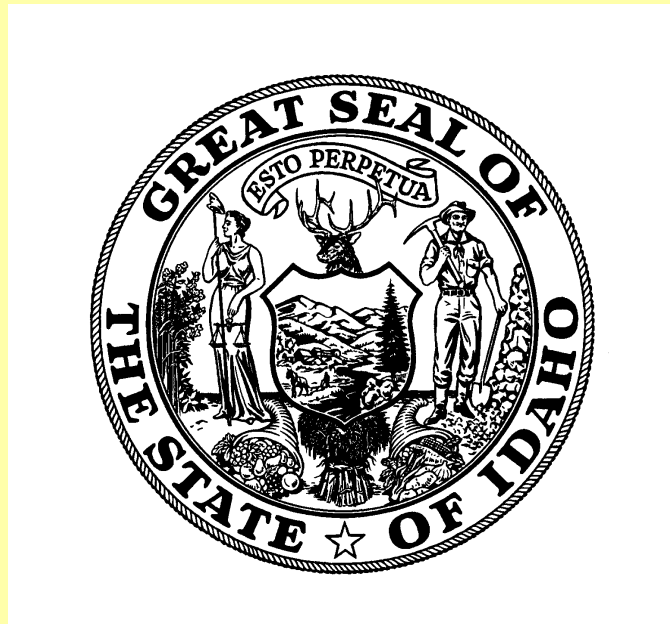


PENDING RULES COMMITTEE RULES REVIEW BOOK

**Submitted for Review Before
Senate Agricultural Affairs Committee
67th Idaho Legislature
Second Regular Session – 2024**



Prepared by:

*Office of the Administrative Rules Coordinator
Division of Financial Management*

January 2024

SENATE AGRICULTURAL AFFAIRS COMMITTEE

ADMINISTRATIVE RULES REVIEW

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IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.02.13 – COMMODITY DEALERS' RULES

DOCKET NO. 02-0213-2301 (ZBR CHAPTER REWRITE, FEE RULE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

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 69-524, 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 is being presented for authorization as part of the ISDA's plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor's [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

These rules clarify the procedure for licensing, collection and remittance of assessments, determining claim value, maintaining electronic records, use of electronic scales and remedies of the Department for non-compliance.

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 October 4, 2023, Idaho Administrative Bulletin, [Vol. 23-10, pages 16-24](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

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

Additional license fees are included in statute at 69-508, Idaho Code, but are not included 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:

No fiscal impact is anticipated from this rulemaking.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

The federal government does not regulate warehouses or commodity dealers. This activity is defined in Idaho Code.

The detailed 22-101A analysis can be found on the agency's website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

DATED this 3rd of January, 2024.

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
Phone: (208) 332-8615
Email: lloyd.knight@isda.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 69-524, 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 October 18, 2023.

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:

This rule is being presented for authorization as part of the ISDA's plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor's [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

These rules clarify the procedure for licensing, collection and remittance of assessments, determining claim value, maintaining electronic records, use of electronic scales and remedies of the Department for non-compliance.

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

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

Additional license fees are included in statute at 69-508, Idaho Code, but are not included 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 anticipated from 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 May 3, 2023 Idaho Administrative Bulletin, [Vol. 23-5, Page 11](#).

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 documents incorporated by reference.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

The federal government does not regulate warehouses or commodity dealers. This activity is defined in Idaho Code.

The detailed 22-101A analysis can be found on the agency's website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 October 25, 2023.

DATED this 4th day of October, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 02-0213-2301

02.02.13 – COMMODITY DEALERS' RULES

000. LEGAL AUTHORITY.

Section 69-524, Idaho Code.

()

001. SCOPE.

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

002. -- 009. (RESERVED)

010. DEFINITIONS.

In addition to the definitions set forth in Section 69-502, Idaho Code, the following definitions apply to the

interpretation and enforcement of this chapter. ()

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

02. Commodity Indemnity Fund. Commodity Indemnity Fund is a trust fund. ()

03. Seed Crops. Means any seed crop regulated by Title 22, Chapter 4, Idaho Code. ()

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

011. ABBREVIATIONS.

01. CIF. Commodity Indemnity Fund. ()

02. NPE. No price established contract. ()

03. SIF. Seed Indemnity Fund. ()

012. LICENSING.

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

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

013. -- 099. (RESERVED)

100. OFFICE RECORDS.

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

01. Daily Position Record. Record which shows the total quantity of each kind and class of agricultural commodity received and loaded out, the amount remaining in storage at the close of each business day and the warehouseman's total storage obligation for each kind and class of agricultural commodity at the close of each business day. ()

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

a. The seller's name and address. ()

b. The date of deliveries. ()

c. The scale ticket numbers. ()

d. The amount, kind and grade of commodity delivered. ()

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

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

- a. Tickets in the commodity dealer's possession that have not been issued. ()
- b. Tickets issued by the commodity dealer. ()
- c. Tickets returned to and canceled by the commodity dealer. ()

04. Separate Records. All records and accounts required under Title 69, Chapter 5, Idaho Code, shall be kept separate and distinct from all records and accounts of any other business and are subject to inspection by the Director at any time. ()

101. -- 149. (RESERVED)

150. INSPECTION.

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

151. -- 199. (RESERVED)

200. LICENSING MODIFICATION.

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

201. -- 299. (RESERVED)

300. FINANCIAL STATEMENT EXTENSION.

01. Extension Request. The Department may grant an extension of no more than sixty (60) days, provided cause of an exceptional nature is provided, in writing, to the Department. ()

- a. The request must be made by a certified public accountant or a licensed public accountant. ()
- b. The request is made prior to the date the financial statement is due. If the request is not received before the financial statement due date, suspension or revocation of license may occur. ()
- c. The director may make exceptions to the financial statement requirements provided sufficient cause is provided and to do so would be in the best interest of the state. ()

- 02. Statement Content.** The statement shall include: ()
- a.** A balance sheet. ()
 - b.** An income statement that includes annual gross sales of commodities purchased from producers covered under the act. ()
 - c.** A statement of cash flows. ()
 - d.** All accompanying notes to the financial statement. ()

301. -- 349. (RESERVED)

350. SHIPPING RECORDS.

Every dealer who ships by truck shall maintain a truck shipping record and every dealer who ships by rail must maintain a rail or car shipping record. Each shipping record includes, but is not limited to, the following: ()

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

351. -- 399. (RESERVED)

400. SCALE TICKETS.

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

401. -- 450. (RESERVED)

451. ADDITIONAL BONDING REQUIREMENTS.

In addition to Section 69-506, Idaho Code, if it appears the licensee does not have the ability to pay producers for commodities purchased, or when it appears the licensee does not have a sufficient net worth to outstanding financial obligations ratio, the licensee may be required to post a bond or other additional acceptable security in the amount of two thousand dollars (\$2,000) for each one thousand dollars (\$1,000) or fraction thereof of deficiency. ()

452. -- 499. (RESERVED)

500. COMMODITY INDEMNITY FUND ASSESSMENTS.

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

02. Exemptions to Assessment. Producers are not eligible to participate in CIF and no assessments will be collected according to Idaho Code and in the following cases. ()

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

501. NPE CONTRACT CLAIMS ON THE FUND.

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

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

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

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

502. HOW ASSESSMENTS ARE TO BE CALCULATED.

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

01. Cash Sale or Credit Sale Contract. Contract on the contract price of the commodity at the time of sale. ()

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

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

503. RECORDKEEPING AND PAYMENT SCHEDULE.

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

02. Payment Due Dates. On or before the twentieth day of the month following the close of the quarter, on a form prescribed by the Department, the assessments imposed by Title 69, Chapters 2 and 5, Idaho Code, collected by warehouses and dealers, are due and payable to the Department. A quarter will consist of three (3) months beginning on the first day of January, April, July, and October. If assessment is paid by mail the payment must be postmarked not later than the twentieth day of the month following the close of the quarter to avoid interest and penalty charges. ()

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

504. TRUST FUNDS.

Money shall not, for any purpose, be considered to be a part of the proceeds of any transaction between a depositor and warehouse or dealer for which the collection and payment of the assessment was related and shall not be subject to an encumbrance, security interest, execution or seizure on account of any debt owed by the warehouse or dealer to any of their creditors. ()

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

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

506. RETURN OF COMMODITY DUE TO FAILURE.

In the event of failure the Department may: ()

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

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

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

507. -- 999. (RESERVED)

[Agency redlined courtesy copy]

02.02.13 – COMMODITY DEALERS' RULES

000. LEGAL AUTHORITY.

~~This chapter is adopted under the legal authority of~~ Section 69-524, Idaho Code. (3-15-22)()

001. ~~TITLE AND SCOPE.~~

~~01. Title.~~ The title of this chapter is IDAPA 02.02.13, "Commodity Dealers' Rules." (3-15-22)

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

002. -- 009. (RESERVED)

010. DEFINITIONS.

~~The Idaho State Department of Agriculture adopts the definitions set forth in Section 69-502, Idaho Code.~~ In addition to the definitions set forth in Section 69-502, Idaho Code, the following definitions apply to the interpretation and enforcement of this chapter. (3-15-22)()

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

02. Commodity Indemnity Fund. Commodity Indemnity Fund is a trust fund. ()

~~03. Credit Sale Contract.~~ An agreement in writing containing the provisions of Section 69-514, Idaho Code, and where the producer transfers a specific quantity of commodity to a warehouse or dealer with a price or payment to the producer by the warehouse or dealer to be made at a later date or on the occurrence of a specific event expressed in the agreement. (3-15-22)

~~04. Dealer. Is limited to dealers licensed by the state of Idaho. (3-15-22)~~

~~053. Seed Crops. Means any seed crop regulated by Title 22, Chapter 4, Idaho Code. ()~~

~~064. NPE. (No price established contract) A contract containing no readily calculable sale value of the commodity for the producer. ()~~

~~07. Warehouse. Is limited to warehouses licensed by the state of Idaho. (3-15-22)~~

011. ABBREVIATIONS.

01. CIF. Commodity Indemnity Fund. ()

02. NPE. No price established contract. ()

03. SIF. Seed Indemnity Fund. ()

012. LICENSING.

~~**01. Posting of License.** Immediately upon receipt of the license or any renewal, extension or modification thereof under Title 69, Chapter 5, Idaho Code, the licensed commodity dealer shall post the license in a conspicuous place in each place of business or in any other place as the director may determine. The Department will issue a duplicate license for each additional facility as needed. (3-15-22)~~

~~**021. Return of Suspended or Terminated License.** If a license issued to a commodity dealer has lapsed or is suspended, revoked or cancelled by the Director, the license shall be returned to the Department. At the expiration of any period of suspension, revocation or cancellation the license will be returned to the commodity dealer to whom it was originally issued and be posted as prescribed by these rules. ()~~

~~**032. Loss of License.** Upon satisfactory proof of the loss or destruction of a license issued to a commodity dealer, a duplicate may be issued under the same number or a new number at the discretion of the Director. ()~~

013. -- 099. (RESERVED)

100. OFFICE RECORDS.

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

01. Daily Position Record. Record which shows the total quantity of each kind and class of agricultural commodity received and loaded out, the amount remaining in storage at the close of each business day and the warehouseman's total storage obligation for each kind and class of agricultural commodity at the close of each business day. ()

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

a. The seller's name and address. ()

b. The date of deliveries. ()

c. The scale ticket numbers. ()

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

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

- a. Tickets in the commodity dealer's possession that have not been issued. ()
- b. Tickets issued by the commodity dealer. ()
- c. Tickets returned to and canceled by the commodity dealer. ()

04. Separate Records. All records and accounts required under Title 69, Chapter 5, Idaho Code, shall be kept separate and distinct from all records and accounts of any other business and are subject to inspection by the Director at any time. ()

101. -- 149. (RESERVED)

150. INSPECTION.

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

151. -- 199. (RESERVED)

200. LICENSING ~~APPLICATION FORMAT~~ MODIFICATION.

~~**01. License Application.** Application for a license to operate as a commodity dealer under the provisions of Title 69, Chapter 5, Idaho Code, shall be on a form prescribed by the Department and include:~~ (3-15-22)

- ~~a. The full name of the person applying for the license and whether the applicant is an individual, partnership, association, corporation or other entity. (3-15-22)~~
- ~~b. The full name of each member of the firm or partnership, or the names of the officers and directors of the company or limited liability company, association, or corporation. (3-15-22)~~
- ~~c. The address of the principal place of business. (3-15-22)~~
- ~~d. The names of any businesses previously owned or operated by the applicant or any members, officers or directors if the applicant is a corporation, partnership or association. (3-15-22)~~

~~e. Information relating to any prior adjudication of bankruptcy relating to the business or any members, officers or directors thereof. (3-15-22)~~

~~f. Information relating to any judgments against the applicants. (3-15-22)~~

~~g. The location of each office the applicant intends to operate. (3-15-22)~~

~~h. Any other reasonable information the Department finds necessary to carry out the purpose and provisions of Title 69, Chapter 5, Idaho Code. (3-15-22)~~

~~**02. License Conditions of Issuance.** An application for license under Title 69, Chapter 5, Idaho Code, shall include: (3-15-22)~~

~~a. Application on a form prescribed by the Director. (3-15-22)~~

~~b. A current financial statement as specified by Section 69-503 and 69-521, Idaho Code. (3-15-22)~~

~~e. A bond or bonds as required by Section 69-506, Idaho Code. (3-15-22)~~

~~d. The license fee as prescribed by Section 69-508, Idaho Code. (3-15-22)~~

~~e. Compliance with all rules adopted pursuant to Title 69, Chapter 5, Idaho Code. (3-15-22)~~

~~f. Any other reasonable information the Department finds necessary to carry out the purpose and provisions of Title 69, Chapter 5, Idaho Code. (3-15-22)~~

~~**03. License Modification.** At the request of the license holder a license may be modified to change existing license classification, providing all requirements of Section 69-508, Idaho Code, are met. (3-15-22)()~~

~~201. -- 249. (RESERVED)~~

~~**250. RECORDS — SEPARATE.**~~

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

~~(3-15-22)~~

~~251. — 299. (RESERVED)~~

300. FINANCIAL STATEMENT EXTENSION.

~~**01. Financial Statements.** In order to obtain a commodity dealer's license, the applicant shall submit a current financial statement prepared not more than ninety (90) days prior to the date of application and conform to the applicable requirements of Title 69, Chapter 5, Idaho Code, as to annual financial statements. (3-15-22)~~

~~**02. Statement Compliance.** Each licensed commodity dealer shall submit to the Department an annual financial statement that has been audited or reviewed by an independent certified public accountant or independent licensed public accountant. The statement shall be submitted to the Department no later than ninety (90) days after the end of the commodity dealer's fiscal year. The commodity dealer license may be suspended or revoked for failure to comply with licensing requirements stated in Subsection 300.01 of these rules and Section(s) 69-503(6) and 69-521, Idaho Code. (3-15-22)~~

~~**01. Extension Request.** The Department may grant an extension of no more than sixty (60) days, provided cause of an exceptional nature is provided, in writing, to the Department. ()~~

~~**0a.** The request must be made by a certified public accountant or a licensed public accountant. ()~~

~~eb.~~ The request is made prior to the date the financial statement is due. If the request is not received before the financial statement due date, suspension or revocation of license may occur. (3-15-22)()

~~dc.~~ The director may make exceptions to the financial statement requirements provided sufficient cause is provided and to do so would be in the best interest of the state. ()

~~032.~~ **Statement Content.** The statement shall include: ()

a. A balance sheet. ()

b. An income statement that includes annual gross sales of commodities purchased from producers covered under the act. ()

c. A statement of cash flows. ()

d. All accompanying notes to the financial statement. ()

301. -- 349. (RESERVED)

350. SHIPPING RECORDS.

Every dealer who ships by truck shall maintain a truck shipping record and every dealer who ships by rail must maintain a rail or car shipping record. Each shipping record includes, but is not limited to, the following: ()

01. **Name and Address.** The name and address of the seller or shipper. ()

02. **Buyer and Destination.** The buyer and destination of the commodity shipped. ()

03. **Date.** The date the agricultural commodities were shipped. ()

04. **Amount and Type.** The amount and type of agricultural commodities shipped. ()

05. **Identification Number.** The truck identification or car number. ()

351. -- 399. (RESERVED)

400. SCALE TICKETS.

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

401. -- 450. (RESERVED)

~~451. AMOUNT OF BOND, IRREVOCABLE LETTER OF CREDIT, CERTIFICATE OF DEPOSIT, OR SINGLE BOND~~ **ADDITIONAL BONDING REQUIREMENTS.**

~~01. Bonding Requirement.~~ The amount of bond to be furnished for each class 1 dealer and each class 2 dealer is fixed at a rate pursuant to Section 69-506, Idaho Code. (3-15-22)

~~02. Single Bond, Irrevocable Letter of Credit or Certificate of Deposit.~~ For the purposes of licensing as a commodity dealer pursuant to Title 69, Chapter 5, Idaho Code, and a seed buyer pursuant to Title 22, Chapter 51, Idaho Code, a single bond, irrevocable letter of credit or certificate of deposit shall be fixed at whichever of the following amounts is greater: (3-15-22)

~~a. Combined total indebtedness paid and owed to producers for agricultural commodity and seed~~

~~crop, without any deductions, for the previous license year; or~~ (3-15-22)

~~b. The indebtedness owed and estimated to be owed to producers for agricultural commodity and seed crop, without any deductions, for the current license year.~~ (3-15-22)

~~03. Additional Bonding Requirements.~~ ~~If~~ In addition to Section 69-506, Idaho Code, if it appears the licensee does not have the ability to pay producers for commodities purchased, or when it appears the licensee does not have a sufficient net worth to outstanding financial obligations ratio, the licensee may be required to post a bond or other additional acceptable security in the amount of two thousand dollars (\$2,000) for each one thousand dollars (\$1,000) or fraction thereof of deficiency. (3-15-22)()

452. -- 499. (RESERVED)

500. COMMODITY INDEMNITY FUND ASSESSMENTS.

~~The Commodity Indemnity Fund applies to entities governed by Chapter 2, Title 69, Idaho Code, and Chapter 5, Title 69, Idaho Code, warehouses and dealers, respectively, unless otherwise specified.~~ (3-15-22)

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

02. Exemptions to Assessment. Producers are not eligible to participate in CIF and no assessments will be collected according to Idaho Code and in the following cases. (3-15-22)()

~~a. If a producer has a financial or management interest in a licensed warehouse or licensed commodity dealer, except members of a cooperative marketing association qualified under Title 22, Chapter 26, Idaho Code.~~ (3-15-22)

~~b. If a producer sells to another producer, none of which are a licensed warehouseman or a licensed commodity dealer.~~ (3-15-22)

~~c. If a producer deposits or delivers commodity to an unlicensed entity pursuant to Title 69, Chapters 2 or 5, Idaho Code.~~ (3-15-22)

~~d. Non-producers or producers delivering commodity that was grown on land not situated within the borders of the state of Idaho are exempt from paying assessments.~~ (3-15-22)()

501. NPE CONTRACT CLAIMS ON THE FUND.

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

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

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

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

502. HOW ASSESSMENTS ARE TO BE CALCULATED.

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

01. Cash Sale or Credit Sale Contract. ~~In a cash sale or credit sale c~~Contract on the contract price of the commodity at the time of sale. (3-15-22)()

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

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

503. RECORDKEEPING AND PAYMENT SCHEDULE.

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

02. Payment Due Dates. On or before the twentieth day of the month following the close of the quarter, on a form prescribed by the Department, the assessments imposed by Title 69, Chapters 2 and 5, Idaho Code, collected by warehouses and dealers, are due and payable to the Department. A quarter will consist of three (3) months beginning on the first day of January, April, July, and October. If assessment is paid by mail the payment must be postmarked not later than the twentieth day of the month following the close of the quarter to avoid interest and penalty charges. ()

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

504. TRUST FUNDS.

~~All assessments collected by warehouses and dealers in compliance with Title 69, Chapters 2 and 5, Idaho Code, immediately upon payment to and collection by the warehouse or dealer, are trust fund money held for payment to the Department for the CIF. Such m~~Money shall not, for any purpose, be considered to be a part of the proceeds of any transaction between a depositor and warehouse or dealer for which the collection and payment of the assessment was related and shall not be subject to an encumbrance, security interest, execution or seizure on account of any debt owed by the warehouse or dealer to any of their creditors. (3-15-22)()

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

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

506. RETURN OF COMMODITY DUE TO FAILURE.

In the event of failure the Department may: ()

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

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

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

507. -- 599. (RESERVED)

600. UNLAWFUL PRACTICES.

~~It is unlawful for a commodity dealer to alter, falsify or withhold records from the warehouse examiner. (3-15-22)~~

~~601. — 999. (RESERVED)~~

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.02.14 – RULES FOR WEIGHTS AND MEASURES

DOCKET NO. 02-0214-2301

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

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 71-111, 71-121, 71-232, 71-233, 71-236, 71-241, and 71-408, 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 proposed rule updates the publication date for the document Incorporated by Reference at Section 004.01. The publication edition is updated to 2023 for the National Institute of Standards and Technology, Handbook No. 44. This handbook contains the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices.

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 October 4, 2023 Idaho Administrative Bulletin, [Vol. 23-10, pages 25 - 26](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

No changes have been made to the fees for these rules.

As authorized in Section 71-121, Idaho Code, the fee(s) in this rule are authorized to compensate the state for the expense of administering weights and measures laws.

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:

There is no fiscal impact due to these changes.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule regulates an activity that is not regulated by the federal government; therefore the entire rule is broader in scope or more stringent than federal law.

The detailed 22-101A analysis can be found on the agency's website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

DATED this 3rd of January, 2023

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
Phone: (208) 332-8615
Email: lloyd.knight@isda.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 71-111, 71-121, 71-232, 71-233, 71-236, 71-241, and 71-408, 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 October 18, 2023.

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:

The proposed rule updates the publication date for the document Incorporated by Reference at Section 004.01. The publication edition is updated to 2023 for the National Institute of Standards and Technology, Handbook No. 44. This handbook contains the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices.

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

No changes have been made to fees for these 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:

There is no fiscal impact due to these changes.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these changes are to the publication dates of documents that were already incorporated into these rules.

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:

National Institute of Standards and Technology Handbook 44 – the common standard for specifications, tolerances, and other technical requirements for weighing and measuring devices.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule regulates an activity that is not regulated by the federal government; therefore the entire rule is broader in scope or more stringent than federal law.

The detailed 22-101A analysis can be found on the agency's website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 October 25, 2023.

DATED this 4th day of October, 2023.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0214-2301

004. INCORPORATION BY REFERENCE.

01. Required Reference Materials. The ~~2020~~ 2023 edition of Handbook No. 44 of the National Institute of Standards and Technology, United States Department of Commerce, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," hereby incorporated by reference, is the specifications, tolerances and other technical requirements for commercial weighing and measuring devices, unless otherwise stated in these rules. (3-15-22)()

02. Required Reference Materials for Checking Prepackaged Commodities. The 2020 edition of Handbook No. 133 of the National Institute of Standards and Technology, United States Department of Commerce, "Checking the Net Contents of Packaged Goods," hereby incorporated by reference, is the authority in checking packaged commodities, unless otherwise stated in these rules. (3-15-22)

03. Specifications for Diesel Fuel and Biodiesel Fuel. American Society of Testing and Materials (ASTM) D975-20c, "Standard Specification for Diesel Fuel Oils," and ASTM D6751-20a, "Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels," intended for blending with diesel fuel are hereby incorporated by reference and are the specifications for diesel fuel and biodiesel fuel blend stock (B100 biodiesel). (3-15-22)

04. Specifications for Gasoline. American Society of Testing and Materials (ASTM) D4814-21, "Standard Specification for Automotive Spark-Ignition Engine Fuel", dated November 15, 2016, is hereby incorporated by reference and is the specification for gasoline. (3-15-22)

05. Local Availability. Copies of the incorporated documents are on file with the Idaho State Department of Agriculture, 2216 Kellogg Lane, Boise, Idaho 83712. Copies of NIST documents may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Copies are available for downloading at <https://www.nist.gov/pml/weights-and-measures/publications>. Copies of ASTM specifications are on file with the Idaho State Department of Agriculture or may be purchased from <http://www.astm.org>, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA, 19428. (3-15-22)

06. Three Year Tier Fee Table. Copy may be found online at <https://agri.idaho.gov/main/i-need-to-see-lawsrules/ag-inspections-law-and-rules>. (3-15-22)

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.02.15 – RULES GOVERNING THE SEED INDEMNITY FUND
DOCKET NO. 02-0215-2301 (ZBR CHAPTER REWRITE, FEE RULE)
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

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 22-5129, 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 is being presented for authorization as part of the ISDA’s plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor’s [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

These rules clarify the procedure for licensing, collection and remittance of assessments, determining claim value, maintaining electronic records, use of electronic scales and remedies of the ISDA for non-compliance.

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 October 4, 2023 Idaho Administrative Bulletin, [Vol. 23-10, pages 27-33](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

If an applicant is not licensed pursuant to the “Pure Seed Law,” Title 22, Chapter 4, Idaho Code, the license fee is equal to the out-of-state license fees, pursuant to Title 22, Chapter 4, and will be deposited to the state treasury and credited to the SIF.

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: There is no fiscal impact as a result of this rulemaking.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

The entire rule regulates activity not regulated by the federal government. This activity is defined in Idaho Code.

The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

DATED this 3rd of January, 2024

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
Phone: (208) 332-8615
Email: lloyd.knight@isda.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 22-5129, 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 October 18, 2023.

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:

This rule is being presented for authorization as part of the ISDA's plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor's [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

These rules clarify the procedure for licensing, collection and remittance of assessments, determining claim value, maintaining electronic records, use of electronic scales and remedies of the ISDA for non-compliance.

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

If an applicant is not licensed pursuant to the "Pure Seed Law," Title 22, Chapter 4, Idaho Code, the license fee is equal to the out-of-state license fees, pursuant to Title 22, Chapter 4, and will be deposited to the state treasury and credited to the SIF.

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 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 May 3, 2023 Idaho Administrative Bulletin, [Vol. 23-5, Page 11](#).

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.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

The entire rule regulates activity not regulated by the federal government. This activity is defined in Idaho Code.

The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 October 25, 2023.

DATED this 4th day of October, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 02-0215-2301

02.02.15 – RULES GOVERNING THE SEED INDEMNITY FUND

000. LEGAL AUTHORITY.

Section 22-5129, Idaho Code. ()

001. SCOPE.

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

002. -- 009. (RESERVED)

010. DEFINITIONS.

In addition to the definitions set forth in Section 22-5102, Idaho Code, and as used in this chapter, “type” means the class of seed (i.e. foundation, certified, registered, noncertified). ()

011. ABBREVIATIONS.

01. GAAP. Generally Accepted Accounting Principles. ()

02. ISDA. Idaho State Department of Agriculture. ()

03. SIF. The Idaho Seed Indemnity Fund. ()

04. USPS. United States Postal Service. ()

012. DELIVERY VOUCHER.

If there are no receipts or scale weight tickets issued at the time of seed crop delivery, a delivery voucher may be issued. Delivery vouchers shall include at least the following: ()

01. Producer. The full name, address and phone number of the producer. ()

02. Seed Buyer. The full name, address and phone number of the seed buyer. ()

03. Ship To. The full name, address and phone number of the seed facility that the seed crop is to be transferred. ()

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

05. Seed Crop Shipped. For each seed crop delivery, the type, kind, variety, estimated volume or weight and date of shipment and container identification markings. ()

013. WAREHOUSE RECEIPTS.

The following information is required on each warehouse receipt: ()

01. Name of Producer. ()

02. Name and Address of Seed Buyer. ()

03. Kind of Seed Crop. ()

04. Date of Delivery. ()

05. Weight of Seed Crop Delivered. ()

06. Lot Identification. ()

014. SCALE WEIGHT TICKETS.

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

01. Pre-Numbered Scale Tickets. If a seed buyer has access to a scale that can be used for weighing seed, the seed buyer is to use pre-numbered scale tickets. ()

02. Numerical Order Requirement. A copy of each ticket must be maintained in numerical order. ()

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

015. -- 025. (RESERVED)

026. LICENSING FEES.

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

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

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

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

027. -- 035. (RESERVED)

036. AMOUNT OF BOND FOR SEED STORED FOR WITHDRAWAL.

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

037. -- 046. (RESERVED)

047. MAINTENANCE OF RECORDS.

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

048. -- 049. (RESERVED)

050. INSURANCE REQUIREMENTS.

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

- a. Loss from fire; ()
- b. Loss from internal explosion; ()
- c. Loss from lightning; ()
- d. Loss from tornado. ()

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

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

04. Self-Insurance. If a seed buyer is self-insured and the seed crop within the licensed seed buyer's facility has been damaged or destroyed, the seed buyer must make complete settlement to all producers within thirty (30) days of the loss. Failure of the seed buyer to make such settlement is cause to revoke the seed buyer's license. If

the seed buyer and producer agree to other terms, set out in writing, the settlement does not need to be made within the thirty (30) day time period. If only a portion of the seed crop is damaged, settlement may be made on a pro-rata basis to the producer. ()

05. Insurance Settlement. When the seed crop within a licensed seed buyer's facility has been damaged or destroyed, the seed buyer must make complete settlement to all producers having seed crops transferred to the seed buyer or stored for withdrawal within ten (10) days after settlement with the insurance company. Failure of the seed buyer to make such settlement is cause to revoke the seed buyer's license. If the seed buyer and producer agree to other terms, set out in writing, the settlement does not need to be made within the ten (10) day time period. If only a portion of the seed crop is damaged, settlement may be made on a pro-rata basis to the producer. ()

051. -- 059. (RESERVED)

060. NONCOMPLIANCE -- REQUIREMENTS.

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

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

02. Audited or Reviewed Financial Statement. In addition to Section 22-5113, Idaho Code, the ISDA may require the licensee to submit an audited or reviewed financial statement prepared for the current financial accounting year by an independent certified public accountant or licensed public accountant. The audited or reviewed financial statement is to be prepared in accordance with GAAP. The ISDA may request a follow-up review of the submitted financial statement. ()

061. -- 069. (RESERVED)

070. HOW ASSESSMENTS ARE TO BE CALCULATED.

All seed buyers must collect assessments from producers who transfer seed crop or store for withdrawal. Assessments are calculated as follows: ()

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

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

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

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

c. The SIF advisory committee may review the assessment rate annually and make recommendations for change, as necessary, to the director. ()

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

03. Incidental Costs and Expenses. All incidental costs and expenses including, but not limited to, transportation, cleaning, in and out charges, insurance, taxes and additional services or charges are not be included in

the calculation to determine the assessment. ()

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

071. -- 079. (RESERVED)

080. COLLECTION AND REMITTANCE OF SIF ASSESSMENTS.

SIF assessments are collected from obligations owed to the producer or at the time of withdrawal by the seed buyer and remitted to the ISDA. If assessment is paid by mail the payment must be postmarked no later than the twentieth day of the month following the close of the quarter to avoid interest and penalty charges. ()

081. -- 089. (RESERVED)

090. CLAIM FORMS AND PAYMENT FROM THE FUND.

01. Claim Forms. Claim forms will be provided by the Department. ()

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

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

091. -- 999. (RESERVED)

[Agency redlined courtesy copy]

02.02.15 – RULES GOVERNING THE SEED INDEMNITY FUND

000. LEGAL AUTHORITY.

~~This chapter is adopted under the legal authority of~~ Section 22-5129, Idaho Code. (3-15-22)()

001. ~~TITLE AND SCOPE.~~

~~01. Title.~~ The title of this chapter is IDAPA 02.02.15, “Rules Governing the Seed Indemnity Fund.” (3-15-22)

~~02. Scope.~~ These rules clarify the procedure for licensing, collection and remittance of assessments, determining claim value, maintaining electronic records, use of electronic scales and remedies of the ISDA for non-compliance. (3-15-22)()

002. -- 009. (RESERVED)

010. DEFINITIONS.

~~The Idaho State Department of Agriculture adopts the definitions set forth in Section 22-5102, Idaho Code.~~ In addition to the definitions set forth in Section 22-5102, Idaho Code, and as used in this chapter, “type” means the class of seed (i.e. foundation, certified, registered, noncertified). (3-15-22)()

011. ABBREVIATIONS.

- 01. **GAAP.** Generally Accepted Accounting Principles. ()
- 02. **ISDA.** Idaho State Department of Agriculture. ()
- 03. **SIF.** The Idaho Seed Indemnity Fund. ()
- 04. **USPS.** United States Postal Service. ()

012. DELIVERY VOUCHER.

If there are no receipts or scale weight tickets issued at the time of seed crop delivery, a delivery voucher may be issued. ~~A delivery voucher is a document that may be used as written evidence of transfer in accordance with Section 22-5102(16), Idaho Code, evidencing delivery of producer's seed crop to seed buyer and includes, but is not limited to:~~ Delivery vouchers shall include at least the following: (3-15-22)()

- 01. **Producer.** The full name, address and phone number of the producer. ()
- 02. **Seed Buyer.** The full name, address and phone number of the seed buyer. ()
- 03. **Ship To.** The full name, address and phone number of the seed facility that the seed crop is to be transferred. ()
- 04. **Transportation Company.** The name, address and phone number of the transportation company delivering the seed crop to the seed facility. The truck, trailer and seal number, if applicable, driver name (printed), signature and date of transfer. ()
- 05. **Seed Crop Shipped.** For each seed crop delivery, the type, kind, variety, estimated volume or weight and date of shipment and container identification markings. ()

013. WAREHOUSE RECEIPTS.

The following information is required on each warehouse receipt: ()

- 01. **Name of Producer.** ()
- 02. **Name and Address of Seed Buyer.** ()
- 03. **Kind of Seed Crop.** ()
- 04. **Date of Delivery.** ()
- 05. **Weight of Seed Crop Delivered.** ()
- 06. **Lot Identification.** ()

014. SCALE WEIGHT TICKETS.

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

- 01. **Pre-Numbered Scale Tickets.** If a seed buyer has access to a scale that can be used for weighing seed, the seed buyer is to use pre-numbered scale tickets. ()
- 02. **Numerical Order Requirement.** A copy of each ticket must be maintained in numerical order. ()
- 03. **Custom Scale Requirement.** If a seed buyer does not have access to a scale and has seed crop custom weighed at various locations, the seed buyer must maintain a copy of the scale ticket in chronological order as part of the seed crop records. ()

015. -- 025. (RESERVED)

026. **LICENSEING FEES.**

~~01. Posting of License. Immediately upon receipt of the license or any renewal, extension or modification thereof under Title 22, Chapter 51, Idaho Code, the licensed seed buyer must post the license in a conspicuous place in each place of business or in any other place as the director may determine. The ISDA will issue a duplicate license for each additional seed facility. (3-15-22)~~

~~02.01. License Fee. If an applicant is not licensed pursuant to the "Pure Seed Law," Title 22, Chapter 4, Idaho Code, the license fee is equal to the out-of-state license fees, pursuant to Title 22, Chapter 4, and will be deposited to the state treasury and credited to the SIF. ()~~

~~03.2. Return of Suspended or Terminated License. If a license issued to a seed buyer has lapsed or is suspended, revoked or canceled by the director, the license and all duplicates shall be returned to the ISDA. At the expiration of any period of suspension, revocation or cancellation, the license will be returned to the seed buyer to whom it was originally issued and be posted as prescribed by these rules. ()~~

~~04.3. Loss of License. Upon satisfactory proof of the loss or destruction of a license issued to a seed buyer, a duplicate may be issued under the same number or a new number at the discretion of the director. ()~~

~~05.4. License Reinstatement Fee. If license renewal material is received by the ISDA after the current license has expired, but no later than thirty (30) days past due, a reinstatement fee of one hundred dollars (\$100) will be assessed. If license renewal material is received after the thirty (30) day late period it will be considered an original license application and will be assessed a license fee equal to the requirements of Section 026. The exemption for license fees in Section 22-5103(3)(a), Idaho Code, will not apply to license renewals that have been received by the ISDA later than thirty (30) days. Fees collected by this subsection will be deposited in the state treasury and credited to the SIF account. ()~~

~~06. Additional License Application Information. The ISDA may request additional license information including, but not limited to: (3-15-22)~~

~~a. Names of officers of corporations or limited liability companies. (3-15-22)~~

~~b. Company information as required in the application form. (3-15-22)~~

~~c. Outstanding producer financial obligations. (3-15-22)~~

~~d. Name and address of banks that handle business accounts. (3-15-22)~~

~~07. License Duration. Licenses issued under the provisions of Title 22, Chapter 51, Idaho Code, expire on the 30th day of June of each year. (3-15-22)~~

027. -- 035. (RESERVED)

036. **AMOUNT OF BOND FOR SEED STORED FOR WITHDRAWAL.**

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

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

~~01. Bonding Requirement. The amount of bond to be furnished will be fixed at a rate pursuant to Section 22-5105, Idaho Code. (3-15-22)~~

~~02. Single Bond, Irrevocable Letter of Credit or Certificate of Deposit. For the purposes of licensing as a seed buyer pursuant to Title 22, Chapter 51, Idaho Code, and as a warehouseman pursuant to Title 69, Chapter 2, Idaho Code, or as a commodity dealer pursuant to Title 69, Chapter 5, Idaho Code, a single bond, irrevocable letter of credit or certificate of deposit will be fixed at whichever of the following amounts is greater: (3-15-22)~~

~~a. Combined total indebtedness paid and owed to producers for seed crop and agricultural commodity, without any deductions, for the previous license year; or (3-15-22)~~

~~b. The indebtedness owed and estimated to be owed to producers for seed crop and agricultural commodity, without any deductions, for the current license year. (3-15-22)~~

~~0387.~~ -- 046. (RESERVED)

047. MAINTENANCE OF RECORDS.

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

048. -- 049. (RESERVED)

050. INSURANCE REQUIREMENTS.

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

- a. Loss from fire; ()
- b. Loss from internal explosion; ()
- c. Loss from lightning; ()
- d. Loss from tornado. ()

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

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

~~04. Self-Insurance. A request for self insurance must be submitted to the ISDA in writing and signed by the seed buyer or his representative. Supporting evidence of ability to pay seed crop obligations, in the event of a loss due to fire, internal explosions, lightning, or tornadoes, must be attached to the self insurance request. (3-15-22)~~

~~a. The director may accept or reject the self insurance request. The director's findings will be in writing and kept on file. (3-15-22)~~

~~b. If a seed buyer is self-insured and the seed crop within the licensed seed buyer's facility has been damaged or destroyed, the seed buyer must make complete settlement to all producers within thirty (30) days of the loss. Failure of the seed buyer to make such settlement is cause to revoke the seed buyer's license. If the seed buyer and producer agree to other terms, set out in writing, the settlement does not need to be made within the thirty (30) day time period. If only a portion of the seed crop is damaged, settlement may be made on a pro-rata basis to the producer. (3-15-22)()~~

05. Insurance Settlement. When the seed crop within a licensed seed buyer's facility has been

damaged or destroyed, the seed buyer must make complete settlement to all producers having seed crops transferred to the seed buyer or stored for withdrawal within ten (10) days after settlement with the insurance company. Failure of the seed buyer to make such settlement is cause to revoke the seed buyer's license. If the seed buyer and producer agree to other terms, set out in writing, the settlement does not need to be made within the ten (10) day time period. If only a portion of the seed crop is damaged, settlement may be made on a pro-rata basis to the producer. ()

051. -- 059. (RESERVED)

060. NONCOMPLIANCE -- REQUIREMENTS.

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

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

02. ~~Provide an Audited or Reviewed Financial Statement.~~ In addition to Section 22-5113, Idaho Code, the ISDA may require the licensee to submit an audited or reviewed financial statement prepared for the current financial accounting year by an independent certified public accountant or licensed public accountant. The audited or reviewed financial statement is to be prepared in accordance with GAAP. The ISDA may request a follow-up review of the submitted financial statement. (3-15-22)()

061. -- 069. (RESERVED)

070. HOW ASSESSMENTS ARE TO BE CALCULATED.

~~Pursuant to Section 22-5121, Idaho Code, a~~ All seed buyers must collect assessments from producers who transfer seed crop or store for withdrawal. Assessments are calculated as follows: (3-15-22)()

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

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

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

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

c. The SIF advisory ~~board will~~ committee may review the assessment rate annually and make recommendations for change, as necessary, to the director. (3-15-22)()

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

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

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

071. -- 079. (RESERVED)

080. COLLECTION AND REMITTANCE OF SIF ASSESSMENTS.

SIF assessments are collected from obligations owed to the producer or at the time of withdrawal by the seed buyer and remitted to the ISDA. If assessment is paid by mail the payment must be postmarked no later than the twentieth day of the month following the close of the quarter to avoid interest and penalty charges. ()

081. -- 089. (RESERVED)

090. CLAIM FORMS AND PAYMENT FROM THE FUND.

01. Claim Forms. Claim forms will be provided ~~either via the USPS, by electronic transfer by the ISDA, or other commercial means~~ by the Department. (3-15-22)()

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

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

091. -- ~~099.~~ (RESERVED)

~~100. EXEMPTIONS.~~

~~Producers are not eligible to participate in SIF and no assessments will be collected from:~~ (3-15-22)

~~**01. Producers With a Financial or Management Interest.** Producers that have a financial or management interest in a seed facility, except members of a cooperative marketing association qualified under Title 22, Chapter 26, Idaho Code.~~ (3-15-22)

~~**02. Producers That Sell or Transfer to Another Producer.** Producers that sell to another producer, none of which are seed buyers.~~ (3-15-22)

~~**03. Deliveries or Transfers to Unlicensed Seed Facilities.** Producers that deliver or transfer seed crops to an unlicensed facility.~~ (3-15-22)

~~**101. -- 999. (RESERVED)**~~

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.03.03 – RULES GOVERNING PESTICIDE AND CHEMIGATION USE AND APPLICATION

DOCKET NO. 02-0303-2301 (ZBR CHAPTER REWRITE, FEE RULE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

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 22-3421, 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 rule is being presented for authorization as part of the ISDA’s plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor’s [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

This chapter governs the use and application of pesticides; licensing of pesticide applicators; registration of pesticides; and responsibilities for chemigation in Idaho.

The changes include:

- Replacing “commercial applicator” with “professional applicator” in order to be consistent with the definition found in statute.
- In 100.04.a., striking the word “surface” to make consistent with federal requirements.
- In 400.02, replacing “ALIP” with “AC, IP” to address a typographical error.
- In the table at 100.04, striking the proposed new “Microbial Pest Management” license category. Also adding “cooling towers; air washers; evaporative condensers; swimming pools; pulp and paper mills; sewer treatment; residential; and commercial building” to covered activities; and adding “health, dwellings, structures, and” to clarify benefits of protection.
- In 101.01.a., Records Requirements, amending records retention from three years to two years; amending to require the name and address of the person for whom the pesticide was applied; deleting the requirement for the dilution rate.

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 October 4, 2023, Idaho Administrative Bulletin, [Vol. 23-10, pages 34-67](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

No changes are being proposed to fees already included in the existing rule. Such fees are imposed on Pesticide Registration (22-3402(6), Idaho Code), License Fees (22-3404(2)(a) and (3)(d), Idaho Code), Dealer’s Fees (22-3406(1)(a), Idaho Code), and Examination Fees.

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:

There is no fiscal impact as a result of this rulemaking.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule does not regulate an activity regulated by the federal government.

The detailed 22-101A analysis can be found on the agency's website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

DATED this 3rd of January, 2024

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
Phone: (208) 332-8615
Email: lloyd.knight@isda.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 22-3421, 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 October 18, 2023.

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:

This rule is being presented for authorization as part of the ISDA's plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor's [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

This chapter governs the use and application of pesticides; licensing of pesticide applicators; registration of pesticides; and responsibilities for chemigation in Idaho.

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

No changes are being proposed to fees already included in the existing rule. Such fees are imposed on Pesticide Registration (22-3402(6), Idaho Code), License Fees (22-3404(2)(a) and (3)(d), Idaho Code), Dealer's Fees (22-3406(1)(a), Idaho Code), and Examination Fees.

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 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 May 3, 2023 Idaho Administrative Bulletin, [Vol. 23-5, Page 11](#).

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 documents incorporated by reference include two sections of the US Code of Federal Regulation, including Title 40, Part 165, Subpart E "Standards for Pesticide Containment Structures", and Title 40, Chapter 1, Part 171 "Certification of Pesticide Applicators"; and a publication "Restrictions For Use of the Livestock Protection Collars (Compound 1080).

These documents are necessary to ensure technical consistency with federal regulations and guidance.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government.

This rule does not regulate an activity regulated by the federal government.

The detailed 22-101A analysis can be found on the agency's website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 October 25, 2023.

DATED this 4th day of October, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 02-0303-2301

02.03.03 – RULES GOVERNING PESTICIDE AND CHEMIGATION USE AND APPLICATION

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 22-3421, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.03.03, “Rules Governing Pesticide and Chemigation Use and Application.” ()

02. Scope. This chapter governs the use and application of pesticides; licensing of pesticide applicators; registration of pesticides; and responsibilities for chemigation in Idaho. ()

002. – 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference: ()

01. U.S. Code of Federal Regulations (CFR) Title 40, Part 165, Subpart E. “Standards for Pesticide Containment Structures,” Sections 165.80 through 165.97 that may be viewed at https://www.govregs.com/regulations/title40_chapterI_part165_subpartE. ()

02. U.S. Code of Federal Regulations (CFR) Title 40, Chapter 1, Part 171. “Certification of Pesticide Applicators” that may be viewed at https://www.govregs.com/regulations/title40_chapterI_part171. ()

03. Restrictions For Use Of The Livestock Protection Collars (Compound 1080). <https://agri.idaho.gov/main/wp-content/uploads/2020/06/LPC-RESTRICTIONS.pdf> ()

005. -- 009. (RESERVED)

010. DEFINITIONS.

The Idaho Department of Agriculture adopts the definitions set forth in Section 22-3401, Idaho Code, and the following definitions: ()

01. Antimicrobial Pesticides. Substances or mixture of substances used to destroy or suppress the growth of harmful microorganisms such as bacteria, viruses, or fungi on inanimate objects and surfaces. ()

02. Certification. Passing one (1) or more examinations, to initially demonstrate an applicant’s competence, as required by the licensing provisions of this act, in order to use or distribute pesticides, or to act as a pesticide consultant. ()

03. Chemigator. Any person engaged in the application of chemicals through any type of irrigation system. ()

04. Hazard Area. Cities, towns, subdivisions, schools, hospitals, or densely populated areas. ()

05. High Volatile Esters. Formulations of 2,4-D which contain methyl, ethyl, butyl, isopropyl, octylamyl and pentyl esters. ()

06. Janitorial Services. Surface cleaning or surface sanitation operations that use pesticides. Janitorial services extend to households and buildings and may include, but are not limited to; bathroom, food storage/processing, food service, retail sales, office, maintenance, educational, government and other like facilities. ()

07. Limited Supervision. The supervision of a professional commercial apprentice by a supervising

applicator licensed in the categories necessary for the pesticide application. The supervising applicator is limited to supervision of two (2) professional commercial apprentice applicators at one (1) time and must maintain immediate communications (voice, radio, cellular telephone, or similar) with the supervised applicators for the duration of all pesticide applications. ()

08. Low Volatile Esters. Formulations of 2,4-D; 2,4-DP; MCPA and MCPB which contain butoxyethanol, propylene glycol, tetrahydrofurfuryl, propylene glycol butyl ether, butoxy propyl, ethylhexyl and isooctyl esters. ()

09. Mixer-Loader. Any person who works under the supervision of a professional applicator in the mixing and loading of pesticides to prepare for, but not actually make, applications. ()

10. On-Site Supervision. A noncertified applicator may apply general use and restricted use pesticides under on-site supervision by a professional applicator with the required license categories. The supervising pesticide applicator must be physically at the site of application, must have visual contact with the pesticide applicator, and must be able to direct the actions of the noncertified pesticide applicator. The supervising applicator may not supervise more than two (2) noncertified pesticide applicators at one (1) time. ()

11. Pesticide Drift. Movement of pesticide dust or droplets through the air at the time of application or soon after, to any site other than the area intended. ()

12. Recertification. The requalification of a certified person through seminar attendance over a set period of time, or taking an examination at the end of a set period of time, to ensure that the person continues to meet the requirements of changing technology and maintains competence. ()

13. Seminar. Any Department-approved meeting or activity convened for the purpose of presenting pesticide recertification information. ()

14. Sprinkler Irrigation. Method of irrigation in which the water is sprayed, or sprinkled, through the air to the ground surface. ()

15. Waters of the State. Any surface waters such as canals, ditches, laterals, lakes, streams, or rivers. ()

011. -- 099. (RESERVED)

SUBCHAPTER A – LICENSING OF APPLICATORS AND DEALERS

100. PROFESSIONAL APPLICATOR LICENSING.
To obtain a professional applicator's license an applicant must: ()

01. Submit Application. Submit an application prescribed by the Department with applicable fee (Section 280). ()

02. Demonstrate Competence. ()

a. All professional applicators must pass the Applicator Core Competency exam in addition to any other category. Professional applicators may only chemigate, make pesticide recommendations, or make pesticide applications for any purpose for which they have demonstrated competence. Competence is demonstrated by passing Department examinations and becoming licensed in categories described in Subsection 100.04. ()

b. An applicant will demonstrate core competency in all standards outlined in 40 CFR 171.103(c). ()

03. Certification and Department Examination Procedures. Be certified by passing Department examinations with a minimum score of seventy percent (70%) in the applicable pesticide categories (Subsection 100.04). Examinations shall adhere to standards outlined in 40 CFR 171.103(a)(2). In addition, examinations are:

- ()
- a. Proctored by ISDA staff or by an authorized agent following approved Department procedures. ()
 - b. Retaken after a minimum waiting period of one (1) day. ()
 - c. Scores valid for twelve (12) months from the date of the examination. ()
 - d. It is prohibited to: ()
 - i. Attempt to cheat, or otherwise obtain an unfair advantage on the exam(s). ()
 - ii. Remove or attempt to remove any test questions or responses or any notes from a testing session. ()
 - iii. At any time, improperly access or attempt to improperly access the test site, the test (or any part of the test), an answer key, or any information about the test. ()
 - iv. Engage in any way in: ()
 - (1) Theft or attempted theft of test content through platform intrusion. ()
 - (2) Post-exam manipulation of test content, responses, or test administration data. ()
 - (3) Attempting to adversely impact the exam proctor, test center, or testing platforms through any means including cybersecurity means. ()
 - v. Attempt to give or receive assistance, including by copying or through the use of an answer key. ()
 - vi. Record or copy information during the testing session including questions, answers, identifying information about the version or form of a test, or any other information that compromises the security of the test. ()
 - vii. Communicate with other test takers or other individuals in any form while testing is in session. ()
 - viii. Allow anyone to see your test questions or answers or attempt to see or copy others' test questions or answers. ()
 - ix. Consult notes, other people, electronic devices, textbooks, or any other resources during the test or during breaks. ()
 - x. Have subject-related information on your clothing, shoes, or body. ()
 - xi. Use or access any prohibited items including devices or aids such as, but not limited to, mobile phones, smartwatches, fitness trackers, other oral or written communication devices or wearable technology, cameras, notes, and reference books, etc., during or in connection with the test, including during breaks. ()
 - xii. Fail to turn in or store away a mobile/smartphone in accordance with the test site's collection process. ()
 - xiii. Use a prohibited calculator. ()
 - xiv. Deliberately attempt to and/or take the test for someone else or attempt to have someone else impersonate you to take the test. ()

04. Categories. All professional applicators must be certified in Applicator Core Competency in one (1) or more of the following categories:

Category Name	Category Description
Applicator Core Competency (CO)	Includes general knowledge of pesticides including proper use and disposal, product characteristics, first aid, labeling and laws. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(c). This category is required for all Idaho Professional Pesticide Applicator Licenses
Agricultural Crop Pest Control (AC)	This category applies to commercial applicators who use or supervise the use of pesticides in production of agricultural commodities including grasslands, and non-crop agricultural lands. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(1)(i).
Aerial Pest Control (AA)	For application of pesticides to all application sites by operating or flying fixed-wing or rotary aircraft. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(15).
Anti-Fouling Coatings (FC)	For applicators who use or supervise the use of anti-fouling coatings to control fouling organisms on aquatic vessels, underwater structures, and other similar structures. An applicant will demonstrate practical knowledge of problems caused by fouling organisms, methods of control using fouling organisms using through anti-fouling coatings, characteristics of antifouling coatings, alternative active ingredients other than copper-based paints, and best management practices for application and removal of anti-fouling coatings.
Agricultural Livestock Pest Control (LP)	For professional applicators who use or supervise the use of pesticides on animals or to places on or in which animals are confined. Certification in this category alone is not sufficient to authorize the purchase, use, or supervision of use of products for predator control listed in the General Vertebrate category or outlined in 40 CFR 171.101(k)(l). An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(1)(ii).
Aquatic Weed and Pest Control (AP)	For professional applicators who use or supervise the use of any pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in as specified in the Public Health (PH) category. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(5).
Chemigation (CH)	For professional applicators who apply chemicals through an irrigation system, excluding applications made to control aquatic organisms. The application of pesticides through a chemigation system will require additional relevant professional applicator categories. An applicant will demonstrate practical knowledge of chemigation including backflow prevention, minimizing risks related to chemigation, and approved chemigation equipment.

Category Name	Category Description
Consultant and Research (CR)	For consultations or recommendations to supply technical advice concerning the use of agricultural pesticides and for the application or supervision of the use of restricted use pesticides (RUPs) for no compensation, to demonstrate the action of the pesticide or conduct research with restricted use pesticides. For all demonstration additional relevant professional applicator categories will be required. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(10).
Forest Pest Control (FP)	For professional applicators who use or supervise the use of pesticides in forests, forest nurseries and forest seed production. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(2).
General Vertebrate Control (GV)	For controlling vertebrate pests such as large and small predators, rodents, and birds by Wildlife Services (WS) personnel of the United States Department of Agriculture-Animal and Plant Health Inspection Service (APHIS). This category applies to professional applicators who use or supervise the use of sodium cyanide and sodium fluoroacetate to control regulated predators. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(11-12).
Industrial, Institutional, and Structural Pest Control – Commodity (CP)	For professional applicators who use or supervise the use of pesticides on manufactured products or commodities in the following: Food handling establishments, packing houses, and food-processing facilities; and industrial establishments, including commodity storage facilities, grain elevators, and any other similar areas, public or private, for the protection of stored, processed, manufactured products, or commodities. Applicators must demonstrate a practical knowledge of pests associated with manufactured products or commodities, including recognizing those pests and signs of their presence, their habitats, their life cycles, biology, and behavior as it may be relevant to problem identification and control. Applicators must demonstrate practical knowledge of types of formulations appropriate for control of pests associated with manufactured products or commodities, and methods of application that avoid contamination of food, minimize damage to and contamination of areas treated, minimize acute and chronic exposure of people and pets, and minimize environmental impacts.
Industrial, Institutional, and Structural Pest Control – Non-Commodity (IP)	For professional applicators who use or supervise the use of restricted use pesticides in, on, or around the following: food handling establishments, packing houses, and food-processing facilities; human dwellings; cooling towers; air washers; evaporative condensers; swimming pools; pulp and paper mills; sewer treatment; residential and commercial building; institutions, such as schools, hospitals, and prisons; and industrial establishments, including manufacturing facilities, warehouses, and any other structures and adjacent areas, public or private, for the protection of health, dwellings, structures, and stored, processed, or manufactured products. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(7).
Non-Soil Fumigation (NS)	For professional applicators who use or supervise the use of a pesticide to fumigate anything other than soil. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(14).
Ornamental Pest (OP)	For professional applicators who use or supervise the use of pesticides to control pests in the maintenance and production of ornamental plants and turf. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(3).

Category Name	Category Description
Public Health Pest (PH)	For State, Tribal, Federal or other governmental employees and contractors who use or supervise the use of pesticides in government-sponsored public health programs for the management and control of pests having medical and public health importance. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(8).
Regulatory Pest Control (RP)	For State, Tribal, Federal, or other local governmental employees and contractors who use or supervise the use of restricted use pesticides in government-sponsored programs for the control of regulated pests. Certification in this category does not authorize the purchase, use, or supervision of use of products for predator control pesticides listed in the General Vertebrate category or outlined in 40 CFR 171.101(k)(l). An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(9).
Right-of-Way Herbicide (RW)	For professional applicators who use or supervise the use of pesticides in the maintenance of roadsides, powerlines, pipelines, and railway rights-of-way, and similar areas. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(6).
Seed Treatment (ST)	For professional applicators using or supervising the use of pesticides on seeds in seed treatment facilities. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(4).
Soil Fumigation (SF)	For applying soil fumigation pesticides to agricultural fields, plant nurseries, and other similar growing media for the growing of agricultural commodities, excluding rodent control. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(13).

