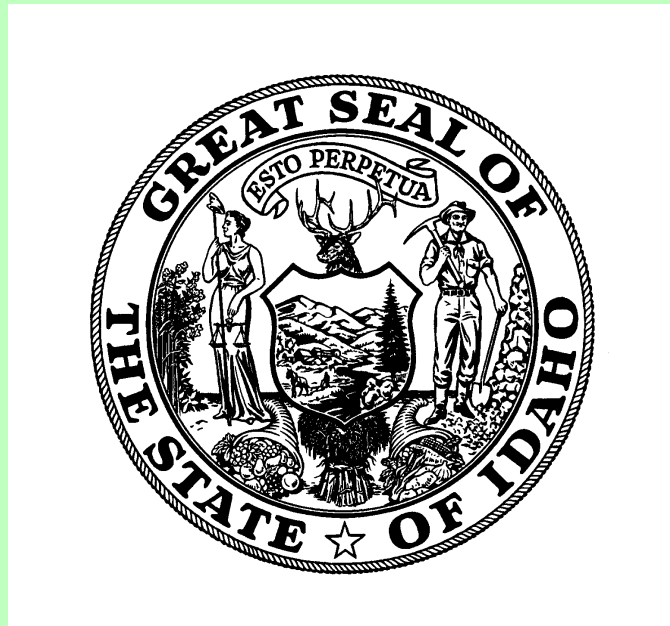


PENDING FEE RULES

COMMITTEE RULES

REVIEW BOOK

Submitted for Review Before
Senate Agricultural Affairs Committee
65th Idaho Legislature
Second Regular Session – 2020



Prepared by:

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

January 2020

SENATE AGRICULTURAL AFFAIRS COMMITTEE

ADMINISTRATIVE RULES REVIEW

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IDAPA 02 – DEPARTMENT OF AGRICULTURE

DOCKET NO. 02-0000-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 22-103, 22-112 and 22-1103, Idaho Code.

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

These pending fee rules adopt and re-publish the following existing and previously approved and codified chapter(s) under IDAPA 02, rules of the Idaho State Department of Agriculture.

- IDAPA 02.01.04, *Rules Governing the Idaho Preferred® Promotion Program*
- IDAPA 02.01.05, *Rules Governing Certificates of Free Sale*
- IDAPA 02.06.33, *Organic Food Products Rules*

This pending rule vacates the following proposed rule previously promulgated under this docket number as part of the omnibus proposed rulemaking under IDAPA 02, rules of the Idaho State Department of Agriculture.

- IDAPA 02.01.02, *Interest Charge Rules*

All changes between the text of these proposed rules and these pending rules are consistent with the guidance and direction provided in the Red Tape Reduction Act. These rules were reviewed to update authorities and to eliminate unnecessarily restrictive language and redundancy:

Any amendments to the text of the pending rules have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rules was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), [Vol. 19-6SE, pages 116 – 131](#).

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(5), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government. These rules do not require such statement because they are neither broader in scope, nor more stringent than federal laws or regulations. These rules also do not regulate areas not already regulated by the federal government.

FEE SUMMARY: The table provides a specific description of fees or charges imposed by specific rules. This rulemaking does not impose fees or charges, or increase fees or charges, beyond what was previously approved and codified in the prior rules. Fees or charges are imposed pursuant to the Idaho Code Sections listed.

IDAPA	Specific Findings	Fee Summary
02.01.04	The fee outlined in this rule funds the required activities. Voluntary participation in the Idaho Preferred program provides eligible program participants with marketing and promotion services.	Directs ISDA to set fees annually not to exceed \$1,000; Authorized by Section 22-112(1), Idaho Code
02.01.05	The fee outlined in this rule funds the required activities. Certificates of Free Sale are often required by export markets in order to ship Idaho commodities to them. Certificates of Free Sale provide producers with necessary documentation to show buyers that commodities were grown and harvested in compliance with applicable Idaho laws and rules.	Directs ISDA to set fee annually not to exceed \$50; Authorized by Section 22-112(1), Idaho Code
02.06.33	The fee outlined in this rule funds required activities. The program provides for certifying inspection of organic producers in Idaho. There is no general fund support for this program.	Graduated fee structure; Authorized by 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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, in anticipation of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Brian Oakey at (208) 332-8550.

Dated this 16th day of October.

Brian Oakey
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Idaho State Department of Agriculture
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Boise, Idaho 83707
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**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 22-103(21), 22-112, and 22-1103, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 02, rules of the Idaho State Department of Agriculture:

IDAPA 02

- 02.01.02, *Idaho Department of Agriculture Interest Charge Rules*, adds required Sections 000-006
- 02.01.04, *Rules Governing the Idaho Preferred® Promotion Program*, modifies Section 010
- 02.01.05, *Rules Governing Certificates of Free Sale*
- 02.06.33, *Organic Food Products Rules*, eliminates Section 400; modifies Section 010

IDAHO CODE SECTION 22-101A STATEMENT: These rules do not regulate an activity not already regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. See table below for agency specific findings.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. See table below for agency specific fee summaries.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules.

IDAPA	Specific Findings	Fee Summary
02.01.02	The fee outlined in this rule funds the required administrative support for certain ISDA programs.	12% per annum
02.01.04	The fee outlined in this rule funds the required activities. Voluntary participation in the Idaho Preferred program provides eligible program participants with marketing and promotion services.	Directs ISDA to set fees annually not to exceed \$1,000

IDAPA	Specific Findings	Fee Summary
02.01.05	The fee outlined in this rule funds the required activities. Certificates of Free Sale are often required by export markets in order to ship Idaho commodities to them. Certificates of Free Sale provide producers with necessary documentation to show buyers that commodities were grown and harvested in compliance with applicable Idaho laws and rules.	Directs ISDA to set fee annually not to exceed \$50
02.06.33	The fee outlined in this rule funds required activities. The program provides for certifying inspection of organic producers in Idaho. There is no general fund support for this program.	Graduated fee structure

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 fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Brian Oakey at (208) 332-8550.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 20th day of May, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 02-0000-1900F

02.01.04 – RULES GOVERNING THE IDAHO PREFERRED® PROMOTION PROGRAM

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 22-112, Idaho Code. (3-16-04)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.01.04, “Rules Governing the Idaho Preferred® Promotion Program.” (3-30-07)

02. Scope. These rules govern the participation in, and product selection criteria for the Idaho Preferred® program. The program was developed by the Idaho State Department of Agriculture to identify and promote food and agricultural products from the state of Idaho, elevate consumer awareness of such products, and assist in developing opportunities for sale of such products. These rules establish the requirements for the use of the Idaho Preferred® logo and will define eligible products, application procedures, and participation fees. (3-30-07)

002. -- 009. (RESERVED)

010. DEFINITIONS.

The following definitions apply in the interpretation and enforcement of this chapter. (3-16-04)

01. Agricultural Product. Any fresh or processed apicultural, aquacultural, avicultural, beverage, cervidae, dairy, horticultural, livestock, forestry, viticultural, or other farm or garden product. (3-16-04)

02. Apicultural Product. Products produced from or related to honey bees or honey. (3-16-04)

03. Aquacultural Product. Products produced from or related to fish, reptiles, or other aquatic animals. (3-16-04)

04. Avicultural Product. Products produced from or related to birds, including but not limited to, ratites or poultry. (3-16-04)

05. Beverage. Drinks including but not limited to wine, beer, distilled spirits, bottled water, or flavored drinks. (3-16-04)

06. Broker. A sales and marketing agent employed to make bargains and contracts for compensation. (3-16-04)

07. Cervidae Product. Products produced from or related to fallow deer, elk, or reindeer owned by a person. (3-16-04)

08. Dairy Product. Products produced from or related to milk from cattle, goats, or sheep. (3-16-04)

09. Florist Stock. All cut flowers, foliage and ferns, all potted plants or cuttings or bedding plants, and all flowering bulbs and rooted herbaceous plants used for ornamental or decorative purposes and all corms, whether grown in boxes, benches, pots, under glass or other artificial covering, or in the field or open ground or cuttings therefrom. (3-16-04)

10. Foodservice. A person engaged in or related to the practice of commercial food preparation and service. (3-16-04)

11. Forest Products. All products made of wood fiber such as timber, wood chips, sawdust or shavings, including but not limited to lumber, paper, particleboard, fence or corral posts or rails, shingles, shakes, firewood or pellets, logs used in the construction of log homes or any other product sold commercially. (3-29-12)

12. Fresh Produce, Commodities, and Fresh Meat. Bulk or packaged agricultural products that have been cleaned, sorted, or otherwise prepared and are sold or distributed in an unprocessed or minimally processed condition. (3-16-04)

13. Horticultural Products. Plants, including but not limited to, fruits, vegetables, flowers, seeds, or ornamental plants. (3-16-04)

- 14. Livestock.** Domestic animals including but not limited to cattle, sheep, pigs, goats, domestic cervidae, domestic bison, camelids, or horses. (3-16-04)
- 15. Livestock Product.** Products produced from or related to livestock. (3-16-04)
- 16. Non-Food Agricultural Products.** Products not intended for human consumption, including but not limited to, animal feed, compost, hides, or skins. (3-16-04)
- 17. Supporting Organization.** Any commission, association, or incorporated group supporting the efforts of the Idaho Preferred® program. (3-30-07)
- 18. Nursery Stock.** All botanically classified plants or any part thereof, such as aquatic or herbaceous plants, bulbs, sod, buds, corms, culms, roots, scions, grafts, cuttings, fruit pits, seeds of fruits, forest and ornamental trees, and shrubs, berry plants, and all trees, shrubs, vines, and plants collected in the wild that are grown or kept for propagation or sale. Nursery stock does not include field and forage crops, seeds of grasses, cereal grains, vegetable crops and flowers, bulbs and tubers of vegetable crops, vegetables or fruit used for food or feed, cut trees or cut flowers unless stems or other portions thereof are intended for propagation. (3-16-04)
- 19. Packer/Shipper.** A person who packages and ships food or agricultural products to wholesalers, retailers, and other outlets. (3-16-04)
- 20. Participant.** A person who has applied to the Department and been approved for participation in the Idaho Preferred® program. (3-30-07)
- 21. Processed Food.** Any food product which has been transformed from its natural state by methods including but not limited to freezing, cutting, heating, drying, treating, or adding ingredients. (3-16-04)
- 22. Processor.** A person engaged in the manufacturing of processed food. (3-16-04)
- 23. Producer.** A person engaged in the business of growing or raising food, fiber, feed, or other agricultural products. (3-16-04)
- 24. Retailer.** A person engaged in making sales directly to consumers. (3-16-04)
- 25. Viticultural Products.** Products produced from or related to grapes and wine. (3-16-04)
- 26. Wholesaler.** A person who buys in comparatively large quantities and then resells, usually in smaller quantities, but never directly to the consumer. (3-16-04)

011. -- 014. (RESERVED)

015. VOLUNTARY PROGRAM.
The Idaho Preferred® program is a voluntary promotion program. (3-30-07)

016. -- 099. (RESERVED)

100. APPLICATION FOR PARTICIPATION.

01. Application Requirement. Persons interested in becoming a participant in the Idaho Preferred® program shall do so by making application to the Department on forms established by the Director. New applications may be submitted at any time throughout the year. (3-30-07)

02. Application Review and Compliance Verification. The Director, upon receipt of an application, will verify the applicant's compliance with this chapter and approve or deny the application. The Director will notify the applicant in writing of the approval or denial. (3-16-04)

101. PARTICIPATION DURATION AND RENEWAL.

- 01. Duration.** Participation is on an annual basis, coinciding with the fiscal year beginning July 1 and ending June 30, unless otherwise provided for in this chapter. (3-16-04)
- 02. Renewing Participation.** Renewals shall be submitted on forms established by the Director and will be due August 1. (3-29-10)
- 03. Reporting on Use of Logo.** Participants renewing with the Department will report their use of the Idaho Preferred® logo from the concluding program year. The report will include, but may not be limited to, information regarding how the Idaho Preferred® logo was used. (3-29-10)

102. -- 109. (RESERVED)

110. PARTICIPATION FEES.

- 01. Annual Fee.** Participation fees will be listed in the participation application and will not exceed one thousand dollars (\$1,000). ()
- 02. Participation Categories:** (3-16-04)
- a.** Producer. (3-16-04)
 - b.** Packer/Shipper/Processor. (3-16-04)
 - c.** Supporting Organization. (3-16-04)
 - d.** Retail/Foodservice. (3-16-04)
 - e.** Broker/Distributor. (3-16-04)
- 03. Pro-Rated Fees.** New participation agreements issued during the program year will be assessed one hundred percent (100%) of the annual fee if applying between July 1 and December 31 and fifty percent (50%) of the fee if applying between January 1 and June 30. (3-29-10)
- 04. Participation in Multiple Categories.** Persons qualifying in multiple participation categories shall be assessed the greater of participation fees. (3-16-04)

111. PARTICIPATION PRIVILEGES.

Participants will benefit from privileges including: (3-16-04)

- 01. Use of the Idaho Preferred® Logo.** Use of the Idaho Preferred® Logo on product labels, advertising, signage, or other promotional materials as allowed by the department. (3-30-07)
- 02. Listing.** Listing In Idaho Preferred® Product Directories. (3-30-07)
- 03. Promotion.** Promotion through advertising, retail and foodservice promotions, consumer and education events, and the Idaho Preferred® website. (3-29-10)
- 04. Visibility.** Visibility from the department's promotion activities. (3-16-04)

112. -- 199. (RESERVED)

200. PRODUCT QUALIFICATION.

- 01. Authority of Determination.** The Director shall have the sole authority in determining the eligibility of a product for participation in the program. (3-16-04)

02. General Product Qualifications. Except as specified in this chapter, or by written order of the Director, products must meet or exceed the following criteria: (3-16-04)

a. Fresh produce and commodities bearing the Idaho Preferred® logo shall be one hundred percent (100%) Idaho grown or raised. (4-2-08)

b. Processed foods and beverages shall contain a minimum of twenty percent (20%) agricultural content by weight that has been grown or raised in Idaho and shall be processed in the state of Idaho. (4-2-08)

c. Non-food agricultural products must be at least twenty percent (20%) agricultural content by weight that has been grown or raised in Idaho and processing must occur in Idaho. (4-7-11)

03. Potatoes. 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. Any person or participant applying to the Idaho Preferred® program, with the intention to promote Idaho-grown potatoes or products made from Idaho-grown potatoes, shall provide proof of such permission prior to making application with the Department. (3-30-07)

04. Wine. Wines shall contain a minimum of ninety-five percent (95%) Idaho grapes. (4-6-05)

05. Beer. Beer shall: ()

a. Be brewed in Idaho; and ()

b. Contain at least one (1) Idaho agricultural product such as Idaho malt, Idaho wheat or Idaho hops, or soluble remnant thereof, but excluding water. ()

06. Water. Water must be extracted from an Idaho water source. ()

07. Nursery Stock. Nursery stock shall have been grown in Idaho a minimum of one (1) growing season or growing cycle. (4-6-05)

08. Beef and Beef Products. Beef and beef products shall come from cattle that: (4-6-05)

a. Were born, raised and harvested in the United States. No cattle that originate from outside the United States may qualify for the Idaho Preferred® logo. (3-30-07)

b. Are raised, fed, or processed in Idaho. ()

c. Are processed in federally inspected plants. ()

09. Lamb and Lamb Products. Lamb and lamb products shall come from sheep that: (5-8-09)

a. Are born, raised and harvested in the United States. No lambs that originate from, or reside for any portion of their life outside the United States may qualify for the Idaho Preferred® logo. (5-8-09)

b. Have grazed or been fed in Idaho at least three (3) months prior to harvest. The three (3) months need not be contiguous, but must be verifiable. (5-8-09)

c. Are processed at approximately one (1) year of age or less and qualify as lamb or carcasses from older animals, identified as mutton by USDA inspectors, may qualify if they have met requirements in Subsection 200.07.b. (5-8-09)

10. Pork and Pork Products. Pork and pork products shall come from hogs that: (5-8-09)

a. Are born, raised and harvested in the United States. No hogs that originate from, or reside for any portion of their life outside the United States may qualify for the Idaho Preferred® logo. (5-8-09)

b. Are raised in or processed in Idaho. (5-8-09)

c. Are processed at less than one (1) year of age unless used exclusively for ground pork or sausage products, and are processed in a federally inspected plant. (4-7-11)

11. Poultry and Poultry Products. Poultry and poultry products shall come from fowl that: (5-8-09)

a. Are hatched, raised and harvested in the United States. No fowl that originate from, or reside for any portion of their life outside the United States may qualify for the Idaho Preferred® logo. (5-8-09)

b. Are raised and processed in Idaho. Fertile eggs, also known as hatching eggs, or chicks less than three (3) days of age that originate outside of Idaho, but are raised and processed in Idaho, may qualify for Idaho Preferred®. (5-8-09)

c. Are processed in a facility that is approved through a District Health Department for retail sales, or in a federally inspected plant. (5-8-09)

12. Game Meat. Game meat shall: (5-8-09)

a. Come from domestic Cervidae that are born, raised and processed in Idaho and originate from a facility regulated by the Idaho State Department of Agriculture. ()

b. Come from domestic buffalo that are born, raised and processed in Idaho. (5-8-09)

c. Be processed in a federally inspected plant. (5-8-09)

13. Apicultural Products. Products produced by honey bees including raw honey, wax, pollen, and propolis shall be one hundred percent (100%) Idaho origin. Processed honey shall be eighty percent (80%) Idaho origin. (4-6-05)

14. Forest Products. Forest products shall contain a minimum of eighty percent (80%) of their wood fiber content from trees grown in Idaho and shall be manufactured in Idaho. (3-29-12)

15. Exceptions. The Director has the authority to establish product qualification requirements specific to individual products and commodities by written order. (3-16-04)

201. -- 299. (RESERVED)

300. LOGO.

The Idaho Preferred® logo has been registered by the Department with the United States Library of Congress (Copyright registration), the United States Patent and Trademark Office (Certification Mark registration), the Idaho Secretary of State (Certificate of Trademark) and is afforded all protections provided for by law. The logo shall be used only by those participants in compliance with this chapter. The Director will establish by written order a logo style manual specifying approved colors, treatments, and fonts for the Idaho Preferred® logo. (5-8-09)

01. Description of the Idaho Preferred® Logo. The Idaho Preferred® logo is an oval background containing a snow-capped mountain range topped with a sunburst. The word "IDAHO" appears in Brand Idaho logotype, and a banner emblazoned with the word "PREFERRED" scrolls across the bottom of the logo. (3-30-07)

02. Graphic Depiction of the Idaho Preferred® Logo:



(3-30-07)

03. Approval for Use of Logo. Participants who wish to use the Idaho Preferred® logo on packaging, labels, flyers, promotional materials, or any other materials that will be viewed by the public must submit a proof of text and design to the Department for approval. Requests for approval must be submitted to the Idaho State Department of Agriculture, Marketing Division not less than five (5) working days prior to the proposed date of use. Written approval from the Department for logo use must be issued prior to use of the logo. (5-8-09)

301. SPECIAL PROMOTIONAL ACTIVITIES.

01. Activities. The Department may engage in special promotional activities including, but not limited to, advertising, product demonstrations, events, publicity, and cooperative activities. The Department may invite participants in the Idaho Preferred® program to participate in any activities. (3-30-07)

02. Fees. The Department may assess a separate fee for any special promotional activity. This fee will not exceed the actual cost of conducting the activity. (3-16-04)

302. OTHER IDAHO PROMOTION PROGRAMS.

01. Commodity-Specific Promotion Programs. Commissions, boards, associations, or other organizations authorized by statute to promote or regulate agricultural products grown, packed, or processed in the state of Idaho shall be the primary and principal promotion and certification mark and trademark organizations for the particular commodity they are authorized to promote or regulate. (3-16-04)

02. Ownership of Marks. Any trademarks, certification marks, brands, seals, logos or other identification marks, that are established, owned or used by such commissions, boards, associations or organizations shall remain their sole property. Any use or infringement of their ownership right is prohibited unless written permission is obtained from an authorized representative of the commission, board, association or organization. (3-16-04)

303. DISTRIBUTION OF PROMOTIONAL MATERIAL.

01. Authorized Use. The Idaho Preferred® program has the authority to provide retail and food service outlets, farmers' markets, schools, media, fairs, and other such businesses, organizations, and venues the opportunity to promote Idaho food and agricultural products using the program logo and promotional materials. Open distribution of any and all point-of-sale materials, signage, advertising, identification placards, and other such promotional material, in accordance with this chapter and other applicable laws and precedent, is acceptable use and not considered an infringement on the ownership rights of any mark or seal of a supporting organization as defined in this chapter. (3-29-10)

02. Fees. The Department may assess a fee for promotional materials such as, but not limited to, banners, stickers, signs, aprons, shopping bags, etc. (3-29-10)

304. -- 309. (RESERVED)

310. SELF-CERTIFICATION.

All participants shall self-certify that all products marked with the Idaho Preferred® logo meet the qualification criteria as set forth in this chapter. Self-certification is subject to verification through the application and compliance process. (3-30-07)

311. COMPLIANCE.

01. Authority of Director. The Director has the authority to enter upon the premises of any participant to examine and copy any of the following items: (3-16-04)

- a. Books, papers, records, ledgers, journals, electronically or magnetically recorded data: (3-16-04)
 - b. Computers and computer records or memoranda bearing on the usage of the Idaho Preferred® logo; (3-30-07)
- and
- c. To secure all other information concerned in the enforcement of these rules. (3-16-04)

02. Random Compliance Inspection. The Director shall annually perform random compliance inspections. (3-16-04)

03. Samples. The participant shall, upon the request of the Director, provide samples of the participant's labels, packaging, merchandising, and promotional materials featuring the Idaho Preferred® logo. (3-30-07)

312. -- 314. (RESERVED)

315. VIOLATION.

Any person found in violation of these rules is subject to termination of participation privileges. (3-16-04)

316. -- 999. (RESERVED)

02.01.05 – RULES GOVERNING CERTIFICATES OF FREE SALE

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 22-112, Idaho Code. (3-29-10)

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is IDAPA 02.01.05, “Rules Governing Certificates of Free Sale.” (3-29-10)

02. **Scope.** These rules govern the issuing of certificates of free sale and establish applicant procedures for obtaining Certificates of Free Sale. (3-29-10)

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. **Applicant.** Any person applying for certification under these rules. (3-29-10)

02. **Certificate of Free Sale.** A certificate issued by the Department for products grown or processed in Idaho to certify that the products are distributed generally throughout the state of Idaho and the United States and are in accordance with Idaho health laws and sanitary regulations. (3-29-10)

011. -- 099. (RESERVED)

100. APPLICATION FOR CERTIFICATION - PROCEDURES.

01. **Application.** Application must be made in writing (which includes electronic mail) and include, but will not be limited to, the following information: (3-29-10)

a. Company name; (3-29-10)

b. Physical address of packing or processing facility; and (3-29-10)

c. List of products to be certified. (3-29-10)

02. **Application Forms.** No application form(s) are necessary. (3-29-10)

03. **Multiple Certificates.** Multiple certificates may be requested at one time. (3-29-10)

101. -- 109. (RESERVED)

110. APPLICANT REQUIREMENTS.

01. **Applicant Health Inspection.** The Department may request a copy of an applicants’ most recent state, federal or third-party health inspection, if applicable. Such inspection records will be kept on file for one (1) year. (3-29-10)

02. **Applicant Licenses or Registrations.** If the applicant is regulated by the Department, the applicant must meet all state laws and Department regulations. (3-29-10)

111. -- 119. (RESERVED)

120. SPECIAL REQUESTS.

01. **Customized Certificates.** The applicant may request customized text for the certificate of free sale in order to meet the import requirements of a specific country. The Department will make every effort to comply with the request. (3-29-10)

02. **Additional Charges.** There will be no additional charges for special requests. (3-29-10)

121. -- 299. (RESERVED)

300. FEES AND CHARGES.

01. Certification Fees. The Director will establish certification fees annually under this chapter. Fees will not exceed fifty dollars (\$50) each. Fees will be set by July 1 of each year. (3-29-10)

02. Notary Charges. Notary certification will be provided for each certificate at no additional charge. (3-29-10)

03. Shipping and Delivery Charges. There will be no fees for mailing costs unless the applicant requests express mailing. (3-29-10)

04. Express Mailing. The applicant will be responsible for express mailing charges. The applicant may provide an account number for the carrier, pre-paid air bill or be invoiced for the actual costs. (3-29-10)

05. Payment. The applicant will be sent an invoice for fees and charges and will be responsible for payment. (4-11-15)

301. -- 999. (RESERVED)

02.06.33 – ORGANIC FOOD PRODUCTS RULES

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 22-1103, Idaho Code. (4-2-03)

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is IDAPA 02.06.33, “Organic Food Products Rules.” (4-2-03)

02. **Scope.** These rules govern definitions, requirements for production, handling, and labeling of organic plant and animal products. These rules further govern the general requirements for certification of producers and handlers of plant and animal products, as well as program fee structures. ()

002. -- 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

The Code of Federal Regulations, Title 7, Part 205, National Organic Program Regulations (July 7, 2010), except sections 205.620 through 205.622, is incorporated by reference and can be viewed online at <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=b885492294d6e01d334ae6076da2c3c2&rgn=div5&view=text&node=7:3.1.1.9.32&idno=7>. Copies of this document may be obtained from the Idaho State Department of Agriculture (ISDA), 2270 Old Penitentiary Road, Boise, Idaho 83712. (4-7-11)

005. -- 009. (RESERVED)

010. DEFINITIONS.

In addition to the definitions found in Section 22-1102, Idaho Code, the following definitions apply to the interpretation and enforcement of these rules: ()

01. **Agent.** Any entity accredited by the Secretary of the United States Department of Agriculture as a certifying agent for the purpose of certifying a production or handling operation. (3-19-07)

02. **Certification.** A document issued by the Department to a producer/handler who is in compliance with this rule who has more than five thousand dollars (\$5,000) annual gross organic sales. (3-19-07)

03. **Educational Activity.** Seminar, conference, farm tour, class, or research. (3-19-07)

04. **Food Products.** Includes all agricultural, horticultural, viticultural and vegetable products of the soil, apiary and apiary products, poultry and poultry products, livestock and livestock products, milk and dairy products and aquaculture products. (4-2-03)

05. **Materials.** Any substance or mixture of substances that is intended to be used in agricultural production, processing, or handling. (3-27-13)

011. -- 199. (RESERVED)

200. IDAHO ORGANIC CERTIFICATION SEAL.

01. **Description of Seal.** Certified operations that become certified for the first time prior to July 1, 2013 may continue to use the seal depicted in Figure 1. Certified operations that become certified for the first time July 1, 2013 and later may only use the seal in Figure 2.

FIGURE 1



FIGURE 2



(3-27-13)

02. Utilization of Seal. The Idaho organic certification seal as approved by the director and as shown in Figure 1 and Figure 2, may be imprinted or affixed on labels, packages or products, or used in advertising in any manner and signifies that the standards and rules developed in accordance with the provisions of this rule and all other conditions of the provisions of this chapter have been met. ()

a. Any container manufacturer may apply for authorization to imprint facsimiles of the ISDA organic certification seal on containers of organic products. (4-2-03)

b. Authorization granted to imprint facsimile seals is subject to review by the director on an annual basis, or more frequently if necessary. (4-2-03)

201. REGISTRATION OF APPROVED MATERIALS.

The director may establish a list of registered branded materials for use in organic production, processing, or handling. (3-27-13)

01. Registration. Registration is voluntary. (3-27-13)

a. All applicants applying for registration of materials must submit the application to the Department on forms prescribed by the Department. (3-27-13)

b. An applicant for materials registration must demonstrate that the material meets the requirements and standards of the National Organic Program. Specifically, the material may not be a material prohibited for use in the production, processing, or handling of organic products by 7 C.F.R. Section 205.105, and may not be otherwise prohibited for use in organic production, processing, or handling by the National Organic Program. (3-27-13)

02. Effect of Registration. The fact that a material is registered is not a guarantee that the registered material will be acceptable for use by certified organic producers, processors, or handlers or other organic certifying agencies other than ISDA. (3-27-13)

03. Department Not Liable. The Department is not liable for any losses or damages that occur as a

result of any person's use of any registered branded material. The Department is not liable for any losses or damages that result from delays that occur in the registration process due to lack of resources or expertise. (3-27-13)

04. Registration Fees. The Director may charge the following fees, which are nonrefundable and are not to exceed the stated amounts. (3-27-13)

a. Operations that hold a current approval from a reputable third party accredited material evaluation program such as the Environmental Protection Agency, an NOP Accredited Certifying Agent, or ISO Guide 65 for the material(s) which it is seeking to register in Idaho must pay two hundred dollars (\$200) for an initial registration application fee, and two hundred dollars (\$200) each year thereafter for renewal of the registration. (3-27-13)

b. All operations must pay initial and annual inspection fees to keep their product registered. (3-27-13)

05. Initial and Annual Inspection Fees. (3-27-13)

a. The hourly rate for inspections is fifty dollars (\$50), including travel time. (3-27-13)

b. Travel time from an inspector's normal duty station to the inspection site and return to normal duty station will be compensable time charged to the applicant. (3-27-13)

c. There will be a minimum charge of fifty dollars (\$50) plus mileage for any inspection. (3-27-13)

d. A mileage rate as approved by the Board of Examiners will be included in the inspection fees. (3-27-13)

e. A per diem, lodging, and travel as allowed by state and ISDA rules, and any other out of pocket costs incurred by ISDA in conducting annual or initial certification inspections will be charged to the operation. (3-27-13)

f. Upon approval by ISDA, private inspectors may be utilized. The applicant or operator will bear the total cost of the private inspection. (3-27-13)

06. Seal for Registered Branded Materials. When a material is registered and added to the list of registered branded materials, the Director will approve the use of the seal in Figure 3 on the packaging and in the promotions for the sale of the registered material subject to the National Organic Program and Idaho state rules:

FIGURE 3



(3-27-13)

07. Revocation of Registration. If at any time the registered material is determined to be not suitable for organic use, the Director may revoke the registration of the branded material, remove the material from the list of registered branded materials, and revoke authorization to use the seal shown in Subsection 201.06. (3-27-13)

202. -- 299. (RESERVED)

300. CERTIFICATION REQUIREMENTS AND FEES.

01. Certification Requirements. All applicants applying for certification with the Department, must submit the application to the Department on forms prescribed or approved by the Department. (3-29-12)

a. All organic food producers/handlers in Idaho with annual gross organic sales of more than five thousand dollars (\$5,000) must be certified with the Department, unless certified by agents other than the Department accredited under the National Organic Program. (3-19-07)

b. Producers/handlers with annual gross organic sales of five thousand dollars (\$5,000) or less may select certification. (4-11-15)

c. All organic food producers and organic handlers certifying with the Department are subject to an annual on-site inspection. (3-19-07)

d. Livestock producer and handler applications will be accepted throughout the year. (3-19-07)

02. Certification Fees. (3-29-10)

a. Organic producers/handlers with annual gross organic sales of more than five thousand dollars (\$5,000) up to fifteen thousand dollars (\$15,000) or producers with annual gross income of five thousand dollars (\$5,000) or less requesting certification - One hundred twenty-five dollars (\$125). (4-7-11)

b. Organic producer/handler with annual gross organic sales of more than fifteen thousand dollars (\$15,000) – Two hundred dollars (\$200). (4-7-11)

c. A person who produces and handles their own organic food products pays only one (1) annual certification fee based on gross annual organic sales. (3-19-07)

03. Certification Inspection Fees. (3-19-07)

a. The hourly rate is thirty-five dollars (\$35) including travel time. (3-19-07)

b. Travel time from an inspector's normal duty station to the inspection site and return to normal duty station will be compensable time charged to the applicant. (3-19-07)

c. There will be a minimum charge of thirty-five dollars (\$35) plus mileage for any inspection. (3-19-07)

d. A mileage rate as approved by the Board of Examiners will be included in the inspection fees. (3-19-07)

e. Inspections conducted on weekends, holidays, or after normal office hours will be charged at an hourly rate of forty-seven dollars and fifty cents (\$47.50) including travel time with a minimum charge of one (1) hour plus mileage. (3-19-07)

f. Upon approval by the Department, private inspectors may be utilized. The applicant bears the total cost of the private inspection. (3-29-10)

301. GRADUATED GROSS SALES FEE SCHEDULE.

01. Graduated Gross Sales Fee Table. In addition to the fees prescribed above, all producers and handlers certified by the Department must remit with their certification application an amount based on their annual gross organic sales during the last calendar year, or in the case of a first-time applicant, a projected gross dollar amount for the upcoming calendar year, with a minimum fee of ten dollars (\$10). The graduated gross organic sales fee structure is as follows:

0 - 2,000	\$10
2,001 - 5,000	\$25
5,001 - 10,000	\$50
10,001 - 15,000	\$75
15,001 - 20,000	\$100
20,001 - 25,000	\$125
25,001 - 30,000	\$150
30,001 - 35,000	\$175
35,001 - 50,000	\$250
50,001 - 75,000	\$375
75,001 - 100,000	\$500
100,001 - 150,000	\$750
150,001 - 200,000	\$1,000
200,001 - 280,000	\$1,400
280,001 - 375,000	\$1,875
375,001 - 500,000	\$2,500
500,001 and up	0.5% of gross organic sales up to \$5,000

(4-11-15)

02. Non-Refundable. Certification application fees are non-refundable.

(4-11-15)

302. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

DOCKET NO. 02-0000-1900FA

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted these pending fee rules. This action is authorized pursuant to Sections 22-103, 22-107, 22-108, 22-112, 22-418, 22-505, 22-604, 22-901, 22-911, 22-1907, 22-2004, 22-2006, 22-2013, 22-2204, 22-2303, 22-2403, 22-2412, 22-2503, 22-2511, 22-2710, 22-5129, 25-203, 25-207, 25-207B, 25-212, 25-305, 25-601, 25-804, 25-3704, 25-1723(b), 25-3520, 37-303, 37-402, 37-405, 37-516, 37-1521, 69-231, 69-524, Idaho Code.

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

These pending fee rules adopt and re-publish the following existing and previously approved and codified chapter(s) under IDAPA 02, rules of the Idaho State Department of Agriculture.

- IDAPA 02.02.11, *Rules Governing Eggs and Egg Products*
- IDAPA 02.02.12, *Bonded Warehouse Rules*
- IDAPA 02.02.13, *Commodity Dealers' Rules*
- IDAPA 02.02.14, *Rules for Weights and Measures*
- IDAPA 02.02.15, *Rules Governing the Seed Indemnity Fund*
- IDAPA 02.04.19, *Rules Governing Domestic Cervidae*
- IDAPA 02.06.06, *Rules Governing the Planting of Beans*

All changes between the text of the proposed rules and the pending rules are consistent with the guidance and direction provided in the Red Tape Reduction Act. These rules were reviewed to update authorities, eliminate unnecessarily restrictive language and redundancy:

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rules was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), **Vol. 19-6SE, pages 291- 522.**

IDAPA 02.06.06, *Rules Governing the Planting of Beans* was amended to add Section 200.05 which was inadvertently omitted when the bean rules were combined prior to publication in the June 19, 2019 Bulletin.

This pending rule vacates the following proposed rules previously promulgated under this docket number as part of the omnibus proposed rulemaking under IDAPA 02, rules of the Department of Agriculture. They have been consolidated into rule chapters with similar subject matter:

- **(VACATED)** 02.02.07, *Bulk Permit Procedure (Potatoes)* (Consolidated into new chapter 02.02.07, “Rules Governing Bulk Permits and Retail Sale of Potatoes”)
- **(VACATED)** 02.04.03, *Rules Governing Animal Industry* (Consolidated into new chapter 02.04.03, “Rules Governing Animal Industry” which combines the Rules Governing Animal Industry and Rules Governing Animal Health Emergencies)
- **(VACATED)** 02.04.09, *Rules Governing Milk and Cream Procurement and Testing* (Consolidated into new chapter 02.04.05, “Rules Governing Grade A and Manufacture Grade Milk”)

- **(VACATED)** 02.04.26, *Rules Governing Livestock Marketing* (Consolidated into new chapter 02.04.26, “Rules Governing the Public Exchange of Livestock”)
- **(VACATED)** 02.06.01, *Rules Governing the Pure Seed Law* (Consolidated into new chapter 02.06.01, “Rules Governing the Production and Distribution of Seed”)
- **(VACATED)** 02.06.02, *Rules Pertaining to the Idaho Commercial Feed Law* (Consolidated into new chapter 02.06.02, Rules Governing Registration and Licenses)
- **(VACATED)** 02.06.03, *Rules Pertaining to Idaho Nurseries and Florists Law* (Consolidated into new chapter 02.06.02, “Rules Governing Registration and Licenses”)
- **(VACATED)** 02.06.04, *Phytosanitary and Post-Entry Seed Certification Rules* (Consolidated into new chapter 02.06.04, “Rules Governing Plant Exports”)
- **(VACATED)** 02.06.05, *Rules Governing Diseases of Hops* (Consolidated into new chapter 02.06.05, “Rules Governing Plant Disease and Quarantines”)
- **(VACATED)** 02.06.12, *Rules Pertaining to the Idaho Fertilizer Law* (Consolidated into new chapter 02.06.02, “Rules Governing Registration and Licenses”)
- **(VACATED)** 02.06.14, *Rules Governing Annual Bluegrass* (Consolidated into new chapter 02.06.01, “Rules Governing the Production and Distribution of Seed”)
- **(VACATED)** 02.06.18, *Rules Governing Mint Rootstock and Clone Production* (Consolidated into new chapter 02.06.05, “Rules Governing Plant Disease and Quarantines”)
- **(VACATED)** 02.06.27, *Rules Governing Bacterial Ring Rot* (Consolidated into new chapter 02.06.05, “Rules Governing Plant Disease and Quarantines”)
- **(VACATED)** 02.06.30, *Rules Under the Idaho Bee Inspection Law* (Consolidated into new chapter 02.06.02, “Rules Governing Registration and Licenses”)
- **(VACATED)** 02.06.31, *Noxious Weed Free Forage and Straw Certification Rules* (Consolidated into new chapter 02.06.09, “Rules Governing Invasive Species and Noxious Weeds”)
- **(VACATED)** 02.06.34, *Rules Concerning Virus-Free Certification of Nursery Stock* (Consolidated into new chapter 02.06.04, “Rules Governing Plant Exports”)
- **(VACATED)** 02.06.40, *Rules Governing Ginseng Export* (Consolidated into new chapter 02.06.04, “Rules Governing Plant Exports”)
- **(VACATED)** 02.06.41, *Rules Pertaining to the Soil and Plant Amendment* (Consolidated into new chapter 02.06.02, “Rules Governing Registration and Licenses”)

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

IDAPA	Specific Findings	Fee Summary	22-101A
02.02.11	The fee outlined in this rule funds the required activities and required inspections. The program establishes standards for sanitation, grading, handling, labelling and marketing of eggs sold in Idaho.	Assessment in lieu of seal @ rate of 0.4 cent per dozen each month; Authorized by Section 37-1523, Idaho Code	Entire rule regulates an activity not regulated by the federal government.
02.02.12	The fee outlined in this rule funds the required activities. Assessments are used to pay valid claims in case of a warehouse failure. The program provides warehouse inspections and financial analysis consistent with program requirements. There is no general fund support of this program.	0.2% of total value @ time of sale; Authorized by Section 69-211, Idaho Code	02.02.12.480; 02.02.12.482; 02.02.12.483; 02.02.12.484; 02.02.12.485; and 02.02.12.486 are broader in scope than federal laws or regulations
02.02.13	The fee outlined in this rule funds the required activities. Assessments are used to pay valid claims in case of a commodity dealer failure. The program provides commodity dealer inspections and financial analysis consistent with program requirements. There is no general fund support of this program.	0.2% gross dollar amount; Authorized by Section 69-508, Idaho Code	Entire rule regulates an activity not regulated by the federal government.
02.02.14	The fee outlined in this rule funds required activities. The program provides for inspection of weighing and measuring devices throughout Idaho.	Fee schedule by device.	Entire rule regulates an activity not regulated by the federal government.
02.02.15	The fee outlined in this rule funds the required activities. Assessments are used to pay valid claims in case of a licensed seed buyer failure. The program provides seed buyer inspections consistent with program requirements. There is no general fund support of this program.	Buyers collect assessment based on certain categories of seed crops; Authorized by Section 22-5107, Idaho Code	Entire rule regulates an activity not regulated by the federal government.
02.04.19	The fees outlined in this rule fund the required activities. The program provides annual facility inspections, entry permits and disease surveillance. There is no general fund support of this program.	\$10/ head on elk, \$3/ head on fallow deer; Authorized by Section 25-3708, Idaho Code	02.04.19.013, 02.04.19.020, 02.04.19.021, 02.04.19.022, 02.04.19.030, 02.04.19.031-040, 02.04.19.070, and 02.04.19.080-400 are more stringent than federal laws or regulations. 02.04.19.031-040 and 02.04.19.080-400 are broader in scope than federal laws or regulations
02.06.06	The fees outlined in this rule are necessary to fund the required activities. Compliance with seed certification and export requirements are necessary to ensure commodities are export eligible. There is no general fund support for this program.	\$0.18 for tags; application fee for inspection \$3.50/acre/ inspection; lab sample fee; Authorized by Section 22-2006, Idaho Code	Entire rule regulates an activity not regulated by the federal government.

