompanied by a certificate, as stated in Subsection 990.01, evidencing compliance with the minimum requirements of this section. ()

05. Solid Frozen Fruits Exempt. No restrictions are placed by this rule on the entry into this state of fruits that upon arrival are frozen solid and that are under refrigeration to assure their solid frozen state. ()

06. Shipments from Cold Storage at Thirty-Two Degrees Fahrenheit (32° F), Zero Degrees Celsius (0° C). Commodities covered that are held in cold storage for a continuous period of forty (40) days or more, during which period the temperature within the storage room is maintained at thirty-two degrees Fahrenheit (32° F) zero degrees Celsius (0° C) or less, may be admitted into Idaho provided each lot or shipment is accompanied by a certificate, as stated in Subsection 990.01, evidencing compliance with the minimum requirements of Subsection 990.06. ()

07. Soil or Growing Media When Certified. Soil or growing media specified in Subsection 980.02 is admissible when certified as treated at origin in a manner approved by the Director. ()

991. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.06.09 – RULES GOVERNING INVASIVE SPECIES AND NOXIOUS WEEDS
DOCKET NO. 02-0609-1901 (NEW CHAPTER, FEE RULE)
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 22-1907, 22-2004, 22-2006, 22-2403, and 22-2412, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

PUBLIC HEARING
Thursday, November 14, 2019 @ 9:00 a.m.
Idaho State Department of Agriculture 2270 Old Penitentiary Road Boise, ID 83712

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Three rules administered by the ISDA are related to the regulation of noxious weeds and invasive species, so as to prevent the spread of such species and their impacts on natural resources and crops. These rules are IDAPA 02.06.09, “Rules Governing Invasive Species,” IDAPA 02.06.22, “Noxious Weeds Rules,” and IDAPA 02.06.31, “Noxious Weed Free Forage and Straw Certification Rules.” These rules were promulgated to carry out requirements described in Title 22, Chapters 19, 20, and 24, Idaho Code. In order to streamline and simplify rules related to noxious weeds and invasive species, the ISDA has decided to combine all three rules into a single rule to be titled “**02.06.09, Rules Governing Invasive Species and Noxious Weeds.**” No substantive changes are being made to the three rules cited above. All rules were reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Fees included in the original rule (Noxious Weed Free Storage Rules, 02.06.31) have not been changed in the new combined rule. Fees associated with these rules are imposed pursuant to Section 22-2412, Idaho Code.

IDAHO CODE SECTION 22-101A STATEMENT: Section 22-101A, Idaho Code, requires that in this notice of proposed rulemaking, the Director must specify whether this rule is broader in scope or more stringent than federal law or regulations, or regulates an activity not regulated by the federal government. This Rule, in its entirety, regulates an activities not regulated by the federal government.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There is no change in fiscal impact as a result of this consolidation rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted on September 18, 2019. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, Pages 15-19](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

Subchapter C of this Rule has incorporated the following document:

The NAISMA Weed Free Forage Minimum Certification Standards, as published at https://www.naisma.org/images/NAISMA_WFF_Minimum_Standards_10_17_2018_Approved_Changes.pdf.

The Standards are updated periodically for the purposes of standardizing the voluntary certification of forage and straw. NAISMA is a nationally recognized organization that periodically updates standards for certification of forage and straw. Incorporating this document by reference allows Idaho to be consistent with the latest certification requirements.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd Knight, Administrator, at (208) 332-8664.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 27, 2019.

Dated this 3rd day of October, 2019.

Brian Oakey
Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8552
Fax: (208) 334-2710

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0609-1901
(New Chapter)

02.06.09 – RULES GOVERNING INVASIVE SPECIES AND NOXIOUS WEEDS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections, 22-1907, 22-2004, 22-2006, 22-2403, and 22-2412, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.06.09, “Rules Governing Invasive Species and Noxious Weeds.” ()

02. Scope. This rule governs the designation of invasive species, inspection, permitting, decontamination, recordkeeping and enforcement and apply to the possession, importation, shipping, transportation, eradication, and control of invasive species. This rule identifies those noxious weeds that have been officially designated by the Director as Noxious Weeds in the state of Idaho, designates articles capable of disseminating noxious weeds, requires treatment of articles to prevent dissemination of noxious weeds and provides authority to designate cooperative weed management areas for management of noxious weeds. Also this rule governs the inspection, certification, and marking of noxious weed free forage and straw to allow for the transportation and use of forage and straw in Idaho and states where regulations and restrictions are placed on such commodities. ()

002. -- 109. (RESERVED)

SUBCHAPTER A – INVASIVE SPECIES

110. DEFINITIONS.

In addition to the definitions found in Section 22-1904 and 22-2005, Idaho Code, the following definitions apply in the interpretation and enforcement of Subchapter A only: ()

01. Acts. Title 22, Chapter 19, Idaho Code, the “Idaho Invasive Species Act of 2008” and Title 22, Chapter 20, the “Idaho Plant Pest Act of 2002.” ()

02. Aquatic Invertebrate Invasive Species. Those species listed in Section 140. ()

03. Control. The abatement, suppression, or containment of an invasive species or pest population. ()

04. Conveyance. A terrestrial or aquatic vehicle or a vehicle part that may carry or contain an invasive species or plant pest. A conveyance includes a motor vehicle, a vessel, a motorboat, a sailboat, a personal watercraft, a container, a trailer, or any other means or method of transportation. “Conveyance” also includes a live well or a bilge area. ()

05. Dreissenia Infested Waterbody. Body of water designated by the United States Geological Survey, <http://nas.er.usgs.gov/taxgroup/mollusks/zebramussel/>, or the Director as having a population of any life stage of Dreissenia mussels. ()

06. Early Detection/Rapid Response. Finding invasive species during the initial stages of colonization and then responding within ten (10) days. ()

07. Energy Crop Invasive Species. An Energy Crop Invasive Species is a non-native plant grown to harvest for use in making biofuels, such as bioethanol, or combusted for its energy content to generate electricity or heat. Energy Crop Invasive Species are non-native plants that are cultivated for the purpose of producing (non-food) energy. ()

08. Equipment. An article, tool, implement, or device capable of carrying or containing: ()

a. Water; or ()

b. An invasive species. ()

09. Facility. Any place, site or location or part thereof where a species listed as invasive pursuant to Subchapter A are found, handled, housed, held, planted, or otherwise maintained for purposes governed by a possession, production, or transport permit issued pursuant to Subchapter A and includes, but is not limited to all fields, plats, buildings, lots, structures, and other appurtenances and improvements on the land. ()

10. Possession. The act of cultivating, importing, exporting, shipping or transporting a listed invasive species in Idaho. Possession does not include the act of having, releasing or transporting a listed invasive species through circumstances beyond individual control, including but not limited to infestations in a water supply system, infestations resulting from natural spread of the species or some other acts of nature. ()

11. Trap Crop Invasive Species. A Trap Crop Invasive Species is a non-native plant species planted for purposes of controlling or eradicating a Plant Pest, as defined in the Idaho Plant Pest Act of 2002. ()

12. Water Body. Natural or impounded surface water, including a stream, river, spring, lake, reservoir, pond, wetland, tank and fountain. ()

13. Water Supply System. A system used to treat, store, convey, or distribute water for irrigation, industrial, waste water treatment, residential, or culinary use. A Water Supply System includes a pump, canal, ditch, regulating impoundment, in-canal forebay, pipeline, or associated wetland and water quality improvement project, but does not include a Water Body as defined in Subsection 110.12. ()

111. ABBREVIATIONS.

01. AIIS. Aquatic Invertebrate Invasive Species. ()

02. EDRR. Early Detection/Rapid Response. ()

03. HACCP. Hazard Analysis and Critical Control Points. ()

112. – 119. (RESERVED)

120. PROHIBITION ON POSSESSION, IMPORTATION, SHIPPING OR TRANSPORTATION OF INVASIVE SPECIES.

No person may possess, cultivate, import, ship, or transport any invasive species, including but not limited to an Energy Crop Invasive Species or Trap Crop Invasive Species, into or through the state of Idaho following the effective date of Subchapter A, unless the person possessing, importing, shipping or transporting has obtained a permit under Section 122, or unless otherwise exempt by Subchapter A, as set forth in Section 123. Prohibited acts include but are not limited to: ()

01. Possession or Transportation. Possessing, cultivating, importing, exporting, shipping, or transporting an invasive species into or through the state of Idaho. ()

02. Releasing. Releasing, placing, planting, or causing to be released, an invasive species in a water body, facility, water supply system, field, garden, planted area, ecosystem, or otherwise into the environment within the state of Idaho. ()

03. Transporting From an Infested Environment. Transporting a conveyance or equipment into or through the state of Idaho that has been in an infested environment without obtaining a Department-approved decontamination of the conveyance or equipment. ()

04. Transporting an Infested Article. Transporting, importing or shipping any plant, animal, mode of transportation, conveyance, or article that is infested with an invasive species into or through the state of Idaho without obtaining a Department-approved decontamination of the object. ()

121. INTRODUCTION OF NEW SPECIES TO THE STATE.

Following the effective date of Subchapter A, no person may introduce or import a species not previously present in Idaho without first receiving a determination from the Department that the species is not an invasive species. ()

122. POSSESSION PERMITS.

Possession of invasive species is authorized only if the person possessing the species obtains a possession permit. ()

01. Application for Possession Permits. Persons seeking a possession permit must make application on a form prescribed by the Director. A separate application must be submitted for each facility where invasive species will be possessed. The application must include: ()

a. The applicant's name, address (residence and mailing), and Employer or Tax Identification Number. ()

b. Description of the proposed facility, including: ()

i. A map identifying the location of the proposed facility; ()

- ii. The legal description of the real property for the proposed facility; ()
- iii. The approximate total area of the proposed facility; ()
- iv. A detailed diagram of proposed facility, ()
- v. A detailed confinement or HACCP Plan if applicable. ()
- c. Name and address of the owner(s) and/or operator(s) of the proposed facility, if different than the applicant. If the proposed facility will be leased, a written and notarized authorization by the property owner must be included. ()
- d. A copy of local zoning authority approval, if approval is required by the local zoning authority. ()
- e. Description of the invasive species to be possessed at the facility, including, to the extent possible, the genus, species, sex, life state, age, identification, and purpose for possessing each species. ()
- f. The date upon which the proposed facility will be available for inspection by the Department, which must be not less than seven (7) days prior to the time the invasive species are possessed at the proposed facility. ()

02. Application Process. The Director will consider all information in the application and issue a written decision granting or denying the application. In reviewing the application, the Director will consider factors including but not limited to: ()

- a. Proximity of the facility to agricultural operations, and environmentally sensitive lands and waters. ()
- b. Potential for access to the facility by unauthorized persons. ()
- c. Potential for vandalism, adverse weather, or other events that compromise the security of the facility. ()
- d. Potential for the invasive species to escape or be released from the facility. ()
- e. Whether, based on the applicant's certification and any other evidence received by the Director in connection with the application or proposed facility, all federal, state, county and city laws applicable to the facility have been met. ()
- f. Whether the applicant has adequate knowledge, experience and training to ensure that the invasive species will not harm agriculture, the natural resources and environment of the state of Idaho. Such experience may be documented by a log book, employment records, education records or other means by which experience may be authenticated. ()
- g. Whether the facility is or will be adequately designed, constructed, and managed to protect agriculture, the natural resources and environment of the state of Idaho from escape of the invasive species. ()
- h. Prior to issuing a possession permit, the Director or his designee may perform an inspection of the facility to determine if its design, construction and proposed operation is consistent with the applicable provisions of Idaho law. ()

03. Grant or Denial of the Permit. Following review of the application and any other relevant information, the Director will either issue the possession permit or deny the application and notify the applicant. If the Director issues the permit, he may include any necessary conditions to prevent release or escape of the invasive species, and to prevent harm to Idaho's agriculture, natural resources, and the environment. ()

04. Duration of Possession Permit. A possession permit is valid until the permitted person no longer possesses the invasive species, or until the invasive species leaves the state. ()

05. Permit Revocation. Permits issued pursuant to Subchapter A may be revoked at any time if the Director or Director's designee finds that the permit holder has violated any of the provisions of this Subchapter A, the Invasive Species Act, the Plant Pest Act, or any of the conditions included in the permit. ()

06. Disposition of Non-Permitted Invasive Species. The Director may order non-permitted or illegally imported invasive species to be removed from the state or destroyed. ()

07. Annual Report. All permit holders shall submit a report no later than January 1 of each calendar year, on forms provided by the Department. ()

123. EXEMPT SPECIES.

The following species were present in portions of the state of Idaho prior to adoption of Subchapter A of these Rules. However, they are not present throughout the state, and in accordance with the policy of the state of Idaho, as expressed in Idaho Code, Section 22-1902, the spread of these species should be prevented to the greatest extent possible. Therefore, the species listed below are exempt from the permit requirements of Sections 121 and 122 above. However, those seeking to transport the species listed in Section 123.01 outside the known established distribution area must obtain a transport permit in accordance with Section 123.03. ()

01. Exempt Species List: ()

a. New Zealand Mud Snail, *Potamopyrgus antipodarum*; ()

b. Bullfrog, *Lithobates catesbeianus*; ()

c. Asian Clam, *Corbicula fluminea*. ()

02. Location of Known Established Populations. Known established distributions of the New Zealand Mud Snail, Bullfrog, and Asian Clam are identified and mapped online at <http://nas.er.usgs.gov/queries>. ()

03. Transport Permits. Any person seeking to transport one of the species listed in Subsection 123.01, above, outside of the known established distribution boundaries delineated in Subsection 123.02, above, must obtain a transport permit that will be valid for five (5) years. For the purposes of Subchapter A, transport of these exempt species is assumed when biological organisms and associated water from aquaculture facilities and hatcheries is moved from known infested areas in the state. ()

04. Application for Transport Permits. Persons seeking a transport permit must make application on a form prescribed by the Director. A separate application must be submitted for each facility from which invasive species will be transported. The application must include: ()

a. The applicant's name, address (residence and mailing), and Employer or Tax Identification Number. ()

b. Description of the facility of origin, including: ()

i. A map identifying the location of the facility; ()

ii. The legal description of the real property for the facility; ()

iii. The approximate total area of the facility; ()

iv. A detailed diagram of facility, ()

v. A detailed HACCP Plan if applicable. ()

c. Name and address of the owner(s) and/or operator(s) of the facility, if different than the applicant. If the proposed facility will be leased, a written and notarized authorization by the property owner must be included. ()

d. Description of the invasive species to be transported from the facility, including the genus, species, sex, life state, age, and purpose for transporting the species. ()

e. Description of self-contained areas needing draining or discharges of water during or after the transport of invasive species. ()

f. Description of procedures to drain self contained areas after transport is complete, including: ()

i. Into a municipal water treatment facility; or ()

ii. Into an on-site waste treatment facility incorporating sand filtration and chlorination; or ()

iii. As approved by the Department. ()

124. ENERGY CROP POSSESSION/PRODUCTION PERMITS.

Possession and/or production of Energy Crop Invasive Species is authorized only if the person possessing the species obtains an Energy Crop Invasive Species Possession/Production Permit (“Energy Crop Invasive Species Permit”). ()

01. Application for Energy Crop Invasive Species Permits. Persons seeking an Energy Crop Invasive Species Permit must make application on a form prescribed by the Director. A separate application must be submitted for each facility or field where the Energy Crop Invasive Species will be possessed and/or produced. The application must include: ()

a. The applicant’s name, address (residence and mailing), and Employer or Tax Identification Number. ()

b. Description of the proposed facility, including: ()

i. A map identifying the location of the proposed facility or field; ()

ii. The legal description of the real property for the proposed facility or field; ()

iii. The approximate total area of the proposed facility or field; ()

iv. A detailed diagram of proposed facility or field; ()

v. A detailed confinement plan if applicable; and ()

vi. A detailed plan outlining survey and reconnaissance for escaped Energy Crop Invasive Species and a detailed plan for their control or elimination. ()

c. Name and address of the owner(s) and/or operator(s) of the proposed facility or field, if different than the applicant. If the proposed facility or field will be leased, a written and notarized authorization by the property owner must be included. ()

d. A copy of local zoning authority approval, if approval is required by the local zoning authority. ()

e. Description of the Energy Crop Invasive Species to be possessed at the facility or field, including, to the extent possible, the genus, species, sex, life state, age, identification, and purpose for possessing each species. ()

f. The date upon which the proposed facility or field will be available for inspection by the Department, which must be not less than seven (7) days prior to the time the Energy Crop Invasive Species are possessed at the proposed facility. ()

02. Application Process. The Director will consider all information in the application and issue a written decision granting or denying the application. In reviewing the application, the Director will consider factors including but not limited to: ()

a. Proximity of the facility to other agricultural operations, and environmentally sensitive lands and waters. ()

b. Potential for access to the facility or field by unauthorized persons. ()

c. Potential for vandalism, adverse weather, or other events that compromise the security of the facility or field. ()

d. Potential for the Energy Crop Invasive Species to escape or be released from the facility or field. ()

e. Whether, based on the applicant's certification and any other evidence received by the Director in connection with the application or proposed facility, all federal, state, county and city laws applicable to the facility or field have been met. ()

f. Whether the applicant has adequate knowledge, experience and training to ensure that the Energy Crop Invasive Species will not harm agriculture, the natural resources and environment of the state of Idaho. Such experience may be documented by a log book, employment records, education records or other means by which experience may be authenticated. ()

g. Whether the facility or field is or will be adequately designed, constructed, and managed to protect agriculture, the natural resources and environment of the state of Idaho from release or escape of the Energy Crop Invasive Species. ()

h. Prior to issuing an Energy Crop Invasive Species Permit, the Director or his designee may perform an inspection of the facility or field to determine if its design, construction and proposed operation is consistent with the applicable provisions of Idaho law. ()

03. Grant or Denial of the Permit. Following review of the application and any other relevant information, the Director will either issue the permit or deny the application and notify the applicant. If the Director issues the permit, he may include any necessary conditions to prevent release or escape of the Energy Crop Invasive Species, and to prevent harm to Idaho's agriculture, natural resources, and the environment. ()

04. Duration of Possession Permit. An Energy Crop Invasive Species Permit is valid for one (1) year. ()

05. Permit Revocation. Permits issued pursuant to this section may be revoked at any time if the Director or his designee finds that the permit holder has violated any of the provisions of Subchapter A, the Invasive Species Act, the Plant Pest Act, or any of the conditions included in the permit. ()

06. Disposition of Non-Permitted Invasive Species. The Director may order non-permitted or illegally imported Energy Crop Invasive Species to be removed from the state or destroyed. ()

07. Annual Report. All permit holders shall submit a report no later than January 1 of each calendar year, on forms provided by the Department. ()

125. TRAP CROP INVASIVE SPECIES PERMITS.

Production/research of Trap Crop Invasive Species is authorized only if the person possessing the species obtains a

Trap Crop Production/Research Permit (“Trap Crop Invasive Species Permit”). ()

01. Application for Trap Crop Invasive Species Permits. Persons seeking a Trap Crop Invasive Species Permit must make application on a form prescribed by the Director. A separate application must be submitted for each facility where Trap Crop Invasive Species will be researched or produced. The application must include: ()

a. The applicant’s name, address (residence and mailing), and Employer or Tax Identification Number. ()

b. Description of the proposed facility, including: ()

i. A map identifying the location of the proposed facility; ()

ii. The legal description of the real property for the proposed facility; ()

iii. The approximate total area of the proposed facility; ()

iv. A detailed diagram of proposed facility; ()

v. A detailed confinement plan if applicable; and ()

vi. A detailed plan outlining survey and reconnaissance for escaped plants and a detailed plan for their control or elimination. ()

c. Name and address of the owner(s) and/or operator(s) of the proposed facility, if different than the applicant. If the proposed facility will be leased, a written and notarized authorization by the property owner must be included. ()

d. A copy of local zoning authority approval, if approval is required by the local zoning authority. ()

e. Description of the Trap Crop Invasive Species to be possessed at the facility, including, to the extent possible, the genus, species, sex, life state, age, identification, and purpose for possessing each species. ()

f. The date upon which the proposed facility will be available for inspection by the Department, which must be not less than seven (7) days prior to the time the Trap Crop Invasive Species is possessed at the proposed facility. ()

02. Application Process. The Director will consider all information in the application and issue a written decision granting or denying the application. In reviewing the application, the Director will consider factors including but not limited to: ()

a. Proximity of the facility to agricultural operations, and environmentally sensitive lands and waters. ()

b. Potential for access to the facility by unauthorized persons. ()

c. Potential for vandalism, adverse weather, or other events that compromise the security of the facility. ()

d. Potential for the Trap Crop Invasive Species to escape or be released from the facility. ()

e. Whether, based on the applicant’s certification and any other evidence received by the Director in connection with the application or proposed facility, all federal, state, county and city laws applicable to the facility have been met. ()

f. Whether the applicant has adequate knowledge, experience and training to ensure that the Trap Crop Invasive Species will not harm agriculture, the natural resources and environment of the state of Idaho. Such experience may be documented by a log book, employment records, education records or other means by which experience may be authenticated. ()

g. Whether the facility is or will be adequately designed, constructed, and managed to protect agriculture, the natural resources and environment of the state of Idaho from escape of the Trap Crop Invasive Species. ()

h. Prior to issuing a Trap Crop Invasive Species Permit, the Director or his designee may perform an inspection of the facility to determine if its design, construction and proposed operation is consistent with the applicable provisions of Idaho law. ()

03. Grant or Denial of the Trap Crop Invasive Species Permit. Following review of the application and any other relevant information, the Director will either issue the Trap Crop Invasive Species Permit or deny the application and notify the applicant. If the Director issues the Trap Crop Invasive Species Permit, he may include any necessary conditions to prevent release or escape of the Trap Crop Invasive Species, and to prevent harm to Idaho's agriculture, natural resources, and the environment. ()

04. Duration of Trap Crop Invasive Species Permit. A Trap Crop Invasive Species Permit is valid for one (1) year. ()

05. Permit Revocation. Permits issued pursuant to this section may be revoked at any time if the Director or his designee finds that the permit holder has violated any of the provisions of this Subchapter A, the Invasive Species Act, the Plant Pest Act, or any of the conditions included in the permit. ()

06. Disposition of Non-Permitted Invasive Species. The Director may order non-permitted or illegally imported Trap Crop Invasive Species to be removed from the state or destroyed. ()

07. Annual Report. All permit holders shall submit a report no later than January 1 of each calendar year, on forms provided by the Department. ()

126. -- 129. (RESERVED)

130. EARLY DETECTION AND RAPID RESPONSE AQUATIC INVERTEBRATE INVASIVE SPECIES.

01. Statewide EDRR AIIS List. If any of the species listed in the following table are found to occur in Idaho, they shall be reported to the Department immediately. Positive identification will be made by the Department or other qualified authority as approved by the Director. Subsections 130.02 through 130.05 are applicable to EDRR AIIS only and not to other invasive species listed in Sections 140 through 148.

Early Detection Rapid Response Aquatic Invertebrate Invasive Species (EDRR AIIS) List	
Common Name	Scientific Name
Quagga Mussel	<i>Dreissenia bugensis</i>
Zebra Mussel	<i>Dreissenia polymorpha</i>

()

02. Transporting EDRR AIIS Over Public Roads. No person may transport Equipment or any Conveyance containing EDRR AIIS over public roads within the state of Idaho without first being decontaminated. ()

03. Contaminated Conveyances in Idaho Waters. No person may place any EDRR AIIS contaminated Equipment or Conveyance into any Water Body or Water Supply System in the state of Idaho. ()

04. Firefighting Equipment. Precautions should be taken to prevent the introduction and spread of EDRR AIIS through firefighting activities. All firefighting agencies moving equipment into the state of Idaho shall follow protocols similar to the United States Forest Service decontamination protocols set forth in “Preventing Spread of Aquatic Invasive Organisms Common to the Intermountain Region.” Those protocols can be viewed online at http://www.fs.usda.gov/detail/r4/landmanagement/resourcemanagement/?cid=fsbdev3_016113. ()

05. Construction and Road Building and Maintenance Equipment. Construction and equipment used for road building and maintenance must be free of EDRR AIIS. If equipment that is being transported into the state of Idaho has been in an infested water body or water supply system within the preceding thirty (30) days, the equipment must be inspected in accordance with Section 132. The Department may require decontamination. ()

131. REPORTING REQUIREMENTS.

01. Discovery. Any person who discovers an EDRR AIIS within the state or who has reason to believe that an invasive species may exist at a specific location shall immediately report the discovery to the Department. ()

02. Contents. The report shall, to the best of the reporter’s ability, contain the following information: location of the invasive species; date of discovery; and identification of any conveyance, equipment, water body, or host in or upon which the invasive species may be found. ()

03. Methods of Reporting. The report shall be made in person or in writing (which may include electronic mail) as follows: ()

- a. At any Department office or headquarters; ()
- b. To the Department’s toll free hotline at 1-877-336-8676; or ()
- c. Via the Department’s website at www.agri.idaho.gov. ()

04. Hold Harmless. Reporting parties will be held harmless from violations pursuant to this Subchapter A regarding possession of EDRR AIS. ()

132. INSPECTIONS.

01. Qualified Inspectors. Inspections to detect the presence of EDRR AIIS may be conducted by any authorized agent, private inspector or peace officer qualified and trained in accordance with the Department’s requirements. ()

02. Conveyances That Have Been in Infested Waters. All persons transporting a conveyance must receive documentation of an inspection prior to launching in any water of the state if the vessel has been in infested water within the last thirty (30) days. ()

03. All Other Conveyances. All conveyances are subject to inspection. All compartments, equipment and containers that may hold water, including, but not limited to live wells and ballast and bilge areas will be drained as part of all inspections. ()

04. Inspection Methods. Inspectors will determine if EDRR AIIS are present by interviewing the person transporting the conveyance and using visual and/or tactile inspection methods, or such other methods as may be appropriate and using forms supplied by the Department. ()

05. Inspection Results. Any authorized agent or private inspector or private decontaminator who, through the course of an inspection, determines that AIIS are present shall advise the operator that the conveyance is suspected of possessing EDRR AIIS and that it must be decontaminated according to Departmental procedures. ()

()

06. Decontamination. Any conveyance found or reasonably believed to contain EDRR AIIS shall be decontaminated in accordance with Section 134. ()

133. HOLD ORDERS.

01. Hold Order. If any person refuses to permit inspection or decontamination of his or her conveyance, that conveyance is subject to a hold order until the inspection and/or decontamination is complete. ()

02. Notification to Owner. If the person in charge of the conveyance is not the registered owner, the registered owner shall be notified by mail, return receipt requested, within five (5) days of the Hold Order. Such notification must also include Department contact information. If the registered owner is present when the Hold Order is issued, then the same information shall be provided to the registered owner at the time the order is issued. ()

03. Release of Hold Order. Decontamination and proof of decontamination, in accordance with Section 134, is necessary in order for the Hold Order to be released. The Hold Order must be released in writing, and may be released only by the Director or his designee. ()

134. EDRR AIIS DECONTAMINATION.

01. Decontamination Protocol. All decontamination must be accomplished by Department-approved service providers, using Department protocol. All decontamination methods must be in accordance with all applicable laws, disposal methods, recommended safety precautions, and safety equipment and procedures. ()

02. Reinspection. After decontamination, the Department or its authorized agent must re-inspect the conveyance to ensure complete decontamination prior to releasing the conveyance and any associated Hold Order. ()

03. Proof of Decontamination. Proof of decontamination will consist of a completed post-decontamination inspection form and application of a tamper-proof seal to the conveyance. ()

135. -- 139. (RESERVED)

140. INVASIVE SPECIES - AQUATIC INVERTEBRATES.

INVASIVE SPECIES - AQUATIC INVERTEBRATES		
	Common Name	Scientific Name
01.	Zebra Mussel	<i>Dreissenia polymorpha</i>
02.	Quagga Mussel	<i>Dreissenia bugensis</i>
03.	New Zealand Mud Snail	<i>Potamopyrgus antipodarum</i>
04.	Red Claw Crayfish	<i>Cherax quadricarinatus</i>
05.	Yabby Crayfish	<i>Cherax albidus/C. destructor</i>
06.	Marone Crayfish	<i>Cherax tenuimanus</i>
07.	Marbled Crayfish	<i>(Procambarus marmoratus)</i>
08.	Rusty Crayfish	<i>Orconectes rusticus</i>
09.	Asian Clam	<i>Corbicula fluminea</i>
10.	Spiny Waterflea	<i>Bythotrephes cederstroemi</i>

INVASIVE SPECIES - AQUATIC INVERTEBRATES		
	Common Name	Scientific Name
11.	Fishhook Waterflea	<i>Cercopagis pengoi</i>
12.	Marmorkrebs	<i>Procambarus</i> sp.

()

141. INVASIVE SPECIES - FISH.

INVASIVE SPECIES - FISH		
	Common Name	Scientific Name
01.	Green Sturgeon	<i>Acipenser medirostris</i>
02.	Walking Catfish	<i>Clariidae</i>
03.	Bowfin	<i>Ania Calva</i>
04.	Gar	<i>Lepiostidae</i>
05.	Piranhas	<i>Serrasalmus</i> spp., <i>Rosseveltella</i> spp., <i>Pygocentrus</i> spp.
06.	Rudd	<i>Scardinius erythrophthalmus</i>
07.	Ide	<i>Leuciscus idus</i>
08.	Diploid Grass Carp	<i>Ctenopharyngoden idella</i>
09.	Bighead Carp	<i>Hypophthalmichthys nobilis</i>
10.	Silver Carp	<i>Hypophthalmichthys molitrix</i>
11.	Black Carp	<i>Mylopharyngodeon piceus</i>
12.	Snakeheads	<i>Channa</i> spp., <i>Parachanna</i> spp.
13.	Round Goby	<i>Neogobius melanostomas</i>
14.	Ruffe	<i>Gymnocephalus cernuus</i>

()

142. INVASIVE SPECIES - AMPHIBIANS

TABLE 1:

INVASIVE SPECIES - AMPHIBIANS		
	Common Name	Scientific Name
01.	Rough-skinned Newt	<i>Taricha granulose</i>
02.	Bullfrog	<i>Lithobates catesbeianus</i>

()

143. INVASIVE SPECIES - REPTILES.

INVASIVE SPECIES - REPTILES		
	Common Name	Scientific Name
01.	Red-eared Slider	<i>Trachemys scripta elegans</i>
02.	Mediterranean Gecko	<i>Hemidactylus turcicus</i>
03.	Common Wall Lizard	<i>Podarcis muralis</i>
04.	Italian Wall Lizard	<i>Podarcis sicula</i>
05.	Brahminy Blindsnake	<i>Ramphotyphlops braminus</i>
06.	Snapping Turtle	<i>Chelydra serpentina</i>

()

144. INVASIVE SPECIES - BIRDS.

INVASIVE SPECIES - BIRDS		
	Common Name	Scientific Name
01.	Monk Parakeet	<i>Myiopsitta monachus</i>

()

145. INVASIVE SPECIES - MAMMALS.

INVASIVE SPECIES - MAMMALS		
	Common Name	Scientific Name
01.	Nutria	<i>Myocastor coypus</i>

()

146. INVASIVE SPECIES - INSECTS.

INVASIVE SPECIES - INSECTS		
	Common Name	Scientific Name
01.	Asian Longhorned Beetle	<i>Anoplophora glabripennis</i>
02.	Citrus Longhorned Beetle	<i>Anoplophora chinensis</i>
03.	Emerald Ash Borer	<i>Agrilus planipennis</i>
04.	Marmorated Stink Bug	<i>Halyomorpha halys</i>
05.	European Woodwasp	<i>Sirex noctilio</i>
06.	European Gypsy Moth	<i>Lymantria dispar</i>
07.	Asian Gypsy Moth	<i>Lymantria dispar</i>
08.	Soybean Aphid	<i>Aphis glycines</i>

INVASIVE SPECIES - INSECTS		
	Common Name	Scientific Name
09.	Potato Tuber Moth	<i>Tecia solanivora</i>
10.	Japanese Beetle	<i>Popillia japonica</i>
11.	Mexican Bean Beetle	<i>Epilachna varivestis</i>
12.	Kaphra Beetle	<i>Trogoderma granarium</i>
13.	Red Imported Fire Ant	<i>Solenopsis invicta</i>
14.	Glassy-winged Sharpshooter	<i>Homalodisca vitripennis</i>
15.	Grape Phylloxera	<i>Daktulosphaira vitifoliae</i>
16.	Vine Mealybug	<i>Planococcus ficus</i>
17.	Summer Fruit Tortix	<i>Adoxophyes orana</i>
18.	Silver Y Moth	<i>Autographa gamma</i>
19.	False Codling Moth	<i>Cryptophlebia leucotreta</i>
20.	Light Brown Apple Moth	<i>Epiphyas postvittana</i>
21.	Apple Tortrix	<i>Archips fuscocupreanus</i>
22.	Pine Shoot Beetle	<i>Tomicus piniperda</i>
23.	Cherry Bark Tortrix	<i>Enarmonia formosana</i>
24.	Apple Ermine Moth	<i>Yponomeuta malinellus</i>
25.	Cherry Ermine Moth	<i>Enarmonia formosana</i>
26.	European Grape Vine Moth	<i>Lobesia botrana</i>
27.	European Grape Berry Moth	<i>Eupoecilia ambiguella</i>
28.	Plum Fruit Moth	<i>Cydia funebrana</i>
29.	Plum Curculio	<i>Conotrachelus nenuphar</i>
30.	Leek Moth	<i>Acrolepiopsis assectella</i>
31.	Bee Mite	<i>Tropilaelaps clareae</i>
32.	Small Hive Beetle	<i>Aethina tumida</i>
33.	Africanized Honey Bee	<i>Apis mellifera</i>
34.	Black Currant Gall Mite	<i>Cecidophyopsis ribis</i>
35.	Exotic Bark Beetles	(Scolytidae): a. <i>Scolytus mali</i> . b. <i>Xylosandrus crassiusculus</i> . c. <i>Xylosandrus germanus</i> . d. <i>Xyleborus californicus</i> .
36.	Sunni Bug	<i>Eurygaster integriceps</i>
37.	German Yellowjacket	<i>espula germanica</i>
38.	European Paper Wasp	<i>Polistes dominulus</i>
39.	European Elm Bark Beetle	<i>Scolytus multistriatus</i>

INVASIVE SPECIES - INSECTS		
	Common Name	Scientific Name
40.	Banded Elm Bark Beetle	<i>Scolytus schevyrewi</i>
41.	Wheat Blossom Midge,	<i>Sitodiplosis mosellana</i>
42.	Potato Tuberworm	<i>Phthorimeaea operculella</i>
43.	Pink Hibiscus Mealybug	<i>Maconellicoccus hirsutus</i>
44.	Bean Plataspid (Kudzu Bug)	<i>Megacopta cribraria</i>

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147. INVASIVE SPECIES - PLANT PATHOGENS AND PARASITIC NEMATODES.

INVASIVE SPECIES - PLANT PATHOGENS AND PARASITIC NEMATODES		
	Common Name	Scientific Name
01.	Phytophthora blight (nursery stock)	<i>Phytophthora ramorum</i> , <i>Phytophthora kernoviae</i>
02.	Karnal Bunt	<i>Tilletia indica</i>
03.	Bean Common Mosaic Necrosis Virus (strain NL-3 and NL-5)	
04.	Potato Wart	<i>Synchytrium endobioticum</i>
05.	Golden Nematode	<i>Globodera rostochiensis</i>
06.	Soybean Cyst Nematode	<i>Heterodera glycines</i>
07.	Bacterial Wilt of Alfalfa	<i>Clavibacter michiganensis</i> spp. <i>insidiosus</i>
08.	Wheat Seed Gall Nematode	<i>Anguina tritici</i>
09.	Pine Wilt Nematode	<i>Bursaphelenchus xylophilus</i>
10.	Brown Rot of Potatoes	<i>Ralstonia solanacearum</i> , race 3, biovar 2 (alternate hosts include tomato, pepper, eggplant, and some greenhouse plants including geranium)
11.	Java Downy Mildew of Corn	<i>Peronosclerospora maydis</i>
12.	Philippine Downy Mildew of Corn	<i>Peronosclerospora philippeninsis</i>
13.	Asian Soybean Rust	<i>Phakopsora pachyrhizi</i>
14.	Plum Pox Potyvirus	
15.	Cherry Leaf Roll Virus	
16.	Stewart's Wilt of Corn	<i>Pantoea stewartii</i>
17.	Brown Stripe Downy Mildew of Corn	<i>Sclerophthora rayssiae</i> var. <i>zeae</i> .
18.	Potato Spindle Tuber Viroid	
19.	Pierce's Disease of Grapes	<i>Xylella fastidiosa</i>

INVASIVE SPECIES - PLANT PATHOGENS AND PARASITIC NEMATODES	
Common Name	Scientific Name
20. Black Currant Reversion Disease	
21. Powdery Mildew of Hops	<i>Sphaerotheca macularis (s. humuli)</i>
22. Wheat Smut	<i>Tilletia tritici</i>
23. Wheat Scab	<i>Fusarium graminearum</i>
24. Potato Ring Rot	<i>Clavibacter michiganensis subsp. sepedonicus</i>
25. Potato Late Blight	<i>Phytophthora infestans</i>
26. Onion White Rot	<i>Sclerotium cepivorum</i>
27. White Pine Blister Rust	<i>Cronartium ribicola</i>
28. Potato Mop Top Virus, PMTV	
29. Black Stem Rust	<i>Puccinia graminis f.sp. tritici</i> Race UG99
30. Apple proliferation phytoplasma	<i>Candidatus Phytoplasma mali</i>

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148. INVASIVE SPECIES - INVASIVE MOLLUSKS (TERRESTRIAL SNAILS AND SLUGS).

INVASIVE SPECIES - INVASIVE MOLLUSKS (TERRESTRIAL SNAILS AND SLUGS)	
Common Name	Scientific Name
01. Green or Burrowing Snail	<i>Cantareus apertus</i>
02. Pulmonate Snail	<i>Helix pomatia</i>
03. White Garden Snail	<i>Theba pisana</i>
04. Giant African Snail	<i>Achatha fulica</i>
05. Lactea Snail	<i>Otala lactea</i>
06. Maritime Garden Snail	<i>Cermea virgata</i>
07. Brown Garden Snail	<i>Cryptomphalus aspersa</i>
08. Wrinkled Snail	<i>Candidula intersepta</i>
09. Chinese Mysterysnail	<i>Bellamyia chinensis</i>
10. Japanese Mysterysnail	<i>Bellamyia japonica</i>
11. Applesnail	<i>Pomacea spp.</i>
12. Marisa	<i>Marisa cornuarietis</i>
13. Red-lipped Melania	<i>Melanoides tuberculata</i>
14. Quilted Melania	<i>Tarebia granifera</i>
15. Decollate Snail	<i>Rumina decollate</i>

INVASIVE SPECIES - INVASIVE MOLLUSKS (TERRESTRIAL SNAILS AND SLUGS)		
	Common Name	Scientific Name
16.	Faucet Snail	<i>Bithynia tentaculata</i>

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149. INVASIVE SPECIES - INVASIVE PLANTS: ENERGY CROPS.

INVASIVE SPECIES - INVASIVE PLANTS: ENERGY CROPS		
	Common Name	Scientific Name
01.	Giant Reed	<i>Arundo donax</i> (and hybrids)
02.	Switch Grass	<i>Panicum virgatum</i> (and hybrids)
03.	Kudzu	<i>Pueraria montana</i> (and hybrids)
04.	Chinese Silver Grass	<i>Miscanthus giganteus</i> (and hybrids)
05.	Purging Nut	<i>Jatropha curcus</i> (and hybrids)
06.	Cold Tolerant Eucalyptis (and hybrids)	

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150. INVASIVE SPECIES - INVASIVE PLANTS: TRAP CROPS.

INVASIVE SPECIES - INVASIVE PLANTS: TRAP CROPS		
	Common Name	Scientific Name
01.	Litchi Tomato	<i>Solanum sisymbriifolium</i> (and hybrids) (Otherwise known as Sticky Nightshade or Fire and Ice)
02.	Black Nightshade	<i>Solanum nigrus</i> (and hybrids)

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151. -- 209. (RESERVED)

SUBCHAPTER B – NOXIOUS WEEDS

210. DEFINITIONS.

In addition to the definitions found in Section 22-2402, Idaho Code, the definitions found in Section 210 apply in the interpretation and enforcement of Subchapter B only: ()

01. **Early Detection and Rapid Response (EDRR).** Finding invasive plant species during the initial stages of colonization and then responding within the same season to initiate eradication of the invasive plant species. ()

02. **Implements of Husbandry.** Every vehicle, including self-propelled units, designed or adapted and used exclusively in agricultural, horticultural, dairy and livestock growing and feeding operations when being incidentally operated as an implement of husbandry. Such implements include, but are not limited to, combines,

discs, dry and liquid fertilizer spreaders, cargo tanks, harrows, hay balers, harvesting and stacking equipment, pesticide applicator equipment, plows, swathers, mint tubs and mint wagons, and farm wagons. A farm tractor when attached to or drawing any implement of husbandry shall be construed to be an implement of husbandry. Implements of husbandry do not include semi trailers, nor do they include motor vehicles or trailers, unless their design limits their use to agricultural, horticultural, dairy or livestock growing and feeding operations. ()

03. Subtaxa(on). A supplementary piece of identifying information in a plant’s or animal’s scientific name. ()

211. ABBREVIATIONS.

01. CWMA. Cooperative Weed Management Area. ()

02. EDRR. Early Detection/Rapid Response. ()

03. ISDA. Idaho State Department of Agriculture. ()

212. -- 219. (RESERVED)

220. NOXIOUS WEEDS - DESIGNATIONS.

The weeds listed on the Statewide Prohibited Genera, EDRR, Containment, and Control lists are hereby officially designated and published as noxious. ()

01. Statewide Prohibited Genera Noxious Weed List. ()

a. All plants and plant parts in the generas of: *Cytisus*, *Genista*, *Spartium*, and *Chamaecytisus* additionally including “all” subtaxa of these plant genera are prohibited in Idaho. ()

b. Weeds listed in the Prohibited Genera list may exist in varying populations throughout the state. The concentration of these weeds is at a level where control and/or eradication may be possible. A written plan for weeds on the Statewide Prohibited Genera Noxious Weed List shall be developed by the control authority that specifies active control methods to reduce known populations in not more than five (5) years. The plan shall be available to the Department upon request. ()

02. Statewide EDRR Noxious Weed List. If any of the listed plants (Subsection 220.02) are found to occur in Idaho, they shall be reported to the Department within ten (10) days following positive identification by the University of Idaho or other qualified authority as approved by the Director. These weeds shall be eradicated during the same growing season as identified.

	Common Name	Scientific Name
1.	Brazilian Elodea	<i>Egeria densa</i>
2.	Common/European Frogbit	<i>Hydrcharis morsus-ranae</i>
3.	Fanwort	<i>Cobomba caroliniana</i>
4.	Feathered Mosquito Fern	<i>Azolla pinnata</i>
5.	Giant Hogweed	<i>Heracleum mantegazzianum</i>
6.	Giant Salvinia	<i>Salvinia molesta</i>
7.	Hydrilla	<i>Hydrilla verticillata</i>
8.	Iberian Starthistle	<i>Centaurea iberica</i>
9.	Policeman’s Helmet	<i>Impatiens glandulifera</i>
10.	Purple Starthistle	<i>Centaurea calcitrapa</i>

	Common Name	Scientific Name
11.	Squarrose Knapweed	<i>Centaurea triumfetti</i>
12.	Syrian Beancaper	<i>Zygophyllum fabago</i>
13.	Tall Hawkweed	<i>Hieracium piloselloides</i>
14.	Variable-Leaf-Milfoil	<i>Myriophyllum heterophyllum</i>
15.	Water Chestnut	<i>Trapa natans</i>
16.	Water Hyacinth	<i>Eichhornia crassipes</i>
17.	Yellow Devil Hawkweed	<i>Hieracium glomeratum</i>
18.	Yellow Floating Heart	<i>Nymphoides pelata</i>

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03. Statewide Control Noxious Weed List. Weeds listed in the control list are known to exist in varying populations throughout the state. The concentration of these weeds is at a level where control or eradication, or both, may be possible. A written plan for weeds on the Statewide Control Noxious Weed List shall be developed by the control authority that specifies active control methods to reduce known populations in not more than five (5) years. The plan shall be available to the Department upon request.

	Common Name	Scientific Name
1.	Black Henbane	<i>Hyoscyamus niger</i>
2.	Bohemian Knotweed	<i>Polygonum X bohemicum</i>
3.	Buffalobur	<i>Solanum rostratum</i>
4.	Common Crupina	<i>Crupina vulgaris</i>
5.	Common Reed (Phragmites)	<i>Phragmites australis</i>
6.	Dyer's Woad	<i>Isatis tinctoria</i>
7.	Eurasian Watermilfoil	<i>Myriophyllum spicatum</i>
8.	Giant Knotweed	<i>Polygonum sachalinense</i>
9.	Japanese Knotweed	<i>Polygonum cuspidatum</i>
10.	Johnsongrass	<i>Sorghum halepense</i>
11.	Matgrass	<i>Nardus stricta</i>
12.	Meadow Knapweed	<i>Centaurea debeauxii</i>
13.	Mediterranean Sage	<i>Salvia aethiopsis</i>
14.	Musk Thistle	<i>Carduus nutans</i>
15.	Orange Hawkweed	<i>Hieracium aurantiacum</i>
16.	Parrotfeather Milfoil	<i>Myriophyllum aquaticum</i>
17.	Perennial Sowthistle	<i>Sonchus arvensis</i>
18.	Russian Knapweed	<i>Acroptilon repens</i>
19.	Scotch Broom	<i>Cytisus scoparius</i>
20.	Small Bugloss	<i>Anchusa arvensis</i>

	Common Name	Scientific Name
21.	Vipers Bugloss	<i>Echium vulgare</i>
22.	Yellow Hawkweed	<i>Hieracium caespitosum</i>

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04. Statewide Containment Noxious Weed List. Weeds listed in the containment noxious weeds list are known to exist in various populations throughout the state. Weed control efforts may be directed at reducing or eliminating new or expanding weed populations while known and established weed populations, as determined by the weed control authority, may be managed by any approved weed control methodology, as determined by the weed control authority.