()

a. Professional Commercial Apprentice License. For conducting General Use Pesticide (GUP) applications only in situations applicable to the MP, OP, AC, IP, and RW categories. To obtain a professional commercial apprentice license the applicant must pass the Applicator Core Competency exam with a minimum score of seventy percent (70%) or better, and meet the requirements as outlined in Section 100. Persons with this license may only perform pesticide applications under limited supervision of a properly certified professional applicator. Applicators with this license cannot supervise other pesticide applicators. The professional commercial apprentice license may not be reciprocated with other participating agencies. This license will expire one (1) year from the date of issuance. The professional commercial apprentice license is non-renewable. ()

b. Professional applicators who engage in janitorial services and use pesticides for cleaning, surface sanitation, and similar activities using general use pesticides with the labeled signal words Warning or Caution, are exempt from professional applicator licensing requirements as outlined in Sections 22-3404 (2)(3)(4), Idaho Code. ()

05. Financial Responsibility. Submits written proof of financial responsibility by any of the following methods: ()

a. Liability insurance with an insurance company licensed to do business in Idaho and documented on a form approved by the Director; ()

b. A bond that is approved by the Director; ()

c. A cash certificate of deposit in escrow with a bank or trust company; ()

- d.** An annuity issued by an insurance company, bank or other financial institution found acceptable to the Director; ()
- e.** An irrevocable letter of credit issued by a national bank in Idaho or by an Idaho state-chartered bank insured by the federal deposit insurance corporation. ()
- f.** Any certificate of deposit, annuity, or irrevocable letter of credit must be payable to the Director as trustee and remain on file with the Department until it is released, canceled or discharged by the Director. Any certificate of deposit, annuity, or irrevocable letter of credit must maintain a cash value equal to the requirements of Subsection 100.05.h., less any penalty for early withdrawal. Accrued interest upon a certificate of deposit or annuity shall be payable to the purchaser of the certificate or annuity. ()
- g.** Exclusions. Any exclusion to liability insurance, bond, cash certificate of deposit, annuity or irrevocable letter of credit coverage shall be listed on a form approved by the Director. ()
- h.** Minimum Coverage Required. ()
- i.** Bodily injury - fifty thousand dollars (\$50,000) per person/one hundred thousand dollars (\$100,000) per occurrence. ()
- ii.** Property damage - fifty thousand dollars (\$50,000) per occurrence. ()
- iii.** Maximum deductible - five thousand dollars (\$5,000). ()
- i.** Target Property Not Required to Be Covered. The immediate property being treated is not required to be covered. ()
- j.** Cancellation or Reduction. The applicator must notify the Department in writing immediately after cancellation or reduction of the financial coverage. ()

06. Licensing Periods and Recertification. The recertification period for professional applicators will be concurrent with their two (2) year licensing period, beginning at the license issuance, and ending upon license expiration. For a professional applicator's license to be renewed, the license holder must complete the recertification provisions of this section. Licenses belonging to professional applicators with last names beginning with A through L, expire on December 31st in every odd-numbered year, and licenses belonging to professional applicators with last names beginning with M through Z, expire on December 31st in every even-numbered year. The apprentice license may not be recertified and will expire one year from the date that it was issued. Recertification requirements may be accomplished by complying with either Subsection 100.06.a. or 100.06.b. Any professional applicator with less than thirteen (13) months in the licensing period is not required to obtain recertification credits during the initial licensing period. Any license holder who fails to accumulate the required recertification credits prior to the expiration date of their license will be required to pass the appropriate examination(s) before being licensed. ()

- a.** Continuing Education: To recertify, an applicator must accumulate sixteen (16) recertification credits during their recertification period, by attending Department-accredited pesticide seminars which meet the following criteria: ()
- i.** One (1) credit is issued for each fifty (50) minutes of instruction. ()
- ii.** To request accreditation for a seminar not provided by the Department, an applicant must submit a written request to the Department not less than thirty (30) days prior to the scheduled seminar. Applications received prior to thirty (30) days shall receive preference for credit approval and have the ability to amend their application until the seminar is held. Applications received after the thirty (30) days shall be reviewed by the Department as time and workload allows. ()
- iii.** The number of credits to be given will be decided by the Department and may be revised if it is later found that the training does not comply. Credit is given only for those parts of seminars that deal with pesticide ()

subjects as listed in Subsection 100.02.b. No credit will be given for training given to persons to prepare them for initial certification. ()

iv. Verification of attendance at a seminar is accomplished by validating the attendee's pesticide license, using a method approved by the Department. Verification of attendance must be submitted with the license renewal application. ()

v. Excess credits may not be carried over to the next recertification period. ()

vi. Upon earning the recertification credits as described above, license holder is recertified for the next recertification period corresponding with the next issuance of a license, provided that the license renewal application is submitted within twelve (12) months after the expiration date of the license. ()

b. Recertification by Examination: A certified applicator who passes the Department's Applicator Core Competency (CO) examination plus examinations for all categories in which intend to license. ()

i. Recertification examinations may be taken by a professional applicator beginning the thirteenth month of the recertification period. ()

ii. The examination procedures as outlined in Subsection 100.03 will be followed. ()

c. The Department may grant variances in the recertification of professional applicators' and dealers' licenses. Issuance of variances will not relieve the recipient from compliance with all other responsibilities under the Pesticide and Chemigation Act and Rules. The request will be on a Department-prescribed form and state fully the grounds for requesting a variance. ()

d. Licenses are eligible for renewal no sooner than forty-five (45) days from the expiration date. ()

101. PROFESSIONAL APPLICATOR RECORD KEEPING REQUIREMENTS.

01. Records Requirements. Maintain pesticide application records for two (2) years, ready to be inspected, duplicated, or submitted when requested by the Director. Such records shall contain: ()

a. The name and address of the person for whom the pesticide was applied; ()

b. The specific crop, animal, or property treated; ()

c. The location by the address, general legal description (township, range, and section) or latitude/longitude of the specific crop, animal, or property treated; ()

d. The size or amount of specific crop, animal, or property treated; ()

e. The trade name or brand name of the pesticide applied; ()

f. The total amount of pesticide applied; ()

g. The EPA registration number of the pesticide applied; ()

h. The date of application; ()

i. The time of day when the pesticide is applied; ()

j. The approximate wind velocity; ()

k. The approximate wind direction; ()

- l.** The full name of the professional applicator applying the pesticide; ()
- m.** The license number of the professional applicator applying the pesticide; ()
- n.** Full name and license number of professional applicator supervising the pesticide application of the professional applicator holding the Apprentice Category (CA). ()
- o.** Worker protection information exchange, if required, prior to pesticide application, including name of grower or operator contacted and date and time of contact. ()

02. Restricted Use Records. Professional applicators who have made an application of a restricted use pesticide shall, within thirty (30) days of the pesticide application, provide a copy of the application records required under this rule for each application of any restricted use pesticide to the person for whom the pesticide application was made. ()

102. -- 149. (RESERVED)

150. PRIVATE APPLICATOR LICENSING.

To obtain a private applicator’s license, an applicant must: ()

01. Submit Application. Submit an application prescribed by the Department with applicable fee(s) (Section 250); ()

02. Demonstrate Competence. ()

a. Private applicators may only chemigate or make pesticide applications using RUP’s in categories for which they have demonstrated competency by passing a Department examination based on a US EPA approved Core/Private Applicator manual. The examination must follow the procedures outlined in Subsection 100.03. ()

b. An applicant will demonstrate competency in all standards outlined in 40 CFR 171.105(a). Demonstrate competence as outlined for Professional Applicators (Subsection 100.01). ()

03. Categories. Private applicators must be certified in the Private Applicator category as a prerequisite to all other private applicator license categories:

Category Name	Category Description
Private Applicator (PA)	For use or supervision of restricted use pesticides to produce agricultural commodities on land owned or operated by applicator or applicator’s employer. Certification in this category alone is not sufficient to authorize the purchase, use, or supervision of use of products for predator control listed in the predator control categories outlined in 40 CFR 171.105(b)(c). PA is prerequisite for all Idaho Private Applicator license categories. An applicant will demonstrate competency standards outlined in 40 CFR 171.105(a).
Aerial Pest Control (AA)	For application of pesticides to all sites owned or operated by an applicator or applicator’s employer by operating or flying fixed-wing or rotary aircraft. An applicant will demonstrate competency standards outlined in 40 CFR 171.105(f).
Chemigation (CH)	For application of chemicals through an irrigation system, excluding pesticides to control aquatic organisms. Chemigation of pesticides will require additional relevant private applicator categories. An applicant will demonstrate practical knowledge of chemigation including backflow prevention, minimizing risks related to chemigation, and approved chemigation equipment.

Category Name	Category Description
Non-Soil Fumigation (NS)	For applicators who use or supervise the use of a pesticide to fumigate anything other than soil. An applicant will demonstrate competency standards outlined in 40 CFR 171.105(e).
Soil Fumigation (SF)	For applying soil fumigation pesticides to agricultural fields, plant nurseries, and other similar growing media on land owned or operated by applicator or applicator's employer for the growing of agricultural commodities, excluding rodent control. An applicant will demonstrate competency standards outlined in 40 CFR 171.105(d).

()

03. License Periods and Recertification. The recertification period for private applicator will be concurrent with their two (2) year licensing period, beginning at the license issuance, and ending upon license expiration. Licenses belonging to private applicators with last names beginning with A through L, expire on the last day of the month listed on the chart in Subsection 150.03.a. in every odd-numbered year, and licenses belonging to private applicators with last names beginning with M through Z, shall expire on the last day of the month listed on the chart in Subsection 150.03.a., in every even-numbered year. Recertification and relicensing may be accomplished by complying with either Subsection 150.03.b. or 150.03.c. Any person with less than thirteen (13) months in the initial licensing period is not required to obtain recertification credits for the initial period. Any license holder who fails to accumulate the required recertification credits prior to the expiration date of their license will be required to pass the appropriate examination(s) before being licensed.

()

a. Licensing schedule.

Last Name		Month to License
Odd Year	Even Year	
A-D	M-P	March
E-H	Q-T	July
I-L	U-Z	October

()

b. Continuing Education: To recertify, and applicator must accumulate seven (7) credits during their recertification period by attending Department-accredited pesticide seminars which meet the following criteria;

()

i. One (1) credit is issued for each fifty (50) minutes of instruction.

()

ii. To request accreditation for a seminar not provided by the Department, an applicant must submit a written request to the Department not less than thirty (30) days prior to the scheduled seminar. Applications received prior to thirty (30) days shall receive preference for credit approval and have the ability to amend their application until the seminar is held. Applications received after the thirty (30) days shall be reviewed by the Department as workload allows.

()

iii. The number of credits to be given will be decided by the Department and may be revised if it is later found that the training does not comply. Credit is given only for those parts of seminars that deal with pesticide subjects as listed in Subsection 100.02.b. No credit will be given for training given to persons to prepare them for initial certification.

()

iv. Verification of attendance at an accredited seminar is accomplished by validating the attendee's pesticide license using a method approved by the Department. Verification of attendance must be submitted with the license renewal application.

()

- v. Excess credits may not be carried over to the next recertification period. ()
- vi. Upon earning the recertification credits as described above, license holder is recertified for the next recertification period corresponding with the next issuance of a license, provided that the license renewal application is submitted within twelve (12) months from the expiration date of the license. ()
- c. Recertification by Examination: A certified applicator passes the Department's private applicator examination(s) for all categories in which they intend to license. ()
 - i. Examinations may be taken beginning the thirteenth (13th) month of the license period. ()
 - ii. The examination procedures as outlined in Subsection 100.03 will be followed. ()
 - iii. Upon passing the examinations, a person is eligible for license renewal for the next licensing period. For the purpose of becoming licensed, examination scores are valid for twelve (12) months after the date of the examination. ()
- d. The Department may issue variances for the requirements delineated in Subsection 150.03 in the recertification of private applicators' licenses. Issuance of variances do not relieve the recipient from compliance with all other responsibilities under the Pesticide and Chemigation Act and Rules. The request will be on a Department-prescribed form and state fully the grounds for requesting a variance. ()
- e. Licenses are eligible for renewal no sooner than forty-five (45) days from the expiration date. ()

151. -- 199. (RESERVED)

200. PESTICIDE DEALER LICENSING.

To obtain a pesticide dealer's license, an applicant must: ()

01. Submit Application. Submit an application prescribed by the Department with applicable fee(s) (Section 280); ()

a. Must hold a valid license with the appropriate professional category(s) listed in Subsection 100.04 that pertains to the types of restricted use pesticides sold or distributed. ()

b. Be renewed after August 31 on even numbered years for a twenty-four (24) month duration. ()

c. Licenses are eligible for renewal no sooner than forty-five (45) days from the expiration date. ()

02. Selling GUPs. Persons selling GUPs will not be required to obtain a pesticide dealer license or maintain distribution records of these products. ()

201. RUP DEALER RECORDS REQUIREMENTS.

01. Records Requirements. Maintain, in a location designated by the pesticide dealer, restricted use pesticide distribution records for two (2) years, ready to be inspected, duplicated, or submitted when requested by the Director. Such records must include the following: ()

a. The name and address of the person purchasing or receiving the restricted use pesticide (RUP); and ()

b. The certified applicator name, license number, license issuing authority, relevant certification category, and expiration date of the license for the person certified to use the RUP; or ()

- c. In the case of distribution of a RUP to another pesticide dealer, the name, license number, and expiration date of the license of the licensed pesticide dealer. ()
- d. The brand name and Environmental Protection Agency (EPA) Registration Number for each RUP distributed and if applicable, include any emergency exemption or State special local need registration number; and ()
- e. Date of the distribution of each RUP; and ()
- f. The quantity and size of each RUP container distributed and the total quantity of RUP distributed; and ()
- g. The pesticide dealer's name, address, and pesticide dealer license number distributing the RUP. ()

202. -- 249. (RESERVED)

250. CHANGE OF LICENSE STATUS.

- 01. Change Notification.** Any person who is licensed by this act will immediately notify the Director, in writing, of any change of status of any person or agent so named, or of any change in the business name, organization, or any other information shown in the licensing application. ()
- 02. Transferability.** Licenses are not transferable. ()

251. -- 279. (RESERVED)

SUBCHAPTER B – FEES

280. FEES.

- 01. Pesticide Registration.** One hundred sixty dollars (\$160) per product. ()
- 02. Professional Applicator's License.** One hundred twenty dollars (\$120) per licensing period of fourteen (14) months or more, sixty dollars (\$60) per licensing period of thirteen (13) months or less. ()
- 03. Commercial Apprentice (CA) Applicator's License.** Sixty dollars (\$60) per licensing period of twelve (12) months or less. ()
- 04. Private Applicator's License.** A Restricted Use Category, ten dollars (\$10); a Chemigation Category, twenty dollars (\$20); or thirty dollars (\$30) for both categories. ()
- 05. Pesticide Dealer's License.** One hundred dollars (\$100) per licensing period of fourteen (14) months or more, fifty dollars (\$50) per licensing period of thirteen (13) months or less. ()
- 06. Examination Fee per Examination Category.** Ten dollars (\$10). ()

281. -- 349. (RESERVED)

SUBCHAPTER C – REGISTRATION AND USE OF PESTICIDES

350. EXPERIMENTAL PERMITS.

Any person who wishes to obtain an experimental permit to register a pesticide under Section 22-3402(5), Idaho Code, must file an application with the Department which includes: ()

- 01. Name.** Company name. ()

02. **Applicant.** Name, address, and telephone number of the applicant. ()
03. **Shipment.** Proposed date of shipment or proposed shipping period not to exceed one (1) year. ()
04. **Active Ingredient.** A statement listing the active ingredient. ()
05. **Quantity Statement.** A statement of the approximate quantity to be tested. ()
06. **Acute Toxicity.** Available data or information or reference to available data on the acute toxicity of the pesticide. ()
07. **Statement of Scope.** A statement of the scope of the proposed experimental program, including the type of pests or organisms involved, the crops and animals for which the pesticide is to be used, the areas where the applicant proposes to conduct the program, and when requested by the Director, the results of previous tests. ()
08. **Temporary Tolerance.** If the pesticide is to be used on food or feed, a temporary tolerance must be obtained from the EPA or evidence that the proposed experiment will not result in injury to humans or animals, or illegal residues entering the food chain. A temporary tolerance is not needed if the food, feed, or fiber crop to which the experimental pesticide is applied will be completely destroyed after the data is collected. ()
09. **Proposed Labeling.** Proposed labeling which must bear: ()
- a. The prominent statement “For Experimental Use Only” on the container label and any labeling that accompanies the product. ()
- b. An adequate caution or warning statement to protect those who may handle or be exposed to the experimental formulation. ()
- c. Name and address of the applicant for the permit. ()
- d. Name or designation of the formulation. ()
- e. Directions for use. ()
- f. A statement listing the name and percentage of each active ingredient and the total percentage of inert ingredients. ()
10. **Quantity Limit.** The Director may limit the quantity of pesticide covered by the permit or make such other limitations as may be determined necessary for the protection of humans or the environment. ()
11. **Experimental Use.** A pesticide for experimental use will not be offered for sale unless a written permit has been obtained from the Director. ()

351. -- 399. (RESERVED)

400. PESTICIDE RESTRICTIONS.

01. **Application of Restricted Use Pesticides by Noncertified Applicators.** A noncertified applicator may apply restricted use pesticides (RUPs) under on-site supervision by a professional applicator with the required license categories of the application being supervised if: ()
- a. Noncertified applicator has completed the following training within twelve (12) months prior to application: ()
- i. EPA approved Worker Protection Standard (WPS) certification for pesticide handler training or

- equivalent. ()
- ii. The safe operation of any equipment they will use for mixing, loading, transferring, or applying pesticides. ()
- b.** The noncertified application of any pesticide is prohibited for: ()
- i. Soil or non-soil fumigation; ()
- ii. Aerial application. ()
- iii. Professional applications conducted by a person under eighteen (18) years of age. ()
- c.** Maintain noncertified applicator training records for three (3) years, ready to be inspected, duplicated, or submitted when requested by the Director. Such records shall contain: ()
- i. Noncertified applicator's printed name and signature. ()
- ii. Date of training. ()
- iii. Full name of the person who provided the training. ()
- iv. Trainer's qualification to conduct training. ()
- v. Title or a description of the training provided. ()
- vi. If the noncertified applicator is a licensed applicator who is not certified to perform the type of application being conducted while under on-site supervision by a professional applicator, the record must include all of the following information: ()
- (1) Noncertified applicator's name. ()
- (2) Noncertified applicator's license number. ()
- (3) Expiration date of the noncertified applicator's license. ()
- (4) Certifying authority that issued the license. ()
- d.** Requirements for supervisors of noncertified applicators of RUPs under on-site supervision. A certified applicator must ensure that all the following requirements are met before allowing a noncertified applicator to use a restricted use pesticide under their on-site supervision: ()
- i. The noncertified applicator must have access to the applicable product labeling at all times during its use. ()
- ii. Where the labeling of pesticide product requires that personal protective equipment be worn for mixing, loading, application, or any other use activities, the noncertified application has been provided clean, label required personal protective equipment in proper operating condition and the personal protective equipment is used correctly. ()
- iii. The certified applicator must provide to each noncertified applicator before use of a restricted use pesticide instructions specific to the site and pesticide used. These instructions must include labeling directions, precautions, and requirements applicable to the specific use and site, and how the characteristics of the use site and the conditions of application might increase or decrease the risk of adverse effects. ()
- iv. The certified applicator must ensure that before each day of use equipment used for mixing, loading, transferring, or applying pesticides is in proper operating condition as intended by the manufacturer, and can

be used without risk of reasonably foreseeable adverse effects to the noncertified applicator, other persons, or the environment. ()

v. The certified applicator must ensure that a means to immediately communicate with the certified applicator is available to each noncertified applicator using restricted use pesticides under their direct supervision. ()

vi. The certified applicator must be physically present at the site of the use being supervised. ()

vii. The certified applicator must create or verify the existence of the records required by Subsection 400.01.c. of this rule. ()

02. Application of General Use Pesticides by Noncertified Applicators. A Professional Commercial Apprentice applicator may apply general use pesticides (GUPs) under MP, OP, AC, IP, and RW categories with limited supervision by a professional applicator that has the required license categories of the application being supervised if: ()

a. All of the following conditions are met: ()

i. The Professional Commercial Apprentice applicator has a valid license. ()

ii. Immediate communication requirements exist between the supervising professional applicator and the Professional Commercial Apprentice applicator. ()

b. Applications of RUPs are prohibited under the Professional Commercial Apprentice license. ()

03. Mixer-Loaders. No person will act as a mixer-loader for a professional applicator without first obtaining annual training. ()

a. Training will be conducted and certified by the professional applicator who employs the mixer-loader. Training recordkeeping requirements for mixer-loaders shall be the same as for noncertified applicators of restricted use pesticides under on-site supervision (see Subsection 400.01.c. of this rule.) ()

b. Training requirements shall be the same as for noncertified applicators of restricted use pesticides under on-site supervision (see Subsection 400.01a. of this rule.) ()

04. Non-Domestic Pesticides Restrictions. ()

a. Home and Garden Restrictions. The following pesticides are to be registered only when labeled, distributed, sold or held for sale and use other than home and garden use and are not be sold to home and garden users or applied by professional applicators around any home or garden. ()

i. Bidrin (Foliar applications). ()

ii. Strychnine (one percent (1%) and above). ()

iii. Zinc Phosphide (two point one percent (2.1%) and above). ()

b. Ester Restriction. Low volatile liquid ester formulations of herbicides shall not be applied around any home or garden at any time when ambient air temperature exceeds or is forecasted to exceed eighty (80) degrees Fahrenheit during the day of application. ()

05. Restrictions to Protect Pollinators. ()

a. Bee Restrictions. Any pesticide that is toxic to bees shall not be applied to any agricultural crop when such crop is in bloom or when bees are actively foraging on blooming weeds in the crop being sprayed except

during the period beginning three (3) hours before sunset until three (3) hours after sunrise. ()

b. Green Pea Exception. In the counties of Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone: Green (white) pea crops may be sprayed or dusted at any time. ()

c. Other Exceptions. Pesticides may be applied at any time to sweet corn for processing, hops, potatoes, and beans other than lima beans, subject to all other applicable regulations. ()

06. Deviations from Pesticide Labels and Labeling. Any licensed professional or private applicator may deviate from pesticide label directions for use only as EPA or state laws, rules, and regulations permit. ()

07. Wind Velocity Restrictions. No person will apply pesticides in sustained wind speeds that exceed the product label directions. If a pesticide label does not state a specific wind speed limitation, pesticides will not be applied in sustained wind conditions exceeding ten (10) miles per hour. ()

a. Exceptions. Application of pesticides by injection into application site or by impregnated granules shall be made according to label directions. ()

b. Approval for Use of Other Application Techniques. Other pesticide application techniques or methods may be approved by the Director or his agent on a case-by-case basis. ()

c. Chemigation Wind Speed Precautions. Chemicals shall not be applied when wind speed favors drift beyond the area intended for treatment or when chemical label restricts the use of a pesticide for wind speed. ()

08. Phenoxy Herbicide Restrictions. ()

a. High Volatile Ester Restrictions. No aircraft pilot will apply high volatile ester formulations of 2,4-D: ()

i. In Latah, Nez Perce, and Clearwater Counties in Idaho; or ()

ii. Within five (5) miles of a susceptible crop or hazard area in any other county in Idaho. ()

iii. Waiver of the restriction in Subsections 400.08.a.i. and 400.08.a.ii. may be issued on a project-by-project basis by the Director. ()

b. Low Volatile Ester Restrictions. No aircraft pilot will apply low volatile ester formulations of 2,4-D; MCPA and MCPB: ()

i. In Latah, Nez Perce, and Clearwater Counties in Idaho, unless ambient air temperatures are not above or expected to exceed eighty-five (85) degrees Fahrenheit within twenty-four (24) hours of the expected application time, or ()

ii. Within one (1) mile of a hazard area in any other county in Idaho. ()

iii. Waiver of the restriction in Subsection 400.08.b.i. may be issued on a project-by-project basis by the Director. ()

c. A continuous smoke column or other device satisfactory to the Director will be employed to indicate to the pilot of any aircraft the direction and velocity of the airflow, and indicate a temperature inversion by layering of smoke, at the time and place of application when applying any formulation of 2,4-D; MCPA; MCPB and Dicamba. ()

09. Pesticide-Fertilizer Mix Restrictions. No person will distribute, sell, offer for sale, or hold for sale any dry pesticide incorporated in a dry blended bulk fertilizer mix. ()

10. Pesticide Drift Prohibitions. The application of pesticides that results in drift outside of the target

area is prohibited. ()

401. -- 449. (RESERVED)

450. PESTICIDE USE ON SEED CROP FIELDS.

01. Nonfood and Nonfeed Site Conditions. For purposes of pesticide registration, all alfalfa seed, carrot seed, chicory seed, clover seed, collard seed, coriander/cilantro seed, dill seed, endive seed, garden beet seed, kale seed, kohlrabi seed, leek seed, lettuce seed, mustard seed, onion seed, parsnip seed, pollinator rows of hybrid canola seed, radish seed, rutabaga seed, sugar beet seed, Swiss chard seed, and turnip seed crop fields are considered nonfood and nonfeed sites for pesticide use and the following conditions will be met: ()

a. No portion of the seeds listed in Section 450.01, including but not limited to seed screenings, green chop, hay, chaff, combine tailings, pellets, meal, whole seed and cracked seed, may be grazed, used, or distributed for food or feed purposes. ()

b. The seed conditioner will keep records of individual growers' seeds listed in Section 450.01 dirt weight and clean weight for three (3) years and will furnish the records to the Director upon request. ()

c. All seed screenings will be disposed of at a sanitary landfill, incinerator, or other equivalent disposal site or by a procedure approved by the Director. ()

d. The seed conditioner will keep seed screening disposal records for three (3) years from the date of disposal and will furnish the records to the Director upon request. Disposal records will consist of documentation from the disposal site and show the total weight of disposed screenings and the date of disposal. ()

e. All seeds listed in Section 450.01 grown or conditioned in this state will bear a tag or container label which forbids the use of the seed for human consumption or animal feed. ()

f. No seeds listed in Section 450.01 grown or conditioned in this state will be distributed for human consumption or animal feed. ()

g. All portions of the seeds listed in Section 450.01, including but not limited to seed screenings, pellets, meal, whole seed and cracked seed may be composted. All composted material may be applied to agricultural crop land as approved by the Director. ()

02. Exemption. Alfalfa seed, kale seed and radish seed crops grown for human consumption are exempt from the requirements of Subsection 450.01 provided: ()

a. All pesticides used are labeled for use on alfalfa seed, kale seed, and radish seed crops and have established residue tolerances which allow food or feed use; and ()

b. All producers maintain for three (3) years complete records of all pesticides applied as specified in Pesticide Use and Application Rules Subsection 100.05. ()

451. -- 499. (RESERVED)

500. UNUSABLE PESTICIDES COLLECTION AND DISPOSAL.

01. Director's Authority to Dispose. The Director or designated agent may, if deemed necessary for the protection of the environment, take possession and dispose of canceled, suspended, or otherwise unusable pesticides. ()

02. Prohibited Handling or Disposal. A person shall not dispose of or handle any pesticide or any pesticide containing material as follows: ()

a. In a manner that results in generating hazardous waste. ()

- b. So as to violate any state or federal pollution control statute. ()
- c. So as to cause or allow burying in a land site in a manner that is not in compliance with applicable state and federal solid waste regulations. ()
- d. So as to cause or allow the storage of pesticides or pesticide-containing materials, including rinsate or wash water, in underground tanks. This prohibition does not apply to watertight catch basins that are used for temporary collection or other recirculating systems as approved by the Director. ()

501. -- 549. (RESERVED)

550. STORAGE OF PESTICIDE CONTAINERS.

01. Protecting Humans and Environment. No person will handle, transport, display, or distribute pesticides in such a manner as to endanger humans and their environment, or to contaminate food, feed, or any other product that may be transported, stored, displayed, or distributed with such pesticides. ()

02. Storage by Professional Applicators or Restricted Use Pesticide Dealers. Storage of pesticide containers by professional applicators and RUP dealers must meet the following conditions: ()

a. Pesticide containers will be stored in one (1) of the following enclosures which when unattended will be locked to prevent unauthorized persons, livestock, or animals from gaining entry: ()

- i. Closed vehicle; ()
- ii. Closed trailer; ()
- iii. Building or room; ()
- iv. Fenced area with a fence at least six (6) feet high; ()
- v. Truck or trailer with solid sideracks and secured tailgate at least six (6) feet above ground level. ()

b. Pesticide containers will be stored in secured storage out of the reach of children in one (1) of the above enclosures. ()

c. Warning notices must be posted and visible from all approachable sides of the pesticide storage area and be readable at a distance of twenty-five (25) feet and must be substantially as follows:

“D A N G E R”

**“POISON STORAGE AREA
ALL UNAUTHORIZED PERSONS
KEEP OUT”**

The notice will be repeated in an appropriate language other than English when it may be reasonably anticipated that persons who do not understand the English language will come to the enclosure. The notice will also contain the name and telephone number of a person to contact in case of an emergency. ()

03. Exceptions. The provisions of Subsection 550.02 shall not apply to drums of petroleum oils, lime sulfur, and copper sulfate. ()

04. Disposal. Any person applying pesticides shall be responsible for the proper disposal of such empty containers. ()

551. -- 599. (RESERVED)

SUBCHAPTER D – CHEMIGATION

600. GENERAL CHEMIGATION REQUIREMENTS.

01. Pesticides Labeled for Chemigation. The chemigator will use only pesticides labeled for chemigation when chemigating. ()

02. Monitoring Chemigation. Licensed professional applicators that start the application of chemicals through chemigation equipment do not have to be present during the entire application, but must return to monitor the proper application at least once every four (4) hours for the duration of the application. ()

03. Chemigation Equipment Standards. Equipment will be placed on the Department’s list of approved chemigation equipment after the manufacturers provide to the Department verification that the equipment meets the standards established in these rules. ()

04. Chemigating Over Waters of the State. Shall be prohibited, except for variances allowed in Section 700. ()

601. -- 649. (RESERVED)

650. IRRIGATION SYSTEMS.

Defined in the ISDA Chemigation System Requirement Protocol document located at the department website at www.agri.idaho.gov. ()

651. -- 999. (RESERVED)

[Agency redlined courtesy copy]

Italicized text indicates changes between the text of the proposed rule as adopted in the pending rule.

02.03.03 – RULES GOVERNING PESTICIDE AND CHEMIGATION USE AND APPLICATION

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 22-3421, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.03.03, “Rules Governing Pesticide and Chemigation Use and Application.” ()

02. Scope. This chapter governs the use and application of pesticides; licensing of pesticide applicators; registration of pesticides; and responsibilities for chemigation in Idaho. ()

002. – 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference: ()

01. U.S. Code of Federal Regulations (CFR) Title 40, Part 165, Subpart E. “Standards for Pesticide Containment Structures,” Sections 165.80 through 165.97 that may be viewed at <https://www.govregs.com/>

[regulations/title40_chapterI_part165_subpartE.](#) ()

02. U.S. Code of Federal Regulations (CFR) Title 40, Chapter 1, Part 171. “Certification of Pesticide Applicators” that may be viewed at https://www.govregs.com/regulations/title40_chapterI_part171. ()

03. Restrictions For Use Of The Livestock Protection Collars (Compound 1080). <https://agri.idaho.gov/main/wp-content/uploads/2020/06/LPC-RESTRICTIONS.pdf> ()

005. -- 009. (RESERVED)

010. DEFINITIONS.

The Idaho Department of Agriculture adopts the definitions set forth in Section 22-3401, Idaho Code, and the following definitions: ()

~~**01. Air Gap.** A physical separation between the free-flowing discharge end of a domestic water supply system pipeline and an open or non-pressure receiving vessel. (3-15-22)~~

~~**02. Basin Irrigation.** Irrigation by flooding areas of level land surrounded by dikes. (3-15-22)~~

~~**03. Border Irrigation.** Irrigation by flooding strips of land, rectangular in shape and cross-leveled, bordered by dikes. (3-15-22)~~

01. Antimicrobial Pesticides. Substances or mixture of substances used to destroy or suppress the growth of harmful microorganisms such as bacteria, viruses, or fungi on inanimate objects and surfaces. ()

042. Certification. Passing one (1) or more examinations, to initially demonstrate an applicant’s competence, as required by the licensing provisions of this act, in order to use or distribute pesticides, or to act as a pesticide consultant. ()

~~**05. Check Valve.** A certified valve designed and constructed to close a water supply pipeline, chemical injection line, or other conduit in a chemigation system to prevent reverse flow in that line. (3-15-22)~~

063. Chemigator. Any person engaged in the application of chemicals through any type of irrigation system. ()

~~**07. Cross-Connection.** Any connection that may have chemical injected or introduced into the domestic water supply system and has the potential of or is connected to the domestic water supply system. (3-15-22)~~

~~**08. Demonstration and Research.** The use of restricted use pesticides to demonstrate the action of the pesticide or conduct research. (3-15-22)~~

~~**09. Domestic Water Supply System.** Any system providing water for human use. (3-15-22)~~

~~**10. Drip Irrigation.** A method of microirrigation wherein water is applied as drops or small streams through emitters. (3-15-22)~~

~~**11. Flood Irrigation.** Method of irrigation where water is applied to the soil surface without flow controls, such as furrows, borders or corrugations. (3-15-22)~~

~~**12. Flow Rate.** The weight or volume of flowable material per unit of time. (3-15-22)~~

~~**13. Furrow Irrigation.** Method of surface irrigation where the water is supplied to small ditches or furrows for guiding the water across the field. (3-15-22)~~

~~**1404. Hazard Area.** Cities, towns, subdivisions, schools, hospitals, or densely populated areas. ()~~

~~1505.~~ **High Volatile Esters.** Formulations of 2,4-D which contain methyl, ethyl, butyl, isopropyl, octylamyl and pentyl esters. ()

~~16.~~ **Injection Pump.** A pump that uses a gear, rotary, piston or diaphragm to develop the pressures exceeding the irrigation system pressure to inject a chemical. (3-15-22)

~~17.~~ **Inspection Port.** An orifice or other viewing device from which the low pressure drain and check valve may be observed. (3-15-22)

~~18.~~ **Limited Supervision.** Pertains to the supervision of a currently licensed pesticide applicator who holds the Commercial Apprentice (CA) category. The Supervising Applicator will be currently licensed in the same category necessary for the pesticide application, and is limited to supervising a maximum of two Commercial Apprentice applicators and must maintain immediate communications (voice, radio, cellular telephone, or similar) with the supervised applicators for the duration of all pesticide applications. (3-15-22)

06. **Janitorial Services.** Surface cleaning or surface sanitation operations that use pesticides. Janitorial services extend to households and buildings and may include, but are not limited to; bathroom, food storage/processing, food service, retail sales, office, maintenance, educational, government and other like facilities. ()

07. **Limited Supervision.** The supervision of a professional commercial apprentice by a supervising applicator licensed in the categories necessary for the pesticide application. The supervising applicator is limited to supervision of two (2) professional commercial apprentice applicators at one (1) time and must maintain immediate communications (voice, radio, cellular telephone, or similar) with the supervised applicators for the duration of all pesticide applications. ()

~~1908.~~ **Low Volatile Esters.** Formulations of 2,4-D; 2,4-DP; MCPA and MCPB which contain butoxyethanol, propylene glycol, tetrahydrofurfuryl, propylene glycol butyl ether, butoxy propyl, ethylhexyl and isocetyl esters. ()

~~2009.~~ **Mixer-Loader.** Any person who works under the supervision of a professional applicator in the mixing and loading of pesticides to prepare for, but not actually make, applications. ()

~~21.~~ **On-Site Supervision.** Pertains to the application of Restricted Use Pesticides (RUP): On-Site Supervision of an unlicensed pesticide applicator or a pesticide applicator who does not hold an appropriate category for the RUP being applied. Supervising pesticide applicator must be physically at the site of application, must have visual contact with the pesticide applicator, and must be in a position to direct the actions of the pesticide applicator. The supervising applicator may not supervise more than two pesticide applicators. (3-15-22)

10. **On-Site Supervision.** A noncertified applicator may apply general use and restricted use pesticides under on-site supervision by a professional applicator with the required license categories. The supervising pesticide applicator must be physically at the site of application, must have visual contact with the pesticide applicator, and must be able to direct the actions of the noncertified pesticide applicator. The supervising applicator may not supervise more than two (2) noncertified pesticide applicators at one (1) time. ()

~~2211.~~ **Pesticide Drift.** Movement of pesticide dust or droplets through the air at the time of application or soon after, to any site other than the area intended. ()

~~23.~~ **Pressure Switch.** A device which will stop the chemical injection pump when the water pressure decreases to the point where chemical distribution is adversely affected. (3-15-22)

~~2412.~~ **Recertification.** The requalification of a certified person through seminar attendance over a set period of time, or taking an examination at the end of a set period of time, to ensure that the person continues to meet the requirements of changing technology and maintains competence. ()

~~25.~~ **Reduced Pressure Principle Backflow Prevention Assembly (RP).** An assembly containing two (2) independently acting approved check valves together with a hydraulically operating, mechanically independent

~~pressure differential relief valve located between the check valves and at the same time below the first check valve. The unit shall include properly located resilient seated test cocks and tightly closing resilient seated test cocks and tightly closing resilient seated shutoff valves at each end of the assembly.~~ (3-15-22)

~~26~~**13. Seminar.** Any Department-approved meeting or activity convened for the purpose of presenting pesticide recertification information. ()

~~27~~**14. Sprinkler Irrigation.** Method of irrigation in which the water is sprayed, or sprinkled, through the air to the ground surface. ()

~~28. System Interlock.~~ Safety equipment used to ensure that a chemical injection pump will stop if the irrigation pumping plant stops to prevent the entire chemical mixture from emptying from the supply tank into the irrigation pipeline. The safety equipment may also be used to shut down the irrigation system if the injection system fails. (3-15-22)

~~29. Vacuum Relief Valve.~~ A device to automatically relieve or break a vacuum. (3-15-22)

~~30. Venturi.~~ A differential pressure injector that operates on a pressure difference between the inlet and outlet of the injector and creates a vacuum inside the body, which results in suction through the suction port. (3-15-22)

~~31. Venturi Injection System.~~ A chemical injection system which operates with a Venturi using the suction from the Venturi that can be used to inject and mix chemicals into the water. (3-15-22)

~~32. Working Pressure.~~ The internal operating pressure of a vessel, tank or piping used to hold or transport liquid. (3-15-22)

~~33~~**15. Waters of the State.** Any surface waters such as canals, ditches, laterals, lakes, streams, or rivers. ()

011. -- 099. (RESERVED)

SUBCHAPTER A – LICENSING OF APPLICATORS AND DEALERS

100. LICENSING PROFESSIONAL APPLICATORS LICENSING.
To obtain a professional applicator's license an applicant must: ()

01. Submit Application. Submit an application prescribed by the Department with applicable fee (Section ~~250~~**80**). (3-15-22)()

02. Demonstrate Competence. ()

a. All professional applicators must pass the Applicator Core Competency exam in addition to any other category. Professional applicators may only chemigate, make pesticide recommendations, the application or make pesticide applications for any purpose for which they have demonstrated competence. Competence is demonstrated by passing Department examinations and becoming licensed in categories described in the Subsection 100.04 categories. (3-15-22)()

b. An applicant will demonstrate core competency in ~~the following areas:~~ all standards outlined in 40 CFR 171.103(c). (3-15-22)()

i. ~~Labels and labeling, including terminology, instructions, format, warnings and symbols.~~ (3-15-22)

ii. ~~Safety factors and procedures, including protective clothing and equipment, first aid, toxicity, symptoms of poisoning, storage, handling, transportation and disposal.~~ (3-15-22)

iii. ~~Laws, rules, and regulations governing pesticides.~~ (3-15-22)

- ~~iv. Environmental considerations, including the effect of climate and physical or geographical factors on pesticides, and the effects of pesticides on the environment, and the animals and plants living in it. (3-15-22)~~
- ~~v. Mixing and loading, including interpretation of labels, safety precautions, compatibility of mixtures, and protection of the environment. (3-15-22)~~
- ~~vi. Methods of use or application, including types of equipment, calibration, application techniques, and prevention of drift and other types of pesticide migration. (3-15-22)~~
- ~~vii. Pests to be controlled, including identification, damage characteristics, biology and habitat. (3-15-22)~~
- ~~viii. Types of pesticides, including formulations, mode of action, toxicity, persistence, and hazards of use. (3-15-22)~~
- ~~ix. Chemigation practices involving the application of chemicals through irrigation systems, calibration, management, and equipment requirements. (3-15-22)~~
- ~~x. Responsibilities of supervision of noncertified applicators. (3-15-22)~~

03. Certification and Department Examination Procedures. Be certified by passing Department examinations with a minimum score of seventy percent (70%) in the applicable pesticide categories (Subsection 100.04). ~~Examinations are~~ Examinations shall adhere to standards outlined in 40 CFR 171.103(a)(2). In addition, examinations are: (3-15-22)()

- ~~a. Presented and answered in a written or text-based format; (3-15-22)~~
- ~~ba. Proctored and monitored by ISDA staff or administered by an authorized agent following approved Department procedures. (3-15-22)()~~
- ~~e. Given only to a person who presents valid government issued identification; (3-15-22)~~
- ~~d. Secure with candidates not having verbal or non-verbal communication with anyone other than the proctor during the exam and only have access to reference materials provided by and collected by the proctor; (3-15-22)~~
- ~~eb. Retaken after a minimum waiting period of one (1) week day. (3-15-22)()~~
- ~~fc. Scores valid for twelve (12) months from the date of the examination. ()~~
- ~~d. It is prohibited to: ()~~
 - ~~i. Attempt to cheat, or otherwise obtain an unfair advantage on the exam(s). ()~~
 - ~~ii. Remove or attempt to remove any test questions or responses or any notes from a testing session. ()~~
 - ~~iii. At any time, improperly access or attempt to improperly access the test site, the test (or any part of the test), an answer key, or any information about the test. ()~~
 - ~~iv. Engage in any way in: ()~~
 - ~~(1) Theft or attempted theft of test content through platform intrusion. ()~~
 - ~~(2) Post-exam manipulation of test content, responses, or test administration data. ()~~

- (3) Attempting to adversely impact the exam proctor, test center, or testing platforms through any means including cybersecurity means. ()
- v. Attempt to give or receive assistance, including by copying or through the use of an answer key. ()
- vi. Record or copy information during the testing session including questions, answers, identifying information about the version or form of a test, or any other information that compromises the security of the test. ()
- vii. Communicate with other test takers or other individuals in any form while testing is in session. ()
- viii. Allow anyone to see your test questions or answers or attempt to see or copy others' test questions or answers. ()
- ix. Consult notes, other people, electronic devices, textbooks, or any other resources during the test or during breaks. ()
- x. Have subject-related information on your clothing, shoes, or body. ()
- xi. Use or access any prohibited items including devices or aids such as, but not limited to, mobile phones, smartwatches, fitness trackers, other oral or written communication devices or wearable technology, cameras, notes, and reference books, etc., during or in connection with the test, including during breaks. ()
- xii. Fail to turn in or store away a mobile/smartphone in accordance with the test site's collection process. ()
- xiii. Use a prohibited calculator. ()
- xiv. Deliberately attempt to and/or take the test for someone else or attempt to have someone else impersonate you to take the test. ()

04. Categories. ~~All professional applicators must be certified and licensed~~ in Applicator Core Competency in one (1) or more of the following categories:

Category Name	Category Description
Applicator Core Competency (CC)	Includes general knowledge of pesticides including proper use and disposal, product characteristics, first aid, labeling and laws. This category is required for all Idaho categories.
Agricultural Herbicide (AH)	For conducting herbicide applications to field crops, including rights-of-way, forests and rangelands.
Agricultural Insecticide/ Fungicide (AI)	For conducting insecticide and fungicide applications to field crops including in rights-of-way, forests, and rangelands.

Category Name	Category Description
Soil Fumigation (SF)	For applying soil fumigation pesticides to agricultural fields, plant nurseries, and other similar growing media for the growing of agricultural commodities, excluding rodent control.
Space (Area) Fumigation (AF)	For fumigating structures and spaces for pest control including buildings and similar structures, commodity storage facilities and containers, shipholds, railcars, RUP fumigant applications for burrowing rodent control, and sewer lines for root control.
Forest Environment (FE)	For application of pesticides to forests and rangelands, excluding vertebrate predator and avian control by U.S.D.A. Forest Service employees, Bureau of Land Management personnel, contractors, and private industry personnel.
Right-of-Way Herbicide (RW)	For the use of herbicides in the maintenance of rights of way, and similar terrestrial areas.
Public Health Pest (PH)	For the management and control of pests having medical and public health importance by employees of abatement districts and other public health related governmental entities.
Livestock Pest Control (LP)	For use of pesticides to control non-vertebrate pests on livestock or where livestock are confined, including the control of nuisance flying insects associated with livestock facilities.
Aerial Pest Control (AA)	For application of pesticides to all application sites by operating or flying fixed-wing or rotary aircraft.
Ornamental Herbicide (OH)	For conducting outside urban or residential herbicide applications to turfs, flowers, shrubs, trees, and associated landscapes, excluding soil applied, total vegetation control pesticides.
Ornamental Insecticide/ Fungicide (OI)	For conducting outside urban or residential insecticide or fungicide applications to turfs, flowers, shrubs, trees and associated landscapes.

Category Name	Category Description
General Pest Control (GP)	For conducting pesticide applications in and around residential, commercial, or other buildings, excluding those applications applicable to Structural Pest Control (SP), Ornamental Herbicide (OH), and Ornamental Insecticide/Fungicide (OI) categories.
Structural Destroying Pest (SP)	For application of pesticides to control pests which destroy wooden structures.
General Vertebrate Control (GV)	For controlling vertebrate pests such as large and small predators, rodents, and birds by Wildlife Services (WS) personnel of the United States Department of Agriculture Animal and Plant Health Inspection Service (APHIS).
Rodent Control (RC)	For application of outdoor use non-fumigation rodenticides to control field rodents.
Aquatic Weed and Pest Control (AP)	For application of pesticides to control weeds and other pests to aquatic sites excluding those pests pertaining to the Public Health Pest Control (PH) category by employees of irrigation districts, canal companies, contractors, and others.
Seed Treatment (ST)	For application of pesticides to protect seeds used for plant reproduction.
Commodity Pest Control (CP)	For application of non-fumigation pesticides to control pests in stored commodities.
Potato Cellar Pest Control (PC)	For application of storage-enhancing pesticides in potato cellars.
Chemigation (CH)	For application of chemicals through an irrigation system, excluding Aquatic Weed and Pest Control (AP) category.
Livestock Protection Collars (LPC)	For use of Livestock Protection Collars (LPC) containing the restricted use pesticide (RUP) Compound 1080 to control predatory coyotes by employees of the USDA/APHIS.

Category Name	Category Description
Wood Preservative (WP)	For application of wood preservatives.
Pest Control Consultant Statewide (SW)	For consultations or recommendations to supply technical advice concerning the use of any pesticide for agricultural purposes.
Demonstration and Research (DR)	For application or supervision of the use of restricted use pesticides (RUPs) at no charge to demonstrate the action of the pesticide or conduct research with restricted use pesticides. The Pest Control Consultant Statewide (SW) is required.
Commercial Apprentice (CA)	For conducting General Use Pesticide (GUP) surface applications only in situations applicable to the OI, OH, AI, AH, GP, and RW categories. Persons with this category can only perform pesticide applications under limited supervision, and cannot make any soil active Total Vegetation Control (TVC) pesticide applications or injectable applications to soil or plants. Applicators with this category cannot supervise other pesticide applicators. This license category will expire on December 31 st in the year it was obtained.

(3-15-22)

Category Name	Category Description
<u>Applicator Core Competency (CO)</u>	<u>Includes general knowledge of pesticides including proper use and disposal, product characteristics, first aid, labeling and laws. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(c). This category is required for all Idaho Professional Pesticide Applicator Licenses</u>
<u>Agricultural Crop Pest Control (AC)</u>	<u>This category applies to commercial applicators who use or supervise the use of pesticides in production of agricultural commodities including grasslands, and non-crop agricultural lands. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(1)(i).</u>
<u>Aerial Pest Control (AA)</u>	<u>For application of pesticides to all application sites by operating or flying fixed-wing or rotary aircraft. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(15).</u>

<u>Category Name</u>	<u>Category Description</u>
<u>Anti-Fouling Coatings (FC)</u>	<u>For applicators who use or supervise the use of anti-fouling coatings to control fouling organisms on aquatic vessels, underwater structures, and other similar structures. An applicant will demonstrate practical knowledge of problems caused by fouling organisms, methods of control using fouling organisms using through anti-fouling coatings, characteristics of antifouling coatings, alternative active ingredients other than copper-based paints, and best management practices for application and removal of anti-fouling coatings.</u>
<u>Agricultural Livestock Pest Control (LP)</u>	<u>For professional applicators who use or supervise the use of pesticides on animals or to places on or in which animals are confined. Certification in this category alone is not sufficient to authorize the purchase, use, or supervision of use of products for predator control listed in the General Vertebrate category or outlined in 40 CFR 171.101(k)(l). An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(1)(ii).</u>
<u>Aquatic Weed and Pest Control (AP)</u>	<u>For professional applicators who use or supervise the use of any pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in as specified in the Public Health (PH) category. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(5).</u>
<u>Chemigation (CH)</u>	<u>For professional applicators who apply chemicals through an irrigation system, excluding applications made to control aquatic organisms. The application of pesticides through a chemigation system will require additional relevant professional applicator categories. An applicant will demonstrate practical knowledge of chemigation including backflow prevention, minimizing risks related to chemigation, and approved chemigation equipment.</u>
<u>Consultant and Research (CR)</u>	<u>For consultations or recommendations to supply technical advice concerning the use of agricultural pesticides and for the application or supervision of the use of restricted use pesticides (RUPs) for no compensation, to demonstrate the action of the pesticide or conduct research with restricted use pesticides. For all demonstration additional relevant professional applicator categories will be required. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(10).</u>
<u>Forest Pest Control (FP)</u>	<u>For professional applicators who use or supervise the use of pesticides in forests, forest nurseries and forest seed production. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(2).</u>
<u>General Vertebrate Control (GV)</u>	<u>For controlling vertebrate pests such as large and small predators, rodents, and birds by Wildlife Services (WS) personnel of the United States Department of Agriculture-Animal and Plant Health Inspection Service (APHIS). This category applies to professional applicators who use or supervise the use of sodium cyanide and sodium fluoroacetate to control regulated predators. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(11-12).</u>

<u>Category Name</u>	<u>Category Description</u>
<u>Industrial, Institutional, and Structural Pest Control – Commodity (CP)</u>	<u>For professional applicators who use or supervise the use of pesticides on manufactured products or commodities in the following: Food handling establishments, packing houses, and food-processing facilities; and industrial establishments, including commodity storage facilities, grain elevators, and any other similar areas, public or private, for the protection of stored, processed, manufactured products, or commodities. Applicators must demonstrate a practical knowledge of pests associated with manufactured products or commodities, including recognizing those pests and signs of their presence, their habitats, their life cycles, biology, and behavior as it may be relevant to problem identification and control. Applicators must demonstrate practical knowledge of types of formulations appropriate for control of pests associated with manufactured products or commodities, and methods of application that avoid contamination of food, minimize damage to and contamination of areas treated, minimize acute and chronic exposure of people and pets, and minimize environmental impacts.</u>
<u>Industrial, Institutional, and Structural Pest Control – Non-Commodity (IP)</u>	<u>For professional applicators who use or supervise the use of restricted use pesticides in, on, or around the following: food handling establishments, packing houses, and food-processing facilities; human dwellings; cooling towers; air washers; evaporative condensers; swimming pools; pulp and paper mills; sewer treatment; residential and commercial building; institutions, such as schools, hospitals, and prisons; and industrial establishments, including manufacturing facilities, warehouses, and any other structures and adjacent areas, public or private, for the protection of health, dwellings, structures, and stored, processed, or manufactured products. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(7).</u>
<u>Non-Soil Fumigation (NS)</u>	<u>For professional applicators who use or supervise the use of a pesticide to fumigate anything other than soil. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(14).</u>
<u>Ornamental Pest (OP)</u>	<u>For professional applicators who use or supervise the use of pesticides to control pests in the maintenance and production of ornamental plants and turf. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(3).</u>
<u>Public Health Pest (PH)</u>	<u>For State, Tribal, Federal or other governmental employees and contractors who use or supervise the use of pesticides in government-sponsored public health programs for the management and control of pests having medical and public health importance. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(8).</u>
<u>Regulatory Pest Control (RP)</u>	<u>For State, Tribal, Federal, or other local governmental employees and contractors who use or supervise the use of restricted use pesticides in government-sponsored programs for the control of regulated pests. Certification in this category does not authorize the purchase, use, or supervision of use of products for predator control pesticides listed in the General Vertebrate category or outlined in 40 CFR 171.101(k)(l). An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(9).</u>
<u>Right-of-Way Herbicide (RW)</u>	<u>For professional applicators who use or supervise the use of pesticides in the maintenance of roadsides, powerlines, pipelines, and railway rights-of-way, and similar areas. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(6).</u>

<u>Category Name</u>	<u>Category Description</u>
<u>Seed Treatment (ST)</u>	<u>For professional applicators using or supervising the use of pesticides on seeds in seed treatment facilities. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(4).</u>
<u>Soil Fumigation (SF)</u>	<u>For applying soil fumigation pesticides to agricultural fields, plant nurseries, and other similar growing media for the growing of agricultural commodities, excluding rodent control. An applicant will demonstrate competency standards outlined in 40 CFR 171.103(d)(13).</u>

()

a. Professional Commercial Apprentice License. For conducting General Use Pesticide (GUP) applications only in situations applicable to the MP, OP, AC, IP, and RW categories. To obtain a professional commercial apprentice license the applicant must pass the Applicator Core Competency exam with a minimum score of seventy percent (70%) or better, and meet the requirements as outlined in Section 100. Persons with this license may only perform pesticide applications under limited supervision of a properly certified professional applicator. Applicators with this license cannot supervise other pesticide applicators. The professional commercial apprentice license may not be reciprocated with other participating agencies. This license will expire one (1) year from the date of issuance. The professional commercial apprentice license is non-renewable.

()

b. Professional applicators who engage in janitorial services and use pesticides for cleaning, surface sanitation, and similar activities using general use pesticides with the labeled signal words Warning or Caution, are exempt from professional applicator licensing requirements as outlined in Sections 22-3404 (2)(3)(4), Idaho Code.

()

~~05. Records Requirements. Maintain pesticide application records for three (3) years, ready to be inspected, duplicated, or submitted when requested by the Director. Such records shall contain:~~

~~(3-15-22)~~

- ~~a. The name and address of the owner or operator of each property treated;~~ ~~(3-15-22)~~
- ~~b. The specific crop, animal, or property treated;~~ ~~(3-15-22)~~
- ~~c. The location by the address, general legal description (township, range, and section) or latitude/longitude of the specific crop, animal, or property treated;~~ ~~(3-15-22)~~
- ~~d. The size or amount of specific crop, animal, or property treated;~~ ~~(3-15-22)~~
- ~~e. The trade name or brand name of the pesticide applied;~~ ~~(3-15-22)~~
- ~~f. The total amount of pesticide applied;~~ ~~(3-15-22)~~
- ~~g. The dilution applied or rate of application;~~ ~~(3-15-22)~~
- ~~h. The EPA registration number of the pesticide applied;~~ ~~(3-15-22)~~
- ~~i. The date of application;~~ ~~(3-15-22)~~
- ~~j. The time of day when the pesticide is applied;~~ ~~(3-15-22)~~
- ~~k. The approximate wind velocity;~~ ~~(3-15-22)~~
- ~~l. The approximate wind direction;~~ ~~(3-15-22)~~

- ~~m.~~ The full name of the person recommending the pesticide application; (3-15-22)
- ~~n.~~ The full name of the professional applicator applying the pesticide; (3-15-22)
- ~~o.~~ The license number of the professional applicator applying the pesticide; (3-15-22)
- ~~p.~~ Full name and license number of professional applicator supervising the pesticide application of the professional applicator holding the Apprentice Category (CA). (3-15-22)
- ~~q.~~ Worker protection information exchange, if required, prior to pesticide application, including name of grower or operator contacted and date and time of contact. (3-15-22)

065. Financial Responsibility. Submits written proof of financial responsibility by any of the following methods: ()

a. Liability insurance with an insurance company licensed to do business in Idaho and documented on a form approved by the Director; ()

b. A bond that is approved by the Director; ()

c. A cash certificate of deposit in escrow with a bank or trust company; ()

d. An annuity issued by an insurance company, bank or other financial institution found acceptable to the Director; ()

e. An irrevocable letter of credit issued by a national bank in Idaho or by an Idaho state-chartered bank insured by the federal deposit insurance corporation. ()

f. Any certificate of deposit, annuity, or irrevocable letter of credit must be payable to the Director as trustee and remain on file with the Department until it is released, canceled or discharged by the Director. Any certificate of deposit, annuity, or irrevocable letter of credit must maintain a cash value equal to the requirements of Subsection ~~250.02~~ 100.05.h., less any penalty for early withdrawal. Accrued interest upon a certificate of deposit or annuity shall be payable to the purchaser of the certificate or annuity. (3-15-22)()

g. Exclusions. Any exclusion to liability insurance, bond, cash certificate of deposit, annuity or irrevocable letter of credit coverage shall be listed on a form approved by the Director. ()

h. Minimum Coverage Required. ()

i. Bodily injury - fifty thousand dollars (\$50,000) per person/one hundred thousand dollars (\$100,000) per occurrence. ()

ii. Property damage - fifty thousand dollars (\$50,000) per occurrence. ()

iii. Maximum deductible - five thousand dollars (\$5,000). ()

i. Target Property Not Required to Be Covered. The immediate property being treated is not required to be covered. ()

j. Cancellation or Reduction. The applicator must notify the Department in writing immediately after cancellation or reduction of the financial coverage. ()

076. Licensing Periods and Recertification. The recertification period for professional applicators will be concurrent with their two (2) year licensing period, beginning at the license issuance, and ending upon license expiration. ~~The apprentice category (CA) will not be able to recertify. This license category will expire on the 31st of December in the year that it was issued. In order f~~ For a professional applicator's license to be renewed, the license holder must complete the recertification provisions of this section. Licenses belonging to professional applicators

with last names beginning with A through L, ~~inclusive~~, expire on December 31st in every odd-numbered year, and licenses belonging to professional applicators with last names beginning with M through Z, ~~inclusive~~, expire on December 31st in every even-numbered year. The apprentice license may not be recertified and will expire one year from the date that it was issued. Recertification requirements may be accomplished by complying with either Subsection 100.076.a. or 100.076.b. Any professional applicator with less than thirteen (13) months in the licensing period is not required to obtain recertification credits during the initial licensing period. Any license holder who fails to accumulate the required recertification credits prior to the expiration date of their license will be required to pass the appropriate examination(s) before being licensed. (3-15-22)()

a. Continuing Education: To recertify, a person an applicator must accumulate sixteen (16) recertification credits during their recertification period, by attending Department-accredited pesticide ~~instruction~~ seminars ~~and~~ which meet the following criteria: (3-15-22)()

i. Complete a minimum of fifteen (15) credits, based upon one (1) credit is issued for each one (1) hour fifty (50) minutes of instruction ~~for each recertification period.~~ (3-15-22)()

ii. To request accreditation for a seminar not provided by the Department, an applicant must submit a written request to the Department not less than thirty (30) days prior to the scheduled seminar. ~~Under exceptional circumstances, as described in writing by the person requesting accreditation, the thirty (30) day requirement may be waived. Applications received prior to thirty (30) days shall receive preference for credit approval and have the ability to amend their application until the seminar is held. Applications received after the thirty (30) days shall be reviewed by the Department as time and workload allows.~~ (3-15-22)()

iii. The number of credits to be given will be decided by the Department and may be revised if it is later found that the training does not comply. Credit is given only for those parts of seminars that deal with pesticide subjects as listed in Subsection 100.02.b. No credit will be given for training given to persons to prepare them for initial certification. ()

iv. Verification of attendance at a seminar is accomplished by validating the attendee's pesticide license, using a ~~stamp, sticker, or other~~ method approved by the Department. Verification of attendance must be submitted with the license renewal application. (3-15-22)()

v. Excess credits may not be carried over to the next recertification period. ()

vi. Upon earning the recertification credits as described above, license holder is recertified for the next recertification period corresponding with the next issuance of a license, provided that the license renewal application is submitted within twelve (12) months after the expiration date of the license. ()

b. Recertification by Examination: A person certified applicator who passes the Department's ~~recertification and~~ Applicator Core Competency (CO) ~~recertification~~ examination plus examinations for all categories in which ~~a person~~ intends to license. (3-15-22)()

i. Recertification examinations may be taken by a professional applicator beginning the thirteenth month of the recertification period. ~~Any professional applicator with less than thirteen (13) months in the licensing period is not required to obtain recertification credits during the initial licensing period.~~ (3-15-22)()

ii. The examination procedures as outlined in Subsection 100.03 will be followed. ()

iii. ~~Excess credits may not be carried over to the next recertification period, if a person accumulates more than fifteen (15) credits during the recertification period.~~ (3-15-22)

iv. ~~Upon earning the recertification credits as described above, license holder is recertified for the next recertification period corresponding with the next issuance of a license, provided that the license renewal application is submitted within twelve (12) months after the expiration date of the license.~~ (3-15-22)

e. ~~Any license holder who fails to accumulate the required recertification credits prior to the expiration date of their license will be required to pass the appropriate recertification examination(s) before being~~

~~licensed.~~

~~(3-15-22)~~

~~**d.c.** The Department may grant variances in the recertification of professional applicators' and dealers' licenses. Issuance of variances will not relieve the recipient from compliance with all other responsibilities under the Pesticide and Chemigation Act and Rules. The request will be on a Department-prescribed form and state fully the grounds for requesting a variance. ()~~

~~**d.** Licenses are eligible for renewal no sooner than forty-five (45) days from the expiration date. ()~~

101. PROFESSIONAL APPLICATOR RECORD KEEPING REQUIREMENTS.

~~**01. Records Requirements.** Maintain pesticide application records for two (2) years, ready to be inspected, duplicated, or submitted when requested by the Director. Such records shall contain: ()~~

~~**a.** The name and address of the person for whom the pesticide was applied; ()~~

~~**b.** The specific crop, animal, or property treated; ()~~

~~**c.** The location by the address, general legal description (township, range, and section) or latitude/longitude of the specific crop, animal, or property treated; ()~~

~~**d.** The size or amount of specific crop, animal, or property treated; ()~~

~~**e.** The trade name or brand name of the pesticide applied; ()~~

~~**f.** The total amount of pesticide applied; ()~~

~~**g.** The EPA registration number of the pesticide applied; ()~~

~~**h.** The date of application; ()~~

~~**i.** The time of day when the pesticide is applied; ()~~

~~**j.** The approximate wind velocity; ()~~

~~**k.** The approximate wind direction; ()~~

~~**l.** The full name of the professional applicator applying the pesticide; ()~~

~~**m.** The license number of the professional applicator applying the pesticide; ()~~

~~**n.** Full name and license number of professional applicator supervising the pesticide application of the professional applicator holding the Apprentice Category (CA). ()~~

~~**o.** Worker protection information exchange, if required, prior to pesticide application, including name of grower or operator contacted and date and time of contact. ()~~

~~**02. Restricted Use Records.** Professional applicators who have made an application of a restricted use pesticide shall, within thirty (30) days of the pesticide application, provide a copy of the application records required under this rule for each application of any restricted use pesticide to the person for whom the pesticide application was made. ()~~

~~101.2. -- 149. (RESERVED)~~

150. PRIVATE APPLICATOR LICENSING.

To obtain a private applicator's license, an applicant must: ()

~~01. Applying for a Private Applicator's License.~~ To obtain a private applicator's license and applicant must: (3-15-22)

~~a. Submit Application.~~ Submit an application prescribed by the Department with applicable fee(s) (Section 250); (3-15-22)()

~~02. Demonstrate Competence.~~ ()

~~ba. Pass an examination based on the Environmental Protection Agency (EPA) core manual with a minimum score of seventy percent (70%). Examination scores are valid for twelve (12) months after the date of the examination. The examination procedure is the same as for professional applicators (Subsection 100.02). Private applicators may only chemigate or make pesticide applications using RUP's in categories for which they have demonstrated competency by passing a Department examination based on a US EPA approved Core/Private Applicator manual. The examination must follow the procedures outlined in Subsection 100.03.~~ (3-15-22)()

~~eb. An applicant will demonstrate competency in all standards outlined in 40 CFR 171.105(a).~~ Demonstrate competence as outlined for Professional Applicators (Subsection 100.01). (3-15-22)()

~~023. License Categories. Private applicators must be certified in the Private Applicator category as a prerequisite to all other private applicator license categories:~~ (3-15-22)

~~a. Private applicators are certified and licensed in one (1) or more of the following categories:~~

Category Name	Category Description
Restricted Use Pesticide (RU)	For use or supervision of restricted use pesticides to produce agricultural commodities or forest crops on land owned or operated by applicator or applicator's employer.
Aerial Pest Control (AA)	For application of pesticides to all application sites owned or operated by applicator or applicator's employer by operating or flying fixed wing or rotary aircraft.
Soil Fumigation (SF)	For applying soil fumigation pesticides to agricultural fields, plant nurseries, and other similar growing media on land owned or operated by applicator or applicator's employer for the growing of agricultural commodities, excluding rodent control.
Space (Area) Fumigation (AF)	For fumigating structures and spaces for pest control with a Restricted Use Pesticide (RUP) including buildings and similar structures, commodity storage facilities and containers, shipholds, railcars owned or operated by applicator or applicator's employer and for RUP fumigant applications for burrowing rodent control.
Chemigation (CH)	For application of chemicals through irrigation systems on land owned or operated by applicator or applicator's employer.