FEE SUMMARY: The table above provides a specific description of fees or charges imposed by specific rules. This rulemaking does not impose fees or charges, or increase fees or charges, beyond what was previously approved and codified in the prior rules. Fees or charges are imposed pursuant to the Idaho Code Sections detailed above.

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 fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, in anticipation of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Brian Oakey at (208) 332-8550.

Dated this 16th day of October, 2019.

Brian Oakey
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
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Boise, Idaho 83707
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**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 22-101(3) 22-103(20), 22-103(22), 22-107, 22-112, 22-418(4), 22-418(11), 22-505, 22-604, 22-702, 22-901, 22-1907, 22-2004, 22-2006, 22-1907, 22-2204, 22-2303(5), 22-2403, 22-2411, 22-2412, 22-2413, 22-2503, 22-2511, 22-3805(11), 22-3805(12), 22-5129, 25-203, 25-303, 25-305, 25-401, 25-601, 25-1723(b), 25-2710, 25-3520, 35-305, 37-303, 37-405, 37-516, 37-1521, 69-231, 69-524, 71-111, 71-121, 71-232, 71-233, 71-236, 71-241, 71-408, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 02, rules of the Idaho State Department of Agriculture:

IDAPA 02

- 02.02.07, *Bulk Permit Procedure (Potatoes)*
- 02.02.11, *Rules Governing Eggs and Egg Products*
- 02.02.12, *Bonded Warehouse Rules*
- 02.02.13, *Commodity Dealers' Rules*
- 02.02.14, *Rules for Weights and Measures*
- 02.02.15, *Rules Governing the Seed Indemnity Fund*
- 02.04.03, *Rules Governing Animal Industry*, modifies Sections 010 and 207; eliminates Section 990
- 02.04.09, *Rules Governing Milk and Cream Procurement and Testing*, with modifications to Section 100
- 02.04.19, *Rules Governing Domestic Cervidae*, modifies Sections 010; eliminates Section 990
- 02.04.26, *Rules Governing Livestock Markets*, modifies Section 010; eliminates Section 990 and 999
- 02.06.01, *Rules Governing the Pure Seed Law*, eliminates Section 601
- 02.06.02, *Rules Pertaining to the Idaho Commercial Feed Law*
- 02.06.03, *Rules Pertaining to Idaho Nurseries and Florists Law*
- 02.06.04, *Phytosanitary and Post-Entry Seed Certification Rules*, eliminates Section 400; adds required Sections 004-006
- 02.06.05, *Rules Governing Diseases of Hops*, eliminates Sections 007 and 450
- 02.06.06, *Rules Governing the Planting of Beans*
- 02.06.12, *Rules Pertaining to the Idaho Fertilizer Law*, eliminates Section 090
- 02.06.14, *Rules Governing Bluegrass*
- 02.06.18, *Rules Governing Mint Rootstock and Clone Production*, modifies Section 300; eliminates Section 007
- 02.06.27, *Rules Governing Bacterial Ring Rot Caused by *Clavibacter michiganensis* subsp. *sepedonicus* of Potato*, eliminates Sections 012 and 500
- 02.06.30, *Rules Under the Idaho Bee Inspection Law*, modifies Section 200; eliminates Section 350
- 02.06.31, *Noxious Weed Free Forage and Straw Certification Rules*
- 02.06.34, *Rules Concerning Virus-Free Certification of Nursery Stock*, modifies Section 010; eliminates Section 030; adds required Sections 004-006
- 02.06.40, *Rules Governing Ginseng Export*, eliminates Sections 007 and 453
- 02.06.41, *Rules Pertaining to the Soil and Plant Amendment Act*, eliminates Section 051

IDAHO CODE SECTION 22-101A STATEMENT: These rules are either broader in scope or more stringent than federal law or regulations, or regulate an activity not regulated by the federal government.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. See table below for agency specific findings.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fee(s) or charge(s) reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. See table below for agency specific fee summaries.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules.

IDAPA	Specific Findings	Fee Summary	22-101A(1)
02.02.07	The first handler or shipper of potatoes collects the assessments in this rule. Funds are remitted directly to the Idaho Potato Commission. These fees are used by the IPC to fund promotion activities.	First handler pays potato advertising tax @ combo grower-shipper rates	Entire rule
02.02.11	The fee outlined in this rule fund the required activities and required inspections. The program establishes standards for sanitation, grading, handling, labeling and marketing of eggs sold in Idaho.	Assessment in lieu of seal @ rate of 0.4 cent per dozen each month.	Entire rule
02.02.12	The fee outlined in this rule funds the required activities. Assessments are used to pay valid claims in case of a warehouse failure. The program provides warehouse inspections and financial analysis consistent with program requirements. There is no general fund support of this program.	0.2% of total value @ time of sale	02.02.12.480; 02.02.12.482; 02.02.12.483; 02.02.12.484; 02.02.12.485; 02.02.12.486
02.02.13	The fee outlined in this rule funds the required activities. Assessments are used to pay valid claims in case of a commodity dealer failure. The program provides commodity dealer inspections and financial analysis consistent with program requirements. There is no general fund support of this program.	0.2% gross dollar amount	Entire rule
02.02.14	The fee outlined in this rule funds required activities. The program provides for inspection of weighing and measuring devices throughout Idaho.	Fee schedule by device.	Entire rule
02.02.15	The fee outlined in this rule funds the required activities. Assessments are used to pay valid claims in case of a licensed seed buyer failure. The program provides seed buyer inspections consistent with program requirements. There is no general fund support of this program.	Buyers collect assessment of 1/100 ¢/lb.	Entire rule
02.04.03	The fee outlined in this rule funds the required activities. Artificial insemination is important to the cattle industry to maintain production levels and meet demands for beef and dairy products. Licensees are required to demonstrate competency through a pre-license examination.	License fee of \$25 for artificial insemination; renewal of \$5	02.04.03.150, 02.04.03.175, 02.04.03.207, 02.04.03.303.10, 02.04.03.400, 02.04.03.460

IDAPA	Specific Findings	Fee Summary	22-101A(1)
02.04.09	The fees outlined in this rule fund the required activities. The program evaluates the accuracy of milk component testing by processing labs. Certain milk components are the basis for dairy producer's payment for their milk.	Lab licensing fee of \$25	Entire rule
02.04.19	The fees outlined in this rule fund the required activities. The program provides annual facility inspections, entry permits and disease surveillance. There is no general fund support of this program.	\$10/ head on elk, \$3/ head on fallow deer	02.04.19.090
02.04.26	The fees included in this rule are implemented as they are defined in Title 25, Chapter 17, Idaho Code. The program provides for the issuance, renewal, suspension and revocation of market charters.	Charter fee of \$100	02.04.26.100
02.06.01	The fee outlined in this rule provides the revenue for required enforcement sample analysis. Enforcement samples are required for official analysis as required by export markets. There is no general fund support for the program.	Service testing fees by test and miscellaneous fees to license.	Entire rule
02.06.02	The registration fee supports all activities - label review, sampling, lab analysis, and inspection for the Commercial Feed program. There is no general fund support for this program.	Product registration fee	Entire rule
02.06.03	The fees outlined in this rule fund the required activities. Additional inspections and special services may be requested when they are required by destination markets. There is no general fund support for this program.	Special service and permit fee	Entire rule
02.06.04	The fees outlined in this rule fund the required activities. Phytosanitary certifications and inspections are required by export markets in order to ship Idaho commodities to them. In addition, there is a fee required by USDA-APHIS for each official phytosanitary certificate that ISDA passes through from the customer to USDA.	Certificate fee by category.	Entire rule
02.06.05	The fees outlined in this rule are necessary to fund the required activities. Special permits require a specific fee for importation of hops.	Special permit and phytosanitary fee	Entire rule

IDAPA	Specific Findings	Fee Summary	22-101A(1)
02.06.06	The fees outlined in this rule are necessary to fund the required activities. Compliance with seed certification and export requirements are necessary to ensure commodities are export eligible. There is no general fund support for this program.	\$0.18 for tags; application fee for inspection \$3.50/acre/inspection; lab sample fee	Entire rule
02.06.12	The fees included in this rule are implemented as they are defined in Title 22, Chapter 6, Idaho Code.	Cited in code	Entire rule
02.06.14	The fees outlined in this rule are necessary to fund the required activities. The program ensures cleanliness of grass seed produced to protect market access and ensure long term viability of Idaho grass seed.	Sampling fee, see analysis, inspection, quarantine release tags	Entire rule
02.06.18	The fees outlined in this rule are necessary to fund the required activities. The program ensures protection of the Idaho mint industry from the introduction of pests and disease. There is no general fund support for this program.	Transfer permit fee; field inspection fee	Entire rule
02.06.27	The fees outlined under this rule ensure sufficient funding for lab analysis. There is no general fund support for this program.	Lab fees	Entire rule
02.06.30	The fees outlined in this rule are necessary to fund the required activities. Industry may be required to have these inspections and lab analysis done prior to moving bees to other states.	Registration fee; inspection fee @ \$15/hr; lab fee	Entire rule
02.06.31	The fees outlined in this rule are necessary to fund the required activities. Hay growers need these services in order to certify hay and forage for use on lands or markets where such certification is required.	Certification Fees	Entire rule
02.06.34	The fees outlined in this rule are necessary to fund the required activities. Program participation is voluntary and provides a virus-free certification program for nursery stock being exported. There is no general fund support for this program.	Application fee of \$50; lab fee; service fee of \$25/hr; tag fee of cost + 10%	Entire rule

IDAPA	Specific Findings	Fee Summary	22-101A(1)
02.06.40	This rule satisfies federal requirements. Program participation is voluntary and provides a disease free certification program for ginseng export. There is no general fund support for this program.	Fee = to ISDA cost; registration of \$25; certificate of origin \$10; hrly rate of \$28; OT rate of \$33/hr	Entire rule
02.06.41	The fees included in this rule are implemented as they are defined in Title 22, Chapter 22, Idaho Code.	Registration and "Inspection" fees are referenced	Entire 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:

This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Brian Oakey at (208)332-8550.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

DATED this May 20, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 02-0000-1900FA

02.02.11 – RULES GOVERNING EGGS AND EGG PRODUCTS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 37-1521, Idaho Code. ()

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is IDAPA 02.02.11, “Rules Governing Eggs and Egg Products.” ()

02. **Scope.** These rules govern the grades and standards for Idaho eggs and egg products, including tolerances, consumer grades, sanitation, storage, egg seals, tax, and cartons. ()

002. -- 011. (RESERVED)

012. GRADES AND STANDARDS.

01. **Classifications.** The following standards, grades and weight classifications are hereby established and adopted. (7-1-93)

a. Except as otherwise provided in this subsection, all shell eggs sold for human consumption in the Idaho must be designated as one (1) of the following grades: “Idaho Consumer Grade AA,” “Idaho Consumer Grade A,” “Idaho Consumer Grade B.” (7-1-93)

b. An Idaho producer of shell eggs may sell shell eggs produced on his premises in Idaho directly to consumers at the place of production of the eggs, without grade designations. (7-1-93)

c. Idaho shell egg producers having three hundred (300) or less hens may sell ungraded shell eggs produced upon their premises to retailers, provided that each carton or other container of ungraded shell eggs sold must be clearly marked “Ungraded” and bear the name and address of the Idaho producer. (7-1-93)

02. **Standards.** The following standards for individual shell eggs are used in determining the Idaho consumer grade designation applicable thereto. (7-1-93)

03. **Application.** The Idaho standards for quality of individual shell eggs contained in this section are applicable only to eggs that are the product of the domesticated chicken hen and are in the shell. (7-1-93)

04. **Interior Egg Quality Specifications.** Interior egg quality specifications for these standards are based on the apparent condition of the interior contents of the egg as it is twirled before the candling light. Any type or make of candling light may be used that will enable the particular grader to make consistently accurate determinations of the interior quality of shell eggs. It is desirable to break out an occasional egg and by determining the Haugh unit value of the broken-out egg, compare the broken-out and candled appearance, thereby aiding in correlating candled and broken-out appearance. (7-1-93)

05. **AA Quality.** The shell must be clean, unbroken and practically normal. The air cell must not exceed one-eighth (1/8) inch in depth, may show unlimited movement and may be free or bubbly. The white must be clear and firm so that the yolk is only slightly defined when the egg is twirled before the candling light. The yolk must be practically free from apparent defects. (7-1-93)

06. **A Quality.** The shell must be clean, unbroken and practically normal. The air cell must not exceed three-sixteenths (3/16) inch in depth, may show unlimited movement and may be free or bubbly. The white must be clear and at least reasonably firm so that the yolk outline is only fairly well defined when the egg is twirled before the candling light. The yolk must be practically free from apparent defects. (7-1-93)

07. **B Quality.** The shell must be unbroken, may be abnormal, and may have slightly stained areas. Moderately stained areas are permitted if they do not cover more than one thirty-second (1/32) of the shell surface if localized, or one-sixteenth (1/16) of the shell surface if scattered. Eggs having shells with prominent stains or adhering dirt are not permitted. The air cell may be over three-sixteenths (3/16) inch in depth, may show unlimited movement, and may be free or bubbly. The white may be weak and watery so that the yolk outline is plainly visible when the egg is twirled before the candling light. The yolk may appear dark, enlarged and flattened and may show clearly visible germ development but no blood due to such development. It may show other serious defects that do

not render the egg inedible. Small blood spots or meat spots (aggregating not more than one-eighth (1/8) inch in diameter) may be present. (7-1-93)

08. Dirty. An individual egg that has an unbroken shell with adhering dirt or foreign material, prominent stains or moderate stains covering more than one thirty-second (1/32) of the shell surface if localized, or one-sixteenth (1/16) of the shell surface if scattered. (7-1-93)

09. Check. An individual egg that has a broken shell or crack in the shell but with its shell membranes intact and its contents do not leak. A “check” is considered to be lower in quality than a “dirty.” (7-1-93)

013. -- 049. (RESERVED)

050. TERMS DESCRIPTIVE OF SHELL.

01. Clean. A shell that is free from foreign material and from stains or discolorations that are readily visible. An egg may be considered clean if it has only very small specks, stains or cage marks if such specks, stains or cage marks are not of sufficient number or intensity to detract from the generally clean appearance of the egg. Eggs that show traces of processing oil on the shell are considered clean unless otherwise soiled. (7-1-93)

02. Dirty. A shell that is unbroken and that has dirt or foreign material adhering to its surface, that has prominent stains, or moderate stains covering more than one thirty-second (1/32) of the shell surface if localized or one-sixteenth (1/16) of the shell surface if scattered. (7-1-93)

03. Practically Normal (AA or A Quality). A shell that approximates the usual shape and that is sound and is free from thin spots. Ridges and rough areas that do not materially affect the shape and strength of the shell are permitted. (7-1-93)

04. Abnormal (B Quality). A shell that may be somewhat unusual or decidedly misshapen or that may show pronounced ridges or thin spots. ()

051. -- 099. (RESERVED)

100. TERMS DESCRIPTIVE OF THE AIR CELL.

01. Depth of Air Cell. The depth of the air cell (air space between shell membranes, normally in the large end of the egg) is the distance from its top to its bottom when the egg is held air cell upward. (7-1-93)

02. Free Air Cell. An air cell that moves freely toward the uppermost point in the egg as the egg is rotated slowly. (7-1-93)

03. Bubbly Air Cell. A ruptured air cell resulting in one (1) or more small separate air bubbles usually floating beneath the main air cell. (7-1-93)

101. -- 149. (RESERVED)

150. TERMS DESCRIPTIVE OF THE WHITE.

01. Clear. A white that is free from discolorations or from any foreign bodies floating in it. (Prominent chalazas should not be confused with foreign bodies such as spots or blood clots). (7-1-93)

02. Firm (AA Quality). A white that is sufficiently thick or viscous to prevent the yolk outline from being more than slightly defined or indistinctly indicated when the egg is twirled. With respect to a broken-out egg, a firm white has a Haugh unit value of seventy-two (72) or higher when measured at a temperature between forty-five (45) Degrees F and sixty (60) Degrees F. (7-1-93)

03. Reasonably Firm (A Quality). A white that is somewhat less thick or viscous than a firm white. A reasonably firm white permits the yolk to approach the shell more closely that results in a fairly well defined yolk

outline when the egg is twirled. With respect to a broken-out egg, a reasonably firm white has a Haugh unit value of sixty (60) to seventy-two (72) when measured at a temperature between forty-five (45) Degrees F and sixty (60) Degrees F. (7-1-93)

04. Weak and Watery (B Quality). A white that is weak, thin and generally lacking in viscosity. A weak and watery white permits the yolk to approach the shell closely, thus causing the yolk outline to appear plainly visible and dark when the egg is twirled. With respect to a broken-out egg, a weak and watery white has a Haugh unit value lower than sixty (60) when measured at a temperature between forty-five (45) Degrees F and sixty (60) Degrees F. (7-1-93)

05. Blood Spots or Meat Spots. Small blood spots or meat spots (aggregating not more than one-eighth (1/8) inch in diameter), may be classified as "B" quality. If larger, or showing diffusion of blood into the white surrounding a blood spot, the egg must be classified as Loss. Blood spots must not be due to germ development. They may be on the yolk or in the white. Meat spots may be blood spots that have lost their characteristic red color or tissue from the reproductive organs. (7-1-93)

06. Bloody White. An egg that has blood diffused through the white. Eggs with bloody whites are classed as Loss. Eggs with blood spots that show a slight diffusion into the white around the localized spot are not to be classified as bloody whites. (7-1-93)

151. -- 199. (RESERVED)

200. TERMS DESCRIPTIVE OF THE YOLK.

01. Outline Slightly Defined (AA Quality). A yolk outline that is indistinctly indicated and appears to blend into the surrounding white as the egg is twirled (7-1-93)

02. Outline Fairly Well Defined (A Quality). A yolk outline that is discernible but not clearly outlined as the egg is twirled. (7-1-93)

03. Outline Plainly Visible (B Quality). A yolk outline that is clearly visible as a dark shadow when the egg is twirled. (7-1-93)

04. Enlarged and Flattened (B Quality). A yolk in which the yolk membranes and tissues have weakened and moisture has been absorbed from the white to such an extent that it appears definitely enlarged and flat. (7-1-93)

05. Practically Free From Defects (AA or A Quality). A yolk that shows no germ development but may show other very slight defects on its surface. (7-1-93)

06. Serious Defects (B Quality). A yolk that shows well developed spots or areas and other serious defects, such as olive yolks, that do not render the egg inedible. (7-1-93)

07. Clearly Visible Germ Development (B Quality). A development of the germ spot on the yolk of a fertile egg that has progressed to a point where it is plainly visible as a definite circular area or spot with no blood in evidence. (7-1-93)

08. Blood Due to Germ Development. Blood caused by development of the germ in a fertile egg to the point where it is visible as definite lines or as a blood ring. Such an egg is classified as inedible. (7-1-93)

201. -- 249. (RESERVED)

250. GENERAL TERMS.

01. Loss. An egg that is inedible, cooked, frozen, contaminated, or containing bloody whites, large blood spots, large unsightly meat spots, or other foreign material. (7-1-93)

02. Inedible Eggs. Eggs of the following description are classed as inedible: black rots, yellow rots, white rots, mixed rots (addled eggs), sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, eggs containing embryo chicks (at or beyond the blood ring state), and any eggs that are adulterated as such term is defined pursuant to the Federal Food, Drug and Cosmetic Act. (7-1-93)

03. Leaker. An individual egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exuding or free to exude through the shell. (7-1-93)

251. -- 299. (RESERVED)

300. CONSUMER GRADES FOR SHELL EGGS - GENERAL.

01. Applicability. The consumer grade designations established by this act are applicable to edible shell eggs in "lot" quantities rather than on an "individual" egg basis. these standards to the term "case" means thirty (30) dozen egg cases as used in commercial practices in the United States. (7-1-93)

02. Substitution. Substitution of higher qualities for the lower qualities specified is permitted.(7-1-93)

03. No Grade. "No Grade" means eggs of possible edible quality that fail to meet the requirements of an Idaho Consumer Grade or that have been contaminated by smoke, chemicals or other foreign material that has seriously affected the character, appearance or flavor of the eggs. (7-1-93)

301. -- 349. (RESERVED)

350. GRADE STANDARDS - TOLERANCES.

01. Grade AA (At Origin). Idaho Consumer Grade AA (at origin) consists of eggs that are at least eighty-seven percent (87%) AA quality. The maximum tolerance of thirteen percent (13%) that may be below AA quality may consist of A or B quality in any combination, except that within the tolerance of B quality not more than one percent (1%) may be B quality due to air cells over three-eighths (3/8) inch, blood spots (aggregating not more than one-eighth (1/8) inch in diameter), or serious yolk defects. Not more than five percent (5%) (seven percent (7%) for Jumbo size) Checks are permitted and not more than five-tenths of one percent (0.5%) Leakers, Dirties or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed three-tenths of one percent (0.3%). Other types of Loss are not permitted. (7-1-93)

02. Grade AA (At Destination). Idaho Consumer Grade AA (destination) consists of eggs that are seventy-two percent (72%) AA quality. The remaining tolerance of twenty-eight percent (28%) must consist of at least ten percent (10%) A quality, and the remainder must be B quality, except that within the tolerance for B quality not more than one percent (1%) may be B quality due to air cells over three-eighths (3/8) inch, blood spots (aggregating not more than one-eighth (1/8) inch in diameter) or serious yolk defects. Not more than seven percent (7%) (nine percent (9%) for Jumbo size) Checks are permitted and not more than one percent (1%) Leakers, Dirties, or Loss (due to meat or blood spots) in any combination except that such Loss may not exceed three tenths of one percent (0.3%). Other types of Loss are not permitted. (7-1-93)

03. Grade A (At Origin). Idaho Consumer Grade A (at origin) consists of eggs that are eighty-seven percent (87%) A quality or better. Within the maximum tolerance of thirteen percent (13%) that may be below A quality, not more than one percent (1%) may be B quality due to air cells over three-eighths (3/8) inch, blood spots (aggregating not more than one-eighth (1/8) inch in diameter) or serious yolk defects. Not more than five percent (5%) (seven percent (7%) for Jumbo size) Checks are permitted and not more than five-tenths of one percent (0.5%) Leakers, Dirties or Loss (due to meat or blood spots) in any combination except that such Loss may not exceed three-tenths of one percent (0.3%). Other types of Loss are not permitted. (7-1-93)

04. Grade A (At Destination). Idaho Consumer Grade A (at destination) consists of eggs that are eighty-two percent (82%) A quality or better. Within the maximum tolerance of eighteen percent (18%) that may be below A quality, not more than one percent (1%) may be B quality due to air cells over three-eighths (3/8) inch, blood spots (aggregating not more than one-eighth (1/8) inch in diameter) or serious yolk defects. Not more than seven percent (7%) (nine percent (9%) for Jumbo size) Checks are permitted and not more than one percent (1%) Leakers,

Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed three-tenths of one percent (0.3%). Other types of Loss are not permitted. (7-1-93)

05. Grade B (At Origin). Idaho Consumer Grade B (at origin) consists of eggs that are ninety percent (90%) B quality or better, not more than ten percent (10%) may be Checks and not more than five-tenths of one percent (0.5%) Leakers, Dirties or Loss (due to meat or blood spots) except that such Loss may not exceed three-tenths of one percent (0.30%) in any combination. Other types of Loss are not permitted. (7-1-93)

06. Grade B (at Destination). Idaho Consumer Grade B (at destination) consists of eggs that are ninety percent (90%) B quality or better, not more than ten percent (10%) may be Checks and not more than one percent (1%) Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed three-tenths of one percent (0.3%). Other types of Loss are not permitted. (7-1-93)

351. -- 399. (RESERVED)

400. ADDITIONAL TOLERANCES -- IN LOTS OF TWO OR MORE CASES.

01. Grade AA. No individual case may exceed ten percent (10%) less AA quality eggs than the minimum permitted for the lot average. (7-1-93)

02. Grade A. No individual case may exceed ten percent (10%) less A quality eggs than the minimum permitted for the lot average. (7-1-93)

03. Grade B. No individual case may exceed ten percent (10%) less B quality eggs than the minimum permitted for the lot average. (7-1-93)

04. Single Egg Exemption. For Grades AA, A, and B, no lot may be rejected or downgraded due to the quality of a single egg except for loss other than blood or meat spots. (7-1-93)

05. Lots of Two or More Cartons. In lots of two (2) or more cartons, no individual carton may contain less than eight (8) eggs of the specified quality and no individual carton may contain less than ten (10) eggs of the specified quality and the next lower quality. The remaining two (2) eggs may consist of a combination of qualities below the next lower quality (i.e., in lots of grade A, not more than two (2) eggs of the qualities in individual cartons within the sample may be B or checks). (7-1-93)

401. -- 449. (RESERVED)

450. SUMMARY OF IDAHO CONSUMER GRADES FOR SHELL EGGS.

01. Grades for Shell Eggs -- Table 1.

	TOLERANCE PERMITTED		
	QUALITY REQUIRED	Percent	Quality
IDAHO CONSUMER GRADE (origin)			
Grade AA	87 percent AA	Up to 13 Not over 5	A or B Checks
Grade A	87 percent A or Better	Up to 13 Not over 5	B Checks
Grade B	90 percent B or Better	Not over 10	Checks
IDAHO CONSUMER GRADE (destination)			
Grade AA	72 percent AA	Up to 28 Not over 7	A or B Checks

TOLERANCE PERMITTED			
	QUALITY REQUIRED	Percent	Quality
Grade A	82 percent A or Better	Up to 18 Not Over 7	B Checks
Grade B	90 percent B or Better	Not over 10	Checks

(5-25-93)

a. In lots of two (2) or more cases or cartons, see Table 2 of Section 450 for tolerances for an individual case or carton within a lot. (5-25-93)

b. For Idaho Consumer Grades (at origin) a tolerance of five-tenths of one percent (0.5%) Leakers, Dirties, or Loss (due to meat or blood spots) in any combination is permitted except that such Loss may not exceed three-tenths of one percent (0.3%). Other types of Loss are not permitted. (5-25-93)

c. For Idaho Consumer Grades (destination) a tolerance of one percent (1%) Leakers, Dirties, or Loss (due to meat or blood spots) in any combination is permitted, except that such Loss may not exceed three-tenths of one percent (0.3%). Other types of Loss are not permitted. (5-25-93)

d. For Idaho Consumer Grade AA at destination, at least ten percent (10%) must be A quality or better. (5-25-93)

e. For Idaho Consumer grade AA and A at origin and destination within the tolerances permitted for B quality, not more than one percent (1%) may be B quality due to air cells over three-eighths (3/8) inch, blood spots (aggregating not more than one-eighth (1/8) inch in diameter) or serious yolk defects. (5-25-93)

f. For Idaho Consumer Grades AA and A Jumbo size eggs, the tolerance for checks at origin and destination is seven percent (7%) and nine percent (9%) respectively. (5-25-93)

02. Tolerance for Individual Case or Carton Within a Lot -- Table 2.

Idaho Consumer Grade	Case Minimum Quality	Origin Percent	Destination Percent	Carton Minimum Quality, No. of Eggs (Origin & Destination)
Grade AA	AA (Min)	77	62	8 eggs AA
	A or B	13	28	2 eggs A
	Check (Max)	10	10	2 eggs B, or Check
Grade A	A (Min)	77	72	8 eggs A
	B	13	18	2 eggs B
	Check (Max)	10	10	2 eggs Check
Grade B	B (Min)	80	80	10 eggs B
	Check	20	20	2 eggs Check

(5-25-93)

03. Summary of Standards for Quality of Individual Shell Eggs. The Specifications for Each Quality Factor:

Quality Factor	AA Quality	A Quality	B Quality
Shell	Clean	Clean	Clean to Slightly Stained
	Unbroken Practically Normal	Unbroken Practically Normal	Unbroken Abnormal
Air Cell	1/8" or less in Depth. Unlimited movement and free or bubbly	3/16" or less in Depth. Unlimited movement and free and bubbly	Over 3/16" in Depth. Unlimited movement and free or bubbly
White	Clear Firm	Clear Reasonably Firm	Weak and Watery. Small Blood and Meat spots present
Yolk	Outline slightly defined. Practically free from defects	Outline fairly well defined. Practically free from defects.	Outline plainly visible. Enlarged and flattened. Clearly visible germ development but no blood. Other serious defects

(5-25-93)

a. Moderately stained areas permitted (one thirty-second (1/32) of surface if localized or one-sixteenth (1/16) if scattered). (7-1-93)

b. Blood and meat spots are allowed if they are small (aggregating not more than one-eighth (1/8) inch in diameter). (5-25-93)

04. Quality of Dirty or Broken Shell Eggs -- Table 5. For eggs with dirty or broken shells, the standards of quality provide three additional qualities. These are:

Dirty	Check	Leaker
Unbroken Adhering dirt or foreign material, moderate stained areas in excess of B quality	Broken or cracked shell but membranes intact, not leaking	Broken or cracked shell and membranes and contents leaking or free to leak

(5-25-93)

05. Weight Classes. The weight class for Idaho Consumer Grades for shell eggs is as indicated in the following table:

Size Or Weight Class	Minimum Net Weight Per Dozen	Minimum Net Weight Per 30 Dozen (Pounds)	Minimum Weight For Individual Eggs At Rate Per Dozen (Ounces)
Jumbo	30	56	29
Extra Large	27	50.5	26
Large	24	45	23
Medium	21	39.5	20
Small	18	34	17
Peewee	15	28	--

(5-25-93)

06. Lot Average Tolerance. A lot average tolerance of three and three-tenths percent (3.3%) for individual eggs in the next lower weight class is permitted as long as no individual case within the lot exceeds five percent (5%). (7-1-93)

451. -- 499. (RESERVED)

500. EGG PRODUCTS AND BREAKING OPERATIONS.

Anyone engaged in a breaking operation for the production of egg products may obtain a copy of the Federal "Regulations Governing Voluntary Inspection of Egg Products and Grading" (7 CFR Part 55) from the United States Department of Agriculture, AMS, Poultry Division, Washington, DC 20250, Revised May 1, 1991. This is a federally mandated program. The Department of Agriculture has entered into a cooperative agreement with the United States Department of Agriculture (USDA) to provide constant monitoring of these operations. Egg product plants in Idaho are monitored with state staff implementing federal regulations as contained in (7 CFR Part 55) including but not limited to: breaking, pasteurization, packaging, labeling, storage and plant sanitation. Copies of these federal regulations are on file at the Idaho Department of Agriculture located at 2270 Old Penitentiary Road, Boise, Idaho 83712. ()

501. -- 549. (RESERVED)

550. SANITATION AND STORAGE.

01. Grading Room. Animals, pets, livestock, etc., are not allowed in the grading and packing rooms, or any areas where eggs, cases, flats, and cartons are stored. (7-1-93)

02. Wash Water. Wash water must be clean, potable and free of foreign material. Water must be changed as often as necessary so as to comply. (5-25-93)

03. Wash Water Temperature. The minimum temperature of the wash water must be ninety (90) degrees F or higher, and must be at least twenty (20) degrees F warmer than the temperature of the eggs to be washed. These temperatures must be maintained through the cleaning cycle. (5-25-93)

04. Pre-Wetting or Soaking. Pre-wetting or soaking of stained eggs may not exceed five (5) minutes. Water temperature must meet requirements of Subsection 550.03. (5-25-93)

05. Rest Period. During any rest period, eggs must be removed from the washing and rinsing area of the egg washer and from the scanning area whenever there is a buildup of heat. (5-25-93)

06. Washing and Rinsing Compound. Where washing and rinsing compounds are used, they must be approved by the United States Department of Agriculture or the State Department of Agriculture. (5-25-93)

07. Grading and Packing Rooms. Grading and packing rooms must be kept reasonably clean during grading and packing operations and must be thoroughly cleaned at the end of each operating day. (5-25-93)

08. Weighing and Grading Equipment. Weighing and grading equipment, whether manual or automatic, must be kept clean and be capable of ready adjustment. (5-22-93)

09. Adequate Lavatory and Toilet Accommodations Must Be Provided. Toilet and locker rooms must be maintained in a clean and sanitary condition. Hot and cold running water must be provided. Signs must be posted in the rest rooms instructing employees to wash their hands before returning to work. (7-1-93)

10. Trash. Trash accumulations must be removed from the grading room after each day of operation and removed from the premises on a regular basis. (5-25-93)

11. Thermometers. Accurate thermometers must be provided in egg coolers. (5-25-93)

12. Sanitary Conditions. Cooler rooms must be free from objectable odors and from mold, and

maintained in a sanitary condition. ()

13. Egg Handling and Transport. (5-25-93)

a. All eggs handled, stored or offered for sale by egg distributors, egg dealers and retailers must be held under refrigeration at a temperature of forty-five (45) degrees F or below. (5-25-93)

b. Eggs must be transported from one facility to another facility in clean and sanitary vehicles that are refrigerated or capable of maintaining the ambient temperature of the eggs at forty-five (45) degrees F or below. ()

14. Distributors or Dealers. All sales areas where eggs are offered for sale by egg distributors or dealers must be maintained in a clean and sanitary condition. (5-25-93)

15. Case and Carton Storage. Egg case and carton storage must be clean and dry, free from poultry house dust or any odorous material that could be absorbed by cases or cartons. (5-25-93)

16. Pesticides, Insecticides and Rodenticides. Pesticides, insecticides and rodenticides must be handled in accordance with the manufacturers' instructions. Storage of these products must be away from the egg grading and packing area. These products must not be allowed to come in contact with the shell eggs being processed, stored, or with egg cases and cartons. (5-25-93)

17. Clean Clothing. Personnel handling, packing and grading eggs must wear clean clothing. (5-25-93)

18. Cases and Packing Materials. Egg cases and packing materials must be clean, free of mold, mustiness and any odors. (5-25-93)

551. -- 599. (RESERVED)

600. EGG SEALS, TAX AND CARTONS.

01. Cartons. Each egg carton must display the following: (7-1-93)

a. An official egg seal one and one-fourth (1 1/4") inches in diameter, black in color with white printing, containing the statement: "State of Idaho, Department of Agriculture - One Dozen Graded Eggs." These official gummed egg seals are available only through the Department and sold at the assessment rate established in this rule; or ()

b. A legible facsimile egg seal, as defined in Subsection 600.02 of these rules. (In lieu of the official or facsimile egg seal application for exemption from use of seals may be made to the Director under the provisions of Subsection 600.07 of these rules.) (7-1-93)

c. Grade of the eggs contained in the carton. (7-1-93)

d. Size of the eggs contained in the carton. (7-1-93)

e. The name and address of the distributor, together with any desired business or corporation name. (e.g. John Doe, Boise, Idaho; or Produced for, Packed for, Distributed for X-Y-Z Stores, by John Doe, Boise, Idaho.) (7-1-93)

f. The statement "Keep Refrigerated" or with a statement of similar meaning. (7-1-93)

g. The items set forth in Subsections 600.01.a. or 600.01.b., and 600.01.c. and 600.01.d. must be contained on the top panel; items set forth in Subsections 600.01.e. and 600.01.f. may be contained anywhere on the lid portion of each egg carton to be used by any dealer or distributor. The items must be clearly and legibly displayed in contrast to the color of the carton and surrounding colors so that they can be easily distinguished and read. Other

coloring or printing that may appear on the top panel of each egg carton must not dominate the above listed items. No printed matter or design must separate or interfere with the clear legibility of the necessary items. (7-1-93)

02. Facsimile Idaho Egg Seal. The Idaho facsimile egg seal must be one and one-fourth (1 1/4") inches in diameter, contain the wording "State of Idaho Department of Agriculture - One Dozen Graded Eggs." If there is to be any deviation in wording or size, written permission must be obtained from the Director prior to use of any such deviating seal. The color does not have to be black. The color of the facsimile Idaho Egg Seal must be in contrast to the color of the egg carton so that it can be easily distinguishable and read in either a good or a poor light and must not be smeared or smothered out or predominated over by other printing or coloring that may appear on the top panel of the carton. ()

03. Distributor. Distributor means the person whose name and address appear on the lid portion of the carton assuming responsibility for the size and grade of such eggs as any carton may be so labeled. (7-1-93)

04. Top Panel. That portion of the egg carton that is the horizontal plane forming the top of the lid of the carton. (7-1-93)

05. Proofs. Proofs of all cartons desired to be used may be submitted to the Director for approval prior to their use. (7-1-93)

06. Imprinting. Procedure for the imprinting of the facsimile Idaho Egg Seal on cartons of eggs: (7-1-93)

a. Instructions for Dealer or Distributor: (7-1-93)

i. A person grading, candling or packing eggs for retail in Idaho must request authorization from the State Department of Agriculture prior to the printing of the facsimile Idaho Egg Seal on the egg cartons. ()

ii. The request must be accompanied by payment of four (4) mills per facsimile Idaho Egg Seal along with the name and address of the printer or supplier. (7-1-93)

iii. It is unlawful to cause to be printed or to receive cartons printed with the facsimile Idaho Egg Seal other than as requested and paid for by the authorization request and/or allowed under the authorization permit. Section 37-1526, Idaho Code, provides a penalty for such act. (7-1-93)

iv. There will be no refund of tax if the printer or supplier delivers short of the amount of the authorizing permit. (7-1-93)

b. Instructions for Printer or Supplier: (7-1-93)

i. The printer or supplier must be registered with the Department of Agriculture. (7-1-93)

ii. To register, the printer or supplier must post a one thousand dollar (\$1,000) surety bond to the effect that only that amount of facsimile Idaho Egg Seals will be delivered for which the authorization permit has been granted. If overage is printed, then an additional authorization permit for the overage must be secured and the tax paid before the overage can be delivered. (7-1-93)

iii. A copy of the printer's or supplier's delivery invoice must be submitted to the Department of Agriculture immediately upon completion and delivery of the order. (7-1-93)

iv. It is unlawful for a printer or supplier to reproduce a facsimile Idaho Egg Seal without authorization of the Department of Agriculture. Section 37-1526, Idaho Code, provides a penalty for such act. (7-1-93)

07. Assessments in Lieu of Egg Seals. Applications for exemption of egg seals must be made to the Director of Agriculture. This application will require the following information and facts. Upon application and approval by the Director, the assessment at the rate of four (4) mills or four-tenths (4/10) of a cent per dozen must be paid on a monthly basis in lieu of egg seals. Such assessment is applicable to all eggs entering intrastate commerce. (7-1-93)

- a.** Application must be made by person or firm that is billing or invoicing eggs sold within Idaho. (7-1-93)
 - b.** Applicant must hold a current shell egg distributor license. (7-1-93)
 - c.** Applicant must show a sound and accurate accounting procedure from which to prepare monthly reports. Accounting procedure subject to approval by the Director. (7-1-93)
 - d.** Reports must be made on a monthly basis on or before the twenty-fifth (25th) day following the month such eggs enter intrastate commerce. (7-1-93)
 - e.** Applicant who pays assessments in lieu of egg seals are subject to audit by the Director or person appointed by him on an annual basis or more frequently, if in the opinion of the Director, such audit is necessary. (7-1-93)
- 08. Divided Cartons Design.** Egg cartons designed to permit the division of such carton by the retail customer into two (2) portions of one-half (1/2) dozen eggs are permissible if the carton, when undivided, conforms to law and these rules. (7-1-93)
- 09. Reporting Form.** A reporting form will be made available to each dealer or distributor that must be completed by them accounting for all eggs entering intrastate commerce and mailed to the Department of Agriculture by the twenty-fifth (25th) day following the month such eggs entered intrastate commerce. (7-1-93)
- a.** The reporting form must be signed by the owner, manager or authorized person of the business or corporation. stating the report is correct and accurate. (7-1-93)
 - b.** A check or money order covering the quantity of eggs sold in Idaho, reported at the rate of four (4) mills per dozen must accompany the report. (7-1-93)
 - c.** All records and invoices must be maintained for two (2) years and made available to authorized representatives of the Director for the purpose of auditing and to determine the correctness of monthly report forms as set forth in Section 37-1525, Idaho Code. (7-1-93)
- 601. -- 999. (RESERVED)**

02.02.12 – BONDED WAREHOUSE RULES

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 69-231, Idaho Code. (5-3-03)

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is IDAPA 02.02.12, “Bonded Warehouse Rules.” (5-3-03)

02. **Scope.** These rules clarify the procedure for licensing, collection and remittance of assessment, determining claim value, maintaining electronic records use of electronic scales and remedies of the Department for non-compliance. (5-3-03)