	Common Name	Scientific Name
1.	Canada Thistle	<i>Cirsium arvense</i>
2.	Curlyleaf Pondweed	<i>Potamogeton crispus</i>
3.	Dalmatian Toadflax	<i>Linaria dalmatica ssp. dalmatica</i>
4.	Diffuse Knapweed	<i>Centaurea diffusa</i>
5.	Field Bindweed	<i>Convolvulus arvensis</i>
6.	Flowering Rush	<i>Butomus umbellatus</i>
7.	Hoary Alyssum	<i>Berteroa incana</i>
8.	Houndstongue	<i>Cynoglossum officinale</i>
9.	Jointed Goatgrass	<i>Aegilops cylindrica</i>
10.	Leafy Spurge	<i>Euphorbia esula</i>
11.	Milium	<i>Milium vernale</i>
12.	Oxeye Daisy	<i>Leucanthemum vulgare</i>
13.	Perennial Pepperweed	<i>Lepidium latifolium</i>
14.	Plumeless Thistle	<i>Carduus acanthoides</i>
15.	Poison Hemlock	<i>Conium maculatum</i>
16.	Puncturevine	<i>Tribulus terrestris</i>
17.	Purple Loosestrife	<i>Lythrum salicaria</i>
18.	Rush Skeletonweed	<i>Chondrilla juncea</i>
19.	Saltcedar	<i>Tamarix sp.</i>
20.	Scotch Thistle	<i>Onopordum acanthium</i>
21.	Spotted Knapweed	<i>Centaurea stoebe</i>
22.	Tansy Ragwort	<i>Senecio jacobaea</i>
23.	White Bryony	<i>Bryonia alba</i>
24.	Whitetop (Hoary Cress)	<i>Cardaria draba</i>
25.	Yellow Flag Iris	<i>Iris pseudocorus</i>
26.	Yellow Starthistle	<i>Centaurea solstitialis</i>

Common Name	Scientific Name
27. Yellow Toadflax	<i>Linaria vulgaris</i>

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05. Designation of Articles Capable of Disseminating Noxious Weeds. The following articles are designated by the Director as capable of disseminating noxious weeds: ()

- a. Construction equipment, road building and maintenance equipment, and implements of husbandry. ()
- b. Motorized vehicles such as, all-terrain vehicles, motorcycles, and other off-road vehicles and non-motorized vehicles such as bicycles and trailers. ()
- c. Grain and seed. ()
- d. Hay, straw and other material of similar nature. ()
- e. Nursery stock including plant material propagated for the support of aquarium, pet, or horticultural activities. ()
- f. Feed and seed screenings. ()
- g. Fence posts, fencing and railroad ties. ()
- h. Sod. ()
- i. Manure, fertilizers and material of similar nature. ()
- j. Soil, sand, mulch, and gravel. ()
- k. Boats, personal watercraft, watercraft trailers, and items of a similar nature. ()

221. -- 229. (RESERVED)

230. TREATMENT OF ARTICLES.

01. Duty. It is the duty of every person, before removing any article from any place that is infested with noxious weeds or before moving the article onto any public roadway, to enclose, clean, or treat the article in a manner that will prevent the spread of noxious weeds ()

02. Treatment. No article containing noxious weed propagules shall be sold or furnished to any person within this state, until it has been treated in a manner sufficient to eliminate all noxious weed propagating capability except when sold or furnished to a person for the purpose of destroying the viability of the noxious weed propagules. ()

231. – 303. (RESERVED)

SUBCHAPTER C - NOXIOUS WEED FREE FORAGE AND STRAW CERTIFICATION

304. INCORPORATION BY REFERENCE.

The following document is incorporated by reference and applies to Subchapter C, only: ()

01. The NAISMA Weed Free Forage Minimum Certification Standards, as published at https://www.naisma.org/images/NAISMA_WFF_Minimum_Standards_10_17_2018_Approved_Changes.pdf. ()

305. – 309. (RESERVED)

310. DEFINITIONS.

In addition to the definitions found in Section 22-2402, Idaho Code, the definitions found in section 310 apply to the interpretation and enforcement of Subchapter C only: ()

01. Agent. Any instrumentality or entity authorized by the Director of the Department, and acting in an official capacity and under the supervision of the Department, to administer the provisions of Subchapter C. The principal purpose of the agent is to establish, conduct, and maintain a uniform and reasonable system of inspection and certification of forage and straw crops to determine if such crops are noxious weed free. ()

02. Approved Inspector. An individual who has been accredited by the Department or by the Department's agent in the noxious weed free forage and straw certification program. ()

03. Bale. A mechanically compressed package of forage or straw bound by string or wire, or other binding material. ()

04. Bale Tag. A tag or label that is attached to the string or wire, or other binding material of a bale of certified forage or straw, and identifies the bale as being certified noxious weed free. ()

05. Certificate of Inspection. A record of inspection issued by an approved inspector that states the results of a field or commodity inspection. The certificate shall document that the inspected field or commodity is Idaho State Noxious Weed Free, NAISMA Noxious Weed Free, or that the field or commodity contains noxious weeds. ()

06. Certification. The process whereby an approved inspector conducts field or commodity inspections to determine that the field or commodity is noxious weed free. ()

07. Certification Markings. Bale tags, purple and yellow colored twine, compressed forage/straw bale binding material, and forage cubes/pellets container tags/labels. ()

08. Certified Compressed Forage/Straw Bale Binding Material. An ISDA approved binding material that is attached to a compressed forage/straw bale of certified noxious weed free forage/straw and identifies the bale as being certified to the NAISMA Standards. ()

09. Compressed Forage/Straw Bale. A bale that has been twice compressed, once in the field by a forage/straw baler and then recompressed a second time and bound by string, wire or other binding material. ()

10. Field. The land on which a forage or straw crop is grown and is not divided by streams, public roads, other crops, or other barriers. ()

11. Forage. Alfalfa, grain, and grass hay, and/or combinations of alfalfa, grain, or grass hay; the term "forage" includes forage cubes, compressed forage bales, and pellets. ()

12. Forage Cubes. Forage that is harvested from a field certified to NAISMA Standards and is mechanically compacted into wafers or cubes. ()

13. Forage Cube/Pellet Tag. A tag, label, or statement that is attached or printed on a container of certified noxious weed free forage cubes or pellets, and identifies the container as being certified to the NAISMA Standards. ()

14. Idaho State Noxious Weed Free. Forage and straw inspected for weeds designated by the Director as noxious as defined in Section 22-2402(17), Idaho Code, and determined to be free of such weeds. ()

15. Idaho State Noxious Weed Free Standards. Forage and straw that meets the requirements Idaho State Noxious Weed Free. ()

16. NAISMA Noxious Weed Free. Forage and straw inspected for, and determined to be free of, weeds designated as noxious by the Director as defined in Section 22-2402(17), Idaho Code, and noxious weeds listed on the NAISMA Designated Weed List. ()

17. NAISMA Weed Free Forage Certification Program. The North American Invasive Species Management Association standard for forage certification. ()

18. NAISMA Twine. Special purple and yellow colored twine approved by NAISMA that is used to mark bales as certified to the NAISMA Standards. ()

19. NAISMA Standards. Requirements of the NAISMA Weed Free Forage Certification Program. ()

20. Noxious Weed Free. No noxious weeds with viable seed, injurious portions, or propagating parts were found during inspection procedures. ()

21. Pellets. Forage that is harvested from a field certified to NAISMA Standards and is manufactured into an agglomerated feed, formed by compacting and forcing through die openings by a mechanical process. ()

23. Straw. The dried stalks or stems remaining after grain is harvested. ()

24. Transit Certificate. A document completed by an approved inspector to certify products proposed for movement as certified noxious weed free into states that require noxious weed free forage and straw certification. The transit certificate must be in the possession of the transporter. ()

311. ABBREVIATIONS.

01. ISDA. The Idaho State Department of Agriculture. ()

02. NAISMA. North American Invasive Species Management Association. ()

03. NWFF&S. Noxious Weed Free Forage and Straw. ()

312. -- 319. (RESERVED)

320. VOLUNTARY NOXIOUS WEED FREE FORAGE AND STRAW CERTIFICATION PROGRAM.

01. Purpose. The noxious weed free forage and straw certification program is a voluntary program, the purpose of which is to provide a means for the inspection, certification, and marking of forage and straw as noxious weed free. The program will be managed by the Department and may be implemented through an agent of the Department. The program will allow for the preparation of a transit certificate for the purpose of interstate transport or shipping of forage and straw into and through states that place regulations and restrictions on such commodities. The program is intended to reduce the exportation, importation, growth, and spread of noxious weeds. ()

02. Certifying Authority. The Department or its agent is the certifying authority. The certifying authority will appoint, as needed, approved inspectors throughout the state, who may issue certificates of inspection. ()

03. Certification Training. The Department will determine minimum training and accreditation standards for approved inspectors. Training will be provided annually by the Department or its agent. Attendance at annual training will certify accreditation for the inspector for that calendar year. Approved inspectors will be issued a certificate of training for the calendar year. Annual training includes: ()

a. Field inspection techniques and procedures; ()

b. ISDA Noxious Weed Lists and NAISMA Weed Free Forage Prohibited Weed List plant

- identification; ()
- c. ISDA and NAISMA certification standards and guidelines; ()
 - d. Knowledge of weed management, including: ()
 - i. Burning; ()
 - ii. Mowing, cutting or roguing; ()
 - iii. Mechanical methods; and ()
 - iv. Herbicides. ()
 - e. Inspection forms. ()
- 04. Certification Program.** ()
- a. The Department or its agent will: ()
 - i. Coordinate forage and straw inspections within the state; ()
 - ii. Select, train, and supervise persons who serve as approved inspectors; ()
 - iii. Issue certificates of inspection, transit certificates, NAISMA Twine, forage cubes/pellets tags/labels, certified compressed forage/straw bale binding material, and bale tags to qualifying participants; ()
 - iv. Maintain a record of inspections performed and certificates and tags issued; ()
 - b. Under the direction of the Department or its agent an approved inspector may perform inspections and issue certificates of inspection, transit certificates, NAISMA Twine, forage cubes/pellets tags/labels, and bale tags within the state at cost. ()
- 05. Application for Certification.** ()
- a. Application for certification inspection shall be made on forms available from the Department or its agent and submitted to the Department or its agent. ()
 - b. An applicant's signature on the application for certification is verification of the accuracy of the information submitted, and signifies the applicant's intent to comply with the post-certification and distribution requirements. ()
- 06. Field Inspection Procedures.** ()
- a. Forage or straw shall be inspected within a maximum of ten (10) days prior to cutting/harvesting in the field of origin for each field and cutting to be certified. Fields must be inspected again if circumstances prevent harvest of the forage/straw for a period greater than ten (10) days from the first inspection. ()
 - b. Each field inspected shall be identified by the name of the owner and a field name or number. The certification inspection may be performed on an entire field or a portion of a field, if the portion is plainly marked and identified prior to inspection. ()
 - c. Field inspections must take place prior to any operation that will limit the approved inspector's ability to properly inspect and certify the field. Fields that have been cut or harvested prior to inspection are ineligible for certification. ()
 - d. There shall be a minimum of two (2) entry points per field. ()

- e. There shall be minimum of one (1) entry point per each ten (10) acres (four (4) hectares). ()
 - f. Each point of entry shall be at least one hundred fifty (150) feet (forty-five (45) meters) into the field, and each additional one hundred fifty (150) feet (forty-five (45) meters) traveled constitutes an entry point. Travel shall be uninterrupted, proceeding through the field being inspected. ()
 - g. The entire field border will be physically inspected. ()
 - h. The field inspection will include all ditches, fence rows, roads, easements, rights-of-way, or buffer zones surrounding the field. ()
 - i. Forage/straw that contains any noxious weeds as identified in Section 22-2402(17) or noxious weeds listed on the NAISMA Weed Free Forage Prohibited Weed List, may be certified if the following requirements are met: ()
 - i. Forage/straw that contains any noxious weeds may still be certified if the field upon which the forage/straw was produced is treated to prevent noxious weed seed or other propagule viability according to agricultural practices acceptable to, and to the satisfaction of, the approved inspector. ()
 - ii. Noxious weed(s) were treated not later than rosette to bud stage, or boot stage for grass species classified as noxious weeds, prior to cutting or harvesting; and ()
 - iii. Treatment method can include, but is not limited to burning, mowing, cutting or roguing, mechanical methods, or chemicals. ()
 - j. An inspection certificate shall document that the above requirements have been met. ()
 - k. Baling equipment must be cleaned of any noxious weeds prior to harvesting certified forage. If the baling equipment is not cleaned, the first three (3) small square bales or the first large round or square bale produced shall be considered non-certified. ()
 - l. Interstate shipment of baled forage and straw shall be accompanied by an original transit certificate issued by the approved inspector in the county of origin. The storage area shall also be inspected and be free of noxious weeds. ()
 - m. An approved inspector may not inspect fields of which said inspector has ownership or financial interest. ()
- 07. Certification Standards.** After completing an inspection, the approved inspector will complete a certificate of inspection. ()
- a. If the field or commodity inspected is certified as NAISMA Noxious Weed Free, the approved inspector will issue a certificate of inspection for that harvest or cutting. If the field or commodity contains NAISMA Noxious Weeds, but does not contain Idaho State noxious weeds, it may be certified as Idaho State noxious weed free, and such certification will be noted on the certificate of inspection. ()
 - b. If the field or commodity inspected is certified as noxious weed free, as defined in Subchapter C, the approved inspector may also issue, upon request, any of the following documents: ()
 - i. Transit certificates. ()
 - ii. Bale tags. The date on the bale tag must accurately reflect the year in which the bale was produced. ()
 - iii. NAISMA Twine only if the field or commodity is certified as NAISMA Noxious Weed Free. ()
 - iv. Forage cube/pellet tag/labels only if the field or commodity is certified as NAISMA Noxious Weed

- Free. ()
- v. Certified compressed forage /straw bale binding material only if the field or commodity is certified as NAISMA Noxious Weed Free. ()
- c. Certificates of inspection, transit certificates and bale tags shall be on forms prescribed by the Department or its agent. ()
- d. NAISMA Twine and bale tags must be purchased from the Department or its agent. ()
- 08. Copy of Inspections and a List of Approved Inspectors.** Upon request, the agent shall provide the Department with a copy of certificates of inspections issued and a current list of approved inspectors. ()
- 09. Reciprocity.** Forage or straw certified under a reciprocal agreement between the Department and another state, and certified as NAISMA Noxious Weed Free according to the other state's approved certification standards, may be shipped into the state of Idaho and will be considered to meet the requirements of the Idaho program. ()
- 10. Exports.** Certification under Subchapter C does not qualify a commodity for export from the United States. Applications for certification for export should be made directly to the Division of Plant Industries within the Department. ()
- 11. Voluntary Posting.** After certification, a producer may post signs, or other forms of notification, on the certified commodity indicating that the commodity is certified as noxious weed free. ()
- 12. Post-Certification and Distribution Requirements.** After a producer's commodity has been inspected and certified, the producer shall: ()
- a. Take reasonable and prudent steps to protect the certified commodity from contamination; ()
- b. Keep the certified commodity separated from all uncertified commodity; ()
- c. Attach bale tags, certified compressed forage/straw bale binding material, or NAISMA Twine to each bale of certified forage or straw intended for sale as noxious weed free forage or straw prior to the bales leaving the producers stack yard or storage area; and ()
- d. Attach cube/pellet tag/label to each container of certified forage cubes/pellets intended for sale as noxious weed free forage prior to the containers leaving the producer's facility. ()
- e. Provide the shipper, trucker, or transporter with the appropriate number of transit certificates. ()
- 13. Cancellation for Failure to Comply.** Any person who provides false information on an application for inspection or who fails to comply with the post-certification and distribution requirements may, upon order of the Director, be suspended for a period of up to two (2) years from participating in the forage and straw certification program. ()
- 14. Enforcement and Cancellation.** Harvested lots of forage or straw from certified fields may be checked at any time by an approved inspector. Manufactured lots of forage cubes, pellets, and compressed forage/straw bales may be checked at any time by an approved inspector. Evidence that forage, straw, forage cubes/pellets, or compressed forage/straw bales are not from a certified field or that any lot has not been protected from contamination shall be cause for cancellation of certification. ()
- 15. Misuse of Transit Certificate and Certification Markings.** Using a transit certificate or certification marking for forage/straw from a field that has not been certified constitutes a violation of Subchapter C. ()
- 16. Certification Fees.** A minimum of thirty dollars (\$30) per inspection will be charged for up to ten

(10) acres, and three dollars (\$3) per acre thereafter, for fields up to ninety-nine (99) acres. Fields that are one-hundred (100) acres or larger in size, the fee is three dollars (\$3) per acre for the first one-hundred (100) acres and two dollars (\$2) per acre thereafter. The agent is authorized to assess a general fee of thirty dollars (\$30) per year to recover overhead costs. ()

321. – 329. (RESERVED)

330. NAISMA WEED FREE FORAGE PROHIBITED WEED LIST.

This list is incorporated by reference in Section 304.01 and is available in electronic format at: <https://www.naisma.org>. ()

331. -- 339. (RESERVED)

340. APPLICATION FORM REQUIREMENTS.

A person wishing to participate in the noxious weed free forage and straw program shall make an application in writing on a form prescribed by ISDA for NWFF&S certification annually. There are no fees for application. The application shall be made with the ISDA agent in the county in which the person resides or in the county in which the person owns or leases land on which forage/straw will be produced. ()

341. -- 349. (RESERVED)

350. CERTIFICATION MARKING.

Each certified bale or container shall be marked by one (1) of the following: ()

01. NAISMA Twine. Only one (1) strand is required per bale. ()

02. Bale Tag. The following information shall be shown on baled forage and straw: ()

a. The words - “NAISMA Weed Free Forage Certification Program” or “Idaho State Noxious Weed Free Forage & Straw Certification Program”; ()

b. Bale tag serial number; ()

c. County of origin identification; ()

d. ISDA emblem; ()

e. ISDA telephone number; and ()

f. A statement that the product is “Certified to the NAISMA Standards” or “Certified to the Idaho State Noxious Weed Free Standards.” ()

g. Year the bale tag was issued. ()

03. Forage Cube/Pellet Tag/Label. Certification tags/labels shall be attached to or a statement with the following information printed on each container of noxious weed free product: ()

a. The words - “NAISMA Weed Free Forage Certification Program”; ()

b. ISDA forage manufacturer identification number; ()

c. ISDA emblem; ()

d. ISDA telephone number; and ()

e. A statement that the product is “Certified to the NAISMA Standards.” ()

04. Certified Compressed Forage/Straw Bale Binding Material. The following information shall be ()

printed in purple ink on yellow binding material. Two (2) consecutive vertical purple lines approximately one-eighth of an inch (1/8") wide, spaced approximately one and one-quarter inches (1 1/4") apart, placed before and after written text that includes the acronym "ISDA NWFFS" and can include the manufacturer's name. ()

351. -- 359. (RESERVED)

360. PROCEDURES FOR CERTIFICATION OF FORAGE CUBES/PELLETS/COMPRESSED FORAGE/STRAW BALES.

01. Application. A person desiring to certify forage cubes/pellets/compressed forage/straw bales as noxious weed free must make an annual application on the ISDA's forage cube/pellet/compressed forage/straw bale certification application form. ()

02. Validity. The application will be valid from the date of Department approval through December 31 of that calendar year. ()

03. Equipment. Equipment will be cleaned of any noxious weed propagules prior to processing forage/straw for certification. ()

04. Purging. After cleaning equipment, a minimum of five hundred (500) pounds of certified forage/straw must be purged through the entire system prior to processing certified forage cubes/pellets/compressed forage/straw bales. The five hundred (500) pounds of forage/straw used to eliminate any noxious weed seeds shall not be certified. ()

05. Documentation. A person who manufactures products referenced in Section 360 shall retain the following records for two (2) years: ()

a. All NWFF&S inspection certificates relating to the certified forage/straw delivered to their manufacturing facility each calendar year. ()

b. Quantity of certified forage cubes/pellets/compressed forage/straw bales processed each calendar year; and ()

c. Quantity of non-certified forage cubes/pellets/compressed forage/straw bales processed each calendar year. ()

361. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.06.10 – RULES GOVERNING THE GROWING OF POTATOES
DOCKET NO. 02-0610-1901 (NEW CHAPTER, FEE RULE)
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 22-505, 22-1907, 22-2004, 22-2006, and 22-2013, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

PUBLIC HEARING
Thursday, November 14, 2019 @ 9:00 a.m.

Idaho State Department of Agriculture
2270 Old Penitentiary Road
Boise, ID 83712

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Four rules administered by the ISDA are related to the regulation of the planting and growing of potatoes, so as to prevent the spread of pests and disease of potatoes and their impacts on potato production. These rules are IDAPA 02.06.10, “Rules Governing the Pale Cyst Nematode; IDAPA 02.06.26, “Rules Concerning Seed Potato Crop Management Areas,” IDAPA 02.06.27, “Rules Governing Bacterial Ring Rot,” and IDAPA 02.06.39, “Rules Governing Minimum Standards for Planting Uncertified Seed Potatoes in Idaho.” The rules were promulgated to carry out the requirements described in Title 22, Chapters 1, 5, and 20, Idaho Code. In order to streamline and simplify rules related to potato production, the ISDA has decided to combine all four rules into a single rule to be titled “**02.06.10, Rules Governing the Growing of Potatoes.**” No substantive changes are being made to the four rules cited above. All rules were reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Fees included in the original rules have not been changed in the new combined rule. Fees associated with these rules are imposed pursuant to Section 22-505, Idaho Code.

IDAHO CODE SECTION 22-101A STATEMENT: Section 22-101A, Idaho Code, requires that in this notice of proposed rulemaking, the Director must specify whether this rule is broader in scope or more stringent than federal law or regulations, or regulates an activity not regulated by the federal government. This Rule, in its entirety, regulates an activity not regulated by the federal government.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

No changes were made to the fees already included in the original rules.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted on September 18, 2019. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, Page 15-19](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Each of these materials represent regulations of extensive size that would be unduly cumbersome, expensive, or otherwise inexpedient to include in this rule.

The following materials are incorporated by reference into Subchapter A only:

1. 7 CFR Part 301 SubPart - Pale Cyst Nematode. Sections 301.86 through 301.86-9 as published under Docket No. APHIS-2006-0143 in the Federal Register Volume 72, No. 176, Wednesday, September 12, 2007, and as amended under Docket No. APHIS-2006-0143 published in the Federal Register Vol. 74, No. 81, Wednesday, April 29, 2009.
2. USDA APHIS PPQ Treatment Manual Schedule T406-d, Revision 10, September 2006.
3. 7 CFR Part 305 - Phytosanitary Treatments, as revised September 12, 2007.

Idaho Code 67-5229(1)(a) authorizes the incorporation by reference of applicable federal regulations or standard into a state rule and the incorporation by reference of these regulations and standards are an efficient way to put the public on notice of both state and federal requirements.

The following materials are incorporated by reference into Subchapter C only:

1. IDAPA 08.05.01.000 et seq., "Rules Governing Seed and Plant Certification" and materials incorporated therein by reference.

Section 67-5229(1)(d), Idaho Code, authorizes the incorporation by reference of an applicable state rule and its incorporation by reference is an efficient way to put the public on notice of the state requirements laid out by both rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd Knight, Administrator, at (208) 332-8664.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 27, 2019.

Dated this 3rd day of October, 2019.

Brian Oakey
Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8552
Fax: (208) 334-2710

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0610-1901
(New Chapter)

02.06.10 – RULES GOVERNING THE GROWING OF POTATOES

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections, 22-505, 22-1907, 22-2004, 22-2006, and 22-2013, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.06.10, “Rules Governing the Growing of Potatoes.” ()

02. Scope. These rules govern the procedures for all potato management within Seed Potato Crop Management Areas and establish the procedures of identifying, handling and testing uncertified seed potatoes to be planted in Idaho. These rules also seek to prevent the spread of Pale Cyst Nematode and the introduction and/or spread of *Cms* and subsequently bacterial ring rot throughout Idaho and the United States. ()

002. -- 103. (RESERVED)

SUBCHAPTER A - PALE CYST NEMOTODE

104. INCORPORATION BY REFERENCE.

The following are incorporated by reference into Subchapter A only: ()

01. 7 CFR Part 301 SubPart - Pale Cyst Nematode. Sections 301.86 through 301.86-9 as published under Docket No. APHIS-2006-0143 in the Federal Register Volume 72, No. 176, Wednesday, September 12, 2007, and as amended under Docket No. APHIS-2006-0143 published in the Federal Register Vol. 74, No. 81, Wednesday, April 29, 2009, and except as amended below in Subchapter A of this rule. ()

02. USDA APHIS PPQ Treatment Manual Schedule T406-d, Revision 10, September 2006. ()

03. 7 CFR Part 305 - Phytosanitary Treatments, as revised September 12, 2007. ()

105. -- 109. (RESERVED)

110. DEFINITIONS AND TERMS.

In addition to the definitions found in Section 22-2005, Idaho Code, the following definitions found in Section 110 apply in the interpretation and enforcement of Subchapter A only: ()

01. Inspector. Any employee of ISDA, APHIS, the U.S. Department of Agriculture, or other person authorized by the USDA APHIS Administrator or ISDA Director to perform the duties required under Subchapter A. ()

02. Interstate. From any state into or through any other state. ()

03. Intrastate. Movement within the boundaries of the state of Idaho. ()

111. ABBREVIATIONS.

01. APHIS. Animal and Plant Health Inspection Service. ()

02. ISDA. Idaho State Department of Agriculture. ()

03. PCN. Pale Cyst Nematode. ()

04. PPQ. Plant Protection and Quarantine. ()

05. USDA. United States Department of Agriculture. ()

112. -- 119. (RESERVED)

120. INTRASTATE MOVEMENT.

No regulated articles may move within the state of Idaho without complying with the federal regulations, as incorporated by reference in Subsection 104.01 in Subchapter A. ()

121. QUARANTINED AREAS.

Those areas of the State quarantined or regulated for PCN under 7 CFR Part 301 Sections 301.86-3 as published on the USDA APHIS PPQ internet website at http://www.aphis.usda.gov/plant_health/plant_pest_info/potato/pcn.shtml. ()

122. RESTRICTIONS.

01. Movement From a Non-Quarantined Area. Movement of regulated articles from a non-quarantined area is subject to inspection by an inspector. Permits and certifications are not required. ()

02. Movement From a Quarantined Area. Movement of regulated articles from a quarantined area is subject to the provision of Section 123 of Subchapter A. ()

03. Other Restrictions. No potatoes, tomatoes, eggplants, or any other known host crops may be planted in the infested fields. Soil must not be moved from the infested fields. Any equipment leaving the infested fields must be sanitized and certified using USDA APHIS approved protocols. ()

04. Seed Potatoes. Seed potatoes may not be grown in a quarantined area. ()

05. Exemptions. Host plant material may be planted in infested fields under the authorization and supervision of the USDA and Idaho State Department of Agriculture eradication program. ()

123. CONDITIONS FOR INTRASTATE OR INTERSTATE MOVEMENT OF REGULATED ARTICLES.

Regulated articles may only be moved intrastate or interstate from a quarantined area by a person under a compliance agreement if accompanied by a certificate or limited permit issued by an inspector in accordance with 7 CFR Part 301 Sections 301.86-4 and 5, as incorporated by reference in Section 104 in Subchapter A of this rule. ()

124. -- 129. (RESERVED)

130. INSPECTION, SAMPLING, AND TESTING.

In order to accomplish the purposes of Subchapter A, an inspector may enter upon and inspect any public or private premises, lands, means of conveyance, or article of any person within this State, for the purpose of inspecting, surveying, sampling, testing, treating, controlling, or destroying any soil, plant, or plant material thought to or found to contain or be infested with Pale Cyst Nematode. ()

131. -- 209. (RESERVED)

SUBCHAPTER B – SEED POTATO CROP MANAGEMENT AREA

210. DEFINITIONS.

In addition to the definitions found in Idaho Code Sections 22-501 and 22-2005, Idaho Code, the definitions found in section 210 apply to the interpretation and enforcement of Subchapter B. ()

01. Cull Potatoes. Potatoes not usable for planting or consumption. ()

02. Grower. Any person who plants and cultivates more than fifteen one-hundredths (.15) acres of potatoes within a Seed Potato Crop Management Area. ()

03. Volunteer Potatoes. Volunteer potatoes are defined as any residue left in a field from previous

years of production that has sprouted and is growing. ()

211. ABBREVIATIONS.

01. ICIA. Idaho Crop Improvement Association. ()

212. -- 219. (RESERVED)

220. SEED POTATO CROP MANAGEMENT AREAS.

01. Fremont Seed Potato Crop Management Area. That portion of Fremont county described as follows: Beginning at a point that is the southwest corner of Section 16, Township 7 North, Range 43 East, Boise, Meridian, Fremont County, Idaho; Thence north approximately 1 mile to the northwest corner of Section 16, Township 7 North, Range 43 East; Thence west approximately 2 miles to the southwest corner of Section 7, Township 7 North, Range 43 East; Thence north approximately 1 mile to the northwest corner of Section 7, Township 7 North, Range 43 East; Thence west approximately 3 miles to the southwest corner of Section 3, Township 7 North, Range 42 East; Thence north approximately 2 miles to the northwest corner of Section 34, Township 8 North, Range 42 East; Thence west approximately 2 miles to the southwest corner of Section 29, Township 8 North, Range 42 East; Thence north approximately 1-3/8 miles to the center line of Fall River; Thence northwest along Fall River approximately 1-1/8 miles to where Fall River intersects the west line of Section 8, Township 8 North, Range 41 East; Thence north approximately 1-7/8 miles to the northwest corner of Section 7, Township 18 North, Range 41 East; Thence west approximately 2 miles to the southwest corner of Section 2, Township 8 North, Range 41 East; Thence north approximately 1 mile to the northwest corner of Section 2, Township 8 North, Range 41 East; Thence west approximately 1/4 of 1 mile; Thence north along an existing road approximately 4 miles; Thence northeasterly along said road approximately 1-1/10 miles to the northwest corner of Section 11, Township 9 North, Range 41 East; Thence north approximately 1 mile to the northwest corner of Section 2, Township 9 North, Range 41 East; Thence east approximately 14 miles to the northeast corner of Section 1, Township 9 North, Range 43 East; Thence south approximately 2 miles to the southeast corner of Section 12, Township 9 North, Range 43 East; Thence east approximately 4 miles to the northeast corner of Section 15, Township 9 North, Range 44 East, which is the west boundary line of the Targhee National Forest; Thence south along said forest boundary approximately 3 miles to the southeast corner of Section 27, Township 9 North, Range 44 East; Thence east continuing along said forest boundary approximately 2 miles to the northeast corner of Section 36, Township 9 North, Range 44 East; Thence south along said forest boundary approximately 1 mile to the east 1/4 corner of Section 1, Township 8 North, Range 44 East; Thence east continuing along said forest boundary approximately 2 miles to the east 1/4 corner of Section 5, Township 8 North, Range 45 East; Thence south continuing along said forest boundary approximately 5 miles to the east 1/4 corner of Section 32, Township 8 North, Range 45 East; Thence east continuing along said forest boundary approximately 1-1/2 miles to the center of Section 34, Township 8 North, Range 45 East; Thence south continuing along said forest boundary approximately 1-1/8 miles to the center line of Bitch Creek; Thence southwesterly along the center line of Bitch Creek approximately 10-1/2 miles to the confluence of Bitch Creek with the Teton River; Thence westerly 8 miles along the center line of the Teton River to the west line of Section 21, Township 7 North, Range 43 East; Thence north approximately 1/10 of a mile to the southwest corner of Section 16, Township 7 North, Range 43 East and the point of beginning. ()

02. Teton And Portions Of Madison County Seed Potato Crop Management Area. ()

a. All of Teton County, Idaho; ()

b. That portion of Madison County, Idaho, located in Township 6 North and Township 7 North lying East of Canyon Creek; and ()

c. That portion of Madison County, Idaho located in Township 6 North, Range 42 East, which includes portions of Sections 11 and 13 located south of Highway 33 and all of Sections 14, 15, 23, and 24. ()

03. Lost River Seed Potato Crop Management Area. Those portions of Butte and Custer Counties within Township 3 North to Township 7 North and Range 23 East to Range 27 East. ()

04. Caribou and Franklin County Seed Potato Crop Management Area. All of Caribou County,

Idaho and all of Franklin County, Idaho. ()

05. Almo Valley Bridge Seed Potato Crop Management Area. ()

a. That portion of Cassia County, Idaho located in Township 16 South, Range 24 East, which includes all of Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36; ()

b. That portion of Cassia County, Idaho located in Township 15 South, Range 24 East, which includes all of Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36; ()

c. That portion of Cassia County, Idaho located in Township 14 South, Range 24 East, which includes all of Section 36; ()

d. That portion of Cassia County, Idaho located in Township 14 South, Range 25 East, which includes all of Sections 19, 20, 29, 30, 31, and 32; ()

e. That portion of Cassia County, Idaho located in Township 15 South, Range 25 East, which includes all of Sections 5, 6, 7, 8, 18, 19, 20, 29, 30, 31, 32 and the Northeast ¼ of Section 33; ()

f. That portion of Cassia County, Idaho located in Township 16 South, Range 25 East, which includes all of Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 29, 30, 31, 32, 33, 34, 35, and 36; ()

g. That portion of Cassia County, Idaho located in Township 16 South, Range 26 East; and ()

h. That portion of Cassia County, Idaho located in Township 16 South, Range 27 East, which includes all of Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, and 30. ()

06. Ririe Reservoir Seed Potato Crop Management Area. ()

a. That portion of Bonneville County, Idaho located in Township 3 North, Range 40 East, which includes all of Sections 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, and 36; ()

b. That portion of Bonneville County, Idaho located in Township 3 North, Range 41 East, which includes all of Sections 8, 15, 16, 17, 18, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36; ()

c. That portion of Bonneville County, Idaho located in Township 2 North, Range 42 East, which includes all of Sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34; and ()

d. That portion of Bonneville County, Idaho located in Township 3 North, Range 42 East, which includes all of Sections 31, 32, and 33. ()

07. Picabo Seed Potato Crop Management Area. That portion of Blaine County, Idaho beginning with Township 1S, in Range 18, all of sections 23 and 24, leading into Township 1N, in Range 19 all of sections: 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, and 34. Leading into Township 1S, in Range 19, the W ½ of section 1, and all of sections: 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29. Leading into Township 1S, Range 20, all of sections: 7, 8, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 35, and 36, including the N ½ of Sections 33 and 34. Leading into Township 2S, Range 20, all of sections 1, 2, and 12. Leading into Township 1S, Range 21, all of sections: 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, 20, W ½ of section 28, and all of sections 29, 30, 31, 32, and the NW ¼ of section 33, from Hwy 20 North, plus section 21 from Dry Creek Road North. Leading into Township 2S, Range 21, all of the W ½ of section 3, and all of the following sections: 4, 5, 6, 7, 8, E ½ of section 9, all of sections 17, 18, 19, 20, 21, 28, 29, 30, and 31, W ½ and the SE ½ of the NE ¼ of section 10. Leading into Township 1N, Range 21, all of sections: 30, 31, and 32. All U.S. Department of the Interior, Bureau of Land Management property and property owned by the state of Idaho existing within the above mentioned areas will not be considered part of the management area. ()

08. Little Camas Ranch Seed Potato Crop Management Area. ()

a. That portion of Elmore County, Idaho located in Township 1 North, Range 9 East, Boise Meridian, which includes the S $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ of Section 27, the SE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, the S $\frac{1}{2}$ S $\frac{1}{2}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 32, the E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, and all of Section 34; and ()

b. That portion of Elmore County, Idaho located in Township 1 South, Range 9 East, Boise Meridian, which includes all of Section 4, all less the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and less the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 5, the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 8, and the NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 9; and ()

c. That portion of Elmore County, Idaho located in Township 1 South, Range 9 East, Boise Meridian, which includes Lots 1, 2, 3, and 4, and the S $\frac{1}{2}$ N $\frac{1}{2}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ of Section 3 less Tax Lot 1 described as follows: That portion of Elmore County, Idaho located in Township 1 South Range 9 East, Boise Meridian, described above as Tax Lot 1: Save and Except that portion of S $\frac{1}{2}$ SW $\frac{1}{4}$, Section 3, Township 1 South, Range 9 East, Boise Meridian, Elmore County, Idaho more particularly described as follows: Commencing at the Southwest corner of Section 3, Township 1 South, Range 9 East, Boise Meridian, and running thence South 89o51' East along the South Section line of said Section 3, a distance of 437 feet to a steel pin in the center of a graveled road, the Real Point of Beginning. Thence continuing from the Real Point of Beginning North 0o04' West a distance of 1,000 feet to a steel pin; thence South 89o51' East a distance of 1,742.4 feet to a steel pin; thence South 0o04' East a distance of 1,000 feet to a steel pin on the South Section line of said Section 3; thence North 89o51' West along the South Section line of said Section 3 a distance of 1,742.4 feet, more or less to the Real Point of Beginning more particularly described as Tax Lot 1. ()

09. Hog Hollow Seed Potato Crop Management Area. ()

a. Beginning at a point that is the northeast corner of Section 19, Township 7 North, Range 43 East, Boise Meridian; Thence south along the eastern border of Section 19, Township 7 North, Range 43 East approximately $\frac{3}{4}$ mile to the centerline of the Teton River as it enters said Section 19 at the eastern border of said Section 19; Thence southwesterly along the centerline of the Teton River as it runs through the southeast corner of Section 19, Township 7 North, Range 43 East; Continuing along the centerline of the Teton River as it runs southwesterly into the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 30, Township 7 North, Range 43 East and then northwesterly out of the N $\frac{1}{2}$ NE $\frac{1}{4}$ of said Section 30; Continuing along the centerline of the Teton River as it runs northwesterly from the southern borderline of Section 19, Township 7 North, Range 43 East and then as the river curves southwesterly to the western border of said Section 19; Continuing along the centerline of the Teton River as it runs generally north-northwesterly through Section 24, Township 7 North, Range 42 East to the western border of said Section 24; Continuing along the centerline of the Teton River as it runs generally northwesterly through Section 23, Township 7 North, Range 42 East and to the northern border of said Section 23; Continuing along the centerline of the Teton River as it runs northwesterly through the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, Township 7 North, Range 42 East to the western border of said Section 14; Continuing along the centerline of the Teton River as it runs generally westerly through Section 15, Township 7 North, Range 42 East to the western border of said Section 15; Continuing along the centerline of the Teton River as it runs southwesterly through the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16, Township 7 North, Range 42 East to the southern border of said Section 16; Thence west approximately $\frac{3}{4}$ mile along the southern border of Section 16, Township 7 North, Range 42 East to the southwest corner of said Section 16; Thence north 1 mile along the western border of Section 16, Township 7 North, Range 42 East to the northwest corner of said Section 16; Thence north approximately $\frac{1}{4}$ mile along the western border of Section 9, Township 7 North, Range 42 East to the northwest corner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 9; Thence west 1 mile along the northern border of the S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 8, Township 7 North, Range 42 East to the western border of said Section 8; Thence west 1 mile along the northern border of the S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 7, Township 7 North, Range 42 East to the western border of said Section 7; Thence south $\frac{1}{4}$ mile to the southeast corner of Section 12, Township 7 North, Range 41 East; Thence west approximately $\frac{3}{4}$ mile along the southern border of Section 12, Township 7 North, Range 41 East to the southwest corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 12; Thence north approximately $\frac{3}{4}$ mile to the northwest corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, Township 7 North, Range 41 East; Thence east $\frac{1}{4}$ mile along the northern border of the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 12, Township 7 North, Range 41 East to the southwest corner of the N $\frac{1}{2}$ NE $\frac{1}{4}$ of said Section 12; Thence north $\frac{1}{4}$ mile along the western border of the NE $\frac{1}{4}$ of Section 12, Township 7 North, Range 41 East to the northern border of said Section 12; Thence east along the northern border of Section 12, Township 7 North, Range 41 East to the northeast corner of said Section 12; Excluding from the described portion of

Section 12, Township 7 North, Range 41 East, Boise Meridian the following parcel; Commencing at the northeast corner of Section 12, Township 7 North, Range 41 East thence North 89°02'34" West, along the north line of said Section, 40.03 feet to a point on the westerly line of a county road; said point being the true point of beginning; thence continuing North 89°02'34" West, along the Section line, 612.05 feet; thence South 253.12 feet; thence East 611.96 feet, to a point on the westerly line of said county road; thence North 242.89 feet to the true point of beginning, containing 3.48 acres more or less; Thence east along the northern border of Section 7, Township 7 North, Range 42 East, Boise Meridian to the northeast corner of said Section 7; Thence east along the northern border of Section 8, Township 7 North, Range 42 East to the northeast corner of said Section 8; Thence east along the northern border of Section 9, Township 7 North, Range 42 East to the northeast corner of said Section 9; Thence east along the northern border of Section 10, Township 7 North, Range 42 East to the northeast corner of said Section 10; Thence east 1/4 mile along the northern border of Section 11, Township 7 North, Range 42 East to the northeast corner of the NW1/4 NW1/4 of said Section 11; Thence south approximately 3/4 mile to a county road known as the Old Hog Hollow Road, located approximately along the northern border of the S1/2 S1/2 of Section 11, Township 7 North, Range 42 East; Thence east along the county road known as the Old Hog Hollow Road as it travels easterly approximately along the northern border of the S1/2 S1/2 of Section 11, Township 7 North, Range 42 East approximately to the northeast corner of the SW1/4 SE1/4 of said Section 11; Thence southeast along the county road known as the Old Hog Hollow Road as it travels southeasterly through the SE1/4 SE1/4 of Section 11, Township 7 North, Range 42 East to the to the eastern border of said Section 11; Thence generally easterly along the county road known as the Old Hog Hollow Road as it travels generally easterly through the S1/2 S1/2 of Section 12, Township 7 North, Range 42 East to the eastern border of said Section 12; Thence south approximately 1/4 mile along the eastern border of Section 12, Township 7 North, Range 42 East to the southeast corner of said Section 12; Thence south 1 mile along the eastern border of Section 13, Township 7 North, Range 42 East to the southeast corner of said Section 13; Thence east 1 mile along the northern border of Section 19, Township 7 North, Range 43 East to the northeast corner of said Section 19 the point of beginning. ()

b. Including also the following non-contiguous parcel: Beginning at a point that is the northeast corner of Section 5, Township 7 North, Range 42 East, Boise Meridian and continuing south along the eastern border of said Section 5 to the southeast corner of the NE1/4 of said Section 5; Thence west 1 mile along the northern border of the S1/2 of Section 5, Township 7 North, Range 42 East to the western border of said Section 5; Thence north 1/2 mile along the western border of Section 5, Township 7 North, Range 42 East to the northwest corner of said Section 5; Thence north 1/4 mile along the western border of Section 32, Township 8 North, Range 42 East to the northwest corner of the SW1/4 SW1/4 of said Section 32; Thence east 1 mile along the northern border of the S1/2 S1/2 of Section 32, Township 8 North, Range 42 East to the eastern border of said Section 32; Thence south 1/4 mile along the eastern border of Section 32, Township 8 North, Range 42 East to the northeast corner of Section 5, Township 7 North, Range 42 East the point of beginning. ()

221. -- 229. (RESERVED)

230. REGULATED ARTICLES.

- 01. Irish Potato.** All plants and plant parts of the Irish potato, *Solanum tuberosum*. ()
- 02. Green Peach Aphid Hosts.** All plants that are hosts to the green peach aphid, *Myzus persicae*, including but not limited to peach and apricot trees and bedding plants. ()
- 03. Any Host.** Any host that may spread or assist in the spread of any of the diseases or pests of concern. ()
- 04. Equipment.** All ground working, earth moving, or potato handling equipment shall be cleaned of soil and plant debris and disinfected before entering the Seed Potato Crop Management Areas in order to prevent the introduction of disease(s) or pest(s) of concern. ()

231. -- 239. (RESERVED)

240. DISEASES AND PESTS OF CONCERN.

- 01. Introduction of Pests.** Introduction into the Seed Potato Crop Management Areas of any of the

pests or diseases listed in this Section by a contaminated vehicle or any other means constitutes a violation of Subchapter B of this rule. ()

02. Leaf Roll. *Net necrosis* or leaf roll, caused by potato leaf roll virus. ()

03. Ring Rot. Ring rot, *Corynebacterium sepedonicum*. ()

04. Columbia Root Knot Nematode. Columbia root knot nematode, *Meloidogyne chitwoodii*. ()

05. Green Peach Aphid. Green peach aphid, *Myzus persicae*, a vector of the leaf roll virus. ()

06. Northern Root Knot Nematode. Northern root knot nematode, *Meloidogyne hapla*. ()

07. Corky Ring Spot. Corky ring spot, a disease caused by tobacco rattle virus. ()

08. Powdery Scab. Powdery scab, *Spongospora subterranea* (Wallr.) Lagerh. f. sp. *subterranea*. ()

09. Stubby Root Nematode. Stubby root nematode, *Paratrichodorus pachydermus*, *Paratrichodorus christiei*, *Trichodorus primitivus*. ()

10. Potato Late Blight. Potato late blight, a disease caused by *Phytophthora infestans*. ()

241. -- 249. (RESERVED)

250. PLANTING OF POTATOES.

01. Seed Potato Crop Management Area. No person shall plant any potatoes in any of the Seed Potato Crop Management Areas except those that have met standards for recertification of the ICIA or equivalent agency of another state or political jurisdiction in accordance with Section 22-503, Idaho Code. ()

02. Certification. All plantings of potatoes shall be entered for certification with ICIA who notifies ISDA of any lots of potatoes rejected. Exceptions: ()

a. All plantings of potatoes in Lost River Seed Potato Crop Management Area; and ()

b. All plantings of potatoes in home gardens that are fifteen one-hundredths (.15) acre or less. ()

03. Home Gardens. Potatoes planted in home gardens within a Seed Potato Crop Management Area are subject to inspection by the ISDA for the pests and diseases listed in Section 240. ISDA ensures that proper control measures are taken. ()

04. Control. The grower shall spray with a pesticide or take other control measures approved by ISDA when potato late blight is found within a twenty-five (25) mile radius of a Seed Potato Crop Management Area boundary except the Lost River Seed Potato Crop Management Area. A grower in the Lost River Seed Potato Crop Management Area shall spray with a pesticide or take other control measures approved by ISDA when potato late blight is found within the boundaries of the Lost River Seed Potato Crop Management Area. ()

251. -- 259. (RESERVED)

260. PEACH, APRICOT TREES, OR ANY HOST. Peach, apricot trees, or any host of green peach aphid growing in Seed Potato Crop Management Areas shall be controlled with an ISDA approved pesticide. ()

261. BEDDING PLANTS.

01. Aphid Inspection. All bedding plants are subject to inspection by the Director for aphids. If aphids

are found, the plants shall be treated by a method approved by the Director. Such methods may include destruction of infested plants. ()

02. Treatment for Infestation. Bedding plants in transit to Seed Potato Crop Management Areas are subject to inspection for aphids and if found infested, treated in a manner approved by the Director before delivery into Seed Potato Crop Management Areas. ()

03. Treatment of Property. The Director may order treatment of property on which there are bedding plants or cut floral arrangements where he determines such treatment is necessary to control aphids. ()

04. Treatment of Cemeteries. All cemeteries within Seed Potato Crop Management Areas shall be sprayed or controlled for insects immediately after the Memorial Day holiday. Such spraying or control will be done in compliance with all State and Federal laws, rules and regulations. ()

262. -- 269. (RESERVED)

270. STORAGE OF POTATOES.

01. Potatoes Produced Within Seed Potato Crop Management Areas. All potatoes grown within Seed Potato Crop Management Areas may be stored within Seed Potato Crop Management Areas. All potatoes found to be infested with any disease or pests of concern as defined in Section 240 shall be removed from Seed Potato Crop Management Areas no later than April 15 of the year following harvest. ()

02. Potatoes Produced Outside Seed Potato Crop Management Areas. Before any lot of potatoes can be brought into Seed Potato Crop Management Areas, the lot shall be inspected, certified, and tagged by ICIA, the Federal/State Inspection Service or a recognized equivalent agency of another state or territory in accordance with Section 22-503, Idaho Code except the Lost River Seed Potato Crop Management Area. Before any lot of potatoes can be brought into the Lost River Seed Potato Crop Management Area the lot shall pass ICIA summer inspection or inspected, certified, and tagged by the Federal/State Inspection Service or a recognized equivalent agency of another state or territory in accordance with Section 22-503, Idaho Code. ()

271. SEED DISPOSITION NOTIFICATION. The Federal/State Inspection Service will notify the ISDA of all seed lots rejected for certification. This notification will include the variety, grower, storage location and the certification number of each rejected lot. ()

272. -- 279. (RESERVED)

280. CULL AND VOLUNTEER POTATOES.

01. Plant Growth. All plant growth on cull potato piles shall be controlled by a state approved chemical or mechanical measure including, but not limited to, burial with a minimum of eighteen (18) inches of soil, field spreading no more than two (2) potato layers and composting. ()