Category Name	Category Description
Private Applicator (PA)	For use or supervision of restricted use pesticides to produce agricultural commodities on land owned or operated by applicator or applicator's employer. Certification in this category alone is not sufficient to authorize the purchase, use, or supervision of use of products for predator control listed in the predator control categories outlined in 40 CFR 171.105(b)(c). PA is prerequisite for all Idaho Private Applicator license categories. An applicant will demonstrate competency standards outlined in 40 CFR 171.105(a).
Aerial Pest Control (AA)	For application of pesticides to all sites owned or operated by an applicator or applicator's employer by operating or flying fixed-wing or rotary aircraft. An applicant will demonstrate competency standards outlined in 40 CFR 171.105(f).
Chemigation (CH)	For application of chemicals through an irrigation system, excluding pesticides to control aquatic organisms. Chemigation of pesticides will require additional relevant private applicator categories. An applicant will demonstrate practical knowledge of chemigation including backflow prevention, minimizing risks related to chemigation, and approved chemigation equipment.
Non-Soil Fumigation (NS)	For applicators who use or supervise the use of a pesticide to fumigate anything other than soil. An applicant will demonstrate competency standards outlined in 40 CFR 171.105(e).
Soil Fumigation (SF)	For applying soil fumigation pesticides to agricultural fields, plant nurseries, and other similar growing media on land owned or operated by applicator or applicator's employer for the growing of agricultural commodities, excluding rodent control. An applicant will demonstrate competency standards outlined in 40 CFR 171.105(d).

(3-15-22)()

03. **License Periods and Recertification.** ~~In order~~ ~~The recertification period~~ for a private applicator's license to be renewed, ~~the license holder must complete the recertification provisions of this section will be concurrent with their two (2) year licensing period, beginning at the license issuance, and ending upon license expiration.~~ Licenses belonging to private applicators with last names beginning with A through L, ~~inclusive,~~ expire on the last day of the month listed on the chart in Subsection 150.03.a. in every odd-numbered year, and licenses belonging to private applicators with last names beginning with M through Z, ~~inclusive,~~ shall expire on the last day of the month listed on the chart in Subsection 150.03.a., in every even-numbered year. ~~The recertification period is concurrent with the licensing period. Any person with less than thirteen (13) months in the initial licensing period is not required to obtain recertification credits for the initial period.~~ Recertification and relicensing may be accomplished by complying with either Subsection ~~0~~150.03.b. or ~~0~~150.03.c. ~~Any person with less than thirteen (13) months in the initial licensing period is not required to obtain recertification credits for the initial period. Any license holder who fails to accumulate the required recertification credits prior to the expiration date of their license will be required to pass the appropriate examination(s) before being licensed.~~

(3-15-22)()

a. Licensing schedule.

Last Name		Month to License
Odd Year	Even Year	
A-D	M-P	March
E-H	Q-T	July
I-L	U-Z	October

()

b. A person Continuing Education: To recertify, and applicator must accumulates ~~recertification~~ seven (7) credits during their recertification period by attending Department-accredited pesticide ~~instruction~~ seminars which meet the following criteria: (3-15-22)()

i. A minimum of six (6) credits shall be earned during each recertification period. (3-15-22)

i. One (1) credit is issued for each fifty (50) minutes of instruction. ()

ii. To request accreditation for a seminar not provided by the Department, an applicant must submit a written request to the Department not less than thirty (30) days prior to the scheduled seminar. Applications received prior to thirty (30) days shall receive preference for credit approval and have the ability to amend their application until the seminar is held. Applications received after the thirty (30) days shall be reviewed by the Department as workload allows. ()

iii. The number of credits to be given will be decided by the Department and may be revised if it is later found that the training does not comply. Credit is given only for those parts of seminars that deal with pesticide subjects as listed in Subsection 100.02.b. No credit will be given for training given to persons to prepare them for initial certification. ()

iv. Verification of attendance at an accredited seminar is accomplished by validating the attendee's pesticide license using a method approved by the Department. Verification of attendance must be submitted with the license renewal application. ()

iv. ~~Guidelines for obtaining recertification credits are described in Subsections 100.06.a.ii. through 100.06.a.v. Any~~ Excess credits ~~accumulated beyond the required six (6) in a recertification period~~ may not be carried over to the next recertification period. (3-15-22)()

vii. Upon earning the recertification credits as described above, a person is eligible for license renewal license holder is recertified for the next ~~licensing~~ recertification period corresponding with the next issuance of a license, provided that the license renewal application is submitted within twelve (12) months from the expiration date of the license. (3-15-22)()

c. Recertification by Examination: A person certified applicator passes the Department's private applicator ~~recertification~~ examination(s) for all categories in which they ~~person~~ intends to license ~~with a minimum score of seventy percent (70%)~~. (3-15-22)()

i. ~~Recertification e~~Examinations may be taken beginning the thirteenth (13th) month of the license period. (3-15-22)()

ii. The examination procedures as outlined in Subsection 100.03 will be followed, ~~except that examination fees are not assessed.~~ (3-15-22)()

iii. Upon passing the ~~recertification~~ examinations, a person is eligible for license renewal for the next licensing period. For the purpose of becoming licensed, ~~recertification~~ examination scores are valid for twelve (12) months after the date of the examination. (3-15-22)()

d. The Department may issue variances for the requirements delineated in Subsection 150.03 in the recertification of private applicators' licenses. Issuance of variances do not relieve the recipient from compliance with all other responsibilities under the Pesticide and Chemigation Act and Rules. The request will be on a Department-prescribed form and state fully the grounds for requesting a variance. ()

e. Licenses are eligible for renewal no sooner than forty-five (45) days from the expiration date. ()

151. -- 199. (RESERVED)

200. ~~LICENSING OF PESTICIDE DEALERS~~ LICENSING.

To obtain a pesticide dealer's license, an applicant must: ()

~~01. Obtaining Pesticide Dealer's License.~~ To obtain a pesticide dealer's license an applicant must: (3-15-22)

~~01.~~ **01. Submit Application.** Submit an application prescribed by the Department with applicable fee(s) (Section 2580); (3-15-22)()

~~ba.~~ **ba.** Obtain ~~Must hold~~ a valid license ~~in with~~ the appropriate professional ~~agricultural~~ category(s) listed in Subsection 100.04 that pertains to the types of restricted use pesticides sold or distributed. (3-15-22)()

~~eb.~~ **eb.** Be renewed after August 31 on even numbered years for a twenty-four (24) month duration. ()

~~c.~~ **c.** Licenses are eligible for renewal no sooner than forty-five (45) days from the expiration date. ()

~~02. Selling GUPs. Persons selling GUPs will not be required to obtain a pesticide dealer license or maintain distribution records of these products.~~ ()

201. RUP DEALER RECORDS REQUIREMENTS.

~~01.~~ **01. Records Requirements.** Maintain, in a location designated by the pesticide dealer, restricted use pesticide distribution records for ~~three~~ two (32) years, ready to be inspected, duplicated, or submitted when requested by the Director. Such records must include the following: (3-15-22)()

~~ia.~~ **ia.** The name and address of the person purchasing or receiving the restricted use pesticide (RUP); and ()

~~iib.~~ **iib.** The certified applicator name, license number, license issuing authority, relevant certification category, and expiration date of the license for the person certified to use the RUP; or (3-15-22)()

~~iic.~~ **iic.** In the case of distribution of a RUP to another pesticide dealer, the name, license number, and expiration date of the license of the licensed pesticide dealer. ()

~~iid.~~ **iid.** The brand name and Environmental Protection Agency (EPA) Registration Number for each RUP distributed and if applicable, include any emergency exemption or State special local need registration number; and (3-15-22)()

~~ie.~~ **ie.** Date of the distribution of each RUP; and ()

~~if.~~ **if.** The quantity and size of each RUP container distributed and the total quantity of RUP distributed; and ()

~~iig.~~ **iig.** The pesticide dealer's name, address, and pesticide dealer license number distributing the RUP. ()

~~02. Selling GUPs. Persons selling only GUPs will not be required to obtain a pesticide dealer license or maintain distribution records of these products.~~ (3-15-22)

~~201.2. -- 249. (RESERVED)~~

250. CHANGE OF LICENSE STATUS.

01. Change Notification. Any person who is licensed by this act will immediately notify the Director, in writing, of any change of status of any person or agent so named, or of any change in the business name,

organization, or any other information shown in the licensing application. ()

02. Transferability. Licenses are not transferable. ()

251. -- 279. (RESERVED)

SUBCHAPTER B – FEES

280. FEES.

01. Pesticide Registration. One hundred sixty dollars (\$160) per product. ()

02. Professional Applicator's License. One hundred twenty dollars (\$120) per licensing period of fourteen (14) months or more, sixty dollars (\$60) per licensing period of thirteen (13) months or less. ()

03. Commercial Apprentice (CA) Applicator's License. Sixty dollars (\$60) per licensing period of twelve (12) months or less. ()

04. Private Applicator's License. A Restricted Use Category, ten dollars (\$10); a Chemigation Category, twenty dollars (\$20); or thirty dollars (\$30) for both categories. ()

05. Pesticide Dealer's License. One hundred dollars (\$100) per licensing period of fourteen (14) months or more, fifty dollars (\$50) per licensing period of thirteen (13) months or less. ()

06. Examination Fee per Examination Category. Ten dollars (\$10). ()

281. -- 349. (RESERVED)

SUBCHAPTER C – REGISTRATION AND USE OF PESTICIDES

350. EXPERIMENTAL PERMITS.

Any person who wishes to obtain an experimental permit to register a pesticide ~~for a special local need~~ under Section 22-3402(5), Idaho Code, must file an application with the Department which includes: (3-15-22)()

01. Name. Company name. ()

02. Applicant. Name, address, and telephone number of the applicant. ()

03. Shipment. Proposed date of shipment or proposed shipping period not to exceed one (1) year. ()

04. Active Ingredient. A statement listing the active ingredient. ()

05. Quantity Statement. A statement of the approximate quantity to be tested. ()

06. Acute Toxicity. Available data or information or reference to available data on the acute toxicity of the pesticide. ()

07. Statement of Scope. A statement of the scope of the proposed experimental program, including the type of pests or organisms involved, the crops and animals for which the pesticide is to be used, the areas where the applicant proposes to conduct the program, and when requested by the Director, the results of previous tests. ()

08. Temporary Tolerance. ~~When~~ If the pesticide is to be used on food or feed, a temporary tolerance must be obtained from the EPA or evidence that the proposed experiment will not result in injury to humans or animals, or illegal residues entering the food chain. A temporary tolerance is not needed if the food, feed, or fiber crop to which the experimental pesticide is applied will be completely destroyed after the data is collected. (3-15-22)()

09. **Proposed Labeling.** Proposed labeling which must bear: ()
- a. The prominent statement “For Experimental Use Only” on the container label and any labeling that accompanies the product. ()
 - b. An adequate caution or warning statement to protect those who may handle or be exposed to the experimental formulation. ()
 - c. Name and address of the applicant for the permit. ()
 - d. Name or designation of the formulation. ()
 - e. Directions for use. ()
 - f. A statement listing the name and percentage of each active ingredient and the total percentage of inert ingredients. ()
10. **Quantity Limit.** The Director may limit the quantity of pesticide covered by the permit or make such other limitations as may be determined necessary for the protection of humans or the environment. ()
11. **Experimental Use.** A pesticide for experimental use will not be offered for sale unless a written permit has been obtained from the Director. ()

351. -- 399. (RESERVED)

400. PESTICIDE RESTRICTIONS.

01. **Application of Restricted Use Pesticides by Noncertified Applicators.** ~~An uncertified noncertified~~ applicator may apply restricted use pesticides (RUPs) under on-site supervision by a professional applicator with the required license categories of the application being supervised if: (3-15-22)()
- a. ~~One or both of the following conditions are met~~ Noncertified applicator has completed the following training within twelve (12) months prior to application: (3-15-22)()
 - i. ~~Uncertified applicator completes Applicator Core Competency (CO)-~~ (3-15-22)
 - ii. ~~Uncertified applicator has completed~~ EPA approved Worker Protection Standard (WPS) certification for pesticide handler training or equivalent. (3-15-22)()
 - ii. The safe operation of any equipment they will use for mixing, loading, transferring, or applying pesticides. ()
 - b. The ~~un~~noncertified application of any pesticide is prohibited for: (3-15-22)()
 - i. Soil or ~~area (space)~~ non-soil fumigation; (3-15-22)()
 - ii. Aerial application ~~of pesticides.~~ (3-15-22)()
 - iii. Professional applications conducted by a person under eighteen (18) years of age. ()
 - c. Maintain noncertified applicator training records for three (3) years, ready to be inspected, duplicated, or submitted when requested by the Director. Such records shall contain: ()
 - i. Noncertified applicator’s printed name and signature. ()
 - ii. Date of training. ()

- iii. Full name of the person who provided the training. ()
- iv. Trainer's qualification to conduct training. ()
- v. Title or a description of the training provided. ()
- vi. If the noncertified applicator is a licensed applicator who is not certified to perform the type of application being conducted while under on-site supervision by a professional applicator, the record must include all of the following information: ()
- (1) Noncertified applicator's name. ()
- (2) Noncertified applicator's license number. ()
- (3) Expiration date of the noncertified applicator's license. ()
- (4) Certifying authority that issued the license. ()
- d.** Requirements for supervisors of noncertified applicators of RUPs under on-site supervision. A certified applicator must ensure that all the following requirements are met before allowing a noncertified applicator to use a restricted use pesticide under their on-site supervision: ()
- i. The noncertified applicator must have access to the applicable product labeling at all times during its use. ()
- ii. Where the labeling of pesticide product requires that personal protective equipment be worn for mixing, loading, application, or any other use activities, the noncertified application has been provided clean, label required personal protective equipment in proper operating condition and the personal protective equipment is used correctly. ()
- iii. The certified applicator must provide to each noncertified applicator before use of a restricted use pesticide instructions specific to the site and pesticide used. These instructions must include labeling directions, precautions, and requirements applicable to the specific use and site, and how the characteristics of the use site and the conditions of application might increase or decrease the risk of adverse effects. ()
- iv. The certified applicator must ensure that before each day of use equipment used for mixing, loading, transferring, or applying pesticides is in proper operating condition as intended by the manufacturer, and can be used without risk of reasonably foreseeable adverse effects to the noncertified applicator, other persons, or the environment. ()
- v. The certified applicator must ensure that a means to immediately communicate with the certified applicator is available to each noncertified applicator using restricted use pesticides under their direct supervision. ()
- vi. The certified applicator must be physically present at the site of the use being supervised. ()
- vii. The certified applicator must create or verify the existence of the records required by Subsection 400.01.c. of this rule. ()
- 02. Application of General Use Pesticides by Noncertified Applicators.** A **Professional** Commercial Apprentice applicator may apply general use pesticides (GUPs) under ~~OL, OH, AI, AH, GP~~ **MP, OP, AC, IP**, and RW categories with limited supervision by a professional applicator that has the required license categories of the application being supervised if: (3-15-22)()
- a. All of the following conditions are met: ()

- i. The Professional Commercial Apprentice applicator has a valid ~~(CA)~~ license ~~category~~. (3-15-22)()
- ii. Immediate communication requirements exist between the supervising professional applicator and the Professional Commercial Apprentice applicator. (3-15-22)()
- b. Applications of RUPs, ~~Total Vegetation Control pesticide, or injectables to soil or plants~~ are prohibited under the CA Professional Commercial Apprentice license ~~category~~. (3-15-22)()

03. Mixer-Loaders. No person will act as a mixer-loader for a professional applicator without first obtaining annual training. ()

a. Training will be conducted and certified by the professional applicator who employs the mixer-loader. ~~Certification of training on a form prescribed by the Department must include the signatures of both the mixer loader and the professional applicator providing the training. Training recordkeeping requirements for mixer-loaders shall be the same as for noncertified applicators of restricted use pesticides under on-site supervision (see Subsection 400.01.c. of this rule.)~~ (3-15-22)()

b. Training ~~includes areas relevant to the pesticide mixing and loading operation and instruction on the interpretation of pesticide labels, safety precautions, first aid, compatibility of mixtures, and protection of the environment~~ requirements shall be the same as for noncertified applicators of restricted use pesticides under on-site supervision (see Subsection 400.01a. of this rule.) (3-15-22)()

04. Non-Domestic Pesticides Restrictions. ()

a. Home and Garden Restrictions. The following pesticides are to be registered only when labeled, distributed, sold or held for sale and use other than home and garden use and are not be sold to home and garden users or applied by professional applicators around any home or garden. ()

- i. Bidrin (Foliar applications). ()
- ii. Strychnine (one percent (1%) and above). ()
- iii. Zinc Phosphide (two point one percent (2.1%) and above). ()

b. Ester Restriction. Low volatile liquid ester formulations of herbicides shall not be applied around any home or garden at any time when ambient air temperature exceeds or is forecasted to exceed eighty (80) degrees Fahrenheit during the day of application. ()

05. Restrictions to Protect Pollinators. ()

a. Bee Restrictions. Any pesticide that is toxic to bees shall not be applied to any agricultural crop when such crop is in bloom or when bees are actively foraging on blooming weeds in the crop being sprayed except during the period beginning three (3) hours before sunset until three (3) hours after sunrise. ()

b. Green Pea Exception. In the counties of Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone: Green (white) pea crops may be sprayed or dusted at any time. ()

c. Other Exceptions. Pesticides may be applied at any time to sweet corn for processing, hops, potatoes, and beans other than lima beans, subject to all other applicable regulations. ()

06. Deviations from Pesticide Labels and Labeling. Any licensed professional or private applicator may deviate from pesticide label directions for use only as EPA or state laws, rules, and regulations permit. ()

07. Wind Velocity Restrictions. No person will apply pesticides in sustained wind speeds that exceed the product label directions. If a pesticide label does not state a specific wind speed limitation, pesticides will not be applied in sustained wind conditions exceeding ten (10) miles per hour. ()

a. Exceptions. Application of pesticides by injection into application site or by impregnated granules shall be made according to label directions. ()

b. Approval for Use of Other Application Techniques. Other pesticide application techniques or methods may be approved by the Director or his agent on a case-by-case basis. ()

c. Chemigation Wind Speed Precautions. Chemicals shall not be applied when wind speed favors drift beyond the area intended for treatment or when chemical label restricts the use of a pesticide for wind speed. ()

08. Phenoxy Herbicide Restrictions. ()

a. High Volatile Ester Restrictions. No aircraft pilot will apply high volatile ester formulations of 2,4-D: ()

i. In Latah, Nez Perce, and Clearwater Counties in Idaho; or ()

ii. Within five (5) miles of a susceptible crop or hazard area in any other county in Idaho. ()

iii. Waiver of the restriction ~~is in~~ Subsections 400.058.a.i. and 400.058.a.ii. may be issued on a project-by-project basis by the Director. (3-15-22)()

b. Low Volatile Ester Restrictions. No aircraft pilot will apply low volatile ester formulations of 2,4-D; MCPA and MCPB: ()

i. In Latah, Nez Perce, and Clearwater Counties in Idaho, unless ambient air temperatures are not above or expected to exceed eighty-five (85) degrees Fahrenheit within twenty-four (24) hours of the expected application time, or ()

ii. Within one (1) mile of a hazard area in any other county in Idaho. ()

iii. Waiver of the restriction in Subsection 400.058.b.i. may be issued on a project-by-project basis by the Director. (3-15-22)()

c. A continuous smoke column or other device satisfactory to the Director will be employed to indicate to the pilot of any aircraft the direction and velocity of the airflow, and indicate a temperature inversion by layering of smoke, at the time and place of application when applying any formulation of 2,4-D; MCPA; MCPB and Dicamba. ()

09. Pesticide-Fertilizer Mix Restrictions. No person will distribute, sell, offer for sale, or hold for sale any dry pesticide incorporated in a dry blended bulk fertilizer mix. ()

10. Pesticide Drift Prohibitions. The application of pesticides that results in drift outside of the target area is prohibited. ()

401. -- 449. (RESERVED)

450. PESTICIDE USE ON SEED CROP FIELDS.

01. Nonfood and Nonfeed Site Conditions. For purposes of pesticide registration, all alfalfa seed, carrot seed, chicory seed, clover seed, collard seed, coriander/cilantro seed, dill seed, endive seed, garden beet seed, kale seed, kohlrabi seed, leek seed, lettuce seed, mustard seed, onion seed, parsnip seed, pollinator rows of hybrid canola seed, radish seed, rutabaga seed, sugar beet seed, Swiss chard seed, and turnip seed crop fields are considered nonfood and nonfeed sites for pesticide use and the following conditions will be met: ()

a. No portion of the seeds listed in Section 450.01, including but not limited to seed screenings, green

chop, hay, chaff, combine tailings, pellets, meal, whole seed and cracked seed, may be grazed, used, or distributed for food or feed purposes. ()

b. The seed conditioner will keep records of individual growers' seeds listed in Section 450.01 dirt weight and clean weight for three (3) years and will furnish the records to the Director upon request. ()

c. All seed screenings will be disposed of at a sanitary landfill, incinerator, or other equivalent disposal site or by a procedure approved by the Director. ()

d. The seed conditioner will keep seed screening disposal records for three (3) years from the date of disposal and will furnish the records to the Director upon request. Disposal records will consist of documentation from the disposal site and show the total weight of disposed screenings and the date of disposal. ()

e. All seeds listed in Section 450.01 grown or conditioned in this state will bear a tag or container label which forbids the use of the seed for human consumption or animal feed. ()

f. No seeds listed in Section 450.01 grown or conditioned in this state will be distributed for human consumption or animal feed. ()

g. All portions of the seeds listed in Section 450.01, including but not limited to seed screenings, pellets, meal, whole seed and cracked seed may be composted. All composted material may be applied to agricultural crop land as approved by the Director. ()

02. Exemption. Alfalfa seed, kale seed and radish seed crops grown for human consumption are exempt from the requirements of Subsection ~~8045~~0.01 provided: (3-15-22)()

a. All pesticides used are labeled for use on alfalfa seed, kale seed, and radish seed crops and have established residue tolerances which allow food or feed use; and ()

b. All producers maintain for three (3) years complete records of all pesticides applied as specified in Pesticide Use and Application Rules Subsection ~~1500.025~~. (3-15-22)()

451. -- 499. (RESERVED)

500. UNUSABLE PESTICIDES COLLECTION AND DISPOSAL.

01. Director's Authority to Dispose. The Director or designated agent may, if deemed necessary for the protection of the environment, take possession and dispose of canceled, suspended, or otherwise unusable pesticides. (3-15-22)()

02. Prohibited Handling or Disposal. A person shall not dispose of or handle any pesticide or any pesticide containing material as follows: ()

a. In a manner that results in generating hazardous waste. ()

b. So as to violate any state or federal pollution control statute. ()

c. So as to cause or allow burying in a land site in a manner that is not in compliance with applicable state and federal solid waste regulations. ()

d. So as to cause or allow the storage of pesticides or pesticide-containing materials, including rinsate or wash water, in underground tanks. This prohibition does not apply to watertight catch basins that are used for temporary collection or other recirculating systems as approved by the Director. ()

501. -- 549. (RESERVED)

550. STORAGE OF PESTICIDE CONTAINERS.

01. Protecting Humans and Environment. No person will handle, transport, display, or distribute pesticides in such a manner as to endanger humans and their environment, or to contaminate food, feed, or any other product that may be transported, stored, displayed, or distributed with such pesticides. ()

02. Storage by Professional Applicators or Restricted Use Pesticide Dealers. Storage of pesticide containers by professional applicators and ~~pesticide~~ RUP dealers must meet the following conditions: (3-15-22)()

a. Pesticide containers ~~which contain Class 1 highly toxic pesticides (LD50 of 50 or below) and which require the skull and crossbones insignia and the words "Danger/Danger - Poison" on the label; and Class 2 (moderately toxic) pesticides (LD50 - 500) which carry a "Warning" statement on the label; and Class 3 (slightly toxic) pesticides (LD50 of 500-5000) and which carry a "Caution" statement on the label;~~ will be stored in one (1) of the following enclosures which when unattended will be locked to prevent unauthorized persons, livestock, or animals from gaining entry: (3-15-22)()

- i. Closed vehicle; ()
- ii. Closed trailer; ()
- iii. Building or room; ()
- iv. Fenced area with a fence at least six (6) feet high; ()
- v. Truck or trailer with solid sideracks and secured tailgate at least six (6) feet above ground level. ()

b. Pesticide containers ~~which contain Class 4 pesticides (LD50 over 5000)~~ will be stored in secured storage out of the reach of children in one (1) of the above enclosures. (3-15-22)()

c. Warning notices; must be posted and visible from ~~any direction, all approachable sides of the pesticide storage area and will be posted around all storage areas where pesticide containers which hold or have held pesticides required to be labeled with the signal words "Warning" or "Danger - Poison" are stored. Each warning notice will be of such size that it is~~ be readable at a distance of twenty-five (25) feet and must be substantially as follows:

"D A N G E R"

**"POISON STORAGE AREA
ALL UNAUTHORIZED PERSONS
KEEP OUT"**

The notice will be repeated in an appropriate language other than English when it may be reasonably anticipated that persons who do not understand the English language will come to the enclosure. The notice will also contain the name and telephone number of a person to contact in case of an emergency. (3-15-22)()

03. Exceptions. The provisions of Subsection 550.02 shall not apply to drums of petroleum oils, lime sulfur, and copper sulfate. ()

04. Disposal. Any person applying pesticides shall be responsible for the proper disposal of such empty containers. ()

551. -- 599. (RESERVED)

SUBCHAPTER D – CHEMIGATION

600. GENERAL CHEMIGATION REQUIREMENTS.

01. Pesticides Labeled for Chemigation. The chemigator will use only pesticides labeled for chemigation when chemigating. ()

02. Monitoring Chemigation. Licensed professional applicators that start the application of chemicals through chemigation equipment do not have to be present during the entire application, but must return to monitor the proper application at least once every four (4) hours for the duration of the application. ()

03. Chemigation Equipment Standards. Equipment will be placed on the Department's list of approved chemigation equipment after the manufacturers provide to the Department verification that the equipment meets the standards established in these rules. ()

04. Chemigating Over Waters of the State. ~~Chemigating over waters of the state s~~ shall be prohibited, except for variances allowed in Section 700. (3-15-22)()

601. -- 649. (RESERVED)

650. IRRIGATION SYSTEMS.

~~Equipment required for each type of irrigation system when chemigation is to be used includes:~~ Defined in the ISDA Chemigation System Requirement Protocol document located at the department website at www.agri.idaho.gov. (3-15-22)()

~~**01. Sprinkler or Drip Irrigation.** If chemicals are being chemigated through the sprinkler or drip irrigation system, the chemigator will verify that the system complies with either Subsection 650.01.a. or 650.01.b. plus the additionally specified equipment for each:~~ (3-15-22)

~~**a.** Irrigation Line Check Valve, (Section 665); with the following:~~ (3-15-22)

~~i. Automatic Low Pressure Drain, (Section 695);~~ (3-15-22)

~~ii. Inspection Port, (Section 690);~~ (3-15-22)

~~iii. Vacuum Relief Valve or a combination Air and Vacuum Relief Valve, (Section 685);~~ (3-15-22)

~~iv. Chemical Injection System, (Section 670);~~ (3-15-22)

~~v. Chemical Injection Line Shut Down (System Interlock), (Section 660);~~ (3-15-22)

~~**b.** Gooseneck Pipe Loop, Downhill and Over A Hill backflow prevention devices may be used For surface water, (Section 680); with~~ (3-15-22)

~~i. Chemical Injection System, (Section 670);~~ (3-15-22)

~~ii. Chemical Injection Line Shut Down (System Interlock), (Section 660).~~ (3-15-22)

~~**02. Flood, Basin, Furrow, or Border Irrigation.** If a chemical, including anhydrous ammonia, will be applied by flood, basin, furrow, or border chemigation through a gravity flow system, the chemigator will verify that the system uses a gravity flow dispensing system that meters the chemical into the water at the head of the field and downstream of a hydraulic discontinuity such as a drop structure or weir box to decrease potential for water source contamination from backflow if water flow stops.~~ (3-15-22)

~~**03. Domestic Water Supply System Cross Connected for Chemigation.** Any irrigation system used for chemical application cross connected to a domestic water supply system will be verified that the system contains either Subsection 650.03.a. or 650.03.b. plus all other additionally specified equipment for each;~~ (3-15-22)

~~**a.** Reduced Pressure Principle Backflow Prevention Assembly (RP) that:~~ (3-15-22)

~~i. Is located on the irrigation pipeline between the water supply pump and the point of chemical~~

~~injection, and downstream from any domestic water supply diversion point. (3-15-22)~~

~~ii. Keep contaminated water from flowing back into a domestic water supply system when some abnormality in the system causes pressure to be temporarily higher in the contaminated part of the system than in the domestic water supply system piping. (3-15-22)~~

~~iii. Has been manufactured in full conformance with the American National Standards Institute (ANSI)/American Water Works Association (AWWA) ANSI/AWWA C511 Standard for Reduced Pressure Principle Backflow Prevention Assemblies established by the AWWA; and have met completely the laboratory and field performance specifications of the Foundation for Cross-Connection Control and Hydraulic Research of the University of Southern California (USC FCCCHR); or an equivalent, Department approved testing facility. (3-15-22)~~

~~b. Chemical Injection System (Section 670); with either Subsection 650.03.b.i. or 650.03.b.ii. (3-15-22)~~

~~i. Chemical Injection Line Shut Down (System Interlock), (Section 660); (3-15-22)~~

~~ii. Air Gap (AG). The water from the domestic water supply system will be discharged into a reservoir tank prior to the chemical injection. An air gap will be at least double the diameter of the supply pipe measured vertically above the overflow rim of the vessel—in no case less than one (1) inch. Chemical injection will not occur upstream of the air gap; and (3-15-22)~~

~~(a). Chemical Injection System, (Section 670); and (3-15-22)~~

~~(b). Chemical Injection Line Shut Down (System Interlock), (Section 660). (3-15-22)~~

651. -- ~~659.~~ (RESERVED)

660. ~~CHEMICAL INJECTION LINE SHUT DOWN (SYSTEM INTERLOCK).~~

~~In every chemigation system, a functional system interlock designed and installed to shut down the chemical injection unit when chemical distribution is adversely affected will connect the water supply pump and the chemical injection unit or connect the irrigation line pressure switch and the chemical injection unit if there is no water supply pump and the system is pressurized. The chemical injection line will contain one (1) of the following interlocks found in Subsections 660.01 through 660.05, to ensure that a chemical injection pump will stop if the irrigation pump stops to prevent the entire chemical mixture from emptying from the supply tank into the irrigation pipeline: (3-15-22)~~

~~**01. Electrical Interlock.** Electrical interlock which contains one (1) of the four options in Subsections 660.01.a. through 660.01.d. plus all of the additionally specified equipment for each: (3-15-22)~~

~~**a. Electric Motor Driven Irrigation Pump or Power Panel:** The electrical controls for the irrigation pump panel or power panel at the pivot or linear will be interlocked with an electric powered chemical injection pump so that if the water pump shuts off or the pressure switch shuts off power at the panel, the chemical injection pump will shut off (it is recommended that the interlock also be provided to shut off the irrigation system if the chemical injection pump shuts off); plus (3-15-22)~~

~~i. Injection Line Check Valve, (Section 670), will be installed; and (3-15-22)~~

~~ii. In pressurized irrigation systems, the irrigation line or water pump will include a functional pressure switch. (3-15-22)~~

~~**b. Solenoid Operated Valve.** A functional automatic quick-closing check valve and a functional normally closed solenoid operated valve connected to the system interlock will be: (3-15-22)~~

~~i. Normally be closed; open only when there is adequate pressure in the irrigation line to ensure uniform chemical distribution; and (3-15-22)~~

- ~~ii. Be located on the intake side of the injection pump; (3-15-22)~~
- ~~iii. Open only when there is adequate pressure in the irrigation line to insure uniform chemical distribution; and (3-15-22)~~
- ~~iv. In pressurized irrigation systems, include a functional pressure switch for the irrigation line or water pump. (3-15-22)~~
- ~~e. A functional automatic quick-closing check valve and a functional normally-closed hydraulically operated check valve. The hydraulically operated check valve will: (3-15-22)~~
 - ~~i. Be connected to the main water line such the way the valve only opens when the main water line is adequately pressurized; (3-15-22)~~
 - ~~ii. In pressurized irrigation systems, include a functional pressure switch for the irrigation line or water pump; (3-15-22)~~
 - ~~d. A functional automatic quick-closing check valve and a functional vacuum relief valve located in the chemical injection line between the positive displacement chemical injection pump and the chemical check valve which: (3-15-22)~~
 - ~~i. Is appropriate only for those chemigation systems using a positive displacement chemical injection pump and is not for use with Venturi injection systems; (3-15-22)~~
 - ~~ii. Is elevated at least twelve (12) inches above the highest fluid level in the chemical supply tank and is the highest point in the injection line; (3-15-22)~~
 - ~~iii. Opens at six (6) inches water vacuum or less and is spring-loaded or otherwise constructed such that it does not leak on closing; (3-15-22)~~
 - ~~iv. Prevents leakage from the chemical supply tank on system shutdown; (3-15-22)~~
 - ~~v. Is constructed of chemically resistant materials; (3-15-22)~~
 - ~~vi. In pressurized irrigation systems, the irrigation line or water pump shall include a functional pressure switch. (3-15-22)~~
- ~~02. **Mechanical Interlock.** Irrigation pumps driven by an internal combustion engine will be interlocked between the chemical injection pump and the irrigation pump by either of the options in Subsections 660.02.a. or 660.01.b. plus the additionally specified equipment Subsection 660.02.e.: (3-15-22)~~
 - ~~a. By operating the chemical injection equipment from the engine electrical system, or an electrical generator driven by the pumping plant power unit. (3-15-22)~~
 - ~~b. By belt from the drive shaft of the irrigation pump or an accessory pulley of the engine: with (3-15-22)~~
 - ~~i. Injection Line Check Valve, (Section 670), installed in pressurized irrigation systems, a functional pressure switch included for the irrigation line or water pump. (3-15-22)~~
- ~~03. **Hydraulic Interlock.** Hydraulic interlock with functional, normally closed, hydraulically operated check valve. The control line must be connected to the main water line such that the valve opens only when the main water line is adequately pressurized. This valve must prevent leakage from the chemical supply tank on system shutdown. The valve must be constructed of chemically resistant materials, such as a Venturi System. (3-15-22)~~
- ~~04. **Human Interlock.** A human interlock shall consist of human supervision on site during the injection of a chemical into the irrigation system for one (1) hour or less to shut down the system in case of failure of~~

- ~~the injection pump or irrigation system; with (3-15-22)~~
- ~~a. Injection Line Check Valve (Section 665) installed; (3-15-22)~~
 - ~~b. In pressurized irrigation systems, a functional pressure switch included for the irrigation line or water pump. (3-15-22)~~
 - ~~05. Other Approved Options. Any other option approved by the Director. (3-15-22)~~
- ~~661.—664. (RESERVED)~~
- 665. INJECTION LINE CHECK VALVE.**
A functional, spring-loaded injection line check valve. (3-15-22)
- 01. Attributes:** A minimum of ten (10) pounds per square inch (psi) opening (cracking) pressure: (3-15-22)
 - ~~a. Located between the chemical injection pump and the point of chemical injection into the irrigation line; (3-15-22)~~
 - ~~b. Made of chemically resistant material; (3-15-22)~~
 - ~~c. Designed to prevent irrigation water under operating pressure from entering the chemical injection line; and (3-15-22)~~
 - ~~d. Designed to prevent leakage from the chemical supply tank on system shut down. (3-15-22)~~
 - 02. Substitute System.** The injection line check valve is a substitute for both the solenoid operated valve and the functional, automatic, quick closing check valve in the chemical injection line. (3-15-22)
- ~~666.—669. (RESERVED)~~
- 670. CHEMICAL INJECTION SYSTEM.**
All chemical injection systems, except for flood, basin, furrow, or border chemigation through a gravity flow system, will use either: (3-15-22)
- ~~01. Metering Pump.~~ Such as a positive displacement injection pump effectively designed and constructed of materials that are compatible with chemicals and capable of being fitted with a system interlock; or (3-15-22)
 - 02. Venturi System.** Including those inserted directly into the main water line, those installed in a bypass system, and those bypass systems boosted with an auxiliary water pump that meet the following criteria: (3-15-22)
 - ~~a. Booster or auxiliary water pumps shall be connected with the system interlock such that they are automatically shut off when the main line irrigation pump stops, or in cases where there is no main line irrigation pump, when the water pressure decreases to the point where pesticide distribution is adversely affected; (3-15-22)~~
 - ~~b. Venturies shall be constructed of chemically resistant materials; and (3-15-22)~~
 - ~~c. The line from the chemical supply tank to the Venturi will contain a functional, automatic, quick closing check valve to prevent the flow of liquid back toward the chemical supply tank. This valve will be located immediately adjacent to the Venturi chemical inlet. (3-15-22)~~
 - ~~d. This same supply line will also contain either a functional normally closed solenoid operated valve connected to the system interlock or a functional normally closed hydraulically operated valve which opens only when the main water line is adequately pressurized. (3-15-22)~~

~~e. In bypass systems as an option to placing both valves in the line from the chemical supply tank, the check valve may be installed in the bypass immediately upstream of the Venturi water inlet and either the normally closed solenoid or hydraulically operated valve may be installed immediately downstream of the Venturi water outlet. (3-15-22)~~

~~671.—674. (RESERVED)~~

~~675. IRRIGATION LINE CHECK VALVE.~~

- ~~01. Construction. Construction will: (3-15-22)~~
- ~~a. Consist of at least a single check valve; (3-15-22)~~
 - ~~b. Be heavy duty with all materials resistant to corrosion or protected to resist corrosion; (3-15-22)~~
 - ~~c. Be spring loaded with a chemically resistant and resilient seal that provides a watertight seal against reverse flow; (3-15-22)~~
 - ~~d. Not consist of metal to metal seal surfaces; (3-15-22)~~
 - ~~e. Be rated at a pressure equal to or greater than the system working pressure; and (3-15-22)~~
 - ~~f. Be positioned and oriented according to manufacturer specifications to ensure proper functioning. (3-15-22)~~
 - ~~g. Be located in the pipeline between the irrigation pump and the point of chemical injection into the irrigation pipeline, and downstream from a vacuum relief valve and automatic low pressure drain. (3-15-22)~~
 - ~~h. Be leveled and on a horizontal plane with deviation of not more than ten (10) degrees from horizontal when installed. (3-15-22)~~
 - ~~i. Be labeled with the following: (3-15-22)~~
 - ~~i. Manufacturer's name and model; (3-15-22)~~
 - ~~ii. Direction of flow. (3-15-22)~~
- ~~02. Model Certification. The manufacturer of the irrigation line check valve will provide verification to the director that the valve model has been tested and certified by an independent laboratory such as the Center For Irrigation Technology, Fresno, California and Great Plains Meter, Inc. Aurora, Nebraska, or other Department approved facility as meeting the following leakage test criteria: (3-15-22)~~
- ~~a. Low Pressure Drip Test. A check valve withstands for sixteen (16) hours without leakage at the valve seat an internal hydrostatic pressure equivalent to the head of a column of water five (5) feet (1.5m) high retained within the downstream portion of the valve body. No leakage occurs as evidenced by wetting of paper placed beneath the valve assembly. This test is to be conducted with the valve in both the horizontal and vertical position if intended for such use. (3-15-22)~~
 - ~~b. High Pressure Test. A check valve withstands for one (1) minute, without leakage at joints or at the valve seat, an internal hydrostatic pressure of two (2) times the rate of working pressure of the valve. (3-15-22)~~

~~676.—679. (RESERVED)~~

~~680. GOOSENECK PIPE LOOP, DOWNHILL AND OVER A HILL.~~

- ~~01. Location. Will be located in the main water line downstream of the irrigation water pump.~~

(3-15-22)

02. Position. The bottom side of the pipe at the loop apex will be at least twenty four (24) inches above the highest sprinkler or other type of water emitting device on the highest part of the field. (3-15-22)

03. Pipe Loop. The loop will contain either a vacuum relief or combination air and vacuum relief valve at the apex of the pipe loop, and if the water pump is portable and the apex is a straight, horizontal section of pipe, the pipe will be level. (3-15-22)

04. Location of Chemical Injection Port. The chemical injection port will be located downstream of the apex of the pipe loop and at least six (6) inches below the bottom side of the pipe at the loop apex. (3-15-22)

05. Use Restriction. Is not to be allowed when pumping from a groundwater source. (3-15-22)

~~681.—684. (RESERVED)~~

685. VACUUM RELIEF VALVE OR COMBINATION AIR AND VACUUM RELIEF VALVE.

01. Location. Will be located on top of the horizontal irrigation pipeline on the upstream side of the check valve. (3-15-22)

02. Orifice Size. Have have a total (individually or combined) orifice size of at least three-fourths (3/4) inch diameter for a four (4) inch pipe, a one (1) inch diameter for a five (5) to eight (8) inch pipe, a two (2) inch diameter for a nine (9) to eighteen (18) inch pipe, and a three (3) inch diameter for a nineteen (19) inch and greater pipe. (3-15-22)

~~686.—689. (RESERVED)~~

690. INSPECTION PORT.

The inspection port can be combined with a mounting of a vacuum relief or combination air and vacuum relief valve and: (3-15-22)

01. Location. Location Be located: (3-15-22)

a. On the pipeline between the irrigation pump and the irrigation pipeline check valve directly above the low pressure drain; (3-15-22)

b. Near the irrigation line check valve to allow for inspections and check for malfunctioning of the irrigation line check valve and low pressure drain. (3-15-22)

02. Orifice Size. Have a minimum diameter opening of four (4) inches from which the check valves and low pressure drain will be visible; (3-15-22)

03. Mounting: Be mounted with quick disconnects, quick coupler, ring lock or flange fittings, dresser couplings or other fittings that allow for easy removal of the inspection port with any bolts located on the outside of the irrigation water pipe; and (3-15-22)

~~691.—694. (RESERVED)~~

695. AUTOMATIC LOW PRESSURE DRAIN.

01. Criteria. An automatic low pressure drain will meet the following criteria: (3-15-22)

a. Is installed upstream of the irrigation line check valve at the lowest point of the horizontal water supply pipeline; (3-15-22)

b. Does not extend into the horizontal pipe beyond the inside surface of the bottom of the pipe;

~~(3-15-22)~~

~~e. Is at least three-fourths (3/4) inch in diameter with a closing pressure of not less than five (5) psi;~~
~~(3-15-22)~~

~~d. If the drain is within twenty (20) feet of the water source, contains a corrosion resistant tube, pipe, hose, or similar conduit one-half (1/2) inch in diameter to discharge a solution at least twenty (20) feet down slope from the irrigation water source and away from any other water sources; and~~
~~(3-15-22)~~

~~e. Does not have any valves located on the outlet side of the drain tube.~~
~~(3-15-22)~~

~~696.—699. (RESERVED)~~

700. VARIANCES.

~~The Department may grant variances with such conditions and safeguards as it determines are necessary to prevent contamination or pollution of the waters of the state. Issuance of variances do not relieve the recipient from compliance with all other responsibilities under the Pesticide and Chemigation Act and Rules. Such variances may be granted upon a request from the owner or operator of the property affected and approval by the Director. The application will state fully the grounds of the application and the facts relied upon. Upon the Department's further investigation, if certain antipollution devices otherwise required by these rules or the Pesticide and Chemigation Act, are not necessary or consequences inconsistent with the rules or act, such variances may be granted.~~
~~(3-15-22)~~

~~701.—999. (RESERVED)~~

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.04.14 – RULES GOVERNING DAIRY BYPRODUCT
DOCKET NO. 02-0414-2301 (ZBR CHAPTER REWRITE)
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo and Incorporation By Reference Synopsis \(IBRS\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the (year) Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

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 37-603, 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 is being presented for authorization as part of the ISDA’s plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor’s [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

These rules govern the Department’s review, approval, and enforcement of dairy environmental management plans.

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 October 4, 2023 Idaho Administrative Bulletin, [Vol. 23-10, pages 68-74](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

Does not apply to this rulemaking.

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:

There is no fiscal impact as a result of this rulemaking.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule regulates an activity that is not regulated by the federal government; therefore the entire rule is broader in scope or more stringent than federal law.

The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lloyd B. Knight, Deputy Director at (208)332-8615.

DATED this 3rd of January, 2024.

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
Phone: (208) 332-8615
Email: lloyd.knight@isda.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 37-603, 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 October 18, 2023.

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:

This rule is being presented for authorization as part of the ISDA's plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor's [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

These rules govern the Department's review, approval, and enforcement of dairy environmental management plans.

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

There are no fees included 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:

There is no 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 May 3, 2023 Idaho Administrative Bulletin, [Vol. 23-5, Page 11](#).

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:

Documents incorporated by reference include the Idaho NRCS Nutrient Management Standard 590, and a publication entitled “The Phosphorus Site Index”. These two publications are necessary as technical standards for implementation of the statute and rule.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule regulates an activity that is not regulated by the federal government; therefore the entire rule is broader in scope or more stringent than federal law.

The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 October 25, 2023.

DATED this 4th day of October, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 02-0414-2301

02.04.14 – RULES GOVERNING DAIRY BYPRODUCT

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 37, Chapters 3, 4, and 6, Idaho Code. ()

001. SCOPE.

These rules govern the Department’s review, approval, and enforcement of dairy environmental management plans. ()

002. -- 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into this chapter. ()

01. Nutrient Management Standard (NMS). ()

a. Idaho NRCS Nutrient Management Standard 590. The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590, available online at https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient_Management_code_590.pdf, or, ()

b. The Phosphorus Site Index: A Systematic Approach to Assess the Risk of Nonpoint Source

Pollution of Idaho Waters by Agricultural Phosphorus, 2023. This document is available online at <https://agri.idaho.gov/main/animals/environmental-nutrient-management/>. ()

005. -- 009. (RESERVED)

010. DEFINITIONS.

In addition to Section 37-604, Idaho Code, the following definitions apply in the interpretation and enforcement of this chapter: ()

01. Dairy Animal. Milking cows, sheep or goats. ()

02. Pasture, Pasturing, and Pastured. For purposes of these rules, a pasture is an irrigated or dryland field with forage plant growth covering a minimum of fifty percent (50%) of the field. Pasturing and pastured is dairy animals and other animals owned, leased, or otherwise under the control of the producer, grazing in the same dairy farm pasture. Pastures are not considered part of a dairy storage and containment facility. ()

03. Permit. A permit issued by the Department allowing the sale of Grade A milk or manufacture grade milk. ()

04. Phosphorus Site Index. A method to evaluate the relative potential for off-site movement of phosphorus from a field or pasture based upon risk factors relating to surface transport, phosphorus loss potential and nutrient management practices. ()

05. Producer. The person who owns or operates a permitted dairy farm. ()

011. ABBREVIATIONS.

01. IPDES. Idaho Pollutant Distribution Elimination System. ()

02. NMS. Nutrient Management Standard ()

03. NRCS. Natural Resources Conservation Service. ()

012. -- 029. (RESERVED)

030. DAIRY ENVIRONMENTAL MANAGEMENT PLAN APPROVAL.

01. Dairy Storage and Containment Facility Criteria. ()

a. Dairy storage and containment facilities shall be constructed to meet a minimum of one hundred eighty (180) days of holding capacity. Construction, operation and maintenance shall be in accordance with IDAPA 02.04.30, "Rules Governing Environmental and Nutrient Management." ()

02. Dairy Nutrient Management Plan (DNMP). Each dairy farm shall have a dairy nutrient management plan that is approved by the Department that covers the dairy farm site and other land owned and operated by the dairy farm to which dairy byproducts are land applied. In addition to the requirements set forth in IDAPA 02.04.30, "Rules Governing Environmental and Nutrient Management," a DNMP must also include the following: ()

a. A nitrogen management plan worksheet shall be completed for all fields and pastures receiving land application of nutrients. ()

b. Pasturing. All pastures utilized for grazing of dairy animals, and other animals grazing within the same pasture, shall be incorporated in to the DNMP and subject to the following requirements: ()

i. Soil testing pursuant to IDAPA 02.04.30, "Rules Governing Environmental and Nutrient Management." ()

- ii. Surface water access. If pastured animals have access to surface water within a pasture, the producer may be required to implement one (1) or more NRCS conservation practice standards to minimize adverse impact on surface water quality. ()
- iii. Land application. If land application occurs within a pasture, annual soil tests shall be conducted. ()
- iv. Confinement areas. Confinement areas shall not be considered part of a pasture. ()

031. PHOSPHORUS MANAGEMENT.

Dairy farms shall utilize either Phosphorus Indexing (Section 031.01) in accordance with the Idaho Phosphorus Site Index, or Phosphorus Threshold (Section 031.02) pursuant to the 1999 Idaho NRCS Nutrient Management Standard 590 to manage nutrient application. ()

01. Phosphorus Indexing. The dairy farm shall utilize phosphorus site indexing (PSI) for each field where dairy byproducts and/or commercial fertilizers are land applied and for each pasture utilized for grazing, in accordance with the Idaho Phosphorus Site Index Standards. The PSI shall be calculated by a Nutrient Management Planner, certified by the Department, and be included as a component of the DNMP in the dairy farm's Environmental Management Plan. It shall be the dairy farm's responsibility to provide updated information, including annual soil test results, to the Nutrient Management Planner for calculation of the PSI on all fields and pastures on an annual basis. Failure to abide by the nutrient application and management provisions of a field or pasture's PSI risk classification in the DNMP shall constitute a non-compliance and the producer may be penalized as provided in these rules. ()

a. Notwithstanding anything to the contrary in the Idaho Phosphorus Site Index Standards, no land application of phosphorus shall be permitted on any fields or pastures that possess a soil phosphorus level exceeding three hundred (300) parts per million, as determined by the required annual soil test (via Olsen method). Further, the dairy farm shall not receive BMP Coefficient credit for implementing any best management practice designed to reduce phosphorus loss on fields exceeding three hundred (300) parts per million, via Olsen method. ()

b. The Department may award zero (0) or partial BMP Coefficient credit when a dairy farm implements a best management practice designed to reduce phosphorus loss from fields that does not fully conform to NRCS standards or the standards set forth in the Idaho Phosphorus Site Index Standards BMP definition section. ()

c. Amendments to the Idaho Phosphorus Site Index Standards must be approved by three (3) scientists from research institutions identified as partner institutions of the USDA National Institute of Food and Agriculture (NIFA), as found at <https://www.nifa.usda.gov/land-grant-colleges-and-universities-partner-website-directory>. Amendments shall be based on a minimum of three (3) peer-reviewed research publications that are relevant to Idaho's climate, soil, cropping system and irrigation. ()

02. Phosphorus Threshold. If the regulatory or producer soil tests reveal that phosphorus thresholds on fields and pastures have exceeded the levels established in the the 1999 Idaho NRCS Nutrient Management Standard 590, the producer shall only apply phosphorus at the appropriate phosphorus crop uptake rate. Subsequent regulatory soil test(s) on fields and pastures that were identified as exceeding the phosphorus threshold will be conducted. If two (2) out of three (3) tests reveal the phosphorus index continues to trend upward, the producer will be penalized as provided in these rules. These tests shall be taken in the top one (1) foot of soil. ()

032. -- 039. (RESERVED)

040. INSPECTIONS.

Each dairy farm shall be inspected at intervals sufficient to determine that dairy byproducts and process water have been managed to prevent an unauthorized discharge, unauthorized release, or contamination of surface and ground water. ()

041. -- 049. (RESERVED)

050. COMPLIANCE SCHEDULES.

01. Non-Compliance or Unauthorized Release Violations. Appropriate corrective actions will be identified and informally scheduled when items of non-compliance or unauthorized release violations are identified. The Director may develop a formal compliance schedule in the following cases: ()

- a. Failure to complete corrective actions within thirty (30) days; or ()
- b. Corrective actions require significant capital investment; or ()
- c. Informal schedules have not been followed. ()

02. Re-Inspection. Re-inspection of the dairy farm will be conducted as appropriate, to ensure compliance. An unauthorized release violation shall be corrected immediately, when at all possible. ()

051. -- 059. (RESERVED)

060. UNAUTHORIZED DISCHARGES AND UNAUTHORIZED RELEASES -- PENALTIES. Non-compliance with requirements for dairy environmental systems, the NMS, and DNMP shall be addressed through corrective actions and compliance schedules pursuant to these rules. ()

061. -- 999. (RESERVED)

[Agency redlined courtesy copy]

02.04.14 – RULES GOVERNING DAIRY BYPRODUCT

000. LEGAL AUTHORITY. This chapter is adopted under the legal authority of Title 37, Chapters 3, 4, and 6, Idaho Code. ()

001. SCOPE. These rules govern the Department’s review, approval, and enforcement of dairy environmental management plans. ()

002. -- 003. (RESERVED)

004. INCORPORATION BY REFERENCE. The following documents are incorporated by reference into this chapter. ()

~~**01. Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (1997 Edition) (USDA, NRCS).** This document is available online at https://agri.idaho.gov/main/wp-content/uploads/2017/08/nrcs_10d_1997.pdf. (3-31-22)~~

01. Nutrient Management Standard (NMS). ()

a. Idaho NRCS Nutrient Management Standard 590. The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590, available online at https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient_Management_code_590.pdf, or, (3-31-22)()

b. The Phosphorus Site Index: A Systematic Approach to Assess the Risk of Nonpoint Source

~~Pollution of Idaho Waters by Agricultural Phosphorus, 2023. This document is available online at <https://agri.idaho.gov/main/animals/environmental-nutrient-management/>. ()~~

~~03. Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004. This document is available online at https://agri.idaho.gov/main/wp-content/uploads/2017/10/nres_313_Dec_2004.pdf. (3-31-22)~~

~~04. American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004. This document is part of a copyrighted publication and is available for viewing at the ISDA offices or a copy may be purchased online at <http://www.asabe.org/>. (3-31-22)~~

~~05. Natural Resources Conservation Service (NRCS) Web Soil Survey Database. This document is available online at <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>. (3-31-22)~~

~~06. Natural Resources Conservation Service (NRCS) Part 630, Hydrology National Engineering Handbook, Chapter 7, (Hydrologic Soil Groups), January 2009. This document is available online at <https://www.wcc.nres.usda.gov/ftpref/wntsc/H&H/NEHhydrology/ch7.pdf>. (3-31-22)~~

~~07. The Phosphorus Site Index: A Systematic Approach to Assess the Risk of Nonpoint Source Pollution of Idaho Waters by Agricultural Phosphorus, 2017. This document is available online at <https://agri.idaho.gov/main/wp-content/uploads/2018/12/Phosphorus-Site-Index-reference-2017-revised.pdf>. (3-31-22)~~

005. -- 009. (RESERVED)

010. DEFINITIONS.

In addition to Section 37-604, Idaho Code, the following definitions apply in the interpretation and enforcement of this chapter: (3-31-22)()

~~01. Approved Laboratory. A soil testing laboratory that meets the requirements and performance standards of the North American Proficiency Testing Program under the auspices of the Soil Science Society of America. (3-31-22)~~