002. -- 009. (RESERVED)

010. DEFINITIONS.

The definitions set forth in Section 69-202, Idaho Code and the following definitions apply: ()

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

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

03. **Credit-Sale Contract.** An agreement in writing containing the provisions of Section 69-249, Idaho Code, and where the producer transfers a specific quantity of commodity to a warehouse or dealer with a price or payment to the producer by the warehouse or dealer to be made at a later date or on the occurrence of a specific event expressed in the agreement. (3-15-02)

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

05. **Deposit for Service.** Deposit of a commodity by a person for cleaning, processing, reconditioning or the rendering of other similar services by a warehouse, but does not include either a cash sale, credit-sale, or open storage. (3-15-02)

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

07. **Open Storage.** The deposit of commodity by the producer for a period of time with the subsequent disposition of the same commodity or a fungible commodity as agreed to by the parties. (3-15-02)

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

011. (RESERVED)

012. LICENSING.

01. **Posting of License.** Immediately upon receipt of the license or any renewal, extension or modification thereof under Title 69, Chapter 2, Idaho Code, the licensed warehouseman shall post the license conspicuously in each place of business or in any other place as the Director may determine. The Department will issue a duplicate license for each additional facility as needed. (5-3-03)

02. **Return of Suspended or Terminated License.** If a license issued to a warehouseman has lapsed or is suspended, revoked or canceled by the Director, the license shall be returned to the Department. ()

03. **Suspension Due to Neglect.** If, through inspection or other information, it is revealed or indicated that the commodities in storage are deteriorating due to the warehouseman’s or operator’s neglect, the license may be suspended until the matter has been corrected to the satisfaction of the Director. ()

04. **Loss of License.** Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate may be issued under the same number or a new number at the discretion of the Director. (9-1-92)

05. Sign to Be Posted. Each licensed warehouseman shall maintain suitable signs on the licensed property in such manner as will give ample public notice of his tenancy. These signs shall be painted on the warehouse or elevator in letters not less than six (6) inches in height and contain the following words: "State No. ____." The number of each warehouse will be assigned by the Director. (9-1-92)

06. Bins Labeled. All storage areas licensed for the storage of agricultural commodities shall be numbered and have a diagram of the storage areas kept in the office showing the exact dimensions and the maximum capacity of the storage area. ()

07. Insurance Calculations. The director may approve a request to reduce the insurance calculation for a facility provided the request is in writing and evidence is supplied that all agricultural commodities that are stored at any given point in time are insured pursuant to Title 69, Chapter 2, Idaho Code. ()

013. -- 049. (RESERVED)

050. RECEIPTING.

01. Every Warehouseman. Every warehouseman shall issue a negotiable warehouse receipt when requested to do so by the depositor. All storage and handling charges are due and payable on or before July 1 following the date of the issuance of the receipt, or as agreed upon by the parties. (9-1-92)

02. Form of Nonnegotiable Warehouse Receipts. Nonnegotiable warehouse receipts that contain the essential terms for warehouse receipts as set forth in Section 28-7-202, Idaho Code, and Section 69-223, Idaho Code, are deemed sufficient for all purposes. Copies of all nonnegotiable warehouse receipts shall be kept as permanent records by the warehouseman issuing them. ()

03. Lost Negotiable Warehouse Receipt. To cancel an outstanding warehouse receipt or issue a new warehouse receipt supplementing one that has been lost or destroyed, the licensed warehouseman shall require the depositor or other applicant to submit to the warehouseman: ()

a. An affidavit showing that he is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it and how the original receipt was lost or destroyed; and (9-1-92)

b. A bond in the amount double the market value of the agricultural commodity represented by the lost or destroyed receipt. The market value shall be determined at the time this bond is submitted for the lost receipt. A duplicate warehouse receipt shall clearly state that it is a duplicate receipt, the number of the receipt the duplicate is replacing, and the license number under which the original receipt was issued. ()

04. Electronic Warehouse Receipts. An electronic version of a warehouse receipt generated by a provider licensed and approved by the United States Department of Agriculture (USDA) that contains the same information as the paper version of a warehouse receipt may be issued instead of a paper document. The electronic version of a warehouse receipt carries the same rights and obligations as the paper version. At no time may a paper receipt and an electronic receipt represent the same lot of commodity. Electronic warehouse receipts shall be numbered and issued consecutively starting with the number specified to the provider by the department. ()

05. Agreements. Prior to entering into an agreement with an electronic warehouse receipt provider to issue such receipts, a warehouse licensee must provide a copy of the proposed agreement to the department for review and approval. A warehouse operator shall not issue electronic negotiable warehouse receipts until and unless the department approves its agreement with an electronic warehouse receipt provider and notifies the licensee of such approval. A provider shall be independent of any outside influence or bias in action or appearance. In order to be approved by the department, an electronic warehouse receipt provider agreement shall: ()

a. Only be with a provider that is first approved as an electronic warehouse receipt provider by the USDA pursuant to the provisions of 7 CFR Part 735. Upon department request, a provider shall provide a copy of the provider's executed USDA Form WA-460 and any addenda, and any other documentation requested by the department to confirm that the provider is a USDA-approved provider in good standing. ()

b. Provide for the department to become a joint holder on all open electronic negotiable warehouse

receipts if the issuing warehouse operator's license is relinquished or revoked. ()

c. Require the provider to provide security as required by its provider agreement with the USDA regarding on-site security, data authorization, security plans, and facility vulnerability. ()

d. Prohibit the provider from deleting or altering any electronic negotiable warehouse receipts in the centralized filing system unless such actions are authorized by the department. ()

e. Allow the department unrestricted access to the central filing system for electronic warehouse receipts issued on behalf of warehouse operators licensed by the department. The electronic warehouse receipt data shall be maintained for six (6) years after cancellation of the receipts. Access shall be free of charge and made available in a manner that allows interaction with department warehouse examinations. ()

f. Require the provider, when a warehouse operator changes provider, to supply the new provider and the warehouse operator with a complete list of all the current holders of open electronic negotiable commodity warehouse receipts prior to the intended transfer date. ()

06. Change in Provider. A warehouse operator shall issue electronic warehouse receipts through only one (1) approved provider at a time. ()

a. A warehouse operator may change providers only once a year unless otherwise approved by the department. ()

b. A warehouse operator shall notify the department of the exact date of the proposed transfer thirty (30) calendar days prior to the intended date of any transfer to a new provider. The operator must also, thirty (30) days prior to the intended transfer date, send notices of the change to the holders of all open electronic negotiable warehouse receipts specifying the date and time period during which access to receipts will not be available. ()

051. -- 079. (RESERVED)

080. FORWARDING AGRICULTURAL COMMODITIES.

Warehouses licensed under Title 69, Chapter 2, Idaho Code, receiving agricultural commodities for shipment to terminals or to other warehouses for storage or processing within the state or outside the state shall have in their possession a statement authorizing the shipment of agricultural commodities to another location for storage or processing that is signed by the owner or producer of the agricultural commodity. The receiving warehouse shall be a state or federally licensed and bonded warehouse or have a Commodity Credit Corporation storage agreement. When requested to do so by an Idaho Warehouse Examiner, the shipping warehouse shall promptly procure from the terminal or storage warehouse a statement or negotiable warehouse receipt on a form approved by the director describing the quantity, class and grade of all agricultural commodities so shipped and in storage. The shipping warehouse shall have such forms promptly forwarded and returned to the Idaho Department of Agriculture, Bureau of Warehouse Control, within fifteen (15) days of issuance. ()

081. -- 099. (RESERVED)

100. OFFICE RECORDS.

A warehouseman shall maintain complete and sufficient records to show all deposits, purchases, sales contracts, storage obligations and loadouts of the warehouse in this state that are subject to Department inspection during normal business hours. Office records as set forth in Title 69, Chapter 2, Idaho Code, include, but not limited to, the following: ()

01. Daily Position Record. This 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. Storage Ledger. This shows the name and address of the depositor, the date purchased, the terms of the sale, and the quality and quantity of the agricultural commodity purchased by the warehouseman. When applicable, the storage ledger shall also show the tare, grade, size, net weight, and unsold amount of agricultural

commodities. ()

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. ()

04. Receipts and Tickets. Receipts and tickets in the warehouseman's possession that have not been issued. (5-3-03)

05. Receipts and Tickets Issued by the Warehouseman. Receipts and tickets issued by the warehouseman. (5-3-03)

06. Receipts and Tickets Returned and Canceled. Receipts and tickets returned to and canceled by the warehouseman. (5-3-03)

07. Insurance Documentation. (9-1-92)

08. Electronic Records. If any electronic records are maintained outside of the state of Idaho, the Department is entitled to examine them at any reasonable time and place as determined by the Department. ()

101. -- 129. (RESERVED)

130. LICENSE APPLICATION AND CONDITIONS OF ISSUANCE.

01. License Application. Application for a license to operate a warehouse under the provisions of Title 69, Chapter 2, Idaho Code, shall be on a form prescribed by the Department and include: (9-1-92)

a. The full name of the person applying for the license and whether the applicant is an individual, partnership, association, corporation or other entity. (9-1-92)

b. The full name of each member of the firm or partnership, or the names of the officers and directors of the company or limited liability company, association, or corporation. (5-3-03)

c. The address of the principal place of business. (5-3-03)

d. Information relating to any judgments against the applicants. (9-1-92)

e. The location of each warehouse the applicant intends to operate and the commodities expected to be stored. (9-1-92)

f. A current financial statement as specified by Section 69-206, Idaho Code. (9-1-92)

g. A sketch or drawing as specified in Section 69-206, Idaho Code. (9-1-92)

h. A bond as required by Section 69-208, Idaho Code. (9-1-92)

i. Proof of insurance as required by Section 69-206, Idaho Code. (9-1-92)

j. The license fee as prescribed by Section 69-211, Idaho Code. (9-1-92)

k. Any other reasonable information the Department finds necessary to carry out the purpose and provisions of Title 69, Chapter 2, Idaho Code. (9-1-92)

02. Modification. If a licensee wishes to add additional capacity to an existing license, the Director may modify the license if all requirements of Section 69-206, Idaho Code, are met. (9-1-92)

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

01. Bonding Requirement. The amount of bond to be furnished shall be fixed at a rate pursuant to Section 69-208A, Idaho Code. (3-16-04)

02. Single Bond, Irrevocable Letter of Credit or Certificate of Deposit. For the purposes of licensing as a warehouseman pursuant to Title 69, Chapter 2, Idaho Code and a seed buyer pursuant to Title 22, Chapter 51, Idaho Code a single bond, irrevocable letter of credit or certificate of deposit shall be fixed at whichever of the following amounts is greater: (3-16-04)

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

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

132. -- 149. (RESERVED)

150. WAREHOUSES TO BE KEPT CLEAN.

Each warehouseman is required to use such precautions and surveillance as is necessary to provide for the safe and adequate storage of all commodities stored in his warehouse and to prevent these commodities from being contaminated in any way from chemicals, pesticides, fertilizers, adulterated seeds, animals, birds or any such thing as may contaminate or reduce the quality of stored goods. ()

151. -- 179. (RESERVED)

180. WAREHOUSEMAN RESPONSIBILITIES.

01. Warehouse Receipts -- Quality. A warehouseman licensed under Title 69, Chapter 2, Idaho Code, shall maintain in the facility of issuance of any negotiable warehouse receipt, for as long as the receipt is outstanding and has not been canceled, like variety, quantity, and quality of the agricultural commodity stated on the receipt. No warehouseman shall remove, deliver, direct or permit any person to remove or deliver any agricultural commodity from any warehouse for which warehouse receipts have been issued and are outstanding, without receiving and canceling the warehouse receipt that was issued for the commodity, except if the Director determines an emergency storage situation exists. A warehouseman may then forward agricultural commodities to other licensed warehouses for storage without canceling the outstanding warehouse receipt, provided the following conditions are met: (9-1-92)

a. The warehouseman obtains written approval from the Department prior to forwarding agricultural commodities. (9-1-92)

b. The warehouseman provides written guidelines to the Department establishing how he will be back in position within the time limits set and granted by the Department. ()

c. The warehouseman maintains and makes available to the Department records of positions concerning the forwarding of agricultural commodities. ()

d. The receiving warehouse is a state or federally licensed and bonded warehouse or have a Commodity Credit Corporation storage agreement. ()

e. The shipping warehouse has in its possession a statement signed by the bearer of the warehouse receipt authorizing the shipment of agricultural commodities represented by such receipt to another location for storage. ()

f. When requested to do so by the Department, the shipping warehouseman shall promptly procure from the receiving warehouseman a statement describing the quantity, class and grade of all agricultural commodities so shipped and in storage on a form approved by the Director. The shipping warehouseman shall have such forms

promptly forwarded to the receiving warehouseman for verification of quantity, class and grade of agricultural commodities forwarded and return the verification to the Department within fifteen (15) days of issuance. Failure to provide this statement to the Department in the above specified time, will result in a short position for the warehouseman with penalties as prescribed by law. ()

02. Rights and Duties of Licensees -- Unlawful Practices. It is unlawful for a warehouseman to: ()

a. Issue a warehouse receipt in excess of the amount of the agricultural commodity held in the licensee's warehouse to cover such receipt. (9-1-92)

b. Sell, encumber, ship, transfer, remove or permit to be sold encumbered, shipped, transferred or removed from a warehouse any agricultural commodity received by him for deposit, shipment or handling for which scale weight tickets have been issued without the written approval of the holder of the scale weight ticket and such transfer shall be shown on the individual depositor's account and the inventory records of the warehouseman. (9-1-92)

c. Remove or permit any person to remove any agricultural commodity from a warehouse when the amount of any fairly representative grade or class of an agricultural commodity in the warehouses of such licensee is reduced below the amount for which a warehouse receipt or scale weight ticket for the particular agricultural commodity is outstanding, except as provided for in Section 69-223(2), Idaho Code, and Rule 180.01. (9-1-92)

d. Issue a warehouse receipt or scale weight ticket that exceeds the amount of agricultural commodities delivered for storage. (9-1-92)

e. Issue a warehouse receipt showing a grade or description different from the grade or description of the agricultural commodities delivered and for which such warehouse receipt is issued. (9-1-92)

f. Fail to deliver agricultural commodities as required by Section 28-7-402, Idaho Code. (9-1-92)

g. Knowingly accept for storage any agricultural commodity destined for human consumption that has been contaminated, if such agricultural commodities are commingled with any uncontaminated agricultural commodity. (9-1-92)

h. Terminate storage of an agricultural commodity in the warehouse without giving reasonable notice to the depositor as provided in Section 28-7-206, Idaho Code. (9-1-92)

i. Alter, falsify, or withhold records from the warehouse examiner. (9-1-92)

181. -- 199. (RESERVED)

200. INSURANCE SETTLEMENT.

When the commodities within a licensed warehouse have been damaged or destroyed, the warehouseman shall make complete settlement to all depositors having agricultural commodities stored in the warehouse within ten (10) days after a settlement with the insurance company. Failure of the warehouseman to make such settlement is grounds for revocation of the license. However, such settlement need not be made within the ten (10) days period if the warehouseman and the depositor agree to other terms. In the case of commingled agricultural commodities where only a portion is damaged, settlement may be made on a pro rata basis to the owners of all agricultural commodities stored within the warehouse. ()

201. -- 229. (RESERVED)

230. AGRICULTURAL COMMODITIES -- WAREHOUSE OBLIGATIONS.

Any agricultural commodity deposited for storage that is not sold by contract or otherwise, as shown by documentation, is open storage and shall be considered a warehouse obligation. (9-1-92)

231. -- 299. (RESERVED)

300. FINANCIAL STATEMENTS.

In order to obtain a bonded warehouse license, the applicant shall submit a current financial statement that has been prepared not more than ninety (90) days prior to the date of application and conform to the applicable requirements of Title 69, Chapter 2, Idaho Code, as to annual financial statements. ()

01. Statement Compliance. Each licensed warehouseman 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 and be submitted to the Department no later than ninety (90) days after the end of the warehouseman's fiscal year. The warehouse license may be suspended or revoked for failure to comply with licensing requirements stated in Bonded Warehouse Rule Section 300 and Section(s) 69-206(6) and (7), Idaho Code. ()

a. The Department may grant an extension of no more than sixty (60) days, provided sufficient cause of an exceptional nature is provided, in writing, to the Department by a certified public accountant or a licensed public accountant and made prior to the date the financial statement is due. ()

b. The director may make exceptions to the financial statement requirements provided sufficient cause is provided and to do so would be in the best interest of the State. (5-3-03)

02. Statement Content. The acceptable statement includes: ()

a. A balance sheet. (9-1-92)

b. An income statement that includes annual gross sales of commodities purchased from producers covered under the act. (9-1-92)

c. A statement of cash flows. (9-1-92)

d. All accompanying notes to the financial statement. (9-1-92)

301. -- 329. (RESERVED)

330. AMENDING TARIFF.

Tariffs may be amended by the licensed warehouseman by filing a new tariff with the Department. The previous tariff continues to apply on all commodities received prior to the effective date of the amended tariff until the anniversary date of deposit. The amended tariff applies to any commodities received after the effective date of the amendment and on any commodities stored under the previous tariff commencing on the anniversary date of the storage period. ()

331. -- 379. (RESERVED)

380. LICENSE -- DURATION.

Licenses issued under the provisions of Title 69, Chapter 2, Idaho Code, expire annually on April 30th. ()

381. -- 399. (RESERVED)

400. INSURANCE DEDUCTIBLE.

The maximum deductible allowed for insurance required by Section 69-206(1), Idaho Code, shall be five thousand dollars (\$5,000). However, a larger deductible may be allowed at the discretion of the Director. (9-1-92)

401. -- 429. (RESERVED)

430. ADDITIONAL BONDING REQUIREMENTS.

If it appears the licensee does not have the ability to pay producers for commodities purchased, or when it appears the licensee does not have a sufficient net worth to outstanding financial obligations ratio, the Department 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. (5-3-03)

431. -- 479. (RESERVED)

480. COMMODITY INDEMNITY FUND.

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. ()

01. Rate of Assessment. The rate of assessment is two-tenths of one percent (.2%) of the total value at the time of sale of the commodities pursuant to Section 69-257(2), Idaho Code. The maximum rate of assessment shall not exceed two-tenths of one percent (.2%) of the total gross dollar amount, without deductions, due the producer. 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. ()

a. The rate of assessment on commodity withdrawn by its producer from open storage is one cent (\$.01) per hundredweight (CWT) of commodity at the time of withdrawal. ()

b. If the amount of the assessment for a producer on all deposits made in a calendar year is calculated to be less than fifty cents (\$.50), no assessment will be collected. If deposits exceed the fifty cent (\$.50) limit, all assessments will be collected. (3-15-02)

02. Exemptions to Assessments. Producers are not eligible to participate in CIF and no assessments can be collected in the following cases. ()

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

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

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

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

481. HOW ASSESSMENTS ARE TO BE CALCULATED.

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

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

02. Open Storage or Deposit for Service. When commodity is withdrawn from storage by the producer, the assessment will be one cent (\$.01) per hundred weight (CWT) at the time of withdrawal. (5-3-03)

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

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

482. RECORDKEEPING AND PAYMENT SCHEDULE.

01. Permanent Record. Each warehouse and dealer shall maintain a permanent record showing producer's name and address, lot or identification number, date assessment collected, amount of assessment,

commodity assessed, quantity of commodity, gross dollars of settlement and check number issued to producer. (3-15-02)

02. Payment Due Dates. On or before the twentieth day of the month following the close of the quarter, on a form prescribed by the Department, the assessments imposed by Chapters 2 and 5 of Title 69, Idaho Code, collected by warehouses and dealers, are due and payable to the Department. A quarter (1/4) will consist of three (3) months beginning on the first day of January, April, July, and October. If assessment is paid by mail the payment must be postmarked not later than the twentieth day of the month following the close of the quarter to avoid interest and penalty charges. (3-16-04)

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

483. TRUST FUNDS.

All assessments collected by warehouses and dealers in compliance with Chapters 2 and 5, Title 69, Idaho Code, shall, immediately upon payment to and collection by the warehouse or dealer, be trust fund money and held for payment to the Department for the CIF. Such money shall not, for any purpose, be considered to be a part of the proceeds of any transaction between a depositor and warehouse or dealer for which the collection and payment of the assessment was related and shall not be subject to an encumbrance, security interest, execution or seizure on account of any debt owed by the warehouse or dealer to any of their creditors. (3-15-02)

484. PENALTIES FOR FAILURE TO COLLECT, ACCOUNT FOR, OR REMIT ASSESSMENTS.

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

485. RETURN OF COMMODITY DUE TO FAILURE.

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

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

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

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

486. -- 500. (RESERVED)

501. NPE CONTRACT CLAIMS ON THE FUND.

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

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

02. NPE Contract List. A warehouseman shall maintain a list of all NPE contracts written in a calendar year and 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. (3-16-04)

502. -- 999. (RESERVED)

02.02.13 – COMMODITY DEALERS’ RULES

000. LEGAL AUTHORITY.

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

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is IDAPA 02.02.13, “Commodity Dealers’ Rules.” (5-3-03)

02. **Scope.** These rules clarify the procedure for licensing, collection and remittance of assessments, determining claim value, maintaining electronic records, use of electronic scales and remedies of the Department for non-compliance. (5-3-03)

002. -- 009. (RESERVED)

010. DEFINITIONS.

The Idaho State Department of Agriculture adopts the definitions set forth in Section 69-502, Idaho Code. In addition the following definitions apply to 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. (3-15-02)

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

03. **Credit-Sale Contract.** An agreement in writing containing the provisions of Section 69-514, Idaho Code, and where the producer transfers a specific quantity of commodity to a warehouse or dealer with a price or payment to the producer by the warehouse or dealer to be made at a later date or on the occurrence of a specific event expressed in the agreement. (3-15-02)

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

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

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

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

011. ABBREVIATIONS.

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

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

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

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. (5-3-03)

02. **Return of Suspended or Terminated License.** If a license issued to a commodity dealer has lapsed or is suspended, revoked or cancelled by the Director, 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. ()

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

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: (5-3-03)

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

03. Scale Weight Tickets. Scale weight tickets, except tickets for electronic scales that are recorded and maintained electronically, shall be pre-numbered 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. (5-3-03)
- b.** Tickets issued by the commodity dealer. (5-3-03)
- c.** Tickets returned to and cancelled by the commodity dealer. (5-3-03)

101. -- 149. (RESERVED)

150. INSPECTION.

For the purpose of inspection the hours of 8 a.m. to 5 p.m., Monday through Friday, except holidays, 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. (7-1-93)

151. -- 199. (RESERVED)

200. LICENSING APPLICATION FORMAT.

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

a. The full name of the person applying for the license and whether the applicant is an individual, partnership, association, corporation or other entity. (7-1-93)

b. The full name of each member of the firm or partnership, or the names of the officers and directors of the company or limited liability company, association, or corporation. (5-3-03)

c. The address of the principal place of business. (7-1-93)

d. The names of any businesses previously owned or operated by the applicant or any members, officers or directors if the applicant is a corporation, partnership or association. (7-1-93)

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

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

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

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

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

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

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

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

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

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

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

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

201. -- 249. (RESERVED)

250. RECORDS -- SEPARATE.

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

251. -- 299. (RESERVED)

300. FINANCIAL STATEMENT.

01. Financial Statements. In order to obtain a commodity dealer's license, the applicant shall submit a current financial statement 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. ()

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. (5-3-03)

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

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

c. The request is made prior to the date the financial statement is due. (5-3-03)

d. The director may make exceptions to the financial statement requirements provided sufficient cause is provided and to do so would be in the best interest of the state. (5-3-03)

03. Statement Content. The statement shall include: (7-1-93)

a. A balance sheet. (7-1-93)

b. An income statement that includes annual gross sales of commodities purchased from producers covered under the act. (7-1-93)

c. A statement of cash flows. (7-1-93)

d. All accompanying notes to the financial statement. (7-1-93)

301. -- 349. (RESERVED)

350. SHIPPING RECORDS.

Every dealer who ships by truck shall maintain a truck shipping record and every dealer who ships by rail 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. (7-1-93)

02. Buyer and Destination. The buyer and destination of the commodity shipped. (7-1-93)

03. Date. The date the agricultural commodities were shipped. (7-1-93)

04. Amount and Type. The amount and type of agricultural commodities shipped. (7-1-93)

05. Identification Number. The truck identification or car number. (7-1-93)

351. -- 399. (RESERVED)

400. SCALE TICKETS.

If a dealer has access to a scale 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.

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. (3-16-04)

02. Single Bond, Irrevocable Letter of Credit or Certificate of Deposit. For the purposes of licensing as a commodity dealer pursuant to Title 69, Chapter 5, Idaho Code, and a seed buyer pursuant to Title 22, Chapter 51, Idaho Code, a single bond, irrevocable letter of credit or certificate of deposit shall be fixed at whichever of the following amounts is greater: (3-16-04)

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

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

03. Additional Bonding Requirements. If it appears the licensee does not have the ability to pay producers for commodities purchased, or when it appears the licensee does not have a sufficient net worth to outstanding financial obligations ratio, the licensee may be required to post a bond or other additional acceptable security in the amount of two thousand dollars (\$2,000) for each one thousand dollars (\$1,000) or fraction thereof of deficiency. (3-15-02)

452. -- 499. (RESERVED)

500. COMMODITY INDEMNITY FUND.

The Commodity Indemnity Fund 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. (3-16-04)

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. (5-3-03)

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

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

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

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

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

501. NPE CONTRACT CLAIMS ON THE FUND.

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

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

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

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

502. HOW ASSESSMENTS ARE TO BE CALCULATED.

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

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

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

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

503. RECORDKEEPING AND PAYMENT SCHEDULE.

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

02. Payment Due Dates. On or before the twentieth day of the month following the close of the quarter, on a form prescribed by the Department, the assessments imposed by Title 69, Chapters 2 and 5, Idaho Code, collected by warehouses and dealers, are due and payable to the Department. A quarter will consist of three (3) months beginning on the first day of January, April, July, and October. If assessment is paid by mail the payment must be postmarked not later than the twentieth day of the month following the close of the quarter to avoid interest and penalty charges. (3-16-04)

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

504. TRUST FUNDS.

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

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

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

506. RETURN OF COMMODITY DUE TO FAILURE.

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

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

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

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

507. -- 599. (RESERVED)

600. UNLAWFUL PRACTICES.

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

601. -- 999. (RESERVED)

02.02.14 – RULES FOR WEIGHTS AND MEASURES

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 71-111, 71-121, 71-232, 71-233, 71-236, 71-241, and 71-408, Idaho Code. (2-13-04)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is “Rules for Weights and Measures.” (2-13-04)

02. Scope. This chapter has the following scope: to govern the checking, testing, and examination of weighing and measuring devices, packages and labels; to govern consumer and non-consumer packaging and labeling; to govern the registration of servicemen and service agencies for commercial weighing and measuring devices; to govern the licensing of weighmasters, and to govern the licensing of commercially used weighing and measuring devices and to set maximum annual license fees for weighing and measuring devices. (2-13-04)

002. – 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

01. Required Reference Materials. The 2019 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. (4-11-19)

02. Required Reference Materials for Checking Prepackaged Commodities. The 2019 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. (4-11-19)

03. Specifications for Diesel Fuel and Biodiesel Fuel. American Society of Testing and Materials (ASTM) D975-16a, “Standard Specification for Diesel Fuel Oils,” and ASTM D6751-15ce¹, “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). (3-28-18)

04. Specifications for Gasoline. American Society of Testing and Materials (ASTM) D4814-16ce¹, “Standard Specification for Automotive Spark-Ignition Engine Fuel”, dated November 15, 2016, is hereby incorporated by reference and is the specification for gasoline. (3-28-18)

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. (4-7-11)

005. -- 009. (RESERVED)

010. DEFINITIONS.

In addition to the definitions set forth in [Sections 71-108 and 71-401](#), Idaho Code, the following definitions apply to this rule: ()

01. Alcohol. A volatile flammable liquid having the general formula $C_nH_{(2n+1)}OH$ used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles, and commonly or commercially known or sold as an alcohol, including ethanol and methanol. ()

02. Biodiesel. A fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100. (4-2-08)

03. Biodiesel Blends. A fuel comprised of a blend of biodiesel fuel with petroleum-based diesel fuel, designated BXX. In the abbreviation BXX, the XX represents the volume percentage of biodiesel fuel in the blend. (4-2-08)

04. Certificate of Conformance. A document issued by the National Institute of Standards and Technology based on testing in participating laboratories, said document constituting evidence of conformance of a type with the requirements of National Institute of Standards and Technology Handbooks 44, 105-1, 105-2, 105-3. ()

05. Compressed Natural Gas (CNG). Natural Gas which has been compressed and dispensed into fuel storage containers and is suitable for use as an engine fuel. (3-28-18)

06. Commercial Weighing and Measuring Device. Any weight or measure or weighing or measuring device commercially used or employed in establishing the size, quantity, extent, area or measurement of quantities, things, product, or articles for distribution or consumption, purchased, offered or submitted for sale, hire, or award, or in computing any basic charge or payment for services rendered on the basis of weight or measure, and must also include any accessory attached to or used in connection with a commercial weighing or measuring device when such accessory is so designed or installed that its operation affects, or may affect, the accuracy of the device. ()

07. Co-Solvent. An alcohol or any other chemical with higher molecular weight than methanol or ethanol which is blended with either or both to prevent phase separation in gasoline. ()

08. Diesel Gallon Equivalent (DGE). Equivalent to six point three hundred eighty-four thousandths (6.384) pounds of compressed natural gas or six point fifty-nine thousandths (6.059) pounds of liquefied natural gas. (3-28-18)

09. Ethanol. Ethyl alcohol, a flammable liquid having the formula C₂H₅OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles, and commonly or commercially known or sold as ethanol or ethyl alcohol. ()

10. Gasoline. Any fuel sold for use in motor vehicles and commonly or commercially known or sold as gasoline whether leaded or unleaded. ()

11. Gasoline Gallon Equivalent (GGE). Equivalent to five point six hundred sixty thousandths (5.660) pounds (two point five hundred sixty- seven thousandths (2.567) kilograms) of compressed natural gas. (3-28-18)

12. Gasoline Liter Equivalent (GLE). Equivalent to one point four hundred ninety-five thousandths (1.495) pounds (zero point six hundred seventy-eight thousandths (0.678) kilograms) of compressed natural gas. (3-28-18)

13. Gasoline-Oxygenate Blend. For labeling purposes, any spark-ignition motor fuel containing one percent (1%) or more by volume of oxygenates or combination of oxygenates, such as but not restricted to ethanol, methanol, or methyl-tertiary-butyl ether. ()

14. Label. Any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon or adjacent to a consumer commodity or a package containing any consumer commodity, for purposes of branding, identifying, or giving any information with respect to the commodity or to the contents of the package, except an inspector's tag or other non-promotional matter affixed to or appearing upon a consumer commodity will not be deemed to be a label requiring the repetition of label information required by this rule. ()

15. Liquefied Natural Gas (LNG). Natural gas that has been liquefied at minus one hundred sixty-two degrees Celsius (-162 °C) (minus two hundred sixty degrees Fahrenheit (-260 °F)) and stored in insulated cryogenic tanks for use as an engine fuel. (3-28-18)

16. Methanol. Methyl alcohol, a flammable liquid having the formula CH₃OH used or sold for the

purpose of blending or mixing with gasoline for use in motor vehicles, and commonly or commercially known or sold as methanol or methyl alcohol. ()

17. Motor Vehicles. Include all vehicles, vessels, watercraft, engines, machines, or mechanical contrivances that are propelled by internal combustion engines or motors. ()

18. Multi-Unit Package. A package containing two (2) or more individual packages of the same commodity, in the same quantity, with the individual packages intended to be sold as part of the multi-unit package but capable of being individually sold in full compliance with all requirements of this rule. ()

19. National Type Evaluation Program. A program of cooperation between the National Institute of Standards and Technology, the National Conference on Weights and Measures, the states, and the private sector for determining, on a uniform basis, conformance of a type with the relevant provisions of the National Institute of Standards and Technology Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," National Institute of Standards and Technology Handbook 105-1, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Field Standard Weights (NIST Class F)," National Institute of Standards and Technology Handbook 105-2, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Field Standard Measuring Flask," or National Institute of Standards and Technology Handbook 105-3, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards." ()

20. Package. Any commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale. ()

21. Participating Laboratory. Any State Measurement Laboratory that has been certified by the National Institute of Standards and Technology, in accordance with its program for the Certification of Capability of State Measurement Laboratories, to conduct a type of evaluation under the National Type Evaluation Program. ()

22. Principal Display Panel or Panels. That part, or those parts, of a label that is, or are, so designed as to most likely be displayed, presented, shown, or examined under normal and customary conditions of display and purchase. Wherever a principal display panel appears more than once on a package, all requirements pertaining to the "principal display panel" shall pertain to all such "principal display panels." ()

23. Random Package. A package that is one (1) of a lot, shipment, or delivery of packages of the same consumer commodity with varying weights; that is, packages of the same consumer commodity with no fixed pattern of weight. ()

24. Registered Service Agency. Any agency, firm, company or corporation which, for hire, award, commission or any other payment of any kind, installs, services, repairs or reconditions a commercial weighing or measuring device, and which voluntarily registers itself as such with the Bureau of Weights and Measures. Under agency registration, identification of individual servicemen is required. ()

25. Registered Serviceman. Any individual who for hire, award, commission or any other payment of any kind, installs, services, repairs or reconditions a commercial weighing or measuring device, and who voluntarily registers himself as such with the Bureau of Weights and Measures. ()

26. Retail Dealer. Any person who owns, operates, controls, or supervises an establishment at which gasoline is sold or offered for sale to the public. ()

27. Sale from Bulk. The sale of commodities when the quantity is determined at the time of sale. ()

28. Spark-Ignition Motor Fuel. Gasoline and its blends with oxygenates such as co-solvent and ethers (also "spark-ignition engine fuel"). ()

29. Type. A model or models of a particular measurement system, instrument, element or a field standard that positively identifies the design. A specific type may vary in its measurement ranges, size, performance, and operating characteristics as specified in the Certificate of Conformance. ()

30. Type Evaluation. The testing, examination, and evaluation of a type by a participating laboratory under the National Type Evaluation Program. ()

31. Wholesale Dealer. Any person engaged in the sale of gasoline to others who the seller knows or has reasonable cause to believe intends to resell the gasoline in the same or an altered form to another. ()

011. ABBREVIATIONS.

01. ISDA. Idaho State Department of Agriculture. (2-13-04)

02. NIST. National Institute of Standards and Technology. (2-13-04)

012. LICENSE REQUIRED FOR COMMERCIALY-USED WEIGHING OR MEASURING INSTRUMENT OR DEVICE.

Weighing or measuring instruments or devices used for commercial purposes in the State of Idaho must be licensed annually. (2-13-04)

01. Annual License. No person may operate or use for commercial purposes within the state any weighing or measuring instrument or device specified in Section 71-113, Idaho Code, that is not licensed in accordance with the requirements of this rule. (2-13-04)

02. Specific Device. Any license issued applies only to the instrument or device identified by Device Code, as listed in TABLE 1-A, and rated capacity on the application for license. The license is applicable to an equivalent replacement for the original instrument or device, within the annual license period. (2-13-04)

013. LICENSE APPLICATION.

License application must be submitted on forms provided by ISDA and accompanied with the proper fee as established in this rule. The capacity of an instrument or device will be determined by the manufacturer's rated capacity. (2-13-04)

014. ANNUAL LICENSE PERIOD.

Annual license applications and fees are due February 1 of each year and all licenses expire on January 31 of the following year. (4-6-15)

015. LICENSE RENEWALS.

Any device or instrument will be considered rejected if the license for that device or instrument is not renewed thirty (30) days after expiration. A person failing to pay the annual license fee after forty-five (45) days following the expiration date, forfeits the right to use the instrument or device for commercial purposes, and the instrument or device may be taken out of service by the ISDA Bureau of Weights and Measures until the license fee is paid. (2-13-04)

016. MAXIMUM AND MINIMUM LICENSE FEE SCHEDULE FOR COMMERCIALY-USED WEIGHING AND MEASURING INSTRUMENTS AND DEVICES.

The annual license fee for instruments and devices is based on manufacturer's rated capacity. The minimum annual license fee for commercially used instrument and device types is twelve dollars (\$12) when licensing a single device.