02. Destroying Volunteer Potatoes. It is the responsibility of each grower within Seed Potato Crop Management Areas to destroy all cull piles and volunteer potatoes growing on summer fallow, set-aside and non-cultivated areas of the grower's property. In the event that the grower fails to destroy such plants, the Director may order them destroyed at the expense of the grower. ()

281. -- 289. (RESERVED)

290. TRANSPORTATION OF POTATOES.

01. Responsibilities. It is the responsibility of the growers of rejected lots to keep contaminated trucks and equipment, infested vegetable matter and foliage from contaminating public roadways, neighboring fields and cellars. ()

02. In Transit. Potatoes in transit through Seed Potato Crop Management Areas shall be in covered

vehicles and not be unloaded in Seed Potato Crop Management Areas. ()

291. – 294. (RESERVED)

295. POTATOES FOR CONSUMPTION.

Potatoes for human and animal consumption, grown outside Seed Potato Crop Management Areas as defined in Section 220, shall be treated with a sprout inhibitor before being offered for sale within Seed Potato Crop Management Areas as defined in Section 220 of Subchapter B. ()

296. -- 303. (RESERVED)

SUBCHAPTER C – BACTERIAL RING ROT

304. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into Subchapter C only: ()

01. IDAPA 08.05.01.000 et seq., “Rules Governing Seed and Plant Certification” and Materials Incorporated Therein By Reference. A copy may be accessed online at: <http://adminrules.idaho.gov/rules/current/08/index.html>. ()

305. -- 309. (RESERVED)

310. DEFINITIONS.

In addition to the definitions in Sections 22-1904 and 22-2005, Idaho Code, the definitions in section 310 apply in the interpretation and the enforcement of this Subchapter C only: ()

01. Bacterial Ring Rot. Caused by a bacterium, *Clavibacter michiganensis subsp. sepedonicus* (*Cms*). ()

02. Contact Lot. A seed lot produced on a farming operation using common production and handling equipment or storage facilities, or both. ()

03. Idaho Crop Improvement Association, Inc. A grower association of certified seed producers and conditioners. In 1959, the Regents of the University of Idaho appointed the Idaho Crop Improvement Association, Inc. as its duly authorized agent to administer and conduct seed certification in Idaho. ()

04. Seed Lot. A field or a group of fields producing seed potatoes or the potatoes (tubers) harvested from a seed potato field, identified with a certification number and a North American Plant Health Certificate, enabling identity preservation and tracking. ()

05. Seed Potato Certification Process. The process, timing and requirements for the certification of seed potatoes in Idaho, as set forth in IDAPA 08.05.01, “Rules Governing Seed and Plant Certification” and the materials incorporated therein by reference. ()

06. Seed Stock. Seed potatoes intended for use as a planting source for certification that are “Identity Preserved” with a certification number and a North American Plant Health Certificate. ()

07. Sister Lot. Seed lots originating from the same lot of seed stock. ()

311. ABBREVIATIONS.

01. BRR. Bacterial Ring Rot. ()

02. Cms. *Clavibacter michiganensis* subsp. *sepedonicus*. ()

03. ISDA. Idaho State Department of Agriculture. ()

04. ICIA. Idaho Crop Improvement Association. ()

312. – 319. (RESERVED)

320. REGULATED PEST - BACTERIAL RING ROT.
Caused by a bacterium, *Clavibacter michiganensis* subsp. *sepedonicus* (*Cms*). ()

321. -- 329. (RESERVED)

330. REPORTING OF BRR.

01. Mandatory Reporting. It is mandatory for any person including, but not limited to, a grower, processor, shipper, laboratory staff member, field inspector, or shipping point inspector, to immediately report the presence of BRR to the Department when: ()

a. The BRR is discovered or observed in seed potato plants or tubers prior to final seed potato certification by ICIA; and ()

b. The presence of BRR is confirmed via laboratory testing; and ()

c. The positive tubers or plant parts are still in the possession of the original seed grower. ()

02. Contents. All reports shall, to the best of the reporter's ability, contain the following information: ()

a. The field, facility or other location at which *Cms* was found; ()

b. The date of discovery; ()

c. The location at which the suspect potatoes were grown; ()

d. The variety and generation of the suspect potatoes; ()

e. The laboratory submission report and test results; ()

f. The certification tags and origin of the seed potatoes used to produce the suspect crop; ()

g. North American Plant Health Certificate. ()

03. Methods of Reporting. The report shall be made by phone, in person or in writing (which may include electronic mail sent to BRR@agri.idaho.gov). ()

331. HOLD HARMLESS.
Reporting parties and those parties participating in and cooperating with the Department's trace back investigation of any alleged *Cms* contaminated potatoes will be held harmless from any civil penalties the Department has authority to issue. ()

332. TRACE BACK INVESTIGATION, SAMPLING, AND TESTING.

01. Trace Back and Investigation. The department, upon receiving a mandatory report of *Cms* infected potatoes, investigates the origin and destination of such potatoes. Trace back and investigation activities may include, but not be limited to: ()

a. A review of all inspection, certification, shipping and production records held by any person for the potatoes in question; ()

b. Inspection and sampling at the reporting operation as well as points for origin, storage and destination related to that operation; and ()

c. Laboratory testing records of any samples. ()

02. Mutual Cooperation. The Department and the Idaho Crop Improvement Association will mutually cooperate with each other in trace back investigations where appropriate. ()

03. Testing Positive for Cms. If certified seed potatoes in a lot test positive for Cms after they have left the control of the grower of that lot, ISDA's trace back investigation may include Cms testing any remaining seed from that lot that is still at the seed potato grower's facility. The testing level will be at a rate, depending on lot size, up to a maximum of four hundred (400) randomly selected tubers. ()

04. Trace Back Investigations. The public disclosure of information obtained during an investigation conducted under Subchapter C of this rule is subject to disclosure to the public only insofar as it is allowed by Title 74, Chapter 1, Idaho Code. ()

333. RESTRICTION ON THE USE OF INFECTED POTATOES.
Those potatoes found to be infected with *Cms* may not be utilized for planting as seed. ()

334. -- 349. (RESERVED)

350. TESTING FOR BRR.

01. Compliance With Certification Standards. Seed potato tubers for planting for commercial production or for seed certification in Idaho or being imported into Idaho as seed potatoes for commercial production or certification as seed for planting must comply with the Rules Governing Seed and Plant Certification as they relate to *Cms*, as incorporated in Section 304 of Subsection C of this rule. ()

02. Seed Potatoes to Be Exported Tested. Seed potato tubers being exported from Idaho to a foreign country as seed potatoes for planting must meet all ICIA requirements for certification and export tag placement, as well as all phytosanitary certification requirements of the importing country. All costs for sampling, transport and testing are borne by the exporter. ()

351. -- 359. (RESERVED)

360. HOLD ORDERS.

The Director may authorize Hold Orders restricting the movement of infested or suspect potatoes until investigation, trace back, and sample analysis are complete. Hold Orders may require verification that said potatoes will not be utilized for any purposes not authorized in writing by the Department. When potatoes from a certified seed potato lot are sampled and test positive for BRR after the seed potatoes have left the seed potato grower's facility, the department will not issue a hold order on any seed potatoes from that lot that remain on the seed potato grower's facility unless and until potatoes from the affected lot are sampled at the seed potato grower's facility and test positive for BRR. ()

361. -- 369. (RESERVED)

370. FEES.

Fees for samples for laboratory testing for *Cms* are those normally charged by the approved laboratory doing the testing. ()

371. -- 409. (RESERVED)

SUBCHAPTER D – PLANTING SEED POTATOES

410. DEFINITIONS.

In addition to the definitions found in Section 22-501, Idaho Code, the definitions found in section 410 apply in the interpretation and the enforcement of this subchapter D of this rule: ()

01. Disease. Any fungus, bacteria, virus, or other organism injurious to plant life or plant products, including the spore or any other propagative state thereof. ()

02. Pest. Any form of animal life that is or may be detrimental or injurious to plant life or plant products, including the egg, larva, pupa, or any other immature stage thereof. ()

411. -- 449. (RESERVED)

450. REQUIREMENTS FOR UNCERTIFIED SEED POTATOES ARE:

01. No More Than One Generation. No more than one (1) generation from certified parent seed potatoes. ()

02. Grown by the Farmer. Grown by the farmer and separated and graded at the storage of the farmer planting the uncertified seed potatoes. ()

03. Planting. Planted only on the farm of the farmer who produced the uncertified seed potatoes. ()

04. Disease Content. In compliance with ICIA rules of certification for seed potatoes by having a disease content that does not exceed the standard for the last generation of certified seed potatoes. ()

05. Laboratory Testing. Laboratory tested for bacterial ring rot prior to planting. ()

06. Laboratory Tested and/or Grown Out. Laboratory tested and/or grown-out for potato leaf roll virus and potato virus Y prior to planting. ()

07. Testing by Designated Agencies. Laboratory and/or grow-out tested by agencies designated by the department. ()

08. Sampling. Sampled in accordance with procedures established by the department. ()

451. -- 459. (RESERVED)

460. ENFORCEMENT.

01. Reporting – Uncertified Seed Potatoes. All growers planning to plant uncertified seed potatoes shall complete an uncertified seed potatoes report form approved by the department and submit it to the department prior to planting. ()

02. Records - Certified Seed Potatoes. All potato growers are required to keep seed potato certification records for a minimum of four years after planting. The records may be official tags or other official documentation issued by the certifying agency and representing each lot planted. These records must include the potato variety name, certification number and certifying agency. These records are to be made available to a Department representative upon request. ()

461. – 999. (RESERVED)

IDAPA 09 – IDAHO DEPARTMENT OF LABOR

09.01.30 – UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES

DOCKET NO. 09-0130-1902

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 72-1333, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change. The intended changes to 09.01.30.175.20 will:

1. Define the circumstances under which an unemployment insurance claimant can leave the local labor market area to attend training or school; and
2. Specify unemployment insurance claimants cannot leave the country while collecting benefits.

The text change from the proposed rule is to remove the implied restriction that a claimant must remain in their current US state, territory or country and would be ineligible in cases of interstate travel, provided they meet the other eligibility criteria.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, pages 167-169](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Josh McKenna, UI Benefits Bureau Chief at (208) 332-3577 x3919.

Dated this 2nd day of October, 2019.

Josh McKenna
UI Benefits Bureau Chief
Idaho Department of Labor – UI Division
219 Main Street
Boise, ID 83735
Phone: (208) 332-3577 x 3919
Fax: (208) 639-3256

THE FOLLOWING IS THE PENDING TEXT OF DOCKET NO. 09-0130-1902

(Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.)

175. AVAILABLE FOR WORK.

The phrase "available for work" is defined as a state of mind which involves a readiness and willingness to work, and a desire to find a job, including the possibility of marketing one's services in the claimant's area of availability. There must remain a reasonable possibility of a claimant finding and obtaining, or being referred and hired for, suitable work. Ref. Sec. 72-1366(4), Idaho Code. (3-19-99)

01. Availability Requirements. The type of work for which the claimant is available must exist in the claimant's area to the extent that a normal unemployed person would generally find work within a reasonable period of time. (3-19-99)

02. Child Care. Child care must be arranged so as not to restrict a claimant's availability for work or for seeking work. (3-19-99)

03. Compelling Personal Circumstances. For the purposes of this rule, compelling personal circumstances are defined as: (6-30-19)T

a. A situation in which the claimant required the assistance of emergency response personnel; (4-11-06)

b. The serious illness or death or funeral of an immediate family member; or (4-11-06)

c. The wedding of the claimant or an immediate family member. (4-11-06)

d. For the purposes of this rule, "immediate family member" is defined as a claimant's spouse, child, foster child, parent, brother, sister, grandparent, grandchild, or the same relation by marriage. (4-11-06)

e. For the purposes of this rule, "workweek" is defined: (6-30-19)T

i. Code R, U, or X. The claimant's normal work week as defined by the employer. (6-30-19)T

ii. Code B or C. Monday through Friday, 8 a.m.-5 p.m. (6-30-19)T

iii. Code D. Regular class hours. (6-30-19)T

f. Claimant work availability requirements are waived on Independence Day, Thanksgiving Day, Christmas Day, and New Year's Day. (6-30-19)T

04. Conscientious Objection. No person may be held to be unavailable for work solely because of religious convictions not permitting work on a certain day. (3-19-99)

05. Contract Obligation. A person who is bound by a contract that prevents him from accepting other employment is not eligible for benefits. (3-19-99)

06. Distance to Work. A claimant seeking work must be willing to travel the distance normally traveled by other workers in his area and occupation. (3-19-99)

07. Domestic Circumstances. A claimant is not eligible for benefits if domestic circumstances take precedence over the claimant's availability for work or for seeking work. (3-19-99)

08. Equipment. Claimants will be required to provide necessary tools or equipment in certain occupations. The lack of these tools or equipment will directly affect a claimant's availability for work, unless he will accept other work. (3-19-99)

09. Evidence. A claimant is responsible for providing proof of his availability for work and for seeking work if his availability is questioned or proof is required by these rules. (3-19-99)

10. Experience or Training. A claimant is expected to be available for work consistent with his past experience or training, provided there is no change in his ability to perform that work. (3-19-99)

11. Full-Time/Part-Time Work. To be eligible for benefits, a claimant must be available for a full workweek and a full, normal workday unless the claimant establishes that a majority of the weeks worked in his base period were for less than full-time work or the claimant establishes eligibility under the Americans with Disabilities Act. An individual who restricts his availability to part-time work pursuant to Section 72-1366(4)(c), Idaho Code, will be considered fully employed and ineligible to receive benefits if the individual works hours comparable to his part-time work experience in his base period. (3-29-10)

12. Incarceration/Work Release. A claimant who is incarcerated for any part of the claimant's normal workweek is not eligible for benefits for that week, unless the claimant can establish he has work release privileges which would provide him a reasonable opportunity to meet his work search requirements and obtain full-time employment. (3-19-99)

13. Jury Duty/Subpoenas. A claimant serving on jury duty or subpoenaed is excused from the availability and work-seeking requirements of the law for that time period. A claimant is not ineligible if he must refuse work because of the jury duty or subpoena. (3-19-99)

14. Licensing or Government Restrictions. A claimant prohibited by law from engaging in certain work must be available for other employment to be eligible for benefits. (3-19-99)

15. Moving to Remote Area. A claimant who moves to a remote locality where there is very little possibility of obtaining work will be ineligible for benefits. (3-19-99)

16. Public Official. A public official who receives pay and performs "full-time" service is not unemployed or eligible for benefits. Part-time officials, even though receiving pay, may be considered available for work the same as any other individual employed on a part-time basis. Ref. Sec. 72-1312(1). (3-19-99)

17. Public Service. Performing public service, including voluntary non-remunerated service, does not disqualify an individual for benefits as long as he is meeting the availability and work-seeking requirements. (3-19-99)

18. Restricting Work to Within the Home. A claimant who restricts his availability to only work done within the home which severely limits the work available to him is ineligible for benefits. (3-19-99)

19. School Attendance or a Training Course. A person who is attending school or a training course may be eligible for benefits if the attendance does not conflict in any way with that person's availability for work or for seeking work and if he will discontinue attendance upon receipt of an offer of employment if there is a conflict between employment and the schooling or training. (3-19-99)

20. Temporary Absence from Local Labor Market to Seek Work. All claimants, regardless of their attachment to an industry or employer, must meet the same standard of remaining within their local labor market area during the workweek in order to be considered available for work, unless the primary purpose of a temporary absence is to seek work in another labor market; ~~provided, however,~~ eClaimants otherwise eligible to receive benefits while participating in an approved training program or course are not deemed ineligible when the training or course occurs outside of their local labor market due to the unavailability of similar programs or courses within their local labor market. (6-30-19)T()

[Subsection 175.20.a.]

a. Otherwise, eligible claimants will continue to be eligible for benefits if they remain within the states, territories, or countries included in the USDOL Interstate Benefit Payment Plan. ()

21. Time. (3-19-99)

a. Time Restrictions. A claimant may not impose restrictions on his time, including either hours of the day or days of the week, which will limit his availability to seek or accept suitable work. (3-19-99)

b. Shift Restrictions. A claimant who restricts his availability to a single shift may not be fully available for work if the restriction significantly reduces his chances of becoming employed. (3-19-99)

22. Transportation Difficulties. Lack of transportation is not a bona fide reason for a claimant to fail to be available for or to seek work. Transportation is the responsibility of the claimant. (3-19-99)

23. Unreasonable Restrictions on Working Conditions. A claimant who places unreasonable restrictions on working conditions so as to seriously hinder his availability and search for work is ineligible for benefits. (3-19-99)

24. Vacation. A person on a vacation approved by his employer during time when work is available is not considered available for work nor eligible for benefits. (3-19-99)

25. Wages. A claimant is not ineligible for benefits if the wages or other conditions of available work are substantially less favorable to the claimant than those prevailing for similar work in the local area. Ref. Sec. 72-1366(7)(b), Idaho Code. (3-19-99)

a. Demanding Higher Wages. A claimant is ineligible for benefits if he unduly restricts his availability for work by insisting on a wage rate that is higher than the prevailing wage for similar work in that area. (3-19-99)

b. Prior Earnings. The claimant's prior earnings and past experience are considered in determining whether he is available for suitable work. (3-19-99)

26. Waiver of Two-Year Training Limitation. For purposes of approving a waiver of the two (2) year limitation on school or training courses, specified by Idaho Code Section 72-1366(8)(c)(ii), for claimants who lack skills to compete in the labor market, the following criteria must be met: (6-30-19)T

a. Financial Plan. The claimant must demonstrate a workable financial plan for completing the school or training course after his benefits have been exhausted. (3-19-99)

b. Demand for Occupation. The claimant must establish there is a demand for the occupation in which the claimant will be trained. A "demand occupation" is one in which work opportunities are available and there is not a surplus of qualified applicants. (3-19-99)

c. Duration of Training. At the time that the claimant applies for the waiver, the duration of the school or training course is no longer than two (2) years to completion. (3-19-99)

d. Denial. No claimant will be denied a waiver of the two (2) year limitation on school or training because the claimant is already enrolled or participating in the school or training at the time he requests the waiver. (6-30-19)T

IDAPA 09 – IDAHO DEPARTMENT OF LABOR

09.01.30 – UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES

DOCKET NO. 09-0130-1903

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 72-1333, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change. The intended changes to IDAPA 09.01.30 will:

1. Clarify unemployment insurance benefit eligibility for individuals with disabilities as determined by Idaho law;
2. Identify unemployment insurance claimants as responsible for providing competent evidence they are qualified individuals with disabilities under the Americans with Disabilities Act; and
3. Remove language concerning long-term disability inconsistent with the definition of disability under the Americans with Disabilities Act.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, pages 170-174](#).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Josh McKenna, UI Benefits Bureau Chief at (208) 332-3577 x3919.

Dated this 2nd day of October, 2019.

Josh McKenna
UI Benefits Bureau Chief
Idaho Department of Labor – UI Division
219 Main Street
Boise, ID 83735
Phone: (208) 332-3577 x 3919
Fax: (208) 639-3256

**IDAPA 11 – IDAHO STATE POLICE
FORENSIC SERVICES**

11.03.01– RULES GOVERNING ALCOHOL TESTING

DOCKET NO. 11-0301-1901

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-2901, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than November 20, 2019.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Removes obsolete definitions and unnecessary words from the definitions. Deletes sections that are historical in nature and are no longer needed. Clarifies sections regarding the number and types of breath alcohol samples required to be considered a valid test for court purposes.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

There is no fee imposed in this rule.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

No fiscal impact is created by these changes.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rule contains information on how to conduct evidentiary blood and breath alcohol testing in Idaho. It sets out the rules for laboratory analysis, calibration of breath testing instruments, operator training requirements, performance specifications for the tests themselves, and quality control measures. These rules are used for criminal prosecution in cases involving potential alcohol impairment.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: There are no materials being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lab Director Matthew Gamette, phone (208) 884-7217, Fax (208) 884-7290, email matthew.gamette@isp.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 27th, 2019.

Dated this 18th day of October, 2019.

Charlie Spencer
Police Services Major, Rules Review Officer
Phone (208) 884-7203 / Fax (208) 884-7290
charlie.spencer@isp.idaho.gov

Idaho State Police
700 S. Stratford Drive
Meridian, ID 83642

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-0301-1901
(Only Those Sections With Amendments Are Shown.)

~~002. WRITTEN INTERPRETATIONS.~~

~~There are no written interpretations of this rule.~~

~~(4-7-11)~~

~~003. ADMINISTRATIVE APPEALS.~~

~~There is no provision for administrative appeals before the Idaho State Police under this chapter.~~

~~(4-7-11)~~

~~004.~~ INCORPORATION BY REFERENCE.

The following are incorporated by reference in this chapter of rules:

(4-7-11)

01. Conforming Products List of Evidential Breath Measurement Devices (revised 11/2/2017).

This document is available on the Internet at <https://www.gpo.gov/fdsys/pkg/FR-2017-11-02/pdf/2017-23869.pdf>.

(12-14-17)T

~~005. MAILING ADDRESS — OFFICE HOURS — WEBSITE.~~

~~The mailing address is Idaho State Police, Forensic Services, 700 S. Stratford Drive Suite 125, Meridian, ID 83642-6206. Lobby hours are Monday through Friday, 8 a.m. to 5:00 p.m. except holidays designated by the state of Idaho. Alcohol Testing information is available on the internet at <http://www.isp.idaho.gov/forensics/index.html>.~~

~~(4-7-11)~~

~~006. PUBLIC RECORDS AVAILABILITY.~~

~~This rule is subject to and in compliance with the Public Records Act.~~

~~(4-7-11)~~

~~007.~~ -- 009. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS AND ABBREVIATIONS.

01. Alcohol. ~~“Alcohol” means~~ ~~†~~The chemical compounds of ethyl alcohol, methyl alcohol, or isopropyl alcohol. ~~(4-11-15)()~~

02. Approved Vendor. ~~“Approved vendor” means a~~ ~~Δ~~ source/provider/manufacture of an approved standard. ~~(4-11-15)()~~

03. Blood Alcohol Analysis. ~~“Blood alcohol analysis” means a~~ ~~Δ~~n analysis of blood to determine the concentration of alcohol present. ~~(7-1-93)()~~

04. Breath Alcohol Analysis. ~~“Breath alcohol analysis” means a~~ ~~Δ~~n analysis of breath to determine the concentration of alcohol present. ~~(7-1-93)()~~

05. Breath Alcohol Test. ~~“Breath alcohol test” means a~~ ~~Δ~~ breath sample or series of separate breath samples provided during a breath testing sequence ~~(s)~~. ~~(4-11-15)()~~

06. Breath Alcohol Testing Sequence. ~~“Breath alcohol testing sequence” means a~~ ~~Δ~~ sequence of events as determined by the Idaho State Police Forensic Services, which may be directed by the instrument, the Operator, or both, and may consist of air blanks, performance verification, internal standard checks, and breath samples. ~~(4-11-15)()~~

~~07. Breath Testing Certification Class. “Breath testing certification class” means a department~~

~~approved training class for prospective or uncertified breath alcohol Operators/Breath Testing Specialists. (4-11-15)~~

~~087.~~ **Breath Testing Specialist (BTS).** ~~“Breath Testing Specialist” means a~~ **Δ** n operator who has completed advanced training approved by the department and are certified to perform routine instrument maintenance, teach instrument operation skills, proctor proficiency tests for instrument Operators, and testifying as an expert on alcohol physiology and instrument function in court. (4-11-15)()

~~098.~~ **Calibration.** ~~“Calibration” means a~~ **Δ** set of laboratory operations which establish under specified conditions, the relationship between values indicated by a measuring instrument or measuring system, or values represented by a material, and the corresponding known values of a measurement. (4-11-15)()

~~102.~~ **Certificate of Analysis.** ~~“Certificate of analysis” means a~~ **Δ** certificate stating the standards used for performance verification have been tested and approved for use by the ISPFS or are manufactured by an ISO 17025:2005, 17025:2017, (or equivalent standard) vendor and are traceable to N.I.S.T. standards. (4-11-15)()

~~110.~~ **Certificate of Instrument Calibration.** ~~“Certificate of instrument calibration” means a~~ **Δ** certificate stating that an individual breath alcohol testing instrument has been evaluated by the ISPFS and found to be suitable for forensic alcohol testing. The certificate bears the signature of the calibration analyst at Idaho State Police Forensic Services, and the effective date of the instrument approval. (4-11-15)()

~~12.~~ **Changeover Class.** ~~“Changeover class” means a training class for currently certified Operators during which the Operator is taught theory, operation, and proper testing procedure for a new make or model of instrument being adopted by their agency. Breath Testing Specialists complete BTS training that qualifies them to perform BTS duties related to the new make or model instrument. (4-11-15)~~

~~131.~~ **Department.** ~~“Department” means~~ **Δ** The Idaho State Police. (7-1-93)()

~~142.~~ **Deprivation Period.** ~~“Deprivation period” means a~~ **Δ** minimum time period of fifteen (15) minutes immediately prior to evidentiary breath alcohol testing during which the subject/individual is not to be allowed to smoke, drink, or eat substances containing alcohol. (4-11-15)()

~~153.~~ **Evidentiary Test.** ~~“Evidentiary test” means a~~ **Δ** blood, breath, or urine test performed on a subject/individual for potential evidentiary or legal purposes. A distinction is made between evidentiary testing and non-quantitative screening/monitoring. (4-11-15)()

~~164.~~ **Idaho State Police Forensic Services (ISPFS).** ~~“Idaho State Police Forensic Services” means a~~ **Δ** division of the Idaho State Police. ISPFS is dedicated to providing forensic science services to the criminal justice system of Idaho. ISPFS is the administrative body for the alcohol testing programs in Idaho. (4-11-15)()

~~175.~~ **Laboratory.** ~~“Laboratory” means~~ **Δ** The place at which specialized devices, instruments and methods are used by trained personnel to measure the concentration of alcohol in samples of blood, vitreous humor, urine, or beverages for law enforcement purposes. (4-11-15)()

~~186.~~ **MIP/MIC.** ~~“MIP/MIC” means a~~ **Δ** n abbreviation used to designate minor in possession or minor in consumption of alcohol. (4-11-15)()

~~197.~~ **Monitoring Period.** ~~“Monitoring Period” means a~~ **Δ** minimum ~~deprivation time~~ period of fifteen (15) minutes immediately prior to evidentiary breath alcohol testing ~~during which the subject/individual should be observed by the officer and any belch/burp/vomit/regurgitation should be noted by the operator.~~ The monitoring period consists of a mandatory deprivation period and discretionary observation period. The observation period becomes mandatory if the numeric results from only a single breath sample are used. (4-11-15)()

18. Observation Period. The time period running concurrently with the deprivation period in which the officer(s) should be observing the subject/individual, and any belch/burp/vomit/regurgitation should be noted by the operator(s). The officer(s) should be in a position, either physically or remotely, to be able to use their available senses to detect the aforementioned events. ()

~~2019.~~ **Operator Certification.** ~~“Operator certification” means~~ ~~†~~The condition of having satisfied the training requirements for administering breath alcohol tests as established by the department. (4-11-15)()

~~210.~~ **Operator.** ~~“Operator” means a~~ ~~†~~An individual certified by the department as qualified by training to administer breath alcohol tests. (4-11-15)()

~~221.~~ **Performance Verification.** ~~“Performance verification” means a~~ ~~†~~ verification of the accuracy of the breath testing instrument utilizing a performance verification standard. Performance verification should be reported to three decimal places. While ISPFS uses the term performance verification, manufacturers and others may use a term such as “calibration check” or “simulator check.” (4-11-15)()

~~232.~~ **Performance Verification Standard.** ~~“Performance verification standard” means a~~ ~~†~~An ethyl alcohol standard used for field performance verifications. The standard is provided or approved, or both, by the department. (4-11-15)()

~~243.~~ **Proficiency Testing.** ~~“Proficiency testing” means a~~ ~~†~~ periodic analysis of blood, urine, or other liquid specimen(s) whose alcohol content is unknown to the testing laboratory, to evaluate the capability of that laboratory to perform accurate analysis for alcohol concentration. (4-11-15)()

~~254.~~ **Quality Control.** ~~“Quality control” means a~~ ~~†~~An analysis of referenced samples whose alcohol content is known, which is performed with each batch of blood, vitreous humor, urine or beverage analysis to ensure that the laboratory’s determination of alcohol concentration is reproducible and accurate. (4-11-15)()

~~26.~~ **Recertification Class.** ~~“Recertification class” means a training class offered by the department for currently certified personnel, completion of which results in uninterrupted continuation of their BTO or BTS status for an additional 2 years.~~ (4-11-15)

~~275.~~ **Urine Alcohol Analysis.** ~~“Urine alcohol analysis” means a~~ ~~†~~An analysis of urine to determine the concentration of alcohol present. (7-1-93)()

011. ~~012.~~ (RESERVED)

~~012. GENERAL PROVISIONS.~~

~~Continuation of Policies. All policies, training manuals, approvals of instruments, and/or certifications of officers in effect when the alcohol program was managed by the Department of Health and Welfare shall continue to be in effect in the Idaho State Police until the policy, training manual, approval and/or certification is changed or deleted by the Idaho State Police.~~ (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

014. REQUIREMENTS FOR PERFORMING BREATH ALCOHOL TESTING.

01. Instruments. Each breath testing instrument model shall be approved by the department and be listed in the “Conforming Products List of Evidential Breath Measurement Devices” published in the Federal Register by the United States Department of Transportation as incorporated by reference in Section 004 of this rule. The department will maintain a list of benchtop and portable instruments approved for evidentiary testing use in Idaho. Each individual breath testing instrument must be certified by the department. The department may, for cause, remove a specific instrument by serial number from evidential testing and suspend or withdraw certification thereof. (4-11-15)

02. Report. Each direct breath testing instrument shall report alcohol concentration as grams of alcohol per two hundred ten (210) liters of breath. (7-1-93)

03. Administration. Breath tests shall be administered in conformity with standards established by the department. Standards shall be developed for each type of breath testing instrument used in Idaho, and such standards shall be issued in the form of Idaho administrative rules, ISPFS analytical methods, and ISPFS standard operating

procedures. (4-11-15)

a. The breath alcohol test must be administered by an operator (BTO or BTS) currently certified in the use of the instrument. (4-11-15)

b. Prior to administering the monitoring period, any foreign objects/materials which have the potential to enter the instrument/breath tube or may present a choking hazard (e.g. gum, chewing tobacco, food) should be removed. (4-11-15)

c. The operator shall administer a monitoring period prior to evidentiary testing. (4-11-15)

d. If mouth alcohol is suspected or indicated by the testing instrument, the operator shall begin another fifteen (15) minute monitoring period if repeating the testing sequence. If during the monitoring period the subject/individual vomits or regurgitates material from the stomach into the breath pathway, the monitoring period should start over. If there is doubt as to the events occurring during the monitoring period (e.g. silent burp, belch, vomit, regurgitation), the operator should evaluate the instrument results for any indication of mouth alcohol. (4-11-15)

e. A complete breath alcohol test includes two (2) valid breath samples taken during the testing procedure and preceded by air blanks. The ~~subsequent~~ breath samples performed with a portable breath testing instrument should be approximately two (2) minutes apart or more. If the subject/individual fails or refuses to provide ~~a subsequent~~, two (2) adequate samples as requested by the operator, the ~~single~~ test result of a single adequate sample shall be considered valid. If a single test result is used, then the ~~subject must have been observed during the fifteen (15) minute monitoring period~~ observation criteria of the monitoring period (observation period) is mandatory. For hygienic reasons, the operator should use a new mouthpiece for each subject/individual tested. (4-11-15)()

f. The operator has the discretion to end breath testing, repeat breath testing, or request a blood draw at any point during the testing process as the circumstances require (including but not limited to lack of sample correlation, lack of subject participation or cooperation, subject is incoherent or incapable of following instructions, subject incapacitation). If a subject/individual fails or refuses to provide ~~a subsequent~~, adequate samples as requested by the operator, the results obtained are still considered valid, provided the failure to supply the requested samples was the fault of the subject/individual and not the operator. (4-11-15)()

g. A third breath sample shall, when possible, be collected if the first two (2) results differ by more than 0.02 g/210L alcohol. Unless mouth alcohol is indicated or suspected, it is not necessary to repeat the monitoring period prior to obtaining a third breath sample. (4-11-15)

h. The results for ~~subsequent~~ breath samples should correlate within 0.02 g/210L alcohol to show consistent sample delivery, indicate the absence of RFI, and to indicate the absence of alcohol contamination in the subject/individual's breath pathway as a contributing factor to the breath results. (4-11-15)()

i. In the event of an instrument failure, the operator should attempt to utilize another instrument or have blood drawn. (4-11-15)

04. Training. Each individual operator (BTO or BTS) shall demonstrate sufficient training to operate the instrument correctly. This shall be accomplished by successfully completing a training course approved by the department on each instrument model utilized by the operator. Operator certifications issued after July 1, 2013 are valid for two (2) calendar years from the course completion date. The department may revoke individual operator (BTO/BTS) certification for cause. (4-11-15)

05. Performance Verification Checks. Each breath testing instrument shall be checked for accuracy with a performance verification standard approved by the department. Performance verification checks shall be performed according to a procedure established by the department and be documented. The official time and date of the performance verification is the time and date recorded on the printout, or the time and date recorded in the log. (4-11-15)

a. A performance verification check shall occur within twenty-four (24) hours before or after an

evidentiary test. The benchtop instrument requires a performance verification check as part of the testing sequence. On the portable instrument, multiple breath alcohol tests may be covered by a single performance verification. (4-11-15)

b. A performance verification on a portable instrument consists of two (2) samples at either the 0.08 or 0.20 level. Both samples must be run with the same performance verification standard. Three (3) attempts at obtaining an acceptable performance verification are allowed. Troubleshooting measures may be employed during this process. If the third performance verification fails, the instrument shall be taken out of service. ~~The instrument shall~~ and not be returned to service until it has been calibrated and certified by ISPFS. (4-11-15)()

c. A performance verification acquired during a breath testing sequence on an approved benchtop instrument consists of one (1) sample at either the 0.08 or 0.20 level. A performance verification acquired outside the breath testing sequence on an approved benchtop instrument consists of two (2) samples at either the 0.08 or 0.20 level. Three (3) attempts at obtaining an acceptable performance verification are allowed. Troubleshooting measures may be employed during this process. If the third performance verification fails, the instrument must be taken out of service. ~~The instrument must~~ and not be returned to service until it has been calibrated and certified by ISPFS. (4-11-15)()

d. Performance verification checks must be within +/- 10% of the performance verification standard target value. (4-11-15)

e. A wet bath 0.08 performance verification standard should be replaced with fresh standard approximately every twenty-five (25) verifications or every calendar month, whichever comes first. For a closed loop, recirculating system (e.g. the Intox 5000 series), the 0.08 performance verification standard should be replaced with fresh standard approximately every one hundred (100) verifications or every calendar month, whichever comes first. (4-11-15)

f. A wet bath 0.20 performance verification standard should be replaced with fresh standard approximately every twenty-five (25) verifications. (4-11-15)

g. Dry gas performance verification standards may be used continuously without replacement until the canister is spent or the expiration date is reached. (4-11-15)

h. Performance verification standards should not be used beyond the expiration date. (4-11-15)

i. If Section 18-8004C, Idaho Code, (excessive alcohol concentration) is applicable, then a 0.20 performance verification must be run and results documented once per calendar month. Failure to perform a 0.20 performance verification will not invalidate any tests where Section 18-8004C, Idaho Code, is not applicable. A performance verification with a 0.20 standard does not need to be performed within twenty-four (24) hours of an evidentiary breath test in excess of 0.20 g/210L alcohol. (4-11-15)

j. Temperature of the wet bath simulator shall be between thirty-three point five degrees Celsius (33.5°C) and thirty-four point five degrees Celsius (34.5°C) in order for the performance verification results to be valid. (4-11-15)

k. An agency may run additional performance verification standard levels at their discretion. (4-11-15)

06. Records. Operators must document and retain test results (i.e. written log, printout, or electronic database). All records regarding maintenance and results shall be retained for three (3) years. ISPFS is not responsible for storage of documentation not generated by ISPFS. (4-11-15)

07. Deficiencies. Failure to meet any of the conditions listed in Sections 013 and 014. Any laboratory or breath testing instrument may be disapproved for failure to meet one (1) or more of the requirements listed in Sections 013 and 014, and approval may be withheld until the deficiency is corrected. (4-7-11)

08. Standards. Premixed alcohol simulator solutions shall be from an approved vendor and explicitly

approved in writing by the department before distribution within Idaho. Dry gas standards from ISO 17025:2005 certified providers are explicitly approved by the department for use in Idaho without evaluation by the department. (4-11-15)

09. MIP/MIC. The presence or absence of alcohol is the determining factor in the evidence in an MIP/MIC case. The instrumentation used in obtaining the breath sample is often the same instrumentation utilized for acquiring DUI evidence. The different standard of evidence requires different standards for the procedure. (4-11-15)

a. Fifteen (15) minute monitoring period: The monitoring period is not required for the MIP/MIC procedure. (4-11-15)

b. The breath alcohol test must be administered by an operator currently certified in the use of that instrument. (4-11-15)

c. The instrument used must be certified by ISPFs. The instrument only needs to be initially certified by ISPFs. Initial certification shows that the instrument responds to alcohols and not to acetone. The instrument does not need to be checked regularly or periodically with any of the 0.08 or 0.20 standard. (4-11-15)

d. The officer should have the individual being tested remove all loose foreign material from their mouth before testing. False teeth, partial plates, or bridges installed or prescribed by a dentist or physician do not need to be removed to obtain a valid test. The officer may allow the individual to briefly rinse their mouth out with water prior to the breath testing. Any alcohol containing material left in the mouth during the entirety of the breath test sampling could contribute to the results in the breath testing sequence. (4-11-15)

e. A complete breath alcohol test includes two (2) valid breath samples taken from the subject and preceded by an air blank. The *subsequent* breath samples do not need to be consecutive samples from the same subject. The individual breath samples should be approximately two (2) minutes apart or more. A deficient or insufficient sample does not automatically invalidate a test sample. The operator should use a new mouthpiece for each individual. (4-11-15) ()

f. A third breath sample is required if the first two (2) results differ by more than 0.02 g/210L alcohol. In the event that all three (3) samples fall outside the 0.02 g/210L alcohol correlation, and testing indicates or the officer suspects mouth alcohol, they must administer a fifteen (15) minute monitoring period and then retest the subject. If mouth alcohol is not suspected or indicated by the test results, then the officer may retest the subject without administering a monitoring period. (4-11-15)

g. The operator should manually log test results and/or retain printouts for possible use in court. (4-11-15)

h. The instrument must not be in passive mode for the testing of subjects for evidential purposes. (4-11-15)

i. The passive mode of testing using the Lifeloc FC20 or ASIII should be used for testing liquids or containers of liquid for the presence or absence of alcohol. (4-11-15)

IDAPA 13 – IDAHO FISH AND GAME COMMISSION

13.01.11 – RULES GOVERNING FISH

DOCKET NO. 13-0111-1901AAP

NOTICE OF AMENDED PROCLAMATION

AUTHORITY: In compliance with Section 36-105(3), Idaho Code, notice is hereby given that at a September 20, 2019 special meeting the Commission, for a second time, amended by proclamation the 2019 Idaho Steelhead Seasons, establishing seasons and limits for fishing in Idaho. The following areas will close to steelhead fishing at midnight on September 29, 2019:

1. **Clearwater River** - from its mouth upstream to the confluence of the Middle Fork Clearwater and South Fork Clearwater rivers;
2. **North Fork Clearwater River** - from mouth to Dworshak Dam;
3. **South Fork Clearwater River** - from the mouth to the confluence of American and Red rivers;
4. **Middle Fork Clearwater River** - from the mouth to Clear Creek; and
5. **Snake River** - from the Washington State line at the confluence of the Snake and Clearwater Rivers upstream to Couse Creek Boat Ramp.

Anglers are advised that they must consult the text of the Commission's official proclamation before fishing as this notice is merely meant to advise that changes have been made. This notice is not an exhaustive list of those changes.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proclamation, contact Owen Moroney at (208) 334-3715.

IDAPA 13 – IDAHO FISH AND GAME COMMISSION

13.01.11 – RULES GOVERNING FISH

DOCKET NO. 13-0111-1905P

NOTICE OF PROCLAMATION

AUTHORITY: In compliance with Section 36-105(3), Idaho Code, notice is hereby given that at a September 20, 2019 special meeting the Commission adopted by proclamation the 2019 Idaho Coho Season, establishing seasons and limits for fishing in Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proclamation, contact Owen Moroney at (208) 334-3715.

IDAPA 22 – BOARD OF MEDICINE

22.01.07 – RULES FOR THE LICENSURE OF NATUROPATHIC MEDICAL DOCTORS

DOCKET NO. 22-0107-1901 (NEW CHAPTER, FEE RULE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency initiated proposed rulemaking procedures. The action is authorized Pursuant to Section 54-5105(2), Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

PUBLIC HEARING

Thursday, November 7, 2019 – 11:00 a.m. - 12:00 p.m. (MST)

**Idaho State Board of Medicine
SpringHill Suites Marriott Boise Parkcenter
424 E. Parkcenter Blvd., Clearwater Room
Boise, Idaho 83706**

The meeting site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the meeting, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

During the 2019 Legislative Session, the Legislature passed a law for the licensure of 4-year post-graduate educated Naturopathic Medical Doctors. Eligible Naturopathic Medical Doctors will be licensed beginning July 1, 2020, under the Board of Medicine. The Naturopathic Medical Board, a board formed under the Board of Medicine on July 1, 2019, proposes Rules that, in concert with the Naturopathic Medicine Licensing statute, will govern the licensure, scope of practice, and discipline of the Naturopathic Medical Doctors.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

When the Naturopathic Medical Board begins licensing Naturopathic Medical Doctors beginning July 1, 2020, the Board will charge a licensure fee of no more than \$600 per applicant as described in the Fee Table of these Rules. The other fees for license renewal, reinstatement, inactive license, and duplicate wallet card and wall certificate are also defined in these Proposed Rules.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

Not applicable. The Board of Medicine is a dedicated funds agency, and therefore, there will be no fiscal impact to the state general fund. This rule provides for licensure of Naturopathic Medical Doctors, which will increase the Board's income by the licensure fees minus any expenses and administrative costs for licensure.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted with interested parties, including the state naturopathic association and state medical association, and such negotiations shall continue through the comment period and hearing.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2) (a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Anne K. Lawler, Executive Director, (208) 327-7000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 27, 2019.

Dated this 19th day of September, 2019.

Anne K. Lawler, JD, RN, Executive Director
Idaho State Board of Medicine
345 W. Bobwhite Court, Suite 150
Boise, Idaho 83706
Phone (208) 327-7000
Fax (208) 327-7005

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 22-0107-1901
(New Chapter)

IDAPA 22 – BOARD OF MEDICINE

22.01.07 – RULES FOR THE LICENSURE OF NATUROPATHIC MEDICAL DOCTORS

000. LEGAL AUTHORITY.

Pursuant to Section 54-5104(2), Idaho Code, the Idaho State Board of Medicine is authorized to promulgate rules to implement provisions of the Naturopathic Medicine Act. ()

001. TITLE AND SCOPE.

These rules are titled IDAPA 22.01.07, “Rules for the Licensure of Naturopathic Medical Doctors,” and governs the licensure, scope of practice, and discipline of the Naturopathic Medical Doctors. ()

002. – 009. (RESERVED)

010. DEFINITIONS.

01. Council on Naturopathic Medical Education (CNME). The accrediting organization that is recognized by the United States Department of Education as the accrediting agency for education programs that prepare naturopathic medical doctors. ()

02. North American Board of Naturopathic Examiners (NABNE). The independent, nonprofit organization that qualifies applicants to take the Naturopathic Physicians Licensing Exam and submits those results to the regulatory authority. ()

03. Naturopathic Physicians Licensing Exam (NPLEX). The board examination for naturopathic medical doctors. ()

04. Naturopathic Medical Doctor. A person who meets the definition in Section 54-5101(5), Idaho Code. Licensed naturopathic physician, physician of naturopathic medicine, naturopathic medical doctor and NMD are interchangeable terms. ()

05. Primary Care. Comprehensive first contact and/or continuing care for persons with any sign,

symptom, or health concern not limited by problem of origin, organ system, or diagnosis. It includes health promotion, disease prevention, health maintenance, counseling, patient education, diagnosis and treatment of acute and chronic illness. It includes collaborating with other health professionals and utilizing consultation or referral as appropriate. ()

011. – 019. (RESERVED)

020. GENERAL QUALIFICATIONS FOR LICENSURE.

Requirements for licensure and renewal are found in Title 54, Chapter 51, Idaho Code, IDAPA 22.01.05, “General Provisions of the Board of Medicine,” and on Board-approved forms. ()

021. APPLICATION FOR LICENSURE.

01. Application. Each applicant for licensure will submit a completed written application to the Board on forms prescribed by the Board, together with the nonrefundable application fee. ()

02. Licensing Examinations. Each applicant must provide certification of passing the following four (4) NPLEX exams: ()

- a. Part I Biomedical Science; ()
- b. Part II Core Clinical Science; ()
- c. Part II Clinical Elective Minor Surgery; and ()
- d. Part II Clinical Elective Pharmacology. ()

03. Waiver of Exam. The Director may waive the NPLEX Pharmacology exam requirement if a newly endorsed naturopathic physician can show that they have substantial experience in prescribing prescription medicines under the laws of another jurisdiction that has standards and qualifications for a naturopathic physician to prescribe prescription medications at least equal to those required under these rules. ()

022. AUTHORITY TO PRESCRIBE, DISPENSE, ADMINISTER, AND ORDER.

Naturopathic medical doctors are allowed to prescribe, dispense, administer, and order the following: ()

01. Laboratory and Diagnostic Procedures. Naturopathic medical doctors licensed under this chapter may perform and order physical examinations, laboratory tests, imaging, and other diagnostic tests consistent with primary care. ()

a. All examinations, laboratory, and imaging tests not consistent with primary care must be referred to an appropriately licensed health care professional for treatment and interpretation. ()

b. Any test result or lesion suspicious of malignancy must be referred to the appropriate physician licensed pursuant to Chapter 18, Title 54 Idaho Code. ()

02 Naturopathic Formulary. The formulary for naturopathic medical doctors licensed under this chapter consists of non-controlled legend medications (excluding testosterone) deemed appropriate for the primary health care of patients within the scope of practice and training of each naturopathic medical doctor. Prescribing pursuant to the Naturopathic Formulary shall be according to the standard of health care provided by other qualified naturopathic medical doctors in the same community or similar communities, taking into account their training, experience and the degree of expertise to which they hold themselves out to the public. ()

03. Formulary Exclusions. The naturopathic formulary does not include: ()

a. Scheduled, controlled drugs, except for testosterone used in physiologic doses with regular lab assessment for hormone replacement therapy, gender dysphoria, or hypogonadism; ()

- b. General anesthetics; ()
- c. Blood derivatives except for platelet rich plasma; or ()
- d. Systemic antineoplastic agents, except for the following antineoplastic agents used orally or topically for non-cancer purposes: ()
 - i. Fluorouracil (5FU); ()
 - ii. Anastrozole; and ()
 - iii. Letrozole. ()

023. – 031. (RESERVED)

032. GROUNDS FOR DISCIPLINE OR DENIAL OF A LICENSE.

In addition to statutory grounds for discipline set forth in Section 54-5109, Idaho Code, every person licensed as a naturopathic medical doctor is subject to discipline by the Board under the following grounds: ()

01. Ability to Practice. Demonstrating a manifest incapacity to carry out the functions of the licensee’s ability to practice naturopathic medicine or deemed unfit by the Board to practice naturopathic medicine; ()

02. Controlled Substance or Alcohol Abuse. Using any controlled substance or alcohol in a manner which has or may have a direct and adverse bearing on the licensee’s ability to practice naturopathic medicine with reasonable skill and safety; ()

03. Education or Experience. Misrepresenting educational or experience attainments; ()

04. Medical Records. Failing to maintain adequate naturopathic medical records. Adequate naturopathic medical records mean legible records that contain subjective information, an evaluation or report of objective findings, assessment or diagnosis, and the plan of care; ()

05. Untrained Practice. Practicing in an area of naturopathic medicine for which the licensee is not trained; ()

06. Sexual Misconduct. Committing any act of sexual contact, misconduct, exploitation, or intercourse with a patient or former patient or related to the licensee's practice of naturopathic medicine; ()

a. Consent of the patient shall not be a defense. ()

b. Subsection 032.06 does not apply to sexual contact between a naturopathic medical doctor and the naturopathic medical doctor’s spouse or a person in a domestic relationship who is also a patient. ()

c. A former patient includes a patient for whom the naturopathic medical doctor has provided naturopathic medical services within the last twelve (12) months. Sexual or romantic relationships with former patients beyond that period of time may also be a violation if the naturopathic medical doctor uses or exploits the trust, knowledge, emotions, or influence derived from the prior professional relationship with the patient. ()

07. Failure to Report. Failing to report to the Board any known act or omission of a licensee, applicant, or any other person, that violates any of the rules promulgated by the Board under the authority of the act; ()

08. Interfering with or Influencing Disciplinary Outcome. Interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts or by use of threats or harassment against any patient, Board or naturopathic medical board, Board staff, hearing officer, or witness in an attempt to influence the outcome of a disciplinary proceeding, investigation or other legal action; ()

09. Failure to Obey Laws and Rules. Failing to obey federal and local laws and rules governing the practice of naturopathic medicine; or ()

10. Lawfully Present. Failing to be lawfully present in the United States. ()

033. CONTINUING MEDICAL EDUCATION (CME) REQUIREMENTS.

01. Renewal. Every two (2) years, a total of forty-eight (48) hours (twenty (20) of which is pharmacology) of Board-approved CME is required as part of the naturopathic medical doctor's license renewal. ()

02. Verification of Compliance. Licensees must, at license renewal, provide a signed statement to the Board indicating compliance. The Board, in its discretion, may require such additional evidence as it deems necessary to verify compliance. ()

034. – 040. (RESERVED)

041. FEES.

Nonrefundable fees are shown in the following table:

Fee Table	
Licensure Fee	Not more than \$600
Annual License Renewal Fee	Not more than \$300
Reinstatement Fee	Not more than \$200
Inactive License Renewal Fee	Not more than \$100
Duplicate Wallet License Fee	Not more than \$20
Duplicate Wall License Fee	Not more than \$50

()

042. – 999. RESERVED

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.04 – RULES FOR ADMINISTRATION OF WASTEWATER TREATMENT FACILITY GRANTS

DOCKET NO. 58-0104-1901 (CHAPTER REPEAL)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before November 20, 2019. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: DEQ initiated this rulemaking in response to [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that its two facility planning grant rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.04, Rules for Administration of Wastewater Treatment Facility Grants, and merge necessary and relevant sections of IDAPA 58.01.04 with IDAPA 58.01.22, Rules for Administration of Planning Grants for Public Drinking Water Facilities. DEQ has initiated a separate rulemaking for the revisions to IDAPA 58.01.22 (Docket No. 58-0122-1901).