~~02. Certified Soil Sampler. An individual qualified and approved by the Department to collect soil samples according to the 1997 University of Idaho Soil Sampling protocols or other method as approved by the Department. (3-31-22)~~

~~03. Dairy Animal. Milking cows, sheep or goats. ()~~

~~04. Dairy Byproduct. Solids and liquids associated with dairy animal rearing and milk production including, but not limited to, manure, manure compost, process water, bedding, spilled feed, and feed leachate. (3-31-22)~~

~~05. Dairy Environmental Management System. The areas and structures within a dairy farm where dairy byproducts are collected, stored, treated, or applied to land. These areas and structures may include corrals, feeding areas, collection systems, conveyance systems, storage ponds, treatment lagoons, and evaporative ponds and land application areas, but do not include pastures as defined in these rules. (3-31-22)~~

~~06. Dairy Farm. The land owned or operated by a person as an integral component of a Department-permitted grade A or manufacture grade facility where one (1) or more milking cows, sheep, or goats are kept, and from which all or a portion of the milk produced thereon is delivered, sold or offered for sale for human consumption. A dairy farm does not include those lands that contain non-dairy animals provided a physical separation exists from lands owned or operated by the dairy, byproducts remain separate, and dairy animals are not comingled with non-dairy animals. (3-31-22)~~

~~07. Dairy Storage and Containment Facilities. The areas and structures within a dairy farm where dairy byproducts are collected, stored, or treated in conformance with engineering standards and specifications published by the USDA Natural Resources Conservation Service or by the ASABE, or other equally protective~~

~~criteria approved by the Director. These areas may include corrals, feeding areas, collection systems, conveyance systems, storage ponds, treatment lagoons, evaporative ponds, and compost areas, but do not include pastures as defined in these Rules.~~ (3-31-22)

~~08. **Inspector.** A qualified, trained person employed by the Department to perform dairy farm inspections.~~ (3-31-22)

~~09. **Land Application.** Mechanical spreading on, or incorporating into the soil mantle, dairy byproduct as a soil amendment for agricultural use of nutrients and for other beneficial purposes. Land application does not include pasturing animals as defined in these rules.~~ (3-31-22)

~~10. **Modification or Modified.** Structural changes and alterations to the dairy storage and containment facility that would require increased storage or containment capacity or the function of the facility.~~ (3-31-22)

~~1102. **Pasture, Pasturing, and Pastured.** For purposes of these rules, a pasture is an irrigated or dryland field with forage plant growth covering a minimum of fifty percent (50%) of the field. Pasturing and pastured is dairy animals and other animals owned, leased, or otherwise under the control of the producer, grazing in the same dairy farm pasture. Pastures are not considered part of a dairy storage and containment facility. (3-31-22)()~~

~~1203. **Permit.** A permit issued by the Department allowing the sale of Grade A milk or manufacture grade milk.~~ ()

~~1304. **Phosphorus Site Index.** A method to evaluate the relative potential for off-site movement of phosphorus from a field or pasture based upon risk factors relating to surface transport, phosphorus loss potential and nutrient management practices.~~ ()

~~1405. **Producer.** The person who owns or operates a permitted dairy farm.~~ ()

011. ABBREVIATIONS.

~~01. **ASABE.** American Society of Agricultural and Biological Engineers.~~ (3-31-22)

~~021. **IPDES.** Idaho Pollutant Distribution Elimination System.~~ ()

~~032. **NMS.** Nutrient Management Standard~~ ()

~~043. **NRCS.** Natural Resources Conservation Service.~~ ()

~~05. **USDA.** United States Department of Agriculture.~~ (3-31-22)

012. -- 029. (RESERVED)

030. DAIRY ENVIRONMENTAL MANAGEMENT PLAN APPROVAL.

01. Dairy Storage and Containment Facility Criteria. ()

a. Dairy storage and containment facilities shall be constructed to meet a minimum of one hundred eighty (180) days of holding capacity. ~~Process water containment structures that are utilized as the secondary or final storage for effluent shall have a minimum two (2) vertical feet of freeboard. Process water and containment structures that are not the secondary or final storage for effluent shall have a minimum one (1) vertical feet of freeboard. Construction, operation and maintenance shall be in accordance with IDAPA 02.04.30, "Rules Governing Environmental and Nutrient Management."~~ (3-31-22)()

b. ~~Earthen dairy storage and containment facilities less than ten (10) vertical feet high with a maximum high water line of eight (8) vertical feet shall have a top embankment width of at least eight (8) feet. The combined embankment slopes must be at least five (5) horizontal to one (1) vertical, and shall not exceed two (2) horizontal to one (1) vertical slope. Earthen dairy storage and containment facilities greater than ten (10) vertical feet~~

~~from the naturally occurring ground level shall meet the NRCS Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004 embankment requirements. (3-31-22)~~

~~**e.** The inside bottom of the dairy storage and containment facility shall be a minimum of two (2) feet above the high water table, bed rock, gravel, or permeable soils. For an earthen dairy storage and containment facility, a soil liner shall be installed such that the specific discharge rate of the containment structure meet 1×10^{-6} cm³/cm²/sec or less. Concrete or synthetic liners must be constructed to ASAE and Appendix 10D specifications. (3-31-22)~~

~~**d.** Storage areas for dairy byproduct, including compost and solid manure storage areas, shall be appropriately protected to prevent run-on, run-off, and contamination of ground and surface water. (3-31-22)~~

~~**e.** Dairy environmental management systems shall be maintained in a condition that allows the producer to regularly inspect the integrity of the systems. (3-31-22)~~

02. Dairy Nutrient Management Plan (DNMP). Each dairy farm shall have a dairy nutrient management plan that is approved by the Department. ~~The DNMP shall that~~ covers the dairy farm site and other land owned and operated by the dairy farm ~~owner or operator~~ to which dairy byproducts are land applied. In addition to the Rrequirements to comply with the provisions of a DNMP set forth in IDAPA 02.04.30, "Rules Governing Environmental and Nutrient Management," a DNMP must also include the following: (3-31-22)()

~~**a.** Producer annual soil tests shall be conducted as set forth in IDAPA 02.04.30, "Rules Governing Environmental and Nutrient Management," and tested by an approved laboratory. (3-31-22)~~

~~**b.** Regulatory soil tests will be conducted at frequencies sufficient to provide assurance of compliance with Section 031 and with IDAPA 02.04.30, "Rules Governing Environmental and Nutrient Management." (3-31-22)~~

~~**e.** Accurate DNMP records shall be maintained. These records shall include at a minimum: (3-31-22)~~

~~**i.** Annual soil analysis; (3-31-22)~~

~~**ii.** Date and amount of dairy byproduct and commercial fertilizer applied to individual dairy owned or operated fields; (3-31-22)~~

~~**iii.** Date(s) of exported dairy byproduct, number of acres applied, amount of dairy byproduct exported, and to whom dairy byproduct was exported; and (3-31-22)~~

~~**iv.** Actual crop yields on dairy owned or operated fields. (3-31-22)~~

~~**v.** A nitrogen management plan worksheet shall be completed for all fields and pastures receiving land application of nutrients. ()~~

~~**db.** Pasturing. All pastures utilized for grazing of dairy animals, and other animals grazing within the same pasture, shall be incorporated in to the DNMP and subject to the following requirements: ()~~

~~**i.** Soil testing pursuant to ~~the NMS and this section~~ IDAPA 02.04.30, "Rules Governing Environmental and Nutrient Management," (3-31-22)()~~

~~**ii.** Surface water access. If pastured animals have access to surface water within a pasture, the producer may be required to implement one (1) or more NRCS conservation practice standards to minimize adverse impact on surface water quality. ()~~

~~**iii.** Land application. If land application occurs within a pasture, annual soil tests shall be conducted. ()~~

~~**iv.** Confinement areas. Confinement areas shall not be considered part of a pasture. ()~~

~~**e.** IPDES Permits. Dairy farms governed by the IPDES program are not required to submit a DNMP~~

~~to the Department.~~

~~(3-31-22)~~

031. PHOSPHORUS MANAGEMENT.

Dairy farms shall utilize either Phosphorus Indexing (Section 031.01) in accordance with the Idaho Phosphorus Site Index, or the Phosphorus Threshold (Section 031.02) pursuant to the 1999 Idaho NRCS Nutrient Management Standard 590 to manage nutrient application. ~~(3-31-22)~~()

01. Phosphorus Indexing. The dairy farm shall utilize phosphorus site indexing (PSI) for each field where dairy byproducts and/or commercial fertilizers are land applied and for each pasture utilized for grazing, in accordance with the ~~2017~~ Idaho Phosphorus Site Index Standards. The PSI shall be calculated by a Nutrient Management Planner, certified by the Department, and be included as a component of the DNMP in the dairy farm's Environmental Management Plan. It shall be the dairy farm's responsibility to provide updated information, including annual soil test results, to the Nutrient Management Planner for calculation of the PSI on all fields and pastures on an annual basis. Failure to abide by the nutrient application and management provisions of a field or pasture's PSI risk classification in the DNMP shall constitute a non-compliance and the producer may be penalized as provided in these rules. ~~(3-31-22)~~()

a. Notwithstanding anything to the contrary in the ~~2017~~ Idaho Phosphorus Site Index Standards, no land application of phosphorus shall be permitted on any fields or pastures that possess a soil phosphorus level exceeding three hundred (300) parts per million, as determined by the required annual soil test (via Olsen method). Further, the dairy farm shall not receive BMP Coefficient credit for implementing any best management practice designed to reduce phosphorus loss on fields exceeding three hundred (300) parts per million, via Olsen method. ~~(3-31-22)~~()

b. The Department may award zero (0) or partial BMP Coefficient credit when a dairy farm implements a best management practice designed to reduce phosphorus loss from fields that does not fully conform to NRCS standards or the standards set forth in the ~~2017~~ Idaho Phosphorus Site Index Standards BMP definition section. ~~(3-31-22)~~()

c. Amendments to the Idaho Phosphorus Site Index Standards must be approved by three (3) scientists from research institutions identified as partner institutions of the USDA National Institute of Food and Agriculture (NIFA), as found at <https://www.nifa.usda.gov/land-grant-colleges-and-universities-partner-website-directory>. Amendments shall be based on a minimum of three (3) peer-reviewed research publications that are relevant to Idaho's climate, soil, cropping system and irrigation. ()

02. Phosphorus Threshold. If the regulatory or producer soil tests reveal that phosphorus thresholds on fields and pastures have exceeded the levels established in the ~~NMS~~ the 1999 Idaho NRCS Nutrient Management Standard 590, the producer shall only apply phosphorus at the appropriate phosphorus crop uptake rate. Subsequent regulatory soil test(s) on fields and pastures that were identified as exceeding the phosphorus threshold will be conducted. If two (2) out of three (3) tests reveal the phosphorus index continues to trend upward, the producer will be penalized as provided in these rules. These tests shall be taken in the top one (1) foot of soil. ~~(3-31-22)~~()

032. -- 039. (RESERVED)

040. INSPECTIONS.

Each dairy farm shall be inspected at intervals sufficient to determine that dairy byproducts and process water have been managed to prevent an unauthorized discharge, unauthorized release, or contamination of surface and ground water. ()

041. -- 049. (RESERVED)

050. COMPLIANCE SCHEDULES.

01. Non-Compliance or Unauthorized Release Violations. Appropriate corrective actions will be identified and informally scheduled when items of non-compliance or unauthorized release violations are identified. The Director may develop a formal compliance schedule in the following cases: ()

- a. Failure to complete corrective actions within thirty (30) days; or ()
- b. Corrective actions require significant capital investment; or ()
- c. Informal schedules have not been followed. ()

02. Re-Inspection. Re-inspection of the dairy farm will be conducted as appropriate, to ensure compliance. An unauthorized release violation shall be corrected immediately, when at all possible. ()

051. -- 059. (RESERVED)

060. UNAUTHORIZED DISCHARGES AND UNAUTHORIZED RELEASES -- PENALTIES.

Non-compliance with requirements for dairy environmental systems, the NMS, and DNMP shall be addressed through corrective actions and compliance schedules pursuant to these rules. ()

061. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.23 – RULES GOVERNING COMMERCIAL LIVESTOCK TRUCK WASHING FACILITIES

DOCKET NO. 02-0423-2301 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

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 22-110, 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 rule is being presented for authorization as part of the ISDA’s plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor’s [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

These rules govern the permitting, construction, and management of commercial livestock truck washing facilities.

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 October 4, 2023 Idaho Administrative Bulletin, [Vol. 23-10, pages 75-81](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

Does not apply to this rulemaking.

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:

There is no fiscal impact as a result of this rulemaking.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule regulates activity and provides requirements beyond those required by the federal government, per the direction and authorization of Idaho Code.

The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

DATED this 3rd of January, 2024.

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
Phone: (208) 332-8615
Email: lloyd.knight@isda.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 22-110, 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 October 18, 2023.

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:

This rule is being presented for authorization as part of the ISDA's plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor's [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

These rules govern the permitting, construction, and management of commercial livestock truck washing facilities.

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

There are no fees included 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:

There is no 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 May 3, 2023 Idaho Administrative Bulletin, [Vol. 23-5, Page 11](#).

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:

Idaho NRCS Nutrient Management Standard 590. 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 is necessary to ensure consistency with standards for nutrient management when required.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule regulates activity and provides requirements beyond those required by the federal government, per the direction and authorization of Idaho Code.

The detailed 22-101A analysis can be found on the agency's website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 October 25, 2023.

DATED this 4th day of October, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 02-0423-2301

02.04.23 – RULES GOVERNING COMMERCIAL LIVESTOCK TRUCK WASHING FACILITIES

000. LEGAL AUTHORITY.

Sections 22-103(15) and 22-110, Idaho Code.

()

001. SCOPE.

These rules govern the permitting, construction, and management of commercial livestock truck washing facilities.

()

002. INCORPORATION BY REFERENCE.

Copies of these documents may be obtained from the Idaho State Department of Agriculture central office and the State Law Library.

()

01. Idaho NRCS Nutrient Management Standard 590. The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590, available online at https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient_Management_code_590.pdf.

()

003. -- 009. (RESERVED)

010. DEFINITIONS.

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

01. Commercial Livestock Truck Washing Facilities. Livestock truck washing facilities that charge a fee to wash livestock trucks and trailers, or those facilities where the process wastewater is not regulated pursuant IDAPA 02.04.14 “Rules Governing Dairy Byproduct,” or 02.04.15 “Rules Governing Beef Cattle Animal Feeding Operations.” ()

02. Livestock. Bovidae, ovidae, suidae, and equidae. ()

03. Livestock Truck Washing Facilities. Those facilities utilized primarily for washing and cleaning trucks and trailers that haul livestock. ()

04. Process Wastewater. Any water generated on a commercial livestock truck washing facility that comes into contact with manure, compost, bedding, or feed. ()

05. Runoff. Any precipitation that comes into contact with manure, compost, bedding, or feed on a commercial livestock truck washing facility. ()

06. Unauthorized Discharge. A discharge of process wastewater or manure from a commercial livestock truck washing facility to surface waters of the state that is not authorized under an IPDES permit. ()

07. Waters of the State. All surface and ground water located within the boundaries of the state or boundary streams, rivers and lakes except for private waters as defined in Title 42, Chapter 2, Idaho Code. ()

011. ABBREVIATIONS.

01. CLTWF. Commercial Livestock Truck Washing Facility. ()

02. ISDA. Idaho State Department of Agriculture. ()

03. NMP. Nutrient Management Plan. ()

04. IPDES. Idaho Pollutant Discharge Elimination System. ()

05. NRCS. Natural Resources Conservation Service. ()

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

012. -- 049. (RESERVED)

050. INSPECTIONS.

The Director shall have reasonable access to all CLTWF facilities or records: ()

051. -- 099. (RESERVED)

100. PERMIT REQUIRED.

No person shall construct or operate a CLTWF without first obtaining a permit to do so from the Director. ()

101. APPLICATION FOR PERMIT.

Applications for permits submitted to ISDA on a form approved by the Administrator. ()

102. -- 109. (RESERVED)

110. DURATION OF PERMIT.

Permits issued pursuant to this chapter are valid for a period of two (2) years. ()

111. RENEWAL OF PERMIT.

The operator of a CLTWF shall submit an application to renew the permit to the Director for approval ninety (90) days prior to the expiration of the existing permit. ()

112. -- 119. (RESERVED)

120. REVOCATION OF PERMIT.

The Director may revoke the permit of any CLTWF that violates any of the provisions of this Chapter. ()

121. -- 199. (RESERVED)

200. UNAUTHORIZED DISCHARGES.

Unauthorized discharges of manure or process wastewater from CLTWF or land application sites owned or controlled by a CLTWF are prohibited. CLTWF operators shall notify the Director within twenty-four (24) hours of learning of a discharge. ()

201. -- 299. (RESERVED)

300. WASTEWATER STORAGE AND CONTAINMENT FACILITIES.

All CLTWF shall have wastewater storage and containment facilities designed, constructed, operated, and maintained pursuant to IDAPA 02.04.30, "Rules Governing Environmental and Nutrient Management." ()

301. -- 319. (RESERVED)

320. SUBSTANCES ENTERING WASTEWATER STORAGE AND CONTAINMENT FACILITIES.

Only manure and process wastewater from the operation of the CLTWF shall be allowed to enter wastewater storage and containment facilities. The disposal of any other materials into a wastewater storage and containment facility, including, but not limited to oil, grease, heavy metals, chlorinated solvents, and human waste is prohibited. ()

321. -- 329. (RESERVED)

330. NUTRIENT MANAGEMENT.

Each CLTWF shall have an NMP that conforms to IDAPA 02.04.30, "Rules Governing Environmental and Nutrient Management." ()

331. -- 999. (RESERVED)

[Agency redlined courtesy copy]

02.04.23 – RULES GOVERNING COMMERCIAL LIVESTOCK TRUCK WASHING FACILITIES

000. LEGAL AUTHORITY.

~~This chapter is adopted under the legal authority of~~ Sections 22-103(15) and 22-110, Idaho Code. ~~(3-31-22)~~()

001. ~~TITLE AND SCOPE.~~

~~01. Title.~~ The title of this chapter is IDAPA 02.04.23, "Rules Governing Commercial Livestock Truck Washing Facilities."² (3-31-22)

~~02. Scope.~~ These rules govern the permitting, construction, and management of commercial livestock truck washing facilities. (3-31-22)()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (3-31-22)

003. ADMINISTRATIVE APPEAL.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (3-31-22)

004. INCORPORATION BY REFERENCE.

Copies of these documents may be obtained from the Idaho State Department of Agriculture central office and the State Law Library. ()

~~01. The 1997 United States Department of Agriculture Natural Resources Conservation Service Agricultural Waste Management Field Handbook, Appendix 10-D. (3-31-22)~~

~~02. The 2000 American Society of Agricultural Engineers Standard EP393.3. (3-31-22)~~

~~03. The 1999 Publication by the United States Department Of Agriculture, Natural Resource Conservation Service, Conservation Practice Standard, Nutrient Management Code 590. Idaho NRCS Nutrient Management Standard 590. The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590, available online at https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient_Management_code_590.pdf. (3-31-22)()~~

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

The Idaho State Department of Agriculture central office is located at 2270 Old Penitentiary Road, Boise, ID 83712-8298. The office is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The mailing address is PO Box 7249, Boise, Idaho 83707. The phone number is (208) 332-8500 and the fax number is (208) 334-2170. The Department web address is <https://agri.idaho.gov/>. (3-31-22)

006. IDAHO PUBLIC RECORDS ACT.

These rules are public records available for inspection and copying at the central office of ISDA and the State Law Library. (3-31-22)

007. -- 009. (RESERVED)

010. DEFINITIONS.

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

01. Commercial Livestock Truck Washing Facilities. Livestock truck washing facilities that charge a fee to wash livestock trucks and trailers, or those facilities where the process wastewater is not regulated pursuant IDAPA 02.04.14 "Rules Governing Dairy Waste Byproduct," or 02.04.15 "Rules of the Department of Agriculture Governing Beef Cattle Animal Feeding Operations." (3-31-22)()

~~02. Compost. A biologically stable material derived from the biological decomposition of organic matter. (3-31-22)~~

~~03. Discharge. Release of process wastewater or manure from a commercial livestock truck washing facility to waters of the state. (3-31-22)~~

~~04. Land Application. The spreading on, or incorporation of manure or process wastewater into the soil. (3-31-22)~~

05. Livestock. Bovidae, ovidae, suidae, and equidae. ()

~~06. Livestock Truck Washing Facilities. Those facilities utilized primarily for washing and cleaning trucks and trailers that haul livestock. ()~~

~~07. Modified.~~ Structural or management changes, or alterations to the livestock truck washing facility which would require increased storage or containment capacity or such changes, which would alter the function of the wastewater storage or containment facility. (3-31-22)

~~08. Non-Compliance.~~ A practice or condition that causes an unauthorized discharge or a practice or condition that if left uncorrected will cause an unauthorized discharge. (3-31-22)

~~09. Non-Land Application Season.~~ The portion of the year during which land application is not allowed pursuant to an approved NMP. (3-31-22)

~~10. Nutrient Management Plan.~~ A plan prepared in conformance with the nutrient management standard or other equally protective standard for managing the amount, source, placement, form, and timing of the land application of nutrients or soil amendments. (3-31-22)

~~11. Operate.~~ Washing or cleaning livestock trucks. (3-31-22)

~~12. Operator.~~ The person who has power or authority to manage, or direct, or has financial control of a commercial livestock truck washing facility. (3-31-22)

~~1304. Process Wastewater.~~ Any water generated on a commercial livestock truck washing facility that comes into contact with manure, compost, bedding, or feed. ()

~~1405. Runoff.~~ Any precipitation that comes into contact with manure, compost, bedding, or feed on a commercial livestock truck washing facility. ()

~~1506. Unauthorized Discharge.~~ A discharge of process wastewater or manure from a commercial livestock truck washing facility to surface waters of the state that is not authorized by under an National IPollutant Discharge Elimination System permit issued by the United States Environmental Protection Agency. (3-31-22)()

~~16. Wastewater Storage and Containment Facility.~~ That portion of a CLTWF where manure or process wastewater is stored or collected. This includes, but is not limited to, waste collection systems, waste conveyance systems, waste storage ponds, waste treatment lagoons and evaporative ponds. (3-31-22)

~~1707. Waters of the State.~~ All surface and ground water located within the boundaries of the state or boundary streams, rivers and lakes except for private waters as defined in Title 42, Chapter 2, Idaho Code. ()

011. ABBREVIATIONS.

01. CLTWF. Commercial Livestock Truck Washing Facility. ()

02. FEMA. Federal Emergency Management Agency. (3-31-22)

032. ISDA. Idaho State Department of Agriculture. ()

043. NMP. Nutrient Management Plan. ()

054. NIPDES. National Idaho Pollutant Discharge Elimination System. (3-31-22)()

065. NRCS. Natural Resources Conservation Service. ()

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

012. APPLICABILITY.

These rules apply to all CLTWF. (3-31-22)

0132. -- 049. (RESERVED)

050. INSPECTIONS.

~~In order to ascertain compliance with this chapter, t~~The Director shall have reasonable access to all CLTWF facilities or records: (3-31-22)()

~~01. Inspect Facilities.~~ Inspect any facility or land application site listed in the CLTWF's NMP. (3-31-22)

~~02. Inspect Records.~~ Inspect, review, or copy any CLTWF's records deemed necessary, during normal business hours. (3-31-22)

051. -- 099. (RESERVED)

100. PERMIT REQUIRED.

No person shall construct or operate a CLTWF without first obtaining a permit to do so from the Director. ()

101. APPLICATION FOR PERMIT.

Applications for permits submitted to ~~the Director shall contain the following:~~ ISDA on a form approved by the Administrator. (3-31-22)()

~~01. Name, Telephone Number, and Address.~~ The name, telephone number, and address of the owner and operator of the CLTWF. (3-31-22)

~~02. Physical Address.~~ The physical address of the CLTWF. (3-31-22)

~~03. Sealed Vicinity Map With Site Location.~~ A detailed sketch of the proposed or existing CLTWF site location, on an aerial photograph if available, which includes the following: (3-31-22)

~~a. The location of all homes, schools, churches, etc. within a one (1) mile radius of the proposed CLTWF; and~~ (3-31-22)

~~b. Private and community domestic water wells, irrigation wells, existing monitoring wells, and existing injection wells as documented by Idaho Department of Water Resources or other sources, which are within a one (1) mile radius of the proposed or existing CLTWF; and~~ (3-31-22)

~~c. Irrigation canals, irrigation laterals, rivers, streams, springs, lakes, reservoirs, and designated wetlands, which are within a one (1) mile radius of the proposed CLTWF; and~~ (3-31-22)

~~d. Location of all land application sites; and~~ (3-31-22)

~~e. FEMA flood zones or other appropriate flood data for the CLTWF site and all land application sites.~~ (3-31-22)

~~04. Sealed Site Plan.~~ A site plan showing all buildings, process wastewater and manure storage areas, piping, and roadways. (3-31-22)

~~05. Land Application System.~~ A detailed description of the current or proposed management practices and methods used to make land application including: (3-31-22)

~~a. Timing, frequency, and duration of practices.~~ (3-31-22)

~~b. Proximity of land application sites to residential and public use areas.~~ (3-31-22)

~~06. Nutrient Management Plan.~~ A NMP for all land where manure or process wastewater from the CLTWF is land applied. (3-31-22)

102. -- 109. (RESERVED)

110. DURATION OF PERMIT.

Permits issued pursuant to this chapter are valid for a period of two (2) years. ()

111. RENEWAL OF PERMIT.

The operator of a CLTWF shall submit an application to renew the permit to the Director for approval ninety (90) days prior to the expiration of the existing permit. ()

112. -- 119. (RESERVED)

120. REVOCATION OF PERMIT.

The Director may revoke the permit of any CLTWF that violates any of the provisions of this Chapter. ()

121. -- 199. (RESERVED)

200. UNAUTHORIZED DISCHARGES.

Unauthorized discharges of manure or process wastewater from CLTWF or land application sites owned or controlled by a CLTWF are prohibited. CLTWF operators shall notify the Director within twenty-four (24) hours of learning of a discharge. (3-31-22)()

~~**201. -- 209. (RESERVED)**~~

~~**210. NOTIFICATION OF DISCHARGE.**~~

~~Within twenty four (24) hours of learning of a discharge, the operator of a CLTWF shall verbally notify the Director of such a discharge.~~ (3-31-22)

~~**211. WRITTEN NOTIFICATION.**~~

~~If the ISDA has not begun a discharge investigation within five (5) days of the verbal notification to the director, the operator shall submit a written report to the Director which includes:~~ (3-31-22)

~~**01. A Description of the Discharge.** A description of the flow path to the receiving water body; and~~ (3-31-22)

~~**02. Flow Rate.** An estimation of the flow rate and volume discharged; and~~ (3-31-22)

~~**03. Dates and Time.** The period of discharge, including dates and times, and if not already corrected, the anticipated time the discharge is expected to continue; and~~ (3-31-22)

~~**04. Steps Taken.** Steps taken to reduce, eliminate, and prevent recurrence of the discharge.~~ (3-31-22)

~~**212**~~**01. -- 299. (RESERVED)**

300. WASTEWATER STORAGE AND CONTAINMENT FACILITIES.

All CLTWF shall have wastewater storage and containment facilities designed, constructed, operated, and maintained pursuant to IDAPA 02.04.30, "Rules Governing Environmental and Nutrient Management." ~~sufficient to contain:~~ (3-31-22)()

~~**01. Process Wastewater.** All process wastewater generated on the CLTWF during the non land application season; and~~ (3-31-22)

~~**02. Rainfall.** The runoff from a twenty five (25)-year, twenty four (24) hour rainfall event; and~~ (3-31-22)

~~**03. Winter Precipitation.** Either three (3) inches of runoff from the accumulation of winter precipitation or the amount of runoff from the accumulation of precipitation from a one in five (1 in 5) year winter.~~ (3-31-22)

301. -- 301~~9.~~ **(RESERVED)**

310. CONSTRUCTION REQUIREMENTS.

All CLTWF shall have wastewater storage and containment facilities designed and constructed in accordance with the engineering standards and specifications contained in the Natural Resources Conservation Service Agricultural Waste Management Field Handbook, Appendix 10D or the American Society of Agricultural Engineers Standard EP393.3, or other equally protective standards approved by the Director. (3-31-22)

~~311. -- 319.~~ (RESERVED)

320. SUBSTANCES ENTERING WASTEWATER STORAGE AND CONTAINMENT FACILITIES.

Only manure and process wastewater from the operation of the CLTWF shall be allowed to enter wastewater storage and containment facilities. The disposal of any other materials into a wastewater storage and containment facility, including, but not limited to oil, grease, heavy metals, chlorinated solvents, and human waste is prohibited. ()

~~321. -- 329.~~ (RESERVED)

330. NUTRIENT MANAGEMENT.

Each CLTWF shall ~~submit, to the Director for approval,~~ have an NMP that conforms to ~~the nutrient management standard~~ IDAPA 02.04.30, "Rules Governing Environmental and Nutrient Management." (3-31-22)()

~~01. Odor.~~ Each NMP shall address odors generated on the CLTWF, and land application sites. Odors shall not be generated in excess of odors normally associated with livestock production in Idaho. (3-31-22)

~~02. Land Application.~~ Each NMP shall include all land to which manure or process wastewater from the CLTWF is land applied. (3-31-22)

~~03. Duty of Operator.~~ It shall be the duty of the operator of a CLTWF to ensure that the NMP, for any land included in the NMP, is implemented. (3-31-22)

~~04. Implementation of NMP.~~ Failure to implement and abide by an approved NMP is a violation of this chapter. (3-31-22)

~~331. -- 359~~999. (RESERVED)

360. NEW CLTWF.

Any new CLTWF shall submit a NMP to the Director for approval with its application for a permit to operate a CLTWF. The Director responds to or approves such NMP within sixty (60) days of submission. (3-31-22)

~~361. -- 999.~~ (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.30 – RULES GOVERNING ENVIRONMENTAL AND NUTRIENT MANAGEMENT

DOCKET NO. 02-0430-2301 (ZBR CHAPTER REWRITE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

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, 22-4903, 25-3802, 25-4012(2), 37-401(1), 37-405, 37-603(1), and 67-6529F(4), 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 is being presented for authorization as part of the ISDA’s plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor’s [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

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.

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 October 4, 2023, Idaho Administrative Bulletin, [Vol. 23-10, pages 82-100](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

There are no fees included 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:

There is no fiscal impact as a result of this rulemaking.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule regulates activity and provides requirements beyond those required by the federal government, per the direction and authorization of Idaho Code.

The detailed 22-101A analysis can be found on the agency's website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

DATED this 3rd of January, 2024.

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 22-110, 22-4903, 25-3802, 25-4012(2), 37-401(1), 37-405, 37-603(1), 67-6529F(4), 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 October 18, 2023.

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:

This rule is being presented for authorization as part of the ISDA's plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor's [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

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.

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

There are no fees included 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:

There is no 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 May 3, 2023 Idaho Administrative Bulletin, [Vol. 23-5, Page 11](#).

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:

Multiple technical documents, federal standards, extension bulletins, engineering standards, and technical handbooks are incorporated into this rule. They are important as they are referenced and included as applicable standards for compliance with this rule.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule regulates activity and provides requirements beyond those required by the federal government, per the direction and authorization of Idaho Code.

The detailed 22-101A analysis can be found on the agency's website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 October 25, 2023.

DATED this 4th day of October, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 02-0430-2301

02.04.30 – RULES GOVERNING ENVIRONMENTAL AND NUTRIENT MANAGEMENT

000. LEGAL AUTHORITY.

Sections 22-110, 22-4903, 25-3802, 25-4012(2), 37-401(1), 37-405, 37-603(1), 67-6529F(4), Idaho Code. ()

001. 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. Idaho Nutrient Management Standard 590, June 1999. The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590 (1999 Idaho Nutrient Management Standard 590). This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient_Management_code_590.pdf or, ()

b. Idaho NRCS Nutrient Management Standard 590, 2007. 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. or, ()

c. The Phosphorus Site Index: A Systematic Approach to Assess the Risk of Nonpoint Source Pollution of Idaho Waters by Agricultural Phosphorus, 2023 (Idaho Phosphorous Site Index). This document is available online at <https://agri.idaho.gov/main/animals/environmental-nutrient-management/>. ()

03. American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004. This document is part of a copyrighted publication and is available for viewing at the ISDA offices or a copy may be purchased online at <http://www.asabe.org/>. ()

04. Natural Resources Conservation Service (NRCS) Web Soil Survey Database. This document is available online at <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>. ()

05. Natural Resources Conservation Service (NRCS) Part 630, Hydrology National Engineering Handbook, Chapter 7, (Hydrologic Soil Groups), January 2009. This document is available online at <https://www.wcc.nrcs.usda.gov/ftpref/wntsc/H&H/NEHhydrology/ch7.pdf>. ()

06. Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004. This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/10/nrcs_313_Dec_2004.pdf. ()

07. Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (March 2008 Edition) (USDA, NRCS). This document can be viewed online at <https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=17767.wba>. ()

105. -- 109. (RESERVED)

110. DEFINITIONS.

The following definitions apply in the interpretation and enforcement of Subchapter A, Sections 104-203 only: ()

01. Approved Laboratory. A soil testing laboratory with a valid certification from the North American Proficiency Testing Program under the auspices of the Soil Science Society of America. ()

02. Certified Soil Sampler. A person who has completed a Department approved soil sampler certification program and has received written certification from the Department. ()

03. 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. ()

04. Nutrient Management Standard. 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. For dairies, the Nutrient Management Standard is (a) the 1999 Idaho NRCS Nutrient Management Standard 590; (b) the Idaho Phosphorus Site Index, or (c) other standard approved by the Director, pursuant to Idaho Code § 37-606(2). ()

05. Operation(s). Animal feeding operation(s). ()

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. ()

04. Commercial Truck Wash Operations. All commercial truck washes required to implement an NMP pursuant to Title 22, Chapter 1, 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," IDAPA 02.04.32, "Rules Governing Poultry Operations," and IDAPA 02.04.23, "Rules Governing Commercial Livestock Truck Washing Facilities" must be approved by the Department and written by certified nutrient management planners. ()

131. STORAGE AND CONTAINMENT FACILITY CRITERIA.

All facilities required to maintain an NMP, pursuant to these rules, shall construct, operate and maintain all storage and containment facilities as follows: ()

01. Secondary or Final Storage Effluent Facility. Process water containment structures that are utilized as the secondary or final storage for effluent shall have a minimum two (2) vertical feet of freeboard. Process water and containment structures that are not the secondary or final storage for effluent shall have a minimum one (1) vertical feet of freeboard. ()

b. Earthen storage and containment facilities less than ten (10) vertical feet high with a maximum high water line of eight (8) vertical feet shall have a top embankment width of at least eight (8) feet. The combined embankment slopes must be at least five (5) horizontal to one (1) vertical, and shall not exceed two (2) horizontal to one (1) vertical slope. Containment facilities greater than ten (10) vertical feet from the naturally occurring ground level shall meet the NRCS Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004 embankment requirements. ()

c. The inside bottom of the storage and containment facility shall be a minimum of two (2) feet above the high water table, bed rock, gravel, or permeable soils. For an earthen storage and containment facility, a soil liner shall be installed such that the specific discharge rate of the containment structure meet 1×10^{-6} cm³/cm²/sec or less. Concrete or synthetic liners must be constructed to ASAE and Appendix 10D specifications. ()

d. Storage areas for byproduct, including compost and solid manure storage areas, shall be located on approved soils and appropriately protected to prevent run on, run off, and contamination of ground and surface water. ()

e. Total containment volume shall be sufficient to contain: ()

i. The runoff from a twenty-five (25) year, twenty-four (24) hour rainfall event; and ()

ii. Either three (3) inches of runoff from the accumulation of winter precipitation or the amount of runoff from the accumulation of precipitation from a one-in-five (1 in 5) year winter. ()

f. All substances entering wastewater storage and containment facilities shall be composed of manure and process wastewater from the operation of the dairy, beef, poultry or commercial truck wash facility. The disposal of any other materials into a wastewater storage and containment facility, including, but not limited to, human waste, is prohibited. ()

g. Maintenance is sufficient to allow regular inspection of the integrity of the systems. ()

132. -- 139. (RESERVED)

140. NUTRIENT MANAGEMENT PLANNER CERTIFICATION.

All persons who develop NMPs pursuant to Subchapter A must be a certified nutrient management planner via the Department Certification Program. The Department may require a CNMP to complete continuing education training to ensure compliance with Subchapter A. If a CNMP fails to follow the criteria in Subchapter A, the Department may revoke their certification. ()

141. -- 149. (RESERVED)

150. SOIL SAMPLES.

Facilities required to maintain an NMP, pursuant to these rules, must have soil samples collected each year from all fields owned or operated by the dairy, beef, poultry, or commercial truck wash operation to which livestock waste, manure, or process wastewater from the operation was land applied. Regulatory soil tests will be conducted at frequencies sufficient to provide assurance of compliance with this subchapter. ()

151. SOIL SAMPLE COLLECTION.

All soil samples collected pursuant to this chapter must be representative samples that are collected by a CSS at the depth indicated by the approved NMP for each facility. Samples shall be collected pursuant to SSB approved methods and submitted to an approved laboratory. If resource concerns require an alternate sampling depth be used, the CSS must indicate the alternate depths on all samples and lab submission forms. ()

152. SOIL SAMPLE CERTIFICATION.

All persons who collect soil samples pursuant to Subchapter A must be a certified soil sampler via the Department Certification Program. The Department may require a CSS to complete continuing education training to ensure compliance with Subchapter A. If a CSS fails to follow the criteria in Subchapter A, the Department may revoke their certification. ()

153. -- 160. (RESERVED)

161. RECORDS OF NUTRIENT ANALYSIS.

All nutrient management records and nutrient analysis data required under this chapter must be complete, identified to the fields listed in the facility's NMP, retained for a minimum of five (5) years and available to the Department upon request. Required records include the following: ()

01. Annual Soil Analysis. Producer annual soil tests conducted as set forth in this subchapter, tested at an approved laboratory; and ()

02. Land Applications. Date and amount of nutrients, byproduct and commercial fertilizer applied to fields owned or operated by the approved NMP facility; ()

03. Third-Party Exports. Date(s) of exported nutrients or byproduct, number of acres applied, amount of nutrients or byproduct exported, and to whom nutrients or byproduct was exported; and ()

04. Crop Yields. Actual crop yields on all fields owned or operated by the approved NMP facility. ()

05. IPDES Permits. Dairy, beef, poultry or commercial truck facilities governed by the IPDES program are not required to submit an NMP to the Department. ()

162. -- 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. Idaho Nutrient Management Standard 590, June 1999. 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 or, ()

b. Idaho NRCS Nutrient Management Standard 590, 2007. 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 or, ()

c. The Phosphorus Site Index: A Systematic Approach to Assess the Risk of Nonpoint Source Pollution of Idaho Waters by Agricultural Phosphorus, 2023 (Idaho Phosphorous Site Index). This document is available online at <https://agri.idaho.gov/main/animals/environmental-nutrient-management/>. ()

205. -- 209. (RESERVED)

210. DEFINITIONS.

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. NMP. Nutrient Management Plan. ()

04. OMP. Odor Management Plan. ()

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. -- 239. (RESERVED)

240. CAFO SITE ADVISORY TEAMS

A CAFO site advisory team will make determinations of suitability on all proposed CAFO sites, as defined in Subchapter B, following a written request to the Director by a board of county commissioners. The team leader, designated by the Director, will notify DEQ and IDWR of all requests. ()

01. Non-CAFO Sites. CAFO site advisory teams may be formed for a site that does not meet CAFO definitions 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. -- 249. (RESERVED)

250. REVIEW OF REQUEST.

Team members will review requests for the formation of a site advisory team to determine if all required elements of Section 67-6520E(2), Idaho Code, are included, and to schedule the date and time of the onsite visit. ()

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 67-6520E(2), Idaho Code, the team will develop and submit to the county a site suitability determination 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.

The following definitions apply in the interpretation and enforcement of Subchapter C, Sections 304-409: ()

01. BAT. The best application of science that is accessible and obtainable to achieve a desired

objective. ()

02. Compost. A biologically stable material derived from the aerobic decomposition of organic matter. ()

03. 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. ()

04. 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." ()

05. Liquid-Solid Separation. The removal of solid manure from water through mechanical or settling means. ()

06. 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. ()

07. 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. BAT. Best Available Technology. ()

02. BMP. Best Management Practice. ()

03. NMP. Nutrient Management Plan. ()

04. OMP. Odor Management Plan. ()

312. -- 319. (RESERVED)

320. ACCEPTED AGRICULTURAL PRACTICES.
Management practices conducted in accordance with applicable laws, rules and best management practices, in a manner that demonstrates reasonable efforts to minimize odors, are considered accepted agricultural practices for purposes of this rule. ()

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." ()

02. 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 360. ()

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. -- 359. (RESERVED)

360. ODOR MANAGEMENT PLANS.

OMP are designed to work in conjunction with any required NMP and must be submitted in writing for approval by the Director. ()

01. OMP Development. Within sixty (60) days of receiving a NOV for a first time violation, the owner or operator of the agriculture operation shall submit an OMP to the Director for approval. ()

02. Interim Measures. The Department will work with first time violators 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. OMPs submitted to the Department from operators committing a first-time violation will be approved, rejected, or requested to provide additional information. ()

04. 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. ()

361. CONTENTS OF AN ODOR MANAGEMENT PLAN.

Contents of an OMP for an agricultural operation shall include all relevant information as required by the Department. ()

01. 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. ()

02. 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. ()

03. Scaled Site Plan. A site plan showing all buildings, housing facilities, waste/manure storage areas, piping, feed storage areas, and roadways. ()

04. 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. ()

05. 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. ()

06. 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. ()

07. 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. ()

08. 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. ()

09. 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. ()

362. -- 409. (RESERVED)

SUBCHAPTER D – STOCKPILING OF LIVESTOCK WASTE

410. DEFINITIONS.

The following definitions apply: ()

01. Agricultural Operation. Facilities that generate or receive and stockpile livestock 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. Duration. The length of time livestock waste is stockpiled. ()

03. Dwelling. The structure where a person lives. ()

04. Livestock. Bovidae, suidae, equidae, captive cervidae, camelidae, ratitidae, gallinaceous birds, and captive waterfowl. ()

05. Livestock Waste. Manure that may also contain bedding, spilled feed, feathers, water, process water, feed leachate, soil, or livestock carcasses or parts thereof. ()

06. Process Water. Water directly or indirectly used or produced in dairy animal rearing or milk ()

production. ()

07. 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. ()

08. 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. ()

09. Stockpile Staging Site. A physical area where stockpiling occurs for a duration of no longer than thirty (30) days. ()

10. Stockpile Site. A physical location where livestock waste is stockpiled for a duration of more than thirty (30) days and that stockpiles more than fifty (50) cubic yards of livestock waste. ()

11. Stockpiling. The accumulation of livestock waste on an agricultural operation. ()

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 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)

[Agency redlined courtesy copy]

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. ~~(3-31-22)~~()

001. ~~TITLE AND SCOPE.~~

~~01. Title.~~ The title of this chapter is IDAPA 02.04.30, "Rules Governing Environmental and Nutrient

Management.”

(3-31-22)

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. (3-31-22)()

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. Idaho Nutrient Management Standard 590, June 1999. The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590 ([1999 Idaho Nutrient Management Standard 590](#)). This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient_Management_code_590.pdf. or. (3-31-22)()

b. Idaho NRCS Nutrient Management Standard 590, 2007. 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. or. (3-31-22)()

c. The Phosphorus Site Index: A Systematic Approach to Assess the Risk of Nonpoint Source Pollution of Idaho Waters by Agricultural Phosphorus, 2023 (Idaho Phosphorous Site Index). This document is available online at <https://agri.idaho.gov/main/animals/environmental-nutrient-management/>. ()

03. American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004. This document is part of a copyrighted publication and is available for viewing at the ISDA offices or a copy may be purchased online at <http://www.asabe.org/>. ()

04. Natural Resources Conservation Service (NRCS) Web Soil Survey Database. This document is available online at <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>. ()

05. Natural Resources Conservation Service (NRCS) Part 630, Hydrology National Engineering Handbook, Chapter 7, (Hydrologic Soil Groups), January 2009. This document is available online at <https://www.wcc.nrcs.usda.gov/ftpref/wntsc/H&H/NEHhydrology/ch7.pdf>. ()

06. Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004. This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/10/nrcs_313_Dec_2004.pdf. ()

07. Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (March 2008 Edition) (USDA, NRCS). This document can be viewed online at <https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=17767.wba>. ()

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: (3-31-22)()

01. Approved Laboratory. A soil testing laboratory with a valid certification from the North American Proficiency Testing Program under the auspices of the Soil Science Society of America. ()

02. Certified Soil Sampler. A person who has completed a Department approved soil sampler certification program and has received written certification from the Department. ()

03. 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. ()

04. Nutrient Management Standard. ~~For dairies and b~~ 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. For dairies, the Nutrient Management Standard is (a) the 1999 Idaho NRCS Nutrient Management Standard 590; (b) the Idaho Phosphorus Site Index, or (c) other standard approved by the Director, pursuant to Idaho Code § 37-606(2). (3-31-22)()

05. Operation(s). Animal feeding operation(s). ()

~~**06. 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. (3-31-22)~~

07. 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. ()

04. Commercial Truck Wash Operations. All commercial truck washes required to implement an NMP pursuant to Title 22, Chapter 1, 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," and IDAPA 02.04.23, "Rules Governing Commercial Livestock Truck Washing Facilities" must be approved by the Department and written by certified nutrient management planners, ~~who have been certified by the Department.~~ (3-31-22)()

131. STORAGE AND CONTAINMENT FACILITY CRITERIA.

All facilities required to maintain an NMP, pursuant to these rules, shall construct, operate and maintain all storage and containment facilities as follows: ()

01. Secondary or Final Storage Effluent Facility. Process water containment structures that are utilized as the secondary or final storage for effluent shall have a minimum two (2) vertical feet of freeboard. Process water and containment structures that are not the secondary or final storage for effluent shall have a minimum one (1) vertical feet of freeboard. ()

b. Earthen storage and containment facilities less than ten (10) vertical feet high with a maximum high water line of eight (8) vertical feet shall have a top embankment width of at least eight (8) feet. The combined embankment slopes must be at least five (5) horizontal to one (1) vertical, and shall not exceed two (2) horizontal to one (1) vertical slope. Containment facilities greater than ten (10) vertical feet from the naturally occurring ground level shall meet the NRCS Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004 embankment requirements. ()

c. The inside bottom of the storage and containment facility shall be a minimum of two (2) feet above the high water table, bed rock, gravel, or permeable soils. For an earthen storage and containment facility, a soil liner shall be installed such that the specific discharge rate of the containment structure meet 1×10^{-6} cm³/cm²/sec or less. Concrete or synthetic liners must be constructed to ASAE and Appendix 10D specifications. ()

d. Storage areas for byproduct, including compost and solid manure storage areas, shall be located on approved soils and appropriately protected to prevent run on, run off, and contamination of ground and surface water. ()

e. Total containment volume shall be sufficient to contain: ()

i. The runoff from a twenty-five (25) year, twenty-four (24) hour rainfall event; and ()

ii. Either three (3) inches of runoff from the accumulation of winter precipitation or the amount of runoff from the accumulation of precipitation from a one-in-five (1 in 5) year winter. ()

f. All substances entering wastewater storage and containment facilities shall be composed of manure and process wastewater from the operation of the dairy, beef, poultry or commercial truck wash facility. The disposal

of any other materials into a wastewater storage and containment facility, including, but not limited to, human waste, is prohibited. ()

g. Maintenance is sufficient to allow regular inspection of the integrity of the systems. ()

~~134~~2. -- 139. (RESERVED)

140. NUTRIENT MANAGEMENT PLANNER CERTIFICATION.

All persons who develop NMPs pursuant to Subchapter A must be a certified nutrient management planner through via the Department Certification Program. The Department may require a CNMP to complete continuing education training to ensure compliance with Subchapter A. If a CNMP fails to follow the criteria in Subchapter A, the Department may revoke their certification. (3-31-22)()

~~01. Certification.~~ The Nutrient Management Planner Certification will be valid unless revoked by the Department. (3-31-22)

~~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. (3-31-22)

~~03. Continuing Education.~~ The Department may require a CNMP to complete periodic continuing education training to retain certification. (3-31-22)

141. REVOCATION OF NUTRIENT MANAGEMENT PLANNER CERTIFICATION.

CNMP Certification may be revoked by the Department if the CNMP: (3-31-22)

~~01. Submits Inaccurate Information.~~ Submits NMPs that contain falsified or materially inaccurate information. (3-31-22)

~~02. Fails to Submit Plans.~~ Fails to submit an NMP to the ISDA within thirty (30) days after being paid by a producer. (3-31-22)

~~03. Fails to Follow Provisions.~~ Fails to meet any requirement in Subchapter A of this rule. (3-31-22)

~~142~~1. -- 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,"~~ Facilities required to maintain an NMP, pursuant to these rules, must have soil samples collected each year from all fields owned or operated by the dairy, beef, ~~or~~ poultry, or commercial truck wash 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.~~ Regulatory soil tests will be conducted at frequencies sufficient to provide assurance of compliance with this subchapter. (3-31-22)()

151. SOIL SAMPLE COLLECTION.

~~01. CSS.~~ All soil samples collected pursuant to this chapter must be ~~collected by a CSS~~ representative samples that are collected by a CSS at the depth indicated by the approved NMP for each facility. Samples shall be collected pursuant to SSB approved methods and submitted to an approved laboratory. If resource concerns require an alternate sampling depth be used, the CSS must indicate the alternate depths on all samples and lab submission forms. (3-31-22)()

~~02. Representative Samples.~~ All soil samples collected by a CSS must be ~~representative samples pursuant to the provisions of the SSB.~~ (3-31-22)

~~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. (3-31-22)~~

~~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. (3-31-22)~~

152. SOIL SAMPLE SUBMISSION CERTIFICATION.

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. All persons who collect soil samples pursuant to Subchapter A must be a certified soil sampler via the Department Certification Program. The Department may require a CSS to complete continuing education training to ensure compliance with Subchapter A. If a CSS fails to follow the criteria in Subchapter A, the Department may revoke their certification. (3-31-22)()

~~153. -- 159~~**60. (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. (3-31-22)~~

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 All nutrient management records of nutrient analysis and nutrient analysis data required under this chapter must be complete, identified to the fields listed in the facility's NMP, retained for a minimum of five (5) years and available to the Department upon request. Required records include the following: (3-31-22)()~~

~~01. **Annual Soil Analysis.** Producer annual soil tests conducted as set forth in this subchapter, tested at an approved laboratory; and ()~~

~~02. **Land Applications.** Date and amount of nutrients, byproduct and commercial fertilizer applied to fields owned or operated by the approved NMP facility; ()~~

~~03. **Third-Party Exports.** Date(s) of exported nutrients or byproduct, number of acres applied, amount of nutrients or byproduct exported, and to whom nutrients or byproduct was exported; and ()~~

~~04. **Crop Yields.** Actual crop yields on all fields owned or operated by the approved NMP facility. ()~~

~~05. **IPDES Permits.** Dairy, beef, poultry or commercial truck facilities governed by the IPDES program are not required to submit an NMP to the Department. ()~~

~~01. **Complete Records.** Records must be complete, readily available, and identified to the fields listed in the facility's NMP. (3-31-22)~~

~~02. **Available to the Director.** Records must be made available to the director for inspection and copying upon request. (3-31-22)~~

~~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. (3-31-22)~~

~~01. **Certification.** The Soil Sampler Certification will be valid unless revoked by the Department.~~

(3-31-22)

~~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. (3-31-22)~~

~~03. **Continuing Education.** The Department may require CSS to complete continuing education training to ensure compliance within the provisions of this chapter. (3-31-22)~~

~~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. (3-31-22)~~

~~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. (3-31-22)~~

~~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. (3-31-22)~~

~~02. **Minor Violations.** The Director may issue suitable warnings or other administrative actions for minor violations. (3-31-22)~~

~~181.62. – 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. Idaho Nutrient Management Standard 590, June 1999. 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. or. (3-31-22)()

b. Idaho NRCS Nutrient Management Standard 590, 2007. 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. or. (3-31-22)()

c. The Phosphorus Site Index: A Systematic Approach to Assess the Risk of Nonpoint Source Pollution of Idaho Waters by Agricultural Phosphorus, 2023 (Idaho Phosphorous Site Index). This document is available online at <https://agri.idaho.gov/main/animals/environmental-nutrient-management/>. ()

205. – 209. (RESERVED)

210. DEFINITIONS.

~~In addition to the definitions found in Section 67-6529C, Idaho Code, t~~The following definitions apply in the interpretation and enforcement of Subchapter B, Sections 204-303: (3-31-22)()

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. (3-31-22)~~

~~**04. FEMA.** Federal Emergency Management Agency (3-31-22)~~

~~**05. IDWR.** Idaho Department of Water Resources. (3-31-22)~~

~~**06. NRCS.** The United States Department of Agriculture, Natural Resources Conservation Service. (3-31-22)~~

~~**073.** NMP. Nutrient Management Plan. ()~~

~~**084.** OMP. Odor Management Plan. ()~~

~~**09.** USGS. United States Geological Survey. (3-31-22)~~

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 ~~n~~ot 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: (3-31-22)()

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. -- ~~239.~~ (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. (3-31-22)~~

~~01. Designation of the Team Leader. Upon receipt of a request to form a site advisory team, the Director shall designate a team leader. (3-31-22)~~

~~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. (3-31-22)~~

~~231. — 239. (RESERVED)~~

240. CAFO SITE ADVISORY TEAMS

A CAFO site advisory team will make determinations of suitability on all proposed CAFO sites, as defined in Subchapter B, following a written request to the Director by a board of county commissioners. The team leader, designated by the Director, will notify DEQ and IDWR of all requests. ()

~~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. (3-31-22)~~

~~021. Non-CAFO Sites That Do not Meet the Definition of a CAFO. The Director may form a CAFO site advisory teams may be formed, as requested by a board of county commissioners, for a site that does not meet the animal numbers in the definition of a CAFO definitions provided that: (3-31-22)()~~

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. (3-31-22)~~

~~01. Designation of the Team Leader. Upon receipt of a request to form a site advisory team, the Director will designate a team leader. (3-31-22)~~

~~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. (3-31-22)~~

~~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: (3-31-22)~~

~~01. County Definition of CAFO. The county's definition of "CAFO" as set forth in any applicable county ordinance. (3-31-22)~~

~~02. Legal Description and Address. Legal description and address of the proposed CAFO. (3-31-22)~~

- ~~03. **One Time Unit Capacity.** The one time animal capacity of the proposed CAFO. (3-31-22)~~
- ~~04. **Type of Animals.** The type of animals to be confined at the proposed CAFO. (3-31-22)~~
- ~~05. **Water Right Information.** All requests shall include one (1) of the following: (3-31-22)~~
- ~~a. Evidence that a valid water right exists to supply adequate water for the operation of the proposed CAFO; or (3-31-22)~~
- ~~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 (3-31-22)~~
- ~~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. (3-31-22)~~
- ~~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: (3-31-22)~~
- ~~a. Building locations; (3-31-22)~~
- ~~b. Waste storage facilities and general areas for any land application including a narrative description of the waste system; (3-31-22)~~
- ~~c. FEMA flood zones or other appropriate flood data for the proposed CAFO site and land application sites owned or leased by the applicant; (3-31-22)~~
- ~~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; (3-31-22)~~
- ~~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. (3-31-22)~~
- ~~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: (3-31-22)~~
- ~~a. Annual precipitation and prevailing wind direction as contained in the Idaho Waste Management Guidelines, 1997; (3-31-22)~~
- ~~b. Soil characteristics from NRCS; (3-31-22)~~
- ~~c. Hydrologic characteristics from IDWR and USGS including: (3-31-22)~~
- ~~i. Depth to first water yielding zone and first encountered water; (3-31-22)~~
- ~~ii. Direction of ground water movement and gradient; (3-31-22)~~
- ~~iii. Sources and estimates of recharge; (3-31-22)~~
- ~~iv. Seasonal variations in water level and recharge characteristics; (3-31-22)~~
- ~~v. Susceptibility to contamination; and (3-31-22)~~
- ~~vi. Relation of ground water to surface water. (3-31-22)~~

- ~~d. Water quality data from DEQ, the Department, IDWR, or USGS, including: (3-31-22)~~
- ~~i. Microorganisms; (3-31-22)~~
- ~~ii. Nutrients; and (3-31-22)~~
- ~~iii. Pharmaceuticals and organic compounds. (3-31-22)~~

~~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. (3-31-22)~~

243~~1~~. -- 249. (RESERVED)

250. REVIEW OF REQUEST.

Team members will review ~~the information provided in the~~ requests for the formation of a site advisory team to determine if ~~it includes the all~~ required elements of ~~Section 242~~ Section 67-6520E(2), Idaho Code, are included, and to schedule the date and time of the onsite visit. (3-31-22)()

~~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. (3-31-22)~~

~~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. (3-31-22)~~

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~~ Section 67-6520E(2), Idaho Code, the team will develop and submit to the county a site suitability determination, ~~based on the elements of Section 242 or other relevant information~~, that contains: (3-31-22)()

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: (3-31-22)()

~~01. Animal. Livestock and agricultural animals. (3-31-22)~~

~~021. 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." (3-31-22)~~

~~04 Beef Cattle Animal Feeding Operation. Those operations regulated pursuant to IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations." (3-31-22)~~

~~052. Compost. A biologically stable material derived from the biological aerobic decomposition of organic matter. (3-31-22)()~~

~~06. Composting. The aerobic degradation of manure and other organic material to a biologically stable form. (3-31-22)~~

~~073. 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. ()~~

~~084. 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." ()~~

~~095. Liquid-Solid Separation. The removal of solid manure from water through mechanical or settling means. ()~~

~~1006. 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. ()~~

~~1107. 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. (3-31-22)~~

~~021. BAT. Best Available Technology. ()~~

~~032. BMP. Best Management Practice. ()~~

~~04. DEQ. Idaho Department of Environmental Quality. (3-31-22)~~

~~053. NMP. Nutrient Management Plan. ()~~

~~06. NOV. Notice Of Violation. (3-31-22)~~

~~07. NRCS. The United States Department of Agriculture, Natural Resources Conservation Service. (3-31-22)~~

~~084. 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~~ this rule. (3-31-22)()

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." (3-31-22)~~

~~**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. (3-31-22)~~

~~**a.** Idaho NRCS Nutrient Management Standard 590, June 1999. (3-31-22)~~

~~**b.** Best Management Practices listed in the "Idaho Agricultural Pollution Abatement Plan," August 2001. (3-31-22)~~

~~**c.** "Control of Manure Odors," ASAE Standard EP379.2 Sections 5 and 6 in their entirety, November 1997. (3-31-22)~~

~~**d.** "Composting Facility," NRCS Conservation Practice Standard 317, March 2001. (3-31-22)~~

~~**032. 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 360. ()~~

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. -- 339. (RESERVED)~~

340. 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. (3-31-22)

~~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. (3-31-22)

~~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. (3-31-22)

~~a. If construction is commenced prior to the Director's written approval, the Director may order construction activities to be ceased.~~ (3-31-22)

~~b. Material deviations from the approved plans and specifications are not allowed without the prior written approval of the director.~~ (3-31-22)

~~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.~~ (3-31-22)

~~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.~~ (3-31-22)

~~**341. 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:~~ (3-31-22)

~~01. Wastewater Storage and Containment Facilities:~~ (3-31-22)

~~a. Liquid solid separation.~~ (3-31-22)

~~b. Wastewater treatment.~~ (3-31-22)

~~c. Use of chemical or biological additives.~~ (3-31-22)

~~d. Dilution of wastewater.~~ (3-31-22)

~~e. Impermeable or permeable storage covers.~~ (3-31-22)

~~f. Biofilters.~~ (3-31-22)

~~g. Enhancing dispersion.~~ (3-31-22)

~~h. Location of wastewater discharge into storage and containment facilities.~~ (3-31-22)

~~02. Wastewater Collection and Conveyance Systems:~~ (3-31-22)

~~a. Wastewater Treatment.~~ (3-31-22)

~~b. Use of chemical or biological additives.~~ (3-31-22)

~~c. Dilution of wastewater.~~ (3-31-22)

~~d. Impermeable or permeable covers of collection areas.~~ (3-31-22)

- ~~e.~~ Timing of collection and conveyance system operation. (3-31-22)
- ~~f.~~ Frequency and duration of collection and conveyance system operation. (3-31-22)
- ~~g.~~ Enhancing dispersion. (3-31-22)

~~342. – 349.~~ (RESERVED)

350. 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. (3-31-22)~~

~~351.~~ **31. – 359.** (RESERVED)

360. ODOR MANAGEMENT PLANS.

~~OMP's shall be~~ are designed to work in conjunction with any required NMP and ~~shall~~ must be submitted ~~to the Director~~ in writing, ~~and upon~~ for approval by the Director, ~~signed by owner or operator of the agricultural operation.~~ (3-31-22)()

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 an OMP to the Director ~~an OMP~~ for approval. (3-31-22)()

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 ors 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. (3-31-22)()

03. Department Approval. OMP's submitted to the Department from operators committing a first-time violation ~~The Director~~ will be approved, rejected, or requested to provide 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. (3-31-22)()

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. (3-31-22)~~

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 371 of these rules, and assess the penalty provisions specified in Subchapter C, Section 370 of these rules, and Section 25-3808, Idaho Code. (3-31-22)~~

e. ~~The Director may, on a case by case basis, grant extensions to the deadlines contained in this section. (3-31-22)~~

04. Implementation. OMPs shall be implemented as approved by the Director. (3-31-22)

054. 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. ()

361. CONTENTS OF AN ODOR MANAGEMENT PLAN.

Contents of an OMP for an agricultural operation ~~may include, but are not limited to the following:~~ shall include all relevant information as required by the Department. (3-31-22)()

- 01.** ~~Owner's Name.~~ Name and telephone number of the owner of the operation. (3-31-22)
- 02.** ~~Address.~~ Physical address of the operation. (3-31-22)
- 03.** ~~Location.~~ County in which the operation is located. (3-31-22)
- 04.** ~~Operation Description.~~ A description of the operation that includes, as applicable: (3-31-22)
- a.** ~~Type of operation.~~ (3-31-22)
- b.** ~~General description of operation.~~ (3-31-22)
- c.** ~~Number and type of any animals including age groups.~~ (3-31-22)
- d.** ~~Any plans for expansion.~~ (3-31-22)
- e.** ~~Type of housing used related to age groups of animals.~~ (3-31-22)
- f.** ~~General description of nearby residential areas, public use areas, and pertinent agricultural operations.~~ (3-31-22)
- g.** ~~Type of crop and number of acres grown.~~ (3-31-22)
- 051.** **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. ()
- 062.** **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. ()
- 073.** **Scaled Site Plan.** A site plan showing all buildings, housing facilities, waste/manure storage areas, piping, feed storage areas, and roadways. ()
- 084.** **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. ()
- 095.** **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. ()

~~406.~~ **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. ()

~~407.~~ **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. ()

~~408.~~ **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. ()

~~409.~~ **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. ()

~~362. – 369.~~ (RESERVED)

~~370. 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. (3-31-22)~~

~~371. 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. (3-31-22)~~

~~372. EXCEPTIONS.~~

~~Events contemplated in Section 25-3805(7), Idaho Code, are not considered violations of this subchapter. Section 25-3805, Idaho Code, is applicable whether or not an agricultural operation is required to have an OMP. (3-31-22)~~

~~373~~~~62.~~ -- 409. (RESERVED)

SUBCHAPTER D – STOCKPILING OF ~~AGRICULTURAL~~ **LIVESTOCK** WASTE

410. DEFINITIONS.

The following definitions apply: ~~in the interpretation and enforcement of Subchapter D, Sections 410-999:~~ (3-31-22)()

01. **Agricultural Operation.** Facilities that generate or receive and stockpile ~~agricultural~~ **livestock** 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.” (3-31-22)()

- ~~02. Agricultural Waste. Agricultural waste means livestock waste. (3-31-22)~~
- ~~032. Duration. The length of time agricultural livestock waste is stockpiled. (3-31-22)()~~
- ~~043. Dwelling. The house, residence, abode, or other structure where a person lives. (3-31-22)()~~
- ~~054. Livestock. Bovidae, suidae, equidae, captive cervidae, camelidae, ratitidae, gallinaceous birds, and captive waterfowl. ()~~
- ~~065. Livestock Waste. Manure that may also contain bedding, spilled feed, feathers, water, or process water, feed leachate, soil, or livestock carcasses or parts thereof. 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. (3-31-22)()~~
- ~~07. Non-Compliance. A practice or facility condition that does not comply with Section 22-110, Idaho Code, or the provisions of these rules. (3-31-22)~~
- ~~06. Process Water. Water directly or indirectly used or produced in dairy animal rearing or milk production. ()~~
- ~~087. 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. ()~~
- ~~098. 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. (3-31-22)~~
- ~~109. Stockpile Staging Site. A physical area where stockpiling occurs for a duration of no longer than thirty (30) days. ()~~
- ~~120. Stockpile Site. A physical location where agricultural livestock waste is stockpiled for a duration of more than thirty (30) days and that stockpiles more than fifty (50) cubic yards of agricultural livestock waste. (3-31-22)()~~
- ~~131. Stockpiling. The accumulation of agricultural livestock waste on an agricultural operation. (3-31-22)()~~
- ~~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. (3-31-22)~~
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. ~~(3-31-22)~~ ()
- 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. 02-0432-2301 (ZBR CHAPTER REWRITE, FEE RULE)
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

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 25-4012, 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 is being presented for authorization as part of the ISDA’s plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor’s [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

These rules govern the management practices of waste systems on poultry concentrated animal feeding operations.