TABLE 1-A		
DEVICE CODE	KEY	FEE
A	Scales ≤ 50 lb	\$6.00
B	Scales > 50 ≤ 1,159 lb	\$12.00
C	Scales ≥ 1,160 ≤ 7,499 lb	\$24.00
D	Scales ≥ 7,500 ≤ 59,999 lb	\$100.00
E & F	Scales 60,000 lbs or more	\$100.00
G	Meter < 20 gpm	\$6.00
H	Meter ≥ 30 < 150 gpm	\$33.00
I	Meter ≥ 150 gpm	\$40.00
J	LPG dispenser	\$40.00
K & L	LPG temperature compensated	\$60.00
M	Cordage or Fabric meter	\$5.00
N	Natural gas motor fuel devices	\$60.00
O	Bulk oil meter	\$35.00
T	Meter > 20 ≤ 30 gpm or fuel additive metering devices	\$10.00

(3-20-14)

017. VOLUNTARY INSPECTION OF WEIGHING AND MEASURING INSTRUMENTS AND DEVICES, FEES.

In addition to commercially used weighing and measuring instruments and devices, ISDA Bureau of Weights and Measures, at the request of an owner or user thereof, may inspect and test non-commercial weighing or measuring instruments or devices to ascertain if they are correct. Any entity making such special request must pay the Bureau of Weights and Measures the cost of the inspection as listed in Section 100. (2-13-04)

018. LICENSE DISPLAYED.

Any owner or user of commercially used weighing and measuring instruments and devices must display the current annual license for those instruments and devices in a prominent place at the same physical location where those devices are installed or used. In the case of devices installed on vehicles, the license must be carried in the vehicle on which the device is installed. (2-13-04)

019. -- 099. (RESERVED)

100. CHARGES FOR SPECIAL REQUEST TESTING OR EXAMINATION.

01. Mileage Charges. (7-1-93)

a. Fifty-five cents (\$.55) a mile for car travel. (4-9-09)

b. Seventy-five cents (\$.75) a mile for pickup and prover. (4-9-09)

c. Two dollars and fifty cents (\$2.50) a mile for heavy capacity scale trucks. (4-9-09)

02. Fee Collection. Such fees will be collected from place where working and back. Where more than one (1) request is to be handled on same trip, the mileage will be prorated between the parties requesting the service. (7-1-93)

03. Personnel Charges. There will also be an hourly personnel charge of thirty dollars (\$30) per hour per person for special request testing, chargeable during the time of the actual testing and examination of devices and for driving time. (4-9-09)

101. -- 149. (RESERVED)

150. PACKAGING AND LABELING RULES.

The application of this rule applies to packages and to commodities in package form, but does not apply to: (7-1-93)

01. Inner Wrappings. Inner wrappings not intended to be individually sold to the customer. (7-1-93)

02. Shipping Containers. Shipping containers or wrapping used solely for the transportation of any commodities in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors, but in no event does this exclusion apply to packages of consumer or non-consumer commodities, as defined herein. (7-1-93)

03. Auxiliary Containers. Auxiliary containers or outer wrappings used to deliver packages of such commodities to retail customers if such containers or wrappings bear no printed matter pertaining to any particular commodity. (7-1-93)

04. Retail Display Containers. Containers used for retail tray pack displays when the container itself is not intended to be sold (e.g., the tray that is used to display individual envelopes of seasonings, gravies, etc., and the tray itself is not intended to be sold). (7-1-93)

05. Unpackaged Commodities. Commodities put up in variable weights and sizes for sale intact and intended to be either weighed or measured at the time of sale, where no package quantities are represented, and where the method of sale is clearly indicated in close proximity to the quantity being sold. (7-1-93)

06. Open Carriers. Open carriers and transparent wrappers or carriers for containers when the wrappers or carriers do not bear any written, printed, or graphic matter obscuring the label information required by this rule. (7-1-93)

151. -- 169. (RESERVED)

170. IDENTITY.

01. Declaration of Identity -- Consumer Package. A declaration of identity on a consumer package must appear on the principal display panel, and positively identify the commodity in the package by its common or usual name, description, generic term, or the like. (7-1-93)

02. Parallel Identity Declaration -- Consumer Package. A declaration of identity on a consumer package must appear generally parallel to the base on which the package rests as it is designed to be displayed. (7-1-93)

03. Declaration of Identity -- Non-Consumer Package. A declaration of identity on a non-consumer package must appear on the outside of a package and positively identify the commodity in the package by its common or usual name, description, generic term, or the like. (7-1-93)

04. Declaration of Responsibility -- Consumer and Non-Consumer Packages. (7-1-93)

a. Any package kept, offered, or exposed for sale, or sold, at any place other than on the premises where packed must specify conspicuously on the label of the package the name and address of the manufacturer, packer, or distributor. The name must be the actual corporate name, or, when not incorporated, the name under which the business is conducted. The address must include street address, city, state, and zip code; however, the street address may be omitted if this is shown in a current city directory or telephone directory. The requirement for inclusion of the zip code must apply only to labels that have been developed or revised after July 1, 1970. (7-1-93)

b. If a person manufactures, packs, or distributes a commodity at a place other than his principal place of business, the label may state the principal place of business in lieu of the actual place where the commodity was manufactured or packed or is to be distributed, unless such statement would be misleading. Where the commodity is not manufactured by the person whose name appears on the label, the name must be qualified by a phrase that reveals the connection such person has with such commodity, such as "Manufactured for and packed by," "Distributed by," or any other wording of similar import that expresses the facts. (7-1-93)

171. DECLARATION OF QUANTITY -- CONSUMER PACKAGES.

01. Largest Whole Unit. Where this rule requires that the quantity declaration be in terms of the largest whole unit, the declaration must, with respect to a particular package, be in terms of the largest whole unit of weight or measure, with any remainder expressed in: (7-1-93)

a. Common or decimal fractions of such largest whole unit; or (7-1-93)

b. The next smaller whole unit, or units, with any further remainder in terms of common or decimal fractions of the smallest unit present in the quantity declaration. (7-1-93)

02. Net Quantity. A declaration of net quantity of the commodity in the package, exclusive of wrappers and any other material packed with such commodity, must appear on the principal display panel of a consumer package and, unless otherwise specified in this rule (see Subsections 171.06 through 171.08) must be in terms of the largest whole unit. (7-1-93)

03. Use of "Net Weight." The term "net weight" must be used in conjunction with the declaration of quantity in terms of weight; the term may either precede or follow the declaration of weight. (7-1-93)

04. Lines of Print or Type. A declaration of quantity may appear on one (1) or more lines of print or type. (7-1-93)

05. Terms -- Weight, Liquid Measures, or Count. The declaration of the quantity of a particular commodity must be expressed in terms of liquid measure if the commodity is liquid, or in terms of weight if the commodity is solid, semisolid, viscous, or a mixture of solid and liquid, or in terms of numerical count. However, if there exists a firmly established general consumer usage and trade custom with respect to the terms used in expressing a declaration of quantity of a particular commodity, such declaration of quantity may be expressed in its traditional terms, if such traditional declaration gives accurate and adequate information as to the quantity of the commodity. (7-1-93)

06. Combination Declaration. (7-1-93)

a. A declaration of quantity in terms of weight must be combined with appropriate declarations of the measure, count, and size of the individual units unless a declaration of weight alone is fully informative. (7-1-93)

b. A declaration of quantity in terms of measure must be combined with appropriate declarations of the weight, count, and size of the individual units unless a declaration of measure alone is fully informative. (7-1-93)

c. A declaration of quantity in terms of count must be combined with appropriate declarations of the weight, measure, and size of the individual units unless a declaration of count alone is fully informative. (7-1-93)

07. Units -- Weight, Measure. A declaration of quantity must be as follows, however provided that in the case of a commodity packed for export shipment, the declaration of quantity may be in terms of the metric system

of weight or measure. (7-1-93)

a. In units of weight will be in terms of the avoirdupois pound or ounce; (7-1-93)

b. In units of liquid measure will be in terms of the United States gallon of two hundred thirty-one (231) cubic inches or liquid-quart, liquid-pint, or fluid-ounce subdivisions of the gallon, and shall express the volume at sixty-eight degrees (68 Degrees F), twenty degrees (20 Degrees C), except in the case of petroleum products, for which the declaration must express the volume at sixty degrees (60 Degrees F), fifteen point six degrees (15.6 Degrees C), and except also in the case of a commodity that is normally sold and consumed while frozen, for which the declaration must express the volume at the frozen temperature, and except also in the case of a commodity that is normally sold in the refrigerated state, for which the declaration must express the volume at forty degrees (40 Degrees F), four degrees (4 Degrees C); (7-1-93)

c. In units of linear measure must be in terms of the yard, foot, or inch; (7-1-93)

d. In units of area measure, must be in terms of the square yard, square foot, or square inch; (7-1-93)

e. In units of dry measure must be in terms of the United States bushel of two thousand one hundred fifty point forty-two (2,150.42) cubic inches, or peck, dry-quart, and dry-pint subdivisions of the bushel; (7-1-93)

f. In units of cubic measure must be in terms of the cubic yard, cubic foot, or cubic inch. (7-1-93)

08. Abbreviations. Any of the following abbreviations, and none other, may be employed in the quantity statement on a package of commodity. (There normally are no periods following, nor plural forms of, these abbreviations. For example, “oz” is the abbreviation for both “ounce” and “ounces.”)

Table 1

avoirdupois - avdp	quart - qt
cubic - cu	square - sq
feet or foot - ft	weight - wt
fluid - fl	yard - yd
gallon - gal	cubic centimeter - cc
inch - in	gram - g
liquid - liq	kilogram - kg
ounce - oz	microgram - mcg
pint - pt	milligram - mg
pound - lb	milliliter - ml

(7-1-93)

09. Units with Two or More Meanings. When the term “ounce” is employed in a declaration of liquid quantity, the declaration must identify the particular meaning of the term by the use of the term “fluid”; however, such distinction may be omitted when, by association of terms (for example, as in “one (1) pint four (4) ounces”), the proper meaning is obvious. Whenever the declaration of quantity is in terms of the dry pint or dry quart, the declaration must include the word “dry.” (7-1-93)

172. PRESCRIBED UNITS.

01. Less Than One Foot, One Square Foot, One Pound, or One Pint. The declaration of quantity

must be expressed as follows, provided, that the quantity declaration appearing on a random package may be expressed in terms of decimal fractions of the largest appropriate unit, the fraction being carried out to not more than two (2) decimal places: (7-1-93)

- a. In the case of length measure of less than one (1) foot, inches, and fractions of inches; (7-1-93)
 - b. In the case of area measure of less than one (1) square foot, square inches, and fractions of square inches; (7-1-93)
 - c. In the case of weight of less than one (1) pound, ounces, and fractions of ounces; (7-1-93)
 - d. In the case of fluid measure of less than one (1) pint, ounces, and fractions of ounces: (7-1-93)
- 02. Four Feet, Four Square Feet, Four Pounds, One Gallon, or More.** (7-1-93)

- a. In the case of length measure of four (4) feet or more the declaration of quantity must be expressed in terms of feet, followed in parentheses by a declaration of yards and common or decimal fractions of the yard, or in terms of feet followed in parentheses by a declaration of yards with any remainder in terms of feet and inches. (7-1-93)
- b. In the case of area measure of four (4) square feet or more; (7-1-93)
- c. In the case of weight of four (4) pounds or more; (7-1-93)
- d. In the case of fluid measure of one (1) gallon or more the declaration of quantity must be expressed in terms of the largest whole unit. (7-1-93)

03. Weight -- Dual Quantity Declaration. On packages containing one (1) pound or more but less than four (4) pounds, the declaration must be expressed in ounces and, in addition, be followed by a declaration in parentheses, expressed in terms of the largest whole unit, provided, that the quantity declaration appearing on a random package may be expressed in terms of pounds and decimal fractions of the pound carried out to not more than two (2) decimal places. (7-1-93)

04. Fluid Measure -- Dual Quantity Declaration. On packages containing (1) one pint or more but less than one (1) gallon, the declaration must be expressed in ounces and, in addition, be followed by a declaration in parentheses, expressed in terms of the largest whole unit. (7-1-93)

05. Length Measure -- Dual Quantity Declaration. On packages containing (1) one foot but less than four (4) feet, the declaration must be expressed in inches and, in addition, be followed by a declaration in parentheses, expressed in terms of the largest whole unit. (7-1-93)

06. Area Measure -- Dual Quantity Declaration. On packages containing (1) one square foot but less than four (4) square feet, the declaration must be expressed in square inches and, in addition, be followed by a declaration in parentheses, expressed in terms of the largest whole unit. (7-1-93)

07. Bidimensional Commodities. For bidimensional commodities (including roll-type commodities) the quantity declaration must be expressed: (7-1-93)

- a. If less than one (1) square foot, in terms of linear inches and fractions of linear inches; (7-1-93)
- b. If at least one (1) square foot but less than four (4) square feet, in terms of square inches followed in parentheses by a declaration of both the length and width, each being in terms of the largest whole unit, provided, that: (7-1-93)
 - i. No square inch declaration is required for a bidimensional commodity of four (4) inches width or less; (7-1-93)

- ii. A dimension of less than two (2) feet may be stated in inches within the parenthetical; and (7-1-93)
- iii. Commodities consisting of usable individual units (except roll-type commodities with individual usable units created by perforations, see Subsection 173.03) require a declaration of unit area but not a declaration of total area of all such units. (7-1-93)
- c. If four (4) square feet or more, in terms of square feet followed in parentheses by a declaration of the length and width in terms of the largest whole unit, provided that: (7-1-93)
 - i. No declaration in square feet is required for a bidimensional commodity with a width of four (4) inches or less; (7-1-93)
 - ii. A dimension of less than two (2) feet may be stated in inches within the parenthetical; and (7-1-93)
 - iii. No declaration in square feet is required for commodities for which the length and width measurements are critical in terms of end use (such as tablecloths or bedsheets) if such commodities clearly present the length and width measurements on the label. (7-1-93)

173. POLYETHYLENE SHEETING.

- 01. Packages.** All packages of polyethylene sheeting must be labeled as to quantity in accordance with the following: (7-1-93)
 - a. Actual length; (7-1-93)
 - b. Actual width; (7-1-93)
 - c. Actual thickness; and (7-1-93)
 - d. Actual weight of each individual unit. (7-1-93)
- 02. Bulk.** All polyethylene sold from bulk must be accompanied by a delivery ticket with the following information: (7-1-93)
 - a. The identity; (7-1-93)
 - b. Actual length, width, thickness, and weight of each individual unit; (7-1-93)
 - c. The number of individual units; (7-1-93)
 - d. The total weight of all the units; (7-1-93)
 - e. The name and address of both the vendor and purchaser; and (7-1-93)
 - f. The date delivered or the date shipped. (7-1-93)
- 03. Count -- Ply.** If the commodity is in individually usable units of one (1) or more components or ply, the quantity declaration must, in addition to complying with other applicable quantity declaration requirements of this rule, include the number of ply and the total number of usable units. Roll-type commodities, when perforated so as to identify individual usable units, must not be deemed to be made up of usable units; however, such roll-type commodities must be labeled in terms of: (7-1-93)
 - a. Total area measurement; (7-1-93)
 - b. Number of ply; (7-1-93)
 - c. Count of usable units; and (7-1-93)

d. Dimensions of a single usable unit. (7-1-93)

04. Fractions. A statement of net quantity of contents of any consumer commodity may contain common or decimal fractions. A common fraction must be in terms of halves (1/2), quarters (1/4), eighths (1/8), sixteenths (1/16), or thirty-seconds (1/32), except that: (7-1-93)

a. If there exists a firmly established general consumer usage and trade custom of employing different common fractions in the net quantity declaration of a particular commodity, they may be employed; and (7-1-93)

b. If linear measurements are required in terms of yards or feet, common fractions may be in terms of thirds (1/3). A common fraction must be reduced to its lowest terms; a decimal fraction must not be carried out to more than two (2) places. (7-1-93)

174. SUPPLEMENTARY DECLARATIONS.

01. Supplementary Quantity Declarations. The required quantity declaration may be supplemented by one (1) or more accurate declarations of weight, measure, or count, such declaration appearing other than on a principal display panel. Such supplemental statement of quantity of contents must not include any terms qualifying a unit of weight, measure, or count that tends to exaggerate the amount of commodity contained in the package (e.g., “giant” quart, “full” gallon, “when packed,” “minimum,” or words of similar import). (7-1-93)

02. Metric System Declarations. A separate statement of the net quantity of contents in terms of the metric system is not regarded as a supplemental statement, and a statement of quantity in terms of the metric system of weight or measure may also appear on the principal display panel or on other panels. The metric system may be used as provided for by Section 71-229, Idaho Code, in lieu of the traditional system of weights and measures by substituting the proper metric terms where applicable in these rules. (7-1-93)

03. Qualification of Declaration Prohibited. In no case will any declaration of quantity be qualified by the addition of the words “when packed,” “minimum,” or “not less than,” or any words of similar import, nor any unit of weight, measure, or count be qualified by any term (such as “jumbo,” “giant,” “full,” or the like) that tends to exaggerate the amount of commodity. (7-1-93)

175. -- 179. (RESERVED)

180. DECLARATION OF QUANTITY -- NON-CONSUMER PACKAGES.

01. Location. Non-consumer packages must bear on the outside a declaration of the net quantity of contents. Such declaration must be in terms of the largest whole unit (see Subsection 171.01 Largest Whole Unit). ()

02. Terms -- Weight, Liquid Measure, or Count. The declaration of the quantity of a particular commodity must be expressed in terms of liquid measure if the commodity is liquid, or in terms of weight if the commodity is solid, semisolid, viscous, or a mixture of solid and liquid, or in terms of numerical count. However, if there exists a firmly established general consumer usage and trade custom with respect to the terms used in expressing a declaration of quantity of a particular commodity, such declaration of quantity may be expressed in its traditional terms, if such traditional declaration gives accurate and adequate information as to the quantity of the commodity. (7-1-93)

03. Units -- Weight, Measure. A declaration of quantity: (7-1-93)

a. In units of weight must be in terms of the avoirdupois pound or ounce; (7-1-93)

b. In units of liquid measure must be in terms of the United States gallon of two hundred thirty-one (231) cubic inches or liquid-quart, liquid-pint, or fluid-ounce subdivisions of the gallon, and must express the volume at sixty-eight (68) degrees F, twenty (20) degrees C, except in the case of petroleum products, for which the declaration must express the volume at sixty (60) degrees F, fifteen point six (15.6) degrees C, and except also in the

case of a commodity that is normally sold and consumed while frozen for which the declaration must express the volume at the frozen temperature, and except also in the case of a commodity that is normally sold in the refrigerated state, for which the declaration must express the volume at forty (40) degrees F, four (4) degrees C; (7-1-93)

- c. In units of linear measure must be in terms of the yard, foot, or inch; (7-1-93)
- d. In units of area measure, must be in terms of the square yard, square foot, or square inch; (7-1-93)
- e. In units of dry measure shall be in terms of the United States bushel of two thousand one hundred fifty and forty-two one hundredths (2,150.42) cubic inches, or peck, dry-quart and dry-pint subdivisions of the bushel; (7-1-93)
- f. In units of cubic measure must be in terms of the cubic yard, cubic foot, or cubic inch, provided that nothing in this subsection prohibits the labeling of non-consumer packages in terms of units on the metric system. (7-1-93)

04. Abbreviations. Any generally accepted abbreviation of a unit name may be employed in the quantity statement on a non-consumer package of commodity. (For commonly accepted abbreviations, see Subsection 171.08, Abbreviations.) (7-1-93)

05. Character of Declaration -- Average. The average quantity of contents in the non-consumer package of a particular lot, shipment, or delivery must at least equal the declared quantity, and no unreasonable shortage in any package is permitted, even though overages in other packages in the same shipment, delivery, or lot compensate for such shortage. (7-1-93)

181. -- 199. (RESERVED)

200. PROMINENCE AND PLACEMENT -- CONSUMER PACKAGES.

01. General. All information required to appear on a consumer package must appear thereon in the English language and be prominent, definite, and plain, and be conspicuous as to size and style of letters and numbers and as to color of letters and numbers in contrast to color of background. Any required information that is either in hand lettering or hand script must be entirely clear and equal to printing in legibility. (7-1-93)

02. Location. The declaration or declarations of quantity of the contents of a package must appear in the bottom thirty percent (30%) of the principal display panel or panels, except as otherwise provided in Subsection 220.07, Cylindrical Containers. (7-1-93)

03. Style of Type or Lettering. The declaration or declarations of quantity must be in such a style of type or lettering as to be boldly, clearly, and conspicuously presented with respect to other type, lettering, or graphic material on the package, except that a declaration of net quantity blown, formed or molded on a glass or plastic surface is permissible when all label information is blown, formed, or molded on the surface. (7-1-93)

04. Color Contrast. The declaration or declarations of quantity must be in a color that contrasts conspicuously with its background, except that a declaration of net quantity blown, formed, or molded on a glass or plastic surface is not required to be presented in a contrasting color if no required label information is on the surface in a contrasting color. (7-1-93)

05. Free Area. The area surrounding the quantity declaration must be free of printed information as follows: (7-1-93)

- a. Above and below, by a space equal to at least the height of the lettering in the declaration: and (7-1-93)
- b. To the left and right, by a space equal to twice the width of the letter "N" of the style and size of type used in the declaration. (7-1-93)

06. Parallel Quantity Declaration. The quantity declaration must be presented in such a manner as to be generally parallel to the declaration of identity and to the base on which the package rests as it is designed to be displayed. (7-1-93)

07. Calculation of Area of Principal Display Panel for Purposes of Type Size. The square-inch area of the principal display panel must be as follows: (7-1-93)

a. In the case of a rectangular container, one (1) entire side, which properly can be considered to be the principal display panel, the product of the height times the width of that side; (7-1-93)

b. In the case of a cylindrical or nearly cylindrical container, forty percent (40%) of the product of the height of the container times the circumference; or (7-1-93)

c. In the case of any other shaped container, forty percent (40%) of the total surface of the container, unless such container presents an obvious principal display panel (e.g., the top of a triangular or circular package of cheese, or the top of a can of shoe polish), the area must consist of the entire such surface. (7-1-93)

d. Determination of the principal display panel excludes tops, bottoms, flanges at tops and bottoms of cans, and shoulders and necks of bottles or jars. (7-1-93)

08. Minimum Height of Numbers and Letters. The height of any letter or number in the required quantity declaration must be not less than that shown in Subsection 200.10, Table 1 with respect to the square-inch area of the panel, and the height of each number of a common fraction must meet one-half (1/2) the minimum height standards. (7-1-93)

09. Numbers and Letters -- Proportion. No number or letter may be more than three (3) times as high as it is wide. (7-1-93)

10. Minimum Height of Numbers and Letters -- Table 1.

Table 2

Square-inch Area of Principal Display Panel	Minimum Height of Numbers and Letters	Minimum Height: Label Information Blown, Formed, or Molded on Surface of Container
5 square inches and less	1/16 inch	1/8 inch
Greater than 5 square inches and not greater than 25 square inches.	inch	3/16 inch
Greater than 25 square inches and not greater than 100 square inches.	3/16 inch	1/4 inch
Greater than 100 square inches and not greater than 400 square inches.	1/4 inch	5/16 inch
Greater than 400 square inches.	1/2 inch	9/16 inch

(7-1-93)

201. -- 209. (RESERVED)

210. PROMINENCE AND PLACEMENT -- NON-CONSUMER PACKAGES GENERAL. All information required to appear on a non-consumer package must be definitely and clearly stated thereon in the English language. Any required information that is either in hand lettering or hand script must be entirely clear and equal to printing in legibility. (7-1-93)

211. -- 219. (RESERVED)

220. REQUIREMENTS -- SPECIFIC CONSUMER COMMODITIES, PACKAGES, CONTAINERS.

01. Display Card Package. For an individual package affixed to a display card, or for a commodity and display card together comprising a package, the type size of the quantity declaration is governed by the dimensions of the display card. (7-1-93)

02. Eggs. When cartons containing twelve (12) eggs have been designed so as to permit division in half by the retail purchaser, the required quantity declaration must be so positioned as to have its context destroyed when the carton is divided. (7-1-93)

03. Aerosols and Similar Pressurized Containers. The declaration of quantity on an aerosol package, and on a similar pressurized package, must disclose the net quantity of the commodity (including propellant), in terms of weight, that will be expelled when the instructions for use as shown on the container are followed. (7-1-93)

04. Multi-Unit Packages. Any package containing more than one (1) individual "commodity in package form" (see Subsection 151.01) of the same commodity must bear on the outside of the package a declaration of the following: (7-1-93)

a. The number of individual units; (7-1-93)

b. The quantity of each individual unit; and (7-1-93)

c. The total quantity of the contents of the multi-unit package, provided, that the requirement for a declaration of the total quantity of contents of a multi-unit package must be effective with respect to those labels revised after the effective date of this rule. Any such declaration of total quantity is not required to include the parenthetical quantity statement of a dual quantity representation. (7-1-93)

05. Combination Packages. Any package containing individual units of dissimilar commodities (such as an antiquing kit, for example) must bear on the label of the package a quantity declaration for each unit. (7-1-93)

06. Variety Packages. Any package containing individual units of reasonably similar commodities (such as, for example, seasonal gift packages, variety packages of cereal) must bear on the label of the package a declaration of the total quantity of commodity in the package. (7-1-93)

07. Cylindrical Containers. In the case of cylindrical or nearly cylindrical containers, information required to appear on the principal display panel must appear within that forty percent (40%) of the circumference that is most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale. (7-1-93)

221. -- 229. (RESERVED)

230. MEASUREMENT OF CONTAINER-TYPE COMMODITIES, HOW EXPRESSED.

01. General. Commodities designed and sold at retail to be used as containers for other materials or objects, such as bags, cups, boxes, and pans, must be labeled with the declaration of net quantity as follows: (7-1-93)

a. For bag-type commodities, in terms of count followed by linear dimensions of the bag (whether packaged in a perforated roll or otherwise). (7-1-93)

b. When the unit bag is characterized by two (2) dimensions because of the absence of a gusset, the width and length will be expressed in inches, except that a dimension of two (2) feet or more will be expressed in feet with any remainder in terms of inches or common or decimal fractions of the foot. (Example: "25 bags, 17 in x 20 in" or "100 bags, 20 in x 2 ft 6 in" or "50 bags, 20 in x 2-1/2 ft"). (7-1-93)

c. When the unit bag is gusseted, the dimensions will be expressed as width, depth, and length, in terms of inches, except that any dimension of two (2) feet or more will be expressed in feet with any remainder in terms of inches or the common or decimal fractions of the foot. (Examples: “25 bags, 17 in x 4 in x 20 in” or “100 bags, 20 in x 12 in x 2-1/2 ft”). (7-1-93)

d. For other square, oblong, rectangular, or similarly shaped containers, in terms of count followed by length, width, and depth, except depth need not be listed when less than two (2) inches. (Example: “2 cake pans, 8 in x 8 in” or “roasting pan, 12 in x 8 in x 3 in”). (7-1-93)

e. For circular or other generally round-shaped containers, except cups, and the like in terms of count followed by diameter and depth, except depth need not be listed when less than two (2) inches. (Example: “4 pie pans, 8 in diameter x 4 in”). (7-1-93)

02. Capacity. When the functional use of the container is related by label references in standard terms of measure to the capability of holding a specific quantity of substance or class of substances such references must be a part of the net quantity statement and must specify capacity as follows: (7-1-93)

a. Liquid measure for containers that are intended to be used for liquids, semisolids, viscous materials, or mixtures of solids and liquids. The expressed capacity will be stated in terms of the largest whole unit (gallon, quart, pint, ounce), with any remainder in terms of the common or decimal fraction of that unit. (Example: Freezer Boxes “4 boxes, 1-qt capacity, 5 in x 4 in x 3 in”). (7-1-93)

b. Dry measure for containers that are intended to be used for solids. The expressed capacity will be stated in terms of the largest whole unit (bushel, peck), with any remainder in terms of the common or decimal fraction of that unit. (Example: Leaf bags “8 bags, 6-bushel capacity, 3 ft x 5 ft”). (7-1-93)

c. Where containers are used as liners for other more permanent containers, in the same terms as are normally used to express the capacity of the more permanent container. (Example: Garbage Can Liners “10 liners, 2 ft 6 in x 3 ft 9 in, fits up to 30-gallon cans”). (7-1-93)

d. Notwithstanding the above requirements, the net quantity statement for containers such as cups will be listed in terms of count and liquid capacity per unit. (Example: “24 cups, 6 fl oz capacity”). For purposes of this section, the use of the terms “capacity,” “diameter,” and “fluid” is optional. (7-1-93)

231. -- 239. (RESERVED)

240. TEXTILE PRODUCTS, THREADS, AND YARNS.

01. Wearing Apparel. Wearing apparel (including non-textile apparel and accessories such as leather goods and footwear) sold as single-unit items, or if normally sold in pairs (such as hosiery, gloves, and shoes) sold as single-unit pairs, is exempt from the requirements for a net quantity statement by count, as required by Subsection 171.05 of this rule. (7-1-93)

02. Textiles. Bedsheets, blankets, pillowcases, comforters, quilts, bedspreads, mattress covers and pads, afghans, throws, dresser and other furniture scarfs, tablecloths and napkins, flags, curtains, drapes, dish towels, dish cloths, towels, face cloths, utility cloths, bath mats, carpets and rugs, pot holders, fixture and appliance covers, non-rectangular diapers, slip covers, etc., are be exempt from the requirements of Subsection 172.07 of this rule, provided that: (7-1-93)

a. The quantity statement for fitted sheets and mattress covers must state, in inches, the length and width of the mattress for which the item is designed, such as “twin,” “double,” “king,” etc. (Example: “Twin Fitted Sheet for thirty-nine by seventy-five (39 x 75) inch mattress”) (7-1-93)

b. The quantity statement for flat sheets must state the size designation of the mattress for which the sheet is designed, such as “twin,” “double,” “king,” etc. The quantity statement also must state, in inches, the length and width of the mattress for which the sheet is designed, followed in parentheses by a statement, in inches, of the length and width of the sheet before hemming. (Example: “Double Flat Sheet for fifty-four by seventy-five (54 x 75)

inch mattress (eighty-one by one hundred four (81 x 104) inch before hemming”) (7-1-93)

c. The quantity statement for pillowcases must state the size designation of the pillow for which the pillowcase is designed, such as “youth,” “standard,” and “queen,” etc. The quantity statement also must state, in inches, the length and width of the pillow for which the pillowcase is designed, followed in parentheses by a statement, in inches, of the length and width of the pillowcase before hemming. (Example: “Standard Pillowcase for twenty by twenty-six (20 x 26) inch pillow (forty-two by thirty-six (42 x 36) inch before hemming”) (7-1-93)

d. The quantity statement for blankets, comforters, quilts, bedspreads, mattress pads, afghans, and throws must state, in inches, the length and width of the finished item. The quantity statement also may state the length of any ornamentation and the size designation of the mattress for which the item is designed, such as “twin,” “double,” “king,” etc. (7-1-93)

e. The quantity statement for tablecloths and napkins must state, in inches, the length and width of the finished item. The quantity statement also may state parenthetically, in inches, the length and width of the items before hemming and properly identified as such. (7-1-93)

f. The quantity statement for curtains, drapes, flags, furniture scarfs, etc., must state, in inches, the length and width of the finished item. The quantity statement also may state parenthetically, in inches, the length of any ornamentation. (7-1-93)

g. The quantity statement for carpets and rugs must state, in feet, with any remainder in common or decimal fractions of the foot or in inches, the length and width of the item. The quantity statement also may state parenthetically, in inches, the length of any ornamentation. (7-1-93)

h. The quantity statement for woven dish towels, dish cloths, towels, face cloths, utility cloths, bath mats, etc., must state, in inches, the length and width of the item. The quantity statement for such items, when knitted, need not state the dimensions. (7-1-93)

i. The quantity statement for textile products such as pot holders, fixture and appliance covers, non-rectangular diapers, slip covers, etc., must be stated in terms of count and may include size designations and dimensions. (7-1-93)

j. The quantity statement for other than rectangular textile products identified in Subsections 240.02.a. through 240.02.h. must state the geometric shape of the product and the dimensions which are customarily used in describing such geometric shape. (Example: “Oval Tablecloth fifty-four by forty-two (54x42) inch” representing the maximum length and width in this case). (7-1-93)

k. The quantity statement for packages of remnants of textile products of assorted sizes, when sold by count, must be accompanied by the term “irregular dimensions” and the minimum size of such remnants. (7-1-93)

03. Textiles -- Variations from Declared Dimensions. (7-1-93)

a. For an item with no declared dimension less than twenty-four (24) inches, a minus variation greater than three percent (3%) of a declared dimension and a plus variation greater than six percent (6%) of a declared dimension should be considered unreasonable. (7-1-93)

b. For an item with a declared dimension less than twenty-four (24) inches, a minus variation greater than six percent (6%) of a declared dimension and a plus variation greater than twelve percent (12%) of a declared dimension should be considered unreasonable. (7-1-93)

04. Exemption -- Variety Textile Packages. Variety packages of textiles which are required by reason of Subsection 171.06 to provide a combination declaration stating the quantity of each individual unit, are exempt from the requirements in this rule for the following: (7-1-93)

a. Location (see Subsection 200.02); or (7-1-93)

- b. Free area (see Subsection 200.05); or (7-1-93)
- c. Minimum height of numbers and letters. (see Subsection 200.08). (7-1-93)
- 05. Sewing Threads, Handicraft Threads, and Yarns.** Sewing and handicraft threads are exempt from the requirements of Subsections 172.02.a. through 172.02.d. of this rule, provided that: (7-1-93)
 - a. The net quantity statement for sewing and handicraft threads must be expressed in terms of yards. (7-1-93)
 - b. The net quantity statement for yarns must be expressed in terms of weight. (7-1-93)
 - c. Thread products may, in lieu of name and address, bear a trademark, symbol, brand, or other mark that positively identifies the manufacturer, packer, or distributor, provided that such marks, employed to identify the vendor, must be filed with the Director. (7-1-93)
 - d. Each unit of industrial thread must be marked to show its net measure in terms of yards or its net weight in terms of avoirdupois pounds or ounces, except that ready-wound bobbins which are not sold separately, shall not be required to be individually marked but the package containing such bobbins must be marked to show the number of bobbins contained therein and the net yards of thread on each bobbin. (7-1-93)
- 241. -- 249. (RESERVED)**
- 250. EXEMPTIONS.**
 - 01. General.** Whenever any consumer commodity or package of consumer commodity is exempted from the requirements for dual quantity declaration, the net quantity declaration required to appear on the package must be in terms of the largest whole unit (except see Subsection 220.04.c., Multi-Unit Packages). (7-1-93)
 - 02. Random Packages.** A random package bearing a label conspicuously declaring: (7-1-93)
 - a. The net weight; (7-1-93)
 - b. The price per pound, or other unit of weight, measure or count; and (7-1-93)
 - c. The total price is exempt from the type size, dual declaration, placement, and free area requirements of this rule. In the case of a random package packed at one place for subsequent sale at another, neither the price per unit of weight nor the total selling price need appear on the package, provided the package label includes both such prices at the time it is offered or exposed for sale at retail. This exemption also applies to uniform weight packages of cheese and cheese products labeled in the same manner and by the same type of equipment as random packages exempted by this section. (7-1-93)
 - 03. Small Confections.** Individually wrapped pieces of “penny candy” and other confectionery of less than one-half (1/2) ounce net weight per individual piece is exempt from the labeling requirements of this rule when the container in which such confectionery is shipped is in conformance with the labeling requirements of this rule. Similarly, when such confectionery items are sold in bags or boxes, such items are exempt from the labeling requirements of this rule including the required declaration of net quantity of contents, when the declaration of the bag or box meets the requirements of this rule. (7-1-93)
 - 04. Individual Servings.** Individual-serving-size packages of foods containing less than one-half (1/2) ounce or less than one-half (1/2) fluid ounce for use in restaurants, institutions, and passenger carriers, and not intended for sale at retail, are exempt from the required declaration of net quantity of contents specified in this rule. (7-1-93)
 - 05. Cuts, Plugs, and Twists of Tobacco and Cigars.** When individual cuts, plugs, and twists of tobacco and individual cigars are shipped or delivered in containers that conform to the labeling requirements of this rule, such individual cuts, plugs, and twists of tobacco and cigars are exempt from such labeling requirements.

(7-1-93)

06. Reusable (Returnable) Glass Containers. Nothing in this rule is deemed to preclude the continued use of reusable (returnable) glass containers; provide, that such glass containers ordered after the effective date of this rule must conform to all requirements of this rule. (7-1-93)

07. Cigarettes and Small Cigars. Cartons of cigarettes and small cigars, containing ten (10) individual packages of twenty (20), labeled in accordance with the requirements of this rule are exempt from the requirements set forth in Subsection 200.02, Location, Subsection 200.08, Minimum Height of Numbers and Letters, and Subsection 220.04, Multi-Unit Packages, provided that such cartons bear a declaration of the net quantity of commodity in the package. (7-1-93)

08. Packaged Commodities with Labeling Requirements Specified in Federal Law. Packages of meat and meat products, poultry and poultry products, tobacco and tobacco products, insecticides, fungicides, rodenticides, alcoholic beverages, and seeds are exempt from the requirements set forth in Subsection 172.03, Weight: Dual Quantity Declaration; Subsection 172.04, Fluid Measure: Dual Quantity Declaration; Subsection 172.05, Length Measure: Dual Quantity Declaration; Subsection 172.06, Area Measure: Dual Quantity Declaration; Subsection 200.02, Location; and Subsection 200.08, Minimum Height of Numbers and Letters, provided that quantity labeling requirements for such products are specified in Federal Law, so as to follow reasonably sound principles of providing consumer information. (7-1-93)

09. Fluid Dairy Products, Ice Cream, and Similar Frozen Desserts. (7-1-93)

a. When packaged in one-half (1/2) liquid pint and one-half (1/2) gallon containers, are exempt from the requirements for stating net contents of eight (8) fluid ounces and sixty-four (64) fluid ounces, which may be expressed as one-half (1/2) pint and one-half (1/2) gallon, respectively. (7-1-93)

b. When packaged in one (1) liquid pint, one (1) liquid quart, and one-half (1/2) gallon containers, are exempt from the dual net contents declaration requirements of Subsection 172.04, Fluid Measure: Dual Quantity Declaration. (7-1-93)

c. When measured by and packaged in one-half (1/2) liquid pint, one (1) liquid pint, one (1) liquid quart, one-half (1/2) gallon and one (1) gallon measure containers as defined in "Measure Container Code of National Bureau of Standards, or its successor organization, the National Institute of Standards and Technology, Handbook 44," are exempt from the requirement of Subsection 200.02, Location, that the declaration of net contents be located within the bottom thirty percent (30%) of the principal display panel. (7-1-93)

d. Milk and milk products when measured by and packaged in glass or plastic containers of one-half (1/2) liquid pint, one (1) liquid pint, one (1) liquid quart, one-half (1/2) gallon, and one (1) gallon capacities are exempt from the placement requirement of Subsection 200.02, Location, that the declaration of net contents be located within the bottom thirty percent (30%) of the principal display panel, provided that other required label information is conspicuously displayed on the cap or outside closure, and the required net quantity of contents declaration is conspicuously blown, formed, or molded on, or permanently applied to that part of the glass or plastic container that is at or above the shoulder of the container. (7-1-93)

10. Single Strength and Less Than Single Strength Fruit Juice Beverages, Imitations Thereof, and Drinking Water. (7-1-93)

a. When packaged in glass, plastic, or fluid milk type paper containers of eight (8) and sixty-four (64) fluid ounce capacity, are exempt from the requirements of Subsection 171.07.b., Units: Weight, Measure, to the extent that net contents of eight (8) fluid ounces and sixty-four (64) fluid ounces (or two (2) quarts) may be expressed as one-half (1/2) pint (or half pint) and one-half (1/2) gallon (or half gallon), respectively. (7-1-93)

b. When packaged in glass, plastic, or fluid milk type paper containers of one (1) pint, one (1) quart, and one-half (1/2) gallon capacities, are exempt from the dual net contents declaration requirements of Subsection 172.04, Fluid Measure: Dual Quantity Declaration. (7-1-93)

c. When packaged in glass or plastic containers of one-half (1/2) pint, one (1) pint, one (1) quart, one (1/2) gallon, and one (1) gallon capacities, are exempt from the placement requirement of Subsection 200.02, Location, that the declaration of net contents be located within the bottom thirty percent (30%) of the principal display panel; provided that other required label information is conspicuously displayed on the cap or outside closure and the required net quantity of contents declaration is conspicuously blown, formed, or molded into or permanently applied to that part of the glass or plastic container that is at or above the shoulder of the container. (7-1-93)

11. Soft-Drink Bottles. Bottles of soft drinks are exempt from the placement requirements for the declaration of: (7-1-93)

a. Identity, when such declaration appears on the bottle closure; and (7-1-93)

b. Quantity, when such declaration is blown, formed, or molded on or above the shoulder of the container and when all other information required by this rule appears only on the bottle closure. (7-1-93)

12. Multi-Unit Soft Drink Packages. Multi-unit packages of soft drinks are exempt from the requirement for a declaration of: (7-1-93)

a. Responsibility, when such declaration appears on the individual units and is not obscured by the multi-unit packaging, or when the outside container bears a statement to the effect that such declaration will be found on the individual units inside; and (7-1-93)

b. Identity, when such declaration appears on the individual units and is not obscured by the multi-unit packaging. (7-1-93)

13. Butter. When packaged in four (4) ounce, eight (8) ounce, and one (1) pound units with continuous label copy wrapping, butter is exempt from the requirements that the statement of identity (Subsection 170.01) and the net quantity declaration (Subsection 200.06) be generally parallel to the base of the package. When packaged in eight (8) ounce and one (1) pound units, butter is exempt from the requirement for location (Subsection 200.02) of net quantity declaration and, when packaged in one (1) pound units, is exempt from the requirement for dual quantity declaration (Subsection 172.03). (7-1-93)

14. Eggs. Carton containing twelve (12) eggs are exempt from the requirement for location (Subsection 200.02) of net quantity declaration. When such cartons are designed to permit division in half, each half (1/2) are exempt from the labeling requirements of this rule if the undivided carton conforms to all such requirements. (7-1-93)

15. Flour. Packages of wheat flour packaged in units of two (2), five (5), ten (10), twenty-five (25), fifty (50), and one-hundred (100) pounds are exempt from the requirement in this rule or location (Subsection 200.02) of the net quantity declaration and, when packaged in units of two (2) pounds, are exempt also from requirement for a dual quantity declaration (Subsection 172.03). (7-1-93)

16. Small Packages. On a principal display panel of five (5) square inches or less, the declaration of quantity need not appear in the bottom thirty (30%) of the principal display panel if that declaration satisfies the other requirements of this rule. (7-1-93)

17. Decorative Containers. The principal display panel of a cosmetic marketed in a "boudoir-type" container including decorative cosmetic containers of the "cartridge," "pill box," "compact," or "pencil" variety, and those with a capacity of one-fourth (1/4) ounce or less, may be a tear-away tag or tape affixed to the decorative container and bearing the mandatory label information as required by this rule. (7-1-93)

18. Combination Packages. Combination packages are exempt from the requirements in this rule for: (7-1-93)

a. Location (see Subsection 200.02); (7-1-93)

b. Free area (see Subsection 200.05); and (7-1-93)