Prospective grant and loan recipients, consulting engineers, grant and loan administrators, other funding agencies, public officials representing various counties and cities, and the public at large may be interested in commenting on this proposed rule.

After consideration of public comments, DEQ intends to present the final proposal to the Idaho Board of Environmental Quality (Board) in 2020 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2021 legislative session if adopted by the Board and approved by the Legislature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: N/A

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220. On August 1, 2019, DEQ posted notice of the negotiated rulemaking on its website, and a preliminary draft rule was made available for public review. The Notice of Negotiated Rulemaking was published in the August 2019 issue of the Idaho Administrative Bulletin, [Vol. 19-8, pages 145–146](#), and a meeting was held on August 27, 2019. Key information was posted on the DEQ website and distributed to the public. No comments were received.

At the conclusion of the negotiated rulemaking process, DEQ formatted the draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule draft, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at www.deq.idaho.gov/58-0104-1901.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov or (208) 373-0439.

SUBMISSION OF WRITTEN COMMENTS: Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before December 4, 2019.

Dated this 6th day of November, 2019.

Paula J. Wilson
Phone: (208) 373-0418 / Fax: (208) 373-0481
paula.wilson@deq.idaho.gov

Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.06 – SOLID WASTE MANAGEMENT RULES

DOCKET NO. 58-0106-1901

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Sections 39-105 and 39-107, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before November 20, 2019. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: DEQ initiated this rulemaking in response to [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that certain rules are outdated, unnecessary, or redundant. Various sections throughout IDAPA 58.01.06, Solid Waste Management Rules, have been identified for deletion, simplification, or consolidation with other sections.

Public and private solid waste facility owners and operators, environmental professionals and consultants, special interest groups including industry associations and conservation and environmental groups, public officials representing various counties and cities, and the public at large may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Idaho Board of Environmental Quality (Board) in 2020 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2021 legislative session if adopted by the Board and approved by the Legislature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: N/A

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220. On August 1, 2019, DEQ posted notice of the negotiated rulemaking on its website, and a preliminary draft rule was made available for public review. The Notice of Negotiated Rulemaking was published in the August 2019 issue of the Idaho Administrative Bulletin, [Vol. 19-8, pages 154–155](#), and a meeting was held on August 29, 2019. Key information was posted on the DEQ website and distributed to the public. Members of the public participated in the negotiated rulemaking process by attending the meeting. No comments were received.

At the conclusion of the negotiated rulemaking process, DEQ formatted the draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule draft, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at www.deq.idaho.gov/58-0106-1901.

IDAHO CODE SECTION 39-107D STATEMENT: IDAPA 58.01.06, Solid Waste Management Rules, regulate activities that are not specifically regulated by the federal government and are broader in scope than federal regulations. The federal government does provide criteria for municipal solid waste landfills; however, the federal regulations do not regulate non-municipal solid waste landfill in Idaho. These rules address non-municipal solid wastes landfills. This rulemaking is administrative in nature and does not set a standard based on science.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Matt Beater at matthew.beater@deq.idaho.gov or (208) 373-0121.

SUBMISSION OF WRITTEN COMMENTS: Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before December 4, 2019.

Dated this 6th day of November, 2019.

Paula J. Wilson
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706
Phone: (208) 373-0418
Fax: (208) 373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0106-1901
(Only Those Sections With Amendments Are Shown.)

001. TITLE AND SCOPE.

- 01. Title.** These rules are titled IDAPA 58.01.06, "Solid Waste Management Rules." (4-2-03)
- 02. Scope.** These rules establish requirements applicable to all solid waste and solid waste management facilities in Idaho, except as specifically provided in Subsections 001.03 and 001.04. (4-2-03)
- 03. Wastes Not Regulated Under These Rules.** (4-2-03)
- a.** These rules do not apply to the following solid wastes: (4-2-03)
- i. Liquid wastes when the discharge or potential discharge of the liquid waste is regulated under a federal, state or local water pollution discharge or wastewater land application permit, including management of any solids if management of the solids are addressed in a permit term or condition; (4-2-03)
- ii. Hazardous wastes regulated by the Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code, and the rules adopted thereunder; (4-2-03)
- iii. Polychlorinated biphenyl (PCB) waste regulated under the Toxic Substance Control Act, 15 U.S.C. 2601, et seq., ~~with the exception that the PCB Waste Disposal Act, Chapter 62, Title 39, Idaho Code,~~ and these rules ~~shall~~ apply to PCB waste authorized by federal law to be disposed of at a nonhazardous waste landfill that is permitted, licensed or registered under Idaho Law; ~~(4-2-03)~~ ()
- iv. Slash or slashing areas resulting from the harvesting of timber and the disposal of which is managed pursuant to Chapter 1, Title 38, Idaho Code or log landings or sorting sites; (4-2-03)
- v. Wastes used, managed, stored and disposed in accordance with The Wood and Mill Yard Debris Technical Guidance Manual, as amended, published by the Department and developed pursuant to Sections 39-171 through 39-174, Idaho Code; (4-2-03)
- vi. Clean soils and clean dredge spoils as regulated under Section 404 of the federal Clean Water Act provided that they are not hazardous wastes regulated by the Hazardous Waste Management Act, Chapter 44, Title

39, Idaho Code and the rules adopted thereunder; (4-2-03)

vii. Septage taken to a sewage treatment plant permitted by either the U.S. Environmental Protection Agency or the Department pursuant to IDAPA 58.01.15, "Rules Governing the Cleaning of Septic Tanks"; (4-2-03)

viii. All radioactive waste and radioactive materials regulated pursuant to Section 39-4405(9), Idaho Code and rules adopted thereunder and radioactive waste and materials regulated under the authority of the Atomic Energy Act of 1954, as amended.; (4-2-03)

ix. Petroleum Contaminated Soils (PCS) from a leaking petroleum storage tank system managed as a one (1) time remediation pursuant to IDAPA 58.01.02, "Water Quality Standards"; or (4-2-03)

x. Asbestos as regulated by the Toxic Substances Control Act, as amended, 15 U.S.C. Sections 2601, et seq., or asbestos as regulated by the Clean Air Act, as amended, 42 U.S.C. Section 7412. (4-2-03)

xi. Nonhazardous wastes disposed in a permitted hazardous waste treatment, storage and disposal unit regulated by the Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code, and rules adopted thereunder; (4-2-03)

xii. Waste otherwise regulated under Department authorities. (4-2-03)

b. These rules do not apply to the following solid waste unless these wastes are mixed with more than incidental quantities of regulated waste; (4-2-03)

i. Inert wastes; (4-2-03)

ii. Manures and crop (plant) residues ultimately returned to the soils at agronomic rates; (4-2-03)

iii. Any agricultural solid waste which is managed and regulated pursuant to rules adopted by the Idaho Department of Agriculture. The Department reserves the right to use existing authorities to regulate agricultural waste that impacts human health or the environment; (4-2-03)

iv. Overburden, waste dumps, low-grade stockpiles, tailings and other materials uniquely associated with mineral extraction, beneficiation or processing operations; (4-2-03)

v. Slag from the production of elemental phosphorus; (4-2-03)

vi. Phospho-gypsum from the production of phosphate fertilizers, which includes the production of phosphoric acid; and (4-2-03)

vii. Wood waste used for ornamental, animal bedding, mulch and plant bedding, or road building purposes. (4-2-03)

04. Solid Waste Management Facilities Not Regulated Under These Rules. These Rules do not apply to the following solid waste management facilities: (4-2-03)

a. Solid waste management facilities accepting only solid waste excluded by Subsection 001.03; (4-2-03)

b. Recycling centers; or (4-2-03)

c. Backyard composting sites. (4-2-03)

~~**d.** Facilities which cease accepting solid waste prior to April 26, 2002 shall be required to only comply with applicable cover, seeding, grading and closure requirements of the former Solid Waste Management Rules and Standards, as follows: (4-2-03)~~

~~i. Grading. The entire site, including the landfill surfaces, shall be graded and provided with drainage facilities to minimize runoff onto and into the sanitary landfill to prevent erosion or washing and to prevent the collection of standing water. The grading of the final surface of the fill area must provide a slope of not less than one percent (1%), but not exceeding fifteen percent (15%), except as approved by the Department or as required in Section 39-7415(3), Idaho Code. (4-2-03)~~

~~ii. Seeding. Seeding to promote stabilization of the final soil cover shall be done as soon as weather permits seed bed preparation and planting operations and when seasonal conditions are suitable for the type of vegetation to be used. Re-seeding is mandatory until adequate vegetative cover is established to prevent erosion. (4-2-03)~~

~~iii. Site Closure. An inspection of the entire site of the completed sanitary landfill, or other solid waste management site that is to be vacated, shall be made by a representative of the District before earth moving equipment or other equipment vital to disposal of solid waste is removed from the site or used on other projects. Any necessary corrective work shall be performed before the operation is accepted as completed. (4-2-03)~~

~~(1) An official notice of closure of the site shall be sent to the District at the time the site is closed. (4-2-03)~~

~~(2) Arrangements shall be made for the repair of all cracked, eroded, and uneven areas in the final cover during the year following completion of fill operations. (4-2-03)~~

002. WRITTEN INTERPRETATIONS. (RESERVED)

~~The Department of Environmental Quality may have written statements that pertain to the interpretation of the rules in this chapter. Any such written statements are available for review at the Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255. (4-2-03)~~

(BREAK IN CONTINUITY OF SECTIONS)

004. APPLICABILITY.

These rules apply to all solid waste unless excluded by Subsection 001.03 and to all ~~existing, new or modified~~ solid waste management sites in Idaho ~~identified in Subsection 004.01 and 004.02~~, unless excluded by Subsection 001.04. Compliance with these rules ~~shall~~ **does** not relieve owners and operators from the obligation to comply with other applicable state or federal laws, including but not limited to the IDAPA 58.01.02, "Water Quality Standards," IDAPA 58.01.11, "Ground Water Quality Rule," and IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho." (4-2-03)()

01. Solid Waste Facility Other Than Municipal Solid Waste Landfills (MSWLF) Applicability. Sections 000 through 060 and Section 999 apply to all solid waste facilities other than MSWLF, as specified therein. (4-2-03)

02. Municipal Solid Waste Landfill Applicability. Sections 000 through 007, and Sections 994 through 999 apply to all MSWLFs, as specified therein. (4-2-03)

005. DEFINITIONS.

01. Active Portion. That part of a ~~new or existing facility or~~ unit where waste had been, or may be, disposed of, treated, or otherwise managed, and that has not been closed in accordance with applicable rules. (4-2-03)()

02. Backyard Composting. Composting operations used only by the owner or person in control of a residential dwelling unit to process garbage and yard waste generated at that dwelling unit. (4-2-03)

03. Beneficial Use. Various uses of ground water in Idaho including, but not limited to, domestic water supplies, ~~industrial water supplies~~, industrial water supplies and agricultural water supplies. A beneficial use is defined as actual current and projected future uses of ground water. (4-2-03)()

- 04. Commercial Solid Waste Facility.** A MSWLF owned and operated as an enterprise conducted with the intent of making a profit by any individual, association, firm, or partnership for the disposal of solid waste, but excluding a MSWLF owned or operated by a political subdivision, state or federal agency or, municipality or a MSWLF owned or operated by any individual, association, firm, or partnership exclusively for the disposal of solid waste generated by such individual, association, firm, or partnership. (4-2-03)
- 05. Composting Facility.** See definition of Processing Facility. (4-2-03)
- 06. ~~Conditionally Exempt~~ Very Small Quantity Generator (~~CEV~~SQG) Hazardous Waste.** As defined in 40 CFR Part ~~261.5~~ 260.10. (4-2-03)()
- 07. ~~Conditionally Exempt~~ Very Small Quantity Generator (~~CEV~~SQG) Management Facility.** A facility or portion thereof where household hazardous waste or ~~CEV~~SQG wastes are transferred from a vehicle or container and subsequently transported to another facility. A ~~CEV~~SQG management facility does not include temporary drop off locations or other facilities where individuals or businesses are authorized to store waste for ultimate collection and disposal. (4-2-03)()
- 08. Contamination.** The introduction of a substance into the surface or ground water causing: (4-2-03)
- a.** At or beyond the point of compliance, the concentration of that substance in ground water to result in significant degradation, as determined pursuant to Subsection 400.02.b of ~~IDAPA 58.01.11, the Idaho~~ "Ground Water Quality Rule," or in an exceedance of the maximum contamination level (MCL) specified in the ~~Idaho~~ Ground Water Quality Rule; (4-2-03)()
- b.** The concentration of that substance in surface water exceeds a numerical criteria or fails to protect designated beneficial uses specified in the ~~Idaho~~ "Water Quality Standards," IDAPA 58.01.02; (4-2-03)()
- c.** A statistically significant increase in the concentration of that substance in the ground water at or beyond the point of compliance, or in surface water, where the existing concentration of that substance exceeds the contamination level specified in Subsections 005.08.a. or 005.08.b. of this rule; or (4-2-03)
- d.** A statistically significant increase in the concentration of that substance in ground water at the point of compliance, or in surface water, above background of a substance which; (4-2-03)
- i.** Is not specified in Subsections 005.08.a. or 005.08.b. of this rule; and (4-2-03)
- ii.** Is a result of the disposal of solid waste; and (4-2-03)
- iii.** Has been determined by the department to present a substantial risk to human health or the environment in the concentrations found in the ground water at the point of compliance, or in surface water. (4-2-03)
- 09. Degradation.** The lowering of ground water quality as measured in a statistically significant and reproducible manner. (4-2-03)
- 10. Department.** The Idaho Department of Environmental Quality. (4-2-03)
- 11. Director.** The Director of the Idaho Department of Environmental Quality. (4-2-03)
- 12. Disposal.** Discharge, deposit, injection, dumping, spilling, leaking, leaching, migration or placing of any solid waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground water. (4-2-03)
- ~~13. Existing Facility.~~** ~~A facility operating and receiving solid waste on or before April 26, 2002.~~ (4-2-03)
- 143. Facility.** Any area used for any solid waste management activity, including, but not limited to,

~~storage, transfer, processing, separation, incineration, treatment, salvaging, or disposal of solid waste.~~-(4-2-03)()

- ~~a. Storage;~~ (4-2-03)
- ~~b. Transfer;~~ (4-2-03)
- ~~c. Processing;~~ (4-2-03)
- ~~d. Separation;~~ (4-2-03)
- ~~e. Incineration;~~ (4-2-03)
- ~~f. Treatment;~~ (4-2-03)
- ~~g. Salvaging; or~~ (4-2-03)
- ~~h. Disposal of solid waste.~~ (4-2-03)

154. Garbage. Any waste consisting of putrescible animal and vegetable materials resulting from the handling, preparation, cooking and consumption of food, including wastes materials from households, markets, storage facilities, handling and sale of produce and other food products. (4-2-03)

165. Ground Water. Any water of the state that occurs beneath the surface of the earth in a saturated geological formation of rock or soil. (4-2-03)

176. Household Waste. Any solid waste, including kitchen wastes, trash and sanitary waste in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas. (4-2-03)

187. Incinerator. Any source consisting of a furnace and all appurtenances thereto designed for the destruction of solid waste by burning. "Open Burning" is not considered incineration. (4-2-03)

198. Inert Waste. Noncombustible, nonhazardous, and non-putrescible solid wastes that are likely to retain their physical and chemical structure and have a de minimis potential to generate leachate under expected conditions of disposal, which includes resistance to biological attack. "Inert waste" includes, but is not limited to, rock, concrete, cured asphaltic concrete, masonry block, brick, gravel, dirt, inert coal combustion by-products, inert precipitated calcium carbonate and inert component mixture of wood or mill yard debris. (4-2-03)

2019. Landfill. An area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well or waste pile, as those terms are defined under 40 CFR 257.2. (4-2-03)

210. Leachate. A liquid that has passed through or emerged from waste and contains soluble, suspended, or miscible materials removed from such waste. (4-2-03)

221. Lift. A vertical rise of compacted solid waste that is complete when it is no longer practical to add additional height without the addition of a cover layer to provide structural stability. (4-2-03)

232. Modification. Any change in the physical characteristics, waste types managed, method of operation, or lateral expansion beyond the boundaries of a site. The following ~~shall is~~ not ~~be~~ considered a modification: (4-2-03)()

- a. Repair and replacement of existing equipment; (4-2-03)
- b. Increase in production rate that does not exceed the Tier level criteria or approved facility capacity; (4-2-03)

c. An increase in hours of operation if more restrictive hours of operation are not specified in an approved operating plan; and (4-2-03)

d. Acquisition of property that is not to be used for the processing or disposal of solid waste. (4-2-03)

~~243.~~ **Municipal Solid Waste Landfill Unit (MSWLF).** As regulated under Chapter 74, Title 39, Idaho Code, a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 CFR 257.2. A MSWLF unit also may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous sludge, ~~conditionally exempt small quantity generator~~ VSQG waste and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. (4-2-03)()

~~254.~~ **Non-Municipal Solid Waste (NMSW).** A solid waste that is: (4-2-03)

a. Not mixed with household waste; or (4-2-03)

b. Not excluded from these rules by Subsection 001.03. (4-2-03)

~~265.~~ **Non-Municipal Solid Waste Landfill (NMSWLF).** A landfill that accepts only non-municipal solid waste. (4-2-03)

~~276.~~ **Open Burning.** The combustion of solid waste without: (4-2-03)

a. Control of combustion air to maintain adequate temperature for efficient combustion; (4-2-03)

b. Containment of the combustion reaction in an enclosed device so as to provide sufficient residence time and mixing for complete combustion; and (4-2-03)

c. Control of the emission of the combustion products. (4-2-03)

~~287.~~ **Operator.** The person(s) responsible for the overall operation of all or part of a site or facility. (4-2-03)

~~298.~~ **Owner.** The person(s) who owns land or a portion of the land on which a site or facility is located. (4-2-03)

~~3029.~~ **Person.** Any individual, association, partnership, firm, joint stock company, trust, political subdivision, public or private corporation, state or federal government department, agency, or instrumentality, municipality, industry, or any other legal entity which is recognized by law as the subject of rights and duties. (4-2-03)

~~340.~~ **Point of Compliance.** A vertical surface located no more than one hundred fifty (150) yards hydraulically down gradient from the active portion of a facility or site, located at the facility boundary down gradient of the land area, or located at the point of diversion of an identified beneficial use within the site, whichever is the smallest distance from the active portion. (4-2-03)

~~321.~~ **Processing Facility.** A facility that uses biological or chemical decomposition to prepare solid waste for reuse, excluding waste handling at transfer stations or recycling centers. (4-2-03)

~~332.~~ **Projected Waste Volume.** The total actual or potential solid waste volume measured in tons per day, cubic yards per day, or an equivalent measurement, proposed to be received or processed at a solid waste facility. (4-2-03)

~~343.~~ **Pumpable Waste.** Wastes, including non-domestic septage, sludge, wastewater and non-municipal solid wastes, which are pumped from a holding area or container into a watertight tank truck or equivalent and transported for processing or disposal. (4-2-03)

~~354.~~ **Qualified Professional.** Qualified professional means a licensed professional geologist or licensed professional engineer, as appropriate, holding current professional registration in good standing and in compliance with applicable provisions of Chapter 12, Title 54, Idaho Code. (4-2-03)

~~365.~~ **Recyclables.** Used, end, or waste products with useful properties that can be reused. (4-2-03)

~~376.~~ **Recycling.** The reclamation of solid waste and its subsequent introduction into an industrial process by which the materials are transformed into a new product in such a manner that the original identity as a product is lost. (4-2-03)

~~387.~~ **Recycling Center.** A materials recovery facility that receives recyclables, then sorts, bales, loads, or physically alters the material and transports the commodities to markets. (4-2-03)

~~398.~~ **Salvage.** The reclamation of solid waste at a disposal site. (4-2-03)

~~4039.~~ **Scavenge.** The unauthorized removal of materials from a facility. (4-2-03)

~~410.~~ **Septage.** A semisolid consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from a septic tank system. (4-2-03)

~~421.~~ **Site.** Any contiguous geographic area with one (1) or more facilities owned or operated by the same person ~~for any of the following activities:~~ used for any solid waste management activity, including, but not limited to, storage, transfer, processing, separation, incineration, treatment, salvaging, or disposal of solid waste. (4-2-03)()

~~a.~~ *Storage;* (4-2-03)

~~b.~~ *Transfer;* (4-2-03)

~~c.~~ *Processing;* (4-2-03)

~~d.~~ *Separation;* (4-2-03)

~~e.~~ *Incineration;* (4-2-03)

~~f.~~ *Treatment;* (4-2-03)

~~g.~~ *Salvaging; or* (4-2-03)

~~h.~~ *Disposal of solid waste.* (4-2-03)

~~432.~~ **Site Size.** The sum in acres of all proposed or existing facilities. (4-2-03)

~~443.~~ **Solid Waste.** Any garbage or refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923). (4-2-03)

~~454.~~ **Speculative Accumulation.** Stock piles of materials or recyclables to be processed for reuse or disposal when fifty percent (50%) of the material is not reused or disposed by the end of the following calendar year after the date of first receipt by the facility, and which may create a nuisance or public health impact. (4-2-03)

~~465.~~ **Storm Water.** Accumulation of water from natural precipitation, including snow melt. (4-2-03)

~~476.~~ **Surface Water.** All surface accumulations of water, natural or artificial, public or private, or parts thereof which are wholly or partially within, which flow through or border upon the state, unless such waters are an integral part of the facility's operation for storm water control and or leachate management. (4-2-03)

~~487.~~ **Tipping Floor.** An area at a transfer station, processing facility, CEVSQ management facility or incinerator that receives and contains all waste materials. (4-2-03)()

~~498.~~ **Toxic Leachate or Gas.** Concentrations of leachate or gas that will cause contamination, as defined by these rules, or that will exceed standards in the IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho." (4-2-03)

~~5049.~~ **Transfer Station.** A facility or portion thereof where solid wastes are transferred from a vehicle or container and subsequently transported off-site to another facility. A transfer station does not include an authorized rural drop-box or other facilities where persons are authorized to store individual waste for ultimate collection and disposal, or any other facility that stores solid waste generated at the facility for collection and disposal off-site. ~~A transfer station shall include waste tire collection sites as defined in Section 39-6501, Idaho Code.~~ (4-2-03)()

~~510.~~ **Wood or Mill Yard Debris Facility.** A facility that manages exclusively, solid wood, bark, or wood fiber generated from the process of manufacturing wood products that may include ash from the burning of wood waste in amounts and in conformity with the requirements of the Wood & Mill Yard Technical Guidance Manual, components of soil, rock, or moisture. (4-2-03)

~~521.~~ **Yard Waste.** Weeds, straw, leaves, grass clippings, brush, wood, and other natural, organic, materials typically derived from general landscape maintenance activities. (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

~~008. OFFICE OFFICE HOURS MAILING ADDRESS AND STREET ADDRESS. (RESERVED)~~
~~The state office of the Department of Environmental Quality and the office of the Board of Environmental Quality are located at 1410 N. Hilton, Boise, Idaho 83706-1255, telephone number (208) 373-0502. The office hours are 8:00 a.m. to 5:00 p.m. Monday through Friday.~~ (4-2-03)

009. SOLID WASTE MANAGEMENT FACILITY CLASSIFICATION.

01. BRC Facilities. A facility is below regulatory concern (BRC) provided it is a processing facility that does not manage PCS or pumpable waste, and the cumulative volume of solid waste at the facility at any one (1) time is less than or equal to three hundred (300) cubic yards. (4-2-03)

02. Tier I Facilities. Tier I facilities shall comply with the requirements identified in Section 011. A facility shall be classified as a Tier I facility if the Department determines the facility is: (4-2-03)

a. A landfill that only accepts for disposal materials that are not likely to produce leachate including, but not limited to, glass, plastic, cardboard, wood, composition roofing material, roofing paper, or ceramics, and which has a total disposal capacity of less than or equal to two thousand (2000) cubic yards. (4-2-03)

b. A processing facility that only processes wastes including, but not limited to, untreated or unpainted wood, yard waste, sheet rock, clean paper products, animal manures, plant or crop residues, or garbage without meats or animal fats, and the cumulative volume of wastes at the facility at any one time is less than or equal to six hundred (600) cubic yards. (4-2-03)

c. A processing facility that only manages PCS not excluded under Subsection 001.03.a.ix. or pumpable wastes and the cumulative volume of material at the facility at any one (1) time is less than or equal to two hundred (200) cubic yards; or (4-2-03)

d. An emergency solid waste management facility that only accepts debris resulting from a natural disaster. (4-2-03)

03. Tier II Facility. Tier II facilities shall comply with the Tier II general siting, operational and closure requirements and any applicable Tier II facility specific requirements. Tier II facilities are not required to install ground water monitoring wells, leachate collection systems or liners. Facilities shall be classified as a Tier II facility if the Department determines the facility is not: (1) landfilling or disposing of ~~CEV~~VSQG hazardous waste; (2) landfilling or disposing of materials with a high human pathogenic potential; (3) managing solid waste in a manner or volume that will form toxic leachate or gas; or (4) managing solid waste in a manner or volume that is likely to pose a substantial risk to human health or the environment. A Tier II facility is one that meets the four (4) above criteria and is identified below: (4-2-03)()

a. A NMSW landfill which has a total disposal capacity greater than two thousand (2000) cubic yards; (4-2-03)
or

b. A processing facility or incinerator that has a cumulative volume of wastes at the facility at any one time that is greater than six hundred (600) cubic yards; or (4-2-03)

c. A processing facility that only manages PCS not excluded under Subsection 001.03.a.ix or pumpable wastes and the cumulative volume of material at the facility at any one (1) time is greater than two hundred (200) cubic yards; or (4-2-03)

d. A transfer station or ~~CEV~~VSQG waste management facility. (4-2-03)()

04. Tier III Facility. Tier III facilities shall comply with the Tier III general siting, operating and closure requirements, ground water monitoring requirements, install leachate collection systems, liners, air contaminant control systems and any applicable Tier III facility specific requirements. Facilities shall be classified as a Tier III facility if the Department determines the facility is: (1) a facility landfilling or disposing of ~~CEV~~VSQG hazardous waste; (2) a facility landfilling or disposing of materials with a high human pathogenic potential; (3) a facility managing solid waste in a manner or volume that will form toxic leachate or gas; or (4) a facility managing solid waste in a manner or volume that is likely to pose a substantial risk to human health or the environment. (4-2-03)()

05. Wood or Mill Yard Debris Facilities. *For the period of one (1) year after April 1, 2003, all Wood or Mill Yard Debris Facilities that are not exempt from these Rules as provided in Section 001.03 shall be regulated as Tier I Facilities. Thereafter, a* All Wood and Mill Yard Debris Facilities that are not exempt from these Rules as provided in Section 001.03 shall be regulated as Tier I Facilities unless, based on site-specific criteria including but not limited to site geology, site soils, groundwater characteristics, distance to surface waters, and site climatic data, the Department determines the facility is more appropriately regulated under a different tier classification. Facilities not regulated as a Tier I Facility shall be regulated as a Tier II Facility unless the Department determines the facility manages waste in a manner that will form toxic leachate or gas. (4-2-03)()

06. Site Specific Classification. An owner or operator of a facility classified as a Tier I, Tier II or Tier III facility may request to be regulated pursuant to the requirements of a lower classification. An owner or operator requesting site specific classification must submit information demonstrating to the Department that, when in compliance with the requirements of a lower classification, the facility would not cause contamination, toxic leachate or gas, or concentrations of a substance that exceed standards in the IDAPA 58.01.01 "Rules for the Control of Air Pollution in Idaho." The information included in any request under this subsection shall include: (4-2-03)

a. Characterization of waste and expected quantities of waste; (4-2-03)

b. Site characterization including; (4-2-03)

i. Site geology report; (4-2-03)

ii. Site soils report; (4-2-03)

iii. Ground water report; (4-2-03)

- iv. Site climatic data; (4-2-03)
- c. Facility Design Plan; (4-2-03)
- d. Operating Plan; and (4-2-03)
- e. Closure Plan. (4-2-03)

07. General and Site Specific Classification Process. The Department's review of a request for a site specific classification shall be conducted pursuant to the process set forth in Section 032. (4-2-03)

010. BELOW REGULATORY CONCERN FACILITIES.

01. Applicable Requirements. The owner and operator of a ~~new~~ BRC facility shall comply with the following requirements prior to accepting waste. ~~The owner and operator of an existing BRC facility shall comply with the following requirements within two (2) years from April 26, 2002. During the two-year period from April 26, 2002, existing facilities shall operate in compliance with their approved operating plan and 40 CFR 257.1 through 257.3.~~ (4-2-03)()

- a. Prohibited Activities. The following activities are prohibited: (4-2-03)
 - i. Disposal in a landfill of regulated waste from any business that provides health care, support to health care businesses, or medical diagnostic services that has not been decontaminated. "Regulated waste" and "decontaminated" for the purpose of Section 010 ~~shall~~ will have the same meaning as defined at 29 CFR 1910.1030; (4-2-03)()
 - ii. Speculative accumulation, unless otherwise approved by the Department in writing; and (4-2-03)
 - iii. Disposal of radioactive waste except in a facility regulated pursuant to Section 39-4405(9), Idaho Code, and rules adopted thereunder or a facility regulated under the authority of The Atomic Energy Act of 1954, as amended. (4-2-03)
- b. Nuisance Control. The owner and operator shall control nuisances, including but not limited to: (4-2-03)
 - i. Disease or discomfort. Operations at any facility shall not provide sustenance to rodents or insects that cause human disease or discomfort; (4-2-03)
 - ii. Vector. Vector control procedures shall prevent or control vectors that may cause health hazards or nuisances; (4-2-03)
 - iii. Odor. The facility shall be operated to control malodorous gases; and (4-2-03)
 - iv. Litter. Effective measures shall be taken to minimize the loss of debris from the facility. Debris blown from or within the facility shall be collected and properly disposed to prevent objectionable accumulations. (4-2-03)
- c. Bird Hazards to Aircraft. No facility may handle putrescible wastes in such a manner that may attract birds and increase the likelihood of bird/aircraft collisions. Facilities that are located within ten thousand (10,000) feet of any airport runway used by turbojet aircraft, or within five thousand (5,000) feet of any airport used by only piston-type aircraft shall operate the facility in such a manner that birds are not a hazard to aircraft; and (4-2-03)
- d. Open Burning and Fires. Open burning is prohibited at facilities except as authorized by ~~these rules and IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho."~~ Section 061. (4-2-03)()
 - i. ~~No open burning shall be conducted during an air pollution episode, declared in accordance with~~

~~IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho."~~

~~(4-2-03)~~

~~ii. Open burning is authorized only if it is infrequent and the materials are agricultural wastes, silviculture wastes, land clearing debris, diseased trees, or debris from emergency cleanup operations. Materials burned shall not include garbage, dead animals, asphalt, petroleum products, paints, tires or other rubber products, plastics, paper (other than that necessary to start the fire), cardboard, treated wood, construction debris, metal, pathogenic wastes, hazardous wastes, or any other substance (other than natural vegetation) that when burned releases toxic emissions, dense smoke or strong odors.~~

~~(4-2-03)~~

~~iii. Open burning shall be conducted pursuant to conditions set forth by the Department or local fire authority. The owner and operator of the facility shall contact the Department and the local fire authority prior to conducting open burning to report its nature and location.~~

~~(4-2-03)~~

02. Application Content, Review and Approval Requirements. The owner and operator of a BRC facility are not required to submit an application. (4-2-03)

03. Documentation Requirements. The owner and operator shall maintain on site documentation, such as a daily log of the quantity and type of waste received or managed, that verifies the facility's BRC status. (4-2-03)

011. APPLICABLE REQUIREMENTS FOR TIER I FACILITIES.

01. Applicable Requirements. The owner and operator of a ~~new~~ Tier I facility shall comply with the following requirements prior to accepting waste. ~~The owner and operator of an existing Tier I facility shall comply with the following requirements within two (2) years from April 26, 2002. During the two-year period from April 26, 2002, existing facilities shall operate in compliance with their approved operating plan, if any, and 40 CFR 257.1 through 257.3.~~

~~(4-2-03)()~~

a. Prohibited Activities. The following activities are prohibited: (4-2-03)

i. Disposal in a landfill of regulated waste from any business that provides health care, support to health care businesses, or medical diagnostic services that has not been decontaminated. "Regulated waste" and "decontaminated" for the purpose of Section 011 ~~shall~~ will have the same meaning as defined at 29 CFR 1910.1030; (4-2-03)()

ii. Speculative accumulation, unless otherwise approved by the Department in writing; and (4-2-03)

iii. Disposal of radioactive waste except in a facility regulated pursuant to Section 39-4405(9), Idaho Code, and rules adopted thereunder or a facility regulated under the authority of The Atomic Energy Act of 1954, as amended. (4-2-03)

b. Signs. Facilities open to the general public shall clearly post visible and legible signs at each entrance to the facility. The signs shall specify at a minimum the name of the facility, the hours of operation, the waste accepted at the facility and an emergency phone number. (4-2-03)

c. Nuisance Control. The owner and operator shall control nuisances, including but not limited to: (4-2-03)

i. Disease or Discomfort. Operations at any facility shall not provide sustenance to rodents or insects that cause human disease or discomfort; (4-2-03)

ii. Vector. Vector control procedures shall prevent or control vectors that may cause health hazards or nuisances; (4-2-03)

iii. Odor. The facility shall be operated to control malodorous gases; and (4-2-03)

iv. Litter. Effective measures shall be taken to minimize the loss of debris from the facility. Debris

blown from or within the facility shall be collected and properly disposed to prevent objectionable accumulations. (4-2-03)

d. Facility Access. Unauthorized vehicles and persons shall be prohibited access to the facility. A facility open to the public shall accept waste only when an attendant is on duty. The facility shall be fenced or otherwise blocked to access when an attendant is not on duty. The owner and operator shall maintain the fencing or other access controls for a period of ten (10) years after closure, or another timeframe approved in writing by the Department. (4-2-03)

e. Bird Hazards to Aircraft. No facility may handle putrescible wastes in such a manner that may attract birds and increase the likelihood of bird/aircraft collisions. Facilities that are located within ten thousand (10,000) feet of any airport runway used by turbojet aircraft, or within five thousand (5,000) feet of any airport used by only piston-type aircraft shall operate the facility in such a manner that birds are not a hazard to aircraft. (4-2-03)

f. Open Burning and Fires. Open burning is prohibited at facilities except as authorized by ~~these rules and IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho."~~ Section 061. (4-2-03)()

i. No open burning shall be conducted during an air pollution episode, declared in accordance with IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho." (4-2-03)

ii. Open burning is authorized only if it is infrequent and the materials are agricultural wastes, silviculture wastes, land clearing debris, diseased trees, or debris from emergency cleanup operations. Materials burned shall not include garbage, dead animals, asphalt, petroleum products, paints, tires or other rubber products, plastics, paper (other than that necessary to start the fire), cardboard, treated wood, construction debris, metal, pathogenic wastes, hazardous wastes, or any other substance (other than natural vegetation) that when burned releases toxic emissions, dense smoke or strong odors. (4-2-03)

iii. Open burning shall be conducted pursuant to conditions set forth by the Department or local fire authority. The owner and operator of the facility shall contact the Department and the local fire authority prior to conducting open burning to report its nature and location. (4-2-03)

g. Storm Water Run-On/Run-Off Controls. Implement sufficient storm water management provisions, which may incorporate a NPDES storm water pollution prevention plan, to prevent contamination of surface or ground water and prevent the spread and impact of contamination beyond the boundary of the facility. (4-2-03)

h. Variance Request. An owner and operator may submit a written variance request for a variance from the requirements listed in Section 011. The owner and operator must demonstrate to the Department that the variance is at least as protective of human health and the environment as the requirements listed in Section 011. (4-2-03)

02. Application Content, Review and Approval Requirements. The owner and operator of a Tier I facility shall submit notification to the Department prior to operating. The notice shall include; the owners name, operators name, physical location of site, mailing address, facility phone number and type of solid waste management facility. (4-2-03)

03. Documentation Requirements. The owner and operator shall maintain on site documentation, such as a daily log of the quantity and type of waste received, that verifies the facility's Tier I status. (4-2-03)

012. APPLICABLE REQUIREMENTS FOR TIER II FACILITIES.

The owner and operator of a ~~new~~ Tier II facility shall establish compliance with the requirements of Section 012 by obtaining Department approval of the applications required in Subsection 012.02 before beginning construction and Subsection 012.04 prior to accepting waste. ~~The owner and operator of an existing Tier II facility shall establish compliance with the requirements of Section 012 by obtaining Department approval of the applications required in Subsection 012.04 within two (2) years from April 26, 2002, and Subsection 012.02 within five (5) years from April 26, 2002. During the two (2) year period from April 26, 2002, existing facilities shall operate in compliance with their approved operating plan, if any, and 40 CFR 257.1 through 257.3. In lieu of submitting an application, the owner and operator of existing facilities may demonstrate to the Department, compliance with Section 012 by~~

~~submitting copies of existing permits and other approvals that establish compliance with the applicable siting, design, operating, closure, and post closure requirements of Section 012 and Subsection 032.01. The owner and operator of a Tier II facility shall meet the requirements of Subsection 012.05 prior to facility closure; except that owners and operators closing Tier II facilities within eighteen (18) months from April 26, 2002 shall comply with applicable cover, seeding, grading and closure requirements of the former Solid Waste Management Rules and Standards, as enumerated in Subsection 001.04.d. of these rules.~~ (4-2-03)()

01. General Siting Requirements. The owner and operator of a Tier II facility shall comply with the following siting requirements: (4-2-03)()

a. Flood Plain Restriction. A facility shall not be located within a one hundred (100) year flood plain if the facility will restrict the flow of the one hundred (100) year flood, reduce the temporary water storage capacity of the flood plain, or result in a washout of solid waste so as to pose a hazard to human health and the environment. (4-2-03)

b. Endangered or Threatened Species Restriction. The facility shall not cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife or result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in 50 CFR Part 17. (4-2-03)

c. Surface Water Restriction. The active portion of a facility shall be located such that the facility shall not cause contamination of surface waters, unless such surface waters are an integral part of the non-municipal solid waste management facility's operation for storm water and/or leachate management. (4-2-03)

d. Park, Scenic or Natural Use Restriction. The active portion of a facility shall not be located closer than one thousand (1,000) feet from the boundary of any state or national park, or land reserved or withdrawn for scenic or natural use including, but not limited to, wild and scenic areas, national monuments, wilderness areas, historic sites, recreation areas, preserves and scenic trails. (4-2-03)

e. Variance from Siting Requirement. An owner or operator of ~~an existing or planned~~ facility that cannot meet the siting requirements of Section 012 may apply for a variance from the Department. The Department shall approve a written request for a variance provided the owner and operator demonstrate to the Department that the variance is at least as protective of public health and the environment as the siting requirements in Section 012. (4-2-03)()

02. Siting Application. Documentation shall be submitted to the Department demonstrating compliance with the siting requirements and restrictions specified in Subsection 012.01 within the time frames specified in Section 012. If the documentation has been certified by a qualified professional, the Director shall approve the siting application unless the Director finds the evidence supports a contrary opinion. A map indicating the following shall also be submitted to the Department as part of a Siting Application: (4-2-03)

- a.** Highways, roads, and adjacent communities; (4-2-03)
- b.** Property boundaries; (4-2-03)
- c.** Total acreage of the site; (4-2-03)
- d.** Off-site and on-site access roads and service roads; (4-2-03)
- e.** Type(s) of land use adjacent to the facility and a description of all facilities on the site; (4-2-03)
- f.** All water courses, ponds, lakes, reservoirs, canals, irrigation systems, and existing water supplies, within one-quarter (1/4) mile of the proposed facility property lines; (4-2-03)
- g.** High tension power line rights-of-way, fuel transmission pipeline rights-of-way, and proposed and existing utilities; (4-2-03)
- h.** Proposed or existing fencing; (4-2-03)

- i. Proposed and existing structures at the facility and within five hundred (500) feet of the facility boundary. This shall include location of employee buildings, and scales (if provided); and (4-2-03)
- j. Direction of prevailing winds. (4-2-03)
- 03. General Operating Requirements.** The owner and operator of a Tier II facility shall comply with the following operating requirements: (4-2-03)
 - a. Prohibited Activities. The following activities are prohibited: (4-2-03)
 - i. Disposal in a landfill of regulated waste from any business that provides health care, support to health care businesses, or medical diagnostic services that has not been decontaminated. “Regulated waste” and “decontaminated” for the purpose of Section 012 ~~has~~ have the same meaning as defined at 29 CFR 1910.1030; ~~(4-2-03)~~ ()
 - ii. Speculative accumulation, unless otherwise approved in an operating plan; and (4-2-03)
 - iii. Disposal of radioactive waste except in a facility regulated pursuant to Section 39-4405(9), Idaho Code, and rules adopted thereunder or a facility regulated under the authority of The Atomic Energy Act of 1954, as amended. (4-2-03)
 - b. Signs. Facilities open to the general public shall clearly post visible and legible signs at each entrance to the facility specifying, at a minimum, the name of the facility, the hours of operation, the waste accepted at the facility and an emergency phone number. (4-2-03)
 - c. Waste Types. Only the solid waste types listed in the approved operating plan may be accepted for disposal or processing. (4-2-03)
 - d. Waste Monitoring and Measurement. Provisions shall be made for monitoring or measuring all solid waste delivered to a facility. The waste monitoring program shall include: (4-2-03)
 - i. A daily written log listing the types and quantities of wastes received; (4-2-03)
 - ii. A plan for monitoring and handling receipt of unauthorized wastes; (4-2-03)
 - iii. Routine characterization of the wastes received; and (4-2-03)
 - iv. Other measures included in an approved Operating Plan. (4-2-03)
 - e. Communication. Communication devices shall be available or reasonably accessible at the site. (4-2-03)
 - f. Fire Prevention and Control. Adequate provisions shall be made for controlling or managing fires at the site. (4-2-03)
 - g. Facility Access. Unauthorized vehicles and persons shall be prohibited access to the facility. A facility open to the public shall accept waste only when an attendant is on duty. The facility shall be fenced or otherwise blocked to access when an attendant is not on duty. (4-2-03)
 - h. Scavenging and Salvaging. Scavenging by the public at a facility is prohibited; however, salvaging may be conducted in accordance with a written operations plan and only by the owner, operator or an authorized agent. (4-2-03)
 - i. Nuisance Control. The owner and operator shall control nuisances, including but not limited to: (4-2-03)