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 October 4, 2023 Idaho Administrative Bulletin, [Vol. 23-10, pages 101-110](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

No changes to fees were included in this rulemaking. Fees in the current rule include an assessment for each poultry permittee of no more than (\$0.03) per square foot of containment area.

As authorized in Section 25-4010, Idaho Code, the fee(s) in this rule are authorized for the purpose of carrying out the provisions of this chapter and 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: There is no fiscal impact as a result of this rulemaking.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule regulates activity and provides requirements beyond those required by the federal government, per the direction and authorization of Idaho Code.

The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lloyd B. Knight, Deputy Director at (208)332-8615.

DATED this 3rd of January, 2024.

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
Phone: (208) 332-8615
Email: lloyd.knight@isda.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 25-4012, 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 October 18, 2023.

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:

This rule is being presented for authorization as part of the ISDA's plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor's [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

These rules govern the management practices of waste systems on poultry concentrated animal feeding operations.

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

No changes to fees were included in this rulemaking. Fees in the current rule include an assessment for each poultry permittee of no more than (\$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 resulting from this rulemaking:

There is no 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 May 3, 2023 Idaho Administrative Bulletin, [Vol. 23-5, Page 11](#).

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 Nutrient Management Standard (2007 Publication) is incorporated by reference to serve as a standard for nutrient management planning required by the rule.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule regulates activity and provides requirements beyond those required by the federal government, per the direction and authorization of Idaho Code.

The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 October 25, 2023.

DATED this 4th day of October, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 02-0432-2301

02.04.32 – RULES GOVERNING POULTRY OPERATIONS

000. LEGAL AUTHORITY.

Section 25-4012, Idaho Code. ()

001. SCOPE.

These rules govern the management practices of waste systems on poultry concentrated animal feeding operations. ()

002. -- 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

The following document is incorporated by reference and a copy of this document may be obtained from the Idaho State Department of Agriculture central office. ()

01. Nutrient Management Standard (NMS). The June 2007 publication by the United States Department of Agriculture (USDA) Idaho 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. ()

005. -- 009. (RESERVED)

010. DEFINITIONS.

The following definitions apply: ()

01. Discharge. Release of process wastewater or manure from a poultry animal feeding operation, including its land application area, to waters of the state or beyond the poultry facility's property boundaries or beyond the property boundary of any facility. Contract manure haulers, producers and other persons who haul manure beyond the operator's property boundaries are responsible for releases of manure between the property boundaries of the operator and the property boundaries at the point of application. A discharge does not include aerosolized matter, or manure that has been reasonably incorporated on the land application area. ()

02. Runoff. Any precipitation that comes into contact with manure, compost, bedding, or feed on a poultry feeding operation and flows off the production area or flows off land application areas where the manure, compost, bedding, or feed has not been reasonably incorporated into the soil. ()

011. ABBREVIATIONS.

01. AFO. Animal Feeding Operation. ()

02. CAFO. Concentrated Animal Feeding Operation. ()

03. NMP. Nutrient Management Plan. ()

04. NRCS. United States Department of Agriculture, Natural Resources Conservation Service. ()

05. USGS. United States Geological Survey. ()

012. -- 109. (RESERVED)

110. PERMIT APPLICATION.

01. Contents of Application. Poultry CAFO permit applications must include all required information and be submitted on a form approved by the Administrator. ()

02. Nutrient Management Plan. Permit applications must include an NMP that was prepared in conformance with IDAPA 02.04.30, "Rules Governing Environmental and Nutrient Management," and approved by the Department. ()

03. Wastewater Storage and Containment Facilities. For a poultry CAFO permit to be granted or renewed, all permitted facilities shall have a wastewater storage and containment facility included in the NMP that are designed, constructed, operated, and maintained pursuant to IDAPA 02.04.30, "Rules Governing Environmental and Nutrient Management." ()

111. -- 129. (RESERVED)

130. PERMIT CONDITIONS.

The following conditions will apply to all permittees: ()

01. Maintenance of the Facility. The permittee must ensure that maintenance of the facility is according to the approved NMP, and comply with the following: ()

a. Provisions of approved NMPs must be adhered to and amended in accordance with IDAPA 02.04.30.000 et seq. "Rules Governing Environmental and Nutrient Management." ()

02. Construction Commencement. If a permittee fails to begin construction or expansion of a facility within five (5) years of the effective date of the permit, the director may void the permit and require a new permit application. ()

03. Permit Renewal. If a permittee intends to continue operation of the permitted facility after expiration of an existing permit, the permittee must apply for a new permit at least one hundred eighty (180) days prior to the expiration of the permit. ()

131. -- 139. (RESERVED)

140. FEES AND ASSESSMENTS.

01. Annual Fees or Assessments. The director may establish annual fees or assessments for each permittee of no more than three cents (\$0.03) per square foot of containment area. ()

02. Payment of Annual Fees or Assessments. Annual fees or assessments are due annually by January 20th of the next calendar year. ()

141. -- 149. (RESERVED)

150. PERMIT MODIFICATION.

01. Modifications. Permit modifications that are not limited to the correction of errors, transfer of ownership or operational control, or minor changes in operational conditions that do not affect state water resources, must be submitted to the Department as a new permit application. ()

151. -- 159. (RESERVED)

160. TRANSFER OF PERMITS.

01. Transfer Application. A new owner or operator of a facility must submit a transfer application to the Department on an approved form that includes all required information and any change of conditions at the facility resulting from the permit transfer. ()

02. Transfer Application Review. If the transfer application is denied, the applicant will be provided specific reasons for the denial, the steps necessary to meet the requirements for a permit transfer, and the opportunity to request a hearing. ()

161. -- 199. (RESERVED)

200. WASTE STORAGE AND CONTAINMENT FACILITIES.

Construction, operation, and maintenance shall be in accordance with IDAPA 02.04.30, "Rules Governing Environmental and Nutrient Management." ()

201. -- 249. (RESERVED)

250. NUTRIENT MANAGEMENT.

01. Designated Poultry CAFOs. Any poultry AFO which is designated as a CAFO by the Department in accordance with Section 400 must submit an NMP within forty-five (45) days of designation. ()

251. NUTRIENT MANAGEMENT PLAN RETENTION.

All NMP records must be maintained by the CAFO permittee for a minimum of five (5) years and made available to the Department upon request. ()

252. -- 259. (RESERVED)

260. GROUND WATER QUALITY MONITORING.

At least annually, the department will sample and test the facility's production well water for nitrogen. ()

261. -- 299. (RESERVED)

300. PROHIBITED DISCHARGES.

Discharges or unauthorized discharges of manure or process wastewater from poultry CAFO or land application sites owned or controlled by a poultry CAFO are prohibited. ()

301. -- 309. (RESERVED)

310. NOTIFICATION OF DISCHARGE.

Within twenty-four (24) hours of learning of a discharge, the operator of a poultry CAFO must notify the Department. ()

311. -- 999. (RESERVED)

[Agency redlined courtesy copy]

02.04.32 – RULES GOVERNING POULTRY OPERATIONS

000. LEGAL AUTHORITY.

~~This chapter is adopted under the legal authority of~~ Section 25-4012, Idaho Code. (3-15-22)()

001. TITLE AND SCOPE.

~~01. Title.~~ The title of this chapter is IDAPA 02.04.32, "Rules Governing Poultry Operations." (3-15-22)

~~02. Scope.~~ These rules govern the ~~design, function and~~ management practices of waste systems on poultry concentrated animal feeding operations. ~~These rules also establish the procedures and requirements for issuance of a permit to construct, operate, or expand poultry concentrated animal feeding operations.~~ (3-15-22)()

002. -- 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

The following documents ~~are is~~ incorporated by reference and ~~a copiesy~~ of ~~these this~~ documents may be obtained from the Idaho State Department of Agriculture central office. (3-15-22)()

~~01. The 2004 Code of Federal Regulations (CFR) Title 40 Part 122 Section 122.23 (b).~~ This document can be viewed online at <https://www.govinfo.gov/content/pkg/CFR-2004-title40-vol20/pdf/CFR-2004-title40-vol20-part122.pdf>. (3-15-22)

~~02. Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (March 2008 Edition) (USDA, NRCS).~~ This document can be viewed online at <https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=17767.wba>. (3-15-22)

~~031.~~ **Nutrient Management Standard (NMS).** The June 2007 publication by the United States Department of Agriculture (USDA) Idaho 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. ()

~~04. Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004.~~ This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/10/nrcs_313_Dec_2004.pdf. (3-15-22)

~~05. American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004.~~ This document can be viewed online at <https://www.asabe.org/Publications-Standards/Standards-Development/National-Standards/Published-Standards>. (3-15-22)

005. -- 009. (RESERVED)

010. DEFINITIONS.

~~In addition to the definitions set forth in Section 25-4002, Idaho Code, t~~The following definitions apply: ~~in the interpretation and the enforcement of this chapter.~~ (3-15-22)()

01. Discharge. Release of process wastewater or manure from a poultry animal feeding operation, including its land application area, to waters of the state or beyond the poultry facility's property boundaries or beyond the property boundary of any facility. Contract manure haulers, producers and other persons who haul manure beyond the operator's property boundaries are responsible for releases of manure between the property boundaries of the operator and the property boundaries at the point of application. A discharge does not include aerosolized matter, or manure that has been reasonably incorporated on the land application area. ()

~~02. Idaho Pollutant Discharge Elimination System (IPDES).~~ Idaho's program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under these rules and the Clean Water Act sections 307, 402, 318, and 405. (3-15-22)

03. Runoff. Any precipitation that comes into contact with manure, compost, bedding, or feed on a poultry feeding operation and flows off the production area or flows off land application areas where the manure, compost, bedding, or feed has not been reasonably incorporated into the soil. ()

011. ABBREVIATIONS.

01. AFO. Animal Feeding Operation. ()

~~02. ASABE.~~ American Society of Agricultural and Biological Engineers. (3-15-22)

~~03. CAFO.~~ Concentrated Animal Feeding Operation. ()

~~04. DEQ.~~ Department of Environmental Quality. (3-15-22)

~~05. FEMA.~~ Federal Emergency Management Agency. (3-15-22)

~~06. IPDES.~~ Idaho Pollutant Discharge Elimination System. (3-15-22)

~~07. NMP.~~ Nutrient Management Plan. ()

~~08. NMS.~~ Nutrient Management Standard. (3-15-22)

~~09. NRCS.~~ United States Department of Agriculture, Natural Resources Conservation Service. ()

~~10. USGS.~~ United States Geological Survey. ()

012. -- 109. (RESERVED)

110. PERMIT APPLICATION.

~~01. **Permit Application.** Every person required by Section 25-4003, Idaho Code, to obtain a permit must submit a permit application to the department. The permit application will be used to determine if the construction and operation of the poultry CAFO will be in conformance with these rules. (3-15-22)~~

~~021. **Contents of Application.** Each Poultry CAFO permit applications must include, in the format set forth by the director in sufficient detail to allow the director to make necessary application review decisions concerning design and environmental protection by providing the following: all required information and be submitted on a form approved by the Administrator. (3-15-22)()~~

- ~~a. Name, mailing address and phone number of the facility owner. (3-15-22)~~
- ~~b. Name, mailing address and phone number of the facility operator. (3-15-22)~~
- ~~c. Name and mailing address of the facility. (3-15-22)~~
- ~~d. Legal description of the facility location. (3-15-22)~~
- ~~e. The one-time animal capacity, by head, of the facility. (3-15-22)~~
- ~~f. The type of animals to be confined at the facility. (3-15-22)~~
- ~~g. The facility's biosecurity and sanitary standards. (3-15-22)~~

~~02. **Nutrient Management Plan.** Permit applications must include an NMP that was prepared in conformance with IDAPA 02.04.30, "Rules Governing Environmental and Nutrient Management," and approved by the Department. ()~~

~~03. **Construction Plans.** Plans and specifications for the facility's animal waste management system that include the following information: (3-15-22)~~

- ~~a. Vicinity map(s) prepared on one (1) or more seven and one half minute (7.5') USGS topographic quadrangle maps or a high quality reproduction(s) that includes the following: (3-15-22)~~
 - ~~i. Layout of the facility, including buildings and animal waste management system; (3-15-22)~~
 - ~~ii. The one hundred (100) year FEMA flood zones or other appropriate flood data for the facility site and land application sites owned or leased by the applicant; and (3-15-22)~~
 - ~~iii. Private and community domestic water wells, irrigation wells, monitoring wells, and injection wells, irrigation conveyance and drainage structures, wetlands, streams, springs, and reservoirs that are within a one (1) mile radius of the facility. (3-15-22)~~
- ~~b. A site plan showing: (3-15-22)~~
 - ~~i. Building locations; (3-15-22)~~
 - ~~ii. Waste facilities; (3-15-22)~~
 - ~~iii. All waste conveyance systems; and (3-15-22)~~
 - ~~iv. All irrigation systems used for land application, including details of approved water supply protection devices. (3-15-22)~~
- ~~e. Building plans showing: (3-15-22)~~
 - ~~i. All wastewater collection systems in housed units; (3-15-22)~~

- ii. All freshwater supply systems, including details of approved water supply protection devices; (3-15-22)
 - iii. Detailed drawings of wastewater collection and conveyance systems and containment construction. (3-15-22)
 - ~~d. If a CAFO Site Advisory Team suitability determination was not conducted for the facility, the following additional information must be provided: (3-15-22)~~
 - i. Idaho DEQ delineated source water assessment areas within a one (1) mile radius of the facility and land application area; (3-15-22)
 - ii. Idaho DEQ delineated nitrate priority areas that intersect the facility or land application area; (3-15-22)
 - iii. Soil characteristics from NRCS; and (3-15-22)
 - iv. Well logs associated with wells listed in Subsection 110.04.a.iii. (3-15-22)
 - ~~e. All construction plans will specify how the facility will meet the engineering standards outlined in the Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (March 2008 Edition) (USDA, NRCS), Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004, or American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004. (3-15-22)~~
- ~~**04. Nutrient Management Plan.** NMPs must be prepared in conformance with the Nutrient Management Standard or other equally protective standard for managing the amount, source, placement, form and timing of the land application of nutrients or soil amendments. (3-15-22)~~

~~**03. Wastewater Storage and Containment Facilities.** For a poultry CAFO permit to be granted or renewed, all permitted facilities shall have a wastewater storage and containment facility included in the NMP that are designed, constructed, operated, and maintained pursuant to IDAPA 02.04.30, "Rules Governing Environmental and Nutrient Management." ()~~

111. -- 129. (RESERVED)

130. PERMIT CONDITIONS.

The following conditions will apply to all permittees: ()

- ~~**01. Compliance Required.** The permittee must comply with all conditions of the permit. The permit must not relieve the permittee of the responsibility of complying with all applicable local, state, and federal laws. (3-15-22)~~
- ~~**021. Construction, Operation, and Maintenance of the Facility.** The permittee must ensure that construction, operation, and maintenance of the facility proceed is according to the construction plans and specifications and the approved nutrient management plans NMP, and comply with the following: (3-15-22)()~~
 - ~~a. Within thirty (30) days of construction completion, submit as-built construction plans. (3-15-22)~~
 - ~~b. Apply best management practices as approved by the director. (3-15-22)~~
 - ~~e. The facility or operations associated with the facility must not adversely affect waters of the state or create nuisance conditions including odor. (3-15-22)~~
 - ~~d. The removal of animal waste from an impoundment or storage structure must be performed in a manner not to damage the integrity of the liner. (3-15-22)~~

~~e. Dead animals must be handled in accordance with IDAPA 02.04.17, “Rules Governing Dead Animal Movement and Disposal.” (3-15-22)~~

~~f. Nutrient management plans must be amended in accordance with IDAPA 02.04.30.000 et seq. “Rules Governing Environmental and Nutrient Management.” (3-15-22)~~

~~a. Provisions of approved NMPs must be adhered to and amended in accordance with IDAPA 02.04.30.000 et seq. “Rules Governing Environmental and Nutrient Management.” ()~~

~~g. Soil tests must be conducted annually on all land application sites owned or leased by the permittee to determine compliance with the NMP and NMS. The director may require more frequent soil tests if he deems it necessary. (3-15-22)~~

~~03. **Information to be Provided.** The permittee must furnish to the director, within a reasonable time, any information which the director may reasonably require to determine whether causes exists to modify or revoke the permit, or to determine compliance with the permit or applicable rules. (3-15-22)~~

~~04. **Entry and Access.** The permittee must allow the director entry and access in accordance with Section 25-4008, Idaho Code. (3-15-22)~~

~~05. **Reporting.** Permittees must report discharges or noncompliance issues within the following time frames: (3-15-22)~~

~~a. Within twenty-four (24) hours of the time the permittee knows or should have known of a discharge or unauthorized discharge, the permittee must verbally report the discharge. (3-15-22)~~

~~b. Within five (5) working days from the time a permittee knows or reasonably should have known of any event which has resulted or which may result in noncompliance with these rules, the permittee must file a written report with the director containing: (3-15-22)~~

~~i. A description of the event and its cause or if the cause is not known, steps taken to investigate and determine the cause; (3-15-22)~~

~~ii. The period of the event including, to the extent possible, times and dates; (3-15-22)~~

~~iii. Measures taken to mitigate or eliminate the event; and (3-15-22)~~

~~iv. Steps taken to prevent recurrence of the event. (3-15-22)~~

~~e. Immediately, whenever the permittee knows or learns or should reasonably know of material relevant acts not submitted or incorrect information submitted in a permit application or any report or notice to the director. (3-15-22)~~

~~062. **Construction Commencement.** If a permittee fails to begin construction or expansion of a facility within five (5) years of the effective date of the permit, the director may void the permit and require a new permit application. ()~~

~~073. **Permit Renewal.** If a permittee intends to continue operation of the permitted facility after expiration of an existing permit, the permittee must apply for a new permit at least one hundred eighty (180) days prior to the expiration of the permit. ()~~

~~08. **Specific Permit Conditions.** The director may establish specific permit conditions on a case by case basis. Specific conditions will be established in consideration of facility’s specific characteristics and will be designed to protect the state’s water resources. (3-15-22)~~

131. -- 139. (RESERVED)

140. FEES AND ASSESSMENTS.

01. **Annual Fees or Assessments.** The director may establish annual fees or assessments for each permittee of no more than three cents (\$0.03) per square foot of containment area. ()

02. **Payment of Annual Fees or Assessments.** Annual fees or assessments are due annually by January 20th of the next calendar year. ()

141. -- 149. (RESERVED)

150. PERMIT MODIFICATION.

01. **Minor Modifications.** ~~Minor p~~Permit modifications ~~are those which do not have a potential effect on the state's water resources. Such modifications will be made by the director, and are generally limited to: that are not limited to the correction of errors, transfer of ownership or operational control, or minor changes in operational conditions that do not affect state water resources, must be submitted to the Department as a new permit application.~~ (3-15-22)()

- a. ~~The correction of typographical or clerical errors;~~ (3-15-22)
- b. ~~Transfer of ownership or operational control in accordance with Section 160; or~~ (3-15-22)
- e. ~~Certain minor changes in monitoring or operational conditions.~~ (3-15-22)

02. **Major Modifications.** ~~All permit modifications not considered minor will be deemed major. The procedure for making major modifications is the same as that used for a new permit under these rules.~~ (3-15-22)

151. -- 159. (RESERVED)

160. TRANSFER OF PERMITS.

01. **Transfer Application.** A new owner or operator of a facility must submit a transfer application to the ~~director~~ Department on an approved form that includes ~~at least the following~~ all required information and any change of conditions at the facility resulting from the permit transfer. (3-15-22)()

- a. ~~The relevant information required by Subsection 110.03; and~~ (3-15-22)
- b. ~~Any change of conditions at the facility resulting from the ownership or operation transfer.~~ (3-15-22)

02. **Transfer Application Review.** ~~The director will review the transfer application and either approve or deny the application within sixty (60) days of its receipt.~~ (3-15-22)

a. ~~An approved transfer will be considered a minor modification pursuant to Subsection 150.01 as long as there are no major changes of conditions at the facility. Major changes of conditions at the facility are subject to Subsection 150.02.~~ (3-15-22)

b. ~~If the director denies the transfer application~~ is denied, the applicant will be provided, ~~he will set forth the~~ specific reasons for the denial, the steps necessary to meet the requirements for a permit transfer, and the opportunity to request a hearing. (3-15-22)()

161. -- 199. (RESERVED)

200. WASTE STORAGE AND CONTAINMENT FACILITIES.

01. ~~Wastewater Storage and Containment Facilities.~~ Construction, operation, and maintenance shall

~~be in accordance with IDAPA 02.04.30, "Rules Governing Environmental and Nutrient Management."~~ All poultry AFOs where process wastewater leaves the confinement area and has the potential to impact water of the state or be in violation of state water quality standards or ground water quality standards must have wastewater storage and containment facilities designed, constructed, operated, and maintained sufficient to contain: (3-15-22)()

- ~~a.~~ All process wastewater generated on the facility during the non-land application season; (3-15-22)
- ~~b.~~ The runoff from a twenty five (25) year, twenty four (24) hour rainfall event; and (3-15-22)
- ~~c.~~ Either three (3) inches of runoff from the accumulation of winter precipitation or the amount of runoff from the accumulation of precipitation from a one in five (1 in 5) year winter. (3-15-22)

~~02. All Substances Entering Wastewater Storage and Containment Facilities.~~ All substances entering wastewater storage and containment facilities must be composed of manure and process wastewater from the operation of the poultry AFO. The disposal of any other materials into a wastewater storage and containment facility, including, but not limited to, human waste, is prohibited. (3-15-22)

~~03. Waste Storage.~~ Storage areas for poultry waste including compost and solid manure storage areas must be located on approved soils and appropriately protected to prevent run-on and run-off. (3-15-22)

~~04. Waste and Wastewater System Maintenance.~~ Waste and wastewater storage and containment systems must be maintained in a condition that allows the producer to regularly inspect the integrity of the systems. (3-15-22)

~~05. Additional Ground Water Protection Requirements.~~ The permittee must construct and maintain all waste containment structures within the parameters of this rule, including the Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (March 2008 Edition) (USDA, NRCS), Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004, or American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004 (see Section 004, Incorporation by Reference). After inspection, if the Department has information that the waste containment structure(s) has been compromised severely enough to no longer meet the requirements of this rule, the Department may require an evaluation to be conducted by a licensed professional engineer. The engineer will make recommendations on steps needed to bring the facility into compliance with this rule. The permittee is responsible for engineering and reconstruction costs. If the permittee has a repeat waste containment compromise, as determined by the department, the Director may require ground water monitoring by the permittee. (3-15-22)

201. -- 249. (RESERVED)

250. NUTRIENT MANAGEMENT.

Each poultry CAFO must submit an NMP for land owned or controlled by the operator to the director for approval. The NMP must conform to the NMS and address odors generated in excess of odors normally associated with raising poultry in Idaho. (3-15-22)

01. Designated Poultry CAFOs. Any poultry AFO which is designated as a CAFO by the Department in accordance with Section 400 must submit an NMP within forty-five (45) days of designation. ()

~~02. NMP Approval.~~ The director will respond to or approve an NMP in writing within forty five (45) days of submission. (3-15-22)

~~03. NMP Updates or Amendments.~~ Nutrient management plans must be updated as needed to accurately reflect the facility and its nutrient management system. (3-15-22)

251. NUTRIENT MANAGEMENT PLAN RETENTION.

All NMPs which have been approved by the department and returned to the CAFO records must be maintained on site at by the CAFO permittee for a minimum of five (5) years and made available to the Department upon request. The department will retain a copy of the NMP. (3-15-22)()

252. NUTRIENT MANAGEMENT RECORDS.

- 01. Required Nutrient Management Records.** The CAFO operator must keep complete and accurate records of: (3-15-22)
- a.** Land application records, consisting of, at a minimum: (3-15-22)
 - i.** The dates, methods and approximate amounts of any manure or process wastewater applied on land owned or controlled by the operator. (3-15-22)
 - ii.** Weather conditions and soil moisture at the time of application. (3-15-22)
 - iii.** The lapsed time to manure incorporation, rainfall or irrigation event. (3-15-22)
 - iv.** Documentation of the actual rate at which nutrients were applied. When the actual rate used differs from the recommended and planned rates, nutrient management records must indicate the rationale for the difference. (3-15-22)
 - b.** The name and address of any third party receiving manure or process wastewater from the facility, including the dates of the transfer and the amount of manure or process wastewater transferred. (3-15-22)
 - c.** Nutrient Application. The quantities, analyses and sources of nutrients applied. (3-15-22)
 - d.** Soil Analysis. Complete soil analysis to create nutrient budget. (3-15-22)
 - e.** Crops. Crops planted, planting and harvest dates, yields and crop residues removed. (3-15-22)
 - f.** Record Review. Dates of annual review, person performing the review, and recommendations determined from the review. (3-15-22)
- 02. Records Retention.** All nutrient management records must be maintained for a period of five (5) years and provided to the department upon request. (3-15-22)

253. NMP VIOLATIONS.

The failure to implement an approved NMP, failure to retain and maintain an NMP at the CAFO, or failure to retain nutrient management records is a violation of these rules. (3-15-22)

~~254.~~ -- 259. (RESERVED)

260. GROUND WATER QUALITY MONITORING.

At least annually, the department will sample and test the facility's production well water for nitrogen. ()

261. -- 299. (RESERVED)

300. PROHIBITED DISCHARGES.

Discharges or unauthorized discharges of manure or process wastewater from poultry CAFO or land application sites owned or controlled by a poultry CAFO are prohibited. ()

301. -- 309. (RESERVED)

310. NOTIFICATION OF DISCHARGE.

Within twenty-four (24) hours of learning of a discharge ~~or unauthorized discharge~~, the operator of a poultry CAFO must ~~verbally~~ notify the ~~department of the discharge or unauthorized discharge~~. (3-15-22)()

~~311. -- 499.~~ (RESERVED)

500. INSPECTIONS.

~~Pursuant to Title 25, Chapter 40, Idaho Code, the director or his designee is authorized to inspect any poultry AFO, and to have access to and copy any facility records deemed necessary to ensure compliance with Title 25, Chapter 40, Idaho Code, and these rules.~~ (3-15-22)

~~**01. Frequency.** All poultry CAFOs will be inspected at least annually, or at intervals sufficient to determine that waste has been managed to prevent an unauthorized discharge or contamination of waters of the state.~~ (3-15-22)

~~**02. Inspection Methods.** Inspections may include, but are not limited to, evaluating effectiveness of best management practices, collecting samples, taking photographs, video recording or collecting other information as necessary.~~ (3-15-22)

~~501. — 549. (RESERVED)~~

550. VIOLATIONS.

~~**01. Failure to Comply.** Failure by a permittee to comply with the provisions of these rules or with any permit condition is a violation of these rules.~~ (3-15-22)

~~**02. Falsification of Statements and Records.** It is a violation of these rules for any person to knowingly make a false statement, representation, or certification in any application, report, document, or record developed, maintained, or submitted pursuant to these rules or the conditions of a permit.~~ (3-15-22)

~~**03. Discharge.** Any discharge or unauthorized discharge from a facility is a violation of these rules.~~ (3-15-22)

~~551-311. -- 999. (RESERVED)~~

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.06.01 – RULES GOVERNING THE PRODUCTION AND DISTRIBUTION OF SEED

DOCKET NO. 02-0601-2301 (FEE RULE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

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 22-2006, 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 Idaho Eastern Oregon Seed Association (IEOSA) has petitioned the agency to open rulemaking regarding the service fee schedule for the State Seed Lab, which is operated by the agency. The petition expresses the concern that the current fee structure is “incompatible” with fee structures in surrounding state seed labs and private sector seed labs. The petition further states that the State Seed Lab fee structure is much lower than private sector and surrounding state seed labs.

Two rulemaking meetings were held, and the fee structure proposed is a result of those meetings. The fee structure includes a 51% increase across all fees, with additional increases for rush fees and beans.

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 October 4, 2023 Idaho Administrative Bulletin, [Vol. 23-10, pages 111-118](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

Purity, Germination, and Tetrazolium Fees			
Kind of Seeds	Purity* \$/Unit	Germination \$/Unit	Tetrazolium** \$/Unit
AGRICULTURAL GRASS SEED			
Bluegrasses	\$68	\$38	\$60
Brome-grasses	\$57	\$36	\$60
Fescues	\$53	\$33	\$60
Orchardgrass	\$57	\$38	\$60
Ryegrasses	\$57	\$35***	\$60
Timothy	\$42	\$35	\$60
For all others the hourly rate will apply			
FIELD SEED			

Alfalfa, clovers and trefoils	\$30	\$26	\$60
Cereals (Barley, Oats, Rice, Rye, Triticale and Wheat	\$38	\$26	\$60
Beans	\$32	\$28	\$60
Corn (all types)	\$30	\$26	\$60
Peas, and Lentils	\$27	\$26	\$60
For all others the hourly rate will apply			
VEGETABLES, FLOWERS AND HERB SEED			
Brassica (Canola, Cauliflower, Broccoli, Radish, etc.)	\$60	\$26	\$76
Beets and Swiss chard	\$44	\$48	\$60
Carrots, celery, dill and parsley	\$41	\$30	\$60
Cucurbits (Squash, melons, etc.)	\$38	\$30	\$60
Flowers (Bachelors button, poppy, etc.)	\$60	\$38	\$76
Lettuce, tomato, and pepper	\$38	\$30	\$60
Onion and Chives	\$38	\$30	\$60
For all others the hourly rate will apply			
TREE AND SHRUB SEED			
Bitterbrush	\$60	\$45	\$76
Saltbush	\$91	\$45	\$76
Chokecherry and Woods' rose	\$38	\$91	\$91
Serviceberry, cliff-rose and mahogany	\$45	\$45	\$60
Trees (Firs, pines, spruces, etc.)	\$38	\$45	\$60
For all others the hourly rate will apply			
RANGE AND NATIVE SEED			
Bluestems and grammas	Hourly Rate	\$45	\$76
Globemallow and penstemons	\$60	\$45	\$76
Kochia and forage Kochia	\$45	\$45	\$60
Rushes and Sedges	Hourly Rate	\$45	\$76
Sagebrush and Rabbitbrush	Hourly Rate	\$45	\$60
Wheatgrasses, wildryes, and squirreltail	\$60	\$38	\$60
Winterfat	Hourly Rate	\$45	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).

Special Testing Fees	
Test Procedures:	Fees \$/Unit
All States Noxious	\$38
Canada: Purity Germination	\$20 - Added to purity fee \$4.00- Added to germination fee
Certified Grains	\$13 - Added to purity fee
Cold Test	\$35
Crop & Weed Check	\$37
Dormancy Percentage	\$11 - Minimum or Dormant % found x germination fee
E.C. Norms	\$30
Noxious Weed Germination (Compost/Mulch, etc.)	\$27
Noxious Weed Purity (Hay, Straw, etc.)	\$Hourly Rate
Identification	\$8- 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 Germination	\$20 - Added to purity fee \$4.- Added to germination fee
Mixtures: Purity Germination Tetrazolium	\$19 - Added per kind exceeding 5% \$19 - Added per kind exceeding 5% \$27 - Added per kind exceeding 5%
Moisture Test	\$21
Round-Up-Ready Trait Test (Alfalfa, Canola, Corn)	\$60
Sand Germination	\$38
Seed Count	\$20
Soil Exam	\$20.00

Sod Quality:	
Bentgrass	\$100
Bermudagrass	\$97
Bluegrass	\$97
Soil Germination	\$35
Species Exam	\$37
Undesirable Grass Species	\$39

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	\$60
Merge Records	\$4
Rush Service (priority processing over standard)	\$75
Super Rush Service (priority processing over Rush)	\$150

As authorized in Section 22-2006, Idaho Code, the fees in this rulemaking are necessary to compensate for the cost of providing voluntary services for seed analysis.

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:

If there are no changes in sample volume, the proposed changes would result in an additional \$110,000 in dedicated fund revenue.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule regulates an activity that is not regulated by the federal government; therefore the entire rule is broader in scope or more stringent than federal law. All activity is authorized or directed by Idaho Code.

The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

DATED this 3rd of January, 2024.

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
Phone: (208) 332-8615
Email: lloyd.knight@isda.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 22-2006, 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 October 18, 2023.

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:

The Idaho Eastern Oregon Seed Association (IEOSA) has petitioned the agency to open rulemaking regarding the service fee schedule for the State Seed Lab, which is operated by the agency. The petition expresses the concern that the current fee structure is “incompatible” with fee structures in surrounding state seed labs and private sector seed labs. The petition further states that the State Seed Lab fee structure is much lower than private sector and surrounding state seed labs.

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

Two rulemaking meetings were held, and the fee structure proposed is a result of those meetings. The fee structure includes a 51% increase across all fees, with additional increases for rush fees and beans as detailed below and included in Sections 190 through 192.

Purity, Germination, and Tetrazolium Fees			
Kind of Seeds	Purity* \$/Unit	Germination \$/Unit	Tetrazolium** \$/Unit
AGRICULTURAL GRASS SEED			
Bluegrasses	\$68	\$38	\$60
Bromegrasses	\$57	\$36	\$60
Fescues	\$53	\$33	\$60
Orchardgrass	\$57	\$38	\$60
Ryegrasses	\$57	\$35***	\$60

Timothy	\$42	\$35	\$60
For all others the hourly rate will apply			
FIELD SEED			
Alfalfa, clovers and trefoils	\$30	\$26	\$60
Cereals (Barley, Oats, Rice, Rye, Triticale and Wheat	\$38	\$26	\$60
Beans	\$32	\$28	\$60
Corn (all types)	\$30	\$26	\$60
Peas, and Lentils	\$27	\$26	\$60
For all others the hourly rate will apply			
VEGETABLES, FLOWERS AND HERB SEED			
Brassica (Canola, Cauliflower, Broccoli, Radish, etc.)	\$60	\$26	\$76
Beets and Swiss chard	\$44	\$48	\$60
Carrots, celery, dill and parsley	\$41	\$30	\$60
Cucurbits (Squash, melons, etc.)	\$38	\$30	\$60
Flowers (Bachelors button, poppy, etc.)	\$60	\$38	\$76
Lettuce, tomato, and pepper	\$38	\$30	\$60
Onion and Chives	\$38	\$30	\$60
For all others the hourly rate will apply			
TREE AND SHRUB SEED			
Bitterbrush	\$60	\$45	\$76
Saltbush	\$91	\$45	\$76
Chokecherry and Woods' rose	\$38	\$91	\$91
Serviceberry, cliff-rose and mahogany	\$45	\$45	\$60
Trees (Firs, pines, spruces, etc.)	\$38	\$45	\$60
For all others the hourly rate will apply			
RANGE AND NATIVE SEED			
Bluestems and grammas	Hourly Rate	\$45	\$76
Globemallow and penstemons	\$60	\$45	\$76
Kochia and forage Kochia	\$45	\$45	\$60
Rushes and Sedges	Hourly Rate	\$45	\$76
Sagebrush and Rabbitbrush	Hourly Rate	\$45	\$60
Wheatgrasses, wildryes, and squirreltail	\$60	\$38	\$60

Winterfat	Hourly Rate	\$45	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).

Special Testing Fees	
Test Procedures:	Fees \$/Unit
All States Noxious	\$38
Canada: Purity Germination	\$20 - Added to purity fee \$4.00- Added to germination fee
Certified Grains	\$13 - Added to purity fee
Cold Test	\$35
Crop & Weed Check	\$37
Dormancy Percentage	\$11 - Minimum or Dormant % found x germination fee
E.C. Norms	\$30
Ergot Check	\$20
Noxious Weed Germination (Compost/Mulch, etc.)	\$27
Noxious Weed Purity (Hay, Straw, etc.)	\$Hourly Rate
Identification	\$8- 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 Germination	\$20 - Added to purity fee \$4.- Added to germination fee
Mixtures: Purity Germination Tetrazolium	\$19 - Added per kind exceeding 5% \$19 - Added per kind exceeding 5% \$27 - Added per kind exceeding 5%
Moisture Test	\$21

Round-Up-Ready Trait Test (Alfalfa, Canola, Corn)	\$60
Sand Germination	\$38
Seed Count	\$20
Soil Exam	\$13.50 20.00
Sod Quality:	
Bentgrass	\$100
Bermudagrass	\$97
Bluegrass	\$97
Soil Germination	\$35
Species Exam	\$37
Undesirable Grass Species	\$39

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	\$60
Reports:	
Merge Records	\$4
Rush Service (priority processing over standard)	\$75
Super Rush Service (priority processing over Rush)	\$150

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:

If there were no changes in sample volume, the proposed changes would result in an additional \$110,000 in dedicated fund revenue.

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 July 5, 2023 Idaho Administrative Bulletin, [Vol. 23-7, page 12](#).

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 documents incorporated by reference.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule regulates an activity that is not regulated by the federal government; therefore the entire rule is broader in scope or more stringent than federal law. All activity is authorized or directed by Idaho Code.

The detailed 22-101A analysis can be found on the agency’s website at: www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 October 25, 2023.

DATED this 4th day of October, 2023.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0601-2301

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 68	\$25 38	\$40 60
Bromegrasses	\$38 57	\$24 36	\$40 60
Fescues	\$35 53	\$22 33	\$40 60
Orchardgrass	\$38 57	\$25 38	\$40 60
Ryegrasses	\$38 57	\$23 35***	\$40 60
Timothy	\$28 42	\$23 35	\$40 60
For all others the hourly rate will apply			
FIELD SEED			
Alfalfa, clovers and trefoils	\$20 30	\$17 26	\$40 60
Cereals (Barley, Oats, Rice, Rye, Triticale and Wheat)	\$25 38	\$17 26	\$40 60
Beans	\$18 32	\$16 28	\$40 60
Corn (all types)	\$20 30	\$17 26	\$40 60
Peas, and Lentils	\$18 27	\$17.50 26	\$40 60
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.)	\$ <u>40</u> <u>60</u>	\$ <u>17</u> <u>26</u>	\$ <u>50</u> <u>76</u>
Beets and Swiss chard	\$ <u>29</u> <u>44</u>	\$ <u>32</u> <u>48</u>	\$ <u>40</u> <u>60</u>
Carrots, celery, dill and parsley	\$ <u>27</u> <u>41</u>	\$ <u>20</u> <u>30</u>	\$ <u>40</u> <u>60</u>
Curcubits (Squash, melons, etc.)	\$ <u>25</u> <u>38</u>	\$ <u>20</u> <u>30</u>	\$ <u>40</u> <u>60</u>
Flowers (Bachelors button, poppy, etc.)	\$ <u>40</u> <u>60</u>	\$ <u>25</u> <u>38</u>	\$ <u>50</u> <u>76</u>
Lettuce, tomato, and pepper	\$ <u>25</u> <u>38</u>	\$ <u>20</u> <u>30</u>	\$ <u>40</u> <u>60</u>
Onion and Chives	\$ <u>25</u> <u>38</u>	\$ <u>20</u> <u>30</u>	\$ <u>40</u> <u>60</u>
For all others the hourly rate will apply			
TREE AND SHRUB SEED			
Bitterbrush	\$ <u>40</u> <u>60</u>	\$ <u>30</u> <u>45</u>	\$ <u>50</u> <u>76</u>
Saltbush	\$ <u>60</u> <u>91</u>	\$ <u>30</u> <u>45</u>	\$ <u>50</u> <u>76</u>
Chokecherry and Woods' rose	\$ <u>25</u> <u>38</u>	\$ <u>60</u> <u>91</u>	\$ <u>60</u> <u>91</u>
Serviceberry, cliff-rose and mahogany	\$ <u>30</u> <u>45</u>	\$ <u>30</u> <u>45</u>	\$ <u>40</u> <u>60</u>
Trees (Firs, pines, spruces, etc.)	\$ <u>25</u> <u>38</u>	\$ <u>30</u> <u>45</u>	\$ <u>40</u> <u>60</u>
For all others the hourly rate will apply			
RANGE AND NATIVE SEED			
Bluestems and grammas	Hourly Rate	\$ <u>30</u> <u>45</u>	\$ <u>50</u> <u>76</u>
Globemallow and penstemons	\$ <u>40</u> <u>60</u>	\$ <u>30</u> <u>45</u>	\$ <u>50</u> <u>76</u>
Kochia and forage Kochia	\$ <u>30</u> <u>45</u>	\$ <u>30</u> <u>45</u>	\$ <u>40</u> <u>60</u>
Rushes and Sedges	Hourly Rate	\$ <u>30</u> <u>45</u>	\$ <u>50</u> <u>76</u>
Sagebrush and Rabbitbrush	Hourly Rate	\$ <u>30</u> <u>45</u>	\$ <u>40</u> <u>60</u>
Wheatgrasses, wildryes, and squirreltail	\$ <u>40</u> <u>60</u>	\$ <u>25</u> <u>38</u>	\$ <u>40</u> <u>60</u>
Winterfat	Hourly Rate	\$ <u>30</u> <u>45</u>	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).

(3-15-22)()

191. SERVICE TESTING FEES -- SPECIAL TESTS.

Special Testing Fees	
Test Procedures:	Fees \$/Unit
All States Noxious	\$25 <u>38</u>
Canada: Purity Germination	\$13 <u>20</u> - Added to purity fee \$2.50 <u>4.00</u> - Added to germination fee
Certified Grains	\$13 - Added to purity fee
Cold Test	\$23.50 <u>35</u>
Crop & Weed Check	\$24.50 <u>37</u>
Dormancy Percentage	\$40 <u>11</u> - Minimum or Dormant % found x germination fee
E.C. Norms	\$20 <u>30</u>
Ergot Check	\$13.50
Noxious Weed Germination (Compost/Mulch, etc.)	\$18 <u>27</u>
Noxious Weed Purity (Hay, Straw, etc.)	\$40 <u>Hourly Rate</u>
Identification	\$58 - 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 Germination	\$13 <u>20</u> - Added to purity fee \$2.50 <u>4</u> - Added to germination fee
Mixtures: Purity Germination Tetrazolium	\$12.50 <u>19</u> - Added per kind exceeding 5% \$12.50 <u>19</u> - Added per kind exceeding 5% \$18 <u>27</u> - Added per kind exceeding 5%
Moisture Test	\$14 <u>21</u>
Round-Up-Ready Trait Test (Alfalfa, Canola, Corn)	\$40 <u>60</u>
Sand Germination	\$25 <u>38</u>
Seed Count	\$13.50 <u>20</u>
Soil Exam	\$13.50 <u>20.00</u>
Sod Quality: Bentgrass Bermudagrass Bluegrass	\$66 <u>100</u> \$64 <u>97</u> \$64 <u>97</u>

Special Testing Fees	
Test Procedures:	Fees \$/Unit
Soil Germination	\$23.50 35
Species Exam	\$24.50 37
Undesirable Grass Species	\$25.50 39

(3-15-22)()

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 60
<u>Reports:</u>	
Merge Records	\$4
Rush Service	\$25 75
<u>Super Rush Service (priority processing over Rush)</u>	<u>\$150</u>

(3-15-22)()

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.06.02 – RULES GOVERNING REGISTRATIONS AND LICENSES
DOCKET NO. 02-0602-2301
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

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 22-604, 22-2204, 22-2303(5), 22-2503, 22-2511, and 25-2710, 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 proposed rule includes updates to the publication dates for publications Incorporated by Reference in the rule. The two publications include standardized definitions and standards utilized by states to regulate commercial feed, commercial fertilizer, and soil & plant amendments.

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 October 4, 2023 Idaho Administrative Bulletin, [Vol. 23-10, pages 119-121](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

No changes have been made to fees for these 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:

There is no fiscal impact due to these changes.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule regulates an activity that is not regulated by the federal government; therefore the entire rule is broader in scope or more stringent than federal law.

The detailed 22-101A analysis can be found on the agency's website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

DATED this 3rd of January, 2024.

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
Phone: (208) 332-8615
Email: lloyd.knight@isda.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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), 22-2503, 22-2511, and 25-2710, 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 October 18, 2023.

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:

The proposed rule includes updates to the publication dates for publications Incorporated by Reference in the rule. The two publications include standardized definitions and standards utilized by states to regulate commercial feed, commercial fertilizer, and soil & plant amendments.

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

No changes have been made to fees for these 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:

There is no fiscal impact due to these changes.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these changes are to the publication dates of documents that were already incorporated into these rules.

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:

Association of American Plant Food Control Officials (AAPFCO) Official Publication – provides a national standard that is common to all state fertilizer and soil & plant amendment regulatory programs.

Association of American Feed Control Officials (AAFCO) Official Publication – provides a national standard that is common to all state animal feed regulatory programs.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule regulates an activity that is not regulated by the federal government; therefore the entire rule is broader in scope or more stringent than federal law.

The detailed 22-101A analysis can be found on the agency's website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 October 25, 2023.

DATED this 4th day of October, 2023.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0602-2301

SUBCHAPTER A – COMMERCIAL FEED

104. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into this Subchapter A: (3-23-23)

01. The Association of American Feed Control Officials (AAFCO) Official Publication. The Terms, Ingredient Definitions, Model Bill and Regulations, and Policies as published in the “2022~~24~~ Official Publication” of AAFCO where those statements do not conflict with 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.

(3-23-23)()

02. The Merck Index. The “Merck Veterinary Manual,” 11th Edition, as published by Merck Research Laboratories Division of Merck & Co., Incorporated. The manual is publicly available online from Merck & Co., Inc at: <http://www.rsc.org/merckindex>.

(3-23-23)

(BREAK IN CONTINUITY OF SECTIONS)

SUBCHAPTER C – FERTILIZER

404. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into Subchapter C: (3-23-23)

01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication. The Officially adopted Documents, Official Terms, and Policies, as published in the “2022~~24~~ Official Publication” of AAPFCO where those statements do not conflict with 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.

(3-23-23)()

02. 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. (3-23-23)

(BREAK IN CONTINUITY OF SECTIONS)

SUBCHAPTER D – SOIL AND PLANT AMENDMENTS

504. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into Subchapter D: (3-23-23)

01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication. The Terms, Ingredient Definitions, and Policies, as published in the “20~~22~~²⁴ 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 22, Idaho Code, and any rule promulgated thereunder. A copy may be purchased online from the AAPFCO website at: www.aapfco.org. (~~3-23-23~~)

02. 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. (3-23-23)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.06.04 – RULES GOVERNING PLANT EXPORTS

DOCKET NO. 02-0604-2301 (ZBR CHAPTER REWRITE, FEE RULE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

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 22-107, 22-112, and 22-2303(5), 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 is being presented for authorization as part of the ISDA's plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor's [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

These rules govern the production of pest-free plants, plant products, and like inspections. To provide procedures for compliance with phytosanitary regulations of other states and foreign countries, to protect Idaho agriculture from the introduction of foreign pests on imported plants and materials. These rules also govern procedures for voluntary certification of virus-free nursery stock for export. These rules also establish a ginseng registration and export program to protect American ginseng as an endangered species.

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 October 4, 2023, Idaho Administrative Bulletin, [Vol. 23-10, pages 122-138](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

Fees are charged for services requested under this rule, including phytosanitary certification and sampling, field sampling, and lab services. Section 22-418(4), Idaho Code, authorizes the imposition of these fees.

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: There is no fiscal impact as a result of this rulemaking.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule outlines the application of federal quarantines or phytosanitary requirements and governs state or customer activities in order to comply with those requirements.

The detailed 22-101A analysis can be found on the agency's website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

DATED this 3rd of January, 2024

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
Phone: (208) 332-8615
Email: lloyd.knight@isda.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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: 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 October 18, 2023.

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:

This rule is being presented for authorization as part of the ISDA's plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor's [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

These rules govern the production of pest-free plants, plant products, and like inspections. To 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 plants and materials. These rules also govern procedures for voluntary certification of virus-free nursery stock for export. These rules also establish a ginseng registration and export program to protect American ginseng as an endangered species.

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

Fees are charged for services requested under this rule, including phytosanitary certification and sampling, field sampling, and lab services.

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 fiscal impact because 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 May 3, 2023 Idaho Administrative Bulletin, [Vol. 23-5, Page 11](#).

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:

Materials cited as Incorporated by Reference include to manuals published by the United States Department of Agriculture, Plant Protection and Quarantine program as required technical standards for those certification and inspection activities performed on commodities for export.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule outlines the application of federal quarantines or phytosanitary requirements and governs state or customer activities in order to comply with those requirements.

The detailed 22-101A analysis can be found on the agency's website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 October 25, 2023.

DATED this 4th day of October, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 02-0604-2301

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. SCOPE.