- c. Minimum height of numbers and letters (see Subsection 200.08). (7-1-93)
19. **Margarine.** Margarine in one (1) pound rectangular packages, except for packages containing whipped or soft margarine or packages containing more than four (4) sticks, is exempt from the requirement in this rule for location (see Subsection 200.02) of the net quantity declaration, and is exempt from the requirement for a dual quantity declaration (see Subsection 172.03). (7-1-93)
20. **Corn Flour.** Corn flour packaged in conventional five (5), ten (10), twenty-five (25), fifty (50), and one-hundred (100) pound bags is exempt from the requirement in this rule for location (see Subsection 200.02) of the net quantity declaration. (7-1-93)
21. **Prescription and Insulin Containing Drugs.** Prescription and insulin containing drugs subject to the provisions of Section 503(b)(1) or 506 of the Federal Food, Drug, and Cosmetic Act are exempt from the provisions of this rule. (7-1-93)
22. **Camera Film.** Camera film packaged and labeled for retail sale is exempt from the net quantity statement requirements of this rule which specify how measurement of commodities should be expressed, provided that: (7-1-93)
- a. The net quantity of contents on packages of movie film and bulk still film is expressed in terms of the number of lineal feet of usable film contained therein. (7-1-93)
- b. The net quantity of contents on packages of still film is expressed in terms of the number of exposures the contents will provide. The length and width measurements of the individual exposures, expressed in millimeters or inches, are authorized as an optional statement. (Example: "36 exposures, 36 x 24 mm" or "12 exposures, 2-1/4 x 2-1/4 in"). (7-1-93)
23. **Paints and Kindred Products.** Paints, varnishes, lacquers, thinners, removers, oils, resins, and solvents, when packed in one (1) liquid pint and one (1) liquid quart units are exempt from the dual quantity declaration requirements of Subsection 172.04. (7-1-93)
24. **Automotive Cooling System Antifreeze.** Antifreeze, when packed in one (1) liquid quart units, in metal or plastic containers, is exempt from the dual quantity declaration requirements of Subsection 172.04. (7-1-93)
25. **Motor Oils.** Motor oils, when packed in one (1) liquid quart units, are exempt from the dual quantity declaration requirements of Subsection 172.04. Additionally, motor oil in one (1) liquid quart, one (1) gallon, one and one-fourth (1-1/4) gallon, two (2) gallon, and two and one-half (2-1/2) gallon units, bearing the principal display panel on the body of the container, is exempt from the requirements of Subsection 170.01 through 170.03. Identity, to the extent that the SAE grade is required to appear on the principal display panel, provided the SAE grade appears on the can lid and is expressed in letters and numerals in type size of at least one-fourth (1/4) inch. (7-1-93)
251. -- 259. (RESERVED)
260. **VARIATIONS TO BE ALLOWED.**
01. **Packaging Variations.** (7-1-93)
- a. Variations from Declared Net Quantity. Variations from the declared net weight, measure, or count are permitted when caused by unavoidable deviations in weighing, measuring, or counting the contents of individual packages that occur in good packaging practice, but such variations are not permitted to such extent that the average of the quantities in the packages of a particular commodity, or a lot of the commodity that is kept, offered, or exposed for sale, or sold, is below the quantity stated, and no unreasonable shortage in any package is permitted, even though overages in other packages in the same shipment, delivery, or lot compensate for such shortage. Variations above the declared quantity may not be unreasonably large. (7-1-93)

b. Variations Resulting from Exposure. Variations from the declared weight or measure are permitted when caused by ordinary and customary exposure to conditions that normally occur in good distribution practice and that unavoidably result in change of weight or measure, but only after the commodity is introduced into intrastate commerce, provided that the phrase “introduced into intrastate commerce” as used in this paragraph must be construed to define the time and the place at which the first sale and delivery of a package is made within the state, the delivery being either: (7-1-93)

i. Directly to the purchaser or to his agent; or (7-1-93)

ii. To a common carrier for shipment to the purchaser, and this paragraph must be construed as requiring that, so long as a shipment, delivery, or lot of packages of a particular commodity remains in the possession or under the control of the packager or the person who introduces the package into intrastate commerce, exposure variations are not permitted. (7-1-93)

02. Magnitude of Permitted Variations. The magnitude of variations permitted under Section 260 of this rule must, in the case of any shipment, delivery, or lot, be determined by the facts in the individual case. (7-1-93)

261. -- 269. (RESERVED)

270. MISLEADING PACKAGES.

No commodity in package form may be so wrapped, nor be in a container so made, formed, or filled as to mislead the purchaser as to the quantity of the package, and the contents of a container must not fall below such reasonable standard of fill as may have been prescribed for the commodity in question by the Director. (7-1-93)

271. ADVERTISING PACKAGES FOR SALE.

Whenever a packaged commodity is advertised in any manner with the retail price stated, there must be closely and conspicuously associated with the retail price a declaration of quantity as is required by law or rule to appear on the package. Where a dual declaration is required, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure need appear in the advertisement. And provided further, that there must not be included as part of the package declaration required under this section such qualifying terms as “when packed,” “minimum,” “not less than,” or any other terms of similar import, nor any term qualifying a unit of weight, measure, or count (for example, “jumbo,” “giant,” “full,” and the like) that tends to exaggerate the amount of commodity in the package. (7-1-93)

272. -- 299. (RESERVED)

300. PETROLEUM PRODUCTS.

01. Liquefied Petroleum. Liquefied petroleum gas is considered to be a petroleum product and must be sold only by weight or liquid measure as provided in Sections 71-232 and 71-241, Idaho Code, of the Idaho Weights and Measures Law. (7-1-93)

02. Metering System Installation. A liquefied petroleum gas metering system installation must be complete, that is, so installed to insure that liquefied petroleum gas is maintained in a liquid state while being metered. This includes an adequate means for vapor elimination upstream of meter and a properly installed and functioning differential valve downstream from meter. (7-1-93)

03. Maintaining Scales. Scales used for liquefied petroleum gas bottle filling must be maintained in an adequate and accurate functioning condition. This means the periodic checking by a competent scale repairman, and checked regularly by your company’s serviceman for any foreign material and clearances around lever system and working parts. Scales must be installed so that they are protected against weather effects so that weight value indicating elements can be accurately read. (7-1-93)

04. Gauge Stick Measurement. Petroleum products are not to be sold by gauge stick measurement. (7-1-93)

05. Single Meters. Trucks with a single meter which are used to meter oils and gasolines must be

calibrated and adjusted on one of the following only: furnace or heating oils, diesel fuels, kerosene and/or high flash solvents. (7-1-93)

06. Compressed Natural Gas. All compressed natural gas kept, offered or exposed for sale and sold at retail as a vehicle fuel must be measured in terms of mass, and indicated in gasoline gallon equivalent (GGE), diesel gallon equivalent (DGE) units, or mass. (3-28-18)

07. Liquefied Natural Gas. All liquefied natural gas kept, offered, or exposed for sale and sold at retail as a vehicle fuel must be measured in terms of mass, and indicated in diesel gallon equivalent (DGE) units, or mass. (3-28-18)

301. -- 349. (RESERVED)

350. SALE AND LABELING OF GASOLINE WHICH CONTAINS OXYGENATES.

01. Pump Labeling Requirements. (7-1-93)

a. All spark ignition engine fuel kept, offered, or exposed for sale, or sold, at retail containing at least one percent (1%) by volume and not more than ten percent (10%) by volume of any oxygenate or combination of oxygenates must be identified as “with” or “containing” (or similar wording) the specific type of oxygenate(s) in the engine fuel. For example, the label may read “contains ethanol” or “with MTBE/ETBE.” This information must be posted on the upper fifty percent (50%) of the dispenser front panel in a position clear and conspicuous from the driver’s position, in a type at least one half (1/2) inch in height, one-sixteenth (1/16) inch stroke (width of type). (4-11-15)

b. The labels are to be furnished by the retail owner or operator. (7-1-93)

02. Oxygenates Content Labels. (10-26-94)

a. The label must have letters in bold face, block not less than one-half (1/2) inch high. The lettering must be in black on a contrasting background. Both colors must be non-fade. (10-26-94)

b. The label must be displayed on both faces of the dispenser on the upper one-half (1/2) of the dispenser as near the unit price display as practical. (10-26-94)

03. Documentation for Dispenser Labeling Purposes. The retailer must be provided, at the time of delivery of the fuel, on an invoice, bill of lading, shipping paper, or other documentation, a declaration of any oxygenate or combination of oxygenates present in concentrations of at least one percent (1%) by volume of the fuel. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending. (10-26-94)

04. Fuel Specifications for Gasoline and Gasoline-Oxygenate Blends. (5-8-09)

a. The version of ASTM D 4814 “Standard Specification for Automotive Spark-Ignition Engine Fuel” incorporated by reference in this rule is the standard for gasoline and gasoline oxygenate blends, except the volatility standards for unleaded gasoline blended with ethanol must not be more restrictive than those adopted under the rules, regulations, and Clean Air Act waivers of the U.S. Environmental Protection Agency. Gasoline blended with ethanol must be blended under any of the following three (3) options. (5-8-09)

i. The base gasoline used in such blends must meet the requirements of ASTM D 4814, or (5-8-09)

ii. The blend must meet the requirements of ASTM D 4814, or (5-8-09)

iii. The base gasoline used in such blends must meet all the requirements for gasoline of ASTM D 4814 except distillation, and the blend must meet the distillation requirements of the ASTM specification. (5-8-09)

b. Blends of gasoline and ethanol must not exceed the ASTM D 4814 vapor pressure standard by

more than one point zero (1.0) psi. (5-8-09)

351. BIODIESEL. Identification and labeling requirements for biodiesel. (4-2-08)

01. Identification of Product. Biodiesel and biodiesel blends must be identified by the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel. (Examples: B10, B20, B100). (4-2-08)

02. Labeling of Retail Dispensers. Each retail dispenser of biodiesel or biodiesel blend containing more than five percent (5%) must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with the either "biodiesel" or "biodiesel blend." (Examples: B10 biodiesel, B20 biodiesel blend). (4-2-08)

a. The label must have letters in bold face block not less than one-half (1/2) inch high, with the lettering clearly legible on a contrasting background. (4-2-08)

b. The label must be displayed on both faces of the dispenser on the upper one-half (1/2) of the dispenser as near the unit price display as practical. (4-2-08)

03. Documentation for Dispenser Labeling Purposes. (4-2-08)

a. The retailer must be provided a declaration of the volume percent of the biodiesel on an invoice, bill of lading, shipping paper, or other document, at the time of delivery of the fuel. (4-2-08)

b. This documentation is for dispenser labeling purposes only; it is the responsibility of any potential blender to determine the amount of biodiesel in the diesel fuel prior to blending. (4-2-08)

04. Exemption. Biodiesel blends containing five percent (5%) or less biodiesel by volume are exempted from the requirements of Section 351 of this rule. (4-2-08)

352. -- 399. (RESERVED)

400. UNATTENDED VENDING MACHINES.

01. Vending Machine Displays. Any coin or currency operated device which automatically dispenses consumer commodities or consumer packages without a full-time attendant must clearly display a sign or signs showing the following facts: (7-1-93)

a. The name of the commodity or commodities dispensed; (7-1-93)

b. The brand name or names of the commodity or commodities dispensed; (7-1-93)

c. A statement of the quantity of each commodity or package to be dispensed through the device, except that this paragraph does not apply to candy bars, gum, or cigarettes; (7-1-93)

d. The name, city, street address, state, and telephone number of the local distributor or operator of such device. (7-1-93)

02. Units of Measurement. The units of measure used on such sign in the statement of quantity are the standard units as prescribed by the Idaho Weights and Measures Law and the rules of this chapter. (7-1-93)

401. -- 449. (RESERVED)

450. REGISTRATION OF SERVICEMEN AND SERVICE AGENCIES FOR COMMERCIAL WEIGHING AND MEASURING DEVICES.

01. Policy. It is the policy of the Director of the Department of Agriculture or the Director's duly authorized agent, hereinafter referred to as "Director," to accept voluntary registration of (a) an individual and (b) an agency that provides acceptable evidence that he or it is fully qualified to install, service, repair or recondition a commercial weighing or measuring device; has a thorough working knowledge of all appropriate weights and measures laws, orders, rules; and has possession of, or available for use, weights and measures standards and testing equipment appropriate in design and adequate in amount. (An employee of government shall not be eligible for registration). This policy in no way precludes or limits the right and privilege of any qualified individual or agency not registered with the Director to install, service, repair, or recondition a commercial weighing or measuring device. (7-1-93)

02. Reciprocity. The Director may enter into an informal reciprocal agreement with any other state or states that has or have similar voluntary registration policies. Under such agreement, the registered servicemen and the registered service agencies of the states party to the reciprocal agreement are granted full reciprocal authority, including reciprocal recognition of certification of standards and testing equipment, in all states party to such agreement. (7-1-93)

03. Voluntary Registration. An individual or agency may apply for voluntary registration to service weighing devices or measuring devices on an application form supplied by the Director. Said form, duly signed and witnessed, must include certification by the applicant that the individual or agency is fully qualified to install, service, repair, or recondition whatever devices for the service of which competence is being registered; has in possession, or available for use, all necessary testing equipment and standards; and has full knowledge of all appropriate weights and measures laws, orders, rules and regulations. An applicant must also submit appropriate evidence or references as to qualifications. (7-1-93)

04. Certificate of Registration. Upon receipt and acceptance of a properly executed application form, the Director will issue to the applicant a "Certificate of Registration," including an assigned registration number, which will remain effective until either returned by the applicant or withdrawn by the Director. (7-1-93)

05. Privileges of a Voluntary Registrant. A bearer of a Certificate of Registration has the authority to remove an official rejection tag or mark placed on a weighing or measuring device by the authority of the Director; place in service, until such time as an official examination can be made, a weighing or measuring device that has been officially rejected; and place in service, until such time as an official examination can be made, a new or used weighing or measuring device. (7-1-93)

06. Placed in Service Report. The Director will furnish each registered serviceman and registered service agency with a supply of report forms to be known as "Placed in Service Reports." Such a form will be executed in triplicate, include the assigned registration number, and be signed by a registered serviceman or by a serviceman representing a registered agency for each rejected device restored to service and for each newly installed device placed in service. Within twenty-four (24) hours after a device is restored to service, or placed in service, the original of the properly executed Placed in Service Report, together with any official rejection tag removed from the device, must be mailed to the Director at The Idaho State Department of Agriculture, Bureau of Weights and Measures, 2216 Kellogg Lane, Boise, Idaho, 83712. The duplicate copy of the report must be handed to the owner or operator of the device, and the triplicate copy of the report must be retained by the registered serviceman or agency. Also, a copy of a test report on the form used by the Bureau of Weights and Measures or a form approved by the Bureau of Weights and Measures must be submitted to the Bureau of Weights and Measures, 2216 Kellogg Lane, Boise, Idaho, 83712, on livestock, vehicle and mono-rail scales. (7-1-93)

07. Standards and Testing Equipment. A registered serviceman and a registered service agency must submit, at least biennially, or as directed, to the Director, for his examination and certification, any standards and testing equipment that are used, or are to be used, in the performance of the service and testing functions with respect to weighing and measuring devices for which competence is registered. A registered serviceman or agency may not use in servicing commercial weighing or measuring devices any standards or testing equipment that have not been certified by the Director. (7-1-93)

08. Revocation of Certificate of Registration. The Director may, for good cause, after careful investigation and consideration, suspend or revoke a Certificate of Registration. (7-1-93)

09. Publication of Lists of Registered Servicemen and Registered Service Agencies. The Director will publish, from time to time as he deems appropriate, and may supply upon request, lists of Registered Servicemen and Registered Service Agencies. (7-1-93)

451. -- 499. (RESERVED)

500. BREAD.

Each loaf of bread kept, offered, or exposed for sale, whether or not the bread is packaged or sliced, must be sold by weight, as per Section 71-236 of Title 71, Chapter 2, Idaho Code. (4-2-08)

501. -- 599. (RESERVED)

600. SINGLE DRAFT VEHICLE WEIGHING.

A highway vehicle or a coupled highway-vehicle or a coupled highway-vehicle combination must be commercially weighed on a vehicle scale only as a single draft. That is, the total weight of such a vehicle or combination may not be determined by adding together the results obtained by separately and not simultaneously weighing each end of such vehicle or individual elements of such coupled combination. However: (7-1-93)

01. Coupled Combination. The weight of a coupled combination may be determined by uncoupling the various elements (tractor, semitrailer, trailer), weighing each unit separately as a single draft, and adding together the results. (7-1-93)

02. Vehicle. The weight of a vehicle or coupled-vehicle combination may be determined by adding together the weights obtained while all individual elements are resting simultaneously on more than one (1) scale platform. (7-1-93)

601. -- 649. (RESERVED)

650. RULE FOR NATIONAL TYPE EVALUATION.

01. Application. This rule applies to all classes of devices and equipment as covered in the National Institute of Standards and Technology Handbooks 44, 105-1, 105-2, and 105-3. (7-1-93)

02. Certificate of Conformance. The Director may require any weight or measure, or any weighing or measuring instrument or device to be issued a Certificate of Conformance prior to use for commercial or law enforcement purposes. (12-22-92)

03. Participating Laboratory. The Director is authorized to operate a participating laboratory as part of the National Type Evaluation Program. (12-22-92)

651. -- 999. (RESERVED)

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. (4-2-03)

001. TITLE AND SCOPE.

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

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

002. -- 009. (RESERVED)

010. DEFINITIONS.

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

011. ABBREVIATIONS.

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

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

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

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

012. DELIVERY VOUCHER.

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

01. **Producer.** The full name, address and phone number of the producer. (4-2-03)

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

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

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

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

013. WAREHOUSE RECEIPTS.

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

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

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

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

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

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

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

014. SCALE WEIGHT TICKETS.

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

01. Pre-Numbered Scale Tickets. If a seed buyer has access to a scale 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. (3-16-04)

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

015. -- 025. (RESERVED)

026. LICENSE.

01. Posting of License. Immediately upon receipt of the license or any renewal, extension or modification thereof under Title 22, Chapter 51, Idaho Code, the licensed seed buyer 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. (4-2-03)

02. License Fee. If an applicant is not licensed pursuant to the "Pure Seed Law," Title 22, Chapter 4, Idaho Code, the license fee 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. (4-2-03)

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

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

05. License Reinstatement Fee. If license renewal material is received by the ISDA after the current license has expired, but no later than thirty (30) days past due, a reinstatement fee of one hundred dollars (\$100) 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. (4-2-03)

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

a. Names of officers of corporations or limited liability companies. (4-2-03)

b. Company information as required in the application form. (4-2-03)

c. Outstanding producer financial obligations. (4-2-03)

- d. Name and address of banks that handle business accounts. (4-2-03)

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

027. -- 035. (RESERVED)

036. AMOUNT OF BOND FOR SEED STORED FOR WITHDRAWAL.

For the purpose of calculating the bond required pursuant to Section 22-5105, Idaho Code, the value for seed stored for withdrawal 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. (4-2-03)

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

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

02. Single Bond, Irrevocable Letter of Credit or Certificate of Deposit. For the purposes of licensing as a seed buyer pursuant to Title 22, Chapter 51, Idaho Code, and as a warehouseman pursuant to Title 69, Chapter 2, Idaho Code, or as a commodity dealer pursuant to Title 69, Chapter 5, Idaho Code, a single bond, irrevocable letter of credit or certificate of deposit will be fixed at whichever of the following amounts is greater: (3-16-04)

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

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

038. -- 046. (RESERVED)

047. MAINTENANCE OF RECORDS.

All records and accounts required under Title 22, Chapter 51, Idaho Code, 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. (4-2-03)

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: (4-2-03)

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

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

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

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

02. Insurance Deductible. The maximum deductible allowed for insurance required by Section 22-5114, Idaho Code, 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. (4-2-03)

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. (4-2-03)

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. (4-2-03)

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

b. If a seed buyer is self-insured and the seed crop within the licensed seed buyer's facility has been damaged or destroyed, the seed buyer 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. (4-2-03)

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

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

061. -- 069. (RESERVED)

070. HOW ASSESSMENTS ARE TO BE CALCULATED.

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

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. (4-2-03)

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

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

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

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

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

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

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

071. -- 079. (RESERVED)

080. COLLECTION AND REMITTANCE OF SIF ASSESSMENTS.

SIF assessments 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. (3-16-04)

081. -- 089. (RESERVED)

090. CLAIM FORMS AND PAYMENT FROM THE FUND.

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

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

03. Not Contracted or Stored for Withdrawal. If the seed crop is not contracted or stored for withdrawal, the value for payment from the SIF 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. (4-2-03)

091. -- 099. (RESERVED)

100. EXEMPTIONS.

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

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

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

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

101. -- 999. (RESERVED)

02.04.19 – RULES GOVERNING DOMESTIC CERVIDAE

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 25-203, 25-305, 25-601, and 25-3704, Idaho Code.

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001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is “Rules Governing Domestic Cervidae.” (4-2-03)

02. **Scope.** These rules govern procedures for the detection, prevention, control and eradication of diseases among domestic cervidae, and facilities, record keeping, and reporting requirements of domestic cervidae ranches. (4-2-03)

002. – 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference.

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01. **Bovine Tuberculosis Eradication, Uniform Methods and Rules, Effective January 1, 2005.** This document can be viewed online at https://www.aphis.usda.gov/animal_health/animal_diseases/tuberculosis/downloads/tb-umr.pdf. (3-29-17)

02. **Code of Federal Regulations, Title 9, Part 161, January 1, 2016.** This document can be viewed online at <http://www.ecfr.gov/cgi-bin/text-idx?SID=aded48cc1dcc4e565ec54ad6aefd2f27&mc=true&node=pt9.1.161&rgn=div5>. (3-29-17)

03. **Code of Federal Regulations, Title 9, Part 55, January 1, 2016.** This document can be viewed online at <http://www.ecfr.gov/cgi-bin/text-idx?SID=aded48cc1dcc4e565ec54ad6aefd2f27&mc=true&node=pt9.1.55&rgn=div5>. (3-29-17)

04. **Code of Federal Regulations, Title 9, Subchapter A, Part 1 and 2, January 1, 2016.** This document can be viewed online at <http://www.ecfr.gov/cgi-bin/text-idx?SID=aded48cc1dcc4e565ec54ad6aefd2f27&mc=true&tpl=/ecfrbrowse/Title09/9CISubchapA.tpl>. (3-29-17)

005. -- 009. (RESERVED)

010. DEFINITIONS.

01. **Accredited Veterinarian.** A veterinarian approved by the Administrator and USDA/APHIS/VS, in accordance with Title 9, Part 161, CFR, January 1, 2004, to perform functions required by cooperative state-federal animal disease control and eradication programs. (4-6-05)

02. **Approved Laboratory.** NVSL, an AAVLD accredited laboratory that is qualified to perform CWD diagnostic procedures, or a laboratory designated by the Administrator to perform CWD diagnostic procedures. (4-2-03)

03. **Approved Slaughter Establishment.** A USDA inspected slaughter establishment at which ante-mortem and post-mortem inspection is conducted by USDA inspectors. (4-2-03)

04. **Area Veterinarian in Charge.** The USDA/APHIS/VS veterinary official who is assigned to supervise and perform official animal health activities in Idaho. (4-2-03)

05. **Breed Associations and Registries.** Organizations maintaining permanent records of ancestry or pedigrees of animals, individual animal identification records and records of ownership. (4-2-03)

06. **Certificate.** An official document issued by a state or federal animal health official or an accredited veterinarian at the point of origin of a shipment of cervidae that contains information documenting the age, sex, species, individual identification of the animals, the number of animals, the purpose of the movement, the points of origin and destination, the consignor, the consignee, the status of the animals relative to official diseases, test results and any other information required by the state animal health official for importation or translocation. (4-2-03)

- 07. Cervid Herd.** One (1) or more domestic cervidae or groups of domestic cervidae maintained on common ground or under common ownership or supervision that may be geographically separated but can have interchange or movement. (4-2-03)
- 08. Cervidae.** Deer, elk, moose, caribou, reindeer, and related species and hybrids including all members of the cervidae family and hybrids. (4-2-03)
- 09. Chronic Wasting Disease.** A transmissible spongiform encephalopathy of cervids that is a nonfebrile, transmissible, insidious, and degenerative disease affecting the central nervous system of cervidae. (4-2-03)
- 10. Commingling.** Within the last five (5) years, the animals have had direct contact with each other, had less than thirty (30) feet of physical separation, or shared management equipment, pasture, or surface water sources, except for periods of less than forty-eight (48) hours at sales or auctions when a state or federal animal health official has determined such contact presents minimal risk of CWD transmission. (4-2-03)
- 11. Custom Exempt Slaughter Establishment.** A slaughter establishment that is subject to facility inspection by USDA, but that does not have ante-mortem and post-mortem inspection of animals by USDA inspectors. (4-2-03)
- 12. CWD-Adjacent Herd.** A herd of domestic cervidae occupying premises that border a premises occupied by a CWD positive herd, including herds separated by roads or streams. (4-6-05)
- 13. CWD-Exposed Animal.** A cervid animal that is not exhibiting any signs of CWD, but has had contact within the last five (5) years with cervids from a CWD-positive herd or the animal is a member of a CWD-exposed herd. (4-2-03)
- 14. CWD-Exposed Herd.** A herd of cervidae in which no animals are exhibiting signs of CWD, but:
(4-2-03)
- a.** An epidemiological investigation indicates that contact with CWD positive animals or contact with animals from a CWD positive herd has occurred in the previous five (5) years; or (4-2-03)
 - b.** A herd of cervidae occupying premises that were previously occupied by a CWD positive herd within the past five (5) years as determined by the designated epidemiologist; or (4-2-03)
 - c.** Two (2) herds that are maintained on a single premises even if they are managed separately, have no commingling, and have separate herd records. (4-6-05)
- 15. CWD-Positive Cervid.** A domestic cervid on which a diagnosis of CWD has been confirmed through positive test results on any official cervid CWD test by an approved laboratory. (4-2-03)
- 16. CWD-Positive Herd.** A domestic cervidae herd in which any animal(s) has been diagnosed with CWD, based on positive laboratory results, from an approved laboratory. (4-2-03)
- 17. CWD-Suspect Cervid.** A domestic cervid for which laboratory evidence or clinical signs suggests a diagnosis of CWD. (4-2-03)
- 18. CWD-Suspect Herd.** A domestic cervidae herd in which any animal(s) has been determined to be a CWD-suspect. (4-2-03)
- 19. Death Certificate.** A form, approved by the administrator, provided by the Division for the reporting of cervidae deaths and for reporting sample submission for CWD testing. (4-6-05)
- 20. Designated Epidemiologist.** A state or federal veterinarian who has demonstrated the knowledge and ability to perform the functions required under these rules and who has been selected by the Administrator to fulfill the epidemiology duties relative to the state domestic cervidae disease control program. (4-2-03)

21. **Disposal.** Final disposition of dead cervidae. (4-2-03)
22. **Domestic Cervidae.** Fallow deer (*Dama dama*), elk (*Cervus elaphus*) or reindeer (*Rangifer tarandus*) owned by a person. (4-2-03)
23. **Domestic Cervidae Ranch.** A premises where domestic cervidae are held or kept, including multiple premises under common ownership. (4-6-05)
24. **Electronic Identification.** A form of unique, permanent individual animal identification such as radio frequency identification tag, radio frequency identification implant, or other forms approved by the Administrator. (4-6-05)
25. **Escape.** Any domestic cervidae located outside the perimeter fence of a domestic cervidae ranch and not under the immediate control of the owner or operator of the domestic cervidae ranch. (4-2-03)
26. **Federal Animal Health Official.** An employee of USDA/APHIS/VS who is authorized to perform animal health activities. (4-6-05)
27. **Harvest.** Any healthy domestic cervid that is intentionally and lethally removed from a domestic cervidae facility, by an owner, designated employee or customer of the facility, strictly for the purposes of either shooting or meat production. (4-6-15)
28. **Herd of Origin.** A cervid herd, on any domestic cervidae ranch or other premise, where the animals were born, or where they were kept for at least one (1) year prior to date of shipment. (4-2-03)
29. **Herd Status.** Classification of a cervidae herd with regard to CWD. (4-2-03)
30. **Intrastate Movement Certificate.** A form approved by the Administrator, and available from the Division, to document the movement of domestic cervidae between premises within Idaho. (4-2-03)
31. **Individual CWD Herd Plan.** A written herd management agreement and testing plan developed by the herd owner and approved by the Administrator to identify and eradicate CWD from a positive, source, suspect, exposed, or adjacent herd. (4-7-11)
32. **Limited Contact.** Incidental contact between animals of different herds in separate pens off of the herd's premises at fairs, shows, exhibitions and sales. (4-2-03)
33. **National CWD Herd Certification Program.** A federal-state-industry cooperative program administered by APHIS and implemented by participating states that establishes CWD surveillance and testing standards that owners must achieve before interstate transport of cervids will be permitted. (3-20-14)
34. **Official CWD Test.** A test approved by the Administrator and conducted at an approved laboratory to diagnose CWD. (4-2-03)
35. **Official Identification.** Identification, approved by the Administrator, that individually, uniquely, and permanently identifies each cervid. (4-2-03)
36. **Operator.** A person who has authority to manage or direct a domestic cervidae ranch. (4-2-03)
37. **Premises.** The ground, area, buildings, and equipment utilized to raise, propagate, control, or harvest domestic cervidae. (4-2-03)
38. **Quarantine.** An order issued on authority of the Administrator, by a state or federal animal health official or accredited veterinarian, prohibiting movement of cervids from any location without a written restricted movement permit. (4-2-03)

- 39. Quarantine Facility.** A confined area where selected domestic cervidae can be secured and isolated from all other cervidae and livestock. (4-2-03)
- 40. Ranch Management Plan.** A written plan for a domestic cervidae ranch that sets forth best management practices that mitigates the introduction or dissemination of disease among domestic cervidae. (4-7-11)
- 41. Reidentification.** The identification of a domestic cervid which had been officially identified, as provided by this chapter, but which has lost the official identification device, or the tattoo or official identification device has become illegible. (4-2-03)
- 42. Restrain.** The immobilization of domestic cervidae in a chute, other device, or by other means for the purpose of efficiently, effectively, and safely inspecting, treating, vaccinating, or testing. (4-2-03)
- 43. Restricted Movement Permit.** An official document that is issued by the Administrator, AVIC, or an accredited veterinarian for movement of animals from positive, suspect, or exposed herds. (4-2-03)
- 44. Source Herd.** A herd from which at least one (1) cervid has originated within the previous five (5) years and that cervid has been diagnosed CWD positive. (4-2-03)
- 45. State Animal Health Official.** The Administrator, or Administrator's designee. ()
- 46. Status Date.** The date on which the Administrator approves in writing a herd status change with regard to CWD. (4-2-03)
- 47. Trace Back Herd.** An exposed herd in which at least one (1) CWD positive animal resided within any of the previous sixty (60) months prior to diagnosis with CWD. (4-2-03)
- 48. Trace Forward Herd.** A herd that has received exposed animals from a positive herd within sixty (60) months prior to the diagnosis of CWD in the positive herd or from the identified point of entry of CWD into the positive herd. (4-2-03)
- 49. Traceback.** The process of identifying the movements and the herd of origin of CWD positive, or exposed animals, including herds that were sold for slaughter. (4-2-03)
- 50. Wild Cervidae.** Any cervid animal not owned by a person. (4-2-03)
- 51. Wild Ungulate.** Any four (4) legged, hooved herbivore, including cervids and other ruminants, not owned by a person. (4-6-05)
- 52. Wild Ungulate Cooperative Herd Plan.** A plan, developed cooperatively by the owner of the domestic cervidae ranch, the ISDA, and the Idaho Department of Fish and Game to determine the disposition of any wild ungulates that are found to be located on a domestic cervidae ranch. (4-6-05)

011. ABBREVIATIONS.

- 01. AAVLD.** American Association of Veterinary Laboratory Diagnosticians. (4-2-03)
- 02. APHIS.** Animal and Plant Health Inspection Service. (4-2-03)
- 03. AVIC.** Area Veterinarian in Charge. (4-2-03)
- 04. AZA.** Association of Zoos and Aquariums. (4-4-13)
- 05. CFR.** Code of Federal Regulations. (4-2-03)
- 06. CWD.** Chronic Wasting Disease. (4-2-03)

- 07. CWDP. Chronic Wasting Disease Program. (4-2-03)
- 08. ISDA. Idaho State Department of Agriculture. (4-2-03)
- 09. NAEBA. North American Elk Breeders Association. (4-2-03)
- 10. NVSL. National Veterinary Services Laboratory. (4-2-03)
- 11. TB. Tuberculosis. (4-2-03)
- 12. UM&R. Uniform Methods and Rules. (4-2-03)
- 13. USDA. United States Department of Agriculture. (4-2-03)
- 14. VS. Veterinary Services. (4-2-03)

012. APPLICABILITY.

These rules apply to all domestic cervidae located in, imported into, exported from, or transported through the state of Idaho. (4-2-03)

013. AZA ACCREDITED FACILITIES AND USDA LICENSED FACILITIES.

AZA accredited facilities and facilities licensed by USDA under 9CFR Subchapter A Parts 1 and 2 as licensees, dealers, exhibitors, research facilities and zoos are exempt from the provisions of this chapter provided that: (4-2-03)

01. Movement Between AZA and USDA Facilities. AZA accredited and USDA licensed facilities may not sell, give, or in any way transfer cervidae to persons or domestic cervidae ranches within Idaho, except other to AZA accredited or USDA licensed facilities. (4-2-03)

02. Transfer of Cervidae. Any AZA accredited or USDA licensed facility that in any way transfers cervidae, or title to cervidae, to any person in Idaho, except to other AZA accredited or USDA licensed facilities, must comply with all of the provisions of this chapter. (4-2-03)

014. IMPORTATION OF DOMESTIC CERVIDAE.

All domestic cervidae imported into the state of Idaho must comply with the requirements of the APHIS National CWD Herd Certification Program and IDAPA 02.04.21 "Rules Governing the Importation of Animals," which apply to domestic cervidae. (3-20-14)

015. -- 019. (RESERVED)

020. LOCATION OF DOMESTIC CERVIDAE.

Any person who owns or has control of domestic cervidae in Idaho that are not located on a domestic cervidae ranch that is in compliance with the applicable provisions of this chapter, or on an AZA accredited or USDA licensed facility in compliance with this chapter, is in violation of these rules. (4-2-03)

01. Department Action. In addition to any other administrative or civil action, the department may seize, require removal from the state, require removal to a domestic cervidae ranch that is in compliance with the provisions of this chapter, or require disposal of any domestic cervidae that are not located on a domestic cervidae ranch, an AZA accredited facility, or a USDA licensed facility which is in compliance with the provisions of this chapter. (4-2-03)

02. Reindeer. Reindeer may not be owned, possessed, propagated or held in Idaho north of the Salmon River in order to protect the wild caribou herd in northern Idaho. (4-2-03)

03. Exceptions. The Administrator may grant exceptions from the provisions of Section 020 on a case specific basis. (4-2-03)

04. Natural Disasters. Damage caused to domestic cervidae ranch facilities by natural disasters does

not constitute a violation of this chapter, provided that the owner or operator begins any necessary repairs immediately upon discovering the damage, acts expeditiously, as determined by the Administrator, to complete any necessary repairs and reports the extent and cause of any damage to the Division within twenty-four (24) hours of the discovery of the damage. (4-6-05)

021. OFFICIAL IDENTIFICATION.

All domestic cervidae must be individually, permanently, and uniquely identified, with two (2) types of official identification approved by the Administrator. (4-2-03)

01. Reporting of Identification. The unique individual identification number, type of identification, and the name, address, and telephone number of the owner of each animal identified must be reported to the Administrator, in writing, by the owner or operator. (4-2-03)

02. Identification Assigned. Official identification, once assigned to an individual animal, may not be changed or transferred to another animal. Animals that lose identification devices must be re-identified in accordance with Section 031. (4-7-11)

03. Progeny. All progeny of domestic cervidae must be officially identified by December thirty-first of the year of birth, upon sale or transfer of ownership, or upon leaving the domestic cervidae ranch, whichever is earlier. (4-2-03)

04. Visible Identification. At least one (1) of the official types of identification used must be visible from one hundred and fifty (150) feet. (4-6-05)

022. TYPES OF OFFICIAL IDENTIFICATION.

All domestic cervidae must be individually identified by two (2) of the following types of official identification, at least one (1) of the types of official identification must be a bangle or lamb tag that is visible from one hundred fifty (150) feet. (4-2-08)

01. Official USDA Ear Tag. (4-2-03)

02. Tattoo. Legible skin tattoo using an alphanumeric tattoo sequence that has been recorded with the Division of Animal Industries and applied to either the ear or escutcheon. ()

03. Electronic Identification. A form of electronic identification, approved by the Administrator. (4-6-05)

04. Official NAEBA Eartag. (4-2-03)

05. Official ISDA Cervidae Program Ear Tag. A tamper resistant, unique number sequenced, individual identification tag approved by the Administrator. (4-2-03)

06. Official HASCO Brass Lamb Tag. A brass lamb tag engraved with farm name and individual animal identification number. ()

07. Freeze Brands. Legible, freeze brands that uniquely identify the individual domestic cervid. (4-6-05)

08. Ranch Specific Unique Bangle or Lamb Tags. The Administrator may grant written approval for the use of bangle or lamb tags that are: ranch specific; tamper resistant; uniquely numbered; and correlated with another type of official identification on the annual inventory report. (4-2-08)

09. Other Identification. Other forms of unique individual identification approved by the Administrator. (4-6-05)

023. NATIONAL CWD HERD CERTIFICATION PROGRAM OFFICIAL IDENTIFICATION.

All domestic cervidae enrolled in the National CWD Herd Certification Program are required to be identified with

two (2) forms of identification for each animal. One (1) form of identification must be a nationally unique official animal identification that uses an APHIS-approved numbering system that is linked to the CWD National Database or equivalent ISDA database. The second form of identification must be unique to the individual animal within the herd and also be linked to the CWD National Database or equivalent ISDA database. (3-20-14)

- 01. APHIS-Approved Identification Devices.** (3-20-14)
 - a.** Electronic Identification; (3-20-14)
 - b.** Official USDA Tamper-Resistant Ear Tag; (3-20-14)
 - c.** Legible Ear or Flank Tattoo; and (3-20-14)
 - d.** Other forms of Identification as approved by APHIS Administrator. (3-20-14)

024. -- 029. (RESERVED)

030. OFFICIAL VISIBLE IDENTIFICATION.

01. Ear Tags. All domestic cervidae must be identified with a bangle or lamb tag that is visible from one hundred fifty (150) feet. (4-2-08)

02. Size. The large portion of the bangle or lamb tag must be at least two (2) square inches. (4-2-08)

03. Color. No visible identification may have a primary color of brown, black, pink, tan, or silver. (4-2-08)

04. Camouflage Patterns. No visible identification may utilize camouflage patterns. (4-2-08)

031. REIDENTIFICATION OF DOMESTIC CERVIDAE.

No domestic cervidae that were marked with official identification may be re-tattooed for the purpose of reestablishing their identification nor re-ear-tagged with an official identification ear tag at any time subsequent to the original identification, except that re-tattooing or re-ear-tagging for the purpose of reestablishing the official identification is allowed only under the following conditions: ()

01. Supervision. Reidentification is accomplished under the supervision of an accredited veterinarian, or state or federal animal health officials. (4-2-03)

02. Permanent Identification. Animals that are presented for reidentification have some permanent identification that identifies the animals as those originally officially identified such as an individual animal registration tattoo, or other approved permanent identification, provided that such identification was submitted on the annual inventory report or other official record. (4-2-03)

03. Inventory Evaluation. In absence of permanent identification, the Administrator may conduct an investigation or inventory evaluation to determine identity of the animal that is being presented for reidentification. (4-2-03)

04. Reproduction of Original Tattoo. Re-tattooing must reproduce the original tattoo that was placed in the animal's ear at the time of official identification. (4-2-03)

05. Records. The accredited veterinarian or state or federal animal health official who supervises the reidentification must correlate the new identification with previous identification and record the ear tag or other identification numbers, the tattoo symbols and the owner's name and address and submit the reidentification record to the Division within ten (10) days of the date of reidentification. (4-2-03)

032. -- 039. (RESERVED)

040. INSPECTIONS.

To prevent the introduction and dissemination, or to control and eradicate diseases, state and federal animal health officials are authorized to inspect cervidae records, premises, facilities, and domestic cervidae to ensure compliance with the provisions of this chapter and other state or federal laws or rules applicable to domestic cervidae. State and federal animal health officials must comply with the operation's biosecurity protocol so long as the protocol does not inhibit reasonable access to: (4-2-08)

01. Entry. Enter and inspect, at reasonable times, the premises of domestic cervidae ranches and inspect domestic cervidae. (4-2-08)

02. Access to Records. Review or copy, at reasonable times, any records that must be kept in accordance with these rules. (4-2-08)

041. -- 049. (RESERVED)

050. GENETICS.

Domestic cervidae that have red deer genetic influence may not be imported into Idaho. Additionally, any domestic cervidae located in Idaho that are identified as having red deer genetic influence will be destroyed, removed from the state, or neutered. (4-2-03)

051. -- 059. (RESERVED)

060. WILD CERVIDAE.

Wild cervidae may not be confined, kept or held on a domestic cervidae ranch. (4-2-03)

01. Duty of Ranch Owner. It is the duty of owners of all domestic cervidae ranches to take precautions, and to conduct periodic inspections, to ensure that wild cervidae are not located within the perimeter fence of any domestic cervidae ranch. (4-2-03)

02. Notification of Administrator. All owners or operators of domestic cervidae ranches must notify the Administrator within twenty-four (24) hours of gaining knowledge of the presence of wild cervidae inside the perimeter fence of the domestic cervidae ranch. (4-2-03)

03. Failure to Notify the Administrator. The failure of any owner or operator of a domestic cervidae ranch to notify the Administrator of the presence of wild cervidae within the perimeter fence of a domestic cervidae ranch is a violation of this chapter. (4-2-03)

04. Idaho Department of Fish and Game. Upon receiving notification that wild cervidae are on a domestic cervidae ranch, the Administrator will notify the Idaho Department of Fish and Game. (4-2-03)

05. Wild Ungulate Cooperative Herd Plan. The Idaho Department of Fish and Game will cooperate with ISDA and the owners or operators of domestic cervidae ranches where any wild cervidae or wild ungulates are present within the external perimeter fence of the domestic cervidae ranch to develop and implement a site specific written herd plan to address the disposition of the wild cervidae or wild ungulates. (4-6-05)

061. -- 069. (RESERVED)