- i. Disease or Discomfort. Operations at any facility shall not provide sustenance to rodents or insects that cause human disease or discomfort; (4-2-03)
- ii. Vector. Vector control procedures shall prevent or control vectors that may cause health hazards or nuisances; (4-2-03)
- iii. Odor. The facility shall be operated to control malodorous gases; and (4-2-03)
- iv. Litter. Effective measures shall be taken to minimize the loss of debris from the facility. Debris blown from or within the facility shall be collected and properly disposed to prevent objectionable accumulations. (4-2-03)
- j. Bird Hazards to Aircraft. No facility may handle putrescible wastes in such a manner that may attract birds and increase the likelihood of bird/aircraft collisions. Facilities that are located within ten thousand (10,000) feet of any airport runway used by turbojet aircraft, or within five thousand (5,000) feet of any airport used by only piston-type aircraft shall operate the facility in such a manner that birds are not a hazard to aircraft. (4-2-03)
- k. Open Burning and Fires. Open burning is prohibited at facilities except as authorized by *these rules and IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho." Section 061.* (4-2-03)()
- i. No open burning shall be conducted during an air pollution episode, declared in accordance with IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho." (4-2-03)*
- ii. Open burning is authorized only if it is infrequent and the materials are agricultural wastes, silviculture wastes, land clearing debris, diseased trees, or debris from emergency cleanup operations. Materials burned shall not include garbage, dead animals, asphalt, petroleum products, paints, tires or other rubber products, plastics, paper (other than that necessary to start the fire), cardboard, treated wood, construction debris, metal, pathogenic wastes, hazardous wastes, or any other substance (other than natural vegetation) that when burned releases toxic emissions, dense smoke or strong odors. (4-2-03)*
- iii. Open burning shall be conducted pursuant to conditions set forth by the Department or local fire authority. The owner and operator of the facility shall contact the Department and the local fire authority prior to conducting open burning to report its nature and location. (4-2-03)*
- l. Storm Water Run-On/Run-Off Controls. The operating plan shall include sufficient storm water management provisions, which may incorporate a NPDES storm water pollution prevention plan, to prevent contamination of surface and ground water and prevent the spread and impact of contamination beyond the boundary of the facility. (4-2-03)
- m. Variance Request. An owner and operator of an ~~an existing or planned~~ facility may submit to the Department a written variance request for a variance from the operating requirements listed in Section 012. The Department shall approve a written request for a variance provided the owner and operator demonstrate to the Department that the variance is at least as protective of human health and the environment as the requirements listed in Section 012. (4-2-03)()
- 04. Operating Plan.** The owner and operator of a Tier II facility shall submit to the Department an Operating Plan containing that information required by Subsection 012.03, within the time frames stated in Section 012. An Operating Plan shall include a description of the wastes to be accepted, the methods for maintaining compliance with each of the applicable general operating requirements of Subsection 012.03, and complies with any applicable facility specific requirements found in Subsections 012.09 through 012.11. (4-2-03)
- 05. Closure Requirement.** The owner and operator of a Tier II facility shall comply with the following closure and post-closure care requirements: (4-2-03)
- a. Public Notice. For a facility open to the public the owner and operator shall provide public notice of the facility's closure by publishing a notice in the local newspaper and posting signs at the facility's entrance. This

notice shall be published and the signs posted; (4-2-03)

i. At least thirty (30) days and no more than ninety (90) days prior to the date of last receipt of waste for a facility that has reached disposal capacity; or (4-2-03)

ii. If the facility has remaining capacity and there is a reasonable likelihood that the facility will receive additional waste, a notice shall be published and signs posted at least thirty (30) days and no more than ninety (90) days prior to closure. (4-2-03)

b. Facility Closure. Unless the Department establishes an alternate closure time period, the owner and operator shall close the facility within six (6) months of the Department's approval of the Closure Plan. The facility shall be closed in accordance with the approved Closure Plan. (4-2-03)

c. Clean Site/Access Control. The owner and operator shall close the facility by managing or removing all solid waste to prevent impact to human health or the environment and installing a gate or other device to prevent public access after the last receipt of waste; and (4-2-03)

d. Drainage and Erosion Control. The owner and operator shall install appropriate measures to control erosion and install appropriate measures to control the run-on and runoff from a twenty-five (25) year, twenty-four (24) hour storm event and to provide for the diversion of other surface waters from the closed facility. (4-2-03)

e. Closure Plan Certification. Within thirty (30) days of closure, the owner and operator shall notify the Department in writing that the facility was closed in accordance with the approved Closure Plan. If closure of the facility is different from the approved Closure Plan, the owner and operator shall submit for Department review and approval documents, such as "as-built" plans, showing the final conditions of the facility. (4-2-03)

06. Closure Plan Application. Except as specified in Subsection 012.10, the owner and operator of a Tier II facility shall submit to the Department a Closure Plan Application containing the following information no later than ninety (90) days before the date on which the facility receives the known final receipt of wastes or, if the facility has remaining capacity and there is a reasonable likelihood that the facility will receive additional wastes, no later than one (1) year after the most recent receipt of wastes: (4-2-03)

a. A complete and accurate legal description of the facility; (4-2-03)

b. A map of the facility, showing pertinent facility features, including: (4-2-03)

i. Facility boundaries, drainage patterns, location of fill areas, and location of access control measures; (4-2-03)

ii. All water courses, ponds, lakes, reservoirs, canals, irrigation systems, and existing water supplies, within one-quarter (1/4) mile of the facility boundary; (4-2-03)

iii. Location of disposal trenches and description of waste disposed; and (4-2-03)

iv. Proposed final contours of the closed facility, drawn to a reasonable scale with five (5) foot intervals for the operational area, and ten (10) foot intervals for the remainder of the facility; (4-2-03)

c. Estimated date of last receipt of waste; (4-2-03)

d. A description of how public access to the closed facility will be controlled; (4-2-03)

e. Estimated total cubic yards, or tons, of waste in place; (4-2-03)

f. Total acreage of the facility and acres containing waste; (4-2-03)

g. Closure equipment and procedures to be used; (4-2-03)

- h.** Texture, depth and permeability of final cover material; (4-2-03)
- i.** Design and construction plan for any necessary final cover; (4-2-03)
- j.** Placement, design, and management of run-on and run-off storm water controls; (4-2-03)
- k.** Types of vegetation and planting procedures to be used for establishing vegetative cover; (4-2-03)
- l.** Other closure information the Department determines is necessary to protect human health and the environment. (4-2-03)

07. Documentation Requirements. The owner and operator of a Tier II facility shall maintain on site a copy of each Department-approved Application and Plan required by Section 012. (4-2-03)

08. Modification Application. The owner and operator shall submit to the Department for review and approval a Modification Application describing any proposed modification. The owner and operator of a Tier II facility shall not implement the modification prior to Department approval. If a proposed modification alters the classification of a facility, the owner and operator shall comply with the application content, review and approval requirements for the new classification. (4-2-03)

09. Tier II Processing Facilities. In addition to the requirements in Subsections 012.01 through 012.08, the owner and operator of a Tier II processing facility shall also comply with the following requirements: (4-2-03)

- a. Siting Requirements:** (4-2-03)
 - i. Ground Water.** The active portion of a facility shall be located, designed and constructed such that the facility shall not cause contamination to a drinking water source or cause contamination of the ground water. (4-2-03)
 - ii. Geologic Restrictions.** No facility may be located on land that would threaten the integrity of the design. (4-2-03)
 - iii. Property Line Restriction.** The active portion of a facility shall not be located closer than one hundred (100) feet to the property line. (4-2-03)
- b. Siting Application.** The owner and operator shall provide in the Siting Application documentation that demonstrates compliance with the siting requirements specified in Subsection 012.01 and 012.09.a. (4-2-03)
- c. Operating Requirements:** (4-2-03)
 - i. Odor Management Plan.** The owner and operator of a Tier II processing facility shall implement a Department approved Odor Management Plan designed to minimize malodorous gases. An Odor Management Plan shall include specific operating criteria for oxygen, moisture and temperature levels appropriate for the wastes to be processed and processing technologies to be employed, methods used to maintain the specific operating criteria and a monitoring strategy that includes the frequency and parameters for monitoring the specific operating criteria. (4-2-03)
 - ii. Documentation requirement.** The owner and operator of a processing facility shall maintain documentation of compliance with Section 012, including an operational log of the methods used to maintain the operating criteria and sampling results. (4-2-03)
 - d. Operating Plan.** The operating plan required in Subsection 012.04 shall identify methods used for maintaining compliance with each applicable operating requirement of Subsection 012.03 and Subsection 012.09.c. (4-2-03)

10. Tier II Incinerators, ~~CE~~YSQG Management Facility and Transfer Stations. In addition to the

requirements in Subsections 012.01 through 012.04 and Subsections 012.07 and 012.08, the owner and operator of a Tier II incinerator, ~~CEV~~ SQG management facility or transfer station shall comply with the following requirements: ~~(4-2-03)~~()

a. Design Requirements. The owner and operator shall comply with the following design requirements: (4-2-03)

i. A tipping floor design constructed of impermeable and durable material and designed to contain, collect, and convey any liquids to a storage or leachate management system. ~~Any transfer station that accepts only waste tires will not be required to construct a tipping floor;~~ **and** ~~(4-2-03)~~()

ii. A leachate storage or management system. (4-2-03)

b. Design Application. The following information shall be submitted to the Department in a Design Application: (4-2-03)

i. A description of the tipping floor design; (4-2-03)

ii. A description of the storage or leachate management system design; (4-2-03)

iii. Building and construction design blueprints; (4-2-03)

iv. A map illustrating a storm water run-on/run-off system designed to prevent contamination of surface and ground water, and prevent the spread and impact of contamination beyond the boundary of the facility; and (4-2-03)

v. Operational design and capacity information including a description of the waste types and projected daily and annual waste volumes. (4-2-03)

c. Operating Requirements. The owner and operator of a Tier II facility shall comply with the following operating requirements: (4-2-03)

i. Implement cleaning procedures and waste residency times to maintain sanitary conditions on the surface of the tipping floor; and (4-2-03)

ii. Implement and operate a leachate storage or management system. (4-2-03)

~~**d.** Waste Tire Collection Site Requirements. Individual tire piles shall not exceed five thousand (5000) square feet of continuous area, nor fifty thousand (50,000) cubic feet in volume or ten (10) feet in height. (4-2-03)~~

ed. Closure Requirement. The owner and operator of a Tier II facility shall comply with the following closure and post-closure care requirements: (4-2-03)

i. Public Notice. For a facility open to the public the owner and operator shall provide public notice of the facility's closure by publishing a notice in the local newspaper and posting signs at the facility's entrance. This notice shall be published and the signs posted at least thirty (30) days prior to closure; (4-2-03)

ii. Facility Closure. The owner and operator shall close the facility by removing all solid waste to prevent impact to human health or the environment and installing a gate or other device to prevent public access after the last receipt of waste; ~~and~~ ~~(4-2-03)~~()

iii. Closure Time Period. Unless the Department establishes an alternate closure time period, the owner and operator shall close the facility within two (2) months of the Department's approval of the Closure Plan. The facility shall be closed in accordance with the approved Closure Plan; **and** ~~(4-2-03)~~()

iv. Closure Plan Certification. Within thirty (30) days of closure, the owner and operator shall notify the Department in writing that the facility was closed in accordance with the approved Closure Plan. If closure of the

facility is different from the approved Closure Plan, the owner and operator shall submit for Department review and approval documents, such as “as-built” plans, showing the final conditions of the facility. (4-2-03)

f. Closure Plan Application. The owner and operator shall submit to the Department a Closure Plan Application containing the following information no later than ninety (90) days before the date on which the facility receives the known final receipt of wastes: (4-2-03)

- i. A complete and accurate legal description of the facility; (4-2-03)
- ii. A map of the facility, showing pertinent facility features, including facility boundaries, drainage patterns, and location of access control measures; (4-2-03)
- iii. Estimated date of last receipt of waste; (4-2-03)
- iv. A description of how public access to the closed facility will be controlled; (4-2-03)
- v. Closure equipment and procedures to be used; (4-2-03)
- vi. Anticipated future uses for the facility; and ~~(4-2-03)~~ () (4-2-03)
- vii. Other closure information the Department determines is necessary to protect human health and the environment. (4-2-03)

11. Tier II NMSWLF. In addition to the requirements in Subsections 012.01 through 012.08, the owner and operator of a Tier II NMSWLF shall also comply with the following requirements: (4-2-03)

- a. Siting Requirements:** (4-2-03)
 - i. Wetlands. A facility shall not be located in wetlands, except as provided in 40 CFR 257.9. (4-2-03)
 - ii. Ground Water. The active portion of a facility shall be located, designed and constructed such that the facility shall not cause contamination to a drinking water source or cause contamination of the ground water. (4-2-03)
 - iii. Geologic Restrictions. No facility may be located on land that would threaten the integrity of the design. (4-2-03)
 - iv. Property Line Restriction. The active portion of a facility shall not be located closer than one hundred (100) feet to the property line. (4-2-03)

b. Siting Application. The owner and operator shall provide in the Siting Application documentation that demonstrates compliance with the siting requirements specified in Subsections 012.01 and 012.11.a.; (4-2-03)

c. Design Application. The owner and operator shall provide the following information for design approval: (4-2-03)

- i. A facility map illustrating: (4-2-03)
 - (1) Surface water and erosion control systems; (4-2-03)
 - (2) Proposed fill area, including the location of waste disposal trenches or cells, noting the locations of trenches used for separated wastes such as animal carcasses, tree trunks, stumps, bulky wastes, car bodies, asbestos, and petroleum contaminated soils; (4-2-03)
 - (3) Location of borrow areas; (4-2-03)
 - (4) Design elevation grade of final cover; (4-2-03)

- (5) Soil and water table test boring holes, wells, or excavations; (4-2-03)
- (6) Proposed receiving, storage, and processing areas; (4-2-03)
- (7) Proposed trench layout and development; and (4-2-03)
- (8) Contour lines at five (5) foot intervals within the operating area and ten (10) foot intervals to the facility boundary. (4-2-03)

d. Operating Requirements: The owner and operator of a NMSWLF shall comply with the following operating requirements: (4-2-03)

- i. Compaction and placement of waste in locations consistent with the approved operating plan; (4-2-03)
- ii. Provision for storage of waste during periods when the NMSWLF is inaccessible; (4-2-03)
- iii. Application of a six (6) inch compacted soil cover layer on exposed waste as necessary to prevent nuisance and vector conditions at periods consistent with the approved operating plan. An owner and operator may request that the Department approve an alternate cover that addresses vectors, litter, fire, odor, and scavenging concerns; (4-2-03)
- iv. Placement of an interim cover layer of twelve (12) inches of compacted soil between lifts to provide erosion control and structural stability. An owner and operator may request that the Department approve an alternate interim cover that addresses erosion, and stability for subsequent lifts; (4-2-03)
- v. Preservation of existing vegetation where attainable. (4-2-03)

e. Operating Plan. The operating plan required in Subsection 012.04 shall identify the methods used for maintaining compliance with each applicable operating requirement of Subsection 012.03 and Subsection 012.11.d.; (4-2-03)

f. Closure Requirements. The owner and operator of a Tier II NMSWLF shall comply with the following closure requirements: (4-2-03)

- i. Final Cover. Within seven (7) days of the date of last receipt of waste, a cover layer shall be applied to prevent nuisances and vector conditions. Within one hundred and twenty (120) days of the date of last receipt of waste, a final cover layer of eighteen (18) inches of compacted soil with an approved in-place permeability designed to minimize infiltration, or its functional equivalent, and, a six (6) inch soil layer that minimizes erosion and sustains plant growth shall be constructed; (4-2-03)
- ii. Facility Stabilization. All disturbed portions of the facility shall be stabilized. Stabilization practices may include but are not limited to: establishment of vegetation, mulching, geotextiles, and sod stabilization; (4-2-03)
- iii. Slope Stability. Finished grade shall be at a minimum of two percent (2%) and a maximum of thirty- three percent (33%) slope on the final surface of the completed fill area, after settlement; and (4-2-03)
- iv. Drainage Control. The completed landfill shall be graded to prevent surface water ponding and erosion, and to conform to the local topography. (4-2-03)

g. Closure Plan. The owner and operator shall provide in the Closure Plan documentation that demonstrates compliance with closure requirements specified in Subsections 012.05 and 012.11.f. (4-2-03)

h. ~~Deed Notation~~ Environmental Covenants: (~~4-2-03~~)()

i. After completion and certification of closure of a NMSWLF, the owner and operator shall record ~~a notation on the deed to the landfill facility property; or some other recorded instrument that is normally examined during title search and is commonly recorded in the County where the landfill facility property is located; to provide notice to any potential purchaser that~~ an environmental covenant, pursuant to the Uniformed Environmental Covenants Act (UECA) Chapter 30, Title 55, Idaho Code, on the property ~~has been used as a solid waste processing or disposal facility~~ where the landfill facility is located and its future use may be restricted in accordance with a post-closure care plan. A copy of the ~~notated deed, or other recorded instrument~~ environmental covenant shall be sent to the Department after recording with the county clerk; (4-2-03)()

ii. The owner may request permission from the Department to remove the ~~notation from the deed, or to remove the other recorded instrument,~~ environmental covenant if all wastes are removed from the facility; (4-2-03)()

iii. Federal agencies with responsibility for management of landfills on federal property shall make an environmental covenant or notation in the federal property records for the affected property. If the subject property is ever sold or transferred by the federal government, a notation on the deed or patent shall be made. (4-2-03)()

i. Post-Closure Care Plan. Owners and operators of a NMSWLF shall submit, in accordance with the time frames specified in Subsection 012.06, to the Department for review and approval a Post-Closure Care Plan, shall obtain Department approval of the Plan, and shall conduct post-closure care in accordance with the Plan. The Post-Closure Care Plan shall typically contain: (4-2-03)

i. The name and address of an agent authorized to accept communications or service during the post-closure period. The name may be changed during the post-closure period by providing the Department with twenty (20) days advance written notice of the change; (4-2-03)

ii. Provisions to maintain the integrity and effectiveness of the final cover; (4-2-03)

iii. Provisions to continue to maintain and operate the systems required in the operating plan including run-on/run-off control systems; (4-2-03)

iv. Provisions to maintain appropriate security of the closed facility; (4-2-03)

v. Provisions for routine facility inspections by the owner and operator to insure compliance with the Post-Closure Care Plan; and (4-2-03)

vi. A description of the planned use(s) of the property during the post-closure care period: (4-2-03)

j. Post-closure care for the NMSWLF shall be conducted for a period of five (5) years, unless the Department establishes in writing an alternate facility-specific post-closure care period. (4-2-03)

k. Post-Closure Standards and Inspection. Post-closure use or operation of the site shall not disturb any final cover or storm water control systems in a manner that will increase the potential to threaten human health or the environment. (4-2-03)

l. The approved Post-Closure Care Plan shall be maintained and available for review on request by the Department. (4-2-03)

013. APPLICABLE REQUIREMENTS FOR TIER III FACILITIES.

The owner and operator of a ~~new~~ Tier III facility shall establish compliance with the requirements of Section 013 by obtaining Department approval of the applications required in Subsection 013.02 before beginning construction and Subsection 013.04 prior to accepting waste. ~~The owner and operator of an existing Tier III facility shall establish compliance with the requirements of Section 013 by obtaining Department approval of the applications required in Subsection 013.04 within two (2) years from April 26, 2002, and Subsection 013.02 within five (5) years from April 26, 2002. During the two (2) year period from April 26, 2002, existing facilities shall operate in compliance with their approved operating plan and 40 CFR 257.1 through 257.3. In lieu of submitting an application, the owner and operator of existing facilities may demonstrate to the Department, compliance with Section 013 by submitting copies~~

~~of existing permits and other approvals that establish compliance with the applicable siting, design, operating, closure, and post closure requirements of Section 013 and Subsection 032.01.~~ The owner and operator of a Tier III facility shall meet the requirements of Subsection 012.07 prior to facility closure; ~~except that owners and operators closing Tier III facilities within eighteen (18) months from April 26, 2002 shall comply with applicable cover, seeding, grading and closure requirements of the former Solid Waste Management Rules and Standards, as enumerated in Subsection 001.04.d. of these rules.~~ (4-2-03)()

01. General Siting Requirements. The owner and operator of a Tier III facility shall comply with the following siting requirements: (4-2-03)

a. Flood Plain Restriction. A facility shall not be located within a one hundred (100) year flood plain if the facility will restrict the flow of the one hundred (100) year flood, reduce the temporary water storage capacity of the flood plain, or result in a washout of solid waste so as to pose a hazard to human health and the environment. (4-2-03)

b. Endangered or Threatened Species Restriction. The facility shall not cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife or result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in 50 CFR Part 17. (4-2-03)

c. Surface Water Restriction. The active portion of a facility shall be located such that the facility shall not cause contamination of surface waters, unless such surface waters are an integral part of the non-municipal solid waste management facility's operation for storm water and/or leachate management. (4-2-03)

d. Ground Water. The active portion of the facility shall be located, designed and constructed such that the facility shall not cause contamination to a drinking water source or cause contamination of ground water. (4-2-03)

e. Geologic Restrictions. No facility may be located on land that would threaten the integrity of the design. (4-2-03)

f. Property Line Restriction. The active portion of a facility shall not be located closer than one hundred (100) feet to the property line. (4-2-03)

g. Park, Scenic or Natural Use Restriction. The active portion of a facility shall not be located closer than one thousand (1,000) feet from the boundary of any state or national park, or land reserved or withdrawn for scenic or natural use including, but not limited to, wild and scenic areas, national monuments, wilderness areas, historic sites, recreation areas, preserves and scenic trails. (4-2-03)

h. Variance from Siting Requirement. Any ~~existing or planned~~ facility that does not meet the siting requirements of Section 013 may apply for a variance from the Department. The Department may approve a written request for a variance provided the owner and operator demonstrate to the Department that the variance is at least as protective of public health and the environment as the siting requirements in Section 013. (4-2-03)()

02. Siting Application. Documentation shall be submitted to the Department demonstrating compliance with the siting requirements and restrictions specified in Subsection 013.01 within the time frames specified in Section 013. If the documentation has been certified by a qualified professional, the Director shall approve the siting application unless the Director finds the evidence supports a contrary opinion. A map indicating the following shall also be submitted to the Department as part of a Siting Application: (4-2-03)

a. Highways, roads, and adjacent communities; (4-2-03)

b. Property boundaries; (4-2-03)

c. Total acreage of the site; (4-2-03)

d. Off-site and on-site access roads and service roads; (4-2-03)

- e. Type(s) of land use adjacent to the facility and a description of all facilities on the site; (4-2-03)
 - f. All water courses, ponds, lakes, reservoirs, canals, irrigation systems, and existing water supplies, within one-quarter (1/4) mile of the proposed facility property lines; (4-2-03)
 - g. High tension power line rights-of-way, fuel transmission pipeline rights-of-way, and proposed and existing utilities; (4-2-03)
 - h. Proposed or existing fencing; (4-2-03)
 - i. Proposed and existing structures at the facility and within five hundred (500) feet of the facility boundary. This shall include location of employee buildings, and scales (if provided); and (4-2-03)
 - j. Direction of prevailing winds. (4-2-03)
- 03. General Operating Requirements.** The owner and operator of a Tier III facility shall comply with the following operating requirements: (4-2-03)
- a. Prohibited Activities. The following activities are prohibited: (4-2-03)
 - i. Disposal in a landfill of regulated waste from any business that provides health care, support to health care businesses, or medical diagnostic services that has not been decontaminated. “Regulated waste” and “decontaminated” for the purpose of Section 013 ~~has~~ have the same meaning as defined at 29 CFR 1910.1030; (4-2-03)()
 - ii. Speculative accumulation, unless otherwise approved in an operating plan; and (4-2-03)
 - iii. Disposal of radioactive waste except in a facility regulated pursuant to Section 39-4405(9), Idaho Code and rules adopted thereunder or a facility regulated under the authority of The Atomic Energy Act of 1954, as amended. (4-2-03)
 - b. Signs. Facilities open to the general public shall clearly post visible and legible signs at each entrance to the facility specifying, at a minimum, the name of the facility, the hours of operation, the waste accepted at the facility and an emergency phone number. (4-2-03)
 - c. Waste Types. Only the solid waste types listed in the approved operating plan may be accepted for disposal or processing. (4-2-03)
 - d. Waste Monitoring and Measurement. Provisions shall be made for monitoring or measuring all solid waste delivered to a facility. The waste monitoring program shall include: (4-2-03)
 - i. A daily written log listing the types and quantities of wastes received; (4-2-03)
 - ii. A plan for monitoring and handling receipt of unauthorized wastes; (4-2-03)
 - iii. Routine characterization of the wastes received; and (4-2-03)
 - iv. Other measures included in an approved Operating Plan. (4-2-03)
 - e. Communication. Communication devices shall be available or reasonably accessible at the site. (4-2-03)
 - f. Fire Prevention and Control. Adequate provisions shall be made for controlling or managing fires at the site. (4-2-03)
 - g. Facility Access. Unauthorized vehicles and persons shall be prohibited access to the facility. A facility open to the public shall accept waste only when an attendant is on duty. The facility shall be fenced or

otherwise blocked to access when an attendant is not on duty. (4-2-03)

h. Scavenging and Salvaging. Scavenging by the public at a facility is prohibited; however, salvaging may be conducted in accordance with a written operating plan and only by the owner, operator or an authorized agent. (4-2-03)

i. Nuisance Control. The owner and operator shall control nuisances, including but not limited to: (4-2-03)

i. Disease or Discomfort. Operations at any facility shall not provide sustenance to rodents or insects that cause human disease or discomfort; (4-2-03)

ii. Vector. Vector control procedures shall prevent or control vectors that may cause health hazards or nuisances; (4-2-03)

iii. Odor. The facility shall be operated to control malodorous gases; and (4-2-03)

iv. Litter. Effective measures shall be taken to minimize the loss of debris from the facility. Debris blown from or within the facility shall be collected and properly disposed to prevent objectionable accumulations. (4-2-03)

j. Bird Hazards to Aircraft. No facility may handle putrescible wastes in such a manner that may attract birds and increase the likelihood of bird/aircraft collisions. Facilities that are located within ten thousand (10,000) feet of any airport runway used by turbojet aircraft, or within five thousand (5,000) feet of any airport used by only piston-type aircraft shall operate the facility in such a manner that birds are not a hazard to aircraft. (4-2-03)

k. Open Burning and Fires. Open burning is prohibited at facilities except as authorized by ~~these rules and IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho."~~ Section 061. (4-2-03)()

~~**i.** No open burning shall be conducted during an air pollution episode, declared in accordance with IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho."~~ (4-2-03)

~~**ii.** Open burning is authorized only if it is infrequent and the materials are agricultural wastes, silviculture wastes, land clearing debris, diseased trees, or debris from emergency cleanup operations. Materials burned shall not include garbage, dead animals, asphalt, petroleum products, paints, tires or other rubber products, plastics, paper (other than that necessary to start the fire), cardboard, treated wood, construction debris, metal, pathogenic wastes, hazardous wastes, or any other substance (other than natural vegetation) that when burned releases toxic emissions, dense smoke or strong odors.~~ (4-2-03)

~~**iii.** Open burning shall be conducted pursuant to conditions set forth by the Department or local fire authority. The owner and operator of the facility shall contact the Department and the local fire authority prior to conducting open burning to report its nature and location.~~ (4-2-03)

l. Storm Water Run-On/Run-Off Controls. The operating plan shall include sufficient storm water management provisions, which may incorporate a NPDES storm water pollution prevention plan, to prevent contamination of ground or surface water and prevent the spread and impact of contamination beyond the boundary of the facility. (4-2-03)

m. Variance Request. An owner and operator may submit to the Department a written variance request for a variance from the operating requirements listed in Section 013. The Department shall approve a written request for a variance provided the owner and operator demonstrate to the Department that the variance is at least as protective of human health and the environment as the requirements listed in Section 013. (4-2-03)

04. Operating Plan. The owner and operator of a Tier III facility shall submit to the Department an Operating Plan containing that information required by Subsection 013.03, within the time frames stated in Section 013. An Operating Plan shall include a description of the wastes to be accepted, the methods for maintaining compliance with each of the applicable general operating requirements of Subsection 013.03, and complies with any

applicable facility specific requirements found in Subsections 013.11 through 013.13.

(4-2-03)()

05. Ground Water Monitoring Requirements. The owner and operator of a ~~new~~ Tier III facility shall comply with the following ground water monitoring requirements:

(4-2-03)()

a. Install and maintain ground water monitoring wells at the point of compliance as approved by the Department;

(4-2-03)

b. Within thirty (30) days of completion of each well, submit a copy of the geologic log and record of well construction to the Department;

(4-2-03)

c. Monitor the ground water quarterly, unless otherwise directed by the Department. Constituents to be monitored shall be those listed in 40 CFR Part 257.24 unless otherwise authorized by the Department; and

(4-2-03)

d. The owner and operator of any facility required to monitor ground water pursuant to Section 013 shall continue the approved monitoring schedule for five (5) years following facility closure, unless otherwise approved by the Department upon request of the owner and operator for a modified monitoring schedule.

(4-2-03)

06. Ground Water Monitoring Application. The following information shall be submitted to the Department in a Ground Water Monitoring Application:

(4-2-03)

a. A map showing soil types, depth to ground water, ground water flow direction and locations of proposed ground water monitoring wells; and

(4-2-03)

b. A monitoring schedule indicating sample frequency and constituents to be analyzed.

(4-2-03)

07. Closure Requirement. The owner and operator of a Tier III facility shall comply with the following closure requirements:

(4-2-03)

a. Public Notice. For a facility open to the public the owner and operator shall provide public notice of the facility's closure by publishing a notice in the local newspaper and posting signs at the facility's entrance. This notice shall be published and the signs posted;

(4-2-03)

i. At least thirty (30) days and no more than ninety (90) days prior to the date of last receipt of waste for a facility that has reached disposal capacity; or

(4-2-03)

ii. If the facility has remaining capacity and there is a reasonable likelihood that the facility will receive additional waste, a notice shall be published and signs posted at least thirty (30) days and no more than ninety (90) days prior to closure.

(4-2-03)

b. Facility Closure. Unless the Department establishes an alternate closure time period, the owner and operator shall close the facility within six (6) months of the Department's approval of the Closure Plan. The facility shall be closed in accordance with the approved Closure Plan.

(4-2-03)

c. Clean Site/Access Control. The owner and operator shall close the facility by managing or removing all solid waste to prevent impact to human health or the environment and shall install a gate or other device to prevent public access after the last receipt of waste;

(4-2-03)

d. Drainage and Erosion Control. The owner and operator shall install appropriate measures to control erosion and install appropriate measures to control the run-on and runoff from a twenty-five (25) year, twenty-four (24) hour storm event and to provide for the diversion of other surface waters from the closed facility; and

(4-2-03)

e. Closure Plan Certification. Within thirty (30) days of closure, the owner and operator shall notify the department in writing that the facility was closed in accordance with the approved Closure Plan. If closure of the facility is different from the approved Closure Plan, the owner and operator shall submit for Department review and approval documents, such as "as-built" plans, showing the final conditions of the facility.

(4-2-03)

08. Closure Plan Application. The owner and operator of a Tier III facility shall submit to the Department a Closure Plan Application containing the information no later than ninety (90) days before the date on which the facility receives the known final receipt of wastes or, if the facility has remaining capacity and there is a reasonable likelihood that the facility will receive additional wastes, no later than one (1) year after the most recent receipt of wastes. The following information shall be submitted to the Department in a Closure Application: (4-2-03)

- a. A complete and accurate legal description of the facility; (4-2-03)
- b. A map of the facility, showing pertinent facility features, including: (4-2-03)
 - i. Facility boundaries, drainage patterns, location of fill areas, and location of access control measures; (4-2-03)
 - ii. All water courses, ponds, lakes, reservoirs, canals, irrigation systems, and existing water supplies, within one-quarter (1/4) mile of the facility boundary; (4-2-03)
 - iii. Location of disposal trenches and description of waste disposed; and (4-2-03)
 - iv. Proposed final contours of the closed facility, drawn to a reasonable scale with five (5) foot intervals for the operational area, and ten (10) foot intervals for the remainder of the facility; (4-2-03)
- c. Estimated date of last receipt of waste; (4-2-03)
- d. A description of how public access to the closed facility will be controlled; (4-2-03)
- e. Estimated total cubic yards, or tons, of waste in place; (4-2-03)
- f. Total acreage of the facility and acres containing waste; (4-2-03)
- g. Closure equipment and procedures to be used; (4-2-03)
- h. Texture, depth and permeability of final cover material; (4-2-03)
- i. Design and construction plan for any necessary final cover; (4-2-03)
- j. Placement, design, and management of run-on and run-off storm water controls; (4-2-03)
- k. Types of vegetation and planting procedures to be used for establishing vegetative cover; (4-2-03)
- l. Details of any proposed changes to any existing groundwater monitoring system; (4-2-03)
- m. Details of any proposed changes to any existing landfill gas control system; (4-2-03)
- n. Details of any proposed changes to any existing leachate collection system; and (4-2-03)
- o. Other closure information the Department determines is necessary to protect human health and the environment. (4-2-03)

09. Documentation Requirements. The owner and operator of a Tier III facility shall maintain on site each Department-approved application required by Section 013. (4-2-03)

10. Modification Application. The owner and operator shall submit to the Department a Modification Application describing the proposed modification no less than sixty (60) days prior to the proposed modification of the facility. The owner and operator of a Tier III facility shall not implement the modification prior to Department approval. If a proposed modification alters the classification of a facility, the owner and operator shall comply with the application content, review and approval requirements for the new classification. (4-2-03)

11. Tier III Processing Facilities. In addition to the requirements in Subsections 013.01 through 013.10, the owner and operator of a Tier III processing facility shall comply with the following requirements: (4-2-03)

a. Odor Management Plan. The owner and operator of a Tier III processing facility shall implement a Department approved Odor Management Plan designed to minimize malodorous gases. An Odor Management Plan shall include specific operating criteria for oxygen, moisture and temperature levels appropriate for the wastes to be processed and processing technologies to be employed; methods used to maintain the specific operating criteria and a monitoring strategy that includes the frequency and parameters for monitoring the specific operating criteria; (4-2-03)

b. Additional Requirements for PCS. Owners and operators of Tier III PCS processing facilities shall comply with the following applicable requirements: (4-2-03)

i. Leachate collection and control system to prevent contamination of ground and surface waters; (4-2-03)

ii. Liner designed to prevent ground and surface water contamination. The liner design shall account for the types of wastes handled and the potential for migration of liquids and gaseous contaminants to ground water; and (4-2-03)

iii. Air emission control system to prevent discharges of air pollutants. (4-2-03)

iv. An owner and operator of a PCS processing facility may submit a written request for a variance from the leachate control and liner requirements. The owner and operator must demonstrate that the variance is at least as protective of surface and ground water as the leachate collection system and liner. (4-2-03)

c. Design Application. The following information shall be submitted to the Department in a Design Application: (4-2-03)

i. Building and construction design blueprints; (4-2-03)

ii. A map illustrating a storm water run-on/run-off system designed to prevent contamination of ground or surface water or and prevent contamination beyond the boundary of the facility; (4-2-03)

iii. Operational design and capacity information including a description of the waste types and projected daily and annual waste volumes; and (4-2-03)

iv. Design and Construction Requirements. The owner and operator of a Tier III PCS processing facility shall submit for Department review and approval the following information as part of the Design Application: (4-2-03)

(1) A hydrogeologic evaluation, including the potential for migration of contamination to ground or surface water; (4-2-03)

(2) A detailed description of treatment methods to be used; (4-2-03)

(3) Design plans for a leachate collection and control system to prevent ground and surface water contamination from the leachate control system; (4-2-03)

(4) Design plans for an air emissions control system to prevent discharges of air pollutants; and (4-2-03)

(5) Design plans for a liner designed to prevent ground or surface water contamination. The liner design shall account for the types of wastes handled and the potential for migration of liquid and gaseous contaminants to ground water. (4-2-03)

d. Operating Plan. The owner and operator of a PCS processing facility shall submit for Department review and approval the following information as part of the Subsection 013.04, Operating Plan: (4-2-03)

i. A sampling plan that describes the methods and frequency that the owner and operator will use to sample and analyze the wastes when received, during processing, and on final testing of processed material; and (4-2-03)

ii. A description of how the owner and operator will maintain and operate the liner, leachate collection and control system, and air emission control system consistent with the approved design application. (4-2-03)

e. Documentation Requirement. The owner and operator of a processing facility shall maintain documentation of compliance with Section 013, including an operational log of the methods used to maintain the operating criteria and sampling results. (4-2-03)

12. Tier III Incinerators. In addition to the requirements in Subsections 013.01 through 013.04 and Subsections 013.09 and 013.10, the owner and operator of a Tier III incinerator shall comply with the following requirements: (4-2-03)

a. Design Requirements. The owner and operator of an incinerator comply with the following design requirements: (4-2-03)

i. A tipping floor constructed of impermeable and durable material and designed to contain, collect, and convey any liquids to a storage or leachate management system. ~~Any facility that accepts only waste tires will not be required to construct a tipping floor.~~ (4-2-03) ()

ii. A storage or leachate management system. (4-2-03)

b. Design Application. The following information shall be submitted to the Department in a Design Application: (4-2-03)

i. A description of the tipping floor design; (4-2-03)

ii. A description of the storage or leachate management system design; (4-2-03)

iii. Building and construction design blueprints; (4-2-03)

iv. A map illustrating a storm water run-on/run-off system designed to prevent ground or surface water contamination, or contamination from the facility beyond the boundary of the facility; (4-2-03)

v. Operational design and capacity information including a description of the waste types and projected daily and annual waste volumes; and (4-2-03)

vi. Any facility specific design elements required by these rules. (4-2-03)

c. Operating Requirements. The owner and operator of an incinerator shall comply with the following operating requirements: (4-2-03)

i. Maintain and operate the tipping floor to control odors, insects, and rodents; (4-2-03)

ii. Implement cleaning procedures and waste residency times used to maintain sanitary conditions on the surface of the tipping floor; and (4-2-03)

iii. Implement a storage or leachate management system operation. (4-2-03)

~~**d.** Waste Tire Collection Site Requirements. Individual tire piles shall not exceed five thousand (5000) square feet of continuous area, nor fifty thousand (50,000) cubic feet in volume or ten (10) feet in height. (4-2-03)~~

ed. If it is determined that the tipping floor or leachate management system integrity has been breached, or waste has been handled or stored outside of the containment of the tipping floor, unless allowed in the facility Operating Plan, the owner and operator of the Tier III incinerator shall comply with Subsections 013.05 through 013.08. (4-2-03)

13. Tier III NMSWLFs. In addition to the requirements in Subsection 013.01 through 013.10, the owner and operator of a Tier III NMSWLF shall comply with the following requirements: (4-2-03)

a. Siting Requirements: A facility shall not be located in wetlands, except as provided in 40 CFR 257.9; (4-2-03)

b. Siting Application. The owner and operator shall include in the Siting Application documentation demonstrating compliance with the requirement specified in Subsection 013.13.a.; (4-2-03)

c. Design and Construction Requirements: The owner and operator of a ~~new~~ NMSWLF shall comply with the following design and construction requirements: ~~(4-2-03)~~ ()

i. Leachate Collection and Control System. A leachate collection and control system shall be constructed to prevent ground and surface water contamination; (4-2-03)

ii. Liner. A liner designed to prevent ground or surface water contamination shall be installed. The liner design shall account for the types of wastes handled and the potential for migration of liquid and gaseous contamination to ground or surface water; (4-2-03)

iii. Landfill Emission Control System. Appropriate toxic and flammable gas monitoring devices shall be installed where the location, geophysical condition, and waste characteristics indicate that there is a reasonable probability that the facility will generate toxic and flammable gas: exceeding twenty-five (25) percent of the lower explosive limit for gases in facility structures (excluding gas control or gas recovery system components); exceeding the lower explosive limit at the property boundary; or otherwise presenting a potential threat to public health or the environment; and (4-2-03)

iv. An owner or operator may submit a written request for a variance from the leachate collection and control system, liner, or emission control system requirements. The Department may approve the variance upon demonstration by the owner or operator that the variance is at least as protective of human health and the environment as the leachate collection and control system, liner, or emission control system. (4-2-03)

d. Design Application. The following information shall be submitted to the Department in a Design Application: (4-2-03)

i. Design plans shall address the need for and include as required a leachate collection and control system, liner, and emission control systems in Subsection 013.13.c.; (4-2-03)

ii. A facility map illustrating: (4-2-03)

(1) Surface water and erosion control systems; (4-2-03)

(2) Proposed fill area, including the location of waste disposal trenches or cells, noting the locations of trenches used for separated wastes such as animal carcasses, tree trunks, stumps, bulky wastes, car bodies, asbestos, and petroleum contaminated soils; (4-2-03)

(3) Location of borrow areas; (4-2-03)

(4) Design elevation grade of final cover; (4-2-03)

(5) Soil and water table test boring holes, wells, or excavations; (4-2-03)

- (6) Proposed receiving, storage, and processing areas; (4-2-03)
- (7) Proposed trench layout and development; and (4-2-03)
- (8) Contour lines at five (5) foot intervals within the operating area and ten (10) foot intervals to the facility boundary. (4-2-03)
- (9) Building and construction design blueprints; (4-2-03)
- (10) Operational design and capacity information including a description of the waste types and projected daily and annual waste volumes; and (4-2-03)
- e.** Operating Requirements: The owner and operator of a NMSWLF shall comply with the following operating requirements: (4-2-03)
- i. Compaction and placement of waste in locations consistent with the approved operations plan; (4-2-03)
- ii. Provision for storage of waste during periods when the NMSWLF is inaccessible; (4-2-03)
- iii. Application of a six (6) inch compacted soil cover layer on exposed waste as necessary to prevent nuisance and vector conditions at periods consistent with the approved operations plan. An owner and operator may request that the Department approve an alternate cover that addresses vectors, litter, fire, odor, and scavenging concerns; (4-2-03)
- iv. Placement of an interim cover layer of twelve (12) inches of compacted soil between lifts to provide erosion control and structural stability. An owner and operator may request that the Department approve an alternate interim cover that addresses erosion, and stability for subsequent lifts; (4-2-03)
- v. Maintenance and operation of a leachate collection and control system and air emission control system consistent with the approved design application; and (4-2-03)
- vi. Preservation of existing vegetation where attainable. (4-2-03)
- f.** Operating Plan. The operating plan required in Section 013 shall identify the methods used for maintaining compliance with each applicable operating requirement of Subsection 013.03. and Subsection 013.13.e. including but not limited to the type, the method of compaction and the frequency of application of respective cover materials; (4-2-03)
- g.** Closure Requirements. The owner and operator of a NMSWLF shall comply with the following closure requirements: (4-2-03)
- i. Final Cover. Within seven (7) days of the date of last receipt of waste, a cover layer shall be applied to prevent nuisances and vector conditions. Within one hundred and twenty (120) days of the date of last receipt of waste, a final cover layer of eighteen (18) inches of compacted soil with an approved in-place permeability designed to minimize infiltration, or its functional equivalent, and, a six (6) inch soil layer that minimizes erosion and sustains plant growth shall be constructed; (4-2-03)
- ii. Facility Stabilization. All disturbed portions of the facility shall be stabilized. Stabilization practices may include but are not limited to: establishment of vegetation, mulching, geotextiles, and sod stabilization; (4-2-03)
- iii. Slope Stability. Finished grade shall be at a minimum of two percent (2%) and a maximum of thirty- three percent (33%) slope on the final surface of the completed fill area, after settlement; and (4-2-03)
- iv. Drainage Control. The completed landfill shall be graded to prevent surface water ponding and erosion, and to conform to the local topography. (4-2-03)

- h. ~~Deed Notation~~ Environmental Covenants: (4-2-03)()
- i. After completion and certification of closure of a NMSWLF, the owner and operator shall record ~~a notation on the deed to the landfill facility property, or some other recorded instrument that is normally examined during title search and is commonly recorded in the County where the landfill facility property is located, to provide notice to any potential purchaser that~~ an environmental covenant, pursuant to the Uniformed Environmental Covenants Act (UECA) Chapter 30, Title 55, Idaho Code, on the property ~~has been used as a solid waste processing or disposal facility~~ where the landfill facility is located and its future use may be restricted in accordance with a post-closure care plan. A copy of the ~~notated deed, or other recorded instrument, shall~~ environmental covenant will be sent to the Department after recording with the county clerk. (4-2-03)()
- ii. The owner may request permission from the Department to remove the ~~notation from the deed, or the other recorded instrument,~~ environmental covenant if all wastes are removed from the facility. (4-2-03)()
- iii. Federal agencies with responsibility for management of landfills on federal property shall make an environmental covenant or notation in the federal property records for the affected property. If the subject property is ever sold or transferred by the federal government, a notation on the deed or patent shall be made. (4-2-03)()
- i. Closure Plan. The owner and operator shall provide in the Closure Plan documentation that demonstrates compliance with closure requirements specified in Subsections 013.07 and 013.13.g. (4-2-03)
- j. Post-Closure Care Plan. Owners and operators of a NMSWLF shall submit, in accordance with the time frames specified in Subsection 013.08, to the Department for review and approval a Post-Closure Care Plan, shall obtain Department approval of the Plan, and shall conduct post-closure care in accordance with the Plan: (4-2-03)
- i. Unless the Department determines otherwise, the Post-Closure Care Plan shall contain: (4-2-03)
- (1) The name and address of an agent authorized to accept communications or service during the post-closure period. The name may be changed during the post-closure period by providing the Department with twenty (20) days advance written notice of the change; (4-2-03)
- (2) Provisions to maintain the integrity and effectiveness of the final cover; (4-2-03)
- (3) Provisions to continue to maintain and operate the systems required in the operating plan, including: run-on/run-off control systems, leachate collection and control systems, groundwater monitoring systems, and gas monitoring systems; (4-2-03)
- (4) Provisions to maintain appropriate security of the closed facility; (4-2-03)
- (5) Provisions for routine facility inspections by the owner and operator to insure compliance with the Post-Closure Care Plan; and (4-2-03)
- (6) A description of the planned use(s) of the property during the post-closure care period. (4-2-03)
- ii. Post-closure care for the NMSWLF shall be conducted for a minimum of five (5) years, but not more than thirty (30) years, as necessary to protect human health and the environment. (4-2-03)
- iii. Post-Closure Standards and Inspection. Post-closure use or operation of the site shall not disturb any final cover, liner or other component of the containment system in a manner that will increase the potential to threaten human health or the environment. (4-2-03)
- iv. The approved Post-Closure Care Plan shall be maintained and available for review on request by the Department. (4-2-03)
- v. The requirements in Subsection 013.07 shall apply to owners and operators and their successors and assigns. (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

061. OPEN BURNING AND FIRES.

Open burning is prohibited at facilities except as authorized by IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho," and the following: ()

01. No Open Burning During an Air Pollution Episode. No open burning may be conducted during an air pollution episode, declared in accordance with IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho"; ()

02. Conditions Under Which Open Burning Authorized. Open burning is authorized only if it is infrequent and the materials are agricultural wastes, silviculture wastes, land clearing debris, diseased trees, or debris from emergency cleanup operations. Materials burned may not include garbage, dead animals, asphalt, petroleum products, paints, tires or other rubber products, plastics, paper (other than that necessary to start the fire), cardboard, treated wood, construction debris, metal, pathogenic wastes, hazardous wastes, or any other substance (other than natural vegetation) that when burned releases toxic emissions, dense smoke or strong odors; and ()

03. Contact Department and Local Fire Authority Prior to Conducting Open Burning. Open burning may be conducted pursuant to conditions set forth by the Department or local fire authority. The owner and operator of the facility must contact the Department and the local fire authority prior to conducting open burning to report its nature and location. ()

~~0672~~. -- 993. (RESERVED)

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.12 – RULES FOR ADMINISTRATION OF WATER POLLUTION CONTROL LOANS

DOCKET NO. 58-0112-1901

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before November 20, 2019. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: DEQ initiated this rulemaking in response to [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that its two revolving loan rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program, and merge necessary and relevant sections of IDAPA 58.01.20 with IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans. DEQ has initiated a separate rulemaking for the deletion of IDAPA 58.01.20 (Docket No. 58-0120-1901).

Prospective grant and loan recipients, consulting engineers, grant and loan administrators, other funding agencies, public officials representing various counties and cities, and the public at large may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Idaho Board of Environmental Quality (Board) in 2020 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2021 legislative session if adopted by the Board and approved by the Legislature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: N/A

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220. On August 1, 2019, DEQ posted notice of the negotiated rulemaking on its website, and a preliminary draft rule was made available for public review. The Notice of Negotiated Rulemaking was published in the August 2019 issue of the Idaho Administrative Bulletin, [Vol. 19-8, pages 156–157](#), and a meeting was held on August 27, 2019. Key information was posted on the DEQ website and distributed to the public. No comments were received.

At the conclusion of the negotiated rulemaking process, DEQ formatted the draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule draft, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at www.deq.idaho.gov/58-0112-1901.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov or (208) 373-0439.

SUBMISSION OF WRITTEN COMMENTS: Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before December 4, 2019.

Dated this 6th day of November, 2019.