These rules govern the production of pest-free plants, plant products, and like inspections. To 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 plants and materials. These rules also govern procedures for voluntary certification of virus-free nursery stock for export. These rules also establish a ginseng registration and export program to protect American ginseng as an endangered species. ()

002. – 109. (RESERVED)

SUBCHAPTER A – PHYTOSANITARY AND POST-ENTRY CERTIFICATION

110. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into subchapter A: ()

01. United States Department of Agriculture, Plant Protection and Quarantine Export Program Manual (XPM). The Officially adopted Documents, Official Terms, and Policies, as published in the XPM of USDA/APHIS/PPQ. A copy may be obtained online from the USDA website at: http://www.aphis.usda.gov/import_export/plants/manuals/domestic/downloads/xpm.pdf. ()

02. United States Department of Agriculture, Plant Protection and Quarantine Post-Entry Quarantine (PEQ) Manual. The Officially adopted Documents, Official Terms, and Policies, as published in the PEQ manual of USDA/APHIS/PPQ. A copy may be obtained online from the USDA website at: https://www.aphis.usda.gov/import_export/plants/manuals/domestic/downloads/postentry.pdf. ()

111. -- 129. (RESERVED)

130. CROP/COMMODITY, DISEASE AND PEST(S) INSPECTIONS.

01. Minimum Field Inspection(s). Minimum field inspections for diseases will be published annually by the Department. ()

02. Special Inspection Requests. Requests for inspection of plants and plant products for plant diseases or pests not specifically listed in the annual publication 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. -- 169. (RESERVED)

170. APPLICATIONS FOR FIELD INSPECTION AND PHYTOSANITARY CERTIFICATES.

01. Application for Field Inspection. Application(s) must be filed with the Department's online submission form. Applications submitted after published deadlines will be performed only at the discretion of the Department. ()

02. 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 and submitted by the application to the USDA Phytosanitary Certificate Issuance and Tracking (PCIT) System at <https://pcit.aphis.usda.gov/pcit/>. Only fully completed applications will be accepted. Notification of pending applications shall be submitted to the area phone message line. ()

03. "Rush" Service. This service is to accommodate requests for phytosanitary certification applications, official sampling, field inspection, or other services that must be completed with a one (1) business day turn-around or within a specific timeframe on a certain day without a two (2) business day prenotification. 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. This service will be carried out only after a mutual agreement between the applicant and the Department. The request must be made by telephone. "Rush" service will be subject to the fees as outlined in Subsections 195.01 and 195.02. ()

171. -- 194. (RESERVED)

195. FEES AND CHARGES.

01. Phytosanitary Certificates, Like Inspections, and Official Treatment Observations. Fees for

these voluntary services will be published annually on the Department website at www.agri.idaho.gov. Fees will be updated every three (3) years. Proposed fees will be posted for comment no later than September 1, final fees will be posted no later than November 1 to be in effect the following January 1. ()

02. Field or Lot Inspections. Fees published annually by the Department. Fees for these voluntary services will be published annually on the Department website at www.agri.idaho.gov. Fees will be updated every three (3) years. Proposed fees will be posted for comment no later than September 1, final fees will be posted no later than November 1 to be in effect the following January 1. ()

03. Plant Pathological Laboratory Services. Fees available upon request through the Bureau of Agriculture Laboratories. ()

196. -- 209. (RESERVED)

SUBCHAPTER B – VIRUS-FREE NURSERY STOCK CERTIFICATION

210. CERTIFICATION PROCEDURES.

A virus certification program exists to produce fruit and ornamental nursery stock material discernibly free of economically harmful plant viruses and virus-like agents that meet domestic and international standards required for export. Eligible nurseries participate in the program on a voluntary basis and plant material must meet certification program requirements as provided by the Department. ()

211. -- 309. (RESERVED)

SUBCHAPTER C – GINSENG REGISTRATION AND EXPORT

310. REGISTRATION.

A ginseng registration and export program exists to protect American ginseng (*Panax quinquefolius*) as an endangered species, prevent illegal trade of wild ginseng, and ensure cultivated ginseng meets domestic and international standards required for export. Anyone who buys ginseng for resale or grows and sells it for export shall register with the Department and plant material must meet program requirements as provided by federal and state standards. ()

311. -- 319. (RESERVED)

320. REGULATED PRODUCTS.

American ginseng (*Panax quinquefolius*). ()

321. -- 329. (RESERVED)

330. COLLECTION OF WILD GINSENG.

To prevent illegal trade, no grower's or dealer's registration will be issued for the collection, sale or distribution of wild ginseng. ()

331. -- 359. (RESERVED)

360. OUT-OF-STATE GINSENG.

031 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. -- 999. (RESERVED)

[Agency redlined courtesy copy]

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.” (3-15-22)

~~02. Scope.~~ These rules govern the production of pest-free plants, ~~and~~ plant products, and like inspections. To 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 plants and materials. These rules also govern procedures for voluntary certification of virus-free nursery stock for export. These rules also establish a ginseng registration and export program to protect American ginseng as an endangered species. (3-15-22)()

002. – 109. (RESERVED)

SUBCHAPTER A – PHYTOSANITARY AND POST-ENTRY ~~SEED~~ CERTIFICATION

110. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into subchapter A: ()

01. United States Department of Agriculture, Plant Protection and Quarantine Export Program Manual (XPM). The Officially adopted Documents, Official Terms, and Policies, as published in the XPM of USDA/APHIS/PPQ. A copy may be obtained online from the USDA website at: http://www.aphis.usda.gov/import_export/plants/manuals/domestic/downloads/xpm.pdf. ()

02. United States Department of Agriculture, Plant Protection and Quarantine Post-Entry Quarantine (PEQ) Manual. The Officially adopted Documents, Official Terms, and Policies, as published in the PEQ manual of USDA/APHIS/PPQ. A copy may be obtained online from the USDA website at: https://www.aphis.usda.gov/import_export/plants/manuals/domestic/downloads/postentry.pdf. ()

110. DEFINITIONS.

The definitions found in Section 110 apply to the interpretation and enforcement of Subchapter A only: (3-15-22)

~~01. Applicant.~~ Any person applying for an inspection or certification under Subchapter A. (3-15-22)

~~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. (3-15-22)

~~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. (3-15-22)

~~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. (3-15-22)~~

~~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. (3-15-22)~~

~~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. (3-15-22)~~

~~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. (3-15-22)~~

- ~~01. **Area 1.** Kootenai County. (3-15-22)~~
- ~~02. **Area 2.** Benewah County. (3-15-22)~~
- ~~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. (3-15-22)~~
- ~~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 (3-15-22)~~
- ~~05. **Area 5.** Lewis County. (3-15-22)~~
- ~~06. **Area 6.** Canyon, Ada, Owyhee, Payette, Washington and Gem Counties. (3-15-22)~~
- ~~07. **Area 7.** Gooding, Jerome, Lincoln and Elmore Counties. (3-15-22)~~
- ~~08. **Area 8.** Twin Falls County. (3-15-22)~~
- ~~09. **Area 9.** Cassia County. (3-15-22)~~
- ~~10. **Area 10.** That portion of Minidoka County lying south of the main line of the Union Pacific Railroad. (3-15-22)~~
- ~~11. **Area 11.** That portion of Minidoka County lying north of the main line of the Union Pacific Railroad. (3-15-22)~~
- ~~12. **Area 12.** Bingham, Bonneville, Power and Bannock Counties. (3-15-22)~~
- ~~13. **Area 13.** Jefferson, Madison, Fremont, Teton, Clark and Butte Counties. (3-15-22)~~

~~14.~~ **Area 14.** All other agricultural areas of the state not specifically designated above. (3-15-22)

~~124~~**11.** -- 129. (RESERVED)

130. CROP/COMMODITY, DISEASE AND PEST(S) INSPECTIONS.

01. Minimum Field Inspection(s). ~~Unless otherwise requested by the applicant, m~~Minimum field inspections for diseases will be ~~as follows~~ published annually by the Department.: (3-15-22)()

~~a.~~ **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.~~ (3-15-22)

~~b.~~ **b.** Peas: Bacterial blight, *Pseudomonas* species. (3-15-22)

~~c.~~ **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. (3-15-22)

~~d.~~ **d.** Alfalfa: Verticillium Wilt—*Verticillium albo atrum*, stem and bulb nematode—*Ditylenchus dipsaci*. (3-15-22)

~~e.~~ **e.** Lettuce: Lettuce mosaic virus. (3-15-22)

~~f.~~ **f.** Radish: Bacterial spot—*Xanthomonas campestris* pv. *vesicatoria*, Anthracnose—*Colletotrichum higginsianum*, blackleg—*Leptosphaera maculans*. (3-15-22)

~~g.~~ **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*. (3-15-22)

~~h.~~ **h.** Carrot: Bacterial blight *Xanthomonas campestris* pv. *carotae*, soft rot—*Erwinia carotovora*. (3-15-22)

02. Special Inspection Requests. Requests for inspection of plants and plant products for plant diseases or pests not specifically listed in ~~Subchapter A~~ the annual publication 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. (3-15-22)()

~~131.—139.~~ (RESERVED)

~~140.~~ **APPLICATION FOR INSPECTION—PROCEDURES.**

~~01.~~ **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. (3-15-22)

~~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. (3-15-22)~~

~~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. (3-15-22)~~

~~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. (3-15-22)~~

~~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. (3-15-22)~~

~~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. (3-15-22)~~

~~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. (3-15-22)~~

~~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. (3-15-22)~~

~~161. -- 169. (RESERVED)~~

~~170. **PROCEDURE FOR OBTAINING APPLICATIONS FOR FIELD INSPECTION AND PHYTOSANITARY CERTIFICATES.**~~

~~01. **Application for Field Inspection.** Application(s) must be filed with the Department's online submission form. Applications submitted after published deadlines will be performed only at the discretion of the Department. ()~~

~~042. **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 and submitted by the application to the USDA Phytosanitary Certificate Issuance and Tracking (PCIT) System at <https://pcit.aphis.usda.gov/pcit/>. 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. Notification of pending applications shall be submitted to the area phone message line. (3-15-22)(____)

~~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. (3-15-22)

~~03. "Rush" Service.~~ As defined in Subsection 110.05 must be requested before or upon submission of an application for phytosanitary certification. This service is to accommodate requests for phytosanitary certification applications, official sampling, field inspection, or other services that must be completed with a one (1) business day turn-around or within a specific timeframe on a certain day without a two (2) business day prenotification. 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. This service will be carried out only after a mutual agreement between the applicant and the Department. The request ~~may~~ must be made by telephone. "Rush" service will be subject to the fees as outlined in Subsections ~~195.02-d~~ 195.01 and 195.02. (3-15-22)(____)

~~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.~~ (3-15-22)

~~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.~~ (3-15-22)

~~191. -- 194. (RESERVED)~~

195. FEES AND CHARGES.

01. Phytosanitary Certificates, Like Inspections, and Official Treatment Observations. Fees for these voluntary services will be published annually on the Department website at www.agri.idaho.gov. Fees will be updated every three (3) years. Proposed fees will be posted for comment no later than September 1, final fees will be posted no later than November 1 to be in effect the following January 1. (3-15-22)(____)

~~a:~~ Federal Phytosanitary Inspection Certificates or like documents: sixty dollars (\$60) per certificate. (3-15-22)

~~b:~~ State Phytosanitary Inspection Certificates or like documents: twenty five dollars (\$25) per certificate. (3-15-22)

~~02. Phytosanitary Certification and Like Inspections and Official Treatment Observations.~~ (3-15-22)

~~a:~~ Officially Drawn Samples: (i.e., purity and germ samples, referee samples, lab analysis) twenty dollars (\$20) per sample. (3-15-22)

~~b:~~ Submitted Samples: twenty dollars (\$20) per item submitted. (3-15-22)

~~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. (3-15-22)~~

~~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. (3-15-22)~~

~~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. (3-15-22)~~

~~03. **Area Inspections.** Area Inspection: fourteen cents (\$.14) per hundred weight. (3-15-22)~~

042. Field or Lot Inspections. Fees published annually by the Department. Fees for these voluntary services will be published annually on the Department website at www.agri.idaho.gov. Fees will be updated every three (3) years. Proposed fees will be posted for comment no later than September 1, final fees will be posted no later than November 1 to be in effect the following January 1. (3-15-22)()

~~a. Application for Field Inspection: five dollars (\$5) per application. (3-15-22)~~

~~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. (3-15-22)~~

~~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. (3-15-22)~~

~~063. **Plant Pathological Laboratory Services.** Fees available upon request through the Bureau of Agriculture Laboratories. (3-15-22)()~~

~~07. **Special Project Fee.** (3-15-22)~~

~~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: (3-15-22)~~

~~i. Research; (3-15-22)~~

~~ii. Lot history verification; (3-15-22)~~

~~iii. Data entry; (3-15-22)~~

~~iv. Sales and purchases; (3-15-22)~~

~~v. Transfer of lots into ISDA database; (3-15-22)~~

~~vi. ISDA training of private company personnel; (3-15-22)~~

~~vii. Special plant pest detection surveys; or (3-15-22)~~

~~viii. Any other circumstance approved by the Director. (3-15-22)~~

~~b. This fee does not include any laboratory analysis fees that might be required as part of a special plant pest detection survey. (3-15-22)~~

196. -- 209. (RESERVED)

SUBCHAPTER B – VIRUS-FREE NURSERY STOCK CERTIFICATION

210. CERTIFICATION PROCEDURES.

A virus certification program exists to produce fruit and ornamental nursery stock material discernibly free of economically harmful plant viruses and virus-like agents that meet domestic and international standards required for export. Eligible nurseries participate in the program on a voluntary basis and plant material must meet certification program requirements as provided by the Department. ()

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:~~ (3-15-22)

~~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.~~ (3-15-22)

~~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%).~~ (3-15-22)

~~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.~~ (3-15-22)

~~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.~~ (3-15-22)

~~05. **Indicator Plant.** Any herbaceous or woody plant used to index or determine virus infection.~~ (3-15-22)

~~06. **Interstock.** Scionwood used for compatibility purposes to graft between a particular top stock and rootstock.~~ (3-15-22)

~~07. **Nursery Stock.** For purposes of this rule includes the plants and plant parts of the genera *Prunus*, *Malus*, *Pyrus*, *Chaenomeles* and *Cydonia*.~~ (3-15-22)

~~08. **Off Type.** Not true to name (phenotype) as registered under Subchapter B.~~ (3-15-22)

~~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.~~ (3-15-22)

~~10. **Rootstock.** That part of a plant including the roots on which another variety of plant material may be grafted.~~ (3-15-22)

~~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."~~ (3-15-22)

~~12. **Scion (Scionwood).** A detached shoot or other portion of a plant consisting of one or more buds used in propagation by grafting.~~ (3-15-22)

~~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."~~ (3-15-22)

~~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.” (3-15-22)

15. Top Stock. Usually scionwood used for grafting onto interstock or rootstock, may include seed. (3-15-22)

16. True Seedling. A tree that has been grown from seed. (3-15-22)

17. Virus-Infected. The presence of a harmful virus(es) in a plant or plant part. (3-15-22)

18. Virus-Like. A disorder of genetic or non-transmissible origin and also includes mycoplasma-like organisms and rickettsia-like organisms. (3-15-22)

~~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. (3-15-22)

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. (3-15-22)

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. (3-15-22)

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. (3-15-22)

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. (3-15-22)

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. (3-15-22)

07. Grafting. There shall be no budding, grafting, or top-working of registered trees in any scion-block, seed-block, or stool-block. (3-15-22)

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. (3-15-22)

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. (3-15-22)

~~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. (3-15-22)

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. (3-15-22)

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. (3-15-22)

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. (3-15-22)

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. (3-15-22)

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. (3-15-22)

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. (3-15-22)

- ~~02. **Location.** The isolation distances between certified and non-certified nursery stock shall be: (3-15-22)~~
- ~~a. Not less than fifty (50) feet from non-certified plants of the Rosaceae family; (3-15-22)~~
 - ~~b. Not less than twenty (20) feet from other non-certified nursery stock; (3-15-22)~~
 - ~~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. (3-15-22)~~
- ~~03. **Identity Maintenance.** The maintenance of certified stock identity shall be a tagging program identifying trees produced from: (3-15-22)~~
- ~~a. Registered rootstock produced from registered seed or stool beds; (3-15-22)~~
 - ~~b. Registered scion source trees. The tracking system involves a numbering diagram system of each participant's nursery stock beds in the program. (3-15-22)~~
- ~~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%). (3-15-22)~~
- ~~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. (3-15-22)~~
- ~~06. **Acceptability.** All nursery stock meeting the requirements of this program are known as Idaho Certified Nursery Stock. (3-15-22)~~
- ~~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. (3-15-22)~~
- ~~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. (3-15-22)~~
 - ~~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. (3-15-22)~~
 - ~~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. (3-15-22)~~
- ~~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. (3-15-22)~~

~~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. (3-15-22)~~

~~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. (3-15-22)~~

~~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. (3-15-22)~~

~~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. (3-15-22)~~

~~02. Laboratory Fees. Laboratory fees are established by a Department approved testing facility and will be paid directly to the facility. (3-15-22)~~

~~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. (3-15-22)~~

~~a. A fee of twenty-five dollars (\$25) per hour for inspection and travel time with a minimum charge of fifty dollars (\$50). (3-15-22)~~

~~b. Per diem costs will be charged according to established state rates. (3-15-22)~~

~~e. The fees charged for tags will be at cost plus an administrative fee of ten percent (10%) for each order. (3-15-22)~~

~~2811. -- 309. (RESERVED)~~

SUBCHAPTER C – GINSENG REGISTRATION AND EXPORT

310. REGISTRATION.

A ginseng registration and export program exists to protect American ginseng (*Panax quinquefolius*) as an endangered species, prevent illegal trade of wild ginseng, and ensure cultivated ginseng meets domestic and international standards required for export. Anyone who buys ginseng for resale or grows and sells it for export shall register with the Department and plant material must meet program requirements as provided by federal and state standards. ()

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. (3-15-22)

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.~~ (3-15-22)

~~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.~~ (3-15-22)

~~03. Dealer Registration. An annual registration issued by the department authorizing a dealer to buy, collect, or otherwise acquire ginseng for resale or export.~~ (3-15-22)

~~04. Dry Weight. The weight in pounds and ounces of harvested or collected ginseng root that is dried and is no longer viable.~~ (3-15-22)

~~05. Export. Outside the boundaries of the United States.~~ (3-15-22)

~~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.~~ (3-15-22)

~~07. Green Ginseng. A ginseng root from which the moisture has not been removed by drying.~~ (3-15-22)

~~08. Green Weight. The weight in pounds and ounces of freshly harvested or collected ginseng root that is not dried and is still viable.~~ (3-15-22)

~~09. Grower. A person who grows "cultivated," "wild simulated," and or "woodsgrown" ginseng, and sells it to a dealer.~~ (3-15-22)

~~10. Grower Registration. An annual registration issued by the department that enables a grower to sell cultivated ginseng that the grower has produced.~~ (3-15-22)

~~11. Out of State Ginseng. Ginseng that is grown or originated outside the state of Idaho.~~ (3-15-22)

~~12. Wild Ginseng. Ginseng growing naturally within its native range.~~ (3-15-22)

~~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.~~ (3-15-22)

~~14. Woodsgrown Ginseng. Ginseng grown in managed beds under natural shade.~~ (3-15-22)

311. -- 319. (RESERVED)

320. REGULATED PRODUCTS.

American ginseng (*Panax quinquefolius*). ()

321. -- 329. (RESERVED)

330. COLLECTION OF WILD GINSENG.

To prevent illegal trade, ~~No~~ grower's or dealer's registration will be issued for the collection, sale or distribution of wild ginseng. (3-15-22)()

~~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.~~ (3-15-22)

~~332.—339.~~ (RESERVED)

~~340. GROWER RECORDS.~~

~~A grower selling cultivated ginseng shall do all of the following when selling to a dealer: (3-15-22)~~

~~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. (3-15-22)~~

~~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. (3-15-22)~~

~~03. Records. Maintain records of all ginseng production and sales. Records must be maintained for a period of three (3) years. (3-15-22)~~

~~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. (3-15-22)~~

~~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. (3-15-22)~~

~~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. (3-15-22)~~

~~351~~31. -- 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. (3-15-22)

02. Recordkeeping. The dealer shall retain for a period of three (3) years a copy of each written certificate of origin received. (3-15-22)

03.1 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: (3-15-22)

- ~~a. State of origin; (3-15-22)~~
- ~~b. Serial number of certificate; (3-15-22)~~
- ~~c. Dealer's and/or grower's state registration number; (3-15-22)~~
- ~~d. Year of harvest of ginseng being certified; (3-15-22)~~
- ~~e. Designation as cultivated roots or plants; (3-15-22)~~
- ~~f. Designation as dried or fresh (green) roots, or live plants; (3-15-22)~~
- ~~g. Weight of roots or plants (or number of plants) separately expressed both numerically and in writing; (3-15-22)~~
- ~~h. Date of certification; and (3-15-22)~~
- ~~i. Signature of grower or dealer making certification. (3-15-22)~~
- ~~02. **Idaho Certificate of Origin.** All of the following conditions must be met in order for an Idaho certificate of origin to be valid: (3-15-22)~~
- ~~a. The grower or dealer whose registration number was entered on it by the department shall sign the certificate; and (3-15-22)~~
- ~~b. The ginseng is cultivated ginseng grown in Idaho. (3-15-22)~~
- ~~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. (3-15-22)~~
- ~~04. **Out of State Issued Certificates.** No person may export ginseng grown in Idaho using an out of state issued certificate. (3-15-22)~~
- ~~05. **Wild Ginseng Certificates.** Certificates of origin will not be issued for wild ginseng. (3-15-22)~~
- ~~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. (3-15-22)~~
- ~~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. (3-15-22)~~
- ~~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. (3-15-22)~~
- ~~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. (3-15-22)~~

~~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. (3-15-22)~~

~~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. (3-15-22)~~

~~391. **FEES—HOURLY, OVERTIME.**~~

~~Fees will be charged to cover the department's cost of implementing Subchapter C. (3-15-22)~~

~~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. (3-15-22)~~

~~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. (3-15-22)~~

~~392. **SCHEDULE OF FEES AND CHARGES.**~~

~~The following schedule for ginseng certification services apply: (3-15-22)~~

~~01. **Registration.** Registration (grower or dealer or grower and dealer), twenty five dollars (\$25). (3-15-22)~~

~~02. **Certificate of Origin Form.** Certificate of origin form, each, ten dollars (\$10). (3-15-22)~~

~~03. **Hourly Rate.** Hourly rate for certification services, twenty eight dollars (\$28). (3-15-22)~~

~~04. **Overtime Rate.** Overtime rate for certification services, thirty three dollars (\$33). (3-15-22)~~

~~393-399. (RESERVED)~~

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.06.09 – RULES GOVERNING INVASIVE SPECIES AND NOXIOUS WEEDS
DOCKET NO. 02-0609-2301
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

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 22-1907, 22-2004, 22-2006, 22-2403, and 22-2412, 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 is being presented for authorization as part of the ISDA’s plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor’s [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

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 October 4, 2023, Idaho Administrative Bulletin, [Vol. 23-10, pages 139-146](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

The only fees included in this rule are certification fees for the voluntary service provided by the weed free hay and forage program. These are not fees collected by the agency, but fees set for collection by certified inspectors.

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:

There is no fiscal impact as a result of this rulemaking.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

The entirety of the rule is broader in scope or more stringent than federal law or rules, but is consistent with the direction and authority defined in Idaho Code.

The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

DATED this 3rd of January, 2024.

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
Phone: (208) 332-8615
Email: lloyd.knight@isda.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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: 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 October 18, 2023.

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:

This rule is being presented for authorization as part of the ISDA's plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor's [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

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.

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

There are no fees impacted by this rulemaking.

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 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 May 3, 2023 Idaho Administrative Bulletin, [Vol. 23-5, Page 11](#).

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.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

The entirety of the rule is broader in scope or more stringent than federal law or rules, but is consistent with the direction and authority defined in Idaho Code.

The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 October 25, 2023.

DATED this 4th day of October, 2023.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0609-2301

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>

(3-15-22)

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.

(3-15-22)

03. **Contaminated Conveyances in Idaho Waters.** No person may place any ED RR AIIS contaminated Equipment or Conveyance into any Water Body or Water Supply System in the state of Idaho. (3-15-22)

04. **Firefighting Equipment.** Precautions should be taken to prevent the introduction and spread of ED RR 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](http://www.fs.usda.gov/detail/r4/landmanagement/resourcemanagement/?eid=fsbdev3_016113) [Guide to Preventing Aquatic Invasive Species Transport by Wildland Fire Operations](https://www.nwccg.gov/sites/default/files/publications/pms444.pdf).” Those protocols can be viewed online at http://www.fs.usda.gov/detail/r4/landmanagement/resourcemanagement/?eid=fsbdev3_016113 <https://www.nwccg.gov/sites/default/files/publications/pms444.pdf>. (3-15-22)()

05. **Construction and Road Building and Maintenance Equipment.** Construction and equipment used for road building and maintenance must be free of ED RR 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. (3-15-22)

(BREAK IN CONTINUITY OF SECTIONS)

146. INVASIVE SPECIES – INSECTS.

Invasive Species - Insects		
	Common Name	Scientific Name
01.	Asian Longhorned Beetle	<i>Anoplophora blabripennis</i>
02.	Emerald Ash Borer	<i>Agrilus planipennis</i>
03.	Spongy Moth	<i>Lymantria dispar</i>

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147. INVASIVE SPECIES – MOLLUSKS.

Invasive Species – Mollusks		
	Common Name	Scientific Name
01.	Applesnail	<i>Pomacea spp.</i>
02.	Brown Garden Snail	<i>Cryptomphalus aspersa</i>
03.	Chinese Mysterysnail	<i>Bellamya chinensis</i>
04.	Decollate Snail	<i>Rumina decollate</i>
05.	Faucet Snail	<i>Bithynia tentaculata</i>
06.	Giant African Snail	<i>Achatha fulica</i>
07.	Green or Burrowing Snail	<i>Cantareus apertus</i>
08.	Japanese Mysterysnail	<i>Bellamya japonica</i>

Invasive Species – Mollusks		
	Common Name	Scientific Name
09.	Lactea Snail	<i>Otala lactea</i>
10.	Marisa	<i>Marisa cornuarietis</i>
11.	Maritime Garden Snail	<i>Cermea virgata</i>
12.	Pulmonate Snail	<i>Helix pomatia</i>
13.	Quilted Melania	<i>Tarebia granifera</i>
14.	Red-lipped Melania	<i>Melanoides tuberculata</i>
15.	White Garden Snail	<i>Theba pisana</i>
16.	Wrinkled Snail	<i>Candidula intersecta</i>

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~~146.~~—148. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

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. (3-15-22)

01. Statewide Prohibited Genera Noxious Weed List. (3-15-22)

a. All plants and plant parts in the genera of: *Cytisus*, *Genista*, *Spartium*, and *Chamaecytisus* additionally including “all” subtaxa of these plant genera are prohibited in Idaho. (3-15-22)

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. (3-15-22)

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.	Cogongrass	<i>Imperata cylindrica</i>
23.	Common/European Frogbit	<i>Hydrcharis morsus-ranae</i>
34.	Fanwort	<i>Cobomba caroliniana</i>
45.	Feathered Mosquito Fern	<i>Azolla pinnata</i>
56.	Giant Hogweed	<i>Heracleum mantegazzianum</i>

	Common Name	Scientific Name
67.	Giant Salvinia	<i>Salvinia molesta</i>
78.	Goatsrue	<i>Galega officinalis</i>
89.	Hydrilla	<i>Hydrilla verticillata</i>
910.	Iberian Starthistle	<i>Centaurea iberica</i>
101.	Policeman's Helmet	<i>Impatiens glandulifera</i>
142.	Purple Starthistle	<i>Centaurea calcitrapa</i>
123.	Squarrose Knapweed	<i>Centaurea triumfetti</i>
134.	Starry Stonewort	<i>Nitellopsis obtusa</i>
145.	Syrian Beancaper	<i>Zygophyllum fabago</i>
156.	Tall Hawkweed	<i>Hieracium piloselloides</i>
167.	Turkish Thistle	<i>Carduus cinereus</i>
178.	Variable-Leaf-Milfoil	<i>Myriophyllum heterophyllum</i>
189.	Water Chestnut	<i>Trapa natans</i>
4920.	Water Hyacinth	<i>Eichhornia crassipes</i>
201.	Yellow Devil Hawkweed	<i>Hieracium glomeratum</i>
242.	Yellow Floating Heart	<i>Nymphoides pelata</i>

(3-15-22)()

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>
43.	Common Crupina	<i>Crupina vulgaris</i>
54.	Common Reed (Phragmites)	<i>Phragmites australis</i>
65.	Dyer's Woad	<i>Isatis tinctoria</i>
76.	Eurasian Watermilfoil	<i>Myriophyllum spicatum</i> (and hybrids)
87.	Flowering Rush	<i>Butomus umbelltus</i>
98.	Giant Knotweed	<i>Polygonum sachalinense</i>
109.	Japanese Knotweed	<i>Polygonum cuspidatum</i>
140.	Johnsongrass	<i>Sorghum halepense</i>

Common Name	Scientific Name
121. Matgrass	<i>Nardus stricta</i>
132. Meadow Knapweed	<i>Centaurea debeauxii</i>
143. Mediterranean Sage	<i>Salvia aethiopsis</i>
154. Musk Thistle	<i>Carduus nutans</i>
165. Orange Hawkweed	<i>Hieracium aurantiacum</i>
176. Parrotfeather Milfoil	<i>Myriophyllum aquaticum</i>
187. Perennial Sowthistle	<i>Sonchus arvensis</i>
198. Russian Knapweed	<i>Acroptilon repens</i>
2019. Scotch Broom	<i>Cytisus scoparius</i>
240. Small Bugloss	<i>Anchusa arvensis</i>
221. Vipers Bugloss	<i>Echium vulgare</i>
232. Yellow Hawkweed	<i>Hieracium caespitosum</i>

(3-15-22)()

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. Hoary Alyssum	<i>Berteroa incana</i>
7. Houndstongue	<i>Cynoglossum officinale</i>
8. Jointed Goatgrass	<i>Aegilops cylindrica</i>
9. Leafy Spurge	<i>Euphorbia esula</i>
10. Milium	<i>Milium vernale</i>
11. Oxeye Daisy	<i>Leucanthemum vulgare</i>
12. Perennial Pepperweed	<i>Lepidium latifolium</i>
13. Plumeless Thistle	<i>Carduus acanthoides</i>
14. Poison Hemlock	<i>Conium maculatum</i>
15. Puncturevine	<i>Tribulus terrestris</i>
16. Purple Loosestrife	<i>Lythrum salicaria</i>

	Common Name	Scientific Name
17.	Rush Skeletonweed	<i>Chondrilla juncea</i>
18.	Saltcedar	<i>Tamarix sp.</i>
19.	Scotch Thistle	<i>Onopordum acanthium</i>
20.	Spotted Knapweed	<i>Centaurea stoebe</i>
21.	Tansy Ragwort	<i>Senecio jacobaea</i>
22.	White Bryony	<i>Bryonia alba</i>
23.	Whitetop (Hoary Cress)	<i>Cardaria draba</i>
24.	Yellow Flag Iris	<i>Iris pseudocorus</i>
25.	Yellow Starthistle	<i>Centaurea solstitialis</i>
26.	Yellow Toadflax	<i>Linaria vulgaris</i>

(3-15-22)

05. Designation of Articles Capable of Disseminating Noxious Weeds. The following articles are designated by the Director as capable of disseminating noxious weeds: (3-15-22)

- a.** Construction equipment, road building and maintenance equipment, and implements of husbandry. (3-15-22)
- b.** Motorized vehicles such as, all-terrain vehicles, motorcycles, and other off-road vehicles and non-motorized vehicles such as bicycles and trailers. (3-15-22)
- c.** Grain and seed. (3-15-22)
- d.** Hay, straw and other material of similar nature. (3-15-22)
- e.** Nursery stock including plant material propagated for the support of aquarium, pet, or horticultural activities. (3-15-22)
- f.** Feed and seed screenings. (3-15-22)
- g.** Fence posts, fencing and railroad ties. (3-15-22)
- h.** Sod. (3-15-22)
- i.** Manure, fertilizers and material of similar nature. (3-15-22)
- j.** Soil, sand, mulch, and gravel. (3-15-22)
- k.** Boats, personal watercraft, watercraft trailers, and items of a similar nature. (3-15-22)

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.06.10 – RULES GOVERNING THE GROWING OF POTATOES
DOCKET NO. 02-0610-2301 (ZBR CHAPTER REWRITE)
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo and Incorporation By Reference Synopsis \(IBRS\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

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 22-505, 22-1907, 22-2004, 22-2006, and 22-2013, 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 is being presented for authorization as part of the ISDA’s plan to review each rule every 5 years. Redundant language that is verbatim in statue has been removed, consistent with the Governor’s [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

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.

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 October 4, 2023, Idaho Administrative Bulletin, [Vol. 23-10, pages 148-161](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking: N/A

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:

There is no fiscal impact as a result of this rulemaking.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

The entire rule – except for Subchapter A – regulates activity not otherwise regulated by the federal government.

The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

DATED this 3rd of January, 2024

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
Phone: (208) 332-8615
Email: lloyd.knight@isda.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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: 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 October 18, 2023.

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:

This rule is being presented for authorization as part of the ISDA's plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor's [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

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.

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

There are no fees included 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:

There is no 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 May 3, 2023 Idaho Administrative Bulletin, [Vol. 23-5, Page 11](#).

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 documents incorporated by reference in this rule are federal regulations and manuals related to Pale Cyst Nematode. These documents are important to include so as to ensure that any activities are consistent with the federal regulation.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

The entire rule – except for Subchapter A – regulates activity not otherwise regulated by the federal government.

The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 October 25, 2023.

DATED this 4th day of October, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 02-0610-2301

02.06.10 – RULES GOVERNING THE GROWING OF POTATOES

000. LEGAL AUTHORITY.

Sections 22-505, 22-1504, 22-1907, 22-2004, 22-2006, and 22-2013, Idaho Code. ()

001. 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 NEMATODE

104. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into this Subchapter A: ()

01. 7 CFR Part 301 SubPart S - 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 as amended under docket No. APHIS-2018-0041 published in the Federal Register Vol. 85, No. 249, Tuesday, December 29, 2020, and except as amended below in Subchapter A of this rule. ()

02. USDA APHIS PPQ Treatment Manual Schedule T406-d. https://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf. ()

03. 7 CFR Part 305 - Phytosanitary Treatments, as revised January 1, 2022. ()

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 Idaho State Department of Agriculture (ISDA), Animal and Plant Health Inspection Service (APHIS), the United States Department of Agriculture (USDA), 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. ()

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 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 ISDA 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 the federal regulations, as incorporated by reference in Section 104 in Subchapter A. ()

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. -- 219. (RESERVED)

220. SEED POTATO CROP MANAGEMENT AREAS.

Area boundary maps as published on ISDA website: <https://agri.idaho.gov/main/plants/potatoes/> for the following Seed Potato Crop Management Areas: All of Teton, Caribou and Franklin Counties; Portions of Fremont and Madison County; and areas known as: Lost River, Almo Valley Bridge, Ririe Reservoir, Picabo, Little Camas, and Hog Hollow. ()

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 Idaho Crop Improvement Association (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. 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 found to be infested with any disease or pests of concern as defined in Section 240 or those that have not met standards for recertification by ICIA 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 State Shipping Point 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 State Shipping Point 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 State Shipping Point 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. -- 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. **Contact Lot.** A seed lot produced on a farming operation using common production and handling equipment or storage facilities, or both. ()

02. **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. ()

03. **Seed Potato Certification Process.** The process, timing, and requirements for the certification of seed potatoes in Idaho, as set forth in the Idaho Potato Certification Standards, as set forth by the Idaho Crop Improvement Association (ICIA). ()

04. **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. ()

05. **Sister Lot.** Seed lots originating from the same lot of seed stock. ()

311. – 319. (RESERVED)

320. REGULATED PEST - BACTERIAL RING ROT (BRR).

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 *Cms* to the Idaho State Department of Agriculture (ISDA) when: ()

a. The *Cms* is discovered or observed in seed potato plants or tubers prior to final seed potato certification by ICIA; and ()

b. The presence of *Cms* 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 ISDA's trace back investigation of any alleged *Cms* contaminated potatoes will be held harmless from any civil penalties the ISDA has authority to issue. ()

332. TRACE BACK INVESTIGATION, SAMPLING, AND TESTING.

01. Trace Back and Investigation. ISDA, 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. ISDA and the ICIA 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 Idaho Potato Certification Standards, as set forth by the ICIA. ()

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 *Cms* 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 *Cms*. ()

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.

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 Idaho Crop Improvement Association (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)

[Agency redlined courtesy copy]

02.06.10 – RULES GOVERNING THE GROWING OF POTATOES

000. LEGAL AUTHORITY.

~~This chapter is adopted under the legal authority of~~ Sections 22-505, 22-1504, 22-1907, 22-2004, 22-2006, and 22-2013, Idaho Code. (3-15-22)()

001. TITLE AND SCOPE.

01. Title. ~~The title of this chapter is IDAPA 02.06.10, “Rules Governing the Growing of Potatoes.”~~ (3-15-22)

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.~~ (3-15-22)()

002. -- 103. (RESERVED)

SUBCHAPTER A – PALE CYST NEMATODE

104. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into this Subchapter A ~~only~~: (3-15-22)()

01. 7 CFR Part 301 SubPart S - 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 as amended under docket No. APHIS-2018-0041 published in the Federal Register Vol. 85, No. 249, Tuesday, December 29, 2020, and except as amended below in Subchapter A of this rule. (3-15-22)()

02. USDA APHIS PPQ Treatment Manual Schedule T406-d, ~~Revision 10, September 2006~~ https://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf. (3-15-22)()

03. 7 CFR Part 305 - Phytosanitary Treatments, as revised ~~September 12, 2007~~ January 1, 2022. (3-15-22)()

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 Idaho State Department of Agriculture (ISDA), Animal and Plant Health Inspection Service (APHIS), the U.S. United States Department of Agriculture (USDA), or other person authorized by the USDA APHIS Administrator or ISDA Director to perform the duties required under Subchapter A. (3-15-22)()

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. (3-15-22)~~

~~02. ISDA. Idaho State Department of Agriculture. (3-15-22)~~

~~03. PCN. Pale Cyst Nematode. (3-15-22)~~

~~04. PPQ. Plant Protection and Quarantine. (3-15-22)~~

~~05. USDA. United States Department of Agriculture. (3-15-22)~~

~~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. (3-15-22)()

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~~ ISDA eradication program. (3-15-22)()

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; the federal regulations,~~ as incorporated by reference in Section 104 in Subchapter A ~~of this rule.~~ (3-15-22)()

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. (3-15-22)~~

~~212~~1. -- 219. (RESERVED)

220. SEED POTATO CROP MANAGEMENT AREAS.

Area boundary maps as published on ISDA website: <https://agri.idaho.gov/main/plants/potatoes/> for the following Seed Potato Crop Management Areas: All of Teton, Caribou and Franklin Counties; Portions of Fremont and Madison County; and areas known as: Lost River, Almo Valley Bridge, Ririe Reservoir, Picabo, Little Camas, and Hog Hollow. ()

~~**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. (3-15-22)

02. ~~Teton And Portions Of Madison County Seed Potato Crop Management Area.~~ (3-15-22)

a. All of Teton County, Idaho; (3-15-22)

b. That portion of Madison County, Idaho, located in Township 6 North and Township 7 North lying East of Canyon Creek; and (3-15-22)

e. 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. (3-15-22)

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. (3-15-22)

04. ~~Caribou and Franklin County Seed Potato Crop Management Area.~~ All of Caribou County, Idaho and all of Franklin County, Idaho. (3-15-22)

05. ~~Almo Valley Bridge Seed Potato Crop Management Area.~~ (3-15-22)

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; (3-15-22)

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; (3-15-22)

e. That portion of Cassia County, Idaho located in Township 14 South, Range 24 East, which includes all of Section 36; (3-15-22)

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; (3-15-22)

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 1/4 of Section 33; (3-15-22)

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; (3-15-22)

g. That portion of Cassia County, Idaho located in Township 16 South, Range 26 East; and (3-15-22)

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. (3-15-22)

06. Ririe Reservoir Seed Potato Crop Management Area. (3-15-22)

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; (3-15-22)

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; (3-15-22)

e: 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 (3-15-22)

d: That portion of Bonneville County, Idaho located in Township 3 North, Range 42 East, which includes all of Sections 31, 32, and 33. (3-15-22)

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. (3-15-22)

08. Little Camas Ranch Seed Potato Crop Management Area. (3-15-22)

a: That portion of Elmore County, Idaho located in Township 1 North, Range 9 East, Boise Meridian, which includes the S ½ N ½ SE ¼, S ½ SE ¼, SW ¼ of Section 27, the SE ¼ SE ¼, SW ¼ SW ¼ of Section 28, the S ½ S ½, N ½ SE ¼, SE ¼ NE ¼, W ½ NE ¼, NE ¼ NE ¼ NW ¼, S ½ NE ¼ NW ¼, SE ¼ NW ¼, N ½ SW ¼, NE ¼ NE ¼ of Section 32, the E ½, E ½ W ½, SW ¼ SW ¼, NW ¼ SW ¼, SW ¼ NW ¼, NW ¼ NW ¼ of Section 33, and all of Section 34; and (3-15-22)

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 ¼ NW ¼ and less the W ½ SW ¼ of Section 5, the N ½ NE ¼ of Section 8, and the NW ¼ NE ¼, N ½ NW ¼ of Section 9; and (3-15-22)

e: 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 ½ N ½, N ½ SE ¼, SW ¼ 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 ½ SW ¼, 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. (3-15-22)

09. Hog Hollow Seed Potato Crop Management Area. (3-15-22)

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 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 N1/2 NE1/4 of Section 30, Township 7 North, Range 43 East and then northwesterly out of the N1/2 NE1/4 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 SW1/4 SW1/4 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 SE1/4 SE1/4 of Section 16, Township 7 North, Range 42 East to the southern border of said Section 16; Thence west approximately 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 1/4 mile along the western border of Section 9, Township 7 North, Range 42 East to the northwest corner of the SW1/4 SW1/4 of said Section 9; Thence west 1 mile along the northern border of the S1/2 S1/2 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 S1/2 S1/2 of Section 7, Township 7 North, Range 42 East to the western border of said Section 7; Thence south 1/4 mile to the southeast corner of Section 12, Township 7 North, Range 41 East; Thence west approximately 3/4 mile along the southern border of Section 12, Township 7 North, Range 41 East to the southwest corner of the SE1/4 SW1/4 of said Section 12; Thence north approximately 3/4 mile to the northwest corner of the SE1/4 NW1/4 of Section 12, Township 7 North, Range 41 East; Thence east 1/4 mile along the northern border of the S1/2 NW1/4 of Section 12, Township 7 North, Range 41 East to the southwest corner of the N1/2 NE1/4 of said Section 12; Thence north 1/4 mile along the western border of the NE1/4 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 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. (3-15-22)~~

~~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. (3-15-22)~~

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 Idaho Crop Improvement Association (ICIA) or equivalent agency of another state or political jurisdiction in accordance with Section 22-503, Idaho Code. (3-15-22)()

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. (3-15-22)~~

~~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 or those that have not met standards for

recertification by ICIA shall be removed from Seed Potato Crop Management Areas no later than April 15 of the year following harvest. (3-15-22)()

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 Shipping Point 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 Shipping Point Inspection Service or a recognized equivalent agency of another state or territory in accordance with Section 22-503, Idaho Code. (3-15-22)()

271. SEED DISPOSITION NOTIFICATION.

The ~~Federal~~ State Shipping Point 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. (3-15-22)()

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. -- 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*). (3-15-22)()~~
- ~~02. 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. (3-15-22)~~
- ~~03. 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. ()~~
- ~~04. Seed Potato Certification Process. The process, timing, and requirements for the certification of seed potatoes in Idaho, as set forth in the Idaho Potato Certification Standards, as set forth by the Idaho Crop Improvement Association (*ICIA*). (3-15-22)()~~
- ~~05. 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. ()~~
- ~~06. Sister Lot. Seed lots originating from the same lot of seed stock. ()~~
- ~~311. ABBREVIATIONS:~~
- ~~01. *BRR*. Bacterial Ring Rot. (3-15-22)~~
- ~~02. *Cms*. *Clavibacter michiganensis* subsp. *sepedonicus*. (3-15-22)~~
- ~~03. *ISDA*. Idaho State Department of Agriculture. (3-15-22)~~
- ~~04. *ICIA*. Idaho Crop Improvement Association. (3-15-22)~~
- ~~312.1. – 319. (RESERVED)~~
- ~~320. REGULATED PEST - BACTERIAL RING ROT (*BRR*).
Caused by a bacterium, *Clavibacter michiganensis* subsp. *sepedonicus* (*Cms*). (3-15-22)()~~
- ~~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 Cms* to the Department Idaho State Department of Agriculture (*ISDA*) when: (3-15-22)()~~
- ~~a. The *BRR Cms* is discovered or observed in seed potato plants or tubers prior to final seed potato certification by *ICIA*; and (3-15-22)()~~
- ~~b. The presence of *BRR Cms* is confirmed via laboratory testing; and (3-15-22)()~~
- ~~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~~ ISDA's trace back investigation of any alleged *Cms* contaminated potatoes will be held harmless from any civil penalties the ~~Department~~ ISDA has authority to issue. (3-15-22)()

332. TRACE BACK INVESTIGATION, SAMPLING, AND TESTING.

01. Trace Back and Investigation. ~~The department~~ ISDA, 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: (3-15-22)()

- 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~~ ISDA and the ~~Idaho Crop Improvement Association~~ ICIA will mutually cooperate with each other in trace back investigations where appropriate. (3-15-22)()

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 Idaho Potato Certification Standards, as set forth by the

Idaho Crop Improvement Association ICIA.

(3-15-22)()

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 Cms 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 Cms. (3-15-22)()

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.

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 Idaho Crop Improvement Association (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. (3-15-22)()

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 02 – DEPARTMENT OF AGRICULTURE
02.06.16 – RULES GOVERNING HONEY STANDARDS
DOCKET NO. 02-0616-2301 (ZBR CHAPTER REWRITE)
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

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 22-2808, 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 is being presented for authorization as part of the ISDA’s plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor’s [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

These rules apply to all honey produced by honeybees and to incorporate by reference the United States Standards for Grades of Extracted Honey as a quality control program.

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 October 4, 2023, Idaho Administrative Bulletin, [Vol. 23-10, pages 162-166](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

Does not apply to this rulemaking.

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:

There is no fiscal impact as a result of this rulemaking.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

The federal government sets a standard for the definition of “honey” but does not provide for application of that standard at the state level.

The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

DATED this 3rd of January, 2024.

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
Phone: (208) 332-8615
Email: lloyd.knight@isda.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 22-2808, 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 October 18, 2023.

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:

This rule is being presented for authorization as part of the ISDA's plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor's [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

These rules apply to all honey produced by honey bees and to incorporate by reference the United States Standards for Grades of Extracted Honey as a quality control program.

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

There is no fee associated with 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:

There is no 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 May 3, 2023 Idaho Administrative Bulletin, [Vol. 23-5, Page 11](#).

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:

United States Standards for Grades of Extracted Honey, Effective Date May 23, 1985. The United States Standards for Grades of Extracted Honey adopted by the Agriculture Marketing Service, United States Department of Agriculture effective May 23, 1985 are hereby adopted for the purposes of this rule for extracted honey grades.

It is the intent of the Idaho Honey Commission to ensure that honey sold in Idaho meets these basic standards.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

The federal government sets a standard for the definition of “honey”, but does not provide for application of that standard at the state level.

The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 October 25, 2023.

DATED this 4th day of October, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 02-0616-2301

02.06.16 – RULES GOVERNING HONEY STANDARDS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 22-2808, Idaho Code. ()

001. SCOPE.

These rules apply to all honey produced by honey bees and to incorporate by reference the United States Standards for Grades of Extracted Honey as a quality control program. ()

002. – 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

01. United States Standards for Grades of Extracted Honey, Effective Date May 23, 1985. The United States Standards for Grades of Extracted Honey adopted by the Agriculture Marketing Service, United States Department of Agriculture effective May 23, 1985 are hereby adopted for the purposes of this rule for extracted honey grades. See Section 016 of this rule. A copy of such federal standards is available at the following USDA Website https://www.ams.usda.gov/sites/default/files/media/Extracted_Honey_Standard%5B1%5D.pdf. ()

005. -- 999. (RESERVED)

[Agency redlined courtesy copy]

02.06.16 – RULES GOVERNING HONEY STANDARDS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 22-2808, Idaho Code. ()

001. ~~TITLE AND SCOPE.~~

~~01. Title. The title of this chapter is IDAPA 02.06.16, “Rules Governing Honey Standards.” (3-31-22)~~

~~02. Scope. These rules apply to all honey produced by honey bees from nectar and covers all styles of honey presentation that are processed and ultimately intended for direct consumption, and to all honey packed, processed or intended for sale in bulk containers as honey that may be repacked for retail sale or for sale or use as an ingredient in other foods and to incorporate by reference the United States Standards for Grades of Extracted Honey as a quality control program. (3-31-22)()~~

002. – 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

01. **United States Standards for Grades of Extracted Honey, Effective Date May 23, 1985.** The United States Standards for Grades of Extracted Honey adopted by the Agriculture Marketing Service, United States Department of Agriculture effective May 23, 1985 are hereby adopted for the purposes of this rule for extracted honey grades. See Section 016 of this rule. A copy of such federal standards is available at the following USDA Website https://www.ams.usda.gov/sites/default/files/media/Extracted_Honey_Standard%5B1%5D.pdf. ()

~~005. – 009. (RESERVED)~~

010. DEFINITIONS.

The Department adopts the definitions set forth in Section 22-2803, Idaho Code. In addition, as used in this chapter, the following definitions apply: (3-31-22)

~~01. Air Bubble. The small visible pockets of air in suspension that may be numerous in the honey and contribute to the lack of clarity in filtered style. (3-31-22)~~

~~02. Bees. Honey producing insects of the genus *Apis* and includes the adults, eggs, larvae, pupae or other immature stages thereof. (3-31-22)~~

~~03. Comb. The wax like cellular structure that bees use for retaining their brood or as storage for pollen and honey. (3-31-22)~~

~~04. Crystallize. The spontaneous solidification of the natural glucose content from solution as the monohydrate. (3-31-22)~~

~~05. Floral Source. The flower from which the bees gather nectar to make honey. (3-31-22)~~

~~06. Food. (3-31-22)~~

~~a. Articles used for food or drink, including ice, for human consumption or food for dogs and cats; (3-31-22)~~

- b.** Chewing gum; and (3-31-22)
- e.** Articles used for components of any such article. (3-31-22)
- 07. Food Additive.** Any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component of or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food. It also includes any source of radiation intended for any such use, if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures or experience based on common use in food to be safe under the conditions of its intended use. 'Food additive' does not include: (3-31-22)
- a.** A pesticide chemical in or on a raw agricultural commodity; (3-31-22)
- b.** A pesticide chemical to the extent that it is intended for use, or is used in the production, storage or transportation of any raw agricultural commodity; or (3-31-22)
- e.** A color additive. (3-31-22)
- 08. Granulate.** The initial formation of crystals in honey. (3-31-22)
- 09. Honey.** The natural sweet substance produced by bees resulting from the harvest of plant nectar or plant secretions that has been collected and transformed by the deposition, dehydration, and storage in comb to ripen and mature. (3-31-22)
- 10. Pollen Grain.** The granular, dust like microspores that bees gather from flowers. Pollen grains in suspension contribute to the lack of clarity in filtered style. (3-31-22)
- 011. COMPLAINT PROCESS.**
- 01. Complaint Contents.** Complaints shall be directed to the department, in writing, and contain the following information: (3-31-22)
- a.** The name, address and contact information of the complainants; and (3-31-22)
- b.** The location and brand name of the product which is the subject of complaint. (3-31-22)
- 02. Initial Review.** The department will forward written complaints to the commission for initial review. (3-31-22)
- 03. Sampling and Analysis.** Upon review, the commission may request the department to acquire an official sample of the product, in accordance with Title 22, Chapter 28, Idaho Code, and send it to an analytical laboratory that possesses the ability to analyze honey for adulteration, or other testing deemed appropriate in accordance with the nature of the complaint. The laboratory analysis will be reviewed by the commission and the department for compliance with Title 22, Chapter 28, Idaho Code, and these rules. (3-31-22)
- 04. Violations.** If, after investigation, the commission and the department find that a violation of title 22, Chapter 28, Idaho Code and/or these rules has occurred the commission and the department shall confer and agree on an appropriate course of action as authorized by Section(s) 22-2811 or 22-2812, Idaho Code. (3-31-22)
- 012.—014. (RESERVED)**
- 015. STANDARDS OF IDENTITY—HONEY.**
Honey sold as such shall not have added to it any food additives, nor any other additions be made other than honey. It shall not have begun to ferment or effervesce and no pollen or constituent unique to honey may be removed except where unavoidable in the removal of foreign matter. (3-31-22)

- ~~01. **Treatments.** Chemical or biochemical treatments shall not be used to influence honey crystallization. (3-31-22)~~
- ~~02. **Moisture Content.** Honey shall not have a moisture content exceeding twenty-three percent (23%). (3-31-22)~~
- ~~03. **Sugars Content.** (3-31-22)~~
- ~~a. The ratio of fructose to glucose shall be greater than zero point nine (0.9). (3-31-22)~~
- ~~b. Fructose and glucose (Sum of Both) shall not be less than 60g/100g. (3-31-22)~~
- ~~c. Sucrose content for honey not listed below shall not be more than 5g/100g. (3-31-22)~~
- ~~i. Honey from Alfalfa (*Medicago sativa*), Citrus spp., False Acacia (*Robinia pseudoacacia*), French Honeysuckle (*Hedysarum*), Menzies Banksia (*Banksia menziesii*), Red Gum (*Eucalyptus camaldulensis*), Leatherwood (*Eucryphia lucida*), and Eucryphia milligani shall have sucrose levels not to exceed 10g/100g. (3-31-22)~~
- ~~ii. Honey from Lavender (*Lavandula* spp.) and Borage (*Borago officinalis*) shall have sucrose levels not to exceed 15g/100g. (3-31-22)~~
- ~~04. **Name of the Food.** Products conforming to the standard of identity as adopted in this rule are designated "honey". Foods containing honey and any flavoring, spice, or other added ingredient or honey that is processed in such a way that materially changes the flavor, color, viscosity or other material characteristics of pure honey, shall be distinguished from honey in the food name by declaration of the food additive or modification. (3-31-22)~~
- ~~a. Honey may be designated according to floral or plant source if it comes predominately from that particular source and has the organoleptic and physicochemical properties corresponding with that origin. (3-31-22)~~
- ~~b. Where honey has been designated according to floral or plant source, as stated in Paragraph 015.04.a., then the common name or the botanical name of the floral source is used in conjunction with or joined with the word "honey". (3-31-22)~~
- ~~c. Honey may be designated according to the following styles, which style shall be declared on packaging: (3-31-22)~~
- ~~i. "Honey"—this is honey in liquid or crystalline state or a mixture of the two (2); (3-31-22)~~
- ~~ii. "Comb Honey"—this is honey stored by bees in the cells of freshly built brood less combs and which is sold in sealed whole combs or sections of such combs. (3-31-22)~~
- ~~iii. "Cut Comb in Honey," "Honey with Comb," or "Chunk Honey"—this is honey containing one (1) or more pieces of comb honey. (3-31-22)~~

~~016. **TYPES AND STYLES OF HONEY.**~~

- ~~01. **Extracted Honey.** Honey that has been separated from the comb by centrifugal force, gravity, straining, or other means. It is identified in the following types: (3-31-22)~~
- ~~a. Liquid Honey. Honey that is free of visible crystals; (3-31-22)~~
- ~~b. Crystallized Honey. Honey that is solidly granulated or crystallized, irrespective of whether candied, fondant, creamed or spread types of crystallized honey; and (3-31-22)~~
- ~~c. Partially Crystallized Honey. Honey that is a mixture of liquid honey and crystallized honey.~~

~~(3-31-22)~~

~~02. Styles. Extracted honey styles are: (3-31-22)~~

~~a. Filtered Honey. Honey of any type defined in these standards that has been filtered to the extent that all or most of the fine particles, pollen grains, air bubbles, or other materials normally found in suspension, have been removed. Honey shall not be filtered to less than one point zero (1.0) micron. (3-31-22)~~

~~b. Strained Honey. Honey of any type defined in these standards that has been strained to the extent that most of the particles, including comb, propolis, or other defects normally found in honey, have been removed. Pollen grains, small air bubbles, and very fine particles are not normally removed from strained honey. (3-31-22)~~

~~c. Unfiltered/Unstrained—Unfiltered/Unstrained Honey. Honey that has not been filtered or strained by United States Standards for Grades of Extracted honey and may include extracted or non-extracted honey. (3-31-22)~~

~~d. Raw Honey. Honey that has not been pasteurized. (3-31-22)~~

~~017.—022. (RESERVED)~~

~~023. MISBRANDING:~~

~~Food labeled as a honey product, but not meeting the provisions of this rule may be subject to a stop sale order as authorized under Section 22-2812, Idaho Code. (3-31-22)~~

~~02405. -- 999. (RESERVED)~~

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.06.33 – ORGANIC FOOD PRODUCTS RULES

DOCKET NO. 02-0633-2301

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature.

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 22-1103, 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 proposed rule includes an update to the publication date for the federal National Organic Program Regulations that were updated effective March 20, 2023. This rule needs to be current with the national regulation in order to ensure that organic certification is valid for those customers wishing to utilize the agency for certification services.

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 October 4, 2023, Idaho Administrative Bulletin, [Vol. 23-10, pages 167-168](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

No changes have been made to fees for these rules. The fees are for the purposes of compensating the agency for the purpose of providing voluntary organic certification services for those desiring such services. Such fees are authorized under Section 22-1106, 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:

There is no fiscal impact due to these changes.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule regulates an activity that is not regulated by the federal government; therefore the entire rule is broader in scope or more stringent than federal law.

The detailed 22-101A analysis can be found on the agency's website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

DATED this 3rd of January, 2024.

Lloyd B. Knight
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, ID 83707
Phone: (208) 332-8615
Email: lloyd.knight@isda.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 22-1103, 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 October 18, 2023.

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:

The proposed rule includes an update to the publication date for the federal National Organic Program Regulations that were updated effective March 20, 2023. This rule needs to be current with the national regulation in order to ensure that organic certification is valid for those customers wishing to utilize the agency for certification services.

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

No changes have been made to fees for these 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:

There is no fiscal impact due to these changes.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these changes are to the publication dates of documents that were already incorporated into these rules.

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:

National Organic Program Regulations – the minimum official standard for organic certification.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), 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 sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule regulates an activity that is not regulated by the federal government; therefore the entire rule is broader in scope or more stringent than federal law.

The detailed 22-101A analysis can be found on the agency's website at www.agri.idaho.gov.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Deputy Director, at (208)332-8615.

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 October 25, 2023.

DATED this 4th day of October, 2023.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0633-2301

004. INCORPORATION BY REFERENCE.

The Code of Federal Regulations, Title 7, Part 205, National Organic Program Regulations (~~April 2, 2021~~March 20, 2023), except sections 205.620 through 205.622, is incorporated by reference and can be viewed online at <https://www.ecfr.gov/current/title-7/subtitle-B/chapter-I/subchapter-M/part-205/subpart-G/subject-group-ECFR370552c56dd7aef>. Copies of this document may be obtained from the Idaho State Department of Agriculture (ISDA), 2270 Old Penitentiary Road, Boise, Idaho 83712. (~~3-15-22~~)()

IDAPA 11 – IDAHO STATE POLICE STATE BRAND BOARD

11.02.01 – RULES OF THE IDAHO STATE BRAND BOARD

DOCKET NO. 11-0201-2301 (FEE RULE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo and Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective on July 1, 2024, after approval.

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 25-1102, 25-1110, 25-1160, and 25-1161, 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:

On July 18, 2022, the Idaho State Brand Board received a cooperative request from the Livestock Industries asking for formulation of a Brand Fee Working Group comprised of stakeholders, to study the need for fee adjustments, the potential to improve efficiencies and reduce costs within administration and operation of the brand inspector's office, and to develop recommendations for a long-range plan to address anticipated budget shortfalls within the Idaho Brand Board. Since that time, the formulated stakeholder group held multiple meetings to evaluate the foregoing. As a mutual result, the Brand Board initiated and carried out negotiated rulemaking to pursue an increase in the per head fee(s) charged for cattle brand inspection and any alternative as brought forth through the negotiated rulemaking process. Adoption of this pending rule is the collective outcome of the negotiated rulemaking.

The Brand Board experienced an \$85,000 financial deficit in FY2023 and will face an ongoing budgetary shortfall if this fee is not increased. The Brand Board has not imposed a cattle brand inspection fee increase since FY2017.

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 October 4, 2023, Idaho Administrative Bulletin, [Vol. 23-10, pages 215 - 217](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

The pending rule increases the cattle brand inspection fee by \$0.06 per head inspected; changing the total fee charged from \$1.19 to \$1.25 per head of cattle inspected. The fee increase moves the Brand Board cattle brand inspection fee charged to the statutory cap of \$1.25 per head set in Section 25-1160(1)(a), Idaho Code. For clarification purposes, the increase in cattle brand inspection fee also initiates a change to the courtesy brand inspection fee for cattle, increasing it from \$1.19 to \$1.25 per head, and the Idaho livestock to pasture fee for cattle from \$0.60 to \$0.63 per head.

As authorized in Section 25-1160(5), Idaho Code, “The state brand board may adopt a schedule or schedules of fees which are below the maximum fees and may adjust such schedule or schedules from time to time whenever such board finds that the cost of administering and enforcing the laws of the state of Idaho for brand inspection of livestock can be maintained with such below-maximum fees.”

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:

There is no negative impact to the State General Fund. An estimated \$126,000 will be generated to the Idaho State Brand Board from the Idaho livestock industry.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact State Brand Inspector, Cody Burlile at (208) 884-7070.

DATED this 7th day of November, 2023.

Cody D. Burlile
State Brand Inspector
Idaho State Brand Board – Idaho State Police
700 S. Stratford Dr.
P.O. Box 1177
Meridian, ID 83680-1177
(208) 884-7070 phone
(208) 884-7097 fax

THE FOLLOWING NOTICE PUBLISHED WITH THE 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(s) 25-1102, 25-1110, 25-1160, and 25-1161 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 October 18, 2023.

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:

On July 18, 2022, the Idaho State Brand Board received a cooperative request from the Livestock Industries asking for formulation of a Brand Fee Working Group comprised of stakeholders, to study the need for fee adjustments, the potential to improve efficiencies and reduce costs within administration and operation of the brand inspector's office, and to develop recommendations for a long-range plan to address anticipated budget shortfalls within the Idaho Brand Board. Since that time, the formulated stakeholder group held multiple meetings to evaluate the foregoing. As a mutual result, the Brand Board initiated and carried out negotiated rulemaking to pursue an increase in the per head fee(s) charged for cattle brand inspection and any alternative as brought forth through the negotiated rulemaking process. This proposed rule is the collective outcome of the negotiated rulemaking.

The Brand Board experienced an \$85,000 financial deficit in FY2023 and will face an ongoing budgetary shortfall if this fee is not increased. The Brand Board has not imposed a cattle brand inspection fee increase since FY2017.