070. SUPERVISION OF DOMESTIC CERVIDAE PROGRAM.

A department veterinary medical officer will provide routine supervision of the domestic cervidae program. (4-2-03)

071. -- 079. (RESERVED)

080. DISPOSAL OF DOMESTIC CERVIDAE.

All domestic cervidae carcasses and parts of carcasses not utilized for human consumption, except parts of carcasses utilized for taxidermy purposes, must be disposed of in compliance with IDAPA 02.04.17, "Rules Governing Dead Animal Movement And Disposal." (4-2-03)

081. -- 089. (RESERVED)

090. FEES.

01. Annual Assessment Fee. A fee, not to exceed ten dollars (\$10) per head per year on elk or three dollars (\$3) per head per year on fallow deer and reindeer, is hereby assessed on all domestic cervidae in the state to cover the cost of administering the program covered in these rules. The fee includes all domestic cervidae present at the ranch as of December 31 and all domestic cervidae that die during the same calendar year. This fee is due January first of each year. The annual assessment fee may be reduced if program revenue accumulates to a balance of at least one hundred thousand dollars (\$100,000) in excess of the projected annual cost of operating the program, as determined by the Department on July 1 of each year. (4-6-15)

02. Import, Export, and Movement Fees. The fees imposed in Section 25-3708(2) through (4), Idaho Code, are due no later than December 31 of each year, but the Department requests all movement fees be submitted within five (5) business days of the movement of the domestic cervids. (4-6-15)

091. -- 099. (RESERVED)

100. DOMESTIC CERVIDAE RANCHES.

In order to prevent the introduction or dissemination of diseases, and to control or eradicate diseases, all domestic cervidae ranches must comply with the disease control, facility, and record keeping requirements and all other provisions of this chapter. (4-2-03)

01. Each Premises. Each separate premises where domestic cervidae are kept or held must comply with all of the provisions of this chapter. (4-6-05)

02. Vehicle Access. Domestic cervidae ranches must have motorized vehicle access to the restraining system on each premises, during the portion of the year that cervidae are held or kept on the premises, adequate to facilitate disease prevention and control as determined by the Administrator. (4-6-05)

03. Premises Registration. Each premises where domestic cervidae are kept or held must be registered with the Division and assigned a unique, individual number approved by the Administrator. (4-6-05)

101. DOMESTIC CERVIDAE RANCH FACILITY REQUIREMENTS.

All domestic cervidae ranches are required to have facilities that include, but are not limited to, perimeter fence, restraining system, gathering system, water system, and if required, a quarantine facility. (4-2-03)

01. Maintenance. All facilities must be maintained, at all times that domestic cervidae are present, to prevent the escape of domestic cervidae or ingress of wild cervidae. (4-2-03)

02. Inspections. To ensure compliance with this chapter, state or federal animal health officials will inspect all premises where domestic cervidae are, or will be, possessed, controlled, harvested, propagated, held, or kept. (4-2-03)

a. Each domestic cervidae ranch will be inspected no less than once every five (5) years. Domestic cervidae ranches may be inspected more frequently if requested by the owner or if specified in a ranch management plan. The Administrator may require additional facility inspections as necessary to aid in the prevention, control, or eradication of disease or to ensure compliance with the provisions of this chapter or other state or federal rules applicable to domestic cervidae. (4-6-15)

b. All facilities relating to the handling or raising of domestic cervidae will be inspected. (4-2-03)

102. PERIMETER FENCE REQUIREMENTS.

A perimeter fence, completely enclosing the domestic cervidae ranch to be constructed of high-tensile, non-slip woven wire or other fencing material approved by the Administrator. (4-2-03)

01. Elk and Fallow Deer. For elk and fallow deer, the fence must be a minimum of eight (8) feet in

height for its entire length at all times. (4-2-03)

02. Reindeer. For reindeer, the fence must be at least six (6) feet in height for its entire length at all times. (4-2-03)

03. Wire. The top two (2) feet of each fence may be smooth, barbed or woven wire (at least twelve and one-half (12-1/2) gauge) with horizontal strands spaced not more than six (6) inches apart. (4-2-03)

a. Wire must be placed on the animal side of the fence to prevent pushing the wire away from the posts. (4-2-03)

b. Wire must be attached to all posts at the top, bottom, and not more than eighteen (18) inches apart between the top and bottom of the wire. (4-2-08)

04. Posts. Wooden posts used in the perimeter fence must be at least butt-end treated with a commercially available preservative and have a minimum of four (4) inch top for line posts and a minimum of five (5) inch top for corner posts. Metal pipe posts must be a minimum of two and one-eighth (2-1/8) inches outside diameter with a three-sixteenths (3/16) inch wall thickness for line posts and two and seven-eighths (2-7/8) inches outside diameter with a seven thirty-seconds (7/32) inch wall thickness for corner posts. Posts must be spaced no more than twenty-four (24) feet apart, with stays, supports or braces as needed, and be placed in the ground a minimum of three (3) feet. (4-2-08)

05. Gates. Each domestic cervidae ranch must have gates that prohibit the escape of domestic cervidae or the ingress of wild cervidae. (4-2-03)

06. Fence Maintenance. Fences must be maintained, at all times that domestic cervidae are present, to prevent domestic cervidae from escaping or native wild cervidae from entering the enclosure. (4-2-03)

07. Exceptions. The Administrator may grant exceptions to the specifications in Section 102 on a case specific basis. (4-2-03)

103. GATHERING AND RESTRAINING SYSTEM.

Each domestic cervidae ranch must have a system for humanely and effectively gathering and restraining domestic cervidae for the purpose of inspecting, identifying, treating, or testing of animals by state or federal animal health officials. (4-2-03)

01. Gathering System. Each domestic cervidae ranch must have a system that facilitates the gathering of domestic cervidae so as to be able to move the domestic cervidae through the restraining system, at any time of the year that domestic cervidae are present. (4-2-03)

02. Restraining System. A system approved by the Administrator, to immobilize domestic cervidae for the purpose of efficient, effective, and safe handling for inspecting, treating, vaccinating, or testing. (4-2-03)

03. Exceptions. The Administrator may grant exceptions to the provisions of this section on a case specific basis. (4-2-03)

104. WATER SYSTEM.

Each domestic cervidae ranch must have a water system adequate to supply the need of the cervidae herd. (4-2-03)

105. QUARANTINE FACILITY.

If animals are to be imported onto the domestic cervidae ranch, a quarantine facility, approved by the Administrator, must be provided for holding animals until any disease retesting is accomplished or other requirements are met. (4-2-03)

106. -- 199. (RESERVED)

200. RECORDS AND REPORTING.

01. Reports. Owners of domestic cervidae ranches must submit complete and accurate reports to the Administrator. Failure to submit complete and accurate reports within the designated time frames is a violation of this chapter. (4-2-03)

02. Records. All owners of domestic cervidae ranches, during normal business hours, must present to state or federal animal health officials, for inspection, review, or copying, any cervidae records deemed necessary to ensure compliance with the provisions of this chapter. (4-2-03)

03. Notification. State or federal animal health officials will attempt to notify the owners or operators of domestic cervidae ranches, and premises where records are kept prior to any inspections. (4-2-03)

04. Emergencies. In the event of an emergency, as determined by the Administrator, the notification requirements of Section 200 may be waived. (4-2-03)

201. ANNUAL INVENTORY REPORT.

01. Inventory Report. All owners of domestic cervidae ranches must submit annually, to the Administrator, a complete and accurate inventory of all animals held no later than December 31st of each year containing the following minimum information: ()

- a. Name and address of the domestic cervidae ranch. (4-2-03)
- b. Name and address of the owner of the domestic cervidae ranch. (4-2-03)
- c. Date the inventory was completed. (4-2-03)

02. Individual Domestic Cervidae. For each individual domestic cervidae that was located on the domestic cervidae ranch during the year for which the report is being made, the following information must be provided: (4-2-03)

- a. All types of official and unofficial identification; (4-2-03)
- b. Species; (4-2-03)
- c. Sex; and (3-29-17)
- d. Age or year born. (4-2-03)

202. INVENTORY VERIFICATION.

State or federal animal health officials will verify all domestic cervidae ranch inventories of animals held and individual animal identification annually. (4-2-03)

01. Visible Identification. Individual animal identification verification may be accomplished by visually noting the unique official visible identification number or visually noting an unofficial visible identification number if the number is correlated with two (2) forms of official identification on the inventory submitted by the cervidae producer. The Administrator may, on a case by case basis, grant written permission for ranch specific unique bangle tags to be used for official identification. (4-2-08)

02. Duty to Gather and Restrain. It is the duty of the owner of each domestic cervidae ranch to gather and restrain any domestic cervidae that state or federal animal health officials determine are not readily identifiable for inventory verification purposes. The Administrator determines the suitability of the restraint system. (4-2-03)

203. CHANGE OF ADDRESS.

Owners of domestic cervidae ranches must notify the Division in writing within thirty (30) days of any change in the address of the owners of domestic cervidae, the owner of the domestic cervidae ranch, or the domestic cervidae ranch. (4-6-05)

204. ESCAPE OF DOMESTIC CERVIDAE.

It is the duty of each owner or operator of a domestic cervidae ranch to take all reasonable actions to prevent the escape of domestic cervidae from a domestic cervidae ranch. (4-6-05)

01. Notification of Escape. When any domestic cervidae escape from a domestic cervidae ranch, the owner or operator of the domestic cervidae ranch must notify the Administrator by phone, facsimile, or other means approved by the administrator within twenty-four (24) hours of the discovery of the escape. (4-6-05)

02. Duty to Retrieve Escaped Cervidae. It is the duty of each owner or operator of a domestic cervidae ranch to retrieve or otherwise bring under control all domestic cervidae that escape from a domestic cervidae ranch. (4-2-03)

03. Fish and Game. The Administrator will notify the Idaho Department of Fish and Game of each escape. (4-2-03)

04. Sheriff and State Brand Inspector. When domestic cervidae escape from a domestic cervidae ranch and the owner or operator is unable to retrieve the animals within twenty-four (24) hours, the Administrator may notify the county sheriff or the state brand inspector of the escape pursuant to Title 25, Chapter 23, Idaho Code. (4-2-03)

05. Capture. In the event that the owner or operator of a domestic cervidae ranch is unable to retrieve escaped domestic cervidae in a timely manner, as determined by the Administrator, the Administrator may effectuate the capture of the escaped domestic cervidae to ensure the health of Idaho's livestock and wild cervidae populations. (4-2-03)

06. Failure to Notify. Failure of any owner or operator of a domestic cervidae ranch to notify the Administrator within twenty-four (24) hours of the discovery of an escape of domestic cervidae is a violation of this chapter. (4-6-05)

07. Taking of Escaped Domestic Cervidae. A licensed hunter may legally take domestic cervidae that have escaped from a domestic cervidae ranch only under the following conditions: (4-6-05)

a. The domestic cervidae has escaped and has not been in the control of the owner or operator of the domestic cervidae ranch for more than seven (7) days; and (4-6-05)

b. The hunter is licensed and in compliance with all the provisions of the Idaho Department of Fish and Game rules and code. (4-6-05)

205. NOTICE OF DEATH OF DOMESTIC CERVIDAE.

Notice of death of domestic cervidae twelve (12) months or older and all domestic cervidae officially identified and inventoried that died on a ranch or at an approved slaughter or custom exempt slaughter establishment must be submitted by the owner or operator to the division on a report approved by the Administrator: (3-29-17)

01. Submission of Death Certificates. A complete and accurate copy of all CWD sample submission forms/death certificates must be submitted to the division by regular mail, facsimile, electronic mail, or by other means as approved by the Administrator within ten (10) business days of when the owner or operator knew or reasonably should have known of the death. The CWD sample submission form/death certificate must contain the following minimum information: (3-29-17)

a. Name and address of the domestic cervidae ranch; and (3-29-17)

b. Name and address of the owner of the domestic cervidae ranch. (3-29-17)

02. Individual Domestic Cervidae. For each individual domestic cervidae death, the following minimum information must be provided: (3-29-17)

- a. All individual identification numbers; (3-29-17)
- b. Sex; (3-29-17)
- c. Age or year born; (3-29-17)
- d. Date and time of death; (3-29-17)
- e. Cause of death; (3-29-17)
- f. Specify animals submitted for CWD testing; and (3-29-17)
- g. Dated signature. (3-29-17)

206. (RESERVED)

207. NOTIFICATION OF EXPOSURE TO DISEASE.

Any owner, operator, veterinarian practicing in Idaho, laboratory conducting cervidae testing, or any other person who has reason to believe that domestic cervidae are exposed to or infected with a dangerous or reportable disease or parasite must notify the Division immediately. (4-2-03)

208. INTRASTATE MOVEMENT CERTIFICATE.

All owners of domestic cervidae ranches who move cervidae, from one premises to another, including movement from one (1) premises to another premises owned, operated, leased, or controlled by the owner, within the state of Idaho must submit, to the Administrator, a complete and accurate intrastate movement certificate signed by the owner, within ten (10) business days of the movement. The Administrator will provide blank intrastate movement certificates to the owners of domestic cervidae ranches upon request. (3-29-17)

209. RANCH MANAGEMENT PLAN.

01. Voluntary Ranch Management Plan. A domestic cervidae ranch may apply, on a form prescribed by the Administrator, to enter into a voluntary ranch management plan. The ranch management plan will be developed cooperatively by the owner or authorized agent and the Administrator. For the ranch management plan, the Administrator will conduct a risk assessment considering the factors in Subsection 209.03. A voluntary ranch management plan may, notwithstanding other rule requirements to the contrary, establish inventory verification requirements and CWD sampling requirements specific for a domestic cervidae ranch. Failure to adhere to an approved voluntary ranch management plan is a violation of these rules. (4-7-11)

02. Mandatory Ranch Management Plan. Domestic cervidae ranches are required to develop and implement an approved ranch management plan if the ranch is found in violation of Sections 060, 204 or 500 of these rules. The ranch management plan must be completed and implemented within six (6) months of the disposition of the violation. For the ranch management plan, the Administrator will conduct a risk assessment considering the factors in Subsection 209.03. Failure to comply with the mandatory ranch management plan is a violation of these rules. ()

03. Risk Assessment for Ranch Management Plans. The Administrator will conduct a risk assessment for each ranch management plan. A ranch management plan will not include a double fencing requirement but may require that double gates be installed. The Administrator will consider the following factors when conducting a risk assessment at a domestic cervidae ranch: (4-7-11)

a. Risk of egress. The risk of egress may be evaluated based on, but not limited to, history of domestic cervidae escape during the previous five (5) years, recovery rate of escaped domestic cervidae, length of time domestic cervidae were outside of the perimeter fence, annual average precipitation, topography, altitude and tree density. (4-7-11)

b. Risk of ingress. The risk of ingress may be evaluated on, but not limited to, history of ingress during the previous five (5) years, annual average precipitation, topography, altitude, tree density and proximity to

wildlife migration corridors. (4-7-11)

c. Compliance with CWD sample submission. The Administrator may, based on a risk assessment of the facility, adjust the number of tissue sample submissions required under this rule. The adjustment will be based on, but not limited to, the following: (4-6-15)

i. Whether the domestic cervidae on the ranch have commingled with any domestic cervids of unknown CWD status. (4-6-15)

ii. Whether the domestic cervidae ranch has been in compliance with all requirements of Title 25, Chapter 35, Idaho Code, and these rules. (4-6-15)

iii. Whether the domestic cervidae ranch has had documented cases of ingress of wild cervids or egress of domestic cervidae within the eighteen (18) months prior to the risk assessment. (4-6-15)

210. -- 249. (RESERVED)

250. INTRASTATE MOVEMENT OF DOMESTIC CERVIDAE.

All live domestic cervidae moving from one premises to another premises within the state of Idaho must be officially identified, except calves during the year of birth accompanying their dam, and accompanied by: (4-6-05)

01. TB Test. An official negative test for tuberculosis of all cervidae over twelve (12) months of age, conducted within the last ninety (90) days, or written permission from the Administrator, except: (4-2-03)

a. Animals originating from an accredited, qualified or monitored herd, as described in "Bovine Tuberculosis Eradication, Uniform Methods and Rules," effective January 1, 2005, if they are accompanied by a certificate signed by an accredited veterinarian or the Administrator stating such domestic cervidae have originated directly from such herd; or (3-29-17)

b. Those domestic cervidae consigned directly to an approved slaughter establishment or domestic cervidae approved feedlot; or (4-2-03)

c. Those domestic cervidae moving from one premises to another premises owned, operated, leased, or controlled by the same person. (4-6-05)

02. Intrastate Movement Certificate. All intrastate movements of live domestic cervidae, including movement from one premises to another premises owned, operated, leased, or controlled by the same person, must be accompanied by a complete and accurate intrastate movement certificate, which has been signed by the owner or operator of the domestic cervidae ranch where the movement originates and includes a statement of the CWD and TB status of the cervidae. (4-6-05)

03. Movement of Cervidae Between Accredited AZA or USDA Licensed Facilities. Movement of cervidae between accredited AZA and USDA licensed facilities is exempt from the requirements of this chapter. All other movement from AZA accredited or USDA licensed facilities must comply fully with all of the provisions of this chapter. (4-2-03)

251. -- 299. (RESERVED)

300. DISEASE CONTROL.

The Administrator may require domestic cervidae in the state to be tested for brucellosis (*Brucella abortus* or *Brucella suis*), tuberculosis (*Mycobacterium bovis*), meningeal worm (*Parelaphostrongylus tenuis*), muscle worm (*Elaphostrongylus cervus*), CWD or for other diseases or parasites determined to pose a risk to other domestic cervidae, livestock, or wildlife. (4-2-03)

301. DUTY TO RESTRAIN.

It is the duty of the owner of each domestic cervidae ranch to gather and restrain domestic cervidae for testing when directed to do so in writing by the Administrator. The Administrator determines the suitability of the restraint system. ()

302. TESTING METHODS.

The Administrator determines appropriate testing procedures and methods. ()

303. TESTING, TREATMENT, QUARANTINE, OR DISPOSAL REQUIRED.

The Administrator determines when testing, treatment, quarantine, or disposal of domestic cervidae is required at any domestic cervidae ranch pursuant to Title 25, Chapters 2, 3, 4, 6, and 37, Idaho Code. If the Administrator determines that testing, treatment, quarantine, disposal of domestic cervidae, or cleaning or disinfection of premises is required, a written order will be issued to the owner describing the procedure to be followed and the time period for carrying out such actions. ()

304. QUARANTINES.

All domestic cervidae animals or herds that are determined to be exposed to, or infected with, any disease that constitutes an emergency, as provided in Title 25, Chapter 2, Idaho Code, will be quarantined. (4-2-03)

01. Infected Herds. Infected herds or animals must remain under quarantine until such time that the herd has been completely depopulated and the premises has been cleaned and disinfected as provided by the Administrator, or the provisions for release of a quarantine established in these rules have been met. (4-6-05)

02. Exposed Herds. The quarantine for exposed herds or animals may take the form of a hold-order which remains in effect until the exposed animals have been tested and the provisions for release of a quarantine as established in these rules have been met. (4-2-03)

03. Validity of Quarantine. The quarantine is valid whether or not acknowledged by signature of the owner. (4-2-03)

305. DECLARATION OF ANIMAL HEALTH EMERGENCY.

The Director is authorized to declare an animal health emergency. (4-2-03)

01. Condemnation of Animals. In the event that the Director determines that an emergency exists, animals that are found to be infected, or affected with, or exposed to an animal health emergency disease may be condemned and destroyed. (4-2-03)

02. Indemnity. Any indemnity is paid in accordance with Sections 25-212 and 25-213, Idaho Code. (4-2-03)

03. Notification to Administrator. Every owner of cervidae, every breeder or dealer in cervidae, every veterinarian, and anyone bringing cervidae into this state who observes the appearance of, or signs of any disease or diseases, or who has knowledge of exposure of the cervidae to diseases that constitute an emergency must give immediate notice to the Administrator by telephone, facsimile, or other means as approved by the Administrator. (4-6-05)

04. Failure to Notify. Any owner of cervidae who fails to report as herein provided forfeits all claims for indemnity for animals condemned and slaughtered or destroyed on account of the animal health emergency. (4-2-03)

306. -- 399. (RESERVED)

400. BRUCELLOSIS.

Owners of domestic cervidae ranches must comply with the provisions of IDAPA 02.04.20, "Rules Governing Brucellosis," that apply to domestic cervidae. ()

401. -- 449. (RESERVED)

450. TUBERCULOSIS.

01. Change of Ownership. All domestic cervidae that are sold, or are in any way transferred from one

person to another person in Idaho are required to be tested negative for TB within ninety (90) days prior to the change of ownership or transfer, except: (4-2-03)

a. Animals originating from an accredited, qualified or monitored herd, as described in “Bovine Tuberculosis Eradication, Uniform Methods and Rules,” effective January 1, 2005, if they are accompanied by a certificate signed by an accredited veterinarian or the Administrator stating such domestic cervidae have originated directly from such herd; or (3-29-17)

b. Those domestic cervidae consigned directly to an approved slaughter establishment or domestic cervidae approved feedlot. (4-2-03)

c. The Administrator, following an evaluation, may grant exceptions to the provisions of this Section on a case-by-case basis. (4-4-13)

02. Rules and UM&R. Owners of domestic cervidae ranches must comply with the provisions of IDAPA 02.04.03, “Rules Governing Animal Industry,” that apply to domestic cervidae, and the Bovine Tuberculosis Eradication, UM&R, Effective January 1, 2005. ()

451. -- 499. (RESERVED)

500. SURVEILLANCE FOR CWD.

01. Slaughter Surveillance. Brain tissue from no less than ten percent (10%) of all domestic cervidae sixteen (16) months of age or older that are slaughtered at approved slaughter establishments or custom exempt slaughter establishments must be submitted annually by the owner of the slaughtered cervidae to official laboratories to be tested or examined for CWD as provided for in these rules. If ten (10) or less cervids on a domestic cervidae ranch are slaughtered in a calendar year, at least one (1) testable brain sample must be submitted to meet the annual CWD surveillance requirement. Tissues samples submitted to an official laboratory that are untestable or are given an indeterminate test result do not count towards the tissue submission requirement. (3-29-17)

02. Domestic Cervidae Ranch Surveillance. Brain tissue from no less than ten percent (10%) of all domestic cervidae sixteen (16) months of age or older that are harvested on domestic cervidae ranches must be submitted for CWD testing annually. If ten (10) or less cervids on a domestic cervidae ranch are harvested in a calendar year, at least one (1) testable brain sample must be submitted to meet the annual CWD surveillance requirement. In addition to the tissue samples from the harvested domestic cervidae, brain tissue from one hundred percent (100%) of all domestic cervidae sixteen (16) months of age or older that die for any reason other than being harvested must also be submitted for CWD testing annually. Reindeer and fallow deer are exempt from CWD testing unless the reindeer and fallow deer are part of a CWD positive, exposed, trace, source, or suspect herd or part of an elk herd. The owner or operator of the domestic cervidae ranch must submit all tissue samples to an official laboratory to be tested for CWD, as provided for in these rules. Tissues samples submitted to an official laboratory that are untestable or are given an indeterminate test result do not count towards the tissue submission requirement. In the event a domestic cervidae ranch cannot submit a testable brain sample, the domestic cervidae ranch must submit a CWD Sample Submission Waiver Request within ten (10) business days of determining that a testable brain sample cannot be submitted. (3-29-17)

501. COLLECTION OF SAMPLES FOR CWD TESTING.

Only accredited veterinarians, state and federal animal health officials, and other persons, approved by the Administrator, may collect brain or other tissue samples for CWD testing. Samples must be collected immediately upon discovery of the death of a domestic cervid. (4-2-03)

01. Brain Samples. Only persons trained by state or federal animal health officials, and approved by the Administrator, may remove the obex portion of the brainstem for submission as the sample for CWD testing. (3-29-17)

02. Submission of Head. Only persons trained by state or federal animal health officials, and approved by the Administrator, may submit a head with the official identification attached to the head as the sample for CWD testing. (4-6-05)

03. Handling of Samples. All CWD samples must be handled in a manner that prevents degradation of the sample. (4-2-03)

04. Sample Submission Time. Fresh samples for CWD testing must be submitted, to an approved laboratory, within seventy-two (72) hours of the date of collection. Formalin preserved samples must be submitted, to an approved laboratory, within ten (10) business days of the date of collection. (3-29-17)

05. Non-Testable or Samples That Do not Contain Appropriate Tissues. The Administrator may conduct an investigation to determine if a domestic cervidae ranch is complying with the provisions of Section 500 if: (4-2-03)

a. The owner or operator of a domestic cervidae ranch submits samples for CWD testing which are non-testable; or (4-2-03)

b. The owner or operator of a domestic cervidae ranch submits samples for CWD testing that do not contain the obex portion of the brainstem or other appropriate tissues, if available, for CWD testing. (3-29-17)

c. The owner or operator of a domestic cervidae ranch submits samples for CWD testing which cannot be identified to the animal of origin. (4-6-05)

06. Failure to Meet Annual CWD Tissue Submission Requirement. An owner or operator of a domestic cervidae ranch who fails to submit samples for CWD testing or who fails to meet the annual tissue submission requirements of this chapter, or both, is in violation of these rules, except the Administrator may approve, in writing, a variance from sample submission requirements on a case specific basis. (3-29-17)

502. OFFICIAL CWD TESTS.

01. Official Tests. Official tests for CWD, approved by the Administrator, include: (4-2-03)

a. Histopathology; (4-2-03)

b. Immunohistochemistry; (4-2-03)

c. Western Blot; (4-2-03)

d. Negative Stain Electron Microscopy; (4-2-03)

e. Bioassay; and (4-2-03)

02. Other Scientifically Validated Test. The Administrator may approve other scientifically validated laboratory or diagnostic tests to confirm a diagnosis of CWD. (4-2-03)

503. CWD STATUS.

CWD status is based on the number of years that a herd of domestic cervidae has been determined to be in compliance with the provisions of this chapter, during which there is no evidence of CWD in the herd. (4-2-03)

01. Status Review. The Administrator will review the CWD status of each domestic cervidae herd located in Idaho on at least an annual basis. (4-2-03)

02. Status Date. The status date is the date that the Administrator approves a change in the CWD status of a domestic cervidae herd in Idaho. (4-2-03)

03. Cervidae of Lesser Status. If a herd of domestic cervidae has contact with cervidae of a lesser status, the status of the herd with the higher status will be lowered to the status of the cervidae with the lesser status. (4-2-03)

04. Change of Ownership. A herd's status may remain with the herd when a change of ownership, management or premises occurs, if there is no contact with cervidae of lesser status, and no previous history of CWD on the premises. (4-2-03)

05. Contact with CWD Positive Animals. Any herd of domestic cervidae that has contact with CWD positive or exposed animals may have its status reduced or removed. (4-2-03)

504. INVESTIGATION OF CWD.

An epidemiological investigation will be conducted on all CWD positive, suspect, and exposed animals and herds, herds of origin, source herds, all adjacent herds, and all trace herds as determined by the Administrator. (4-2-03)

01. Quarantine. All positive, suspect, and exposed herds or animals, herds of origin, adjacent herds, and herds having contact with positive or exposed animals must be quarantined; and (4-2-03)

02. Identification. CWD suspect and exposed animals must be identified and remain on the premises where they are found until they have met the provisions for release of quarantine established in this chapter, are destroyed and disposed of as directed by the Administrator, or are moved at the Administrator's direction on a restricted movement permit. (4-2-03)

505. DURATION OF CWD QUARANTINE.

Quarantines imposed because of CWD in accordance with this chapter remain in effect until one (1) of the following criteria are met: (4-2-03)

01. CWD Positive Herds. The quarantine may be released after the herd is completely depopulated as provided in Subsection 505.07, or after five (5) years of compliance with an individual herd CWD plan and all provisions of these rules, during which there was no evidence of CWD. (4-7-11)

02. CWD Suspect Herds. The quarantine may be released after the herd is completely depopulated as provided in Subsection 505.07, or after a minimum of five (5) years of compliance with an individual CWD herd plan and all provisions of these rules and during which there was no evidence of CWD, or an epidemiologic investigation determines that there is no evidence CWD exists in the herd as determined by the Administrator. (4-7-11)

03. Source Herds and Herds of Origin. The quarantine may be released after a minimum of five (5) years of compliance with an individual CWD herd plan and all provisions of these rules and during which there was no evidence of CWD, or an epidemiologic investigation determines that there is no evidence CWD exists in the herd and that the herd is not the source of infection as determined by the Administrator. (4-7-11)

04. Exposed Herds. The quarantine may be released after the herd is completely depopulated as provided in Subsection 505.07, or after a minimum of five (5) years of compliance with an individual CWD herd plan and all provisions of these rules and during which there was no evidence of CWD, or an epidemiologic investigation determines that there is no evidence CWD exists in the herd as determined by the Administrator. (4-7-11)

05. Adjacent Herds. The quarantine may be released when directed by the Administrator based upon an epidemiological investigation and in consultation with the designated epidemiologist. (4-6-05)

06. Fencing Requirements. Any owner of a domestic cervidae ranch who chooses to remain under quarantine for five (5) years must construct a second perimeter fence that meets the requirements for perimeter fence, as provided in Section 102, such that no domestic cervidae on the domestic cervidae ranch can get within ten (10) feet of the original exterior perimeter fence or as approved by the Administrator. (4-2-03)

07. Complete Depopulation. The quarantine may be released after: (4-2-03)

a. Complete depopulation of all cervidae on the premises as directed by the Administrator; and (4-2-03)

b. The premises have been free of all livestock as specified in an individual CWD herd plan approved by the Administrator; and (4-7-11)

c. The soil and facilities have been cleaned, treated, decontaminated, or disinfected as directed by the Administrator. (4-2-03)

08. Disposal of Positive or Exposed Cervidae. All CWD positive or exposed domestic cervidae must be disposed of as directed by the Administrator. (4-2-03)

506. CLEANING, TREATING, DECONTAMINATING, OR DISINFECTING. Premises must be cleaned, treated, decontaminated, or disinfected under state or federal supervision as directed by the Administrator within fifteen (15) days after CWD positive or suspect animals have been removed. (4-2-03)

01. Exemptions. The Administrator may authorize, in writing, an exemption from cleaning, treating, decontaminating, or disinfection requirements on a case-by-case basis. (4-2-03)

02. Extension of Time. The Administrator may authorize, in writing, an extension of time for cleaning and disinfection under extenuating circumstances. (4-2-03)

03. Requests for Extensions or Exemptions. The owner of the contaminated facility must submit requests for extensions or exemptions to the Administrator in writing. (4-2-03)

507. -- 999. (RESERVED)

02.06.06 – RULES GOVERNING THE PLANTING OF BEANS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 22-1907, 22-2004, and 22-2006, Idaho Code. (4-2-03)

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is IDAPA 02.06.06, “Rules Governing the Planting of Beans.”()

02. **Scope.** These rules govern the planting of beans in Idaho. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

The Department adopts the definitions set forth in Section 22-2005, Idaho Code. In addition, as used in this chapter:
(4-2-03)

01. **Department Approved Tag (Yellow Tag) (Phaseolus).** A tag issued by the Department to seed lots produced west of the Continental Divide in the contiguous United States. The seed lot must be accompanied by a phytosanitary certificate issued by the regulatory agency of the state of origin, listing the diseases the crop was inspected for, that must include the regulated pests as defined in Section 012 of these rules and be based on growing season and windrow or pre-harvest inspections. Seed lots must pass laboratory testing done by the Department on samples drawn in Idaho by the Department and found free from regulated pest(s) as listed in Section 012 of this rule.
()

02. **Department Approved Tag (Yellow Tag) (Non-Phaseolus).** A tag issued by the Department to seed lots produced outside of Idaho and imported into Idaho for planting. The seed lot must be certified by the seed certification agency of the state of origin and be accompanied by a phytosanitary certificate or official field inspection report issued by the regulatory agency of the state of origin. Seed lots must pass laboratory testing performed by the Department, or Department approved laboratories, on samples drawn in Idaho by the Department and found free from regulated pest(s) and soil as listed in Sections 012 and 013 of this rule.
()

03. **Department In-State Planting Tag (Green Tag).** A tag issued by the Department to seed lots in compliance with growing season and windrow inspections in Idaho.
(4-2-03)

04. **Detailed Varietal Planting Plan.** A plan that shows the variety name, seed lot number, In-state planting tag number (State Number) if applicable, pounds planted, acres planted, origin of seed, and the results of laboratory testing.
(4-2-03)

05. **Edible Harvest.** Seed planted in Idaho intended for edible purposes (fresh green pod or dried edible seed).
()

06. **Experimental Plots.** Subdivisions of trial grounds used for the introduction of seed otherwise ineligible for planting in Idaho.
(4-2-03)

07. **Farmstead.** All land farmed in common with the land upon which the trial ground is located.
(4-2-03)

08. **Home Garden.** Personal use home gardens wherein Phaseolus or Non-Phaseolus species are planted for consumption and will not be utilized for replanting outside the same home garden where they were produced or offered for sale or sold for further propagation in Idaho.
()

09. **ICIA Tag.** A tag issued by ICIA provided that the lot was field and windrow inspected by ICIA in accordance with these rules.
(4-2-03)

10. **In-State Planting Tag Number (State Number).** A number assigned by the Department to each lot which has successfully passed the Department’s field and windrow inspection requirements in which no regulated pests were found.
(4-2-03)

11. **Introduction Plots.** Subdivisions of trial grounds used for the introduction or increase of bean seed.
(4-2-03)

12. Oregon Department of Agriculture Inspection Tag. A tag issued to seed lots produced in Malheur County, Oregon which were inspected in the growing season and in the windrow by the Oregon Department of Agriculture for the regulated pests as defined in Section 012 and Subsections 013.01 and 013.02 of these rules ()

13. Pre-Harvest Inspection. Inspection done prior to harvest, where harvest methods or crop condition do not allow for windrow inspection. ()

14. Rill Irrigation. A method of applying non-pressurized irrigation water to crops in a free flow manner by using a series of drip, ditches, canals, siphon tubes, and gated pipe utilizing gravity as means of conveyance within the field. ()

15. Seed Borne. Pest(s) that can be found on the seed or within the seed coat but do not necessarily result in the transfer of the pest to the resulting plant. ()

16. Seed Lot. A definite quantity of seed identified by a lot number, every portion or bag of which is uniform, within permitted tolerances, for factors that appear in the labeling. (4-2-03)

17. Seed Transmitted. Pest(s) that can be transferred from the seed into the resulting plant. ()

18. Sprinkler Irrigation. An overhead water delivery system used to disperse irrigation water to crops in a designated pattern utilizing a pump, a network series of pipes and delivering water under a controlled pressure in a predetermined quantity. (4-2-03)

19. Trial Grounds. Parcels of land located on one (1) farmstead set aside for the purpose of research testing or introduction of bean seed. (4-2-03)

20. True Identity of Seed Lot. True identity of seed lot is recorded using information provided by the applicant on the application for field inspection or on the detailed varietal planting plan and harvest records. The true identity of the seed lot is maintained by the Department after the applicant has finalized the harvest information and provided such to the Department. (4-2-03)

21. Windrow Inspection. An inspection procedure performed on a seed crop prior to harvest but after the crop has been cut and allowed for curing or drying out. (4-2-03)

011. ABBREVIATIONS.

01. ICIA. Idaho Crop Improvement Association. (4-2-03)

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

012. REGULATED PESTS (PHASEOLUS AND NON-PHASEOLUS).

01. Anthracnose. Caused by (*Colletotrichum lindemuthianum*), (*Glomerella lindemuthiana*). (4-2-03)

02. Bacterial Wilt. Caused by (*Curtobacterium flaccumfaciens pv. flaccumfaciens*), (*Corynebacterium flaccumfaciens*). (4-2-03)

03. Brown Spot. Caused by (*Pseudomonas syringae pv. syringae*), (*P. syringae*). (4-2-03)

04. Common Blight. Caused by (*Xanthomonas axonopodis pv. phaseoli*), (*X. phaseoli*), (*X. phaseoli var. fuscans*). (4-2-03)

05. Halo Blight. Caused by (*Pseudomonas savastanoi pv. phaseolicola*), (*P. phaseolicola*). (4-2-03)

013. REGULATED PESTS (NON-PHASEOLUS ONLY).

01. Soybean Cyst Nematode. (*Heterodera glycines*). ()

02. Asian Soybean Rust. Caused by (*Phakopsora pachyrhizi*). ()

03. Soil. There is a zero (0) tolerance, as defined by the soil tolerance standards of the Association of Official Seed Analysts (AOSA), for soil in any lot of a regulated article imported into Idaho and destined for planting in Idaho. This prohibition does not apply to seed of Idaho or Malheur County, Oregon origin. ()

014. -- 049. (RESERVED)

050. REGULATED ARTICLES.

All seed and growing plants of (*Phaseolus*) species, from any source, being grown or planted for the production of seed or planted for edible harvest within the state of Idaho. All seed of soybean (*Glycine max*), mung bean (*Vigna radiata*), and azuki bean (*Vigna angularis*) and any other plant species capable of spreading a regulated pest as a contaminant or in a seed borne or seed transmitted manner, from any source and being planted within the state of Idaho, unless otherwise exempted in this rule. ()

051. EDIBLE HARVEST EXEMPTION.

Seeds planted for edible harvest must bear an approved tag as defined in Section 200.08 or 201.06 of this rule. Seeds planted for edible harvest are not required to undergo inspection requirements defined in Section 150 and 151, and are not covered by the irrigation restrictions defined in Section 200.09. ()

052. HOME GARDEN EXEMPTION.

Seeds planted for home garden use and consumption that will not be sold for replanting outside the original home garden space are allowed to utilize small package, non-tagged seed and are exempt from inspection requirements defined in Section 150 and 151 of this rule and from irrigation restrictions defined in Section 200.09. All seed intended for production of seed for replanting outside the home garden where they were produced are defined as Regulated Articles in Section 050. ()

053. -- 149. (RESERVED)

150. INSPECTION (PHASEOLUS).

All seeds harvested from bean fields in Idaho intended for replanting in Idaho shall be submitted to the Department or ICIA for growing season and windrow inspections. (4-2-03)

01. Application for Inspection. (4-2-03)

a. Deadline for Submission. Received by the Department on or before July 1 of each year. (4-2-03)

b. Application Forms. Forms will be provided by the Department or may be company generated. Company generated application forms must be approved by the Department prior to submission. (4-2-03)

c. Additional or Substitute Acreage. Applications for additional or substitute acreage may be submitted until September 1 and will be accepted on a case by case basis and the cost of inspection to be determined by the Director. (4-2-03)

02. Active Growth Inspection. Unless the Director, in his sole discretion, deems additional inspections are necessary, the bean seed for replanting will be inspected as follows: (4-2-03)

a. Fields under rill irrigation -- at least once. (4-2-03)

b. Fields under sprinkler irrigation -- at least twice. (4-2-03)

03. Windrow or Pre-Harvest Inspection. (4-2-03)

a. Number of inspections -- at least once. (4-2-03)

b. The Director may authorize qualified personnel to perform windrow inspections under the supervision of the Department. (4-2-03)

c. The Director may upon written request of the seed company agent perform standing crop pre-harvest inspection. ()

151. INSPECTION (NON-PHASEOLUS)

All imported or Idaho origin seeds intended for planting or replanting in Idaho shall be submitted to the Department for growing season and pre-harvest/windrow inspections. ()

01. Application for Inspection. ()

a. Deadline for Submission. Received by the Department on or before July 1 of each year. ()

b. Application Forms. Forms will be provided by the Department or may be company generated. Company generated application forms must be approved by the Department prior to submission. ()

c. Additional or Substitute Acreage. Applications for additional or substitute acreage may be submitted until September 1 and will be accepted on a case by case basis and the cost of inspection to be determined by the Director. ()

02. Inspections. Unless the Director, at his sole discretion, deems additional inspections are necessary, the bean seed for planting will be inspected as follows: ()

a. Fields under rill or sprinkler irrigation -- at least once; ()

b. Pre-Harvest or Windrow Inspection -- at least once. ()

152. -- 199. (RESERVED)

200. REQUIREMENTS FOR PLANTING BEAN SEED IN IDAHO (PHASEOLUS).

In order to be eligible for planting bean seed in Idaho: (4-2-03)

01. Idaho Grown Seed. Seeds planted must be from a lot that has an in-state planting tag number (state number) assigned by the Department based on growing season and windrow inspections and be tagged by the Department with a Department In-State Planting Tag (Green tag) or be tagged by the ICIA in accordance with these rules. (4-2-03)

02. Malheur County, Oregon Grown Seed. Bean seed produced in Malheur County, Oregon must be from a lot inspected in the growing season and in the windrow for the regulated pests as defined in Section 012 of these rules and tagged by the Oregon Department of Agriculture. The ICIA may inspect and issue tags for bean seed grown in Malheur County, Oregon provided that each field is inspected according to these rules and the Malheur County Bean Disease Control Area order. (3-29-10)