Paula J. Wilson
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706
Phone: (208) 373-0418
Fax: (208) 373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0112-1901
(Only Those Sections With Amendments Are Shown.)

IDAPA 58
TITLE 01
CHAPTER 12

58.01.12 – RULES FOR ADMINISTRATION OF ~~WASTEWATER POLLUTION CONTROL AND~~
~~DRINKING WATER LOANS FUNDS~~

000. LEGAL AUTHORITY.

The Idaho Board of Environmental Quality, pursuant to authority granted in Chapters 1-~~and~~, 36, ~~and~~ 76, Title 39, Idaho Code, did adopt the following rules for the administration of ~~a~~ ~~the~~ ~~Wastewater Pollution Control and Drinking Water Loan Program in Idaho Funds~~. (5-3-03)()

001. TITLE AND SCOPE.

01. **Title.** These rules are titled IDAPA 58.01.12, “Rules for Administration of ~~Wastewater Pollution Control and Drinking Water Loans Funds~~.” (3-30-01)()

02. **Scope.** The provisions of these rules will establish administrative procedures and requirements for establishing, implementing and administering ~~a~~ ~~two~~ state loan programs for providing financial assistance to eligible applicants of ~~wastewater and drinking water pollution control~~ projects. The U.S. Environmental Protection Agency provides annual capitalization grants to the state of Idaho for ~~this~~ ~~these~~ programs. Financial assistance projects must be in conformance with the requirements of the Subchapter VI of the federal Clean Water Act (33 U.S.C. Sections 1381 et seq.) ~~and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.)~~. (3-29-12)()

002. ~~WRITTEN INTERPRETATIONS (RESERVED)~~

~~As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706.~~ (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIAL.

01. **Incorporation by Reference.** These rules do not contain documents incorporated by reference. (5-8-09)

02. **Availability of Referenced Material.** The “Wastewater ~~Facilities~~ Loan Handbook ~~of Procedures and the Drinking Water Loan Handbook~~” (Handbook) is available at the Idaho Department of Environmental Quality, Water Quality Division Loan Program, 1410 N. Hilton, Boise, ID 83706-1255, (208) 373-0502, or DEQ website <http://www.deq.idaho.gov>. ~~(5-8-09)~~()

(BREAK IN CONTINUITY OF SECTIONS)

006. POLICY.

It is the policy of the Idaho Board of Environmental Quality through the Idaho Department of Environmental Quality, to administer the ~~Wastewater Pollution Control Loan Program~~ Loan Fund for the purpose of protecting and enhancing the quality and value of the water resources of the state of Idaho by financially assisting in the prevention, control and abatement of water pollution and the Drinking Water Loan Fund for the purpose of providing assistance to eligible public drinking water systems for the planning, design, and construction of facilities to ensure safe and adequate drinking water. It is also the intent of the Idaho Board of Environmental Quality to assign a priority rating to those projects which that will most significantly improve the quality of the waters of the state and most adequately protect the public health. ~~(3-30-01)~~()

007. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (12-31-91)

01. **Applicant.**

a. When used in the context of wastewater loan fund, applicant is defined as ~~A~~ municipality or nonpoint source project sponsor which that has the ability to establish and maintain a loan repayment source. Individuals and for-profit corporations are not eligible. ~~(5-8-09)~~()

b. When used in the context of drinking water loan fund, applicant is defined as any eligible system making application for drinking water loan funds. ()

02. **Best Management Practice.** A practice or combination of practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be the most cost-effective and practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality needs. (3-30-01)

03. **Board.** The Idaho Board of Environmental Quality. (5-8-09)

04. **Categorical Exclusion (CE).** Category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental information document nor an environmental impact statement is required. (5-8-09)

05. **Close or Closing.** The date on which the loan recipient issues and physically delivers to the Department the bond or note evidencing the loan to the loan recipient, specifically determining the principal, interest and fee amounts that shall be repaid and the schedule for payment. (3-29-12)

06. **Collector Sewer.** That portion of the wastewater treatment facility whose primary purpose is to receive sewage from individual residences and other individual public or private structures and which is intended to convey wastewater to an interceptor sewer or a treatment plant. (1-1-89)

07. Community Water System. A public drinking water system that: ()

~~a.~~ Serves at least fifteen (15) service connections used by year round residents of the area served by the system; or ()

~~b.~~ Regularly serves at least twenty-five (25) year-round residents. ()

~~078.~~ **Construction.** The erection, building, acquisition, alteration, reconstruction, improvement or extension of wastewater treatment facilities, including preliminary planning to determine the economic and engineering feasibility of wastewater treatment facilities, the engineering, architectural, legal, fiscal and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures and other action necessary in the construction of wastewater treatment facilities; the inspection and supervision of the construction; and start-up of the associated facilities. (3-29-12)

~~09.~~ Contaminant. Any physical, chemical, biological, or radiological substance or matter in water. ()

~~108.~~ **Department.** The Idaho Department of Environmental Quality. (1-1-89)

~~0911.~~ **Director.** The Director of the Idaho Department of Environmental Quality or his/her designee. (5-3-03)

~~102.~~ **Disadvantaged Community.** The service area of a wastewater treatment facility that meets affordability criteria established by the Department of Environmental Quality after public review and comment. (3-29-12)

~~143.~~ **Disadvantaged Loans.** Loans made to a disadvantaged community. (3-29-12)

~~14.~~ Distribution System. Any combination of pipes, tanks, pumps, and other equipment that delivers water from the source(s), treatment facility(ies), or a combination of source(s) and treatment facility(ies) to the consumer. Chlorination may be considered as a function of a distribution system. ()

~~125.~~ **Eligible Costs.** Costs which are necessary for planning, designing and/or constructing wastewater treatment facilities or implementation of water pollution control projects. To be eligible, costs must be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 041. (5-3-03)

~~136.~~ **Environmental Impact Statement (EIS).** A document prepared by the applicant when the Department determines that the proposed construction project may significantly affect the environment. The major purpose of the EIS will be to describe fully the significant impacts of the project and how these impacts can be either avoided or mitigated. The environmental review procedures contained in Chapter 5 of the Handbook may be used as guidance when preparing the EIS. (3-29-12)

~~147.~~ **Environmental Information Document (EID).** Any written environmental assessment prepared by the applicant describing the environmental impacts of a proposed wastewater construction project. This document will be of sufficient scope to enable the Department to assess the environmental impacts of the proposed project and ultimately determine if an EIS is warranted. (3-29-12)

~~158.~~ **Financial Management System.** Uniform method of recording, summarizing and analyzing financial information about the water pollution control loan applicant. (3-30-01)

~~169.~~ **Finding of No Significant Impact (FONSI).** A document prepared by the Department presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an EIS will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it. (3-29-12)

~~1720.~~ **Handbook.** The “Wastewater ~~Facilities~~ Loan ~~Fund and Drinking Water Loan Fund~~ Handbook ~~of Procedures.~~” (5-8-09)()

- ~~218.~~ **Implementation Plan.** Completed project implementation plan or work plan provides detailed documentation of the proposed project including list of tasks, schedule of tasks, agency/contractor/entity responsible for implementation of the project tasks, adequate time schedules for completion of all budget tasks, and the anticipated results of the project. (3-30-01)
- ~~1922.~~ **Ineligible Costs.** Costs which are not eligible for funding pursuant to these rules. (3-29-12)
- ~~203.~~ **Interceptor Sewer.** That portion of the wastewater treatment facility whose primary purpose is to transport domestic sewage or nondomestic wastewater from collector sewers to a treatment plant. (1-1-89)
- ~~214.~~ **Loan Recipient.** An applicant who has been awarded a loan. (3-29-12)
- ~~22.~~ **National Pollutant Discharge Elimination System.** Point source permitting program established pursuant to Section 402 of the federal Clean Water Act (33 U.S.C. Section 1342). (3-30-01)
- ~~25.~~ **Managerial Capability.** The capability of the loan applicant to support the proper financial and technical operation of the system. ()
- ~~26.~~ **Maximum Contaminant Level (MCL).** The maximum permissible level of a contaminant in water which is delivered to any user of a public water system. ()
- ~~27.~~ **Noncommunity Water System.** A public water system that is not a community water system. ()
- ~~238.~~ **Nondomestic Wastewater.** Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin. (5-3-03)
- ~~249.~~ **Nonpoint Source Pollution.** Water pollution that enters the waters of the state from nonspecific and diffuse sources and is the result of runoff, precipitation, drainage, seepage, hydrological modification or land disturbing activities. (5-8-09)
- ~~2530.~~ **Nonpoint Source Project Sponsor.** Any applicant for ~~wastewater pollution control~~ loan funds ~~for~~ ~~to address~~ nonpoint source pollution ~~project~~. (5-8-09)()
- ~~2631.~~ **Operation and Maintenance Manual.** For wastewater treatment facilities, a guidance and training manual outlining the optimum operation and maintenance of the wastewater treatment facility or its components. For nonpoint source water pollution control projects, a plan that incorporates applicable sections of the Natural Resources Conservation Service Field Office Technical Guide, for implementation of best management practices. (3-29-12)
- ~~2732.~~ **Planning Document.** A document which describes the condition of a public wastewater system and presents a cost effective and environmentally sound alternative to achieve or maintain regulatory compliance. Engineering reports and facility plans are examples of such planning documents. The planning documents shall be prepared by or under the responsible charge of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Requirements for planning documents prepared using loan funds are provided in Section 030 of these rules and in the Handbook. (3-29-12)
- ~~2833.~~ **Plan of Operation.** A schedule of specific actions and completion dates for construction, start-up and operation of the ~~wastewater treatment~~ facility or for implementation of ~~wastewater pollution control~~ or ~~drinking water~~ projects. (5-3-03)()
- ~~2934.~~ **Point Source.** Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be discharged to the waters of the state. This term as used in these rules does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition. (5-8-09)

~~305.~~ **Pollutant.** Any chemical, biological, or physical substance whether it be solid, liquid, gas, or a quality thereof, which if released into the environment can, by itself or in combination with other substances, create a nuisance or render that environment harmful, detrimental, or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, aesthetic or other beneficial uses. (1-1-89)

~~316.~~ **Priority List.** An integrated list of proposed wastewater treatment facility and nonpoint source pollution control projects rated as described in Section 020; or a list of proposed drinking water projects rated by severity of risk to public health, the necessity to ensure compliance with IDAPA 58.01.08, Idaho Rules for Public Drinking Water Systems, and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.), population affected, and need on a household basis for protection of Idaho's public drinking water. (~~5-3-03~~)()

~~32.~~ **Rehabilitation.** ~~The repair or replacement of limited segments of intercepter or collector sewers.~~ (~~5-3-03~~)

~~37.~~ **Public Drinking Water System/Public Water System/Water System.** A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any "special irrigation district." A public water system is either a "community water system" or a "noncommunity water system." ()

~~38.~~ **Readiness to Proceed.** The progress which a loan applicant has made towards completion of time-consuming tasks necessary to complete a loan application (e.g. bond election, local improvement district formation, judicial confirmation towards debt authority, completion of facility plan). ()

~~339.~~ **Reserve Capacity.** That portion of the ~~treatment works~~ facility that is designed and incorporated in the constructed facilities to handle future ~~sewage flows and loadings~~ demand upon the system. (~~1-1-89~~)()

~~340.~~ **Sewer Use Ordinance/Sewer Use Resolution.** An ordinance or resolution ~~which that~~ requires new sewers and connections to be properly designed and constructed, prohibits extraneous sources of inflow and prohibits introduction of wastes into the sewer in an amount that endangers the public safety or the physical or operational integrity of the wastewater treatment facility. (~~5-8-09~~)()

~~3541.~~ **State.** The state of Idaho. (12-31-91)

~~3642.~~ **Supplemental Grants.** A state funded grant awarded in conjunction with a loan from the water pollution control loan account. (3-29-12)

~~3743.~~ **Suspension.** An action by the Director to suspend a loan contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (1-1-89)

~~3844.~~ **Sustainability.** Sustainability will include efforts for energy and water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement. (3-29-12)

~~3945.~~ **Termination.** An action by the Director to permanently terminate a loan contract prior to project completion for a specific cause. Terminated contracts will not be reinstated. (1-1-89)

~~406.~~ **User Charge System.** A system of rates and service charges applicable to specific types of users, including any legal enforcement mechanism as may be required and which provides sufficient reserves and/or revenues for debt retirement, operation and maintenance, and replacement of the installed equipment or structures. (3-30-01)

~~417.~~ **Wastewater.** A combination of the liquid and water-carried wastes from dwellings, commercial

buildings, industrial plants, institutions and other establishments, together with any groundwater, surface water and storm water that may be present; liquid and water that is physically, chemically, biologically, or rationally identifiable as containing excreta, urine, pollutants or domestic or commercial wastes; sewage. (1-1-89)

428. Wastewater Treatment Facility. Any facility, including land, equipment, furnishings and appurtenances thereof, used for the purpose of collecting, treating, neutralizing or stabilizing wastewater and removing pollutants from wastewater including the treatment plant, collectors, interceptors, outfall and outlet sewers, pumping stations, sludge treatment and handling systems, land disposal systems; a sewage treatment plant. (1-1-89)

439. Water Pollution Control Project. Any project that contributes to the removal, curtailment, or mitigation of pollution of the surface waters or groundwater of the state, or the restoration of the quality of said waters, and conforms to any applicable planning document which has been approved and/or adopted such as the State Water Quality Management Plan. This includes the planning, design, construction/implementation or any other distinct stage or phase of a project. (3-30-01)

50. Water System Protection Ordinance. An ordinance adopted pursuant to Chapter 32, Title 42, Idaho Code, or other applicable law that requires new connections to be properly designed and constructed, which prohibits cross-connections with non-potable water sources and in all ways protects the water system from injection of contaminants, and that provides for fees for service from users or classes of users. ()

008. OFFICE HOURS — MAILING ADDRESS AND STREET ADDRESS ELIGIBLE SYSTEMS.
The state office of the Department of Environmental Quality and the office of the Board of Environmental Quality are located at 1410 N. Hilton, Boise, Idaho 83706-1255, telephone number (208) 373-0502. The office hours are 8 a.m. to 5 p.m. Monday through Friday. (5-8-09)

01. Basic Drinking Water Considerations. Public and private community water systems and nonprofit noncommunity water systems. ()

02. Basic Wastewater Considerations. Municipal or non-profit owned wastewater point source treatment facilities, lagoons, reuse facilities, and systems using nonpoint source methodologies of wastewater disposal. ()

03. Assistance to Ensure Compliance. Public water systems not eligible for project loans may receive assistance if: ()

a. The use of the assistance will ensure compliance; ()

b. The owner or operator of the system agrees to undertake feasible and appropriate changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures); ()

c. The Department determines that the measures are necessary to ensure that the system has the technical, managerial, and financial capability to comply with state and federal drinking water requirements over the long term; and ()

d. Prior to providing assistance under this section to a public water system that is in significant noncompliance with any requirement of IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.), the Department conducts a review to determine whether this section applies to the system. ()

009. (RESERVED) INELIGIBLE SYSTEMS.

01. Basic Considerations. Systems not eligible for project loans are described in Subsection 009.02. ()

02. Systems Not Eligible. The following systems will not be considered eligible for project loans: ()

- a. Wastewater systems that are owned by individuals or for-profits; ()
- b. Drinking water systems in significant noncompliance with any requirement of IDAPA 58.01.08, Idaho Rules for Public Drinking Water Systems, and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.); ()
- c. Drinking water systems under disapproval designation as outlined in IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems"; or ()
- d. Systems delinquent in payment of fines, state revolving fund loans, penalties, or fee assessments due to DEQ. ()

010. FINANCIAL AND MANAGEMENT CAPABILITY ANALYSIS.

No loans shall be awarded for projects unless the applicant has demonstrated and certified that it has the legal, technical, managerial, and financial capabilities as provided for in these rules to ensure construction, operation and maintenance, and to repay principal and interest which would be due on a loan. (5-3-03)

01. Information Needed. Before an application will be considered complete, the applicant must submit all necessary information on a form prescribed by the Department along with substantiating documentation. The information may include, but not be limited to, demographic information of the applicant, estimated construction or implementation costs, annual operating costs, and information regarding the financing of the project, including the legal debt limit of the applicant and the existence and amount of any outstanding bonds or other indebtedness which may affect the project. (5-8-09)

02. Incorporated Nonprofit Applicants. (7-1-93)

a. In addition to all other information required to be submitted by these rules, an incorporated nonprofit applicant must demonstrate to the satisfaction of the Department by its articles of incorporation and/or bylaws, that: (3-30-01)

- i. The corporation is nonprofit and lawfully incorporated pursuant to Chapter 3, Title 30, Idaho Code; (5-8-09)
- ii. The corporation is authorized to incur indebtedness to construct, improve or repair wastewater ~~treatment~~ or drinking water facilities and/or implement water pollution control nonpoint source projects; (~~5-8-09~~) ()
- iii. The corporation is authorized to secure indebtedness by pledging corporation ~~property assets,~~ including any revenues raised through a user charge system; (~~5-8-09~~) ()
- iv. The corporation exists either perpetually or for a period long enough to repay a ~~wastewater treatment facility loan or water pollution control~~ project loan; and (~~3-30-01~~) ()
- v. The corporation is capable of raising revenues sufficient to repay a loan. (3-30-01)

b. The Department may impose conditions on the making of a ~~wastewater treatment~~ facility loan or water pollution control nonpoint source project to an incorporated nonprofit applicant which are necessary to carry out the provisions of these rules and the provisions of Chapter 36 or 76, Title 39, Idaho Code. (~~3-30-01~~) ()

03. Cost Allocation. An applicant proposing a point source wastewater, drinking water or nonpoint source ~~water pollution control~~ project designed to serve two (2) or more entities must show how the costs will be allocated among the participating entities. Such applicants must provide an executed intermunicipal service agreement which, at a minimum, incorporates the following information: (~~5-8-09~~) ()

- a. The basis upon which the costs are allocated; (5-8-09)

- b. The formula by which the costs are allocated; and (1-1-89)
- c. The manner in which the cost allocation system will be implemented. (1-1-89)

04. Waivers. The requirement in ~~Subsection 010.03~~ may be waived by the Department if the applicant can demonstrate: ~~(12-31-91)~~()

- a. Such an agreement is already in place; (5-8-09)
- b. There is documentation of a service relationship in the absence of a formal agreement; or (1-1-89)
- c. An applicant exhibits sufficient financial strength to continue the project if one (1) or more of the applicants fails to participate. (5-8-09)

011. -- 019. (RESERVED)

020. ~~INTEGRATED~~ PRIORITY RATING SYSTEM.

Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. ~~Information is also received from the Department and consulting engineers.~~ Limited loan funds are awarded to projects based on priority ratings and readiness to proceed. Projects are rated by the Department on a standard priority rating form using public health, sustainability, the condition of the existing system and water quality criteria. ~~(3-29-12)~~()

01. Purpose. An ~~integrated~~ priority rating system shall be utilized by the Department to annually allot available funds to wastewater quality and drinking water projects determined eligible for funding assistance under ~~the water pollution control loan program in accordance with~~ these rules. ~~(5-3-03)~~()

02. Wastewater Priority Rating. The priority rating system shall be based on a numerical point system. Priority criteria shall contain the following points: (3-29-12)

- a. Public health emergency or hazard certified by the Idaho Board of Environmental Quality, the Department, a District Health Department or by a District Board of Health -- one hundred and fifty (150) points. (5-8-09)
- b. Regulatory compliance issues (e.g., noncompliance and resulting legal actions relating to infrastructure deficiencies at a wastewater facility) -- up to one hundred (100) points. (3-29-12)
- c. Watershed restoration (e.g., implementation of best management practices or initiation of construction at wastewater collection and treatment facilities as part of an approved total maximum daily load plan, implementation of nonpoint source management actions in protection of a threatened water, or is part of a special water quality effort) -- up to one hundred (100) points. (3-29-12)
- d. Watershed protection from impacts (e.g., improvement of beneficial use(s) in a given water body, evidence of community support, or recognition of the special status of the affected water body) -- up to one hundred (100) points. (3-29-12)
- e. Preventing impacts to uses (nonpoint source pollution projects) -- up to one hundred (100) points. (3-29-12)
- f. Sustainability efforts (e.g., prospective efforts at energy conservation, water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement) -- up to fifty (50) points. (3-29-12)
- g. Affordability (current system user charges exceed state affordability guidelines) -- ten (10) points. (3-29-12)

03. Drinking Water Priority Rating. The priority rating system shall be based on a numerical points

system. Priority criteria shall contain the following points. ()

a. Public Health Hazard. Any condition that creates, or may create, a danger to the consumer's health, which may include any one (1) or more of the following, may be awarded a maximum of one hundred (100) points: ()

i. Documented unresolved violations of the primary drinking water standards including maximum contaminant levels, action levels, and treatment techniques (to include maximum contaminant levels for acute and chronic contaminants): ()

ii. Documented unresolved violations of pressure requirements; ()

iii. Documented reduction in source capacity that impacts the system's ability to reliably serve water; ()

iv. Documented significant deficiencies (e.g., documented in a sanitary survey) in the physical system that are causing the system to not reliably serve safe drinking water; or ()

v. Documented unregulated contaminants that have been shown by EPA to be a risk to public health. ()

b. General Conditions of Existing Facilities. Points shall be given based on deficiencies, which would not constitute a public health hazard, for pumping, treating, and delivering drinking water - up to sixty (60) points. ()

c. Sustainability Efforts (e.g., prospective efforts at energy conservation, water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement) - up to fifty (50) points. ()

d. Consent Order, Compliance Agreement Schedule, or Court Order. Points shall be given if the system is operating under and in compliance with a Consent Order, Compliance Agreement Schedule, or Court Order and the proposed construction project will address the Consent Order, Compliance Agreement Schedule, or Court Order - up to thirty (30) points. ()

e. Incentives. Bonus points shall be awarded to systems that promote source water protection, conservation, economy, proper operation maintenance, and monitoring - up to ten (10) points. ()

f. Affordability. Points shall be given when current system user charges exceed state affordability guidelines - ten (10) points. ()

034. Rating Forms. Rating criteria for ~~Subsection 020-02~~ is set forth in a rating form that is available in the Handbook. ~~(3-29-12)~~()

045. ~~Integrated~~ Priority List. A list shall be developed from projects rated according to ~~Subsection 020-02. Such list shall be~~, submitted for public review and comment, and ~~shall thereafter be~~ submitted to the Board for approval. ~~(3-29-12)~~()

a. Priority Reevaluation. Whenever significant changes occur, which in the Department's judgment would affect the design parameters or treatment requirements by either increasing or decreasing the need for or scope of any project, a reevaluation of that priority rating will be conducted. (1-1-89)

~~**b. Priority Target Date.** An eligible applicant whose project is on the approved priority list, and for which funding is available, will be contacted by the Department and a target date for submission of a completed loan application will be established.~~ ~~(5-3-03)~~

eb. Project Bypass. A project that does not or will not meet the ~~project target date or a~~ Department schedule that allows for timely utilization of loan funds may be bypassed, substituting in its place the next highest

ranking project(s) that is ready to proceed. An eligible applicant that is bypassed will be notified in writing of the reasons for being bypassed. (3-29-12)()

056. Amendment of ~~Integrated~~ **a** Priority List. The Director may amend ~~the Integrated~~ **a** Priority List as set forth in Section 995 of these rules. (5-8-09)()

021. DISADVANTAGED LOANS.

Disadvantaged Loan Awards. In conjunction with the standard loans, the Department may award disadvantaged loans to applicants deemed disadvantaged using the following criteria: (3-29-12)

01. Qualifying for a Disadvantaged Loan. In order to qualify for a disadvantaged loan, a loan applicant must have an ~~annual residential~~ user rate for ~~either drinking water or~~ wastewater services ~~for residential customers which that~~ exceeds two percent (2%) of the applicant community's median household income or, if the user rate is between one and one-half percent (1½%) and two percent (2%) of the applicant community's median household income, the community must also have: unemployment that exceeds the state average; and a decreasing population. The applicant shall agree to a thirty (30) year loan unless the design life of the project is documented to be less than thirty (30) years. The annual user rate would be based on all operating, maintenance, replacement, and debt service costs (both for the existing system and for upgrades). If the applicant's service area is not within the boundaries of a municipality, or if the applicant's service area's median household income is not consistent with the municipality as a whole, the applicant may use the census data for the county in which it is located or may use a representative survey, conducted by a Department approved, objective third party, to verify the median household income of the applicant's service area. (3-25-16)()

02. Adjustment of Loan Terms. DEQ will equally apportion funds available for principal forgiveness to all prospective disadvantaged loan recipients. ~~For wastewater loan funding, the length of the repayment period is set at the borrower's discretion, up to the maximum repayment period of thirty (30) years. For drinking water loan funding, extensions of repayment term to thirty (30) years are only allowed for disadvantaged applicants.~~ Consistent with achieving user rates as per the criteria set forth in ~~Subsection 021-01~~, and where possible with available funds, loan terms may be adjusted in the following order: decreasing the interest rate and providing principal forgiveness. (3-25-16)()

a. Decreasing Interest Rate. The loan interest rate may be reduced from the rate established by the Director for standard loans to a rate that results in an annual user rate equaling the criteria set forth in ~~Subsection 021-01~~. The interest rate may be reduced to as low as zero percent (0%). (3-25-16)()

b. Principal Forgiveness. If even at zero percent (0%) interest, the annual user rate per residential user still exceeds the criteria set forth in ~~Subsection 021-01~~, then the principal ~~which that~~ causes the user charge to exceed the criteria set forth in ~~Subsection 021-01~~ may be partially forgiven or reduced. The principal reduction cannot exceed fifty percent (50%) of the total loan, ~~unless the user rate will exceed \$100 per month (in which case the principal reduction may exceed fifty percent (50%)).~~ Principal forgiveness terms may be revised (from initial estimates established in the annual Intended Use Plan) based upon final construction costs, such that loan terms do not result in user rates that are below the criteria set forth in ~~Subsection 021-01~~. (3-25-16)()

022. SUPPLEMENTAL GRANTS.

In conjunction with loans, the Department may award state funded supplemental grants, not to exceed ninety percent (90%) of total eligible costs, to loan recipients in the following manner: (3-29-12)

01. Projects Not Funded by Loans. Planning and design projects may receive grant assistance up to ninety percent (90%) funding of eligible costs not funded by a loan; and (1-1-89)

02. Costs in Excess of Financial Ability. (3-30-01)

a. Loan recipients may receive supplemental grant assistance for eligible costs that exceed the amount a loan recipient is able to pay. In order to qualify for a supplemental grant, a loan recipient must have the following: (3-29-12)

i. An annual user rate per household which exceeds one and one-half percent (1 1/2%) of the median

household income from the most recent census data. If the loan recipient's service area is not within the boundaries of a municipality, the loan recipient may use the census data for the county in which it is located or may use an income survey approved by the Department; and (3-29-12)

ii. The annual user rate includes all operating, maintenance, replacement and debt service costs, both for the existing system and for upgrades. (3-29-12)

b. If a loan recipient meets the requirement of ~~Subsections 022-02.i. and 022-02.ii.~~, a supplemental grant may be made for the amount of the project that causes the annual user rate for wastewater service per household to exceed one and one-half percent (1 1/2%) of the median household income, subject to available funds. (3-29-12)()

~~03. **Accrued Interest on Loans with Supplemental Grants.** Interest will not be accrued during the design and construction phases on loan projects that also have a supplemental grant. (3-30-01)~~

023. -- 029. (RESERVED)

030. PROJECT SCOPE AND FUNDING.

Loan funds awarded under this program may be used to prepare a ~~wastewater treatment~~ facility planning document which identifies the cost effective and environmentally sound alternative to achieve or maintain compliance with IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," the Safe Drinking Water Act, 42 U.S.C., Sections 300f et seq., IDAPA 58.01.16, "Wastewater Rules," and the Clean Water Act, 33 U.S.C. Sections 1381 et seq., and which is approvable by the Department. Loan funds may also be used for design and construction of the chosen alternative. (3-29-12)()

01. Nonpoint Source Implementation Funding. Eligible nonpoint source water pollution control projects may be funded when all of the following criteria are met: (3-30-01)

a. Consistent with and implements the Idaho Nonpoint Source Management Plan. (3-30-01)

b. Data is used to substantiate a nonpoint source pollutant problem or issue exists and is described or directly referenced. (3-30-01)

c. Completed project implementation plan or work plan. (3-30-01)

d. Project commitment documentation through demonstrated ability for loan repayment. (3-30-01)

e. The project includes documentation that the project owner(s), manager(s), or the sponsoring agency will maintain the project for the life of the project (e.g., Maintenance Agreement). (3-30-01)

f. The project provides adequate tracking and evaluation of the effectiveness of the water quality improvements being funded by either the project owner/manager or the sponsoring agency throughout the life of the project. (3-30-01)

g. The project demonstrates nexus/benefit to municipality through a letter of support from one (1) or more affected municipalities. (3-30-01)

02. ~~Wastewater Treatment Facility Funding.~~ Projects may be funded in steps: (3-30-01)()

a. Step 1. Planning document prepared in accordance with the Handbook. (3-29-12)

b. Step 2. Design which includes the preparation of the detailed engineering plans and specifications necessary for the bidding and construction of the project. (1-1-89)

c. Step 3. Construction, which includes bidding and actual construction of the project. (1-1-89)

d. Step 4. A combination of Step 2 and Step 3. (1-1-89)

e. Combination Step Funding. Projects may be funded in any combination of the steps with the approval of the Department. Separate loans may be awarded for Step 1 or Step 2 projects. If a Step 1 or Step 2 project proceeds to construction, either the Step 1 or Step 2 loan, or both, may be consolidated with the Step 3 loan. If a project does not proceed to construction, outstanding Step 1 and Step 2 loans will be amortized and a repayment schedule prepared by the Department. (1-1-89)

f. Cost Effective Requirement. Step 2, Step 3 or Step 4 loans shall not be awarded until a final cost effective and environmentally sound alternative has been selected by the Step 1 planning document and approved by the Department. If the planning document has not been completed pursuant to IDAPA 58.01.0422, "Rules for Administration of ~~Wastewater Treatment Facility~~ Planning Grants for Drinking Water and Wastewater Facilities," then the loan recipient shall provide an opportunity for the public to comment on the draft planning document. The public comment period shall be held after alternatives have been developed and the Department has approved the draft planning document. The loan recipient shall provide written notice of the public comment period and hold at least one (1) public meeting within the jurisdiction of the loan recipient during the public comment period. At the public meeting, the draft planning document shall be presented by the loan recipient with an explanation of the alternatives identified. The cost effective and environmentally sound alternative selected shall consider public comments received from those affected by the proposed project. After the public meeting and public comment period, the final alternative will be selected and the Environmental Information Document will be prepared. (3-29-12)()

g. Funding For Wastewater Reserve Capacity. Funding for reserve capacity of a treatment plant will not exceed a twenty (20) year population growth and funding for reserve capacity of an interceptor will not exceed a forty (40) year population growth as determined by the Department. (1-1-89)()

h. Funding for Drinking Water Reserve Capacity. Funding for reserve capacity of a drinking water system shall not exceed a twenty (20) year population growth, except that distribution and transmission lines which may be planned for a forty (40) year useful life. ()

031. LIMITATION OF PRELOAN ENGINEERING REVIEWS.

Preloan engineering documents prepared by consulting engineers will be reviewed by Department staff only when accompanied by a certificate that the consulting engineer carries professional liability insurance in accordance with Subsection 050.05.d. (5-3-03)()

032. LOAN FEE.

01. **Loan Fee.** The Department may elect to impose a loan fee when necessary to offset the costs of administering the loan program, to provide planning assistance, or to otherwise facilitate the operation of the Clean Water Act State Revolving Fund (CWSRF) loan efforts. ~~The Department may impose a loan fee on loans scheduled to close after January 4, 2006.~~ The loan fee shall not exceed one percent (1%) of the unpaid balance of the loan at the time each loan payment is due. (5-8-09)()

~~02. **Determination of Loan Fee.** The Department shall determine the amount of the loan fee on a yearly basis and shall assess a loan fee based upon each loan recipient's total interest rate. The amount of the loan fee shall be included in the Intended Use Plan, as described by Section 606(e) of the Clean Water Act. In determining the amount of the loan fee, the Department shall consider:~~ (3-29-12)

~~a. The Department's anticipated costs of administering the loan program for the upcoming fiscal year, including salaries and overhead;~~ (3-19-07)

~~b. Any Department costs related to providing technical assistance for the loan program for the upcoming fiscal year;~~ (5-8-09)

~~c. The amount of money generated from loan fees in previous fiscal years available for use in the upcoming fiscal year; and~~ (3-19-07)

~~d. The anticipated demand for planning assistance to supplement regular appropriations and other~~

~~related needs to support the CWSRF loan program.~~

~~(5-8-09)~~

032. **Effect on Loan Interest Rate.** The loan interest rate, as described in ~~Subsection 050-05~~, will be reduced by the corresponding percentage of the loan fee. ~~(3-19-07)~~()

043. **Payment of Loan Fee.** The loan fee shall be due and payable concurrently with scheduled loan principal and interest repayments over the repayment period. (3-19-07)

033. -- 039. (RESERVED)

040. LOAN APPLICATION AND REVIEW.

01. Submission of Application. Those eligible systems that received high priority ranking and are ready to proceed shall be invited to submit an application. The applicant shall submit to the Department, a completed application on a form as prescribed by the Department. ~~(5-3-03)~~()

02. Application Requirements. Applications shall contain the following documentation, as applicable: (5-3-03)

a. A lawful resolution passed by the governing body authorizing an elected official or officer of the applicant to execute a loan contract and sign subsequent loan disbursement requests; (5-8-09)

b. Contracts for engineering or other technical services and the description of costs and tasks set forth therein shall be in sufficient detail for the Department to determine whether the costs associated with the tasks are eligible costs pursuant to Section 041; (5-8-09)

c. Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (5-3-03)

~~i. Be procured for design and/or services during construction or previously procured for planning services through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; (5-8-09)~~

~~ii.~~ Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; (5-8-09)

~~iii.~~ Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (5-3-03)

~~iv.~~ Be covered by professional liability insurance in accordance with ~~Subsection 050-05.d.~~ of these rules. A certification of liability insurance shall be included in the application. ~~(5-8-09)~~()

d. A description of other costs, not included in the contracts for engineering or other technical services, for which the applicant seeks funding. The description of the costs and tasks for such costs must be in sufficient detail for the Department to determine whether the costs are eligible costs pursuant to Section 041; (5-8-09)

e. A demonstration that the obligation to pay the costs for which funding is requested is the result or will be the result of the applicant's compliance with applicable competitive bidding requirements for construction and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code; (3-29-12)

f. Step 1 -- Scope of work describing the work tasks to be performed in the preparation of the planning document if required in accordance with ~~Subsection 030-02~~, a schedule for completion of the work tasks and an estimate of staff hours and costs to complete the work tasks; ~~(3-29-12)~~()

g. Step 2 -- Design, or Step 4 -- Design and Construction: (1-1-89)

- i. Planning document, including a final environmental document and decision in accordance with Section 042; (3-29-12)
- ii. Financial and management capability analysis as provided in ~~Subsection 010-01~~; and ~~(12-31-91)~~()
- iii. Intermunicipal service agreements between all entities within the scope of the project, if applicable; (5-8-09)
- h.** Step 3 -- Construction: (1-1-89)
- i. Documented evidence of all necessary easements and land acquisition; (5-8-09)
- ii. Biddable plans and specifications of the approved wastewater treatment facility alternative; (5-8-09)
- iii. A plan of operation and project schedule; (5-8-09)
- iv. A user charge system, sewer use or water system protection ordinance and financial management system; and ~~(1-1-89)~~()
- v. A staffing plan and budget; (5-8-09)
- i.** Step 4 -- Design and Construction. Loan applicants must submit all documentation specified in ~~Subsection 040-02-h~~ prior to advertising for bids on construction contracts; ~~(5-8-09)~~()
- j.** Nonpoint Source Implementation Funding: (5-8-09)
- i. Information demonstrating that the project is consistent with and implements the Idaho Nonpoint Source Management Plan; (5-8-09)
- ii. Data that substantiates a nonpoint source pollution problem or issue exists; (5-8-09)
- iii. A project implementation plan or workplan; (5-8-09)
- iv. Project commitment documentation that demonstrates the ability for loan repayment; (5-8-09)
- v. Documentation that the project owner, manager or sponsoring agency will maintain the project for the life of the project; (5-8-09)
- vi. A demonstration that there will be adequate tracking and evaluation of the effectiveness of the water quality improvements being funded by either the project owner/manager or the sponsoring agency throughout the life of the project; and (5-8-09)
- vii. A description of the nexus/benefit to a municipality and a letter of support from one (1) or more affected municipalities. (5-3-03)

03. Determination of Completeness of Application. The Department ~~shall~~ will review the application to determine whether it includes all of the information required by ~~Subsection 040-02~~. ~~(5-3-03)~~()

04. Notification of Incompleteness of Application. Written notification if an application is incomplete, including an explanation of missing documentation will be sent to the applicant. The applicant may provide the missing documentation. (5-3-03)

05. Reapplication for Loan. The action of disapproving, recalling or terminating a loan in no way precludes or limits the former applicant from reapplying for another loan when the project deficiencies are resolved and project readiness is secured. (1-1-89)

041. DETERMINATION OF ELIGIBILITY OF COSTS.

The Department ~~shall~~ will review the application, including any contracts required to be submitted with the application, to determine whether the costs are eligible costs for funding. ~~(5-3-03)~~()

01. Eligible Costs. Eligible costs are those determined by the Department to be: (5-3-03)

a. Necessary costs; (3-29-12)

b. Reasonable costs; and (3-29-12)

c. Costs that are not ineligible as described in ~~Sub~~section 041-05. ~~(5-3-03)~~()

02. Necessary Costs. The Department ~~shall~~ will determine whether costs are necessary by comparing the tasks for which the costs will be incurred to the scope of the project as described in the plan of study for facility planning ~~planning~~ documents, the project implementation plan or work plan for nonpoint source projects, and any other relevant information in the application that describes the scope of the project to be funded. ~~(3-29-12)~~()

03. Reasonable Costs. Costs ~~shall~~ will be determined by the Department to be reasonable if the obligation to pay the costs is the result of or will be the result of the applicant's compliance with applicable competitive bidding requirements for construction and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code. ~~(5-8-09)~~()

04. Examples of Costs That May Be Eligible. Examples of costs that may be eligible, if determined necessary, reasonable and not ineligible costs include: (5-3-03)

a. Costs of salaries, benefits, and expendable material the applicant incurs in the project except ordinary operating expenses of local government, such as salaries and expenses of mayors, city council members, attorneys, commissioners, board members, or managers; (5-8-09)

b. Costs under construction contracts bid and executed in compliance with state public works construction laws; (5-3-03)

c. Professional and consulting services utilizing a lump sum contract, a negotiated hourly rate contract, a time and materials contract, or cost plus a fixed fee contract; (5-3-03)

d. Planning directly related to the ~~water pollution control~~ projects; ~~(5-3-03)~~()

e. ~~Sewer~~sSystem evaluations; ~~(5-3-03)~~()

f. Financial and management capability analysis; (5-3-03)

g. Preparation of construction drawings, specifications, estimates, and construction contract documents; (5-3-03)

h. Landscaping; (5-3-03)

i. Removal and relocation or replacement of utilities for which the applicant is legally obligated to pay; (5-8-09)

j. Material acquired, consumed, or expended specifically for the project; (5-3-03)

k. A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations; (5-3-03)

l. Preparation of an operation and maintenance manual; (5-3-03)

- m. Preparation of a plan of operation; (5-3-03)
 - n. Start-up services; (5-3-03)
 - o. Project identification signs; (5-3-03)
 - p. Public participation for alternative selection; (5-3-03)
 - q. Development of user charge and financial management systems; (5-3-03)
 - r. Development of sewer use or water system protection ordinance; ~~(5-3-03)~~()
 - s. Staffing plans and budget development; (5-3-03)
 - t. Certain direct and other costs as determined eligible by the Department; (5-3-03)
 - u. Costs of complying with the Federal Water Pollution Control Act (P.L. 92-500) as amended, 33 USC Section 1251 et seq. and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq., loan requirements applied to specific projects; and ~~(5-3-03)~~()
 - v. Site acquisition costs, including ~~sewer~~ right of way, ~~sewage treatment~~ plant site, wastewater land application sites and sludge disposal areas. Land purchase shall be from a willing seller. ~~(3-29-12)~~()
- 05. Ineligible Project Costs.** Costs which are ineligible for funding include, but are not limited to: (5-3-03)
- a. Basin or area wide planning not directly related to the project; (5-3-03)
 - b. Bonus payments not legally required for completion of construction before a contractual completion date; (5-3-03)
 - c. Personal injury compensation or damages arising out of the project; (5-3-03)
 - d. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (5-3-03)
 - e. Costs outside the scope of the approved project; (5-3-03)
 - f. Ordinary operating expenses of local government, such as salaries and expenses of mayors, city council members, attorneys, commissioners, board members, or managers; (5-8-09)
 - g. Construction of privately owned wastewater treatment facilities; (5-3-03)
 - h. Cost of land in excess of that needed for the proposed project; (5-3-03)
 - i. Cost of refinancing existing indebtedness; (3-29-12)
 - ~~j.~~ Engineering costs incurred without professional liability insurance; ()
 - ~~k.~~ Costs of condemnation; ()
 - ~~l.~~ Reserve funds; and (3-29-12)
 - ~~m.~~ Costs incurred prior to acceptance of the loan unless specifically approved in writing as eligible pre-award costs by the Department. (3-29-12)

06. Notification Regarding Ineligible Costs. Prior to providing a loan offer, the Department ~~shall~~ will notify the applicant if certain costs are not eligible for funding and the reasons for the Department's determination. If such costs are included in the engineering contract, the Department ~~shall~~ will also provide notification to the engineer. The applicant may provide the Department additional information in response to the notice.

(5-3-03)()

07. Eligible Costs and the Loan Offer. The loan offer shall reflect those costs determined by the Department to be eligible costs. The loan offer, however, may include estimates of some eligible costs that have not yet been set, such as construction costs. Actual eligible costs may differ from such estimated costs set forth in the loan offer. In addition, loan disbursements may be increased or decreased if eligible costs are modified as provided in Section 060.

(5-3-03)

042. ENVIRONMENTAL REVIEW.

01. Environmental Documentation. ~~Projects may be a nonpoint source activity or a wastewater treatment facility or other point source facility.~~ Guidance on how to complete an environmental review ~~may be~~ is found in Chapter 5 of the applicable Handbook. For eligible point source projects funded solely with non-federal funds (e.g. State Revolving Loan Fund repayments), see ~~Subsection 042.10~~. For eligible point source projects, the loan recipient shall complete an environmental review as part of and in conjunction with a planning document. Projects funded exclusively as nonpoint or estuary management projects may not be required to complete an environmental review. The loan recipient shall consult with the Department at an early stage in the loan process to determine the required level of environmental review. Based on review of existing information, and assessment of environmental impacts, the loan recipient shall complete one (1) of the following per the Department's instruction:

(3-29-12)()

a. Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department;

(5-8-09)

b. Prepare an Environmental Information Document (EID) in a format specified by the Department;

(5-8-09)

or

c. Prepare an Environmental Impact Statement (EIS) in a format specified by the Department.

(5-8-09)

02. Categorical Exclusions. If the loan recipient requests a CE, the Department ~~shall~~ will review the request and, based upon the supporting documentation, take one (1) of the following actions:

(3-29-12)()

a. Determine if the action is consistent with categories eligible for exclusion whereupon the Department ~~shall~~ will issue a notice of CE from substantive environmental review. Once the CE is granted for the selected alternative, the Department will publish a notice of CE in a local newspaper in the geographical area of the proposed project to inform the public of this action, following which the planning document can be approved and the loan award can proceed; or

(3-29-12)()

b. Determine if the action is not consistent with categories eligible for exclusion and that issuance of a CE is not appropriate. If a CE is not issued, the Department ~~shall~~ will notify the loan recipient to prepare an EID.