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

The proposed rulemaking increases the cattle brand inspection fee by \$0.06 per head inspected; changing the total fee charged from \$0.19 to \$1.25 per head of cattle inspected. The fee increase moves the Brand Board cattle brand inspection fee to the statutory cap of \$1.25 per head set in Section 25-1160(1)(a), Idaho Code. For clarification purposes, the increase in cattle brand inspection fee also affects the fee charged for the cattle courtesy brand inspection fee, increasing it from \$1.19 to \$1.25 and the Idaho livestock to pasture fee for cattle from \$0.60 to \$0.63.

According to Title 25-1160(5) “The state brand board may adopt a schedule or schedules of fees which are below the maximum fees and may adjust such schedule or schedules from time to time whenever such board finds that the cost of administering and enforcing the laws of the state of Idaho for brand inspection of livestock can be maintained with such below-maximum fees.”

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 negative impact to the State General Fund. An estimated \$126,000 will be generated to the Idaho State Brand Board from the Idaho livestock industry.

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 July 5, 2023, Idaho Administrative Bulletin, [Volume 23-7 Page 22](#).

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 State Brand Inspector, Cody Burlile at (208) 884-7070.

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 October 25, 2023.

DATED this 29th day of August, 2023.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0201-2301

034. SCHEDULE OF FEES.

01. Fees. Fees authorized by the Board and to be collected by the Brand Inspector are as follows:

SCHEDULE OF FEES		
Recording of a Brand	\$50 initial recording fee plus a \$20 per year prorated staggered recording fee every year thereafter	
Transfer of a recorded brand	\$50.00	
Renewal of a recorded brand (every five years)	\$100.00	
Duplicate brand registration certificate	\$1.50	
Lifetime ownership and transportation certificate	\$50.00	
Duplicate lifetime ownership and transportation certificate	\$5.00	
Annual inspection equine or bovine	\$5.00	
	CATTLE	HORSES
Brand inspection (per head)	\$1.49 1.25	\$5.00
Idaho livestock to pasture (per head)	\$.60 63	\$2.50

SCHEDULE OF FEES		
Minimum auction fee (per day)	\$50.00	\$50.00
Minimum field brand inspection fee	\$20.00	\$20.00
Equine farm service fee		\$45.00
Courtesy brand inspection	\$1.49 1.25	\$5.00

Fees To Be Collected By The State Brand Inspector For Other State Agencies:	
Idaho Beef Council (per head)	\$1.50
Idaho Horse Board (per head)	\$3.00
Idaho Department of Agriculture:	
Animal Disease Control (per head)	\$.22
Animal Damage Control (per head)	\$.05
Wolf Control Assessment	\$25/brand renewal \$5/staggered recording fee every year thereafter

(3-15-22)()

02. Due and Payable. All brand inspection fees, and all other fees required to be collected by the Brand Inspector are due and payable at the time of inspection, except that livestock owners may make arrangements with a deputy brand inspector and approved by the state brand inspector to pay for all accumulated brand inspection fees to be paid at least monthly. Failure to comply with the payment arrangement makes all fees immediately due and payable. (3-15-22)

03. Minimum Fees. Feedlots, currently approved by the Idaho Department of Agriculture, and slaughter plants are exempt from the minimum brand inspection fee. Other minimum brand inspection fees may be waived at the discretion of the State Brand Inspector or District Brand Supervisor. (3-15-22)

IDAPA 24 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES

24.38.01 – RULES OF THE STATE OF IDAHO BOARD OF VETERINARY MEDICINE

DOCKET NO. 24-3801-2301 (ZBR CHAPTER REWRITE, FEE RULE)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo, Incorporation By Reference Synopsis \(IBRS\), & Cost/Benefit Analysis \(CBA\)](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature after approval.

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 67-2604, Idaho Code, and Sections 54-2103, 54-2104, 54-2105, 54-2112, 54-2115, 54-2118, 67-2614, 67-9406, and 67-9409, 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:

Under [Executive Order 2020-01, Zero-Based Regulation](#), the Board of Veterinary Medicine is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government.

Section 67-5229, Idaho Code, requires agencies to identify materials incorporated by reference with specificity, including the date when the material was published. To correct this omission from the proposed rule, 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 6, 2023, Idaho Administrative Bulletin, [Vol. 23-9, pages 380–402](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

The fees for applications, licenses, registrations and reinstatement as designated in Rule 400 of these rules are authorized in Section 54-2105, Idaho Code. None of these fees are being changed as a result of this rulemaking or since they were previously reviewed by the Idaho Legislature.

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:

This rulemaking is not anticipated to have any negative fiscal impact on the State General Fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Katie Stuart, Bureau Chief, at 208-577-2489.

DATED this 6th day of December, 2023.

Katie Stuart
Bureau Chief
11341 W. Chinden Blvd., Bldg. #4
Boise, ID 83714
Phone: (208) 577-2489
Email: katie.stuart@dopl.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This rulemaking action is authorized pursuant to Section 67-2604, Idaho Code, and Sections 54-2103, 54-2104, 54-2105, 54-2112, 54-2115, 54-2118, 67-2614, 67-9406 and 67-9409, Idaho Code.

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

<p>Thursday, September 14, 2023, 9:00 a.m. MT</p> <p>Division of Occupational and Professional Licenses Chinden Campus Building 4 11341 W. Chinden Blvd., Bldg. #4 Boise, ID 83714</p> <p>Telephone and web conferencing information will be posted on: https://dopl.idaho.gov/calendar/ and https://townhall.idaho.gov/</p>
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The hearing site will be accessible to persons with disabilities, if needed. Requests for accommodation must be made not later than five (5) days prior to the meeting to the agency address below.

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

Under [Executive Order 2020-01, Zero-Based Regulation](#), the State of Idaho Board of Veterinary Medicine is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. In conjunction with stakeholders, the proposed rule changes reflect a comprehensive review of this chapter by collaborating with the public to streamline or simplify the rule language in this chapter and to use plain language for better understanding. This proposed rulemaking updates the rules to comply with governing statute and Executive Order 2020-01.

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

The fees for applications, licenses, and reinstatement as designated in Rule 400 of these proposed rules are authorized in Section 54-2105, Idaho Code. None of these fees are being changed as a result of this rulemaking or since being previously reviewed by the Idaho legislature.

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 as a result of this rulemaking:

This rulemaking is not anticipated to have any negative fiscal impact on the State General Fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was conducted under Docket No. 24-ZBRR-2301. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 5, 2023 Idaho Administrative Bulletin, [Vol. 23-4, pp. 42-46](#).

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:

Principles of Veterinary Medical Ethics, published by the American Veterinary Medical Association (AVMA).

The ethics code cited is incorporated by reference because it would be unduly cumbersome, expensive, or otherwise inexpedient to republish all or in part. The ethics code is adopted by a nationally recognized organization or association.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES: For assistance on technical questions concerning this proposed rule, contact Katie Stuart, Bureau Chief, at (208) 577-2489. Materials pertaining to the proposed rulemaking, including any available preliminary rule drafts, can be found on the following DOPL website: <https://dopl.idaho.gov/rulemaking/>.

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 September 27, 2023.

DATED this 4th day of August, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 24-3801-2301

24.38.01 – RULES OF THE STATE OF IDAHO BOARD OF VETERINARY MEDICINE

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 54, Chapter 21, Idaho Code. ()

001. SCOPE.

The rules govern the licensing procedures, supervision requirements, standards of practice, inspections, and grounds for discipline of veterinarians, veterinary technicians, Committee on Humane Euthanasia members, and certified euthanasia technicians and agencies. ()

002. INCORPORATION BY REFERENCE.

The Principles of Veterinary Medical Ethics of the American Veterinary Medical Association (AVMA), as adopted and revised April 2016, is incorporated herein by reference in accordance with the provisions of Section 67-5229, Idaho Code. ()

003. -- 099. (RESERVED)

100. LICENSURE.

01. Certification Of Veterinary Technicians. ()

a. Certificate Required. Any person representing themselves as a licensed, registered, or certified veterinary technician, shall hold a valid, unexpired certificate to practice veterinary technology in Idaho. ()

b. Application for Certification. An individual desiring to be certified as a veterinary technician shall make written application, available online, to the Board. ()

02. Foreign Veterinary Graduate. The Board may issue a license to applicants who are graduates of

nonaccredited foreign colleges of veterinary medicine who possess a certificate issued by the American Veterinary Medical Association Educational Commission for Foreign Veterinary Graduates (ECFVG) or a certificate issued by the Program for the Assessment of Veterinary Education Equivalence (PAVE) as administered by the American Association of Veterinary State Boards (AAVSB). ()

03. Certified Euthanasia Agency. In order to be certified to purchase and store approved drugs, certified euthanasia agencies shall be inspected by the Board in accordance with the standards promulgated by the Committee on Humane Euthanasia and approved by the Board. The approved standards will be made available online to the public. ()

04. Certified Euthanasia Technician. ()

a. Training and Examinations. Qualifying training courses must be sponsored by or affiliated with a veterinary medicine school accredited by the AVMA or be approved by the Board. ()

05. Continuing Education. A renewing a licensee shall report fifteen (15) hours of completed continuing education to the Board. ()

101. -- 199. (RESERVED)

200. PRACTICE STANDARDS.

01. Supervising Veterinarians: ()

a. Provide direct supervision for all procedures pertaining to the practice of veterinary medicine with the exception of: ()

i. Routine procedures in the practice of veterinary technology performed under indirect supervision of the veterinarian. ()

ii. Previously prescribed medications and vaccines, administered, dispensed, and delivered under the indirect supervision of the veterinarian. This does not include injectable controlled substances, injectable tranquilizers, injectable sedatives, and injectable or inhalant anesthetics, which may only be administered under the direct supervision of the veterinarian. ()

iii. Emergency situations in which the veterinarian, while en route to the location of the distressed animal, may prescribe treatment and delegate appropriate procedures. ()

b. Examines the patient prior to the delegation of any animal health care task. The examination shall be conducted at such times as acceptable veterinary medical practice dictates, consistent with the particular delegated animal health care task. ()

c. May delegate to a certified veterinary technician under direct supervision to perform tooth extraction procedures. ()

02. Veterinarian/Client/Patient Relationship. A veterinarian shall establish a valid veterinarian/client/patient relationship. Such relationship will exist when: ()

a. The veterinarian has assumed the responsibility for making medical judgements regarding the health of the animal and the need for medical treatment. ()

b. There is sufficient knowledge of the animal by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal, either by virtue of an examination of the animal, or by medically appropriate visits to the premises where the animals are maintained within a minimum of the last twelve (12) months. ()

03. Record Keeping. Every veterinarian shall maintain detailed daily medical records. Medical

records shall include, at a minimum: the name, address, and phone number of the animal's owner or other caretaker; the name and description, sex (if readily determinable), breed, and age of the animal, or description of the group; dates (beginning and ending of custody of the animal; a short history of the animal's condition as it pertains to the animal's condition and diagnosis suspected; all medications, treatments, prescriptions, or prophylaxis given, including amount, frequency, and route of administration for both inpatient and outpatient care; diagnostic and laboratory tests or techniques utilized, and results of each; written documented evidence of continuous monitoring of all anesthetized animals. Records shall be readily retrievable to be inspected, duplicated, or submitted when requested by the Board. All records shall be safeguarded against loss, defacement, tampering, and use by unauthorized personnel. If changes are made to any records the records must clearly reflect what the change is, who made the change, when the change was made, and why. Records shall be maintained for a period of three (3) years following the last treatment or examination. Patient medical records shall be maintained for every animal accepted and treated as an individual patient by a veterinarian, or for every animal group (for example, herd, litter, and flock) treated by a veterinarian. ()

04. Preservation of Patient's Body. Where possible preserve for twenty-four (24) hours the body of any patient that dies while in the veterinarian's care until the owner can be contacted, except as otherwise provided by law. The time of contact or attempted contact with the owner shall be documented in the medical record. The veterinarian is allowed to use the usual manner of disposal if the owner has not made pick-up arrangements within twenty-four (24) hours of the documented contact time. ()

05. Consent for Treatment or Transporting. A veterinarian shall obtain written consent from a patient's owner or other caretaker before treating or transporting a patient to another facility for veterinary medical care or any other reason, unless circumstances qualifying as an emergency do not permit obtaining such consent. ()

06. Refusal to Render Services. A veterinarian has the right to refuse to render veterinary medical services for any reason, or refuse an owner's request to euthanize a healthy or treatable animal. ()

07. Immunization. When the primary objective is to protect the patient's health and a professionally acceptable immunization procedure is being sought, an examination is required, unless the animal has been examined within the twelve (12) months, except in the practice of large animal medicine where mass immunizations of animal herds is involved or when immunization is performed by the patient's owner. ()

08. Procurement And Administration Of Euthanasia Drugs. In order for a certified euthanasia agency to obtain approved drugs for euthanizing animals and a certified euthanasia technician to administer such drugs: ()

a. A certified euthanasia agency (CEA) shall appoint a person who will be responsible for ordering the approved drugs and who shall submit an application for the agency's registration to the Drug Enforcement Agency (DEA). The CEA shall also designate a certified euthanasia technician (CET) who will be responsible for the security of the agency's approved drugs. ()

b. Each CET employed by the agency shall apply for a controlled substance registration from the Idaho Board of Pharmacy under their individual name and using the CEA's DEA registration number. ()

09. Ownership of Medical Records. Medical records including diagnostic images are the personal property of the hospital or the proprietor of the practice that prepares them. Other veterinarians, including those providing subsequent health needs for a patient, and the patient's owner may receive a copy of the patient's medical record, upon the request of the patient's owner or other caretaker. A diagnostic image shall be released upon the request of another veterinarian who has the authorization of the owner of the animal or to the Board. Records shall be supplied within three (3) business days, counting the day of the request if a business day and shall be returned within a reasonable time to the veterinarian who originally ordered them prepared. ()

201. -- 299. (RESERVED)

300. DISCIPLINE.

01. Grounds For Discipline Of Veterinary Technicians. The Board may take administrative action or other discipline against certified veterinary technicians, certified euthanasia agencies, or certified euthanasia technicians for any action that would otherwise constitute grounds for discipline for a veterinarian under any applicable provision under Section 54-2115, Idaho Code, or Section 54-2118, Idaho Code. ()

301. -- 399. (RESERVED)

400. FEE SCHEDULE.

01. Fees Are As Follows:

	New	Active Renewal	Inactive Renewal	Late/ Reinstatement	Inactive to Active Fee
Veterinary License	\$275	\$175	\$50	\$200	\$150
Certified Veterinary Technician	\$125	\$75	\$25	\$50	\$50
Certified Euthanasia Agency	\$100	\$200	-	\$50	-
Certified Euthanasia Technician	\$100	\$100	-	\$50	-
Duplicate Wall License/ Certificate	\$25				
Veterinary License Verification	\$20				

()

401. -- 999. (RESERVED)

[Agency redlined courtesy copy]

Italicized text indicates changes between the text of the proposed rule as adopted in the pending rule.

24.38.01 – RULES OF THE STATE OF IDAHO BOARD OF VETERINARY MEDICINE

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 54, Chapter 21, Idaho Code.()

001. SCOPE.

The rules govern the licensing procedures, supervision requirements, standards of practice, inspections, and grounds for discipline of veterinarians, veterinary technicians, Committee on Humane Euthanasia members, and certified euthanasia technicians and agencies.()

~~002. -- 004.(RESERVED)~~

~~005~~**0302.INCORPORATION BY REFERENCE.**

The most current and updated Principles of Veterinary Medical Ethics of the American Veterinary Medical Association (AVMA), ~~as adopted and revised April 2016,~~ is incorporated herein by reference in accordance with the provisions of Section 67-5229, Idaho Code.()

PENDING TEXT 002

002. INCORPORATION BY REFERENCE.

The ~~most current and updated~~ Principles of Veterinary Medical Ethics of the American Veterinary Medical Association (AVMA), ~~as adopted and revised April 2016~~, is incorporated herein by reference in accordance with the provisions of Section 67-5229, Idaho Code. ()

006. -- 008.(RESERVED)

009 02. Foreign Veterinary Graduate.

~~Any graduate of a veterinary school, college or university outside that fulfills the current requirements for foreign veterinary graduates as set forth by the Educational Commission for Foreign Veterinary Graduates or the American Association of Veterinary State Boards. A graduate enrolled in the foreign graduate program would be considered a student as defined by Section 54-2104(2)(b), Idaho Code.()~~

~~01. Any graduate of an unaccredited veterinary school who has completed a curriculum of not less than four (4) academic years in a veterinary medical program approved by the Board and satisfactorily completed clinical education equivalent in purpose, content, experience and length to the clinical training received by students in an accredited veterinary medical program. Such clinical education needs to have been obtained pursuant to a formal affiliation agreement between the unaccredited veterinary school and an accredited veterinary medical program. Qualified graduates applying for licensure under Subparagraph 010.01.b.i. of these rules may be issued a probationary license to practice veterinary medicine under the professional supervision of an actively licensed Idaho veterinarian. The probationary license may be renewed for up to three (3) years by paying the current active license renewal fee established by Section 011 of these rules, provided that during this three (3) year period, the applicant has applied to complete the evaluated clinical experience requirements of the ECFVG program. The evaluated clinical experience requirements of the ECFVG program require that the applicant, following graduation from an unaccredited veterinary medical program, has successfully passed the Clinical Proficiency Examination (CPE) approved by the ECFVG.()~~

~~02. At the end of the three (3) year period, the Board will review the probationary license and determine has the whether to issue or deny a full license based on the candidates status in the foreign graduate program. The Board may issue a license to applicants who are graduates of nonaccredited foreign colleges of veterinary medicine who possess a certificate issued by the American Veterinary Medical Association Educational Commission for Foreign Veterinary Graduates (ECFVG) or a certificate issued by the Program for the Assessment of Veterinary Education Equivalence (PAVE) as administered by the American Association of Veterinary State Boards (AAVSB). ()~~

010. CHANGE OF ADDRESS.

~~It is the responsibility of each licensed veterinarian and certified veterinary technician to notify the Board office of any change of address.()~~

100. LICENSURE.

011400. FEE SCHEDULE.

~~The Board may pro rate application fees to accommodate a shortened licensure or certification period before the applicant's first June renewal. Fees are as follows:()~~

01. Fee Schedule.

	New	Active Renewal	Inactive Renewal	Late/ Reinstatement	Inactive to Active Fee
Veterinary License	\$275	\$175	\$50	\$200	\$150

Certified Veterinary Technician	\$125	\$75	\$25	\$50	\$50
Certified Euthanasia Agency	\$100	\$200	-	\$50	-
Certified Euthanasia Technician	\$100	\$100	-	\$50	-
<u>Duplicate Wall License/Certificate</u>	<u>\$25</u>	<u>=</u>	<u>=</u>	<u>=</u>	<u>=</u>
<u>Veterinary License Verification</u>	<u>\$20</u>	<u>=</u>	<u>=</u>	<u>=</u>	<u>=</u>

()

02. Administrative Services.

<u>Duplicate Wall License/Certificate</u>	<u>\$25</u>
<u>Veterinary License Verification</u>	<u>\$20</u>

()

01205. Continuing Education.

A ~~veterinarian and certified veterinary technician~~ renewing a license shall report fifteen (15) hours of completed continuing education to the Board. ()

013. 099. (RESERVED)

100 01. Certification Of Veterinary Technicians.

01a. Certificate Required. Any person representing themselves as a ~~veterinary technician~~, licensed ~~veterinary technician~~, registered ~~veterinary technician~~, or certified veterinary technician, shall hold a valid, unexpired certificate to practice veterinary technology in Idaho. ()

02b. Application for Certification ~~Contents Examinations~~. An individual desiring to be certified as a veterinary technician shall make written application, available online, to the Board ~~upon a form furnished by the Board. A complete application is valid for a period of one (1) year, contain the applicant's notarized signature, and include:~~ ()

- a.** ~~A copy of a birth certificate or current passport proving that the applicant is eighteen (18) years of age or older.~~ ()
- b.** ~~Documentation of education/training/experience as follows:~~()
 - i.** ~~A certified copy of a diploma or transcript, or a letter verifying graduation from a veterinary technology program, accredited by the American Veterinary Medical Association;~~()
 - ii.** ~~A certified copy of a diploma or transcript, or a letter verifying the award of a D.V.M. or V.M.D. degree or equivalent, from an accredited school of veterinary medicine; or~~()
 - iii.** ~~If a foreign veterinary graduate, a letter from the Educational Commission for Foreign Veterinary Graduates (ECFVG) certifying completion of the ECFVG program or a copy of the ECFVG certificate.~~()
- e.** ~~Verification of a criterion referenced passing score reported by the Professional Examination~~

~~Service or its designee, or by other designated test vendors or their designees approved by the American Association of Veterinary State Boards on the Veterinary Technician National Examination (VTNE) or other national examination approved by the American Association of Veterinary State Boards or its designated test vendor or by the Board. If such a score is not available, the passing score shall be as reported by the Professional Examination Service or its designee, or by other designated test vendors or their designees approved by the American Association of Veterinary State Boards or by the Board and shall be considered equal to or greater than one and five-tenths (1.5) standard deviation below the mean score of the examination.(—)~~

~~i. The VTNE or other national examination approved by the American Association of Veterinary State Boards or its designated test vendor or by the Board may have been taken at any time.(—)~~

~~ii. Scores for the VTNE or other national examination approved by the American Association of Veterinary State Boards or its designated test vendor or by the Board are to be provided to the Board by the Professional Examination Service or its designee or by other designated test vendors or their designees approved by the American Association of Veterinary State Boards.(—)~~

~~d. A passing score for the jurisprudence examination, which should be ninety percent (90%) or such score as deemed appropriate by the Board. The jurisprudence examination, as prepared by the Board or its designee, may be taken more than once.(—)~~

~~e. A completed application, other required documents, and first year's certification fee in the amount established by the Board shall be received at the Board office by the first day of January or June. All application and certification fees are nonrefundable.(—)~~

~~101.—102.(Reserved)~~

103. 01. Supervising Veterinarians:-

~~01. **Statement of Purpose.** Veterinarians licensed under the provisions of Title 54, Chapter 21, Idaho Code, are responsible for all certified euthanasia technicians, certified veterinary technicians, veterinary assistants, or any others to whom they delegate the performance of acts pertaining to the practice of veterinary medicine.
(—)~~

~~02. **A Supervising Veterinarian Shall:(—)**~~

~~a. Provide direct supervision for all procedures pertaining to the practice of veterinary medicine **that are delegated to a certified veterinary technician, an assistant, or any others** with the exception of:()~~

~~i. Routine procedures in the practice of veterinary technology **that include, but are not limited to, taking radiographs, weight and temperature, or as determined by the standard of practice for the area.** These routine procedures may be performed under **the** indirect supervision of the veterinarian.()~~

~~ii. Previously prescribed **antibiotics and medications and vaccines, which may be** administered, dispensed, and delivered under the indirect supervision of the veterinarian. **Previously prescribed antibiotics and medications** This does not include injectable controlled substances, injectable tranquilizers, injectable sedatives, and injectable or inhalant anesthetics, which may only be administered under the direct supervision of the veterinarian.()~~

~~iii. Emergency situations. **In these situations, in order to stabilize the animal, in which** the veterinarian, while en route to the location of the distressed animal, may prescribe treatment and delegate appropriate procedures **pertaining to the practice of veterinary medicine under indirect supervision.** ()~~

~~b. Be available to supervise and direct all procedures pertaining to the practice of veterinary medicine **that are delegated to others.**(—)~~

~~e. Bear legal responsibility for the health, safety and welfare of the animal patient **that the certified veterinary technician, assistant, or any others serves.**(—)~~

- ~~d.~~ Not delegate an animal health care task to an unqualified individual.(—)
- ~~e.~~ Make all decisions relating to the diagnosis, treatment, management, and future disposition of an animal patient. (—)
- ~~f.~~ Have ~~Examined~~ the animal patient prior to the delegation of any animal health care task ~~to a certified veterinary technician, or assistant.~~ The examination ~~of the animal patient~~ shall be conducted at such times as acceptable veterinary medical practice dictates, consistent with the particular delegated animal health care task.
()
- ~~g.~~ Diagnose and perform operative dentistry, oral surgery, and teeth extraction procedures May delegate to a certified veterinary technician under direct supervision to perform tooth extraction procedures. Operative dentistry and oral surgery are considered to be any dental procedure which invades the hard or soft oral tissue including, but not limited to, a procedure that alters the structure of one (1) or more teeth or repairs damaged and diseased teeth, or the deliberate extraction of one (1) or more teeth. Operative dentistry and oral surgery do not include, removal of calculus, soft deposits, plaque, stains, floating to shape the teeth, or smoothing, filing or polishing of tooth surfaces above the gum line.(—)

~~03. Limitations on Supervising Veterinarians.~~ A supervising veterinarian shall not authorize a certified veterinary technician, an assistant, or anyone else, other than a licensed veterinarian to perform surgery, diagnosis, prognosis, prescribing, or operative dentistry/oral surgery.(—)

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300. DISCIPLINE.

01. Grounds For Discipline Of Veterinary Technicians.
In addition to the provisions of Section 54-2118, Idaho Code, The Board may refuse to issue, renew, or reinstate the certification of a veterinary technician, or may deny, revoke, suspend, sanction, place on probation, or require voluntary surrender of the certification of a veterinary technician, or may impose other forms of discipline, take administrative action or other discipline against certified veterinary technicians, certified euthanasia agencies, or certified euthanasia technicians for any action that would otherwise constitute grounds for discipline for a veterinarian under any applicable provision under Section 54-2115, Idaho Code, or Section 54-2118, Idaho Code, and enter into consent agreements and negotiated settlements with certified veterinary technicians pursuant to the procedures set forth in Title 67, Chapter 52, Idaho Code, for provisions of Section 54-2115, Idaho Code, any of the following reasons:(—)

~~01. Unethical or Unprofessional Conduct.~~ Unethical or unprofessional conduct is conduct that includes, but is not limited to, any of the following:(—)

- ~~a.~~ Providing any procedure to an animal that constitutes the practice of veterinary medicine or veterinary technology and which has not been delegated by the supervising veterinarian, except in the case of an emergency as defined by Section 54-2103(16), Idaho Code;(—)
- ~~b.~~ Practicing veterinary technology in a manner that endangers the health and welfare of the patient or the public. A certified veterinary technician shall not practice veterinary technology if their ability to practice with reasonable skill and safety is adversely affected by reason of illness, excessive use of alcohol, drugs, narcotics, chemicals, or any other substance, or as a result of any mental or physical disability;(—)
- ~~c.~~ Gross ignorance, incompetence or inefficiency in the practice of veterinary technology as determined by, but not limited to, the practices generally and currently followed and accepted by persons certified to practice veterinary technology in Idaho and the current teaching at accredited programs in veterinary technology;
(—)
- ~~d.~~ Intentionally performing a duty, task, or procedure in the field of veterinary technology for which the individual is not qualified; or(—)
- ~~e.~~ Engaging in conduct of a character likely to deceive or defraud the public.(—)

~~**02. Conviction of a Charge or Crime.** Being found guilty, convicted, placed on probation, having entered a guilty plea that is accepted by the court, forfeiture of bail, bond or collateral deposited to secure a defendant's appearance, or having received a withheld judgment or suspended sentence by a court of competent jurisdiction in Idaho or any other state of one (1) or more of the following:(—)~~

~~**a.** Any felony, as defined by Title 18, Chapter 1, Idaho Code; or(—)~~

~~**b.** Any other criminal act that in any way is related to the practice of veterinary technology as defined by Section 54-2103(47), Idaho Code.(—)~~

~~**03. Medical Incompetence.** Medical incompetence in the practice of veterinary technology, which means lacking in sufficient medical knowledge or skills or both to a degree likely to endanger the health of patients.(—)~~

~~**04. Physical or Mental Incompetence.** Physical or mental incompetence, which means the individual's ability to practice veterinary technology with reasonable skill and safety is impaired by reason of illness, excessive use of alcohol, drugs, narcotics, chemicals or any other substance, or as a result of any physical or mental disability.(—)~~

~~**05. Malpractice or Negligence.** Malpractice or negligence, in the practice of veterinary technology, which includes, but is not limited to:(—)~~

~~**a.** Treatment in a manner contrary to accepted practices in veterinary technology and with injurious results;(—)~~

~~**b.** Any professional misconduct or unreasonable lack of professional skill or fidelity in the performance of an act that is part of the practice of veterinary technology;(—)~~

~~**c.** Performance of an act that is part of the practice of veterinary technology without adequate supervision, except in the case of an emergency as defined by Section 54-2103(16), Idaho Code; or(—)~~

~~**d.** The negligent practice of veterinary technology, as determined by the standard of practice for the area, that results in injury, unnecessary suffering or death.(—)~~

~~**06. Cruelty to Animals.** Cruelty to animals, including, but not limited to, the intentional and malicious infliction of pain, physical suffering, injury or death, performance of experimental treatments without the owner's consent, deprivation of necessary sustenance, withholding of appropriate pain medications or levels of pain medications, or the administration of unnecessary procedures and treatment. Infliction of pain on any animal in self-defense, or to prevent physical harm to others, or in accordance with local custom and culture in moving, handling, treating, dehorning, castrating or performing other procedures on livestock, shall not be considered cruel or physically abusive unless done in an unnecessary or intentionally malicious manner. This provision does not alter Section 25-3514, Idaho Code.(—)~~

~~**07. Revocation, Suspension, Limitation or Subjection.** The revocation, suspension, limitation, or subjection of a license, certificate or registration or any other disciplinary action by another state or U.S. jurisdiction or voluntary surrender of a license, certificate or registration by virtue of which one is licensed, certified or registered to practice veterinary technology in that state or jurisdiction on grounds other than nonpayment of the renewal fee.()~~

~~**08. Continuing Education.** Failure to comply with the continuing education requirements outlined by Board rules.(—)~~

~~**09. Failure to Cooperate.(—)**~~

~~**a.** Failure of any applicant or certificate holder to cooperate with the Board during any investigation, even if such investigation does not personally concern the applicant or certificate holder.(—)~~

~~b.~~ Failure to comply with the terms of any order, negotiated settlement or probationary agreement of the Board. ()

~~e.~~ Failure to comply with the terms for certification renewal or to timely pay certification renewal fees as specified by Section 010 of these rules. ()

~~10. Violation of Law, Rules or Order.~~ Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation or conspiracy to violate any of the provisions of the veterinary law or rules or a written order of the Board issued pursuant to Title 54, Chapter 21, Idaho Code. ()

~~105.—149.(RESERVED)~~

~~150~~ **02. VALID Veterinarian/Client/Patient Relationship.**

An veterinarian shall establish a valid appropriate veterinarian/client/patient relationship. Such relationship will exist when: ()

~~01a. Responsibility.~~ The veterinarian has assumed the responsibility for making medical judgements regarding the health of the animal and the need for medical treatment, ~~and the client (owner or other caretaker) has followed the instructions of the veterinarian.~~ ()

~~02b. Medical Knowledge.~~ There is sufficient knowledge of the animal by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal. ~~This means that the veterinarian has seen the animal within the last twelve (12) months or is personally acquainted with the keeping and care of the animal,~~ either by virtue of an examination of the animal, or by medically appropriate visits to the premises where the animals are maintained within a minimum of the last twelve (12) months. ()

~~03. Availability.~~ The practicing veterinarian or designate is readily available for follow-up in case of adverse reactions or failure of the regimen of therapy. ()

~~151. UNPROFESSIONAL CONDUCT.~~

Any violation of the Principles of the Veterinary Medical Ethics of the American Veterinary Medical Association, these rules, Chapter 21, Title 54, Idaho Code, constitutes unprofessional conduct. Unprofessional conduct includes, but is not limited to: ()

~~01. Unsanitary Methods or Procedures.~~ Failure to apply sanitary methods or procedures in the treatment of any animal, contrary to Board rules. ()

~~02. Association with Illegal Practitioners.~~ Includes, but is not limited to: ()

~~a.~~ Having a professional relationship or connection with, lending one's name to, or otherwise aiding and abetting any illegal or unlicensed practice or practitioner of veterinary medicine and the various branches thereof; ()

~~b.~~ Rendering professional service in association with a person who is not licensed; or ()

~~e.~~ Sharing fees with any person, except a licensed veterinarian, for services actually performed. ()

~~03. False Testimony.~~ Swearing falsely in any testimony or affidavits relating to, or in the course of, the practice of veterinary medicine, surgery or dentistry. ()

~~04. Gross Ignorance, Incompetence or Inefficiency.~~ In determining gross ignorance, incompetence or inefficiency in the profession, the Board may take into account all relevant factors and practices including, but not limited to, the practices generally and currently followed and accepted by the persons licensed to practice veterinary medicine in Idaho, the current teaching at accredited veterinary schools, relevant technical reports published in recognized veterinary medical journals, and the desirability of reasonable experimentation in the furtherance of the

art of veterinary medicine.(—)

05. Improper Supervision. Includes, but is not limited to:(—)

a. Permitting, allowing, causing or directing any individual to perform a duty, task or procedure that they are not qualified to perform.(—)

b. Providing, permitting, allowing, causing or directing any individual to perform inadequate anesthetic monitoring. Evidence of this monitoring shall be documented in written form and contained within the medical record. (—)

06. Association with Others. Accepting fees from the providers of animal services or products when referring clients to such providers.(—)

152. CODE OF PROFESSIONAL CONDUCT.

The Board's code of professional conduct includes, but is not limited to, the following standards of conduct. A veterinarian shall:(—)

01. Veterinarian/Client/Patient Relationship. Not dispense or prescribe controlled substances, prescription or legend drugs except in the course of their professional practice and after a bona fide veterinarian/client/patient relationship as defined by Section 150 of these rules has been established.(—)

02. Health Certificate. Not issue a certificate of health unless they have personal knowledge by means of actual examination and appropriate testing of the animal that the animal meets the requirements for issuance of such a certificate.(—)

03. DEA and Controlled Substance Registration. Notify the Board of the suspension, revocation, or voluntary surrender of their federal Drug Enforcement Administration (DEA) registration and their state controlled substance registration.(—)

04. Ability to Practice. Not practice veterinary medicine as to endanger the health and welfare of their patients or the public. A veterinarian shall not practice veterinary medicine if their ability to practice with reasonable skill and safety is adversely affected by reason of illness, excessive use of alcohol, drugs, narcotics, chemicals, or any other substance or as a result of any mental or physical disability.(—)

05. Conflicting Interests. Not represent conflicting interests except by the express consent of all the parties after full disclosure of all the facts. A conflict of interest includes, but not be limited to, accepting a fee from a buyer to inspect an animal for soundness and accepting a fee from the seller.(—)

06. Confidentiality. Maintain a confidential relationship with their clients, except as otherwise provided by law or required by considerations related to public health and animal health.(—)

a. The information contained in veterinary medical records is considered confidential. It is unethical for a veterinarian to release this information except by court order or consent of the patient's owner or other caretaker at the time treatment was rendered.(—)

b. Without express permission of the practice owner, it is unethical for a veterinarian or certified veterinary technician to remove, copy, or use the medical records or any part of any record belonging to the practice or its owner for any purpose other than the business of the practice.(—)

07. Physical Abuse Patient. Not physically abuse a patient or fail to conform to the currently accepted standards of care in the veterinary profession for any animal under their care.(—)

0804. Preservation of Patient's Body. Where possible preserve for twenty-four (24) hours the body of any patient that dies while in the veterinarian's care until the owner can be contacted, except as otherwise provided by law. The time of contact or attempted contact with the owner shall be documented in the medical record. The veterinarian is allowed to use the usual manner of disposal if the owner has not made pick-up arrangements within

twenty-four (24) hours of the documented contact time.()

~~0905.~~ **Consent for Treatment or Transporting.** A veterinarian shall obtain written consent from a patient's owner or other caretaker before treating or transporting a patient to another facility for veterinary medical care or any other reason, unless circumstances qualifying as an emergency do not permit obtaining such consent.()

~~1006.~~ **Refusal to Render Services.** A veterinarian has Have the right to refuse to render veterinary medical services for any reason, or refuse an owner's request to euthanize a healthy or treatable animal.()

~~153200.~~ **STANDARDS OF PRACTICE STANDARDS.**

~~Veterinarians shall adhere to the standards of practice including, but not limited to:()~~

~~01. Practice Procedures.~~ A licensed veterinarian shall exercise at least the same degree of care, skill, and diligence in treating patients that is ordinarily used in the same or similar circumstances by members of the veterinary medical profession of similar training and experience in the community in which he practices.()

~~0207. Immunization.~~ When the primary objective is to protect the patient's health and a professionally acceptable immunization procedure is being sought, an examination of the animal by the veterinarian is required prior to each and every immunization procedure, unless the animal has been examined within the last ninety (90) days twelve (12) months, except in the practice of large animal medicine where mass immunizations of animal herds is involved or when immunization is performed by the patient's owner. For the purpose of this subsection, the definition of "owner" in addition to ownership as defined by the laws of the ownership of property, non-profit organizations dedicated to the care and treatment of animals is considered the owners of animals in their custody if such organizations are the primary care giver for the animal or if the true owner of such animal cannot be immediately determined.()

~~03. Relationship.~~ A veterinarian shall establish a valid veterinarian/client/patient relationship prior to dispensing, using, prescribing, or selling any controlled substance or legend drug, or the prescribing of an extra-label use of any drug. ()

~~04. Dispense and Distribute in Good Faith.~~ A veterinarian dispensing or distributing any drug or medicine will dispense or distribute such drug or medicine in good faith, within the context of a valid veterinarian/client/patient relationship and will, except in the case of any drugs and medicines that are in containers that bear a label of the manufacturer with information describing their contents and that are labeled indicating:()

- ~~a.~~ The date on which such drug is dispensed;()
- ~~b.~~ The name of the owner and patient;()
- ~~c.~~ The name or initials of the person dispensing such drug;()
- ~~d.~~ Directions for use, including dosage and quantity; and()
- ~~e.~~ The proprietary or generic name of the drug.()

~~05. Anesthesia Standards.~~ All anesthetized animals shall be appropriately monitored and under supervision. ()

~~154 03.~~ **Record Keeping STANDARDS.**

Every veterinarian shall maintain detailed daily medical records of the animals treated. Medical records shall include, at a minimum: the name, address, and phone number of the animal's owner or other caretaker; the name and description, sex (if readily determinable), breed, and age of the animal, or description of the group; dates (beginning and ending of custody of the animal; a short history of the animal's condition as it pertains to the animal's condition and diagnosis suspected; all medications, treatments, prescriptions, or prophylaxis given, including amount, frequency, and route of administration for both inpatient and outpatient care; diagnostic and laboratory tests or techniques utilized, and results of each; written documented evidence of continuous monitoring of all anesthetized

animals. Records shall be readily retrievable to be inspected, duplicated, or submitted when requested by the Board. All records shall be safeguarded against loss, defacement, tampering, and use by unauthorized personnel. If changes are made to any records the records must clearly reflect what the change is, who made the change, when the change was made, and why. Records shall be maintained for a period of three (3) years following the last treatment or examination. Patient medical records shall be maintained for every animal accepted and treated as an individual patient by a veterinarian, or for every animal group (for example, herd, litter, and flock) treated by a veterinarian.()

- ~~01. **Medical Records.** Medical records shall include, but not be limited to:()~~
- ~~a. Name, address and phone number of the animal's owner or other caretaker.()~~
 - ~~b. Name and description, sex (if readily determinable), breed and age of animal; or description of group.()~~
 - ~~c. Dates (beginning and ending) of custody of the animal.()~~
 - ~~d. A short history of the animal's condition as it pertains to the animal's medical status.()~~
 - ~~e. Results and notation of each examination, including the animal's condition and diagnosis suspected.()~~
 - ~~f. All medications, treatments, prescriptions or prophylaxis given, including amount, frequency, and route of administration for both inpatient and outpatient care.()~~
 - ~~g. Diagnostic and laboratory tests or techniques utilized, and results of each.()~~
 - ~~h. All anesthetized animals shall be appropriately monitored and under supervision at all times. Evidence of this monitoring shall be documented in writing in the medical record.()~~

~~02. **Consent Forms.** Consent forms, signed by the patient's owner or other legal caretaker for each surgical or anesthesia procedure requiring hospitalization or euthanasia, shall be obtained, except in emergency situations, for each animal and be maintained on file with the practitioner.()~~

~~03. **Postoperative Instructions.** Postoperative home care instructions shall be provided in writing and be noted in the medical record.()~~

~~04. **Treatment Records.** Veterinarians who practice with other veterinarians shall indicate by recognizable means on each patient's or animal group's medical record any treatment the veterinarian personally performed and which treatments and procedures were delegated to a technician or assistant to perform. The patient's record must also include a notation indicating when the animal was handed off to another veterinarian or a treatment or procedure delegated to a technician or assistant along with a summary of the animal's condition and diagnosis at the time of the hand-off.()~~

0509. Ownership of Medical Records. Medical records including diagnostic images are the personal property of the hospital or the proprietor of the practice that prepares them. Other veterinarians, including those providing subsequent health needs for a patient, and the patient's owner may receive a copy of the patient's medical record, upon the request of the patient's owner or other caretaker. A diagnostic image shall be released upon the request of another veterinarian who has the authorization of the owner of the animal or to the Board. Records shall be supplied within three (3) business days, counting the day of the request if a business day and shall be returned within a reasonable time to the veterinarian who originally ordered them prepared.()

~~06. **Diagnostic Image Identification and Ownership.** All diagnostic images shall be labeled in the emulsion film or digitally imprinted to identify the veterinarian or premise, the patient, the owner, the date, and anatomical orientation. A diagnostic image is the physical property of the hospital or the proprietor of the practice that prepares it, and it shall be released upon the request of another veterinarian who has the authorization of the owner of the animal to whom it pertains or to the Board. Such diagnostic images shall be returned within a reasonable~~

time to the veterinarian who originally ordered them to be prepared. ()

- 07. Estimates.** A veterinarian shall make available to each client a written estimate on request.
()

155.—199.(Reserved)

200. COMMITTEE ON HUMANE EUTHANASIA:

Pursuant to Section 54-2105(8), Idaho Code, a Committee on Humane Euthanasia (COHE) is established and consists of no fewer than five (5) members appointed by the Board. At its discretion, the Board may appoint itself as the COHE. New members will be nominated by either the Board or the COHE and be confirmed by the Board. Applicants for a COHE position shall be certified euthanasia technicians (CETs) and employed by a certified euthanasia agency or be a veterinarian ()

01. Term. Each member may serve for three (3) years, at the pleasure of the Board. A COHE member may be eligible for reappointment. If there is a vacancy for any cause, the COHE or the Board shall nominate and confirm a successor to fill the unexpired term. ()

- 02. Duties.** The duties of COHE members include, but are not limited to, the following: ()

- a.** Coordinate and provide euthanasia training classes as needed. ()
- b.** Inspect and certify agencies. ()
- c.** Review the applications, records, performance, methods and procedures used by agencies and persons seeking to be certified or to renew their certification as a Certified Euthanasia Agency (CEA) or Certified Euthanasia Technician (CET). ()
- d.** Conduct written and practical examinations for applicants applying for certification and authorize certification through the Board. ()
- e.** Recommend suspension or revocation of a certification when necessary. ()

201. METHODS OF EUTHANASIA AND PRE-EUTHANASIA SEDATION:

Methods approved by the COHE and used for the purpose of humanely euthanizing and sedating sick, homeless, or unwanted pets and animals: ()

01. Euthanasia Drugs. Any Schedule II non narcotic or Schedule III non narcotic euthanasia drug covered by the Controlled Substances Act that has first been approved in writing by the COHE and the Board. A list of approved euthanasia drugs is on file at the Board office. ()

02. Pre-Euthanasia Sedation Drugs. Any Schedule III or Schedule IV narcotic or non-narcotic controlled substance as defined by the Controlled Substances Act, or other legend drugs that have been approved for use by CEAs or CETs at a CEA facility. Such pre-euthanasia sedation drugs shall be limited to those approved in writing by the COHE and the Board. A list of approved pre-euthanasia sedation drugs is on file at the Board office.
()

202 08. Procurement And Administration Of Approved Euthanasia Drugs.

In order for a certified euthanasia agency to obtain approved drugs for euthanizing animals and a certified euthanasia technician to administer such drugs, the following procedure shall be followed: ()

01a. DEA Registration. A certified euthanasia agency (CEA) shall appoint a person who will be responsible for ordering the approved drugs and who shall submit an application for the agency's registration as a Euthanasia Agency Practitioner A.S. to the Drug Enforcement Agency (DEA). The CEA shall also designate a certified euthanasia technician (CET) who will be responsible for the security of the agency's approved drugs.
()

~~02b. **Controlled Substance Registration.** Each CET employed by the agency shall apply for a controlled substance registration from the Idaho Board of Pharmacy under their individual name and using the CEA's DEA registration number.()~~

~~03. **Purchase of Approved Drugs.** After the certified euthanasia agency has received a DEA registration number and the CETs at that agency have received their Idaho Board of Pharmacy controlled substance registrations, the designated individual for the agency may on behalf of the agency purchase approved drugs for storage at the CEA location. Approved drugs shall only be obtained from a drug wholesaler.()~~

~~04. **Administration of Approved Drugs.** Certified euthanasia technicians employed by certified euthanasia agencies and registered with the Idaho Board of Pharmacy may perform euthanasia by the administration of approved drugs.()~~

203. (Reserved)

204 03. Certified Euthanasia Agency.

A certified euthanasia agency is a law enforcement agency, an animal control agency, a humane society, or an animal shelter that has been inspected and certified by the COHE or the Board, Section 54-2103(8), Idaho Code. In order to be certified to purchase and store approved drugs, certified euthanasia agencies shall be inspected by the ~~COHE or the Board~~ in accordance with the standards promulgated by the Committee on Humane Euthanasia and approved by the Board. The approved standards will be made available online to the public, and shall meet the following criteria:()

~~01. **Approved Drugs.**()~~

~~a. Each agency will maintain a current written list of CET(s).()~~

~~b. Access to the approved drugs in a locked drug storage cabinet will be limited to licensed veterinary supervisors and assigned CET. Such persons will be responsible for the security of the approved drugs and allow withdrawal of the approved drugs only to a person certified by the Board and registered with the Idaho Board of Pharmacy to administer such drugs.()~~

~~c. All approved drugs shall be prepared according to the manufacturer's instructions.()~~

~~d. Needles and syringes will be of medical quality and will not be reused.()~~

~~02. **Proper Labeling.** Upon removal from the shipment carton, each individual container of an approved drug will be labeled with the drug name and strength, the date the drug was prepared, a drug hazard warning label and the name and address of the agency owning the drug.()~~

~~03. **Temporary Storage.** When a CET is on duty and when animals are being euthanized throughout the workday, approved drugs may be kept in a temporary locked drug storage cabinet. The key to this cabinet shall be secured by a licensed veterinary supervisor or the lead CET designated on the DEA controlled substance registration, and made available to the CET(s) performing euthanasia that day.()~~

~~04. **Record Keeping.** Proper record keeping of approved drugs shall include the following:()~~

~~a. Shipment records showing receipt of the approved drugs shall be maintained and include all information required by federal law, the date the shipment was received, the amount, the source, and the invoice number.()~~

~~b. Administration records showing the date an approved drug was:()~~

~~i. Administered;()~~

~~ii. Weight and species of animal;()~~

- ~~iii. Dosage of each drug administered for pre-ethanasia sedation, euthanasia, and remote chemical capture restraint; (——)~~
- ~~iv. Identification of the person who dispensed the approved drugs; and, if applicable;(——)~~
- ~~v. Identification of the veterinarian or CET who supervised the dispensing shall be maintained. (——)~~
- ~~e. Records of wastage shall be maintained and signed by the CET administering the approved drug and the CET responsible for security.(——)~~
- ~~d. A weekly record of the approved drugs on hand, minus the amounts withdrawn for administration, signed by the CET responsible for security.(——)~~
- ~~e. Disposal records of any expired or unwanted approved drugs shall be maintained.(——)~~
- ~~f. All records shall be filed in chronological order in a binder that is labeled with the name of the agency and be kept for a period of three (3) years.(——)~~
- ~~05. **Proper Sanitation.** The euthanasia area shall be clean and regularly disinfected.(——)~~
- ~~06. **Other Site Conditions.**(——)~~
- ~~a. Each agency shall have a specific area designated for euthanasia that is a separate room or area that is not used for any other purpose while animals are being euthanized:(——)~~
- ~~b. The euthanasia area shall have a table or other work area where animals can be handled, and a cabinet, table or work bench where the drugs, needles, syringes and clippers can be placed.(——)~~
- ~~e. The following items and materials shall either be kept in the euthanasia area or brought to the area each time an animal is euthanized:(——)~~
 - ~~i. A first aid kit that meets minimum first aid supply standards;(——)~~
 - ~~ii. One (1) or more tourniquets;(——)~~
 - ~~iii. Standard electric clippers with No. 40 blade;(——)~~
 - ~~iv. Animal control stick for dogs and animal net for cats (if the agency handles cats);(——)~~
 - ~~v. Stethoscope;(——)~~
 - ~~vi. Disinfectant.(——)~~
 - ~~vii. The current certification cards for the CEA and all CETs working at the CEA, which shall be kept together. The CEA is strongly encouraged to keep all DEA and Idaho Board of Pharmacy registration cards together with the certification cards.(——)~~
- ~~d. All equipment shall be in good working order.(——)~~
- ~~07. **Equipment Stored.** All equipment shall be stored so that it does not create a safety hazard for the personnel. (——)~~
- ~~08. **Certification Renewal.** Certifications may be renewed upon successful completion of a facility inspection by a COHE member, a member of the Board or other individual appointed by the COHE and payment of the annual renewal fee.(——)~~

205 04. Certified Euthanasia Technician.

~~01.a.~~ Training and Examinations. Qualifying training courses must be sponsored by or affiliated with a veterinary medicine school accredited by the AVMA or be approved by the Board. ~~The COHE or the Board will develop training sessions, materials, and a written examination.(—)~~

~~02. Certification Standards.~~ Applicants for certification as a CET shall be eighteen (18) years of age or older and demonstrate proficiency in compliance with the following standards:(—)

~~a. Demonstrate competency in euthanasia techniques in the presence of a COHE or Board member, or a person approved by the Board:(—)~~

~~i. CETs are fully responsible for all actions that take place in the euthanasia area when an animal is brought to the area including, but not limited to, animal handling, use of the proper restraint technique, the proper drug dosage, and drug handling;(—)~~

~~ii. CETs shall be able to competently perform intravenous injections on dogs and intraperitoneal injections on both dogs and cats. Intravenous injections on cats shall not be required as part of the certification process, but when performed, meet the standards listed in Subparagraph 205.02.a.ii.(1) of these rules. Intracardiac injections on dogs and cats shall not be required as part of the certification process, but when performed, are restricted to the limitations listed in Subparagraph 205.02.a.ii.(3) of these rules.(—)~~

~~(1) Intravenous Injections: The CET shall be able to competently insert the needle into an animal's vein when an animal is injected by this method. A minimum of two (2) people shall be required for any IV injection. One (1) person shall be a CET and one (1) or more people shall be the handler. The handler does not need to be a CET, but the handler should be trained in human safety and animal handling techniques;(—)~~

~~(2) Intraperitoneal Injections: The CET shall be able to competently insert the needle into the proper area of the peritoneal cavity when an animal is injected by this method. It is recommended that animals injected by this method be placed into a cage or carrier with no other animals. The cage or carrier shall be covered with cloth or other material that can keep the injected animal isolated from the normal activities in the euthanasia area. Intraperitoneal injections may be administered by a CET without a handler.(—)~~

~~(3) Intracardiac Injections: Intracardiac injection shall be performed only on an anesthetized animal. CETs shall be able to competently insert the needle into the heart of an anesthetized animal, and intracardiac injections may be administered by a CET without a handler.(—)~~

~~iii. No other euthanasia injection procedures are permitted in any type of animal with the exception of intramuscular and subcutaneous injections for pre-euthanasia sedation;(—)~~

~~iv. Oral administration of approved euthanasia drugs is permitted for any animal that cannot be captured or restrained without serious danger to human safety;(—)~~

~~b. Demonstrate proper record keeping. A record of all approved drugs received and used by the agency shall be kept containing the following information:(—)~~

~~i. A weekly verification of the drug stock on hand, minus the amounts withdrawn for administration, signed by the CET responsible for security;(—)~~

~~ii. An entry of the date that a new bottle of any approved drug is opened and the volume of the bottle, signed by the CET responsible for security;(—)~~

~~iii. The species and approximate weight of each animal administered a drug;(—)~~

~~iv. The amount of the drug that was administered;(—)~~

~~v. The date the drug was administered;(—)~~

- vi. ~~The signature of the CET who administered the drug;(——)~~
- vii. ~~A record of the amount of the drug wasted, if any, signed by the CET administering the drug and the CET responsible for security; and(——)~~
- viii. ~~A record of any disposal of expired or unwanted approved drugs, other chemical agent or the containers, instruments and equipment used in their administration, signed by the CET and disposed of in accordance with the Idaho Board of Pharmacy law and rules and the Code of Federal Regulations.(——)~~
- e. ~~Demonstrate understanding and concern for the needs and humane treatment of individual animals:
(——)~~
 - i. ~~All animals shall be handled in a manner that minimizes stress to the animal and maximizes the personal safety of the CET and the handler. Each animal shall be handled with the least amount of restraint necessary, but human safety is always the primary concern. Handling includes all aspects of moving an animal from one (1) area to another;(——)~~
 - ii. ~~The use of control sticks and other similar devices shall be limited to fractious or potentially dangerous animals; and(——)~~
 - iii. ~~Animals shall not be placed in cages or kennels with other breeds or species that are incompatible with the animal in question or be overcrowded in a cage or kennel.(——)~~
 - d. ~~Demonstrate ability to verify death. The animal should become unconscious and show terminal signs within sixty (60) minutes of drug administration. If any animal does not show any of these signs within the designated time period, the CET shall re-administer the drug. An animal that has received an approved drug orally may be injected with the same or another approved drug after it has become unconscious. Verification is the responsibility of the CET and shall be made by physical examination of the individual animal. One (1) of the following two (2) standards for death shall be met:(——)~~
 - i. ~~Rigor mortis; or(——)~~
 - ii. ~~Complete lack of heartbeat (as checked with a stethoscope), complete lack of respiration, and complete lack of corneal and palpebral reflexes.(——)~~
- e. ~~Demonstrate ability to communicate with handlers during the euthanasia process.(——)~~
- 03. Certification.(——)**
 - a. ~~An individual shall not be certified as a CET until such time as he has successfully passed a euthanasia written examination, a practical or clinical examination, and an Idaho euthanasia jurisprudence examination. (——)~~
 - b. ~~The practical examination will test the individual's knowledge and skills in the hands-on application of euthanasia procedures and practices in a clinical setting under the direction of a COHE member, a Board member, or a designee of either the COHE or Board. The Idaho euthanasia jurisprudence examination (which can either be a separate written test or combined with the euthanasia written examination) will be an examination testing the individual's understanding of Idaho laws and Board rules addressing the practice of euthanasia. Both the euthanasia written examination and the euthanasia jurisprudence examination will be developed by the Board, the COHE, or a designee of either the Board or the COHE.(——)~~
 - e. ~~A passing score for the euthanasia written examination is eighty percent (80%), or such other score as deemed appropriate by the Board or the COHE. A passing score for the euthanasia jurisprudence examination is ninety percent (90%), or such other score as deemed appropriate by the Board or the COHE. A failed euthanasia jurisprudence examination may be retaken multiple times upon making arrangements acceptable to the Board.(——)~~

~~d. Initial certification and certification renewal training sessions and examinations will be conducted at least once per year prior to July 1, and at such other times deemed necessary by the COHE, the Board, or a designee of either the COHE or the Board. Upon approval of the Board, a COHE member, or the designee of either the Board or the COHE, an individual may take the euthanasia written examination, the practical examination, and the euthanasia jurisprudence examination in any order.(—)~~

~~e. An individual who has passed the written examination, but has not attended a training session and has not passed the practical examination, may serve as a probationary euthanasia technician under the direct supervision of a currently certified CET until such time as the next training course, practical examination and certification are conducted by a COHE member, a Board member, or the designee of either the COHE or the Board.
(—)~~

~~f. An individual who has not passed the written examination may not serve as a euthanasia technician.
(—)~~

~~g. An individual who attends a training session and passes the written examination but fails the practical examination may serve on probation until he has been re-examined. If the individual fails to pass the practical examination a second time and wishes to apply again, the individual shall attend the next regular training session and written examination.(—)~~

~~h. Upon termination from an agency as defined in Section 204 of these rules, a CET's certification immediately becomes invalid and the CET shall not perform animal euthanasia until employed by another certified euthanasia agency, at which time the certification may be reinstated.(—)~~

~~i. The agency shall notify the Board office in writing within thirty (30) days from the date the CET's employment at that agency is terminated.(—)~~

~~j. If a CET is employed again by a CEA prior to the expiration of their certification, the CEA employer may request reinstatement of the CET's certification. If a CET has not attended a euthanasia training in the three (3) year period preceding recertification, the CET may not be recertified and will need to reapply for certification, at COHE discretion.(—)~~

~~k. All certifications expire on July 1 of each year.(—)~~

~~04. **Certification Renewal.** Certifications may be renewed each year by payment of the annual renewal fee, provided that, every third year following the date of certification, the CET will need to attend a euthanasia training and pay the current training and certification fee prescribed by Section 014 of these rules.
(—)~~

~~05. **Duties.** The duties of a CET include, but are not limited to:(—)~~

~~a. Preparing animals for euthanasia;(—)~~

~~b. Accurately recording the dosages for drugs that are administered and amounts for drugs wasted;
(—)~~

~~e. Ordering supplies;(—)~~

~~d. Maintaining the security of all controlled substances and other approved drugs;(—)~~

~~e. Directly supervising probationary CET;(—)~~

~~f. Reporting to the Board violations or suspicions of a violation of these rules or any abuse of drugs;
(—)~~

~~g. Humanely euthanizing animals; and(—)~~

~~h. Proper and lawful disposal of euthanized animals and expired or unwanted drugs, other chemical agent or the containers, instruments and equipment used in the administration of approved drugs.(—)~~

~~206. Grounds For Discipline—CEAs And CETs.~~

~~The Board may refuse to issue, renew, or reinstate the certification of a CEA or CET, or may deny, revoke, suspend, sanction, place on probation, or require voluntary surrender of the certification of a CEA or CET, impose other forms of discipline, and enter into consent agreements and negotiated settlements with CEAs and CETs pursuant to the procedures set forth in Title 67, Chapter 52, Idaho Code, for any of the following reasons:(—)~~

~~01. **Failure to Carry Out Duties.** Failure to carry out the duties of a CEA or CET.(—)~~

~~02. **Abuse of Chemical Substances.** Abuse of any chemical substance by:(—)~~

~~a. Selling or giving chemical substances away; or(—)~~

~~b. Stealing chemical substances; or(—)~~

~~e. The diversion or use of any chemical substances for other than legitimate euthanasia purposes; or (—)~~

~~d. Abetting anyone in the foregoing activities.(—)~~

~~03. **Euthanizing of Animals Without Proper Supervision.** Allowing uncertified individuals or probationary CETs to euthanize animals or personally euthanizing animals without proper supervision.(—)~~

~~04. **Administration of Approved Drugs Without Proper Supervision.** Allowing uncertified individuals or probationary CETs to administer approved drugs or personally administering approved drugs without proper supervision.(—)~~

~~05. **Euthanizing of Animals Without Proper Certification.** Allowing individuals or probationary CETs to euthanize animals or personally euthanizing animals without being properly certified to do so.(—)~~

~~06. **Fraud, Misrepresentation, or Deception.** The employment of fraud, misrepresentation of a material fact, or deception by an applicant or certificate holder in securing or attempting to secure the issuance or renewal of a certificate.(—)~~

~~07. **Unethical or Unprofessional Conduct.** Unethical or unprofessional conduct means to knowingly engage in conduct of a character likely to deceive or defraud the public and includes, but is not limited to:(—)~~

~~a. Working in conjunction with any agency or person illegally practicing as a CEA or CET; (—)~~

~~(—) b. Failing to provide sanitary facilities or apply sanitary procedures for the euthanizing of any animal;~~

~~e. Euthanizing animals in a manner that endangers the health and welfare of the public. A CET shall not euthanize animals if their ability to practice with reasonable skill and safety is adversely affected by reason of illness, excessive use of alcohol, drugs, narcotics, chemicals, or any other substance or as a result of any mental or physical disability;(—)~~

~~d. Gross ignorance, incompetence or inefficiency in the euthanizing of animals as determined by, but not limited to, the practices generally and currently followed and accepted by persons certified to practice as CETs in Idaho; (—)~~

~~e. Intentionally performing a duty, task or procedure involved in the euthanizing of animals for which the individual is not qualified; and(—)~~

- ~~f. Swearing falsely in any testimony or affidavits relating to practicing as a CEA or CET.(—)~~
- ~~08. **Conviction of Violating Any Federal or State Statute, Rule or Regulation.** Conviction of a charge of violating any federal or state statute or rule or regulation regulating narcotics, dangerous drugs or controlled substances.(—)~~
- ~~09. **Conviction of a Charge or Crime.** Being found guilty, convicted, placed on probation, having entered a guilty plea that is accepted by the court, forfeiture of bail, bond or collateral deposited to secure a defendant's appearance, or having received a withheld judgment or suspended sentence by a court of competent jurisdiction in Idaho or any other state of one (1) or more of the following:(—)~~
- ~~a. Any felony, as defined by Title 18, Chapter 1, Idaho Code; or(—)~~
- ~~b. Any crime constituting or having as an element the abuse of any drug, including alcohol.(—)~~
- ~~e. Any other criminal act that in any way is related to practicing as a CEA or CET as defined by Section 54-2103(8) and (9), Idaho Code.(—)~~
- ~~10. **Improper Record Keeping.** Failure to follow proper record keeping procedures as outlined in Board rules.(—)~~
- ~~11. **Improper Security for Approved Drugs.** Failure to provide and maintain proper security for approved euthanasia and restraint drugs as outlined in Board rules.(—)~~
- ~~12. **Improper Storage of Equipment and Approved Drugs.** Failure to properly store equipment or approved drugs as outlined in Board rules.(—)~~
- ~~13. **Improper Disposal of Approved Drugs and Equipment.** Failure to properly dispose of approved drugs and the containers, instruments and equipment used in their administration as outlined in Board rules.(—)~~
- ~~14. **Improper Labeling of Approved Drugs.** Failure to properly label approved euthanasia and restraint drugs as outlined by Board rules.(—)~~
- ~~15. **Revocation, Suspension, Limitation or Restriction.** The revocation, suspension, limitation, or restriction of a license, certificate or registration or any other disciplinary action by another state or U.S. jurisdiction or voluntary surrender of a license, certificate or registration by virtue of which one is licensed, certified or registered to practice as a CEA or CET in that state or jurisdiction on grounds other than nonpayment of the renewal fee.(—)~~
- ~~16. **Failure to Cooperate.**(—)~~
- ~~a. Failure of any applicant or certificate holder to cooperate with the Board during any investigation, even if such investigation does not personally concern the applicant or certificate holder; or(—)~~
- ~~b. Failure to comply with the terms of any order, negotiated settlement, or probationary agreement of the Board; or(—)~~
- ~~e. Failure to comply with the terms for certification renewal or to timely pay certification renewal fees.(—)~~
- ~~17. **Aiding and Abetting.** Knowingly aiding or abetting an uncertified agency or person to practice as a CEA or CET.(—)~~
- ~~18. **Current Certification.** Practicing as a CEA or CET without a current certification.(—)~~
- ~~19. **Improper Drug Preparation.** Preparing approved drugs, contrary to manufacturer's instructions.(—)~~

~~20. **Violation of any Law, Rules or Orders.** Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation or conspiracy to violate any provisions of the veterinary law and rules or a written order of the Board issued pursuant to Title 54, Chapter 21, Idaho Code, the Idaho Board of Pharmacy law and rules, or the Code of Federal Regulations.(—)~~

~~207. **INSPECTION DEFICIENCIES.**~~

~~If there are inspection deficiencies with either a CEA or CET, a COHE member or the Board will document in writing areas for correction. The CEA or CET, or both, shall make corrections within the time period specified in the notice of deficiency, and correction will be verified by a COHE or Board member as recorded on the deficiency documentation. If the deficiency has not been corrected, the certification may be revoked by the Board, and the Idaho Board of Pharmacy will be notified.(—)~~

~~208. **999.(RESERVED)**~~

IDAPA 29 – IDAHO POTATO COMMISSION
29.01.01 – RULES OF THE IDAHO POTATO COMMISSION
DOCKET NO. 29-0101-2301 (ZBR CHAPTER REWRITE)
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature after approval.