03. Imported Seed Grown West of the Continental Divide in the Contiguous United States. Imported bean seed grown west of the Continental Divide in the contiguous United States must: (4-2-03)

a. Be accompanied by a phytosanitary certificate issued by the regulatory agency of the state of origin, listing the diseases for which the crop was inspected, that must include the regulated pests as defined in Section 012 of these rules, and stating that the crop was field and windrow or pre-harvest inspected; ()

b. Seed lot shall successfully pass laboratory tests conducted by the Department from samples officially drawn in the state of Idaho by the Department; (4-2-03)

c. Bear a Department approved tag (yellow); ()

- d. Not be planted under sprinkler irrigation; and ()
 - e. Each field planted in Idaho must be submitted for field and windrow or pre-harvest inspections. (4-2-03)
- 04. Imported Seed Grown East of the Continental Divide in the Contiguous United States or of Foreign Origin.** Imported bean seed grown east of the Continental Divide in the Contiguous United States or of foreign origin to be planted in Idaho shall be planted only on an approved trial ground as outlined in Section 250. (4-2-03)
- 05. Idaho Grown Seeds Shipped East of the Continental Divide in the Contiguous United States or to a Foreign Country and Returned.** Bean seeds shipped east of the Continental Divide in the contiguous United States or to a foreign country may be returned to Idaho but, upon return, be planted on an approved trial ground as outlined in Section 250. ()
- 06. Idaho Grown Seeds Shipped West of the Continental Divide in the Contiguous United States, Except Malheur County, Oregon, or to a Foreign Country and Returned.** Bean seeds shipped outside Idaho or Malheur County, Oregon, west of the Continental Divide in the contiguous United States, or to a foreign country, which were tagged prior to leaving the state and at the Director's discretion were segregated in such a way to ensure freedom from regulated pests, may be returned to Idaho for planting under the following conditions: ()
- a. Seed tags and packaging are intact with the segregation of the seed deemed satisfactory by the Director, ()
 - b. Bean seed not tagged prior to leaving the state, returned to Idaho without seed tags and packaging intact, or not segregated to the satisfaction of the Director, may be returned to Idaho but, upon return, will fall under Section 200.03 or 201.03 of these rules or may be planted on an approved trial ground as outlined in Section 250. ()
- 07. Contaminated Seeds.** The seeds from any bean field found or known to be contaminated with a regulated pest, as defined in Section 012 of these rules, cannot be planted in Idaho. (4-2-03)
- 08. True Identity of Seed Lots.** Failure to maintain the true identity of any seed lot intended for seed purposes will automatically disqualify that lot for future planting in Idaho. (4-2-03)
- 09. Tags.** Bean seeds planted in Idaho shall be from an approved lot bearing an approved tag on each bag or container, stating the kind, variety, and lot number. The following is a list of approved planting tags in Idaho: (4-2-03)
- a. Department in-state planting tag (green tag); (4-2-03)
 - b. Department approved tag (yellow tag); (4-2-03)
 - c. ICIA tag, provided the lot was field and windrow inspected by ICIA in accordance to these rules; or (4-2-03)
 - d. Oregon Department of Agriculture inspection tag. (4-2-03)
- 10. Irrigation.** (4-2-03)
- a. Pintos, Reds, Pinks, Great Northerns, Small Whites, Navy Beans, Blacks, Kidneys, Yellows, Cranberries, and Lima beans: ()
 - i. First generation of seed grown in Idaho must be grown and inspected under rill irrigation. (4-2-03)
 - ii. Thereafter, the seed may be grown and inspected for two (2) consecutive generations in Idaho under sprinkler irrigation. (4-2-03)

- iii. Seed grown under sprinkler irrigation for two (2) consecutive generations shall then be grown and inspected for one (1) generation in Idaho under rill irrigation. (4-2-03)
- b. All other beans: (3-29-10)
 - i. First generation of seed grown in Idaho must be grown and inspected under rill irrigation. (4-2-03)
 - ii. Thereafter, the seed may be grown and inspected for one (1) generation in Idaho under sprinkler irrigation. (4-2-03)
 - iii. Any time seed has been grown and inspected for one (1) generation in Idaho under sprinkler irrigation and prior to planting the seed under sprinkler irrigation or rill irrigation in Idaho, the seed must be sampled and laboratory tested by the Department in Idaho and found negative for the regulated pests. (3-29-10)
 - iv. Following a second consecutive planting of the seed under sprinkler irrigation in Idaho, the seed must be sampled and laboratory tested by the Department in Idaho and found negative for the regulated pests. (3-29-10)
 - v. After meeting the requirements of Subsections 200.09.b.i. through 200.09.b.iv., the seed must be grown and inspected for one (1) generation in Idaho under rill irrigation. (4-2-03)

201. REQUIREMENTS FOR PLANTING BEAN SEED IN IDAHO (NON-PHASEOLUS). ()
In order to be eligible for planting seed in Idaho: ()

01. Idaho Origin Seed to Be Replanted. Seeds planted must be from a lot that was produced in accordance with these rules and has an in-state planting tag number (state number) assigned by the Department based on growing season and pre-harvest or windrow inspections and be tagged by the Department with a Department In-State Planting Tag (Green tag). ()

02. Malheur County, Oregon Grown Seed. Seed produced in Malheur County, Oregon must be from a lot inspected in the growing season and pre-harvest or windrow for the regulated pests as defined in Section 012, 013.01, and 013.02 of these rules and tagged by the Oregon Department of Agriculture. ()

03. Imported Seed From Other Than Malheur County, Oregon. Imported seed must: ()

a. Be certified by the seed certification agency of the state of origin and be accompanied by a state phytosanitary certificate issued by the regulatory agency of the state of origin, listing the diseases for which the crop was inspected, that must include the regulated pests and soil as defined in Sections 012 and 013 of these rules, as identified from official field inspection, official samples and official laboratory testing; or ()

b. Each seed lot shall successfully pass laboratory tests on untreated seed for regulated pests and soil conducted by the Department (in the case of nematodes and soil by a Department approved lab) from samples officially drawn in the state of Idaho by the Department; and ()

c. Bear a Department Approved Tag (Yellow Tag) at the time of planting; and ()

d. Be submitted for a growing season inspection in compliance with Section 151 of this rule; and ()

e. If intended for seed production, not be planted under sprinkler irrigation for the first growing season. ()

04. Contaminated Seeds. The seeds from any field found or known to be contaminated with a regulated pest or soil, as defined in Section 012 and 013 of these rules, cannot be planted in Idaho. ()

05. True Identity of Seed Lots. Failure to maintain the true identity of any seed lot intended for seed

purposes will automatically disqualify that lot for future planting in Idaho. ()

06. Tags. Seeds planted in Idaho shall be from an approved lot bearing an approved tag on each bag or container, stating the kind, variety, and lot number. The following is a list of approved planting tags in Idaho: ()

- a. Department in-state planting tag (green tag); ()
- b. Department approved tag (yellow tag); ()
- c. Oregon Department of Agriculture inspection tag. ()

202. -- 249. (RESERVED)

250. TRIAL GROUNDS.

01. General Trial Ground Requirements. (4-2-03)

a. A written request for trial ground must be submitted to the Director for approval prior to May 20 of the year the bean seed will be planted and must contain: (4-2-03)

- i. Name of person in charge. (4-2-03)
- ii. Geographic location and size of trial ground. (4-2-03)

iii. Detailed varietal planting plan. If the original planting plan is changed, the person in charge of the trial ground must notify the Director. (4-2-03)

b. Must be jointly supervised by the Department and personnel approved by the Director. (4-2-03)

c. The land must be owned or leased by the applicant. If leased, a copy of the lease must accompany the application. (4-2-03)

d. More than one (1) trial ground may be approved provided that a separate application is submitted and each trial ground meets the requirements of Section 250. (4-2-03)

02. Trial Ground Subdivisions. (4-2-03)

a. Experimental Plots. A maximum of one (1) pound of bean seed per variety may be planted in an experimental plot without laboratory testing. (4-2-03)

b. Introduction Plots. Introduction plots are limited to a maximum of two (2) acres per variety per company or designated agent for any given year and each seed lot to be planted in an introduction plot must successfully pass laboratory tests conducted by the Department from samples officially drawn in the state of Idaho by the Department. ()

03. Trial Ground Restrictions and Inspection Procedures. (4-2-03)

a. Any machinery used in production of bean seed on trial grounds must be disinfected, to the satisfaction of the Director, prior to movement to other bean fields. (4-2-03)

b. Approved trial grounds shall not be planted under sprinkler irrigation. (4-2-03)

c. During each growing season there will be a minimum of four (4) active growth inspections and one (1) windrow or pre-harvest inspection. ()

04. Detection of Regulated Pest. If a regulated pest is found by field inspection, windrow or pre-harvest inspection or subsequent laboratory seed testing, the infested seed must be destroyed. None of the remaining

bean seed produced on that farmstead may be released for general planting in Idaho. The remaining seeds must be sampled and laboratory tested by the Department. If the laboratory test is negative for the regulated pests, then the seeds must be planted on an approved trial ground for one (1) additional year and are limited to a maximum of two (2) acres. ()

251. -- 299. (RESERVED)

300. SPECIAL SITUATIONS.

The Director may grant specific exemptions for research purposes for the planting of beans that do not meet the requirements of Sections 200, 201, or 250. Seed not meeting the requirements of Sections 200, 201, or 250 must be planted only in counties where commercial beans or bean seed is not produced, as determined by the Director. ()

301. -- 349. (RESERVED)

350. DETECTION, IDENTIFICATION, AND REPORTING OF REGULATED PESTS.

01. Reporting. Any person may report to the Department the detection of any of the regulated pests. (4-2-03)

02. Observation. Detection of regulated pests will be based on the observance of symptoms in the field. (4-2-03)

03. Disagreement. In case of disagreement concerning the identity of the regulated pest or the virulence of the pathogen to Phaseolus or non-Phaseolus, the Department will submit cultures of the suspected pathogen to a plant pathologist appointed by the Dean of the College of Agriculture, University of Idaho. The results and findings obtained by the approved pathologist are final. ()

04. Release of Information. When the presence of a regulated pest is confirmed, information regarding the location and acres involved will be released upon request. (4-2-03)

351. -- 399. (RESERVED)

400. DISPOSITION OF DISEASED SEED AND INFECTED FIELDS.

01. Quarantine. Any field in which there is a disagreement concerning the identity of the regulated pest or the virulence of the pathogen to its host will be placed under quarantine. Entry to the quarantined area will be restricted to the grower or his agents, Department officials, University of Idaho plant pathologists, and persons authorized in writing by the Director. Persons granted entry to the quarantined area will be required to take all necessary sanitary precautions prescribed by the Director. ()

02. Destruction. Upon the confirmation of a regulated pest, any bean fields within the boundaries of the state will be destroyed in part or in total, as required by the Director, to eliminate the pest at the expense of the grower and his landlord. The Director will notify the grower or his landlord of the method and extent of the destruction and safeguards against pest spread in order for the parties to comply. (4-2-03)

03. Threshing and Segregating. When the symptoms of a regulated pest are first detected during windrow inspection and laboratory confirmation is necessary, the Director may allow the beans to be threshed and segregated until laboratory results are obtained. (4-2-03)

401. -- 449. (RESERVED)

450. EXEMPTIONS FROM DESTRUCTION (PHASEOLUS).

01. Brown Spot. Fields contaminated with brown spot, (*Pseudomonas syringae* pv. *syringae*), are exempt from destruction. The Department will review this exemption as necessary. (4-2-03)

02. Beans for Processing or Fresh Consumption. Snap beans or lima beans for processing or fresh

consumption are exempt from destruction if the diseased portion of the field is destroyed or harvested within five (5) days after first detection or verification as per Section 350 and Subsection 400.01 and the crop residue is promptly and completely destroyed after harvest, as required by the Director. (4-2-03)

451. EXEMPTIONS FROM DESTRUCTION (NON-PHASEOLUS).

Those non-Phaseolus crops for forage production are exempt from destruction if the diseased portion of the field is destroyed or harvested within five (5) days after first detection or verification as per Section 350 and Subsection 400.01, as required by the Director. ()

452. -- 549. (RESERVED)

550. FEES AND CHARGES.

The fees and charges for tags and inspections under these rules are: (4-2-03)

01. Tags. Green tags or Yellow tags for In-State Planting Purposes -- Eighteen cents (\$0.18) per hundred-weight. (3-16-04)

02. Applications. (4-2-03)

a. Application for Field Inspection -- Five dollars (\$5) each. (3-16-04)

b. Late Application for Field Inspection -- Ten dollars (\$10) each. (4-2-03)

03. Field Inspections. (4-2-03)

a. Inspection Fees. (4-2-03)

i. Active Growth Fees -- Three dollars and fifty cents (\$3.50) per acre, per inspection, fifty dollar (\$50) minimum. ()

ii. Windrow or Pre-harvest Fees -- Three dollars and fifty cents (\$3.50) per acre, fifty dollars (\$50) minimum. ()

iii. Department Approved Trial Grounds - origin east of the Continental Divide -- Ten dollars (\$10) per acre, per inspection, fifty dollars (\$50) minimum. ()

iv. Department Approved Trial Grounds - origin West of the Continental Divide -- Three dollars and fifty cents (\$3.50) per acre, per inspection, fifty dollars (\$50) minimum. ()

v. Requests for pre-harvest or windrow inspections after office hours, on weekends or holidays will be charged at cost plus mileage. ()

04. Laboratory Seed Sampling. Official Sample -- twenty dollars (\$20) per sample. Sample size requirements for imported seed:

Lot size	Sample Size
<10 pounds	Negotiable
10 - 14 pounds	0.5 pounds
15 - 25 pounds	1.0 pounds
26 - 50 pounds	1.5 pounds
51 - 200 pounds	2.0 pounds
201 - 1,000 pounds	3.0 pounds
>1,000 pounds	5.0 pounds for every 10,000 pounds or portion thereof

(3-16-04)

05. Plant Pathological Laboratory Services. Fees will be charged at current laboratory rates and are available upon request. (4-2-03)

06. Confirmation Fees. The party disputing the Department's determination of the presence of a regulated pest per Subsection 350.03 will be responsible for the payment of fees charged by the University of Idaho. (3-16-04)

07. Soil Analysis. Testing for the presence of soil will be performed by the Idaho State Seed Laboratory or other seed laboratory approved by the Department. The cost of soil analysis will be at the normal rates as is charged by those approved laboratories. ()

08. Nematode Analysis. Nematodes testing will be performed by the University of Idaho Nematology Laboratory or other laboratory approved by the Department. The cost of analysis for nematodes will be at the normal rates for testing as is charged by those approved laboratories. ()

09. Special Project Fee. Special projects not covered by 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, research, lot history verification, data entry, sales and purchases, transfer of lots into ISDA database, ISDA training of private company personnel or any other circumstance approved by the Director. (3-16-04)

551. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.02.07 – RULES GOVERNING BULK PERMITS AND RETAIL SALE OF POTATOES

DOCKET NO. 02-0207-1901 (NEW CHAPTER)

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 22-901, 22-911, and 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:

Combining two potato rules; IDAPA 02.02.07 and 02.02.09. These two rules administered by the ISDA are related to the retail sale, inspection and bulk permitting of potatoes in Idaho. These rules were promulgated to carry out requirements described in Title 22, Chapters 9 and 20, Idaho Code. In order to streamline and simplify rules related to retail sale inspection and bulk permitting requirements for potatoes, the ISDA has decided to combine the two rules into a single rule to be titled “02.02.07, Rules Governing Bulk Permits and Retail Sale of Potatoes.” No substantive changes are being made to the two rules cited above. However, these rules were reviewed for repeal and amendment of certain sections consistent with the guidance and direction provided in the Red Tape Reduction Act. Therefore, the consolidated rule was reviewed to update authorities, eliminate unnecessarily restrictive language and redundancy.

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 November Idaho Administrative Bulletin, Vol. 19-11, pages 55-58.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(5), Idaho Code, for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government. The consolidated rule, IDAPA 02.02.07- Rules Governing Bulk Permits and Retail Sale of Potato, in its entirety, regulates activity not already regulated by the federal government.

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

This fee, originally imposed by 02.02.07 Rules Governing Bulk Permits Procedure remains in the new rule, 02.0207 Rules Governing Bulk Permits and Retail Sale of Potatoes. This fee has not changed. The fee is authorized pursuant to Section 22-107, 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: The agency does not anticipate any fiscal impact as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Laura Thomas, Bureau Chief, Ag. Inspections at (208) 332-8672.

Dated this 27th day of November, 2019.

Brian Oakey, Deputy Director
Idaho Department of Agriculture
Ph: (208) 332-8552 / Fax: (208) 334-2170

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

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 22-901, 22-911, and 22-2006, Idaho Code.

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

PUBLIC HEARING

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

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

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

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

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

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

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

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

IDAHO CODE SECTION 22-101A STATEMENT: Section 22-101A, Idaho Code, requires that in this notice of proposed rulemaking, the Director must specify whether this rule is broader in scope or more stringent than federal

law or regulations, or regulates an activity not regulated by the federal government. The Rules Governing Bulk Permits and Retail Sale of Potatoes, in their entirety, regulate an activity not already regulated by the federal government.

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

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

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

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

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

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

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

Dated this 3rd day of October, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 02-0207-1901

02.02.07 – RULES GOVERNING BULK PERMITS AND RETAIL SALE OF POTATOES

000. LEGAL AUTHORITY.

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

001. TITLE AND SCOPE.

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

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

002. -- 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

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

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

005. -- 119. (RESERVED)

SUBCHAPTER A – BULK PERMITS

120. PERMIT FEES.

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

121. APPLICATION FORM.

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

122. MARKETING ORDER.

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

123. REQUEST FOR PERMIT.

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

124. -- 219. (RESERVED)

SUBCHAPTER B – RETAIL SALES

220. INSPECTIONS, RESTRICTIONS, AND IDENTIFICATION REQUIRED.

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

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

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

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

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

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

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

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

222. COMPLIANCE OR NON-COMPLIANCE CERTIFICATE.

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

223. SECOND NOTICE ACTION -- NON-COMPLIANCE.

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

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

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

225. RESPONSIBILITY OF PERMANENT AND CONDITION DEFECTS.

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

226. RESTRICTING STANDARDS TO TABLESTOCK GRADES.

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

227. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.03.03 – IDAHO DEPARTMENT OF AGRICULTURE RULES GOVERNING
PESTICIDE AND CHEMIGATION USE AND APPLICATION

DOCKET NO. 02-0303-1901

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated this 3rd day of October, 2019.

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

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220, 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 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 18, 2019.

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

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

This proposed rule adopts a previously approved and codified chapter under IDAPA 02, rules of the Idaho State Department of Agriculture. This rule regulates the use and application of pesticides, licensing of pesticide applicators, registration of pesticides, and responsibilities for chemigation in Idaho. This rule was reviewed for amendment or repeal of non-substantive sections to comply with the Red Tape Reduction Act.

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

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

IDAHO CODE SECTION 22-101A(1) STATEMENT: This rule is either broader in scope, more stringent than federal regulation or regulates an activity not regulated by the federal government as shown in the following table:

02.03.03.050	Broader in Scope
02.03.03.100	Broader in Scope
02.03.03.101	More Stringent
02.03.03.102	More Stringent
02.03.03.150	Broader in Scope
02.03.03.200	Broader in Scope
02.03.03.250	More Stringent
02.03.03.300	Not regulated
02.03.03.310	More Stringent
02.03.03.320	More Stringent
02.03.03.321	Not regulated
02.03.03.323	Broader in Scope
02.03.03.324	More Stringent
02.03.03.400	More Stringent
02.03.03.450	Broader in Scope
02.03.03.500	More stringent
02.03.03.550	More stringent
02.03.03.600	More stringent
02.03.03.601	More stringent
02.03.03.800	Broader in Scope
02.03.03.850	Not regulated
02.03.03.961-971	Broader in Scope

For a more detailed analysis, please see Rulemaking Record for IDAPA 02-0303-1901.

IDAHO CODE SECTION 22-101A(4) STATEMENT: Idaho Code § 22-101A(4) requires that in proposing any rule necessary to protect human health and the environment, the Director shall include a summary of information in

the rulemaking record by Idaho Code § 22-101A(3). This summary of Idaho Code § 22-101A(3) information is as follows:

IDAPA 02.03.03 governs the use and application of pesticides; licensing of pesticide applicators; chemigation and the registration of pesticides in Idaho. The general public, professional applicators, pesticide handlers, agricultural workers, people who live near agricultural land and consumers of agricultural commodities may be exposed to pesticides in a number of ways. Unintended pesticide exposure is associated with the upper, central and lower bound risks of pesticide use. The upper bound risk associated with pesticides is death from acute pesticide exposure; however, other central and lower bound risks include sickness in humans, contaminated soil, contaminated commodities or damage to water sources, among other things.

ISDA uses the best available, peer reviewed studies to support and implement IDAPA 02.02.03 including studies done by U.S. Environmental Protection Agency, and other professional, medical, and scientific journals. However, even with such data, uncertainties remain. Uncertainties include unreported amounts of pesticides used, unreported pesticide disposal, and unreported exposure rates.

To view ISDA's complete Idaho Code § 22-101A analysis and a comprehensive list of studies supporting and directly relevant to this Rule, please see the IDAPA 02.03.03 Rulemaking Record located at <https://agri.idaho.gov/main/i-need-to-see-lawsrules/rulemaking/isda-rulemaking-2019-2020/ag-resources-temporary-rulemaking-2019-2020/>.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need to adopt the rules as temporary, and and re-authorized as previously promulgated and approved by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules would have inhibited the agency from executing its responsibilities to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rule attached.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Vic Mason, Administrator – Division of Ag Resources at (208) 332-8628.

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 25, 2019.

DATED this 2nd day of August, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 02-0303-1901

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. (3-23-98)

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. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (3-20-97)

003. ADMINISTRATIVE APPEAL.

There is no provision for administrative appeal before the Idaho Department of Agriculture under this chapter. Hearing and appeal rights are pursuant to Title 67, Chapter 52, Idaho Code. (3-20-97)

004. INCORPORATION BY REFERENCE.

01. Incorporated Document. IDAPA 02.03.03 incorporates by reference 40 CFR Part 165 Subpart E - Standards For Pesticide Containment Structures, Sections 165.80 through 165.97 as published in the Federal Register, Volume 71, Number 158, on August 16, 2006. Copies of these documents may be viewed at the Idaho State Department of Agriculture, or at <https://www.federalregister.gov/documents/2006/08/16/06-6856/pesticide-management-and-disposal-standards-for-pesticide-containers-and-containment>. ()

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/>. (3-30-01)

006. PUBLIC RECORDS ACT COMPLIANCE.

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

007. -- 009. (RESERVED)

010. DEFINITIONS.

The Idaho Department of Agriculture adopts the definitions set forth in Section 22-3401, Idaho Code, and the following definitions: (3-20-97)

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. (4-5-00)

02. Basin Irrigation. Irrigation by flooding areas of level land surrounded by dikes. (4-5-00)

03. Border Irrigation. Irrigation by flooding strips of land, rectangular in shape and cross leveled, bordered by dikes. (4-5-00)

04. 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. (3-20-97)

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. (4-5-00)

06. Chemigator. Any person engaged in the application of chemicals through any type of irrigation system. (4-5-00)

- 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. (4-5-00)
- 08. Demonstration and Research.** The use of restricted use pesticides to demonstrate the action of the pesticide or conduct research. (3-20-97)
- 09. Domestic Water Supply System.** Any system providing water for human use. (4-5-00)
- 10. Drip Irrigation.** A method of microirrigation wherein water is applied as drops or small streams through emitters. (4-5-00)
- 11. Flood Irrigation.** Method of irrigation where water is applied to the soil surface without flow controls, such as furrows, borders or corrugations. (4-5-00)
- 12. Flow Rate.** The weight or volume of flowable material per unit of time. (4-5-00)
- 13. Furrow Irrigation.** Method of surface irrigation where the water is supplied to small ditches or furrows for guiding the water across the field. (4-5-00)
- 14. Hazard Area.** Cities, towns, subdivisions or densely populated areas. (3-20-97)
- 15. High Volatile Esters.** Formulations of 2,4-D which contain methyl, ethyl, butyl, isopropyl, octylamyl and pentyl esters. (3-20-97)
- 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. (4-5-00)
- 17. Inspection Port.** An orifice or other viewing device from which the low pressure drain and check valve may be observed. (4-5-00)
- 18. 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 isoctyl esters. (3-20-97)
- 19. 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. (3-20-97)
- 20. 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. (4-5-00)
- 21. 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. (3-20-97)
- 22. 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. (4-5-00)
- 23. Seminar.** Any Department-approved meeting or activity convened for the purpose of presenting pesticide recertification information. (3-20-97)
- 24. Sprinkler Irrigation.** Method of irrigation in which the water is sprayed, or sprinkled, through the air to the ground surface. (4-5-00)

25. 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. (4-5-00)

26. Vacuum Relief Valve. A device to automatically relieve or break a vacuum. (4-5-00)

27. 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. (4-5-00)

28. 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. (4-5-00)

29. Working Pressure. The internal operating pressure of a vessel, tank or piping used to hold or transport liquid. (4-5-00)

30. Waters of the State. Any surface waters such as canals, ditches, laterals, lakes, streams, or rivers. (4-5-00)

011. -- 049. (RESERVED)

050. PRIVATE APPLICATOR LICENSING.

01. Applying for a Private Applicator's License. To obtain a private applicator's license: ()

a. Fill out an application prescribed by the Department; and (4-4-13)

b. Take an examination based on the Environmental Protection Agency (EPA) core manual and score a minimum of seventy percent (70%). For the purpose of becoming licensed, examination scores **are** valid for twelve (12) months from the date of the examination. The examination procedure **is** the same as for professional applicators (Subsection 100.03), except private applicators **are** not assessed an examination fee. ()

02. License Categories. (4-4-13)

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

i. Restricted Use Pesticide (RU). For persons who use or supervise the use of restricted use pesticides to produce agricultural commodities or forest crops on land they or their employer(s) own(s) or operate(s). (3-20-97)

ii. Chemigation (CH). For persons who apply chemicals through irrigation systems on land they or their employer(s) own(s) or operate(s). (3-20-97)

iii. Soil Fumigation (SF). For persons who apply soil fumigants on land they or their employer(s) own(s) or operate(s). In order to be certified and licensed in this category, private applicators must pass both the RU examination and the SF examination. (4-4-13)

b. Non-reading applicators may be certified to purchase and apply a single restricted use pesticide when they have demonstrated their competence in the safe and proper use of such pesticide to the Director or other designated agent. (3-20-97)

03. License Recertification. The recertification period shall be 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. Upon issuance of the replacement license, the previous license **is** null and void. Recertification and relicensing may be accomplished by complying with either Subsection 050.03.a. or 050.03.c. ()

a. A person accumulates recertification credits by attending Department-accredited pesticide instruction seminars. ()

i. A minimum of six (6) credits shall be earned during each recertification period. (3-23-98)

ii. Guidelines for obtaining recertification credits are described in Subsections 100.04.a.ii. through 100.04.a.v. Any credits accumulated beyond the required six (6) in a recertification period may not be carried over to the next recertification period. ()

iii. Upon earning the recertification credits, a person is eligible for license renewal for the next licensing period, provided that the license renewal application is submitted within twelve (12) months from the expiration date of the license. ()

b. A person passes the Department's private applicator recertification examination(s) for all categories in which the person intends to license with a minimum score of seventy percent (70%). ()

i. Recertification examinations may be taken by a person beginning the thirteenth (13th) month of the license period. (3-20-97)

ii. The examination procedures as outlined in Subsection 100.03 shall be followed, except that examination fees are not assessed. ()

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 from the date of the examination. ()

051. -- 099. (RESERVED)

100. LICENSING PROFESSIONAL APPLICATORS AND PESTICIDE DEALERS.

01. Demonstration of Competence. (3-20-97)

a. Professional applicators may only recommend 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 the Subsection 100.02 categories. ()

b. An applicant shall demonstrate competency in the following areas: (3-20-97)

i. Labels and labeling, including terminology, instructions, format, warnings and symbols. (3-20-97)

ii. Safety factors and procedures, including protective clothing and equipment, first aid, toxicity, symptoms of poisoning, storage, handling, transportation and disposal. (3-20-97)

iii. Laws, rules, and regulations governing pesticides. (3-20-97)

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. (3-20-97)

v. Mixing and loading, including interpretation of labels, safety precautions, compatibility of mixtures, and protection of the environment. (3-20-97)

vi. Methods of use or application, including types of equipment, calibration, application techniques, and prevention of drift and other types of pesticide migration. (3-20-97)

vii. Pests to be controlled, including identification, damage characteristics, biology and habitat. (3-20-97)

- viii. Types of pesticides, including formulations, mode of action, toxicity, persistence, and hazards of use. (3-20-97)
- ix. Chemigation practices involving the application of chemicals through irrigation systems, calibration, management, and equipment requirements. (4-5-00)
- x. For use of the Livestock Protection Collar (LPC), in addition to the requirements of Subsection 100.01.b.i. through 100.01.b.viii., professional applicators shall have training in and knowledge of the following: (3-19-99)
- (1) Characteristics and habits of predatory animals, and particularly, coyotes. (3-19-99)
 - (2) Properties of the collars and of Sodium Fluoroacetate (Compound 1080). (3-19-99)
 - (3) Recordkeeping requirements set forth in Subsection 150.01 that will additionally include a record of each animal found poisoned or suspected of having been poisoned as a result of the use of Compound 1080, including target and non-target species. (3-19-99)
 - (4) The requirement for immediate reporting of suspected poisonings of non-target species and suspected poisonings of humans or domestic animals by the use of Compound 1080 to the United States Environmental Protection Agency (US EPA) and the Idaho State Department of Agriculture (ISDA). (3-19-99)
 - (5) How to properly dispose of animal remains, vegetation, or soil contaminated by a punctured LPC. (3-19-99)
 - (6) Practical treatment of Compound 1080 poisonings in humans and domestic animals. (3-19-99)
 - (7) Safe handling, attachment, and storage of LPC collars. (3-19-99)
 - (8) The requirement to post and maintain bilingual (English/Spanish or other second language appropriate for the region) signs at logical points of access to areas where LPCs are in use. (3-19-99)
 - (9) The requirement to perform inspections once every week to ensure that collars in use are accounted for, properly positioned, and intact. (3-19-99)
 - (10) Knowledge of alternative controls of predation. (4-5-00)
- xi. For use of the LPC, in addition to the requirements of Subsections 100.01.b.i. through 100.01.b.x., professional applicators shall have training in and the ability to: (3-19-99)
- (1) Recognize potential hazards to humans, domestic animals, and non-target wildlife from the use of the LPC. (3-19-99)
 - (2) Read and understand the labeling specific to the LPC. (3-19-99)
 - (3) Recognize general symptoms of poisoning by Compound 1080 in humans and domestic animals and take appropriate action. (3-19-99)
 - (4) Recognize where the LPC can be used safely and effectively and, conversely, where alternative methods of control would be more appropriate. (3-19-99)
 - (5) Assess damaged LPCs to determine which can be repaired and which must be disposed of properly. (3-19-99)
 - (6) Properly dispose of the LPCs. (3-19-99)

02. Certification. A person **is** certified by passing Department examinations with a minimum of seventy percent (70%) in the applicable pesticide categories. For the purpose of becoming licensed, examination scores **are** valid for twelve (12) months from the date of the examination. ()

a. Professional applicators shall be certified and licensed in one (1) or more of the following categories: (3-20-97)

i. Law and Safety (LS). This includes **general** knowledge of pesticides including proper use and disposal, product characteristics, first aid, labeling, and laws. Certification in this category is required when certifying in Subsections 100.02.a.ii. through 100.02.a.ix. ()

ii. Agriculture. For persons conducting field crop applications. Agriculture Herbicide (AH). Certification in this category also **certifies** a person to make herbicide applications in rights-of-way, forests, and rangelands. Agriculture Insecticide/Fungicide (AI). Certification in this category also **certifies** a person to make insecticide/fungicide applications in rights-of-way, forests, and rangelands. Soil Fumigation (SF). ()

iii. Forest Environment (FE). For U.S. Forest Service and Bureau of Land Management personnel, contractors, and private industry personnel who control pests in forests and on rangelands. (3-20-97)

iv. Right-of-Way Herbicide (RW). For railroads, highway departments and others, for roadside weed control, soil sterilant herbicides, and weed control on public lands (non-crop). Certification in the Agricultural Herbicide category **exempts** the applicant from the need to certify in this category. ()

v. Public Health Pest (PH). For abatement districts and others controlling mosquitoes and other public health pests. (3-20-97)

vi. Livestock Pest Control (LP). For persons treating livestock pests. (3-20-97)

vii. Ornamental Herbicide (OH). For persons conducting outside urban or residential herbicide applications, with the exception of soil sterilant applications (see Subsection 100.02.a.iv.). Ornamental Insecticide/Fungicide (OI). For persons doing outside urban or residential insecticide and fungicide applications, including exterior applications to residential, urban or commercial buildings, excluding structural destroying pests (see Subsection 100.02.a.ix.). (4-5-00)

viii. General Pest Control Operations (GP). For persons controlling pests in and around residential, commercial, or other buildings, excluding structural destroying pests. (3-20-97)

ix. Structural Destroying Pest (SP). For persons involved in the control of pests which destroy wooden structures, such as bridges, houses, offices, and warehouses. (3-20-97)

x. General Vertebrate Control (GV). For Wildlife Services (WS) personnel of the United States Department of Agriculture-Animal and Plant Health Inspection Service, for controlling vertebrates such as rodents, predators, and birds. (4-5-00)

xi. Rodent Control (RC). For rodent districts and others, for the control of field rodents. Certification in the General Pest Control category shall exempt the applicant from the need to certify in this category. (3-20-97)

xii. Aquatic Weed and Pest Control (AW). For irrigation districts, canal companies and others, for weed and pest control on aquatic sites. (4-5-00)

xiii. Seed Treatment (ST). For persons doing treatments to protect seeds used for plant reproduction. (3-20-97)

xiv. Commodity Pest Control (CP). For persons controlling pests in stored commodities. (3-20-97)

xv. Potato Cellar Pest Control (PC). For persons who apply sprout inhibitors in potato cellars. (3-20-97)

- xvi. Wood Preservative (WP). For persons who apply wood preservatives. (3-20-97)
- xvii. Pest Control Consultant-Statewide (SW). For persons who make recommendations or supply technical advice concerning the use of any pesticide for agricultural purposes. (3-20-97)
- xviii. Demonstration and Research (DR). For persons who apply or supervise the use of restricted use pesticides at no charge to demonstrate the action of the pesticide or conduct research with restricted use pesticides. A person **is** eligible to license in this category by passing the Pest Control Consultant examination. ()
- xix. Chemigation (CH). For persons who apply chemicals through an irrigation system, excluding Aquatic Weed and Pest Control applicators (see Subsection 100.02.xii.). (4-5-00)
- xx. Livestock Protection Collars (LPC). For use of Livestock Protection Collars (LPC) containing the restricted use pesticide Compound 1080 to control predatory coyotes. (3-19-99)
- b. Pesticide Dealers **are** certified and licensed in any category listed in Subsection 100.02 that pertains to the types of restricted use pesticides sold or distributed. ()
- c. Mixer-Loaders. No person shall act as a mixer-loader for a professional applicator without first obtaining annual training. ()
- i. Training **will** be conducted and certified by the professional applicator who employs the mixer-loader. Certification of training shall be on a form prescribed by the Department and must include the signatures of both the mixer-loader and the professional applicator providing the training. ()
- ii. Training includes **are** 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. ()
- 03. Department Examination Procedures.** (3-20-97)
- a. Examinations **are** administered by a designated agent. ()
- b. Professional applicators and pesticide dealers **pass a Department examination by** obtaining a score of seventy percent (70%) or higher. ()
- c. Payment of examination fees shall be received by the Idaho Department of Agriculture before examination results may be released. (3-20-97)
- d. A minimum waiting period of one (1) week **is** required before an applicant may retake an examination. ()
- 04. Licensing Periods and Recertification.** 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. The recertification period for professional applicators shall be concurrent with their two (2) year licensing period. Recertification requirements may be accomplished by complying with either Subsection 100.04.a. or 100.04.b. ()
- a. A person accumulates **s** recertification credits by attending Department-accredited pesticide instruction seminars. ()
- i. Professional applicators **have a fifteen (15) credit minimum for** each recertification period. ()
- ii. A completed **written** request for accreditation of a seminar shall be received by the Department not less than thirty (30) days prior to the scheduled seminar submitted on a form prescribed by the Department. Under exceptional circumstances, as described in writing by the person requesting accreditation, the thirty (30) day requirement may be waived. ()

iii. Credit **is** given only for those parts of seminars that deal with pesticide subjects as listed in Subsection 100.01.b. No credit will be given for training given to persons to prepare them for initial certification. ()

iv. The number of credits assigned in advance for a seminar, or a part of a seminar, **is** tentative, and may be revised by the Department if it is later found that the training does not comply with Subsection 100.04.a.iii. ()

v. A recertification credit **is** based upon one (1) credit for each one (1) hour of instruction, as described in Subsection 100.04.a.iii. ()

vi. 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. A designated agent **must** ensure that such attendance records are properly completed. Verification of attendance must be submitted with the license renewal application. ()

vii. If a person has accumulated more than fifteen (15) credits during the recertification period, the excess credits may not be carried over to the next recertification period. (3-23-98)

viii. Upon earning the recertification credits as described above, a person **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. ()

b. A person shall pass the Department's recertification examinations for all categories in which a person intends to license. (3-20-97)

i. Recertification examinations may be taken by a professional applicator beginning the thirteenth month of the recertification period. (3-23-98)

ii. The examination procedures as outlined in Subsection 100.03 shall be followed. (3-23-98)

iii. In addition to examinations for categories listed under Subsections 100.02.a.ii. through 100.02.a.ix., a person must also pass a Law and Safety recertification examination. (3-23-98)

iv. Recertification shall not be achieved by passing an entry-level examination. (3-20-97)

v. Upon passing the recertification examination(s), a person **is** considered by the Department to be recertified for the next recertification period. ()

c. Any person who fails to accumulate the required recertification credits prior to the expiration date of their license shall be required to pass the appropriate recertification examination(s) before being licensed. (3-20-97)

05. Licensed Professional Applicator. Only a licensed professional applicator shall operate or supervise the operation of commercial application equipment by being present during the time of operation. 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. (3-29-12)

101. REGISTRATION AND LICENSING REQUIREMENTS FOR USE OF THE LPC.

01. Registration. Use restricted to United States Department of Agriculture, Animal and Plant Health Inspection Service, wildlife services (USDA, APHIS, WS) employees, licensing, and recordkeeping requirements for the LPC. (3-19-99)

a. Only the USDA, APHIS, WS **can** register the LPC. USDA, APHIS, WS **is** hereinafter known as the

registrant for the purpose of these rules. ()

b. The LPC shall be transferred only by the registrant and only to professional applicators who are certified in the LC category and who are current employees of USDA, APHIS, WS. (3-19-99)

c. The LPC is used only by professional applicators with certification in the LC category who are current employees of the USDA, APHIS, WS. ()

d. Before obtaining certification and licensing, LC applicants shall receive training and demonstrate competency in the areas listed in Subsection 100.01.b.x. and 100.01.b.xi. of these rules and satisfy Section 22-3404, Idaho Code. (3-19-99)

e. Only the manufacturer or registrant is authorized to fill collars with Compound 1080. Certified professional applicators or any other person shall not fill collars or remove the pesticide from the collars. (4-5-00)

02. Use of the LPC (Compound 1080). (3-19-99)

a. Coyotes may be taken by collar only. ()

b. Warning signs shall be posted at all usual points of entry to the area, including any access roads, or footpath or other walking route that enters the area. When there are no usual points of entry, signs shall be posted in the corners of the area or in any other location affording maximum visibility. (3-19-99)

i. The signs shall remain visible and legible throughout the collar use. (3-19-99)

ii. All warning signs shall be posted and inspected once a week by the certified Wildlife Services employee to ensure their continued presence and legibility, and will be removed when all collars are removed and accounted for. (3-19-99)

iii. Warning signs shall be at least fourteen (14) inches by sixteen (16) inches with letters at least one (1) inch in height. (3-19-99)

iv. All warning signs shall have a background color that contrasts with red and feature clearly legible wording. The words "DANGER" and "PELIGRO," plus "PESTICIDES" and "PESTICIDAS," shall be at the top of the sign, and the words "KEEP OUT" and "NO ENTRE" shall be at the bottom of the sign. A circle containing an upraised hand on the left and a stern face on the right shall be near the center of the sign. The inside of the circle shall be red, except that the hand and a large portion of the face shall be in a shade that contrasts with red. The length of the hand shall be at least twice the height of the smallest letters. The length of the face shall be only slightly smaller than the hand. ()

v. The name of the pesticide (Compound 1080) and the date collars were placed on the sheep or goats shall appear on the warning sign. (4-5-00)

c. If a collar is found to have been punctured by a predator attacking a collared animal, an intensive search shall be conducted for the predator that punctured the collar. ()

i. Disposal of punctured or unserviceable collars and contaminated gloves, clothing, vegetation or soil shall be as prescribed by the 1080 LPC label and technical bulletin or through the ISDA pesticide disposal program. Disposal of animal remains shall be in accordance with label directions. (4-5-00)

d. Prior to any intended use or application of the LPCs, the professional applicator is to submit to ISDA a written notice of intended use containing: ()

i. The professional applicator's license number issued by the ISDA; (3-19-99)

ii. A list of the names and addresses of the owners or persons in charge of the areas to be treated and a map of the geographic location of such areas; (3-19-99)