(3-29-12)()

03. Environmental Information Document Requirements. When an EID is required, the loan recipient shall prepare the EID in accordance with the following Department procedures:

(3-29-12)

a. Various laws and executive orders related to environmentally sensitive resources shall be considered as the EID is prepared. Appropriate state and federal agencies shall be consulted regarding these laws and executive orders;

(5-8-09)

b. A full range of relevant impacts, both direct and indirect, of the proposed project shall be discussed in the EID, including measures to mitigate adverse impacts, cumulative impacts, and impacts that shall cause irreversible or irretrievable commitment of resources; and

(5-8-09)

c. The Department *shall will* review the draft EID and either request additional information about one (1) or more potential impacts, or *shall* draft a “finding of no significant impact” (FONSI). ~~(5-8-09)~~()

04. Final Finding of No Significant Impact. The Department *shall will* publish the draft FONSI in a local newspaper in the geographical area of the proposed project and *shall will* allow a minimum thirty (30) day public comment period. Following the required period of public review and comment, and after any public concerns about project impacts are addressed, the FONSI *shall will* become final. The Department *shall will* assess the effectiveness and feasibility of the mitigation measures identified in the FONSI and EID prior to the issuance of the final FONSI and approval of the planning document. ~~(3-29-12)~~()

05. Environmental Impact Statement (EIS) Requirements. If an (EIS) is required, the loan recipient shall: (3-29-12)

a. Consult with all affected federal and state agencies, and other interested parties, to determine the required scope of the document; (5-8-09)

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; (5-8-09)

c. Conduct a public meeting which may be in conjunction with a planning document meeting; and (3-29-12)

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. (5-8-09)

06. Final ~~Environmental Impact Statement (EIS)~~. Upon completion of the EIS by the loan recipient and approval by the Department of all requirements listed in ~~Subsection 042-05~~, the Department *shall will* issue a record of decision, documenting the mitigation measures ~~which shall to~~ be required of the loan recipient. The loan agreement can be completed once the final EIS has been approved by the Department. ~~(3-29-12)~~()

07. Partitioning the Environmental Review. Under certain circumstances, the building of a component/partition of a ~~wastewater~~ system may be justified in advance of all environment review requirements for the remainder of the system. The Department *shall will* approve partitioning the environment review in accordance with established procedures. ~~(3-29-12)~~()

08. Use of Environmental Reviews Conducted by Other Agencies. If environmental review for the project has been conducted by another state, federal, or local agency, the Department may, at its discretion, issue its own determination by adopting the document and public participation process of the other agency. (5-8-09)

09. Validity of Review. Environmental reviews, once completed by the Department, are valid for five (5) years from the date of completion. If a loan application is received for a project with an environmental review which is more than five (5) years old, the Department *shall will* reevaluate the project, environmental conditions and public views and *shall will*: ~~(3-29-12)~~()

a. Reaffirm the earlier decision; or (1-1-89)

b. Require supplemental information to the earlier EIS, EID, or request for CE. Based upon a review of the updated document, the Department *shall will* issue and distribute a revised notice of CE, FONSI, or record of decision. ~~(5-8-09)~~()

10. Exemption From Review. Loan projects may be exempt from certain federal crosscutting authorities at the discretion of the Department as long as in any given year the annual amount of loans, equal to the most recent federal capitalization grant, complies with all of the federal crosscutting authorities. (3-29-12)

043. -- 049. (RESERVED)

050. LOAN OFFER AND ACCEPTANCE.

01. Loan Offer. Loan offers will be delivered to successful applicants by representatives of the Department or by registered mail. (1-1-89)

02. Acceptance of Loan Offer. Applicants have sixty (60) days in which to officially accept the loan offer on prescribed forms furnished by the Department. The sixty (60) day acceptance period commences from the date indicated on the loan offer notice. If the applicant does not accept the loan offer within the sixty (60) day period the loan funds may be offered to the next project of priority. (1-1-89)

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director and upon signature by the authorized representative of the eligible applicant, the loan offer shall become a contract. Upon accepting a loan offer, an eligible applicant becomes a loan recipient. The disbursement of funds pursuant to a loan contract is subject to a finding by the Director that the loan recipient has complied with all loan contract conditions and has prudently managed the project. The Director may, as a condition of disbursement, require that a loan recipient vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with loan funds. No third party shall acquire any rights against the state or its employees from a loan contract. (5-3-03)()

04. Estimate of Reasonable Cost. All loan contracts will include the eligible costs of the project. Some eligible costs may be estimated and disbursements may be increased or decreased as provided in Section 060. (5-3-03)

05. Terms of Loan Offers. The loan offer shall contain such terms as are prescribed by the Department including, but not limited to: (1-1-89)

a. Terms consistent with these rules, the project step to be funded under the loan offer, and Title 39, Chapter 36, Idaho Code; (5-8-09)

b. Special clauses as determined necessary by the Department for the successful investigation, design, construction and management of the project; (5-8-09)

c. Terms consistent with applicable state and federal laws pertaining to planning documents, design, and construction, including the Public Works Contractors License Act and the Public Contracts Bond Act, Chapter 19, Title 54, Idaho Code, and the federal Clean Water Act and Safe Drinking Water Act requirements for projects funded with loan moneys of federal origin; (3-29-12)()

d. Requirement for the prime engineering firm(s) and their principals retained for engineering services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors and omissions of a professional nature. The total aggregate of the engineer's professional liability insurance shall be one hundred thousand dollars (\$100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability insurance must cover all such services rendered for all project phases, whether or not such services or phases are state funded, until the certification of project performance is accepted by the Department; (3-29-12)

e. The project shall be bid, contracted and constructed according to the current edition of Idaho Standards for Public Works Construction unless the loan recipient has approved and adopted acceptable public works construction standards approved by the Department; (3-29-12)

f. The loan interest rate for loans made during the state fiscal year beginning July 1 will be established by the Director. The interest rate will be a fixed rate in effect for the life of the loan. The rate may equal but shall not exceed the current market rate; (5-8-09)

g. The loan fee pursuant to Section 032; (5-8-09)

h. All loans must be fully amortized within a period not to exceed thirty (30) years after project completion. The loan contract will ~~contain~~ be appended with a schedule of loan repayments stating the due dates and the amount due upon project completion. The loan recipient may elect for either a schedule of semi-annual or annual

repayments at the time the loan is finalized; and

~~(3-29-12)~~()

i. Repayment default will occur when a scheduled loan repayment is thirty (30) days past due. If default occurs, the Department may invoke appropriate loan contract provisions and/or bond covenants. (5-3-03)

051. ACCOUNTING AND AUDITING PROCEDURES.

Loan recipients must maintain project accounts in accordance with generally accepted accounting principles. ~~Eligible nonpoint source water pollution control implementation funding projects~~ sponsors may be audited on an annual basis according to government auditing standards issued by the U.S. ~~General Accounting~~ Governmental Accountability Office. ~~(3-29-12)~~()

(BREAK IN CONTINUITY OF SECTIONS)

995. WAIVER OF REQUIREMENTS AND AMENDMENT OF ~~INTEGRATED~~ PRIORITY LIST.

~~01. Conditions for Waiver.~~ The Director may amend the ~~Integrated~~ Priority List and grant a waiver from the requirements of these rules on a case-by-case basis upon full demonstration by the loan recipient requesting the waiver that the following conditions exist. See also ~~Subsection 020.05~~ of these rules. ~~(3-29-12)~~()

~~01. Health Hazard.~~ A significant public health hazard exists; (5-8-09)

~~02. Water Contamination.~~ A significant water contamination problem exists; (5-8-09)

~~03. Pollution.~~ A significant point source of pollution exists causing a violation of Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards"; or (3-29-12)

~~04. Affordability Criteria Exceeded.~~ The project will exceed affordability criteria adopted by the Department in the event the waiver is not granted. (3-29-12)

~~02. Availability of Federal Funds.~~ The waiver will not affect the availability of federal funds for the project where such funding is required by the loan recipient requesting the waiver. ~~(3-29-12)~~

996. -- 999. (RESERVED)

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.20 – RULES FOR ADMINISTRATION OF DRINKING WATER LOAN PROGRAM

DOCKET NO. 58-0120-1901 (CHAPTER REPEAL)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Chapters 1 and 76, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before November 20, 2019. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: DEQ initiated this rulemaking in response to [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that its two revolving loan rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program, and merge necessary and relevant sections of IDAPA 58.01.20 with IDAPA 58.01.12, Rules for Administration of Water Pollution Control Loans. DEQ has initiated a separate rulemaking for the revisions to IDAPA 58.01.12 (Docket No. 58-0112-1901).

Prospective grant and loan recipients, consulting engineers, grant and loan administrators, other funding agencies, public officials representing various counties and cities, and the public at large may be interested in commenting on this proposed rule.

After consideration of public comments, DEQ intends to present the final proposal to the Idaho Board of Environmental Quality (Board) in 2020 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2021 legislative session if adopted by the Board and approved by the Legislature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: N/A

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220. On August 1, 2019, DEQ posted notice of the negotiated rulemaking on its website, and a preliminary draft rule was made available for public review. The Notice of Negotiated Rulemaking was published in the August 2019 issue of the Idaho Administrative Bulletin, [Vol. 19-8, pages 158–159](#), and a meeting was held on August 27, 2019. Key information was posted on the DEQ website and distributed to the public. No comments were received.

At the conclusion of the negotiated rulemaking process, DEQ formatted the draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule draft, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at www.deq.idaho.gov/58-0120-1901.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov or (208) 373-0439.

SUBMISSION OF WRITTEN COMMENTS: Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before December 4, 2019.

Dated this 6th day of November, 2019.

Paula J. Wilson
Phone: (208) 373-0418 / Fax: (208) 373-0481
paula.wilson@deq.idaho.gov

Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.22 – RULES FOR ADMINISTRATION OF PLANNING GRANTS FOR DRINKING WATER FACILITIES

DOCKET NO. 58-0122-1901

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before November 20, 2019. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: DEQ initiated this rulemaking in response to [Executive Order No. 2019-02](#), Red Tape Reduction Act, issued by Governor Little on January 21, 2019. Upon review of its existing rules, DEQ determined that its two facility planning grant rule chapters could be simplified and consolidated into a single chapter. DEQ proposes to delete IDAPA 58.01.04, Rules for Administration of Wastewater Treatment Facility Grants, and merge necessary and relevant sections of IDAPA 58.01.04 with IDAPA 58.01.22, Rules for Administration of Planning Grants for Public Drinking Water Facilities. DEQ has initiated a separate rulemaking for the deletion of IDAPA 58.01.04 (Docket No. 58-0104-1901).

Prospective grant and loan recipients, consulting engineers, grant and loan administrators, other funding agencies, public officials representing various counties and cities, and the public at large may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Idaho Board of Environmental Quality (Board) in 2020 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2021 legislative session if adopted by the Board and approved by the Legislature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: N/A

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220. On August 1, 2019, DEQ posted notice of the negotiated rulemaking on its website, and a preliminary draft rule was made available for public review. The Notice of Negotiated Rulemaking was published in the August 2019 issue of the Idaho Administrative Bulletin, [Vol. 19-8, pages 160–161](#) and a meeting was held on August 27, 2019. Key information was posted on the DEQ website and distributed to the public. No comments were received.

At the conclusion of the negotiated rulemaking process, DEQ formatted the draft for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule. The negotiated rulemaking record, which includes the negotiated rule draft, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at www.deq.idaho.gov/58-0122-1901.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov or (208) 373-0439.

SUBMISSION OF WRITTEN COMMENTS: Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before December 4, 2019.

Dated this 6th day of November, 2019.

Paula J. Wilson
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706
Phone: (208) 373-0418
Fax: (208) 373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0122-1901
(Only Those Sections With Amendments Are Shown.)

58.01.22 – RULES FOR ADMINISTRATION OF PLANNING GRANTS
FOR DRINKING WATER ~~AND WASTEWATER~~ FACILITIES

000. LEGAL AUTHORITY.

The Idaho State Board of Environmental Quality, pursuant to authority granted in Chapters 1 and 36, Title 39, Idaho Code, adopted the following rules for the administration of ~~Drinking Water~~ and Wastewater Planning Grant Programs in Idaho. ~~(5-3-03)~~()

001. TITLE AND SCOPE.

01. Title. These rules will be known and cited as Rules of the Idaho Department of Environmental Quality, IDAPA 58.01.22, “Rules for Administration of Planning Grants for Drinking Water and Wastewater Facilities.” ~~(3-30-01)~~()

02. Scope. The provisions of these rules will establish administrative procedures and requirements for establishing, implementing and administering a state grant program providing financial assistance to qualifying entities to prepare a drinking water or wastewater facility planning document. ~~(3-29-12)~~()

002. ~~WRITTEN INTERPRETATIONS (RESERVED)~~

~~As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706. (3-30-01)~~

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIAL.

01. Incorporation by Reference. These rules do not contain documents incorporated by reference. (4-2-08)

02. Availability of Referenced Material. The “Drinking Water Loan Handbook of Procedures” and “Clean Water Loan Handbook of Procedures” (Handbook) is available at the Idaho Department of Environmental Quality, Water Quality Division Loan Program, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502, or www.deq.idaho.gov. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

006. POLICY.

It is the policy of the Idaho Board of Environmental Quality, through the Idaho Department of Environmental Quality, to administer the Drinking Water and Wastewater Grant Programs. The Drinking Water and Wastewater Grant Programs provides assistance to eligible public drinking water and wastewater systems for the planning of facilities to help ensure safe and adequate supplies of drinking water and appropriate processing and disposal of wastewater. It is ~~also~~ the intent of the Idaho Board of Environmental Quality to assign a priority rating to those projects ~~which shall~~ to facilitate the compliance of any eligible public drinking water system with national primary drinking water regulations applicable to the system, IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems,” and the Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq., and to administer the Wastewater Treatment Facility Grant Program to protect and enhance the quality and value of the water resources of the state of Idaho by financially assisting in the prevention, control and abatement of water pollution in accordance with IDAPA 58.01.16. Wastewater Rules. (4-2-08)()

007. SYSTEM ELIGIBILITY.

01. Eligible Drinking Water Systems. Community water systems and nonprofit noncommunity water systems. (3-30-01)()

02. Eligible Wastewater Systems. Any county, city, special service district, nonprofit corporation, or other governmental entity, or a combination thereof, having authority to collect, treat or dispose of wastewater. ()

023. Systems Not Eligible. The following ~~public drinking water~~ systems will not be considered eligible for project planning grants: (3-30-01)()

a. Systems that do not have the financial capability to pay their non-grant share of a planning project. (3-30-01)

b. Systems delinquent in payment of the annual state drinking water fee, Idaho Pollutant Discharge Elimination System (IPDES) permit assessments or state revolving fund loan repayments. (3-30-01)()

008. -- 009. (RESERVED)

010. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (3-30-01)

01. Applicant. Any qualifying entity making application for drinking water planning grant funds. (3-30-01)

02. Board. The Idaho Board of Environmental Quality. (4-2-08)

03. Categorical Exclusion (CE). Category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental information document nor an environmental impact statement is required. (4-2-08)

04. Collector Sewer. That portion of the wastewater treatment facility whose primary purpose is to receive sewage from individual residences and other individual public or private structures and which is intended to convey wastewater to an interceptor sewer or a treatment plant. ()

- 045.** **Community Water System.** A public drinking water system that: (3-30-01)
- a.** Serves at least fifteen (15) service connections used by year round residents of the area served by the system; or (3-30-01)
- b.** Regularly serves at least twenty-five (25) year-round residents. (3-30-01)
- 056.** **Contaminant.** Any physical, chemical, biological, or radiological substance or matter in water. (3-30-01)
- 067.** **Department.** The Idaho Department of Environmental Quality. (3-30-01)
- 078.** **Director.** The Director of the Idaho Department of Environmental Quality or the Director's designee. (4-2-08)
- 089.** **Distribution System.** Any combination of pipes, tanks, pumps, and other equipment which delivers water from the source(s), treatment facility(ies), or a combination of source(s) and treatment facility(ies) to the consumer. Chlorination may be considered as a function of a distribution system. (3-29-12)
- 10.** **Domestic Wastewater.** Wastewater derived from public or private residences, business buildings or institutions and similar establishments and which contains water and human body wastes, specifically excreta and urine, along with such products designed to come in contact with excreta and urine in the practice of personal hygiene. ()
- 0911.** **Eligible Costs.** Costs which are necessary for planning ~~public drinking water systems~~. To be eligible, costs must also be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 032. ~~(3-3-03)~~()
- 102.** **Environmental Impact Statement (EIS).** A document prepared by the applicant when the Department determines that the proposed drinking water project will significantly affect the environment. The major purpose of the EIS will be to describe fully the significant impacts of the project and how these impacts can be either avoided or mitigated. The Environmental Review Procedures contained in Chapter 5 of the Handbook may be used as guidance when preparing the EIS. (4-2-08)
- 113.** **Environmental Information Document (EID).** Any written environmental assessment prepared by the applicant describing the environmental impacts of a proposed drinking water construction project. This document will be of sufficient scope to enable the Department to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted. (3-29-12)
- 124.** **Financial Capability.** The ability to raise and manage funds to provide the necessary resources for proper operation of the system. ~~(3-30-01)~~()
- 135.** **Finding of No Significant Impact (FONSI).** A document prepared by the Department presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement (EIS) will not be prepared. It shall include the environmental information document or a summary of it and *shall* note any other environmental documents related to it. ~~(3-29-12)~~()
- 146.** **Grant Recipient.** An applicant who has been awarded a grant. (3-29-12)
- 157.** **Handbook.** "Drinking Water Loan and Wastewater Loan Handbook ~~of Procedures.~~" ~~(4-2-08)~~()
- 18.** **Idaho Pollutant Discharge Elimination System.** Point source permitting program established pursuant to Section 402 of the federal Clean Water Act (33 U.S.C. Section 1342). ()
- 169.** **Ineligible Costs.** Costs which are not eligible for funding pursuant to these rules. (3-29-12)

~~20.~~ **Interceptor Sewer.** That portion of the wastewater treatment facility whose primary purpose is to transport domestic sewage or nondomestic wastewater from collector sewers to a treatment plant. ()

~~21.~~ **Maximum Contaminant Level (MCL).** The maximum permissible level of a contaminant in water which is delivered to any user of a public drinking water system. (3-30-01)

~~22.~~ **Managerial Capability.** The capabilities of the qualified entity to support the proper financial management and technical operation of the system. (3-30-01)

~~23.~~ **Noncommunity Water System.** A public water system that is not a community water system. (5-3-03)

~~24.~~ **Nondomestic Wastewater.** Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin. ()

~~25.~~ **Nonprofit Noncommunity Water System.** A public drinking water system that is not a community water system and is governed by Section 501 of the Internal Revenue Code and includes, but is not limited to, state agencies, municipalities and nonprofit organizations such as churches and schools. (5-3-03)

~~26.~~ **Nontransient Noncommunity Water System.** A public drinking water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year. (4-2-08)

~~27.~~ **Operation and Maintenance Manual.** A guidance and training manual delineating the optimum operation and maintenance of the facility or its components. ()

~~28.~~ **Person.** An individual, corporation, company, association, partnership, state agency, municipality, or federal agency (and includes officers, employees, and agents of any corporation, company, association, state agency, municipality, or federal agency). (5-3-03)

~~29.~~ **Planning Document.** A document which describes the condition of a public drinking water or wastewater system and presents a cost effective and environmentally sound alternative to achieve or maintain regulatory compliance. Engineering reports and facility plans are examples of such planning documents. The planning documents shall be prepared by or under the responsible charge of an Idaho licensed professional engineer and ~~shall~~ bear the imprint of the engineer's seal. Requirements for planning documents prepared using grant funds are provided in Section 030 of these rules and in the Handbook. (~~3-29-12~~)()

~~30.~~ **Point Source.** Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition. ()

~~31.~~ **Pollutant.** Any chemical, biological, or physical substance whether it be solid, liquid, gas, or a quality thereof, which if released into the environment can, by itself or in combination with other substances, create a nuisance or render that environment harmful, detrimental, or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, aesthetic or other beneficial uses. ()

~~32.~~ **Priority List.** A list of proposed projects ~~rated by severity of a risk to public health, the necessity to ensure compliance with, IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act, 42 U.S.C., Sections 300f et seq., population affected, the need on a household basis for protection of Idaho's public drinking water supplies, and as otherwise~~ as described in Section 020. (~~4-2-08~~)()

~~33.~~ **Public Drinking Water System/Public Water System/Water System.** A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration

of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any "special irrigation district." A public water system is either a "community water system" or a "noncommunity water system." (4-2-08)

~~26~~³⁴. **Qualifying Entity.** Any county, city, special service district, nonprofit or investor-owned corporation, or other governmental entity, or a combination thereof, which owns or operates a public drinking water system ~~or~~, irrigation system, or wastewater system. (4-2-08)()

27. **Rehabilitation.** The repair or replacement of segments of drinking water facilities. (3-30-01)

28. **Reserve Capacity.** That portion of the system in the planned facilities to handle future drinking water demand. (3-30-01)

~~29~~. **Sewer Use Ordinance/Sewer Use Resolution.** An ordinance or resolution which requires new sewers and connections to be properly designed and constructed, prohibits extraneous sources of inflow and prohibits introduction of wastes into the sewer in an amount that endangers the public safety or the physical or operational integrity of the wastewater treatment facility. ()

~~29~~³⁰. **State.** The state of Idaho. (3-30-01)

~~30~~¹. **Suspension.** An action by the Director to suspend a grant contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (3-30-01)

~~31~~². **Sustainability.** Sustainability will include efforts for energy and water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement. (3-29-12)

~~32~~³. **Technical Capability.** The ability of the public drinking water or wastewater system to comply with existing and expected ~~drinking water~~ rules. (3-30-01)()

~~33~~⁴. **Termination.** An action by the Director to permanently terminate a grant contract prior to project completion for a specific cause. Terminated contracts will not be reinstated. (3-30-01)

~~35~~. **User Charge System.** A system of rates and service charges applicable to specific types of users, including any legal enforcement mechanism as may be required, and which provides sufficient reserves and/or revenues for debt retirement, operation and maintenance, and replacement of the wastewater treatment facility. ()

~~36~~. **Wastewater.** A combination of the liquid and water-carried wastes from dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any groundwater, surface water and storm water that may be present; liquid and water that is physically, chemically, biologically, or rationally identifiable as containing excreta, urine, pollutants or domestic or commercial wastes; sewage. ()

~~37~~. **Wastewater Treatment Facility.** Any facility, including land, equipment, furnishings and appurtenances thereof, for the purpose of collecting, treating, neutralizing or stabilizing wastewater and removing pollutants from wastewater including the treatment plant, collectors, interceptors, outfall and outlet sewers, pumping stations, sludge treatment and handling systems and land disposal systems. ()

~~38~~. **Water Treatment Plant.** That portion of the public drinking water system whose primary purpose is to remove contaminants. (3-30-01)

011. -- 019. (RESERVED)

020. PRIORITY RATING SYSTEM.

Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. ~~Information is also received from the Department and consulting engineers.~~ Grant funds are awarded to projects based on priority ratings. Projects are rated by the Department on a standard priority rating form using public health, sustainability, and water quality criteria and condition of the existing system. (3-29-12)()

01. Purpose. A priority rating system shall be utilized by the Department to annually allot available funds to projects determined eligible for funding assistance in accordance with these rules. (3-2-08)

02. Priority Rating for Drinking Water Systems. The priority rating system shall be based on a numerical point system. Priority criteria shall contain the following points: (3-29-12)

a. Public Health Hazard. Any condition which creates, or may create, a danger to the consumer's health, which may include any one (1) or more of the following, may be awarded a maximum of one hundred (100) points: (3-29-12)

i. Documented unresolved violations of the primary drinking water standards including maximum contaminant levels, action levels, and treatment techniques (to include maximum contaminant levels for acute and chronic contaminants); (3-29-12)

ii. Documented unresolved violations of pressure requirements; (3-29-12)

iii. Documented reduction in source capacity that impacts the system's ability to reliably serve water; (3-29-12)()

iv. Documented significant deficiencies (e.g., documented in a sanitary survey) in the physical system that is causing the system to not be able to reliably serve safe drinking water. (3-29-12)

v. Documented unregulated contaminants that have been shown to be a hazard to public health. ()

b. General Conditions of Existing Facilities. Points shall be given based on deficiencies (which would not constitute a public health hazard) for pumping, treating, storing, and delivering drinking water - up to sixty (60) points. (3-29-12)

c. Sustainability Efforts (e.g., prospective efforts at energy conservation, water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement) - up to fifty (50) points. (3-29-12)

d. Consent Order, Compliance Agreement Schedule, or Court Order. Points shall be given if the system is operating under and in compliance with a Consent Order, Compliance Agreement Schedule, or Court Order and the proposed construction project will address the Consent Order, Compliance Agreement Schedule, or Court Order - up to thirty (30) points. (3-29-12)

e. Incentives. Bonus points shall be awarded to systems that promote source water protection, conservation, economy, proper operation maintenance, and monitoring - up to ten (10) points. (3-29-12)

f. Affordability. Points shall be given when current system user charges exceed state affordability guidelines - ten (10) points. (3-30-01)

03. Priority Rating for Wastewater Systems. The priority rating system shall be based on a numerical point system. Priority criteria shall contain the following points. ()

a. Public health emergency or hazard certified by the Idaho Board of Environmental Quality, the Department, a District Health Department, or by a District Board of Health - one hundred fifty (150) points. ()

b. Regulatory compliance issues (e.g., noncompliance and resulting legal actions relating to infrastructure deficiencies at a wastewater facility) - up to one hundred (100) points. ()

c. Watershed restoration (e.g., implementation of best management practices or initiation of construction at wastewater collection and treatment facilities as part of an approved total maximum daily load plan, implementation of nonpoint source management actions in protection of a threatened water, or is part of a special water quality effort) – up to one hundred (100) points. ()

d. Watershed protection from impacts (e.g., improvement of beneficial use(s) in a given water body, evidence of community support, or recognition of the special status of the affected water body) – up to one hundred (100) points. ()

e. Preventing impacts to uses (nonpoint source pollution projects) – up to one hundred (100) points. ()

f. Sustainability efforts (e.g., prospective efforts at energy conservation, water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement) – up to fifty (50) points. ()

g. Affordability (current system user charges exceed state affordability guidelines) -- ten (10) points. ()

034. **Rating Forms.** Rating criteria for Subsections 020.02 and 020.03 is set forth in a rating form that is available in the Handbook at www.deq.idaho.gov. (3-29-12)()

045. **Priority List.** A list shall be developed from projects rated according to the priority rating system. ~~Such list shall be~~, submitted for public review and comment, and ~~shall thereafter be~~ submitted to the Board for approval and adoption. (3-29-12)()

a. **Priority Reevaluation.** Whenever significant changes occur, which in the Department's judgment would affect the design parameters or treatment requirements by either increasing or decreasing the need for or scope of any project, a reevaluation of that priority rating will be conducted. (3-30-01)

b. **Priority Target Date.** An eligible applicant whose project is on the approved priority list, and for which funding is available, will be contacted by the Department and a target date for submission of a completed grant application will be established. (3-29-12)

c. **Project Bypass.** A project that does not or will not meet the project target date or a Department schedule that allows for timely utilization of grant funds may be bypassed, substituting in its place the next highest ranking project that is ready to proceed. An eligible applicant that is bypassed will be notified in writing of the reasons for being bypassed. (3-29-12)

056. **Amendment of Priority List.** The Director may amend the Priority List as set forth in Section 080 of these rules. (3-29-12)

021. -- 029. (RESERVED)

030. PROJECT SCOPE AND FUNDING.

Grant funds awarded under this program will be used entirely to prepare a drinking water facility planning document. ~~The~~ planning document ~~will~~ to identify the cost effective and environmentally sound alternative to achieve or maintain compliance with IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq.; or, maintain compliance with IDAPA 58.01.16, Wastewater Rules, and the federal Clean Water Act, 33 U.S.C. Sections 1381 et seq. The planning document must be approved by the Department. (3-29-12)()

01. Planning Document. (3-29-12)

a. A planning document shall include all items required by IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Subsection 503.03 or 502.04 or IDAPA 58.01.16, "Wastewater Rules," Subsection 411.03

or 410.04. Should the grant recipient proceed to construction using federal funds (e.g., a state revolving fund loan), then the items listed in Subsection 030.01.b. of these rules ~~shall~~ will be required prior to construction. (3-29-12)()

b. A planning document that is prepared anticipating the use of federal funds shall include an environmental review that will require the Department approval of both a draft and final planning document. (3-29-12)

i. The draft planning document shall include all items required by IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," Subsection 502.04 or 503.03, as well as the following: or 58.01.16, "Wastewater Rules," Subsection 411.03 or 410.04 (3-29-12)()

- (1) Description of existing conditions for the proposed project area; (3-30-01)
- (2) Description of future conditions for the proposed project area; (3-30-01)
- (3) Development and initial screening of alternatives; (3-30-01)
- (4) Development of an environmental review specified by the Department as described in Section 040. (3-29-12)

ii. The final planning document shall include all items required of the draft planning document as well as the following: (3-29-12)

- (1) Final screening of principal alternatives and plan adoption; (3-30-01)
- (2) Selected plan description and implementation arrangements; and (3-29-12)
- (3) Relevant engineering data supporting the final alternative. (3-29-12)

(4) Assessment of the cost and effectiveness, to the maximum extent practicable, of efficient water use, reuse, recapture and conservation, and energy conservation, with cost including construction, operation and maintenance, and replacement. ()

iii. The grant recipient shall provide an opportunity for the public to comment on the draft planning document. The public comment period shall be held after alternatives have been developed and the Department has approved the draft planning document. The grant recipient shall provide written notice of the public comment period and hold at least one (1) public meeting within the jurisdiction of the grant recipient during the public comment period. At the public meeting, the grant recipient shall present the draft planning document ~~shall be presented by the grant recipient~~ with an explanation of the alternatives identified. The cost effective and environmentally sound alternative selected shall consider public comments received from those affected by the proposed project. After the public meeting and public comment period, the final alternative will be selected and the Environmental Information Document may be prepared. (3-29-12)()

c. The draft and final planning document shall bear the imprint of an Idaho licensed professional engineer's seal that is both signed and dated by the engineer. (3-29-12)

d. The draft and final planning documents must be reviewed and approved by the Department. (3-29-12)

e. The planning period shall be twenty (20) years for all facilities except for distribution and transmission systems which may be forty (40) years. (4-2-08)

02. Limitation on Funding Assistance. The maximum grant funding provided in a state planning grant award shall not exceed fifty percent (50%) of the total eligible costs for grants awarded. (3-30-01)

031. REVIEW AND EVALUATION OF GRANT APPLICATIONS.

01. Submission of Application. Those eligible systems which received high priority ranking shall be invited to submit an application. The applicant shall submit to the Department, a completed application in a form prescribed by the Department. (3-30-01)

02. Application Requirements. Applications shall contain the following documentation, as applicable: (5-3-03)

a. An authorizing resolution passed by a majority of the governing body authorizing an elected official or officer of the qualifying entity to commit funding; and (5-3-03)

b. Contracts for engineering services or other technical services and the description of costs and tasks set forth therein shall be in sufficient detail for the Department to determine whether the costs associated with the tasks are eligible costs pursuant to Section 032; and (3-29-12)

c. A plan of study describing the work tasks to be performed in the planning document, a schedule for completion of the work tasks and an estimate of staff hours and costs to complete the work tasks; and (3-29-12)

d. Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (5-3-03)

~~**i.** Be procured through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; and (5-3-03)~~

~~**ii.** Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; and (5-3-03)~~

~~**iii.** Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (5-3-03)~~

~~**iv.** Be covered by professional liability insurance in accordance with Subsection 050.05.d. A certification of liability insurance shall be included in the application; and (5-3-03)~~

e. A description of other costs, not included in the contracts for engineering or other technical services, for which the applicant seeks funding. The description of the costs and tasks for such costs must be in sufficient detail for the Department to determine whether the costs are eligible costs pursuant to Section 032; and (3-29-12)

f. A demonstration that the obligation to pay the costs for which funding is requested, is the result or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code; and (4-2-08)

g. A statement regarding how the non-grant portion of the project will be funded; and (5-3-03)

h. For incorporated nonprofit applicants only, Articles of Incorporation and/or Bylaws showing nonprofit and incorporated status according to Chapter 3, Title 30, Idaho Code. (3-30-01)

03. Determination of Completeness of Application. Applications will be reviewed to determine whether they contain all of the information required by Subsection 031.02. (3-29-12)

04. Notification Regarding Incompleteness of Application. Written notification if an application is incomplete, including an explanation of missing documentation, will be sent to the applicant. ~~The applicant may provide the missing documentation. (5-3-03)()~~

05. Reapplication for Grant. The action of disapproving, recalling, or terminating a grant in no way precludes or limits the former applicant from reapplying for another grant when the project deficiencies are resolved

and project readiness is secured. (5-3-03)

032. DETERMINATION OF ELIGIBILITY OF COSTS.

The Department ~~shall~~ will review the application, including any contracts required to be submitted with the application, to determine whether the costs are eligible costs for funding. ~~(5-3-03)~~()

01. Eligible Costs. Eligible costs are those determined by the Department to be: (5-3-03)

a. Necessary costs; (3-29-12)

b. Reasonable costs; and (3-29-12)

c. Costs that are not ineligible as described in Subsection 032.05. (3-29-12)

02. Necessary Costs. The Department ~~shall~~ will determine whether costs are necessary by comparing the tasks for which the costs will be incurred to the scope of the project as described in the plan of study for the planning document. ~~(3-29-12)~~()

03. Reasonable Costs. Costs ~~shall~~ will be determined by the Department to be reasonable if the obligation to pay the costs is the result of or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code. ~~(4-2-08)~~()

04. Examples of Costs That May Be Eligible. Examples of costs that may be eligible, if determined necessary, reasonable and not ineligible costs include: (5-3-03)

a. Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary expenses such as salaries and expenses of a mayor; city council members; board; or a city, district or board attorney; (4-2-08)

b. Professional and consulting services ~~utilizing a lump-sum contract~~, specifying costs of individual tasks. ~~(5-3-03)~~()

c. Engineering costs ~~pursuant to a lump-sum contract~~, specifying costs of individual tasks, directly related to the planning of ~~public drinking water treatment, storage and distribution~~ facilities including but not limited to the preparation of a planning document and environmental review report; ~~(3-29-12)~~()

d. Financial, technical and management capability analysis; (5-3-03)

e. Public participation for alternative selection; (5-3-03)

f. Certain direct and other costs as determined eligible by the Department; and (5-3-03)

g. ~~Site acquisition services which could include legal fees, appraisals and surveys for land associated with the cost effective alternative in the report and for purchase from a willing seller~~ Legal costs necessary to allow for the completion of the facility plan. ~~(3-29-12)~~()

05. Ineligible Project Costs. Costs which are ineligible for funding include, but are not limited to: (5-3-03)

a. ~~Basin or area wide p~~lanning not directly related to the project; ~~(5-3-03)~~()

b. Personal injury compensation or damages arising out of the project; (5-3-03)

c. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (5-3-03)

- d. Costs outside the scope of the approved project; (5-3-03)
- e. Ordinary operating expenses such as salaries and expenses of a mayor, city council members, city attorney, district or association personnel costs, and acquiring project funding; (4-2-08)
- f. Preparation of a grant application; (5-3-03)
- g. All costs related to assessment, defense and settlement of disputes, unless such costs are integral to the completion of the project; ~~(5-3-03)~~()
- h. Costs of supplying required permits or waivers; and ~~(5-3-03)~~()
- i. Costs incurred prior to award of the grant unless specifically approved in writing as eligible pre-award costs by the Department; (5-3-03)
- ~~j. Engineering costs incurred prior to approval of the engineering contract or those costs in excess of the contract ceiling unless preapproval has been given in writing by the Department; and (5-3-03)~~

06. Notification Regarding Ineligible Costs. Prior to providing a grant offer, the Department shall will notify the applicant that certain costs are not eligible for funding and the reasons for the Department's determination. If such costs are included in the engineering contract, the Department shall will also provide notification to the engineer. The applicant may provide the Department additional information in response to the notice. ~~(5-3-03)~~()

07. Eligible Costs and the Grant Offer. The grant offer shall will reflect those costs determined by the Department to be eligible costs. The grant offer, however, may include estimates of some eligible costs that have not yet been set. Actual eligible costs may differ from such estimated costs set forth in the grant offer. In addition, grant disbursements may be increased or decreased if eligible costs are modified. ~~(4-2-08)~~()

033. -- 039. (RESERVED)

040. ENVIRONMENTAL REVIEW.

01. Environmental Documentation. The grant recipient may complete an environmental review as part of and in conjunction with a planning document. Guidance on how to complete an environmental review may be found in Chapter 5 of the Handbook. If the grant recipient prepares an environmental review, then the Department shall will be consulted at an early stage in the preparation of the planning document to determine the required level of environmental review. Based on review of existing information and assessment of environmental impacts, the grant recipient may complete at least one (1) of the following: ~~(3-29-12)~~()

- a. Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (4-2-08)
- or
- b. Prepare an Environmental Information Document (EID) in a format specified by the Department; (4-2-08)
- c. Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. (4-2-08)

02. Categorical Exclusions. If the grant recipient requests a CE, the Department shall will review the request and, based upon the supporting documentation, take one (1) of the following actions: ~~(3-29-12)~~()

- a. Determine if an action is consistent with categories eligible for exclusion whereupon the Department shall will issue a notice of CE from further substantive environmental review. Once the CE is granted for the selected alternative, the Department will publish a notice of CE in a local newspaper, following which the planning document can be approved; or ~~(3-29-12)~~()

b. Determine if an action is not consistent with categories eligible for exclusion and that issuance of a CE is not appropriate. If issuance of a CE is not appropriate, the Department *shall will* notify the grant recipient of the need to prepare an EID. ~~(3-29-12)~~()

03. Environmental Information Document Requirements. When an EID is required, the grant recipient shall prepare the EID in accordance with the following Department procedures: (3-29-12)

a. Various laws and executive orders related to environmentally sensitive resources shall be considered as the EID is prepared. Appropriate state and federal agencies shall be consulted regarding these laws and executive orders. (4-2-08)

b. A full range of relevant impacts, both direct and indirect, of the proposed project shall be discussed in the EID, including measures to mitigate adverse impacts, cumulative impacts, and impacts that shall cause irreversible or irretrievable commitment of resources. (4-2-08)

c. The Department *shall will* review the draft EID and either request additional information about one (1) or more potential impacts, or *shall will* draft a “finding of no significant impact” (FONSI). ~~(4-2-08)~~()

04. Final Finding of No Significant Impact. The Department *shall will* publish the draft FONSI in a newspaper of general circulation in the geographical area of the proposed project and shall allow a minimum thirty (30) day public comment period. Following the required period of public review and comment, and after any public concerns about project impacts are addressed, the FONSI shall become final. The Department *shall will* assess the effectiveness and feasibility of the mitigation measures identified in the FONSI and EID prior to the issuance of the final FONSI and approval of the planning document. ~~(3-29-12)~~()

05. Environmental Impact Statement (EIS) Requirements. If an EIS is required, the grant recipient shall: (3-29-12)

a. Contact all affected state agencies, and other interested parties, to determine the required scope of the document; (4-2-08)

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; (4-2-08)

c. Conduct a public meeting which may be held in conjunction with a planning document meeting; and (3-29-12)

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. (4-2-08)

06. Final EIS. Upon completion of the EIS by the grant recipient and approval by the Department of all requirements listed in Subsection 040.05, the Department *shall will* issue a record of decision, documenting the mitigative measures ~~which shall to~~ be required of the grant recipient. The planning document can be completed once the final EIS has been approved by the Department. ~~(3-29-12)~~()

07. Use of Environmental Reviews Conducted by Other Agencies. If an environmental review for the project has been conducted by another state, federal, or local agency, the Department may, at its discretion, issue its own determination by adopting the document and public notification process of the other agency. (4-2-08)

08. Validity of Review. Environmental reviews, once completed by the Department, are valid for five (5) years from the date of completion. If a grant application is received for a project with an environmental review which is more than five (5) years old, the Department *shall will* reevaluate the project, environmental conditions, and public comments and *shall will*: ~~(3-29-12)~~()

a. Reaffirm the earlier decision; or (3-30-01)

b. Require supplemental information to the earlier Environmental Impact Statement, Environmental

Information Document, or request for Categorical Exclusion. Based upon a review of the updated document, the Department ~~shall~~ will issue and distribute a revised notice of Categorical Exclusion, finding of no significant impact, or record of decision. ~~(3-30-01)~~()

041. -- 049. (RESERVED)

050. GRANT OFFER AND ACCEPTANCE.

01. Grant Offer. Grant offers will be delivered by certified mail to applicants who received high priority ranking, were invited to submit an application, and provided a complete application. (3-30-01)

02. Acceptance of Grant Offer. Applicants have sixty (60) days in which to officially accept the grant offer on prescribed forms furnished by the State. The sixty (60) day acceptance period commences from the date indicated on the grant offer notice. If the applicant does not accept the grant offer within the sixty (60) day period, the grant funds may be offered to the next project of priority. (3-30-01)

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director or the Director's designee as the grantor, and upon signature by the authorized representative of the qualifying entity, as the grant recipient, the grant offer ~~shall~~ will become a grant contract agreement. The disbursement of funds pursuant to an agreement is subject to a finding by the Director that the grant recipient has complied with all agreement conditions and has prudently managed the project. The Director may, as a condition of payment, require that a grant recipient vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with grant funds or transfer its claim against such third parties to the Department. Grant contract agreements shall be interpreted according to the law of grants in aid. No third party shall acquire any rights against the State or its employees from a grant contract agreement. ~~(3-29-12)~~()

04. Estimate of Reasonable Cost. Each grant project contract will include the eligible cost of conducting the planning study. Some eligible costs may be estimated and payments may be increased or decreased as provided in Section 060. (5-3-03)

05. Terms of Agreement. The grant offer shall contain terms of agreement as prescribed by the Department including, but not limited to special conditions as determined necessary by the Department for the successful planning of the project. (3-30-01)

a. Terms consistent with these rules and consistent with the scope of the grant project; and (3-29-12)

b. Special clauses as determined necessary by the Department for the successful investigation and management of the project; and (5-3-03)

c. Terms consistent with applicable state ~~and federal laws~~ pertaining to planning documents; and ~~(3-29-12)~~()

d. Requirement for the prime engineering firm(s) retained for engineering services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the engineer's professional liability shall be one hundred thousand dollars (\$100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability insurance must cover all such services rendered for all project steps, whether or not such services or steps are state funded, until the certification of project performance is accepted by the Department. (4-2-08)

051. -- 059. (RESERVED)

060. PAYMENTS.

01. Eligibility Determination. Grant funds will only be provided for eligible costs as defined at Section 010 and determined in accordance with Section 032. (3-29-12)

02. Payments for State Grants. Requests for payment shall be submitted to the Department on a form

provided by the Department. The Department ~~shall~~ will pay for those costs that are determined to be eligible. (3-30-01)()

03. Grant Increases. Grant amendment increase requests as a result of an increase in eligible project costs will be considered, provided funds are available. Documentation and justification supporting the unavoidable need for a grant increase must be submitted to the Department for approval prior to incurring any costs above the approved eligible cost ceiling. (3-30-01)

04. Grant Decreases. If the actual eligible cost is determined to be lower than the estimated eligible cost the grant amount will be reduced proportionately. (3-30-01)

05. Final Project Review to Determine Actual Eligible Costs. The Department may conduct a final project review to determine the actual eligible costs. The financial records of the grant recipient may be reviewed by the Department. (3-29-12)

06. Final Payment. The final payment consisting of five percent (5%) of the total state grant will not be made until the requirements contained in the grant agreement have been satisfied. (3-29-12)

061. -- 069. (RESERVED)

070. SUSPENSION OR TERMINATION OF GRANT.

01. Causes. The Director may suspend or terminate any grant for failure by the grantee or its agents, including his engineering firm(s), contractor(s) or subcontractor(s) to perform. A grant may be suspended or terminated for good cause including, but not limited to, the following: (3-30-01)

a. Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification or unlawful destruction of records, or receipt of stolen property, or any form of tortious conduct; or (3-30-01)

b. Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years imprisonment or any crime involving or affecting the project; or (3-30-01)

c. Violation(s) of any term of agreement of the grant offer or contract agreement; or (3-30-01)

d. Any willful or serious failure to perform within the scope of the project; or (4-2-08)

e. Debarment of an engineering firm, contractor or subcontractor for good cause by any federal or state agency from working on public work projects funded by that agency. (3-30-01)

02. Notice. The Director will notify the grantee in writing and by certified mail of the intent to suspend or terminate the grant. The notice of intent shall state: (3-30-01)

a. Specific acts or omissions which form the basis for suspension or termination; and (3-30-01)

b. That the grantee may be entitled to appeal the suspension or termination pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (3-15-02)

03. Determination. A determination will be made by the Board pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (3-15-02)

04. Reinstatement of Suspended Grant. Upon written request by the grantee and evidence that the cause(s) for suspension no longer exist, the Director may, if funds are available reinstate the grant. (3-30-01)

05. Reinstatement of Terminated Grant. No terminated grant shall be reinstated. (3-30-01)

071. -- 079. (RESERVED)

080. WAIVERS.

Waivers from the requirements of these rules may be granted by the Department on a case-by-case basis upon full demonstration that a significant public health ~~emergency~~ hazard exists. ~~(3-30-01)~~ ()

081. -- 999. (RESERVED)

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LEGAL NOTICE

Summary of Proposed Rulemakings

PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the latest publication of the state Administrative Bulletin.

*The proposed rule public hearing request deadline is November 20, 2019, unless otherwise posted.
The proposed rule written comment submission deadline is November 27, 2019, unless otherwise posted.
(Temp & Prop) indicates the rulemaking is both Temporary and Proposed.
(*PH) indicates that a public hearing has been scheduled.*

IDAPA 02 – DEPARTMENT OF AGRICULTURE PO Box 7249, Boise, ID 83707

***02-0202-1901, Rules Governing Grading and Controlled Atmosphere Storage of Apples.** (*PH) New ruler combines two chapters governing grading standards and storage of apples.

***02-0205-1902, Rules Governing Stone Fruit Grades.** (*PH) New rule combines three chapters governing state inspection and grading standards for prunes, sweet cherries and apricots.

***02-0207-1901, Rules Governing Bulk Permits and Retail Sale of Potatoes.** (*PH) New rule combines two chapters governing the retail sale, inspection and bulk permitting of potatoes and includes permit fees for advertising tax and inspections when required.

***02-0403-1901, Rules Governing Animal Industry.** (*PH) New rule combines two chapters governing the general health, disease surveillance and disease prevention requirements for domestic animals and livestock and includes a license application fee.

***02-0405-1901, Rules Governing Grade A Milk and Manufacture Grade Milk.** (*PH) New rule combines four chapters governing inspection, production, processing, analysis, and transport of Grade A and Manufacture Grade Milk and Milk Products. Includes license fee for testing labs.

***02-0426-1901, Rules Governing the Public Exchange of Livestock.** (*PH) New chapter combines two chapters regulating the sale, trade, exchange, identification and movement of livestock through public livestock markets, buying stations and trader lots and simplifies rules related to disease prevention and disease surveillance and reporting requirements.

***02-0430-1903, Rules Governing Environmental and Nutrient Management.** (*PH) New rule combines four chapters relating to general environmental issues associated with agricultural and livestock facilities.

***02-0601-1901, Rules Governing the Production and Distribution of Seed.** (*PH) New rule combines three chapters that regulate seed production.

***02-0602-1902, Rules Governing Registrations and Licenses.** (*PH) New rule combines five chapters to streamline the licensure and registration of certain agricultural activities or agricultural products.

***02-0604-1901, Rules Governing Plant Exports.** (*PH) New rule combines three chapters related to plant exports.

***02-0605-1901, Rules Governing Plant Disease and Quarantines.** (*PH) New rule combines eleven chapters that regulate and quarantine certain crops to prevent the spread of disease and pests.

***02-0609-1901, Rules Governing Invasive Species and Noxious Weeds.** (*PH) New rule combines three chapters that regulate noxious weeds and invasive species to prevent the spread of both.

***02-0610-1901, Rules Governing the Growing of Potatoes.** (*PH) New rule combines four chapters that regulate the planting and growing of potatoes to prevent the spread of disease and pests.

IDAPA 11 – IDAHO STATE POLICE / FORENSIC SERVICES

700. S. Stratford Dr., Meridian, ID 83642

11-0301-1901, Rules Governing Alcohol Testing. Removes obsolete definitions and unnecessary words from the definitions; deletes obsolete sections; clarifies sections regarding the number and types of breath alcohol samples required to be considered a valid test for court purposes.

IDAPA 22 – BOARD OF MEDICINE

345 W. Bobwhite Court, Suite 150, Boise, ID 83706

22-0107-1901, Rules for the Licensure of Naturopathic Medical Doctors. (*PH) New chapter governs the licensure, scope of practice, and discipline of the Naturopathic Medical Doctors and includes fees for initial licensure, renewal license, reinstatement, inactive license, and duplicate wallet card and wall certificate.

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

1401 N. Hilton, Boise, ID 83706

58-0104-1901, Rules for the Administration of Wastewater Treatment Facility Grants. Chapter repeal.

58-0106-1901, Solid Waste Management Rules. Removes outdated and redundant rules in response to the Governor's Red Tape Reduction Act.

58-0112-1901, Rules for Administration of Water Pollution Control Loans. Consolidates 58.01.20 into this chapter in response to the Governor's Red Tape Reduction Act.

58-0120-1901, Rules for Administration of Drinking Water Loan Program. Chapter repeal.

58-0122-1901, Rules for Administration of Planning Grants for Drinking Water Facilities. Consolidates 58.01.04 into this chapter in response to the Governor's Red Tape Reduction Act.

Please refer to the Idaho Administrative Bulletin **November 6, 2019, Volume 19-11**, for the notices and text of all rulemakings, proclamations, negotiated rulemaking and public hearing information and schedules, executive orders of the Governor, and contact information.

Issues of the Idaho Administrative Bulletin can be viewed at www.adminrules.idaho.gov/

Office of the Administrative Rules Coordinator, Division of Financial Management

P.O. Box 83720, Boise, ID 83720-0032

Phone: 208-854-3900; Email: rulescoordinator@dfm.idaho.gov

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

*Office of the Administrative Rules Coordinator
Division of Financial Management
Office of the Governor*

July 1, 1993 – Present

[CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES](#)

This online index provides a history of all agency rulemakings beginning with the first Administrative Bulletin in July 1993 to the most recent Bulletin publication. It tracks all rulemaking activities on each chapter of rules by the rulemaking docket numbers and includes negotiated, temporary, proposed, pending and final rules, public hearing notices, vacated rulemaking notices, notice of legislative actions taken on rules, and executive orders of the Governor.

ABRIDGED RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

(Index of Current and Active Rulemakings)

*Office of the Administrative Rules Coordinator
Division of Financial Management*

April 11, 2019 – November 6, 2019

*(PLR) – Final Effective Date Is Pending Legislative Review
(eff. date)L – Denotes Adoption by Legislative Action
(eff. date)T – Temporary Rule Effective Date*

*SCR # – denotes the number of a Senate Concurrent Resolution (Legislative Action)
HCR # – denotes the number of a House Concurrent Resolution (Legislative Action)*

(This Abridged Index includes all active rulemakings.)