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 22-1207(1), 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 pending rule is being adopted pursuant to [Executive Order 2020-01; Zero-Based Regulation](#) resulting in the removal of unnecessary and redundant language. 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 6th, 2023, Idaho Administrative Bulletin, [Vol. 23-9, pages 478-491](#).

FEE SUMMARY: Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. The following is a description of the fee or charge imposed or increased in this rulemaking:

Does not apply to this rulemaking.

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: No fiscal impact.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sam Eaton, sam.eaton@potato.idaho.gov.

DATED this 9th day of November, 2023.

Sam Eaton, VP Legal Affairs
Idaho Potato Commission
661 S. Rivershore Ln. Ste. 230
Eagle, Idaho 83616
(208) 334-2350

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This action is authorized pursuant to Section 67-1207(1), 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 September 20, 2023. 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 statement in nontechnical language of the substance and purpose of the proposed rulemaking:

Under [Executive Order 2020-01: Zero-Based Regulation](#), the Idaho Potato Commission is striving to prevent the accumulation of costly, ineffective, and outdated regulations and reduce regulatory burden to achieve a more efficient operation of government. The rule changes are intended to perform a comprehensive review of this chapter by collaborating with the public to streamline or simplify this rule language.

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

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: None

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 May 2023 Idaho Administrative Bulletin, [Volume 23-5, page 170](#).

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES: For assistance on technical questions concerning the proposed rulemaking contact Sam Eaton at (208) 334-2350. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on IPC's web site at the following web address: <https://idahopotato.com/industry>.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be submitted online at <https://idahopotato.com/industry> or directed to the undersigned and must be delivered on or before September 27, 2023.

DATED this 1st day of September, 2023.

THE FOLLOWING IS THE TEXT OF ZBR DOCKET NO. 29-0101-2301

29.01.01 – RULES OF THE IDAHO POTATO COMMISSION

000. LEGAL AUTHORITY.

Section 22-1207(1) Idaho Code. ()

001. SCOPE.

These rules govern payment of taxes to the Idaho Potato Commission (the Commission); records to be kept by growers, dealers, handlers, shippers, processors, container manufacturers, and out-of-state repackers of Idaho® potatoes; use of Certification Marks and Trademarks owned or administered by the Commission; branding of individual potatoes, state brand grade and packing requirements, reporting, labeling and revocation, and additional labeling requirements. These rules govern all procedure before the Idaho Potato Commission. ()

002. (RESERVED)

003. ADMINISTRATIVE PROCEEDINGS AND APPEALS.

Whenever these rules address the same subject matter as IDAPA 04.11.01, the specific provisions of these rules govern. There are no provisions for administrative appeals within the Commission under these rules of procedure, except that under Sections 202 and 203 a presiding officer may in the presiding officer's discretion refer a ruling on evidence or a motion to the full Commission. ()

004. -- 010. (RESERVED)

010. DEFINITIONS.

The terms defined in Section 22-1204, Idaho Code, apply to this chapter. In addition, the following terms are defined as follows: ()

01. Primary Channel of Trade. Potatoes are deemed to be delivered for shipment into the primary channel of trade when any such potatoes are sold or delivered for shipment, or delivered for canning and/or processing into by-products. ()

011. -- 099. (RESERVED)

100. GENERAL.

01. Growers', Dealers', Handlers', Shippers', Processors', Container Manufacturers', and Out-of-State Repackers' Records. Every dealer or handler shall keep a complete and accurate record of all potatoes handled in the primary channels of trade in such form as the Commission or their designee prescribes. Each grower, dealer, handler, shipper, processor, container manufacturer, and out-of-state repacker shall keep records that segregates purchases and sales of Idaho® potatoes by calendar month; records of inventories of Idaho® potatoes by calendar month; and records of inventories of containers bearing the registered Certification Marks of the Commission by calendar month. Such records shall be preserved for a minimum period of two (2) years and be open to inspection at any time upon written or oral request or demand by the Commission or its duly authorized agents, representatives, or employees. ()

02. Calculation of Tax Due. All first handlers of Idaho® Grown potatoes shall pay the total tax due on all potatoes handled by them on a net weight basis. Net weight shall be determined by subtracting from the gross scale weight the dirt, rock, other foreign material only, and potatoes that are not used for human consumption. The amount of tax due is the tax rate currently set by the Commission multiplied by the net hundredweight (cwt). ()

03. Tax Reports to Be Made by Growers, Dealers, Handlers, Shippers and Processors. A report showing total weight handled for a given period of time and potato tax due are to be sent to the Commission office with the tax payment. The information required for the reports are to be made on forms furnished by the Commission. ()

101. (RESERVED)

102. CERTIFICATION MARKS FOR IDAHO® POTATO CONTAINERS.

01. Containers. All potatoes grown in Idaho and packed or repacked in containers in or outside of the state of Idaho shall be in containers printed, labeled or stenciled in a plain and legible manner with one (1) of the Commission's registered Certification Marks, and a "GROWN IN IDAHO®" Certification Mark. An exact reproduction of the Commission's Certification Marks appears at idahopotato.com/licensing/marks. Certification Marks may not be stamped on any Idaho® potato container without a temporary written variance. No container may use a "Check Off" box format for state of origin. All containers must use Idaho specific approved produce code identification numbers, where the same have been obtained and approved. No container of Idaho® potatoes or potato products may be manufactured or used without prior written approval of the Commission or its employee. No Seal, Trademark, Certification Mark, brand, or similar device used to promote potatoes not grown in Idaho can be placed on a container. ()

a. Variance. Upon written application, the Idaho Potato Commission may grant a variance from these rules for special purpose shipments for charity, certified seed, experimentation and processing. If a variance is granted, the applicant shall comply with all terms and conditions of such variance. If applicable, the application shall be accompanied by a valid Certificate of Privilege issued by the Idaho and Eastern Oregon Potato Committee, and the applicant shall furnish copies of all of the reports required by the Idaho and Eastern Oregon Potato Committee to the Idaho Potato Commission. ()

02. Agreement to use Marks. No person, firm or corporation packing or repacking Idaho potatoes or Idaho potato products outside of the state of Idaho shall use any of the Commission's Certification Marks on any containers of potatoes or potato products packed or repacked outside the state of Idaho unless they have first executed an agreement for the use of the Certification Marks with the Idaho Potato Commission. ()

03. Agreement. No person, including without limitation manufacturers, container manufacturers, growers, shippers, processors and repackers, shall use or reproduce any of the Commission's Certification Marks on any container without first executing an agreement for the use of the marks with the Idaho Potato Commission. ()

04. Recognition. Whenever the "GROWN IN IDAHO®," "IDAHO®," or other Certification Marks are used, recognition must be given that the marks are registered under the appropriate Federal statute. This recognition must be: by printing a legible "®" immediately after the word "IDAHO" or where designated by the Commission. ()

05. Certification Mark Use. The Commission's Certification Marks must be portrayed without embellishment and cannot be incorporated into any private label, brand, or seal. The word "IDAHO®" cannot be incorporated into any private label, brand, or seal unless such label, brand, or seal was registered with the U.S. Patent Office prior to January 1, 1966. ()

06. Sack Type Containers. A Certification Mark shall be used on the front of a one hundred (100) pound sack type container, that is not less than five (5) inches in diameter or width and not placed closer than two (2) inches from the bottom of said container. Any Certification Mark used on the rear of a one hundred (100) pound sack type container shall not be less than twelve (12) inches in diameter or width. The marks may also be used on both the front and back of one hundred (100) pound sack type containers, if placed as indicated and in the sizes indicated. On fifty (50) pound sack type containers, a Certification Mark shall be used as on the one hundred (100) pound containers, but in proportionate sizes. On all sack type containers of less than fifty (50) pounds, a Certification Mark shall appear plainly visible on the front of the containers in relative proportion to brands, labels, or other printed matter thereon, but not less than two and one quarter (2 1/4) inches in diameter or width. ()

07. Box Type Containers. ()

a. On all box type containers in which U.S. No. 1 grade Idaho® Potatoes will be packed, a Certification Mark shall be located on the front and back panels of the container that is not less than a width measurement of three and one half (3 1/2) inches and a length measurement of five and one half (5 1/2) inches so

placed as to be plainly visible. Unless an approved product traceability sticker is used, the top one and three quarters (1 3/4) inches of the carton shall contain no preprinting on all four (4) sides of the container. The container shall be packed with an approved box bottom bearing Idaho® Potato Certification Marks as specified by the commission. ()

b. Packaging requirements for U.S. No. 2 grade Idaho® potatoes in box type containers are located at idahopotato.com/licensing and are consistent with the following: ()

i. The container must be manufactured in a kraft, or non-colored cardboard material and may either be of a single or double piece construction that uses a box bottom bearing Idaho® Potato Certification Marks as specified by the commission; ()

ii. The rectangular “Grown in Idaho®” certification mark shall be placed on each side and end panel of the container, with a width measurement of three and one-half (3 1/2) inches and length measurement of five and one-half (5 1/2) inches. ()

iii. The certification mark “Idaho® Potatoes” shall be printed on all four (4) sides of the container in one (1) inch lettering. ()

iv. The words “U.S. NO. 2” shall be printed on all four (4) sides of the container in one (1) inch lettering and on one (1) of the top flaps of the container; ()

v. The top one and three quarters (1 3/4) inches of the carton shall contain no preprinting on all four (4) sides of the container; ()

vi. One (1) of the elongated top flaps shall contain the “Grown in Idaho®” certification mark with a width of three and one-half (3 1/2) inches and length of five and one-half (5 1/2) inches, together with the certification mark “Idaho® Potatoes” in one (1) inch height and the words “U.S. NO. 2” in one (1) inch height; ()

vii. Product code identification numbers on containers bearing the certification marks shall use Idaho specific codes where the same have been obtained and approved; and ()

viii. All other requirements regarding container packaging set forth in these rules and the license agreements of the Idaho Potato Commission apply to the use of this type of container. ()

08. Tote Bin Type. On all tote bin type containers, Certification Marks must be used on the front of said container but may be used elsewhere and shall not be less than twelve (12) inches in diameter or width. ()

09. Identity of Commodity. All containers bearing the marks shall specify the identity of the commodity contained therein and the name and place of business of the manufacturer, packer, licensee, or distributor of the commodity. Containers which do not comply with the rules of the Idaho Potato Commission cannot be used by any grower, dealer, handler, shipper, processor, or out-of-state repacker for any potatoes or potato products subject to these rules. ()

10. Packed in Idaho. All potatoes grown in Idaho and packed or repacked in Idaho shall have the words “PACKED IN IDAHO” printed on the container. ()

a. Sack Type Containers -- Fifty Pounds or Over. On all sack type containers for fifty (50) pounds or over the words “PACKED IN IDAHO” shall be located on the front lower half of the container but not closer than six (6) inches to the bottom thereof. ()

b. Sack Type Containers -- Less Than Fifty Pounds. On all sack type containers containing less than fifty (50) pounds of potatoes the words “PACKED IN IDAHO” may be placed anywhere on the container so as to be plainly visible. ()

c. Location of Words. On all box type containers the words “PACKED IN IDAHO” may be located

on the ends, sides or top of the container but shall be so placed as to be plainly visible. ()

d. Colors. All marks when used and the words “PACKED IN IDAHO” shall be in color or colors in contrast with the color of the container. ()

11. Use. Only in connection with potatoes and potato products grown within the state of Idaho may growers, handlers, shippers, processors, and packers use the name “IDAHO®” in any mark, label or stencil applied to containers for such produce and products. The growers, dealers, handlers, shippers, processors, and packers of potatoes within the state of Idaho are not precluded from processing, packing, and shipping potatoes grown outside the state of Idaho so long as such potatoes are not misrepresented or misbranded as Idaho® Potatoes. ()

12. Compulsory Printing. Printing of the mark “GROWN IN IDAHO®” and the words “PACKED IN IDAHO” is compulsory on all potato containers printed or contracted for after December 1, 1964. ()

13. Idahos. The word “IDAHOS” cannot be used on any container for potatoes, potato products, or on any other printing or advertising material or correspondence used to identify or promote Idaho potatoes. ()

14. Exemption. Only shipments of certified seed potatoes to destinations outside of the state of Idaho are exempt from this rule. ()

15. Other Rules. Other rules on containers, grade, and size are covered under Title 22, Chapter 9, Idaho Code, and applicable marketing orders. ()

103. BRANDING, AND GRADE AND PACKAGING REQUIREMENTS OF STATE BRAND.

01. Branding or Marking of Individual IDAHO® Potatoes. ()

a. Idaho® potatoes are considered to be branded when they are individually marked or identified as such. The methods of branding shall include: marking of individual potatoes by ink, heat, light, labeling, stickering, or puncturing and such other methods as may from time to time be authorized by the Idaho Potato Commission. ()

b. The certification mark “Idaho®” shall be one (1) inch in length and one-quarter (1/4) inch in height unless prior Idaho Potato Commission written approval is secured and granted for any variance. ()

c. The purchase or the leasing or use of branding machines shall be entirely voluntary. ()

d. There are no limitations on the size and type of containers in which branded potatoes may be packed as long as they meet the licensing requirements of Section 102. ()

e. Grade for branding shall be U.S. No. 1 or better (as defined in the U.S. Standards effective March 27, 1991) and not less than two (2) inches in diameter or four (4) ounces in weight. ()

f. Only Certification Marks owned or administered by the Idaho Potato Commission may be branded on potatoes grown in Idaho unless prior Idaho Potato Commission approval in writing is secured and granted for the use of additional words or designs. ()

g. The operation of branding the word “Idaho®” upon potatoes may be carried on only by licensees of the Idaho Potato Commission, and only upon such terms and conditions that will ensure that only Idaho grown potatoes are branded as such. ()

h. All varieties of potatoes grown in Idaho may be so branded. ()

i. No person, firm, or corporation may brand the word “Idaho®” on potatoes or sell machinery for the purpose of branding potatoes with any of the Idaho certification marks unless granted the right to do so by written agreement with the Idaho Potato Commission. ()

j. Branded potatoes must use Idaho specific, approved produce code identification numbers, where the same have been obtained and approved. ()

k. On all branded potatoes using a standard size sticker, the Certification Mark “Idaho® Potatoes” shall be printed in eight (8) point type and the Certification Mark “Grown in Idaho®” shall be printed with a minimum height of eight point one hundred twenty-nine (8.129) mm and minimum width of five point thirty-seven (5.37) mm. ()

02. State Brand Grade and Packaging Requirements. Idaho® potatoes shall meet all requirements of U.S. Extra No. 1 as defined in the U.S. Standards for Grades of Potatoes, March 27, 1991, with the following additions or exceptions: ()

a. Mature. ()

b. Fairly well shaped. Defined as excluding the lower limits of such classification. ()

c. Appearance as related to russetting where at least seventy five percent (75%) of the surface of the individual potato is moderately netted which means the netting will be solid net-like in appearance. ()

d. Size is two and one eighth (2-1/8) inches in diameter and four (4) ounces minimum, eleven (11) ounces maximum. Each lot shall meet the specifications of Size A as defined in 51.1545, Table I(2) of the Standards. ()

e. Tolerances for grade defects are defined in 51.1546(a)(2), for U.S. No. 1. ()

f. All other tolerances and definitions of the Standards apply. ()

03. Packaging. ()

a. Container Requirement: Maximum size not to exceed twenty (20) pounds. ()

b. Miscellaneous Requirements: Use of the state brand packaging is entirely voluntary. Potatoes grown and packed in Idaho may be packed in state branded containers. All varieties of potatoes grown in Idaho may be packed in state branded containers. The Commission shall require a written agreement between the Idaho Potato Commission and Idaho packers for the use of the state brand. All state branded containers shall be Federal-State inspected. ()

c. The grade used in state brand containers shall be as defined in Subsection 103.03 and “Idaho State Code 22-908” and “Federal-State Inspected” shall be printed in three-eighths (3/8) inch or larger letters, on front of each container. ()

d. If individually branded Idaho® potatoes are packaged in state brand packaging they must meet grade requirements as defined in Subsection 103.03. ()

104. REPORTING, LABELING, AND REVOCATION.

01. Reporting of Fresh Shipments of Potatoes. Growers, dealers, handlers, and shippers of Idaho® potatoes are required to report shipments of all fresh Idaho grown potatoes giving information as to weight, packaging, and type of receiver. Reporting forms will be furnished for this information by the Idaho Potato Commission. All information received will be kept in strictest confidence as to individual shipments. ()

02. Labeling Containers of Fresh Idaho® Potatoes to Indicate the Variety Packed Therein. ()

a. All potatoes grown in Idaho that are packed or repacked in containers in Idaho, or packed or repacked in containers outside of Idaho under an out-of-state packer license agreement, shall be packed or repacked in containers that are printed, marked, labeled or stenciled in a plain and legible manner that identifies the variety

packed therein. ()

b. No container may contain more than one (1) variety of potato, except as provided by written variance for non-russet variety potatoes. ()

c. Any mark, label, or stencil necessitated by this rule shall be conspicuously placed on the container and printed in a color contrasting with the background and be of a size determined as follows: ()

i. For bags and other containers holding one hundred (100) pounds of potatoes or more, the letters of the label shall be at least one (1) inch high; ()

ii. For bags and other containers holding fifty (50) pounds or more of potatoes, but less than one hundred (100) pounds, the letters of the label shall be at least three-fourths (3/4) of an inch high; ()

iii. For bags or other containers holding less than fifty (50) pounds of potatoes, the letters on the label shall be five-eighths (5/8) of an inch high. ()

iv. For containers holding less than five (5) potatoes, the letter on the label shall be in a size that is plainly visible and approved in writing by a duly authorized Commission employee. ()

d. Any person seeking authorization to comply with this rule in a manner other than that specified herein shall submit a written request to the Commission for approval of an alternate method of compliance, which alternative method shall be in substantial compliance with these standards and which request describes in detail the proposed alternate method of compliance. The Executive Director of the Commission or a duly authorized employee shall have the authority and responsibility to review such requests and rule whether they should be allowed, said determination to be based upon a finding that such alternate method has nor has not been shown to comply with the purpose and meet the standards of this rule; provided, any interested person may request in writing that the Commission grant a de novo review of said request at a subsequent regular meeting deemed convenient and appropriate by the Commission, which request the Commission may in its discretion, either grant or deny. ()

e. No potatoes grown in Idaho and packed or repacked in containers in Idaho, or packed or repacked outside of Idaho under an out-of-state packer license agreement, shall carry or be printed, labeled, or identified with the GROWN IN IDAHO® or IDAHO® marks unless this rule is fully complied with as respects said potatoes. ()

f. All persons growing potatoes in Idaho or packing or repacking in containers in Idaho, or packing or repacking outside of Idaho under an out-of-state license agreement, shall have the affirmative duty to avoid and refrain from ambiguous or misleading practices, acts or representations and to eliminate the same in marketing or handling Idaho® potatoes if such practice does or is likely to mislead any purchaser or consumer regarding the quality and variety of Idaho® potatoes purchased by such buyer or consumer. ()

03. Revocation of Right to Use Marks. ()

a. The Commission has the power to revoke the right of any person, firm, or corporation to use any of the Commission's Certification Marks or Trademarks if such person, firm, or corporation fails to pay any advertising tax assessed against it, license fees, or royalties, or fails to comply with any of these rules or applicable law. ()

b. Revocation of the right to use the Certification Marks or Trademarks shall not occur without reasonable notice of at least twenty (20) days and an opportunity for a hearing pursuant to Section 67-5242, Idaho Code. However, where the Executive Director determines that expedited action is necessary, he may: ()

i. Issue an order immediately suspending the right to use any of the Commission's Certification Marks or Trademarks pending a hearing, which hearing shall be held within twenty (20) days from the Executive Director's order; or ()

ii. Issue an order conditioning the right to use any of the Commission's Certification Marks or Trademarks pending a hearing, which hearing shall be held within twenty (20) days from the Executive Director's

order; or ()

iii. Issue an order directing that the user of the Commission’s Certification Marks or Trademarks show cause why the right to use the marks should not be suspended or conditioned further. ()

105. ADDITIONAL LABELING REQUIREMENTS, POTATOES.

01. Disclosure of Geographic Growing Area of Origin upon Potato Containers. All persons doing business in the state of Idaho are required to disclose the growing area of origin upon all potato containers in accordance with this rule and Section 22-1207, Idaho Code. For purposes of these rules, doing business in the state of Idaho means the doing of any of the acts which would subject a person to the jurisdiction of the courts of this state or defined in Section 5-514, Idaho Code. ()

02. Compliance for Idaho Grown Potatoes. For potatoes “Grown in Idaho®,” this rule is complied with by meeting the requirements of Section 102. ()

03. Compliance for Private Brands or Labels That Reference Idaho Locations. Private brands or labels of containers that reference an Idaho location, geographical feature, or otherwise attempt to imply directly or indirectly that a container of potatoes contains potatoes grown in Idaho when in fact such is not the case are prohibited. ()

04. Compliance for Private Brands or Labels That Do Not Reference Idaho Locations. Private brands or labels that do not reference an Idaho location, geographical feature, or otherwise attempt to imply directly or indirectly that a container of potatoes contains potatoes grown in Idaho when in fact such is not the case, but only have an Idaho address on the container, are permitted when approved by the commission or its designee. This rule is complied with by private brands or labels that: ()

a. Meet the requirements of Subsection 104.02.c.; ()

b. State the geographical state of origin of the potatoes followed by the word “potatoes”; and ()

c. The lettering size of the Idaho address on the container does not exceed one-half (1/2) inch for containers fifty (50) pounds or greater and one-quarter (1/4) inch for containers less than fifty (50) pounds. For example, for potatoes grown in the state of Washington, the phrase “Washington potatoes” would comply with these rules. The use of the words “Grown in” preceding the state of origin is prohibited. ()

106. ADDITIONAL REQUIREMENTS FOR USE OF TRADEMARKS.

01. Marks. No person is permitted to use any trademark owned or administered by the Commission unless authorized to do so pursuant to a license agreement entered into with the Commission. ()

02. Agreement. Trademarks owned or administered by the Commission may be licensed for use as permitted under federal and state law and as authorized by the Commission. ()

03. Royalty Fees. In addition to license fees, the Commission may set royalty fees for the use of trademarks. ()

107. -- 200. (RESERVED)

SUBCHAPTER A – RULES OF PROCEDURE
(Sections 201 through 204)

201. SUBPOENAS.

01. Witness or Travel Fees. A party’s motion to issue a subpoena must be accompanied by a statement that the party will tender to the subpoenaed person all fees necessitated by statute and rules if the subpoena is issued. ()

02. Motions to Quash. The Commission upon motion to quash made promptly, and in any event, before the time to comply with the subpoena, may: ()

a. Quash the subpoena; or ()

b. Condition denial of the motion to quash upon reasonable terms. ()

202. RULINGS AT HEARINGS.

The presiding officer rules on motions presented at hearing. The presiding officer's rulings may be reviewed by the full Commission in determining the matter on its merits. In extraordinary circumstances, the presiding officer may refer or defer these matters to the full Commission for determination. ()

203. OBJECTIONS -- OFFERS OF PROOF.

Grounds for objection to the admission or exclusion of evidence must be stated briefly at the time the evidence is offered. Formal exceptions to rulings admitting or excluding evidence are unnecessary and need not be taken. An offer of proof for the record consists of a statement of the substance of the excluded evidence. When a party objects to the admission of evidence, the presiding officer will rule on the objection or the presiding officer may receive the evidence subject to the later ruling by the full Commission or refer to the matter to the full Commission. ()

204. -- 999. (RESERVED)

[Agency redlined courtesy copy]

29.01.01 – RULES OF THE IDAHO POTATO COMMISSION

000. LEGAL AUTHORITY.

~~These rules are adopted under the general legal authority of the Idaho Potato Commission Law, Chapter 12, Title 22, Section 22-1207(1) Idaho Code.~~ (3-31-22)()

001. TITLE AND SCOPE.

01. Title. ~~The title of this chapter is IDAPA 29.01.01, "Rules of the Idaho Potato Commission."~~ (3-31-22)

02. Scope. ~~These rules govern payment of taxes to the Idaho Potato Commission (the Commission); records to be kept by growers, dealers, handlers, shippers, processors, container manufacturers, and out-of-state repackers of Idaho® potatoes; use of Certification Marks and Trademarks owned or administered by the Commission; branding of individual potatoes, state brand grade and packing requirements, reporting, labeling and revocation, and additional labeling requirements. These rules govern all procedure before the Idaho Potato Commission (the Commission).~~ (3-31-22)()

002. (RESERVED)

003. ADMINISTRATIVE PROCEEDINGS AND APPEALS.

~~Administrative proceedings and appeals are administered by the Commission in accordance with the "Idaho Rules of Administrative Procedure of the Attorney General." IDAPA 04.11.01, Subchapter B – Contested Cases, Sections 100 through 800, which for the purpose of Section 22-1201 et seq., Idaho Code, will be known as Rules of Practice and Procedure of the Idaho Potato Commission Governing Contested Cases.~~ Whenever these rules address the same subject matter as IDAPA 04.11.01, the specific provisions of these rules govern. There are no provisions for administrative appeals within the Commission under these rules of procedure, except that under Sections 202 and 203 a presiding officer may in the presiding officer's discretion refer a ruling on evidence or a motion to the full

Commission. (3-31-22)()

004. -- 010. (RESERVED)

010. DEFINITIONS.

The terms defined in Section 22-1204, Idaho Code, apply to this chapter. In addition, the following terms are defined as follows: ()

01. Primary Channel of Trade. Potatoes are deemed to be delivered for shipment into the primary channel of trade when any such potatoes are sold or delivered for shipment, or delivered for canning and/or processing into by-products. ()

011. -- 099. (RESERVED)

100. GENERAL.

~~**01. Potato Tax.** All potatoes grown in Idaho, no matter how grown (i.e. by conventional, organic, or other methods) and no matter what variety (i.e. russet, red, yellow, specialty, or other variety) are subject to the potato tax imposed by Section 22-1211, Idaho Code. (3-31-22)~~

~~**02. Potato Tax Base Rate and Additional Tax.** A base tax of four cents (\$0.04) per hundredweight is imposed by statute on all potatoes grown in Idaho. In addition, an additional tax of eleven cents (\$0.11) per hundredweight may be imposed upon a determination by at least two thirds (2/3) of commission members that the anticipated expenditures for the fiscal year following the year in which the determination is made will exceed the anticipated tax revenues to be collected from the four cents (\$0.04) base tax rate. (3-31-22)~~

~~**03. Potato Tax Due Date and Responsible Party.** The potato tax is due when potatoes are first handled in the primary channels of trade and must be paid not later than the fifteenth day of the next month. The first person selling or otherwise delivering potatoes into primary channels of trade is responsible for and must pay the full potato tax. However, if the first person is a dealer or shipper handling potatoes grown by another, he may charge back to the person he acquired the potatoes from sixty percent (60%) of the potato tax. The charge back does not reduce the first person's tax liability due to the commission. (3-31-22)~~

~~**04. Growers', Dealers', Handlers', Shippers', Processors', Container Manufacturers', and Out-of-State Repackers' Records.** Idaho Potato Commission Tax Report Forms—Audits—Inspections Every dealer or handler shall keep a complete and accurate record of all potatoes handled in the primary channels of trade in such form as the Commission or their designee prescribes. Each grower, dealer, handler, shipper, processor, container manufacturer, and out-of-state repacker shall keep records that segregates purchases and sales of Idaho® potatoes by calendar month; records of inventories of Idaho® potatoes by calendar month; and records of inventories of containers bearing the registered Certification Marks of the Commission by calendar month. Such records shall be preserved for a minimum period of two (2) years and be open to inspection at any time upon written or oral request or demand by the Commission or its duly authorized agents, representatives, or employees. (3-31-22)()~~

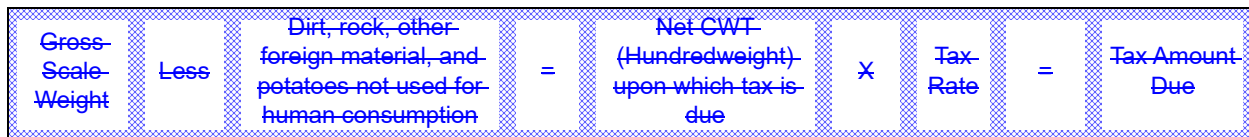
~~**a.** Every dealer or handler including out of state repackers shall keep a complete and accurate record of all potatoes handled in the primary channels of trade in such form as the Commission or their designee prescribes. (3-31-22)~~

~~**b.** In addition to such other information that the Executive Director, duly authorized agent, representative or employee requires, each grower, dealer, handler, shipper, processor, container manufacturer, and out of state repacker shall keep records that segregates purchases and sales of Idaho® potatoes by calendar month; records of inventories of Idaho® potatoes by calendar month; and records of inventories of containers bearing the registered Certification Marks of the Commission by calendar month. Such records shall be preserved for a minimum period of two (2) years and be open to inspection at any time upon written or oral request or demand by the Commission or its duly authorized agents, representatives, or employees. (3-31-22)~~

~~**e.** The Commission's duly authorized agent, representative or employee may enter upon the premises of any grower, dealer, handler, out of state repacker, container manufacturer, processor or any other licensee~~

~~agreement holder of Idaho® potatoes and examine or cause to be examined any books, papers, records, ledgers, purchase journals, sales journals, electronically and/or magnetically recorded data, computers and computer records or memoranda bearing upon the amount of taxes payable or the correct usage of any Idaho Trade or Certification Mark, and to secure any other information directly or indirectly concerned with the enforcement of Chapter 12, Title 22, Idaho Code, all rules adopted pursuant thereto and all licensing agreements entered into with the Commission. The Commission's duly authorized agents, representatives or employees may also inspect and take samples of any potatoes, potato products or containers from the premises used by a grower, dealer, handler, shipper, processor, container manufacturer, or out of state repacker. Regular audits shall be routinely performed by the Commission or its duly authorized agents, representatives, or employees to assure adherence with these rules. In addition, compliance audits may take place at any time. For further requirements see Section 22-1212, Idaho Code.~~ (3-31-22)

052. Calculation of Tax Due. All first handlers of Idaho® Grown potatoes shall pay the total tax due on all potatoes handled by them on a net weight basis. Net weight shall be determined by subtracting from the gross scale weight the dirt, rock, other foreign material only, and potatoes that are not used for human consumption. The amount of tax due is the tax rate currently ~~imposed pursuant to Section 100.03 set by the Commission~~ multiplied by the net hundredweight (cwt). ~~The following diagram illustrates the manner in which the formula is to be applied:~~



(3-31-22)(____)

063. Tax Reports to Be Made by Growers, Dealers, Handlers, Shippers and Processors. A report ~~on a form approved by the Commission~~, showing total weight handled for a given period of time and ~~the Idaho Potato Commission potato~~ tax due are to be sent to the ~~Idaho Potato~~ Commission office with the tax payment. ~~These The information required for the~~ reports are to be made on forms furnished by the Commission ~~and show such information as the Commission may require.~~ (3-31-22)(____)

101. (RESERVED)

102. CERTIFICATION MARKS FOR IDAHO® POTATO CONTAINERS.

01. Containers. All potatoes grown in Idaho and packed or repacked in containers in or outside of the state of Idaho shall be in containers printed, labeled or stenciled in a plain and legible manner with one (1) of the Commission's registered Certification Marks, and a "GROWN IN IDAHO®" Certification Mark. An exact reproduction of the Commission's Certification Marks appears ~~in appendix A at idahopotato.com/licensing/marks~~. Certification Marks may not be stamped on any Idaho® potato container without a temporary written variance. No container may use a "Check Off" box format for state of origin. All containers must use Idaho specific approved produce code identification numbers, where the same have been obtained and approved. No container of Idaho® potatoes or potato products may be manufactured or used without prior written approval of the Commission or its employee. No Seal, Trademark, Certification Mark, brand, or similar device used to promote potatoes not grown in Idaho can be placed on a container. (3-31-22)(____)

a. Variance. Upon written application, the Idaho Potato Commission may grant a variance from these rules for special purpose shipments for charity, certified seed, experimentation and processing. If a variance is granted, the applicant shall comply with all terms and conditions of such variance. If applicable, the application shall be accompanied by a valid Certificate of Privilege issued by the Idaho and Eastern Oregon Potato Committee, and the applicant shall furnish copies of all of the reports required by the Idaho and Eastern Oregon Potato Committee to the Idaho Potato Commission. (3-31-22)(____)

02. Agreement to use Marks. No person, firm or corporation packing or repacking ~~Idaho~~ Idaho potato products outside of the state of Idaho shall use any of the Commission's Certification Marks on any containers of potatoes or potato products packed or repacked outside the state of Idaho unless they have first executed an agreement for the use of the Certification Marks with the Idaho Potato Commission, ~~and unless they are actually~~

~~packing or repacking in such containers of Idaho grown potatoes or potato products made from Idaho grown potatoes.~~
(3-31-22)()

03. Agreement. No person, including without limitation manufacturers, container manufacturers, growers, shippers, processors and repackers, shall use or reproduce any of the Commission's Certification Marks on any container without first executing an agreement for the use of the marks with the Idaho Potato Commission.
()

04. Recognition. Whenever the "GROWN IN IDAHO®," "IDAHO®," or other Certification Marks are used, recognition must be given that the marks are registered under the appropriate Federal statute. This recognition must be: by printing a legible capital "R" inside a circle "®"; immediately after the word "IDAHO" or where designated by a duly authorized employee of the Commission.
(3-31-22)()

05. No Certification Mark Use. ~~No Certification Mark may be incorporated into any private label, brand, or seal but shall be portrayed without embellishment as shown in appendix A. The Commission's Certification Marks must be portrayed without embellishment and cannot be incorporated into any private label, brand, or seal.~~
(3-31-22)

06. Not Incorporated. The word "IDAHO®," cannot be incorporated into any private label, brand, or seal unless such label, brand, or seal was registered with the U.S. Patent Office prior to January 1, 1966.
(3-31-22)()

07. Size Sack Type Containers. A Certification Mark shall be used on the front of a one hundred (100) pound sack type container, that is not less than five (5) inches in diameter or width and not placed closer than two (2) inches from the bottom of said container. Any Certification Mark used on the rear of a one hundred (100) pound sack type container, it shall not be less than twelve (12) inches in diameter or width. The marks may also be used on both the front and back of one hundred (100) pound sack type containers, if placed as indicated and in the sizes indicated.
(3-31-22)

08. Limitation of Use. On fifty (50) pound sack type containers, a Certification Mark shall be used as on the one hundred (100) pound containers, but in proportionate sizes.
(3-31-22)

09. Other Type Containers. On all sack type containers of less than fifty (50) pounds, a Certification Mark shall appear plainly visible on the front of the containers in relative proportion to brands, labels, or other printed matter thereon, but not less than two and one quarter (2 1/4) inches in diameter or width.
(3-31-22)()

1007. Box Type Containers. ()

a. On all box type containers in which U.S. No. 1 grade Idaho® Potatoes will be packed, a Certification Mark shall be located on the front and back panels of the container that is not less than a width measurement of three and one half (3 1/2) inches and a length measurement of five and one half (5 1/2) inches so placed as to be plainly visible. Unless an approved product traceability sticker is used, the top one and three quarters (1 3/4) inches of the carton shall contain no preprinting on all four (4) sides of the container. The container shall be packed with an approved box bottom bearing Idaho® Potato Certification Marks as specified by the commission.
()

b. ~~On all box type containers in which number two (2) grade Idaho® Potatoes will be packed, packing is permitted only when~~ Packaging requirements for U.S. No. 2 grade Idaho® potatoes in box type containers are located at idahopotato.com/licensing and are consistent with the following ~~requirements are met:~~ (3-31-22)()

i. The container must be manufactured in a kraft, or non-colored cardboard material and may either be of a single or double piece construction that uses a box bottom bearing Idaho® Potato Certification Marks as specified by the commission;
()

ii. The rectangular "Grown in Idaho®" certification mark shall be placed on each side and end panel of the container, with a width measurement of three and one-half (3 1/2) inches and length measurement of five and one-half (5 1/2) inches ~~as shown in Appendix B;~~ (3-31-22)()

iii. The certification mark “Idaho® Potatoes” shall be printed on all four (4) sides of the container in one (1) inch lettering ~~in the locations shown in Appendix B;~~ (3-31-22)()

iv. The words “U.S. NO. 2” shall be printed on all four (4) sides of the container in one (1) inch lettering ~~in the locations shown in Appendix B~~ and on one (1) of the top flaps of the container; (3-31-22)()

v. The top one and three quarters (1 3/4) inches of the carton shall contain no preprinting on all four (4) sides of the container; ()

vi. One (1) of the elongated top flaps shall contain the “Grown in Idaho®” certification mark with a width of three and one-half (3 1/2) inches and length of five and one-half (5 1/2) inches, together with the certification mark “Idaho® Potatoes” in one (1) inch height and the words “U.S. NO. 2” in one (1) inch height; ()

vii. Product code identification numbers on containers bearing the certification marks shall use Idaho specific codes where the same have been obtained and approved; and ()

viii. All other requirements regarding container packaging set forth in these rules and the license agreements of the Idaho Potato Commission apply to the use of this type of container. ()

~~1408.~~ **Tote Bin Type.** On all tote bin type containers, Certification Marks must be used on the front of said container but may be used elsewhere and shall not be less than twelve (12) inches in diameter or width. ()

~~1209.~~ **Identity of Commodity.** All containers bearing the marks shall specify the identity of the commodity contained therein and the name and place of business of the manufacturer, packer, licensee, or distributor of the commodity. Containers which do not comply with the rules of the Idaho Potato Commission cannot be used by any grower, dealer, handler, shipper, processor, or out-of-state repacker for any potatoes or potato products subject to these rules. ()

~~130.~~ **Words Printed Packed in Idaho.** All potatoes grown in Idaho and packed or repacked in Idaho shall have the words “PACKED IN IDAHO” printed on the container. (3-31-22)()

~~14a.~~ **Sack Type Containers -- Fifty Pounds or Over.** On all sack type containers for fifty (50) pounds or over the words “PACKED IN IDAHO” shall be located on the front lower half of the container but not closer than six (6) inches to the bottom thereof. ()

~~15b.~~ **Sack Type Containers -- Less Than Fifty Pounds.** On all sack type containers containing less than fifty (50) pounds of potatoes the words “PACKED IN IDAHO” may be placed anywhere on the container so as to be plainly visible. ()

~~16c.~~ **Location of Words.** On all box type containers the words “PACKED IN IDAHO” may be located on the ends, sides or top of the container but shall be so placed as to be plainly visible. ()

~~17d.~~ **Colors.** All marks when used and the words “PACKED IN IDAHO” shall be in color or colors in contrast with the color of the container. ()

~~181.~~ **Use.** Only in connection with potatoes and potato products grown within the state of Idaho may growers, handlers, shippers, processors, and packers use the name “IDAHO®” in any mark, label or stencil applied to containers for such produce and products. The growers, dealers, handlers, shippers, processors, and packers of potatoes within the state of Idaho are not precluded from processing, packing, and shipping potatoes grown outside the state of Idaho so long as such potatoes are not misrepresented or misbranded as Idaho® Potatoes. ()

~~192.~~ **Compulsory Printing.** Printing of the mark “GROWN IN IDAHO®” and the words “PACKED IN IDAHO” is compulsory on all potato containers printed or contracted for after December 1, 1964. ()

~~2013.~~ **Idahos.** The word “IDAHOS” cannot be used on any container for potatoes, potato products, or on

any other printing or advertising material or correspondence used to identify or promote Idaho potatoes. ()

2114. Exemption. Only shipments of certified seed potatoes to destinations outside of the state of Idaho are exempt from this rule. ()

2215. Other Rules. Other rules on containers, grade, and size are covered under Title 22, Chapter 9, Idaho Code, and applicable marketing orders. ()

103. BRANDING, AND GRADE AND PACKAGING REQUIREMENTS OF STATE BRAND.

01. Branding or Marking of Individual IDAHO® Potatoes. ()

a. Idaho® potatoes are considered to be branded when they are individually marked or identified as such. The methods of branding shall include: marking of individual potatoes by ink, heat, light, labeling, stickering, or puncturing and such other methods as may from time to time be authorized by the Idaho Potato Commission. ()

b. The certification mark “Idaho®” shall be one (1) inch in length and one-quarter (1/4) inch in height unless prior Idaho Potato Commission written approval is secured and granted for any variance. ()

c. The purchase or the leasing or use of branding machines shall be entirely voluntary. ()

d. There are no limitations on the size and type of containers in which branded potatoes may be packed as long as they meet the licensing requirements of Section 102. ()

e. Grade for branding shall be U.S. No. 1 or better (as defined in the U.S. Standards effective March 27, 1991) and not less than two (2) inches in diameter or four (4) ounces in weight. ()

f. Only Certification Marks owned or administered by the Idaho Potato Commission may be branded on potatoes grown in Idaho unless prior Idaho Potato Commission approval in writing is secured and granted for the use of additional words or designs. ()

g. The operation of branding the word “Idaho®” upon potatoes may be carried on only by licensees of the Idaho Potato Commission, and only upon such terms and conditions that will ~~insure~~ ensure that only Idaho grown potatoes are branded as such. (3-31-22)()

h. All varieties of potatoes grown in Idaho may be so branded. ()

i. No person, firm, or corporation may brand the word “Idaho®” on potatoes or sell machinery for the purpose of branding potatoes with any of the Idaho certification marks unless granted the right to do so by written agreement with the Idaho Potato Commission. ()

j. Branded potatoes must use Idaho specific, approved produce code identification numbers, where the same have been obtained and approved. ()

k. On all branded potatoes using a standard size sticker, the Certification Mark “Idaho® Potatoes” shall be printed in eight (8) point type and the Certification Mark “Grown in Idaho®” shall be printed with a minimum height of eight point one hundred twenty-nine (8.129) mm and minimum width of five point thirty-seven (5.37) mm. ()

02. State Brand Grade and Packaging Requirements. Idaho® potatoes shall meet all requirements of U.S. Extra No. 1 as defined in the U.S. Standards for Grades of Potatoes, March 27, 1991, with the following additions or exceptions: ()

a. Mature. ()

b. Fairly well shaped. Defined as excluding the lower limits of such classification. ()

c. Appearance as related to russetting where at least seventy five percent (75%) of the surface of the individual potato is moderately netted which means the netting will be solid net-like in appearance. ()

d. Size is two and one eighth (2-1/8) inches in diameter and four (4) ounces minimum, eleven (11) ounces maximum. Each lot shall meet the specifications of Size A as defined in 51.1545, Table I(2) of the Standards. ()

e. Tolerances for grade defects are defined in 51.1546(a)(2), for U.S. No. 1. ()

f. All other tolerances and definitions of the Standards apply. ()

03. Packaging. ()

a. Container Requirement: Maximum size not to exceed twenty (20) pounds. ()

b. Miscellaneous Requirements: Use of the state brand packaging is entirely voluntary. Potatoes grown and packed in Idaho may be packed in state branded containers. All varieties of potatoes grown in Idaho may be packed in state branded containers. The Commission shall require a written agreement between the Idaho Potato Commission and Idaho packers for the use of the state brand. All state branded containers shall be Federal-State inspected. ()

c. The grade used in state brand containers shall be as defined in Subsection 103.03 and "Idaho State Code 22-908" and "Federal-State Inspected" shall be printed in three-eighths (3/8) inch or larger letters, on front of each container. ()

d. If individually branded Idaho® potatoes are packaged in state brand packaging they must meet grade requirements as defined in Subsection 103.03. ()

104. REPORTING, LABELING, AND REVOCATION.

01. Reporting of Fresh Shipments of Potatoes. (3-31-22)

~~*~~ Growers, dealers, handlers, and shippers of Idaho® potatoes are required to report shipments of all fresh Idaho grown potatoes giving information as to weight, packaging, and type of receiver. Reporting forms will be furnished for this information by the Idaho Potato Commission. All information received will be kept in strictest confidence as to individual shipments. (3-31-22)()

~~b. The purpose of this information is to provide the Idaho Potato Commission with information concerning fresh potato sales in geographical marketing areas receiving Idaho® grown potatoes to enable it to design and evaluate advertising and marketing programs. (3-31-22)~~

02. Labeling Containers of Fresh Idaho® Potatoes to Indicate the Variety Packed Therein. ()

a. All potatoes grown in Idaho that are packed or repacked in containers in Idaho, or packed or repacked in containers outside of Idaho under an out-of-state packer license agreement, shall be packed or repacked in containers that are printed, marked, labeled or stenciled in a plain and legible manner that identifies the variety packed therein. ()

b. No container may contain more than one (1) variety of potato, except as provided by written variance for non-russet variety potatoes. ()

c. Any mark, label, or stencil necessitated by this rule shall be conspicuously placed on the container and printed in a color contrasting with the background and be of a size determined as follows: ()

i. For bags and other containers holding one hundred (100) pounds of potatoes or more, the letters of

the label shall be at least one (1) inch high; ()

ii. For bags and other containers holding fifty (50) pounds or more of potatoes, but less than one hundred (100) pounds, the letters of the label shall be at least three-fourths (3/4) of an inch high; ()

iii. For bags or other containers holding less than fifty (50) pounds of potatoes, the letters on the label shall be five-eighths (5/8) of an inch high. ()

iv. For containers holding less than five (5) potatoes, the letter on the label shall be in a size that is plainly visible and approved in writing by a duly authorized Commission employee. ()

d. Any person seeking authorization to comply with this rule in a manner other than that specified herein shall submit a written request to the Commission for approval of an alternate method of compliance, which alternative method shall be in substantial compliance with these standards and which request describes in detail the proposed alternate method of compliance. The Executive Director of the Commission or a duly authorized employee shall have the authority and responsibility to review such requests and rule whether they should be allowed, said determination to be based upon a finding that such alternate method has nor has not been shown to comply with the purpose and meet the standards of this rule; provided, any interested person may request in writing that the Commission grant a de novo review of said request at a subsequent regular meeting deemed convenient and appropriate by the Commission, which request the Commission may in its discretion, either grant or deny. ()

e. No potatoes grown in Idaho and packed or repacked in containers in Idaho, or packed or repacked outside of Idaho under an out-of-state packer license agreement, shall carry or be printed, labeled, or identified with the GROWN IN IDAHO® or IDAHO® marks unless this rule is fully complied with as respects said potatoes. ()

f. All persons growing potatoes in Idaho or packing or repacking in containers in Idaho, or packing or repacking outside of Idaho under an out-of-state license agreement, shall have the affirmative duty to avoid and refrain from ambiguous or misleading practices, acts or representations and to eliminate the same in marketing or handling Idaho® potatoes if such practice does or is likely to mislead any purchaser or consumer regarding the quality and variety of Idaho® potatoes purchased by such buyer or consumer. ()

03. Revocation of Right to Use Marks. ()

a. The Commission has the power to revoke the right of any person, firm, or corporation to use any of the Commission's Certification Marks or Trademarks if such person, firm, or corporation fails to pay any advertising tax assessed against it, license fees, or royalties, or fails to comply with any of these rules or applicable law. ()

b. Revocation of the right to use the Certification Marks or Trademarks shall not occur without reasonable notice of at least twenty (20) days and an opportunity for a hearing pursuant to Section 67-5242, Idaho Code. However, where the Executive Director determines that expedited action is necessary, he may: ()

i. Issue an order immediately suspending the right to use any of the Commission's Certification Marks or Trademarks pending a hearing, which hearing shall be held within twenty (20) days from the Executive Director's order; or ()

ii. Issue an order conditioning the right to use any of the Commission's Certification Marks or Trademarks pending a hearing, which hearing shall be held within twenty (20) days from the Executive Director's order; or ()

iii. Issue an order directing that the user of the Commission's Certification Marks or Trademarks show cause why the right to use the marks should not be suspended or conditioned further. ()

105. ADDITIONAL LABELING REQUIREMENTS, POTATOES.

01. Disclosure of Geographic Growing Area of Origin upon Potato Containers. All persons doing business in the state of Idaho are required to disclose the growing area of origin upon all potato containers in

accordance with this rule and Section 22-1207, Idaho Code. For purposes of these rules, doing business in the state of Idaho means the doing of any of the acts which would subject a person to the jurisdiction of the courts of this state or defined in Section 5-514, Idaho Code. ()

02. Compliance for Idaho Grown Potatoes. For potatoes “Grown in Idaho®,” this rule is complied with by meeting the requirements of Section 102. ()

03. Compliance for Private Brands or Labels That Reference Idaho Locations. Private brands or labels of containers that reference an Idaho location, geographical feature, or otherwise attempt to imply directly or indirectly that a container of potatoes contains potatoes grown in Idaho when in fact such is not the case are prohibited. ()

04. Compliance for Private Brands or Labels That Do Not Reference Idaho Locations. Private brands or labels that do not reference an Idaho location, geographical feature, or otherwise attempt to imply directly or indirectly that a container of potatoes contains potatoes grown in Idaho when in fact such is not the case, but only have an Idaho address on the container, are permitted when approved by the commission or its designee. This rule is complied with by private brands or labels that: ()

a. Meet the requirements of Subsection 104.02.c.; ()

b. State the geographical state of origin of the potatoes followed by the word “potatoes”; and ()

c. The lettering size of the Idaho address on the container does not exceed one-half (1/2) inch for containers fifty (50) pounds or greater and one-quarter (1/4) inch for containers less than fifty (50) pounds. For example, for potatoes grown in the state of Washington, the phrase “Washington potatoes” would comply with these rules. The use of the words “Grown in” preceding the state of origin is prohibited. ()

106. ADDITIONAL REQUIREMENTS FOR USE OF TRADEMARKS.

01. Marks. No person is permitted to use any trademark owned or administered by the Commission unless authorized to do so pursuant to a license agreement entered into with the Commission. ()

02. Agreement. Trademarks owned or administered by the Commission may be licensed for use as permitted under federal and state law and as authorized by the Commission. ()

03. Royalty Fees. In addition to license fees, the Commission may set royalty fees for the use of trademarks. ()

~~**04. Reproductions.** Exact reproductions of the trademarks owned or administered by the Commission are set forth in Appendix C of these rules. (3-31-22)~~

107. -- 199200. (RESERVED)

SUBCHAPTER A – RULES OF PROCEDURE
(Sections 201 through 204)

~~**200. INFORMAL FILES MAY BE INVESTIGATIVE RECORDS.**~~

~~Files created by the Commission and its staff in response to informal inquiries or complaints are investigatory records within the meaning of Sections 74-101(6) and 74-107(16), Idaho Code, are generally exempt from disclosure according to the standards of Sections 74-101 through 74-108, Idaho Code, but are available under Section 74-113, Idaho Code, to the customer, applicant, licensee, etc., that are the subjects of the investigation. (3-31-22)~~

201. SUBPOENAS.

~~**01. Issuance of Subpoenas.** Upon a motion in writing, or upon a Commissioner’s own initiative without motion, any Commissioner or the Commission’s Secretary may issue subpoenas: (3-31-22)~~

- ~~a.~~ Requiring the attendance of a witness from any place in Idaho; (3-31-22)
- ~~b.~~ The production of documents from any place in Idaho; or (3-31-22)
- ~~c.~~ The production of any books, accounts, papers, or records of a licensee kept within or without Idaho to any designated place of deposition, hearing, or investigation for the purpose of taking testimony or examining documents before the Commission, a Commissioner or hearing examiner. (3-31-22)

021. Witness or Travel Fees. A party’s motion to issue a subpoena must be accompanied by a statement that the party will tender to the subpoenaed person all fees necessitated by statute and rules if the subpoena is issued. ()

032. Motions to Quash. The Commission upon motion to quash made promptly, and in any event, before the time to comply with the subpoena, may: ()

- a. Quash the subpoena; or ()
- b. Condition denial of the motion to quash upon reasonable terms. ()

202. RULINGS AT HEARINGS.

The presiding officer rules on motions presented at hearing. The presiding officer’s rulings may be reviewed by the full Commission in determining the matter on its merits. In extraordinary circumstances, the presiding officer may refer or defer these matters to the full Commission for determination. ()

203. OBJECTIONS -- OFFERS OF PROOF.






Grounds for objection to the admission or exclusion of evidence must be stated briefly at the time the evidence is offered. Formal exceptions to rulings admitting or excluding evidence are unnecessary and need not be taken. An offer of proof for the record consists of a statement of the substance of the excluded evidence. When a party objects to the admission of evidence, the presiding officer will rule on the objection or the presiding officer may receive the evidence subject to the later ruling by the full Commission or refer to the matter to the full Commission. ()

204. -- 999. (RESERVED)

APPENDIX A



APPENDIX B

<p>Company or firm logo may be placed on this major flap. Size is not limited. Other items may also be placed on this flap.</p> 	<p>Grown in Idaho® seal is a minimum of 3 1/2 inches wide and must be placed on one major flap in two locations, with the left "Grown in Idaho® Potatoes" and "U.S. No. 2" located between both seals. This area is also used for placement of Sprout Nip Clause (in box).</p>	
<p>IDAHO® POTATOES U.S. NO. 2</p> <p>1-inch type 1 1/2-inch type</p>  <p>BAR CODE PLACEMENT ONLY</p>	<p>IDAHO® POTATOES U.S. NO. 2</p> <p>PRODUCE OF U.S.A. NET WT. 5 LBS. (2.26 kg)</p> 	<p>IDAHO® POTATOES U.S. NO. 2</p>  <p>BAR CODE PLACEMENT ONLY</p>
<p>* Packed 17" or address line to be placed at least 1/2 inch from bottom score and at least 1/2 inch from left score (reading left to right) on major panel. It is not limited to one line but can not exceed beyond the word "Potatoes".</p>	<p>* Grown in Idaho® seal must be 3 1/2 inches wide with placement at left on major panels and at right on minor panels. Reading left to right, seal must be 1 1/2 inch from bottom score and at least 1/2 inch from side score.</p>	<p>* Company or firm logo may be placed under "No. 2". Maximum logo size is 3 1/4 inches wide.</p>

APPENDIX C