IDAPA 01 – IDAHO BOARD OF ACCOUNTANCY

01-0101-1900F *Idaho Accountancy Rules* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking - Reauthorizes Title 01, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

01-0101-1900F *Idaho Accountancy Rules* - Notice of Omnibus Fee Rulemaking - Notice of Public Hearing, Bulletin Vol. 19-9

IDAPA 02 – IDAHO DEPARTMENT OF AGRICULTURE

Omnibus Negotiated Rulemaking – Consolidation & Reorganization of Chapters Under the Direction of ISDA Chapters 02.02.02 through 02.06.41

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02-0000-1900 *Rules of the Idaho Department of Agriculture* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking - Reauthorizes **Title 02**, Chapters 04-06, 10; **Title 04**, Chapters 05-06, 22, 24; **Title 05**, Chapter 01 - Bulletin Vol. 19-6SE (eff. 6-30-19)T

02-0000-1900A *Rules of the Idaho Department of Agriculture* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking (for rules requiring 22-101A statement) - Reauthorizes **Title 01**, Chapter 03; **Title 02**, Chapters 02, 09; **Title 04**, Chapters 04, 08, 13, 18, 20-21, 25, 27-29; **Title 06**, Chapters 07-11, 13, 15, 17, 20, 22, 24, 26, 32, 38, 39 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

02-0000-1900F *Rules of the Idaho Department of Agriculture* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking - Reauthorizes **Title 01**, Chapters 02, 04, 05; **Title 06**, Chapter 33 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

02-0000-1900FA *Rules of the Idaho Department of Agriculture* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking (Rules requiring 22-101A statement)-Reauthorizes **Title 02**, Chapters 07, 11-15; **Title 04**, Chapters 03, 09, 19, 26; **Title 06**, Chapters 01-06, 12, 14, 18, 27, 30-31, 34, 40-41 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

02-0616-1900 *Rules Governing Honey Standards* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking - Reauthorizes **Title 06**, Chapter 16 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

02-0701-1900F *Rules of the Idaho Hop Growers Commission* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking - Reauthorizes **Title 07**, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

02-0801-1900F *Rules of the Idaho Sheep and Goat Health Board* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking - Reauthorizes **Title 08**, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

02.01.04, Rules Governing the Idaho Preferred[®] Promotion Program

02-0104-1801* *Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-6 (*Rulemaking terminated by agency)*

02-0104-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-5

02-0104-1901 Proposed Rulemaking, Bulletin Vol. 19-8

02-0104-1901 Adoption of Pending Rule, Bulletin Vol. 19-11 (PLR 2020)

02.02.02, Idaho Department of Agriculture Controlled Atmosphere Storage Rules

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.02.02, Rules Governing Grading and Controlled Atmosphere Storage of Apples

02-0202-1901* Proposed Rulemaking (New Chapter), Bulletin Vol. 19-11

(*Rulemaking combines previously codified chapters 02.02.02 and 02.02.04 into this new chapter)

02.02.04, Idaho Standards for Grades of Apples

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.02.05, Prune Standards

02-0205-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-7

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.02.05, Rules Governing Stone Fruit Grades

02-0205-1902* Proposed Rulemaking (New Chapter), Bulletin Vol. 19-11

*(*Rulemaking combines previously codified chapters 02.02.05, 02.02.06 and 02.02.10 into this new chapter)*

02.02.06, Idaho Standards for Grades of Sweet Cherries

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.02.07, Bulk Permit Procedure (Potatoes)

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.02.07, Rules Governing Bulk Permit and Retail Sale of Potatoes

02-0207-1901* Proposed Rulemaking (New Chapter, Fee Rule), Bulletin Vol. 19-11

*(*Rulemaking combines previously codified chapters 02.02.07 and 02.02.09 into this new chapter)*

02.02.09, Rules Requiring Inspection of Potatoes Intended for Sale or Offered for Sale in Retail Outlets

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.02.10, Idaho Standards for Apricots

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.02.12, Bonded Warehouse Rules

02-0212-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-6

02-0212-1902 Adoption of Temporary Rule, Bulletin Vol. 19-6 (eff. 7-1-19)T

02-0212-1901 Proposed Rulemaking, Bulletin Vol. 19-9

02-0212-1901 Adoption of Pending Rule, Bulletin Vol. 19-11 (PLR 2020)

02.02.14, Rules for Weights and Measures

02-0214-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-5

02-0214-1901 2nd Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-7

02.03.01, Rules Governing Pesticide Management Plans for Ground Water Protection

02-0301-1901 Adoption of Temporary Rule, Bulletin Vol. 19-7 (eff. 7-1-19)T

02-0301-1901 Proposed Rulemaking, Bulletin Vol. 19-9

02-0301-1901 Adoption of Pending Rule, Bulletin Vol. 19-11 (PLR 2020)

02.03.03, Idaho Department of Agriculture Rules Governing Pesticide and Chemigation Use and Application

02-0303-1901 Adoption of Temporary Rule, Bulletin Vol. 19-7 (eff. 7-1-19)T

02-0303-1901 Proposed Rulemaking (Fee Rule), Bulletin Vol. 19-9

02-0303-1901 Adoption of Pending Fee Rule, Bulletin Vol. 19-11 (PLR 2020)

02.04.03, Rules Governing Animal Industry

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.04.03, Rules Governing Animal Industry

02-0403-1901* Proposed Rulemaking (New Chapter, Fee Rule), Bulletin Vol. 19-11

*(*Rulemaking combines previously codified chapters 02.04.03 and 02.04.22 into this new chapter - no change to chapter name)*

02.04.05, Rules Governing Manufacture Grade Milk

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.04.05, Rules Governing Grade A Milk and Manufacture Grade Milk

02-0405-1901* Proposed Rulemaking (New Chapter, Fee Rule), Bulletin Vol. 19-11

(*Rulemaking combines previously codified chapters 02.04.05, 02.04.06, 02.04.08 and 02.04.09 into this new chapter)

02.04.06, Rules Governing Licensed Dairy Plants

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.04.08, Rules Governing Grade A Milk and Milk Products

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.04.09, Rules Governing Milk and Cream Procurement and Testing

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.04.14, Rules Governing Dairy Byproduct

02-0414-1901 Adoption of Temporary Rule, Bulletin Vol. 19-7 (eff. 7-1-19)T

02.04.15, Rules Governing Beef Cattle Animal Feeding Operations

02-0415-1901 Adoption of Temporary Rule, Bulletin Vol. 19-7 (eff. 7-1-19)T

02-0415-1901 Proposed Rulemaking, Bulletin Vol. 19-9

02-0415-1901 Adoption of Pending Rule, Bulletin Vol. 19-11 (PLR 2020)

02.04.16, Rules Governing Agriculture Odor Management

02-0416-1901 Adoption of Temporary Rule, Bulletin Vol. 19-7 (eff. 7-1-19)T

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.04.17, Rules Governing Dead Animal Movement and Disposal

02-0417-1901 Adoption of Temporary Rule, Bulletin Vol. 19-7 (eff. 7-1-19)T

02-0417-1901 Proposed Rulemaking, Bulletin Vol. 19-9

02-0417-1901 Adoption of Pending Rule, Bulletin Vol. 19-11 (PLR 2020)

02.04.18, Rules Governing CAFO Site Advisory Team

02-0418-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-6

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.04.20, Rules Governing Brucellosis

02-0420-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-6

02-0420-1901 Proposed Rulemaking, Bulletin Vol. 19-9

02-0420-1901 Adoption of Pending Rule, Bulletin Vol. 19-11 (PLR 2020)

02.04.21, Rules Governing the Importation of Animals

02-0421-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-6

02-0421-1901 Proposed Rulemaking, Bulletin Vol. 19-9

02-0421-1901 Adoption of Pending Rule, Bulletin Vol. 19-11 (PLR 2020)

02.04.22, Rules Governing Animal Health Emergencies

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.04.23, Rules Governing Commercial Livestock Truck Washing Facilities

02-0423-1901 Adoption of Temporary Rule, Bulletin Vol. 19-7 (eff. 7-1-19)T

02-0423-1901 Proposed Rulemaking, Bulletin Vol. 19-9

02-0423-1901 Adoption of Pending Rule, Bulletin Vol. 19-11 (PLR 2020)

02.04.26, Rules Governing Livestock Marketing

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.04.26, Rules Governing the Public Exchange of Livestock

02-0426-1901* Proposed Rulemaking (New Chapter, Fee Rule), Bulletin Vol. 19-11

(*Rulemaking combines previously codified chapters 02.04.26 and 02.04.28 into this new chapter)

02.04.28, Rules Governing Livestock Dealers, Buying Stations, and Livestock Trader Lots

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.04.30, Rules Governing Nutrient Management

02-0430-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-6

02-0430-1902 Adoption of Temporary Rule, Bulletin Vol. 19-7 (eff. 7-1-19)T

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.04.30, Rules Governing Environmental and Nutrient Management

02-0430-1903* Proposed Rulemaking (New Chapter), Bulletin Vol. 19-11

(*Rulemaking combines previously codified chapters 02.04.16, 02.04.18, 02.04.30 and 02.04.31 into this new chapter)

02.04.31, Rules Governing the Stockpiling of Agricultural Waste

02-0431-1901 Adoption of Temporary Rule, Bulletin Vol. 19-7 (eff. 7-1-19)T

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.04.32, Rules Governing Poultry Operations

02-0432-1901 Adoption of Temporary Rule, Bulletin Vol. 19-7 (eff. 7-1-19)T

02-0432-1901 Proposed Rulemaking (Fee Rule), Bulletin Vol. 19-9

02-0432-1901 Adoption of Pending Fee Rule, Bulletin Vol. 19-11 (PLR 2020)

02.06.01, Rules Governing the Pure Seed Law

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.06.01, Rules Governing the Production and Distribution of Seed

02-0601-1901* Proposed Rulemaking (New Chapter, Fee Rule), Bulletin Vol. 19-11

(*Rulemaking combines previously codified chapters 02.06.01, 02.06.13 and 02.06.14 into this new chapter)

02.06.02, Rules Pertaining to the Idaho Commercial Feed Law

02-0602-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-6

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.06.02, Rules Governing Registrations and Licenses

02-0602-1902* Proposed Rulemaking (New Chapter, Fee Rule), Bulletin Vol. 19-11

(*Rulemaking combines previously codified chapters 02.06.02, 02.06.03, 02.06.12, 02.06.31 and 02.06.41 into this new chapter)

02.06.03, Rules Pertaining to the Idaho Nurseries and Florists Law

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.06.04, Phytosanitary and Post-Entry Certification Rules

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.06.04, Rules Governing Plant Exports

02-0604-1901* Proposed Rulemaking (New Chapter, Fee Rule), Bulletin Vol. 19-11

(*Rulemaking combines previously codified chapters 02.06.02, 02.06.34, and 02.06.40 into this new chapter)

02.06.05, Rules Governing Diseases of Hops (*Humulus lupulus*)

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.06.05, Rules Governing Plant Disease and Quarantines

02-0605-1901* Proposed Rulemaking (New Chapter, Fee Rule), Bulletin Vol. 19-11

(*Rulemaking combines previously codified chapters 02.06.05, 02.06.07, 02.06.08, 02.06.11, 02.06.15, 02.06.17, 02.06.18, 02.06.20, 02.06.24, 02.06.32 and 02.06.38 into this new chapter)

02.06.09, Rules Governing Invasive Species

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.06.09, Rules Governing Invasive Species and Noxious Weeds

02-0609-1901* Proposed Rulemaking (New Chapter, Fee Rule), Bulletin Vol. 19-11

(*Rulemaking combines previously codified chapters 02.06.09, 02.06.22, and 02.06.39 into this new chapter)

02.06.10, Rules Governing the Pale Cyst Nematode (*Globodera pallida*)

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.06.10, Rules Governing the Growing of Potatoes

02-0610-1901* Proposed Rulemaking (New Chapter, Fee Rule), Bulletin Vol. 19-11

(*Rulemaking combines previously codified chapters 02.06.10, 02.06.26, 02.06.27 and 02.06.31 into this new chapter)

02.06.11, Rules Governing European Corn Borer (*Ostrinia nubilalis*)

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.06.12, Rules Pertaining to the Idaho Fertilizer Law

02-0612-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-6

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.06.13, Rules Relating to Rapeseed Production and Establishment of Rapeseed Districts in the State of Idaho

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.06.14, Rules Governing Annual Bluegrass (*Poa annua*)

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.06.15, Rules Governing Peach Tree Diseases

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.06.17, Rules Governing the Disposal of Cull Onions and Potatoes

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.06.18, Rules Governing Mint Rootstock and Clone Production

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.06.20, Rules Governing Grape Planting Stock

02-0620-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-8

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.06.22, Noxious Weed Rules

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.06.24, Rules Governing the Japanese Beetle (*Popillia japonica*)

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.06.26, Rules Concerning Seed Potato Crop Management Areas

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.06.27, Rules Governing Bacterial Ring Rot Caused By (*Clavibacter michiganensis* subsp. *sepedonicus*) of Potato

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.06.30, Rules Under the Idaho Bee Inspection Law

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.06.31, Noxious Weed Free Forage and Straw Certification Rules

02-0631-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-6

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.06.32, Rules Concerning the Anthracnose Disease of Lentil (*lens culinaris medik*)

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.06.34, Rules Concerning Virus-Free Certification of Nursery Stock

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.06.38, Rules Governing Plum Curculio (*Conotrachelus nenuphar*)

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.06.39, Rules Governing Minimum Standards for Planting Uncertified Seed Potatoes in Idaho

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.06.40, Rules Governing Ginseng Export

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

02.06.41, Rules Pertaining to the Idaho Soil and Plant Amendment Act of 2001

02-0641-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-6

02-0100-1901OM Notice of Intent to Promulgate - Omnibus Negotiated Rulemaking, Bulletin Vol. 19-9

STATE ATHLETIC COMMISSION

(Moved and Re-designated) - Rules of the State Athletic Commissions (This chapter has been re-designated from *IDAPA 03.01.01* to *IDAPA 24.02.01* under the Bureau of Occupational Licenses - See IDAPA 24 in this Index.)

IDAPA 04 -- OFFICE OF THE ATTORNEY GENERAL

04-0000-1900 *Rules of the Attorney General* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking - Reauthorizes Title 02, Chapter 01; Titles 11, 12, 20 - Bulletin Vol. 19-6SE (eff. 6-30-19)T

04-0000-1900F *Rules of the Attorney General* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking - Reauthorizes Title 02, Chapter 02 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

IDAPA 05 -- DEPARTMENT OF JUVENILE CORRECTIONS

05-0000-1900 *Rules of the Department of Juvenile Corrections* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking - Reauthorizes Title 01, Chapters 02-04; Title 02, Chapters 01-03 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

05.01.04, Uniform Standards for Juvenile Probation Services

05-0104-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-8

IDAPA 06 -- STATE BOARD OF CORRECTION

06-0000-1900 *Rules of the State Board of Correction* - Omnibus Notice of Proclamation of Rulemaking - Reauthorizes Title 01, Chapters 01-02; Title 02, Chapters 01-02 -- Bulletin Vol. 19-6SE (eff. 6-30-19)

06.02.02, Rules Governing Establishment and Operation of a Limited Supervision Unit by

the Department of Correction, Division of Probation and Parole

06-0202-1901 Notice of Proclamation of Rulemaking, Bulletin Vol. 19-10 (eff. 11-1-19)

IDAPA 07 – DIVISION OF BUILDING SAFETY

07-0000-1900* *Rules of the Division of Building Safety* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking - Reauthorizes Title 01, Chapters 01, 04-08, 10; Title 02, Chapters 04-06; Title 03, Chapters 09, 13; Title 04, Chapter 01; Title 06, Chapter 01; Title 08, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

(*Rulemaking combines Title 08, Chapters 02-17 into 07.08.01

07-0000-1900 Notice of Omnibus Rulemaking - Notice of Public Hearing, Bulletin Vol. 19-9

07-0000-1900F *Rules of the Division of Building Safety* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 01, Chapters 02-03, 11; Title 02, Chapters 02-03, 07; Title 03, Chapters 01, 03, 11-12; Title 04, Chapter 02; Title 05, Chapter 01; Title 07, Chapter 01; Title 10, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

07-0000-1900F Notice of Omnibus Fee Rulemaking - Notice of Public Hearing, Bulletin Vol. 19-9

07.01.01, Rules of the Idaho Electrical Board

07-0101-1901* Proposed Rulemaking (New Chapter - Rule Consolidation), Bulletin Vol. 19-9

(*This rulemaking consolidates all rules previously promulgated under Title 01, Chapters 01-11)

07.01.03, Rules of Electrical Licensing and Registration – General

07-0103-1901* Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-5

(*Rulemaking has been included in the newly consolidated rule chapter under Docket 07-0101-1901)

07.02.02, Rules Governing Plumbing Permits

07-0202-1901* Proposed Fee Rulemaking, Bulletin Vol. 19-7

(*This rulemaking consolidates provisions from IDAPA 07.02.03, 07.02.04, and 07.02.07 into this chapter)

07-0202-1901* Notice of Vacation of Proposed Fee Rulemaking, Bulletin Vol. 19-10

07.02.03, Rules Governing Permit Fee Schedule

07-0203-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-5

07-0203-1902 Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 19-7

07-0203-1902 Notice of Vacation of Proposed Rulemaking, Bulletin Vol. 19-10

07.02.04, Rules Governing Plumbing Safety Inspections

07-0204-1901 Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 19-7

07-0204-1901 Notice of Vacation of Proposed Rulemaking, Bulletin Vol. 19-10

07.02.05, Rules Governing Plumbing Safety Licensing

07-0205-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-5

07-0205-1901 Proposed Rulemaking, Bulletin Vol. 19-7

07-0205-1901 Notice of Vacation of Proposed Rulemaking, Bulletin Vol. 19-10

07.02.07, Rules Governing Civil Penalties

07-0207-1901 Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 19-7

07-0207-1901 Notice of Vacation of Proposed Rulemaking, Bulletin Vol. 19-10

07.03.01, Rules of Building Safety

07-0301-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-6

07-0301-1901 Proposed Rulemaking, Bulletin Vol. 19-10

07.03.12, Rules Governing Manufactured or Mobile Home Installations

07-0312-1901* Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-7 (*Rulemaking has been terminated)

07.05.01, Rules of the Public Works Contractors License Board

- 07-0501-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-5
- 07-0501-1901 Temporary and Proposed Rulemaking, Bulletin Vol. 19-9 (eff. 7-15-19)T

07.07.01, Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems

- 07-0701-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-5
- 07-0701-1901 Proposed Rulemaking, Bulletin Vol. 19-7
- 07-0701-1902 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-7
- 07-0701-1902 Proposed Rulemaking (Fee Rule), Bulletin Vol. 19-9

07.08.01, Idaho Minimum Safety Standards and Practices for Logging -- General Provisions

- 07-0801-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-6
- 07-0801-1901 Proposed Rulemaking, Bulletin Vol. 19-10

07.11.01, Rules of the Division of Building Safety

- 07-0711-1901 Proposed Rulemaking (New Chapter), Bulletin Vol. 19-9

**IDAPA 08 – IDAHO STATE BOARD OF EDUCATION
AND STATE DEPARTMENT OF EDUCATION**

- 08-0000-1900 **Rules of the State Board of Education and the Department of Education** - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking - Reauthorizes Title 01, Chapters 02, 10, 11, 13; Title 02, Chapters 01-05; Title 03, Chapter 01; Title 04, Chapter 01; Title 05, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

- 08-0000-1900F **Rules of the State Board of Education and the Department of Education** - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking - Reauthorizes Title 01, Chapter 11, Sections 200 and 300 only; Title 02, Chapter 02, Sections 066 and 075 only; Title 02, Chapter 03, Section 128 only -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

- 08-0000-1900 **Rules of the State Board of Education and the Department of Education** - Notice of Public Hearing, Bulletin Vol. 19-8
- 08-0000-1900 **Rules of the State Board of Education and the Department of Education** - Notice of Public Hearing, Bulletin Vol. 19-10

08.01.13, Rules Governing the Idaho Opportunity Scholarship Program

- 08-0113-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-7
- 08-0113-1901 Temporary and Proposed Rulemaking, Bulletin Vol. 19-10 (eff. 8-29-19)T

08.02.01, Rules Governing Administration

- 08-0201-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-7
- 08-0201-1902 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-7
- 08-0201-1902 Proposed Rulemaking, Bulletin Vol. 19-10

08.02.02, Rules Governing Uniformity

- 08-0202-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-3
- 08-0202-1902 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-3
- 08-0202-1903 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-7
- 08-0202-1902 Proposed Rulemaking, Bulletin Vol. 19-8
- 08-0202-1901 Proposed Rulemaking, Bulletin Vol. 19-10
- 08-0202-1903 Proposed Rulemaking, Bulletin Vol. 19-10

08.02.03, Rules Governing Thoroughness

- 08-0203-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-7
- 08-0203-1902 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-7
- 08-0203-1903 Temporary and Proposed Rulemaking, Bulletin Vol. 19-8 (eff. 7-1-19)T
- 08-0203-1901 Proposed Rulemaking, Bulletin Vol. 19-10

08-0203-1902 Proposed Rulemaking, Bulletin Vol. 19-10

08.02.04, Rules Governing Public Charter Schools

08-0204-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-7

08-0204-1901 Proposed Rulemaking, Bulletin Vol. 19-10

IDAPA 09 – IDAHO DEPARTMENT OF LABOR

09-0000-1900 *Rules of the Idaho Department of Labor* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking - Reauthorizes Title 01, Chapters 01, 08, 30, 35, 60; Title 02, Chapter 01; Title 05, Chapter 03 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

09.01.30, Unemployment Insurance Benefits Administration Rules

09-0130-1901 Notice of Adoption of Temporary Rule, Bulletin Vol. 19-3 (eff. 3-6-19)T

09-0130-1902 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-5

09-0130-1903 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-5

09-0130-1902* 2nd Filing - Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-7

09-0130-1903* 2nd Filing - Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-7

09-0130-1902 Proposed Rulemaking, Bulletin Vol. 19-9

09-0130-1903 Proposed Rulemaking, Bulletin Vol. 19-9

09-0130-1902 Adoption of Pending Rule, Bulletin Vol. 19-11 (PLR 2020)

09-0130-1903 Adoption of Pending Rule, Bulletin Vol. 19-11 (PLR 2020)

**IDAPA 10 – IDAHO BOARD OF LICENSURE OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS**

10-0000-1900F *Rules of the Board of Professional Engineers and Professional Land Surveyors* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking - Reauthorizes Title 01, Chapters 01-04 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

10-0000-1900F *Rules of the Board of Professional Engineers and Professional Land Surveyors* - Notice of Public Hearing, Bulletin Vol. 19-8

10.01.01, Rules of Procedure

10-0101-1901 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 19-6

10.01.04, Rules of Continuing Professional Development

10-0104-1901 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 19-6

10.01.05, Rules for Military or Veterans Licensure

10-0105-1901 Notice of Intent to Promulgate Rules - Negotiated Rulemaking (New Chapter), Bulletin Vol. 19-6

IDAPA 11 – IDAHO STATE POLICE

11-0000-1900 *Rules of the Idaho State Police* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking - Reauthorizes Title 03, Chapter 01; Title 06, Chapter 01; Title 07, Chapters 01-03; Title 10, Chapter 03; Title 13, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

11-0000-1900F *Rules of the Idaho State Police* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking - Reauthorizes Title 05, Chapter 01; Title 10, Chapter 02 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

11-0200-1900F *Rules of the Idaho State Brand Board* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking - Reauthorizes Title 02, Chapters 01-02 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

11-0400-1900 *Rules of the Idaho State Racing Commission* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking - Reauthorizes Title 04, Chapters 04, 06, 08-10, 13-14 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

11-0400-1900F *Rules of the Idaho State Racing Commission* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking - Reauthorizes **Title 04**, Chapters 02, 03, 05, 07, 11, 15 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

11-1001-1900F *Idaho Public Safety and Public Information Systems* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, - Reauthorizes **Title 10**, Chapter 01, Bulletin Vol. 19-6SE (eff. 6-30-19)T

11-1101-1900F* *Rules of the Peace Officer Standards and Training Council* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking, - Reauthorizes **Title 11**, Chapter 01, Bulletin Vol. 19-6SE (eff. 6-30-19)T
**(Reauthorization combines previous chapters 11.02, 11.03, 11.04, 11.05, and 11.06 into Title 11, Chapter 01)*

Idaho State Brand Board

11-0200-1900F *Rules of the Idaho State Brand Board* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking - Reauthorizes Title 02, Chapters 01-02 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

11.02.01, Rules of the Idaho State Brand Board

11-0201-1901 Adoption of Temporary Rule, Bulletin Vol. 19-6 (eff. 7-1-19)T

11-0201-1902 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-7

Idaho State Police Forensic Services

11-0000-1900 *Rules of the Idaho State Police* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking - Reauthorizes **Title 03, Chapter 01**; Title 06, Chapter 01; Title 07, Chapters 01-03; Title 13, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

11.03.01, Rules Governing Alcohol Testing

11-0301-1801 Adoption of Temporary Rule, Bulletin Vol. 18-1 (eff. 12-14-17)T

11-0301-1801 OARC Omnibus Notice of Legislative Action-Extension of Temporary Rule - SCR150, Bulletin Vol. 18-5 (eff. 10-2-17)T

11-0301-1801 OARC Omnibus Notice of Legislative Action-Extension of Temporary Rule - SCR113, Bulletin Vol. 19-5 (eff. 12-14-19)T

11-0301-1901 Proposed Rulemaking, Bulletin Vol. 19-11

Idaho State Racing Commission

11-0400-1900 *Rules of the Idaho State Racing Commission* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking - Reauthorizes Title 04, Chapters 04, 06, 08-10, 13-14 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

11-0400-1900F *Rules of the Idaho State Racing Commission* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking - Reauthorizes Title 04, Chapters 02, 03, 05, 07, 11, 15 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

11.04.03, Rules Governing Licensing and Fees

11-0403-1801 Adoption of Temporary Rule, Bulletin Vol. 18-11 (eff. 9-17-18)T

11-0403-1801 OARC Omnibus Notice of Legislative Action-Extension of Temporary Rule by SCR 114, Bulletin Vol. 19-5 (eff. 9-17-18)T

11.04.11, Rules Governing Equine Veterinary Practices, Permitted Medications, Banned Substances and Drug Testing of Horses

11-0411-1801* *Notice of Intent to Promulgate Rules – Negotiated Rulemaking, Bulletin Vol. 18-3 (*Rulemaking terminated by agency)*

11-0411-1802 Adoption of Temporary Rule, Bulletin Vol. 18-11 (eff. 9-17-18)T

11-0411-1802 OARC Omnibus Notice of Legislative Action-Extension of Temporary Rule by SCR 114, Bulletin Vol. 19-5 (eff. 9-17-18)T

11.06.01, Rules Governing Civil Asset Forfeiture Reporting

11-0601-1901 Adoption of Temporary Rule, Bulletin Vol. 19-3 (eff. 2-7-19)T

Public Safety and Security Information Bureau

11-0000-1900 *Rules of the Idaho State Police* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking - Reauthorizes Title 03, Chapter 01; Title 06, Chapter 01; Title 07, Chapters 01-03; **Title 10, Chapter 03**; Title 13, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

11-1001-1900F *Idaho Public Safety and Public Information Systems* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, - Reauthorizes **Title 10, Chapter 01**, Bulletin Vol. 19-6SE (eff. 6-30-19)T

11-0000-1900F *Rules of the Idaho State Police* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking - Reauthorizes Title 05, Chapter 01; **Title 10, Chapter 02** -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

11.10.02, Rules Governing State Criminal History Records and Crime Information

11-1002-1901 Adoption of Temporary Rule, Bulletin Vol. 19-3 (eff. 2-5-19)T

Peace Officer Standards and Training (POST) Council

11-1101-1900F *Rules of the Peace Officer Standards and Training Council* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking, - Reauthorizes Title 11, Chapter 01, Bulletin Vol. 19-6SE (eff. 6-30-19)T

**(Reauthorization combines previous chapters 11.02, 11.03, 11.04, 11.05, and 11.06 into Chapter 11.01)*

11.11.01, Rules of the Idaho Peace Officer Standards and Training Council

11-1101-1901 Adoption of Temporary Rule, Bulletin Vol. 19-4 (eff. 3-14-19)T

IDAPA 12 – DEPARTMENT OF FINANCE

12-0000-1900 *Rules of the Department of Finance* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking, Reauthorizes Title 01, Chapters 04, 09, 10, 11 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

12-0000-1900F *Rules of the Department of Finance* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking, Reauthorizes Title 01, Chapters 06, 08 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

12.01.08, Rules Pursuant to the Uniform Securities Act (2004)

12-0108-1901 Proposed Rulemaking, Bulletin Vol. 19-10

12.01.09, Rules Pursuant to the Idaho Credit Code

12-0109-1901 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 19-8

12-0109-1901 Proposed Rulemaking, Bulletin Vol. 19-10

12.01.10, Rules Pursuant to the Idaho Residential Mortgage Practices Act

12-0110-1901 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 19-8

12-0110-1901 Proposed Rulemaking, Bulletin Vol. 19-10

12.01.11, Rules Pursuant to the Idaho Collection Agency Act

12-0111-1901 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 19-8

12-0111-1901 Proposed Rulemaking, Bulletin Vol. 19-10

IDAPA 13 – IDAHO FISH AND GAME COMMISSION

13-0000-1900 *Rules of the Idaho Fish and Game Commission* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking, Reauthorizes Title 01, Chapters 01-04, 06-12, 14-19 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

13-0000-1900 Notice of Omnibus Rulemaking - Notice of Public Hearing, Bulletin Vol. 19-9

13-0000-1900F *Rules of the Idaho Fish and Game Commission* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 01, Chapter 02, Sections 100 and 102 only; Title 01, Chapter 04, Section 600 only; Title 01, Chapter 08, Subsection 260.06 only; Title 01, Chapter 10, Subsection 400.09 only; Title 01, Chapter 19, Section 112 only; Title 01, Chapter 20, Subsection 102.04 only -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

13-0000-1900F Notice of Omnibus Fee Rulemaking - Notice of Public Hearing, Bulletin Vol. 19-9

13.01.08, Rules Governing the Taking of Big Game Animals in the State of Idaho

13-0108-1902AP Notice of Amended Proclamation of Rulemaking, Bulletin Vol. 19-6

13-0108-1903 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 19-6

13-0108-1904 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 19-6

13-0108-1903 Proposed Rulemaking, Bulletin Vol. 19-9

13-0108-1904 Proposed Rulemaking, Bulletin Vol. 19-9

13.01.09, Rules Governing the Taking of Game Birds in the State of Idaho

13-0109-1901P Notice of Proclamation of Rulemaking, Bulletin Vol. 19-6

13-0109-1902 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 19-6

13-0109-1902 Proposed Rulemaking, Bulletin Vol. 19-9

13-0109-1801AP Notice of Amended Proclamation of Rulemaking, Bulletin Vol. 19-10

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BOARD OF REGISTRATION OF PROFESSIONAL GEOLOGISTS

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IDAPA 15 – OFFICE OF THE GOVERNOR

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- [15-0100-1900](#) *Rules of the Idaho Commission on Aging* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking, Reauthorizes Title 01, Chapters 01-03, 20, 30 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
- [15-0100-1900](#) Notice of Omnibus Rulemaking - Notice of Public Hearing, Bulletin Vol. 19-9

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- [15-0200-1900](#) *Rules of the Idaho Commission for the Blind and Visually Impaired* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking, Reauthorizes Title 02, Chapters 02-04, 30 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

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- [15-0300-1900F](#) *Rules of the Idaho Forest Products Commission* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking, Reauthorizes Title 03, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

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- [15-0400-1900](#) *Rules of the Division of Human Resources and Personnel Commission* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking, Reauthorizes Title 04, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

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- [15-0600-1900](#) *Rules of the Idaho Military Division* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking, Reauthorizes Title 06, Chapters 01-02, 04-06 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
- [15-0600-1900F](#) *Rules of the Idaho Military Division* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 06, Chapter 03 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

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- [15-1000-1900F](#) *Rules of the Idaho State Liquor Division* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 10, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE

- [16-0000-1900](#) *Rules of the Department of Health and Welfare* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking, Reauthorizes Title 01, Chapters 01-06, 12; Title 02, Chapters 02, 06, 10-12, 15, 19, 23-24; Title 03, Chapters 01-02, 04-11, 13-14, 17, 20-21, 23-25; Title 04, Chapters 10, 13-14, 16-17; Title 05, Chapters 01, 03-04, 07; Title 06, Chapters 05, 12-13; Title 07, Chapters 17, 19, 25, 33, 37, 39 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
- [16-0000-1900](#) *Rules of the Department of Health and Welfare* - Notice of Public Hearing, Bulletin 19-8

- 16-0000-1900F** *Rules of the Department of Health and Welfare* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 01, Chapter 07; Title 02, Chapters 01, 08, 13-14, 25-27; Title 03, Chapters 03, 18, 19, 22; Title 04, Chapters 07, 08; Title 05, Chapter 06; Title 06, Chapters 01-02; Title 07, Chapters 01, 15 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
- 16-0000-1900F** *Rules of the Department of Health and Welfare* - Notice of Public Hearing, Bulletin 19-8

16.01.02, Emergency Medical Services (EMS) - Rule Definitions

- 16-0102-1901** Proposed Rulemaking, Bulletin Vol. 19-9

16.01.03, Emergency Medical Services (EMS) – Agency Licensing Requirements

- 16-0103-1901** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-5
- 16-0103-1901** Proposed Rulemaking, Bulletin Vol. 19-9

16.01.07, Emergency Medical Services (EMS) – Personnel Licensing Requirements

- 16-0107-1901** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-5
- 16-0107-1901** Proposed Rulemaking, Bulletin Vol. 19-9

16.02.01, Rules of the Idaho Time Sensitive Emergency System Council

- 16-0201-1901** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-7
- 16-0201-1901** Proposed Rulemaking, Bulletin Vol. 19-10

16.02.02, Rules of the Idaho Emergency Medical Services (EMS) Physician Commission

- 16-0202-1901** Proposed Rulemaking, Bulletin Vol. 19-10

16.02.04, Syringe and Needle Exchange Program

- 16-0204-1901** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (New Chapter), Bulletin Vol. 19-6

16.02.08, Vital Statistics Rules

- 16-0208-1901** Temporary and Proposed Rulemaking, Bulletin Vol. 19-7 (eff. 7-1-19)T
- 16-0208-1901** Notice of Public Hearing, Bulletin 19-9

16.02.14, Rules Governing Construction and Operation of Public Swimming Pools in Idaho

- 16-0214-1901** Proposed Rulemaking, Bulletin Vol. 19-10

16.03.01, Eligibility for Health Care Assistance for Families and Children

- 16-0301-1901** Temporary and Proposed Rulemaking, Bulletin Vol. 19-10 (eff. 1-1-20)T

16.03.09, Medicaid Basic Plan Benefits

- 16-0309-1803** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 16-0309-1803** Temporary and Proposed Rulemaking, Bulletin Vol. 19-7 (eff. 7-1-19)T

16.03.10, Medicaid Enhanced Plan Benefits

- 16-0310-1704** 4th Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 19-6
- 16-0310-1806** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 18-7
- 16-0310-1806** Temporary and Proposed Rulemaking, Bulletin Vol. 19-7 (eff. 7-1-19)T
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16.03.18, Medicaid Cost-Sharing

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- 16-0318-1901** Proposed Rulemaking, Bulletin Vol. 19-10

16.03.19, Rules Governing Certified Family Homes

- 16-0319-1901** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-5
- 16-0319-1901** Proposed Rulemaking, Bulletin Vol. 19-9

16.03.22, Residential Care or Assisted Living Facilities in Idaho

- 16-0322-1901** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-7
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16.05.04, Rules of the Idaho Council on Domestic Violence and Victim Assistance Grant Funding

- 16-0504-1901** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-7
16-0504-1901 Proposed Rulemaking, Bulletin Vol. 19-10

16.05.06, Criminal History and Background Checks

- 16-0506-1901** OARC Omnibus Notice of Legislative Action-Extension of Temporary Rule by SCR 114, Bulletin Vol. 19-5 (eff. 1-1-19)T
16-0506-1902 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 19-6
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16.06.12, Rules Governing the Idaho Child Care Program (ICCP)

- 16-0612-1901** Proposed Rulemaking, Bulletin Vol. 19-10

IDAPA 17 – INDUSTRIAL COMMISSION

- 17-0000-1900** *Rules of the Idaho Industrial Commission* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking, Reauthorizes Title 10, Chapter 01; Title 11, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
17-0000-1900F *Rules of the Idaho Industrial Commission* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 01, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

IDAPA 18 – DEPARTMENT OF INSURANCE

- 18-0000-1900*** *Rules of the Idaho Department of Insurance* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking, Reauthorizes and Re-designates Title 01, Chapter 01; Title 02, Chapters 01-03; Title 03, Chapters 01-05; Title 04, Chapters 01-15; Title 05, Chapters 01-03; Title 06, Chapters 01-06; Title 07, Chapters 01-12; Title 08, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
18-0000-1900F* *Rules of the Idaho Department of Insurance* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes and Re-designates Title 01, Chapter 02; Title 08, Chapter 02 --- Bulletin Vol. 19-6SE (eff. 6-30-19)T

*These chapters indexed under IDAPA 18 are re-designated with new Title and Chapter numbers as follows:

New Designation [Old Designation]: **18.01.01** [18.01.48]; **18.01.02** [18.01.44]; **18.02.01** [18.01.19]; **18.02.02** [18.01.20]; **18.02.03** [18.01.34]; **18.03.01** [18.01.09]; **18.03.02** [18.01.13]; **18.03.03** [18.01.16]; **18.03.04** [18.01.41]; **18.03.05** [18.01.61]; **18.04.01** [18.01.05]; **18.04.02** [18.01.06]; **18.04.03** [18.01.24]; **18.04.04** [18.01.26]; **18.04.05** [18.01.27]; **18.04.06** [18.01.28]; **18.04.07** [18.01.29]; **18.04.08** [18.01.30]; **18.04.09** [18.01.31]; **18.04.10** [18.01.54]; **18.04.11** [18.01.60]; **18.4.12** [18.01.69]; **18.04.13** [18.01.70]; **18.04.14** [18.01.72]; **18.04.15** [18.01.77]; **18.05.01** [18.01.01]; **18.05.02** [18.01.25]; **18.05.03** [18.01.56]; **18.06.01** [18.01.04]; **18.06.02** [18.01.10]; **18.06.03** [18.01.52]; **18.06.04** [18.01.53]; **18.06.05** [18.01.64]; **18.06.06** [18.01.65]; **18.07.01** [18.01.23]; **18.07.02** [18.01.46]; **18.07.03** [18.01.47]; **18.07.04** [18.01.62]; **18.07.05** [18.01.66]; **18.07.06** [18.01.67]; **18.07.07** [18.01.68]; **18.07.08** [18.01.75]; **18.07.09** [18.01.76]; **18.07.10** [18.01.77]; **18.07.11** [18.01.78]; **18.07.12** [18.01.81]; **18.08.01** [18.01.50]; **18.08.02** [18.01.49]

18.04.08, [18.01.30] Individual Disability and Group Supplemental Disability Insurance Minimum Standards Rule

- 18-0408-1901** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-8
18-0408-1901 Proposed Rulemaking, Bulletin Vol. 19-10

18.04.16, Rules Governing Short-Term Health Insurance Coverage

- 18-0416-1901** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking (New Chapter), Bulletin Vol. 19-7
18-0416-1902 Adoption of Temporary Rule (New Chapter), Bulletin Vol. 19-8 (eff. 7-1-19)T
18-0416-1901 Proposed Rulemaking (New Chapter), Bulletin Vol. 19-10

18.06.06, [18.01.65] Rules for the Surplus Lines Brokers

- 18-0606-1901** Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-8

18-0606-1901 Proposed Rulemaking, Bulletin Vol. 19-10

IDAPA 19 – BOARD OF DENTISTRY

19-0101-1900F *Rules of the Idaho State Board of Dentistry* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 01, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

19-0101-1900F *Rules of the Idaho State Board of Dentistry* - Notice of Public Hearing (Omnibus Fee Rulemaking), Bulletin Vol. 19-8

19.01.01, Rules of the Idaho State Board of Dentistry

19-0101-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-7

19-0101-1901 Temporary and Proposed Rulemaking (Fee Rule), Bulletin Vol. 19-9 (eff. 7-27-19)T

IDAPA 20 – DEPARTMENT OF LANDS

20-0000-1900 *Rules of the Idaho Department of Lands* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking, Reauthorizes Title 01, Chapter 01; Title 02, Chapter 01; Title 04, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

20-0000-1900 *Rules of the Idaho Department of Lands* - Notice of Public Hearing (Omnibus Rulemaking), Bulletin Vol. 19-8

20-0000-1900F *Rules of the Idaho Department of Lands* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 02, Chapter 14; Title 03, Chapters 01-05, 08, 09, 13-17; Title 04, Chapter 02; Title 06, Chapter 01; Title 07, Chapter 02 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

20-0000-1900F *Rules of the Idaho Department of Lands* - Notice of Public Hearing (Omnibus Fee Rulemaking), Bulletin Vol. 19-8

20.03.02, Rules Governing Mined Land Reclamation

20-0302-1901 Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-5

20-0302-1902* Adoption of Temporary Rule (Fee Rule), Bulletin Vol. 19-9 (eff. 7-16-19)T

(*Temporary Rulemaking changes chapter name to: “Rules Governing Mined Land Reclamation”
from: “Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities”)

20-0302-1901 2nd Notice of Intent to Promulgate a Rule – Negotiated Rulemaking, Bulletin Vol. 19-10

20.03.03, Rules Governing Administration of the Reclamation Fund

20-0303-1901 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 19-6

20-0303-1901 Proposed Rulemaking, Bulletin Vol. 19-9

20.03.04, Rules Governing the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho

20-0304-1901 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 19-6

20-0304-1901 Proposed Rulemaking (Fee Rule), Bulletin Vol. 19-9

IDAPA 21 -- DIVISION OF VETERANS SERVICES

21-0000-1900 *Rules of the Division of Veterans Services* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking, Reauthorizes Title 01, Chapter 06 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

21-0000-1900F *Rules of the Division of Veterans Services* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 01, Chapters 01, 04 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

IDAPA 22 – BOARD OF MEDICINE

22-0000-1900 *Rules of the Idaho Board of Medicine* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking, Reauthorizes Title 01, Chapter 05 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

22-0000-1900 Notice of Public Hearing (Omnibus Rulemaking), Bulletin Vol. 19-8

- 22-0000-1900F** *Rules of the Idaho Board of Medicine* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 01, Chapters 01, 03, 10, 11, 13 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
22-0000-1900F Notice of Public Hearing (Omnibus Fee Rulemaking), Bulletin Vol. 19-8

22.01.07, Rules for the Licensure of Naturopathic Medical Doctors

- 22-0107-1901** Notice of Intent to Promulgate Rules - Negotiated Rulemaking (New Chapter), Bulletin Vol. 19-8
22-0107-1901 Proposed Rulemaking (New Chapter, Fee Rule), Bulletin Vol. 19-11

IDAPA 23 – BOARD OF NURSING

- 23-0101-1900F** *Rules of the Idaho Board of Nursing* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 01, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
23-0101-1900F Notice of Public Hearing (Omnibus Fee Rulemaking), Bulletin Vol. 19-9

23.01.01, Rules of the Idaho Board of Nursing

- 23-0101-1901** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 19-6
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IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

- 24-0101-1900F** *Rules of the Board of Architectural Examiners* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 01, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
24-0201-1900F* *Rules of the State Athletic Commissions* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking - Reauthorizes re-designated Title 02, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
**(Re-designated from IDAPA 03.01.01 to 24.02.01)*
24-0301-1900F *Rules of the State Board of Chiropractic Physicians* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 03, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
24-0401-1900F* *Rules of Procedure of the Board of Registration for Professional Geologists* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes re-designated Title 04, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
**(Re-designated from IDAPA 14.01.01 to 24.04.01)*
24-0501-1900F *Rules of the Board of Drinking Water and Wastewater Professionals* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 05, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
24-0601-1900F *Rules for the Licensure of Occupational Therapists & Occupational Therapy Assistants* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 06, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
24-0701-1900F *Rules of the Idaho State Board of Landscape Architects* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 07, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
24-0801-1900F *Rules of the State Board of Morticians* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 08, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
24-0901-1900F *Rules of the Board of Examiners of Nursing Home Administrators* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 09, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
24-1001-1900F *Rules of the Board of Examiners of Nursing Home Administrators* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 10, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
24-1101-1900F *Rules of the State Board of Podiatry* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 11, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

- 24-1201-1900F** *Rules of the Idaho State Board of Psychological Examiners* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 12, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
- 24-1301-1900F** *Rules Governing the Physical Therapy Licensure Board* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 13, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
- 24-1401-1900F** *Rules of the State Board of Social Work Examiners* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 14, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
- 24-1501-1900F** *Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists*-Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 15, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
- 24-1601-1900F** *Rules of the State Board of Dentistry* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 16, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
- 24-1701-1900F** *Rules of the State Board of Acupuncture* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 17, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
- 24-1801-1900F** *Rules of the Real Estate Appraiser Board* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 18, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
- 24-1901-1900F** *Rules of the Board of Examiners of Residential Care Facility Administrators* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 19, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
- 24-2001-1900F** *Rules of the Bureau of Occupational Licenses* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 20, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
- 24-2101-1900F** *Rules of the Idaho State Contractors Board* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 21, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
- 24-2201-1900F** *Rules of the Idaho State Liquefied Petroleum Gas Safety Board* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 22, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
- 24-2301-1900F** *Rules of the Speech, Hearing and Communication Services Licensure Board* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 23, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
- 24-2401-1900F** *Rules of the Genetic Counselors Licensing Board* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 24, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
- 24-2501-1900F** *Rules of the Idaho Driving Businesses Licensure Board* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 25, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
- 24-2601-1900F** *Rules of the Idaho Board of Midwifery* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 26, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
- 24-2701-1900F** *Rules of the Idaho State Board of Massage Therapy* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 27, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
- 24-2801-1900F** *Rules of the Barber and Cosmetology Services Licensing Board* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 28, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
- 24-2901-1900F*** *Rules of Procedure of the Idaho Certified Shorthand Reporters Board* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes re-designated Title 29, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T
*(Re-designated from IDAPA 49.01.01 to 24.29.01)

IDAPA 25 – OUTFITTERS AND GUIDES LICENSING BOARD

25-0101-1900F *Rules of the Outfitters and Guides Licensing Board* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 01, Chapter 01 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

25-0101-1900F *Rules of the Outfitters and Guides Licensing Board* - Notice of Public Hearing for Omnibus Fee Rule, Bulletin Vol. 19-9

25.01.01, Rules of the Outfitters and Guides Licensing Board

25-0101-1901 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 19-6

25-0101-1902 Adoption of Temporary Rule, Bulletin Vol. 19-6 (eff. 4-26-19)T, (5-22-19)T

IDAPA 26 – DEPARTMENT OF PARKS AND RECREATION

26-0000-1900 *Rules of the Department of Parks and Recreation* - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking, Reauthorizes Title 01, Chapters 03, 21-22, 24, 30-31, 34, 37 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

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34-0000-1900F *Rules of the Idaho Secretary of State* - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking, Reauthorizes Title 04, Chapter 01; Title 05, Chapter 01-03, 06 -- Bulletin Vol. 19-6SE (eff. 6-30-19)T

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