- iii. The approximate size of the area where treatment will take place; (3-19-99)
- iv. The intended period of use; and (3-19-99)
- v. The number of collars to be used. (3-19-99)
- e.** USDA, APHIS, WS shall accurately keep and maintain the following records and reports:(3-19-99)
 - i. Records of all collars distributed; (3-19-99)
 - ii. The name and address of each professional applicator receiving the collars; and (3-19-99)
 - iii. The dates and the number of collars received by each professional applicator. (3-19-99)
 - iv. These records shall be maintained by USDA, APHIS, WS for a period of three (3) years and made available to the ISDA for inspection, duplication, and verification upon request by the ISDA. ()
- f.** The professional applicator shall accurately keep and maintain the following records and reports: (3-19-99)
 - i. Any suspected poisoning of humans, threatened or endangered species, domestic animals, or non-target wild animals shall be reported within seventy-two (72) hours or less to the ISDA and US EPA; (3-19-99)
 - ii. The name and address of the person on whose property the LPC was used or, if different from the property owner, the same information for the person in charge of the area where the collars will be used; (3-19-99)
 - iii. A map of the geographic location and size of the area in which the LPCs were used; (3-19-99)
 - iv. A summary report of the date each individual collar was obtained by the professional applicator, placed on sheep, punctured or ruptured (along with apparent cause), lost or unrecovered, or removed and put in storage, or disposed of through the ISDA Pesticide Disposal Program; (3-19-99)
 - v. The species, date, and location of each animal found poisoned or suspected of having been poisoned as a result of the use of Compound 1080 in LPCs; (3-19-99)
 - vi. The dates and results of each collar inspection; and (3-19-99)
 - vii. A written description of any complete and intensive search for missing collars or poisoned animals conducted as specified in these rules. (3-19-99)
 - viii. The records required by this rule shall be maintained by the professional applicator for a period of three (3) years and made available to the ISDA for inspection, duplication and verification upon request of the ISDA. ()
 - ix. A report of the records required by Subsection 101.02.g. shall be submitted to the ISDA as an annual summary report. (4-5-00)
- g.** Collars **may** be used only upon sheep or goats within fenced pastures no larger than two thousand five hundred sixty (2,560) acres (four (4) square miles). Fenced pastures include all pastures that are enclosed by livestock fencing. In addition to wire livestock fences, and other man-made fences, such as rock walls, natural barriers such as escarpments, lakes, or large rivers may be used as fences, as long as they will prevent escape of sheep or goats. Fenced pastures and fences as herein defined **are** referred to elsewhere in this section as “area.” Collars shall not be used on unfenced, open range. ()
- h.** All appropriate alternative control methods must be considered before implementing use of the LPC. (4-5-00)

i. Each collar in use shall be inspected by the professional applicator once a week to ensure that it is properly positioned and unbroken. An inspection report on a form prescribed by the director shall be forwarded to ISDA following the conclusion of the project. (4-5-00)

i. If any collared animal is not accounted for in any two (2) consecutive checks, a complete search for the collared animal shall be conducted. ()

ii. If more than four (4) LPCs are unaccounted for during any thirty (30) day period, WS employees shall remove all LPCs from all animals and terminate their use. Use of collars shall not be resumed until WS employees have provided ISDA with a written protocol defining adequate steps they shall take to prevent any losses of LPCs. (4-5-00)

j. Intact LPCs containing Compound 1080 shall be stored by USDA, APHIS, WS under lock and key in a dry place away from food, feed, domestic animals and corrosive chemicals, and in outbuildings or in outdoor storage areas attached to, but separate from, human living quarters. (4-5-00)

102. -- 149. (RESERVED)

150. RECORDS REQUIREMENTS.

01. Applicator Records. Professional applicators shall maintain pesticide application records for three (3) years, ready to be inspected, duplicated, or submitted when requested by the Director. The records shall be maintained in a location designated by the professional applicator. (4-5-00)

02. Record Contents. Such records shall contain: (3-20-97)

- a.** The name and address of the owner or operator of each property treated; and (3-20-97)
- b.** The specific crop, animal, or property treated; and (3-20-97)
- c.** The location by the address, general legal description (township, range, and section) or latitude/longitude of the specific crop, animal, or property treated; and (3-23-98)
- d.** The size or amount of specific crop, animal, or property treated; and (3-23-98)
- e.** The trade name or brand name of the pesticide applied; and (3-23-98)
- f.** The total amount of pesticide applied; and (3-23-98)
- g.** The dilution applied or rate of application; and (3-23-98)
- h.** The EPA registration number of the pesticide applied; and (3-23-98)
- i.** The date of application; and (3-20-97)
- j.** The time of day when the pesticide is applied; and (3-20-97)
- k.** The approximate wind velocity; and (3-20-97)
- l.** The approximate wind direction; and (3-23-98)
- m.** The full name of the person recommending the pesticide application; and (3-23-98)
- n.** The full name of the professional applicator applying the pesticide; and (3-23-98)
- o.** The license number of the professional applicator applying the pesticide; and (3-23-98)

p. Worker protection information exchange, if required by the worker protection standard, prior to pesticide application, shall be documented by: (3-30-01)

i. Date of contact; and (3-23-98)

ii. Time of contact; and (3-23-98)

iii. Name of grower or operator contacted. (3-23-98)

03. Pesticide Dealer Records. Pesticide dealers shall maintain restricted use pesticide distribution records for three (3) years, ready to be inspected, duplicated, or submitted when requested by the Director. The records shall be maintained in a location designated by the pesticide dealer. (3-30-01)

04. Record Contents. Such records shall contain: (3-30-01)

a. The name and address of the person purchasing or receiving the restricted use pesticide (RUP); and (3-30-01)

b. The certified applicator name, license number, and expiration date of the license for the person certified to use the RUP; or (3-30-01)

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. (3-30-01)

d. The brand name and Environmental Protection Agency (EPA) Registration Number for each RUP distributed; and (3-30-01)

e. Date of the distribution of each RUP; and (3-30-01)

f. The quantity and size of each RUP container distributed and the total quantity of RUP distributed; and (3-30-01)

g. The pesticide dealer's name, address, and pesticide dealer license number distributing the RUP. (3-30-01)

151. -- 199. (RESERVED)

200. 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. (3-20-97)

03. 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. ()

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. (3-20-97)

05. Examination Fee per Examination Category. Ten dollars (\$10). (3-20-97)

201. -- 249. (RESERVED)

250. FINANCIAL RESPONSIBILITY.

01. Proof of Financial Ability. A professional applicator's license will not be issued by the Department until an applicant submits written proof of financial responsibility by any of the following methods: (3-20-97)

a. Liability insurance with an insurance company licensed to do business in Idaho and documented on a form approved by the Director; or (3-23-98)

b. A bond that is approved by the Director; or (3-20-97)

c. A cash certificate of deposit in escrow with a bank or trust company; or (3-20-97)

d. An annuity; or (3-20-97)

e. An irrevocable letter of credit. (3-20-97)

f. Any certificate of deposit, annuity, or irrevocable letter of credit must be payable to the Director as trustee and shall 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, 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. (3-20-97)

g. Under the provisions of this chapter, an irrevocable letter of credit shall not be acceptable unless it is issued by a national bank in Idaho or by an Idaho state-chartered bank insured by the federal deposit insurance corporation. Under the provisions of this chapter, an annuity shall not be accepted by the Department unless it is issued by an insurance company, bank or other financial institution found acceptable by the Director. (3-20-97)

h. 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. (3-19-99)

02. Minimum Coverage Required. (3-20-97)

a. Professional applicators. (3-20-97)

i. Bodily injury - fifty thousand dollars (\$50,000) per person/one hundred thousand dollars (\$100,000) per occurrence. (3-23-98)

ii. Property damage - fifty thousand dollars (\$50,000) per occurrence. (3-23-98)

iii. Maximum deductible - five thousand dollars (\$5,000). (3-23-98)

iv. All new professional applicator licenses issued on or after September 1, 1997, shall require financial responsibility at or exceeding the coverage limits as specified in Subsections 250.02.a.i. and 250.02.a.ii. (3-23-98)

v. In order to maintain an existing professional applicator license the coverage limits specified in Subsections 250.02.a.i. and 250.02.a.ii. shall be met or exceeded on or before December 31, 1998. (3-23-98)

03. Target Property Not Required to Be Covered. The immediate property being treated is not required to be covered as prescribed in Subsection 250.02.a.ii. (3-19-99)

04. Cancellation or Reduction. The Department shall be notified by the applicator in writing immediately after cancellation or reduction of the financial coverage. (3-23-98)

05. Coverage Waived. Coverage waivers which have been issued prior to September 1, 1997, shall remain in effect until the first license expiration date subsequent to September 1, 1997. (3-23-98)

251. -- 299. (RESERVED)

300. 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. (3-20-97)

301. -- 309. (RESERVED)

310. LOW-FLYING PROHIBITIONS.

01. Low-Flying Prohibitions. Aircraft pilots during spray operations are prohibited from turning or low-flying: (3-20-97)

a. Over cities, towns, schools, hospitals and densely populated areas unless the pilot obtains an agreement in writing for pesticide applications from the authorized agent for the city, town, school, hospital, or densely populated area in question; or (3-23-98)

b. Directly over an occupied structure without prior notification by some effective means such as daily newspapers, radio, television, telephone, or door-to-door notice. (3-23-98)

02. Restriction. The low-flying restrictions listed in Subsection 310.01 shall only pertain to persons other than those persons whose property is to be treated. (3-20-97)

311. -- 319. (RESERVED)

320. WIND VELOCITY RESTRICTIONS.

01. Restrictions. No person shall apply any pesticide in sustained wind conditions exceeding ten (10) miles per hour or in wind conditions exceeding product label directions, except as provided in Subsection 320.04. (4-5-00)

02. Exceptions. Application of pesticides by injection into application site or by impregnated granules shall be made according to label directions. (3-23-98)

03. 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. (3-23-98)

04. Chemigation Wind Speed Precautions. Chemicals shall not be applied when wind speed favors drift beyond the area intended for treatment or when chemical distribution is adversely affected. (4-5-00)

321. CHANGE OF LICENSE STATUS.

01. Change Notification. Any person who is licensed by this act shall 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. (3-20-97)

02. Transferable. Licenses are not transferable. (3-23-98)

322. (RESERVED)

323. PESTICIDE-FERTILIZER MIX RESTRICTIONS.

No person shall distribute, sell, offer for sale, or hold for sale any dry pesticide incorporated in a dry blended bulk fertilizer mix. (3-20-97)

324. EXPERIMENTAL PERMITS.

Any person who wishes to obtain an experimental permit to accumulate information necessary to register a pesticide for a special local need under Section 22-3402(5), Idaho Code, shall file an application with the Department which contains: (3-20-97)

- 01. Name.** The company name. (3-20-97)
- 02. Applicant.** The name, address, and telephone number of the applicant. (3-20-97)
- 03. Shipment.** The proposed date of shipment or proposed shipping period not to exceed one (1) year. (3-20-97)
- 04. Active Ingredient.** A statement listing the active ingredient. (3-20-97)
- 05. Quantity Statement.** A statement of the approximate quantity to be tested. (3-20-97)
- 06. Acute Toxicity.** Available data or information or reference to available data on the acute toxicity of the pesticide. (3-20-97)
- 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. (3-20-97)
- 08. Temporary Tolerance.** When 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. (3-20-97)
- 09. Proposed Labeling.** Proposed labeling which must bear: (3-20-97)
- a.** The prominent statement “For Experimental Use Only” on the container label and any labeling that accompanies the product. (3-20-97)
- b.** An adequate caution or warning statement to protect those who may handle or be exposed to the experimental formulation. (3-20-97)
- c.** The name and address of the applicant for the permit. (3-20-97)
- d.** The name or designation of the formulation. (3-20-97)
- e.** Directions for use. (3-20-97)
- f.** A statement listing the name and percentage of each active ingredient and the total percentage of inert ingredients. (3-20-97)
- 10. Quantity Limit.** The Director may limit the quantity of pesticide covered by the permit or make such other limitations as he may determine to be necessary for the protection of humans or the environment. (3-20-97)
- 11. Experimental Use.** A pesticide for experimental use shall not be offered for sale unless a written permit has been obtained from the Director. (3-20-97)

325. -- 399. (RESERVED)

400. RESTRICTIONS TO PROTECT POLLINATORS.

01. 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. (3-30-01)

02. 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.

(3-20-97)

03. 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. (3-20-97)

401. -- 449. (RESERVED)

450. STORAGE OF PESTICIDE CONTAINERS.

01. Protecting Humans and Environment. No person shall 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. (3-20-97)

02. Storage by Professional Applicators or Pesticide Dealers. Storage of pesticide containers by professional applicators and pesticide dealers: (3-20-97)

a. Empty or partially full 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 - 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, shall be stored in one of the following enclosures which when unattended shall be locked to prevent unauthorized persons, livestock or animals from gaining entry: (3-20-97)

i. Closed vehicle; (3-20-97)

ii. Closed trailer; (3-20-97)

iii. Building or room; (3-20-97)

iv. Fenced area with a fence at least six (6) feet high; (3-20-97)

v. Truck or trailer with solid sideracks and secured tailgate at least six (6) feet above ground level. (3-20-97)

b. Empty or partially full pesticide containers which contain Class 4 pesticides (LD50 over 5000) shall be stored in secured storage out of the reach of children in one of the above enclosures. (3-20-97)

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

"D A N G E R"

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

The notice shall 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 shall also contain the name and telephone number of a person to contact in case of an emergency. (3-20-97)

03. Exceptions. The provisions of Subsection 450.02 shall not apply to drums of petroleum oils, lime sulfur, and copper sulfate. (3-20-97)

04. Disposal. Any person applying pesticides shall be responsible for the proper disposal of such empty containers. (3-20-97)

451. -- 499. (RESERVED)

500. NON-DOMESTIC PESTICIDES.

01. 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. ()

- a. Bidrin (Foliar applications). (3-20-97)
- b. Strychnine (one percent (1%) and above). (3-20-97)
- c. Zinc Phosphide (two point one percent (2.1%) and above). (3-20-97)

02. 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. (4-11-15)

501. -- 549. (RESERVED)

550. PHENOXY HERBICIDE RESTRICTIONS.

01. High Volatile Ester Restrictions. No aircraft pilot shall apply high volatile ester formulations of 2,4-D: (3-20-97)

- a. In Latah, Nez Perce, and Clearwater Counties in Idaho; or (3-20-97)
- b. Within five (5) miles of a susceptible crop or hazard area in any other county in Idaho. (3-20-97)
- c. Waiver of the restriction is Subsections 550.01.a. and 550.01.b. may be issued on a project-by-project basis by the Director. (3-20-97)

02. Low Volatile Ester Restrictions. No aircraft pilot shall apply low volatile ester formulations of 2,4-D; MCPA and MCPB: (3-20-97)

- a. 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 (3-30-01)
- b. Within one (1) mile of a hazard area in any other county in Idaho. (3-20-97)
- c. Waiver of the restriction in Subsection 550.02.a. may be issued on a project-by-project basis by the Director. (3-20-97)

03. Hazard Area. Aircraft pilots shall maintain the following spray distances from hazard areas when applying amine or acid formulations of 2,4-D; MCPA; MCPB; and Dicamba:

Mean Sustained Wind Velocity	Downwind	Upwind
0-3 MPH	1/2 mile	600 feet
4-7 MPH	1 mile	200 feet
8-10 MPH	1 mile	50 feet
Over 10 MPH	Do not apply	Do not apply

(3-23-98)

04. Airflow and Temperature Inversion Indicators. A continuous smoke column or other device satisfactory to the Director shall 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. (3-20-97)

05. Other Spraying Equipment. If any aerial applicator wishes to use spraying equipment other than the equipment specified, such equipment must be approved by the Director prior to use. (3-20-97)

551. -- 599. (RESERVED)

600. APPLICATION NEAR HAZARD AREAS.

An aircraft pilot shall not apply any pesticide within one-half (1/2) mile of a hazard area unless there is air movement away from the hazard area. (3-20-97)

601. -- 799. (RESERVED)

800. 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 shall be met: (3-20-14)

a. No portion of the seed alfalfa, 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, or turnip seed plant, 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. (3-20-14)

b. The seed conditioner shall keep records of individual growers' 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 dirt weight and clean weight for three (3) years and shall furnish the records to the Director forthwith upon request. (3-20-14)

c. All seed screenings shall be disposed of at a sanitary landfill, incinerator, or other equivalent disposal site or by a procedure approved by the Director. (3-23-98)

d. The seed conditioner shall keep seed screening disposal records for three (3) years from the date of disposal and shall furnish the records to the Director forthwith, upon request. Disposal records shall consist of documentation from the disposal site and shall show the total weight of disposed screenings and the date of disposal. (3-20-97)

e. 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, or turnip seed grown or conditioned in this state shall bear a tag or container label which forbids the use of the seed for human consumption or animal feed. (3-20-14)

f. No 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, or turnip seed grown or conditioned in this state shall be distributed for human consumption or animal feed. (3-20-14)

g. All portions of the seed alfalfa, seed carrot, seed chicory, seed clover, seed collard, seed coriander/

cilantro, seed dill, seed endive, seed of garden beet, seed onion, seed parsnip, pollinator rows of hybrid canola seed, seed radish, seed rutabaga, seed of sugar beets, seed of Swiss chard, or seed turnip plant, 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. (3-20-14)

02. Exemption. Alfalfa seed, kale seed and radish seed crops grown for human consumption shall be exempt from the requirements of Subsection 800.01 provided: (3-29-10)

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 (3-29-10)

b. All producers maintain for three (3) years complete records of all pesticides applied as specified in Pesticide Use and Application Rules Subsection 150.02. These records shall be ready to be inspected, duplicated, or submitted when requested by the Director. (3-20-97)

801. -- 849. (RESERVED)

850. UNUSABLE PESTICIDES COLLECTION AND DISPOSAL.

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. ()

851. -- 960. (RESERVED)

961. GENERAL CHEMIGATION REQUIREMENTS.

This Section prescribes equipment listing requirements, posting requirements for certain types of pesticides, use of pesticide label directions, a prohibition from chemigation over waters of the state. (4-5-00)

01. Chemigation Equipment Standards. Equipment manufacturers shall provide to the Department of Agriculture verification that the equipment meets the standards established in these rules. If the equipment meets the standards, it shall be placed on the Department's list of approved chemigation equipment. (4-5-00)

02. Posting Requirements. Labels of toxicity category I pesticide products (those with the label signal word "DANGER." allow chemigation on their label and contain posting requirements specific to chemigation) shall be posted in accordance with their label. (4-5-00)

03. Pesticides Labeled for Chemigation. The chemigator shall use only pesticides labeled for chemigation when chemigating. (4-5-00)

04. Chemigating Over Waters of the State. Chemigating over waters of the state shall be prohibited, except for variances allowed in Section 971. (4-5-00)

962. IRRIGATION SYSTEMS.

This Section prescribes the equipment required for each type of irrigation system when chemigation is to be used. (4-5-00)

01. Sprinkler or Drip Irrigation. If chemicals are being chemigated through the sprinkler or drip irrigation system, the chemigator shall verify that the system complies with either Subsection 962.01.a. or 962.01.g. and shall include all of the additionally specified equipment for each: (4-5-00)

a. Irrigation Line Check Valve Requirement. The system shall contain a functional Irrigation Line Check Valve, (Section 966); and (4-5-00)

b. Low Pressure Drain Requirement. The system shall contain an Automatic Low Pressure Drain, (Section 970); and (4-5-00)

c. Inspection Port Requirement. The system shall contain an Inspection Port, (Section 969); and (4-5-00)

d. Vacuum Relief Valve Requirement. The system shall contain a Vacuum Relief Valve or a combination Air and Vacuum Relief Valve, (Section 968); and (4-5-00)

e. Chemical Injection System Requirement. The system shall contain a Chemical Injection System, (Section 965); and (4-5-00)

f. Chemical Injection Line Shut Down (System Interlock) Requirement. The system shall contain a Chemical Injection Line Shut Down (System Interlock), (Section 963); or (4-5-00)

g. Gooseneck Pipe Loop, Downhill and Over-A-Hill Requirement. For surface water impoundments the system may use a Gooseneck Pipe Loop, Downhill and Over-A-Hill system rather than the requirements of Subsections 962.01.a. through 962.01.f., (Section 967); and (4-5-00)

h. Chemical Injection System Requirement. The system shall contain a Chemical Injection System, (Section 965); and (4-5-00)

i. Chemical Injection Line Shut Down (System Interlock) Requirement. The system shall contain a Chemical Injection Line Shut Down (System Interlock), (Section 963). (4-5-00)

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 shall verify that the system complies with the following requirements: systems using a gravity flow dispensing system shall meter 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. (4-5-00)

03. Domestic Water Supply System Cross-Connected for Chemigation. Any irrigation system used for chemical application cross-connected to a domestic water supply system shall verify that the system complies with either Subsection 962.03.a. or 962.03.d. and shall include all other additionally specified equipment for each; (4-5-00)

a. Reduced Pressure Principle Backflow Prevention Assembly (RP). The irrigation system shall contain a functional reduced pressure backflow preventer assembly (RP); and (4-5-00)

i. The RP assembly shall be 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. (4-5-00)

ii. The purpose of a Reduced Pressure Principle Backflow Prevention Assembly (RP) is to 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. (4-5-00)

iii. The RP assembly shall have been manufactured in full conformance with the American National Standards Institute (ANSI)/American Water Works Association (AWWA) ANSI/WWA 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. (4-5-00)

b. Chemical Injection System Requirement. The system shall contain a Chemical Injection System, (Section 965); and (4-5-00)

c. Chemical Injection Line Shut Down (System Interlock) Requirement. The system shall contain a Chemical Injection Line Shut Down (System Interlock), (Section 963); or (4-5-00)

d. Air Gap (AG). The water from the domestic water supply system shall be discharged into a reservoir tank prior to the chemical injection. An air gap shall 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 shall not occur upstream of the air gap; and (4-5-00)

e. Chemical Injection System Requirement. The system shall contain a Chemical Injection System, (Section 965); and (4-5-00)

f. Chemical Injection Line Shut Down (System Interlock) Requirement. The system shall contain a Chemical Injection Line Shut Down (System Interlock), (Section 963). (4-5-00)

963. CHEMICAL INJECTION LINE SHUT DOWN (SYSTEM INTERLOCK).

In every chemigation system, there shall be a functional system interlock designed and installed to shut down the chemical injection unit when chemical distribution is adversely affected. The system interlock shall 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 shall contain one (1) of the following options found in Subsections 963.01 through 963.05, 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: (4-5-00)

01. Electrical Interlock. The electrical interlock shall contain one (1) of the options in Subsections 963.01.a. through 963.01.d. and shall include all of the additionally specified equipment for each: (4-5-00)

a. Electric Motor-Driven Irrigation Pump or Power Panel: (4-5-00)

i. The electrical controls for the irrigation pump panel or power panel at the pivot or linear shall 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 shall shut off (it is recommended that the interlock also be provided to shut off the irrigation system if the chemical injection pump shuts off); and (4-5-00)

ii. Injection Line Check Valve, (Section 964), shall be installed; and (4-5-00)

iii. In pressurized irrigation systems, the irrigation line or water pump shall include a functional pressure switch. (4-5-00)

b. Solenoid Operated Valve. A functional automatic quick-closing check valve and a functional normally closed solenoid operated valve connected to the system interlock shall be: (4-5-00)

i. Normally closed; and (4-5-00)

ii. Located on the intake side of the injection pump; and (4-5-00)

iii. Open only when there is adequate pressure in the irrigation line to insure uniform chemical distribution; and (4-5-00)

iv. In pressurized irrigation systems, the irrigation line or water pump shall include a functional pressure switch. (4-5-00)

c. A functional automatic quick-closing check valve and a functional normally closed hydraulically operated check valve. The hydraulically operated check valve shall be connected to the main water line such that the valve only opens when the main water line is adequately pressurized. In addition, in pressurized irrigation systems, the irrigation line or water pump shall include a functional pressure switch; or (4-5-00)

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. This alternative is appropriate only for those chemigation systems using a positive displacement chemical injection pump and is not for use with Venturi injection systems. This valve shall be elevated at least twelve (12) inches above the highest fluid level in the chemical supply tank and shall be the highest point in the injection line. The valve shall open at six (6) inches water vacuum or less and shall be spring-loaded or otherwise constructed such that it does not

leak on closing. It shall prevent leakage from the chemical supply tank on system shutdown. The valve shall be constructed of chemically resistant materials. In addition, in pressurized irrigation systems, the irrigation line or water pump shall include a functional pressure switch. (4-5-00)

02. Mechanical Interlock. The mechanical interlock shall contain one (1) of the options in Subsections 963.02.a. or 963.01.b. and shall include all of the additionally specified equipment for each: (4-5-00)

a. Irrigation pumps driven by an internal combustion engine shall be interlocked between the chemical injection pump and the irrigation pump by operating the chemical injection equipment from the engine electrical system, or an electrical generator driven by the pumping plant power unit: (4-5-00)

i. Injection Line Check Valve, (Section 964), shall be installed; and (4-5-00)

ii. In pressurized irrigation systems, the irrigation line or water pump shall include a functional pressure switch; or (4-5-00)

b. Irrigation pumps driven by an internal combustion engine shall be interlocked between the chemical injection pump and the irrigation pump by belt from the drive shaft of the irrigation pump or an accessory pulley of the engine: and (4-5-00)

i. Injection Line Check Valve, (Section 964), shall be installed; and (4-5-00)

ii. In pressurized irrigation systems, the irrigation line or water pump shall include a functional pressure switch. (4-5-00)

03. Hydraulic Interlock. 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. (4-5-00)

04. Human Interlock. (4-5-00)

a. 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; and (4-5-00)

b. Injection Line Check Valve (Section 964) shall be installed; and (4-5-00)

c. In pressurized irrigation systems, the irrigation line or water pump shall include a functional pressure switch. (4-5-00)

05. Other Approved Option. Any other option approved by the Director. (4-5-00)

964. INJECTION LINE CHECK VALVE.

01. Injection Line Check Valve. A functional, spring-loaded injection line check valve with a minimum of ten (10) pounds per square inch (psi) opening (cracking) pressure plus one (1) psi per one (1) foot of elevation between the chemical supply tank and the point of chemical injection and shall be: (4-5-00)

a. Located between the chemical injection pump and the point of chemical injection into the irrigation line; and (4-5-00)

b. Made of chemically resistant material; and (4-5-00)

c. Designed to prevent irrigation water under operating pressure from entering the chemical injection line; and (4-5-00)

d. Designed to prevent leakage from the chemical supply tank on system shut down; and (4-5-00)

02. A Substitute System. The injection line check valve shall be a substitute for both the solenoid-operated valve and the functional, automatic, quick closing check valve in the chemical injection line. (4-5-00)

965. CHEMICAL INJECTION SYSTEM.

All chemical injection systems, except for flood, basin, furrow, or border chemigation through a gravity flow system, shall use: (4-5-00)

01. Metering Pump. A 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 (4-5-00)

02. Venturi System. Venturi systems 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. 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. Venturies shall be constructed of chemically resistant materials. The line from the chemical supply tank to the Venturi shall contain a functional, automatic, quick closing check valve to prevent the flow of liquid back toward the chemical supply tank. This valve shall be located immediately adjacent to the Venturi chemical inlet. This same supply line shall 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. 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. (4-5-00)

966. IRRIGATION LINE CHECK VALVE.

01. Construction. Construction shall: (4-5-00)

a. Consist of at least a single check valve; (4-5-00)

b. Be of heavy duty construction with all materials resistant to corrosion or protected to resist corrosion; (4-5-00)

c. Be spring-loaded with a chemically resistant and resilient seal that provides a watertight seal against reverse flow; (4-5-00)

d. Not consist of metal to metal seal surfaces; (4-5-00)

e. Be rated at a pressure equal to or greater than the system working pressure; and (4-5-00)

f. Be positioned and oriented according to manufacturer specifications to ensure proper functioning. (4-5-00)

02. Location. The Irrigation Line Check Valve shall: (4-5-00)

a. 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. (4-5-00)

b. When installed, be on a horizontal plane and level. A deviation of not more than ten (10) degrees from horizontal is permitted. (4-5-00)

03. Labeling of the Check Valve or Valve Assembly. Shall be labeled with the following: (4-5-00)

a. Manufacturer's name and model; (4-5-00)

- b. Working pressure in pounds per square inch (psi); (4-5-00)
- c. Maximum flow rate in gallons per minute; and (4-5-00)
- d. Direction of flow. (4-5-00)

04. Model Certification. The manufacturer of the irrigation line check valve shall 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: (4-5-00)

a. Low Pressure Drip Test. A check valve shall withstand 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 shall occur 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. (4-5-00)

b. High Pressure Test. A check valve shall withstand 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. (4-5-00)

967. GOOSENECK PIPE LOOP, DOWNHILL AND OVER-A-HILL.

01. Location. Shall be located in the main water line immediately downstream of the irrigation water pump. (4-5-00)

02. Position. The bottom side of the pipe at the loop apex shall 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. (4-5-00)

03. Pipe Loop. The loop shall 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 shall be level. (4-5-00)

04. Location of Chemical Injection Port. The chemical injection port shall 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. (4-5-00)

05. Use Restriction. Shall not be allowed when pumping from a groundwater source. (4-5-00)

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

01. Location. Shall be located on top of the horizontal irrigation pipeline on the upstream side of the check valve. (4-5-00)

02. Orifice Size. Shall 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. (4-5-00)

969. INSPECTION PORT.

01. Inspection Port. The inspection port can be combined with a mounting of a vacuum relief or combination air and vacuum relief valve and shall: (4-5-00)

a. Be located on the pipeline between the irrigation pump and the irrigation pipeline check valve directly above the low pressure drain; (4-5-00)

b. Have a minimum diameter opening of four (4) inches from which the check valves and low

pressure drain shall be visible; (4-5-00)

c. 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. Any bolts shall be located on the outside of the irrigation water pipe; and (4-5-00)

d. Be located near the irrigation line check valve to allow for inspections and check for malfunctioning of the irrigation line check valve and low pressure drain. (4-5-00)

970. AUTOMATIC LOW PRESSURE DRAIN.

01. Automatic Low Pressure Drain. Automatic low pressure drain shall: (4-5-00)

a. Be installed upstream of the irrigation line check valve at the lowest point of the horizontal water supply pipeline; (4-5-00)

b. Not extend into the horizontal pipe beyond the inside surface of the bottom of the pipe; (4-5-00)

c. Be at least three-fourths (3/4) inch in diameter with a closing pressure of not less than five (5) psi; (4-5-00)

d. If the drain is within twenty (20) feet of the water source, contain a corrosion resistant tube, pipe, hose, or similar conduit three-fourths (3/4) 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 (4-5-00)

e. Not have any valves located on the outlet side of the drain tube. (4-5-00)

971. 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 shall 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. (4-5-00)

972. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.03 – RULES GOVERNING ANIMAL INDUSTRY

DOCKET NO. 02-0403-1901 (NEW CHAPTER)

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 25-203, 25-207, 25-207B, 25-212, 25-804, and 25-3704, 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:

Two rules administered by the ISDA are related to general health, disease surveillance and disease prevention requirements for domestic animals and livestock. These rules are IDAPA 02.04.03, “Rules Governing Animal Industry,” and IDAPA 02.04.22, “Rules Governing Animal Health Emergencies.” Each of these rules addresses regulations pertaining to various disease prevention, mitigation, testing and reporting requirements for domestic animals. In order to streamline and simplify all rules related to disease prevention, disease surveillance and reporting, the ISDA is proposing to combine these two rules into a single rule to be titled “02.04.03, Rules Governing Animal Industry.” No substantive changes are being made to the two rules cited above. However, these rules were reviewed for repeal and amendment of certain sections consistent with the guidance and direction provided in the Red Tape Reduction Act. Therefore, the consolidated rule was reviewed to update authorities, eliminate unnecessarily restrictive language and redundancy.

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 November Idaho Administrative Bulletin, [Vol. 19-11, pages 63-83](#).

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

02.04.03.200	- Not regulated by the federal government.
02.04.03.220	- Not regulated by the federal government.
02.04.03.257	- Broader in scope than federal law or regulations.
02.04.03.300-338	- Broader in scope than federal law or regulations.
02.04.03.400	- More stringent than federal law or regulations.
02.04.03.402	- More stringent than federal law or regulations.
02.04.03.460	- More stringent than federal law or regulations.
02.04.03.504-591	- Broader in scope than federal law or regulations.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. A license applications fee of twenty-five (\$25) dollars is required for any person desiring to practice artificial insemination of domestic animals. A license renewal fee of five (\$5) dollars is required annually thereafter. No changes were made to the fee already included in the Rules Governing Animal Industry. These fees are authorized pursuant to Section 25-807, 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: The agency does not anticipate any fiscal impact as a result of this rulemaking.

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

Dated this 27th day of November, 2019.

Brian Oakey, Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8552
Fax: (208) 334-2170

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 25-203, 25-207B, 25-212, 25-804, and 25-3704, Idaho Code.

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

PUBLIC HEARING

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

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

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

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

Two rules administered by the ISDA are related to general health, disease surveillance and disease prevention requirements for domestic animals and livestock. These rules are IDAPA 02.04.03, “Rules Governing Animal Industry,” and IDAPA 02.04.22, “Rules Governing Animal Health Emergencies.” Each of these rules addresses regulations pertaining to various disease prevention, mitigation, testing and reporting requirements for domestic

animals. In order to streamline and simplify all rules related to disease prevention, disease surveillance and reporting, the ISDA is proposing to combine these two rules into a single rule to be titled “02.04.03, Rules Governing Animal Industry.” No substantive changes are being made to the two rules cited above. All rules were reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act

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

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

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

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

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

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

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

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

Subchapter A:

1. The USDA Pseudorabies Eradication State-Federal-Industry Program Standards, November 1, 2003, outlines program standards to be utilized in the eradication of pseudorabies in swine. As this is a federal-state cooperative effort, it is important that this document be incorporated by reference.
2. National Poultry Improvement Plan and Auxiliary Provisions, February 12, 2008, outlines new and or modified sampling and testing procedures for management of the National Poultry Improvement Program. As these provisions may change, it is more efficient to incorporate by reference the entire document to keep the rule current.
3. Title 9, Parts 145, 146, 147, and 161, CFR, January 1, 2008. Parts 145, 146 and 147 address roles and responsibilities pertaining the National Poultry Improvement Program. Part 161 addresses roles and responsibilities of state-federal accredited veterinarians.

4. The Compendium of Animal Rabies Prevention and Control, 2008, is produced by the National Association of Public Health Veterinarian and provides guidance for the management of rabies. It is not a regulatory document for informational and guidance purposes. The document can be viewed online at:
<http://www.nasphv.org/Documents/NASPHVRabiesCompendium.pdf>
5. Equine Viral Arteritis Uniform Methods and Rules, April 19, 2004. This publication, “Equine Viral Arteritis: Uniform Methods and Rules” (UM&R), contains minimum standards for detecting, controlling, and preventing EVA as well as minimum EVA requirements for the intrastate and interstate movement of equines.

Subchapter B:

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

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

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

Dated this 3rd day of October, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 02-0403-1901

02.04.03 – RULES GOVERNING ANIMAL INDUSTRY

000. LEGAL AUTHORITY.

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

001. TITLE AND SCOPE.

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

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

002. -- 010. (RESERVED)

011. ABBREVIATIONS.

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

02. CFR. Code of Federal Regulations. ()

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

- 04. VS. Veterinary Services.** ()
- 012. -- 103. (RESERVED)**

SUBCHAPTER A – ANIMAL INDUSTRY

104. INCORPORATION BY REFERENCE.

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

- 01. Incorporated Documents.** ()
- a.** The USDA Pseudorabies Eradication State-Federal-Industry Program Standards, November 1, 2003, which can be viewed online at http://www.aphis.usda.gov/animal_health/animal_diseases/pseudorabies/downloads/program_stds.pdf. ()
- b.** National Poultry Improvement Plan and Auxiliary Provisions, February 12, 2008, which can be viewed online at <http://edocket.access.gpo.gov/2009/E9-7240.htm>. ()
- c.** Title 9, Parts 145, 146, 147, and 161, CFR, January 1, 2008, which can be viewed online at http://www.access.gpo.gov/nara/cfr/waisidx_00/9cfrv1_00.html. ()
- d.** The Compendium of Animal Rabies Prevention and Control, 2008, which can be viewed online at <http://www.nasphv.org/Documents/NASPHVRabiesCompendium.pdf>. ()
- e.** Equine Viral Arteritis Uniform Methods and Rules, April 19, 2004, which can be viewed online at <http://www.aphis.usda.gov/vs/nahss/equine/eva/eva-umr.pdf>. ()

110. DEFINITIONS.

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

- 01. Accredited Veterinarian.** A veterinarian approved by the Administrator and USDA/APHIS/VS, in accordance with the provisions of Title 9, Part 161, Code of Federal Regulations, to perform functions of State-Federal animal disease control programs. ()
- 02. Animal.** Any vertebrate member of the animal kingdom, except man. ()
- 03. Approved Pseudorabies Vaccine.** Any pseudorabies vaccine produced under current USDA license and intended for immunizing swine against pseudorabies. ()
- 04. Cachexia.** Weakness and emaciation caused by a serious disease such as tuberculosis or cancer. ()
- 05. Epithelioma.** Cancer or tumor. ()
- 06. Equidae.** Horses, ponies, mules, asses, and zebras. ()
- 07. Exposed Livestock.** Any livestock that have been in contact with an animal infected with, or affected by, any contagious, infectious or communicable disease, including all livestock in a known infected herd. ()
- 08. Gamebirds.** Domesticated gallinaceous fowl such as pheasants, partridge, quail, grouse, and guineas. ()
- 09. Garbage.** Putrescible animal and vegetable waste containing animal parts resulting from the ()

- handling, preparation, processing, cooking or consumption of foods. ()
10. **Hatching Eggs.** Fertilized eggs. ()
11. **Herd.** A herd is any group of livestock maintained on common ground for any purpose, or two (2) or more groups of livestock under common ownership or supervision, geographically separated, but which have an interchange or movement of animals without regard to whether the animals are infected with or exposed to contagious, infectious, or communicable animal diseases. ()
12. **Infected Livestock.** Any livestock determined to be infected with a contagious infectious, of communicable disease by an official test or diagnostic procedure, or diagnosed by a veterinarian as infected. ()
13. **Interstate Movement.** Movements of livestock and poultry from Idaho into any other state, territory or the District of Columbia or from any other state, territory or the District of Columbia into Idaho. ()
14. **Intrastate Movement.** Movement of any animal from one location to another location within Idaho. ()
15. **Known Infected Herd.** Any herd in which any livestock has been determined to be infected with contagious, infectious, or communicable diseases by an official test or diagnostic procedure, or diagnosed by a veterinarian as being infected. ()
16. **Livestock.** Swine, cattle, sheep, goats, equidae, domestic bison, domestic cervidae, camelids, ratites, and other domestically raised animals. ()
17. **Necrosis.** Death of tissue. ()
18. **Negative.** An animal that has been tested with official test procedures and is found to be negative. ()
19. **Neoplastic Tissue.** New growth or tissue associated with a tumor. ()
20. **Official Pseudorabies Test.** Any test for the diagnosis of pseudorabies that has been approved by USDA/APHIS and is conducted by a state/federal approved laboratory. ()
21. **Orbital Region.** The cavity containing the eye and surrounding bones. ()
22. **Positive.** An animal that has been tested and found positive with official disease test procedures and is considered infected with any contagious, infectious, or communicable disease. ()
23. **Poultry.** Domesticated fowl, including chickens, turkeys, waterfowl, and gamebirds. ()
24. **Pseudorabies.** The contagious, infectious, and communicable disease of livestock and other animals also known as Aujeszky's disease, mad itch or infectious paralysis. ()
25. **Quarantine.** A written order, or a verbal order followed by a written order, executed by the Administrator, to confine or hold animals on a premise or any other location, and to prevent movement of animals from a premise or any other location when the Administrator has determined that the animals have been found or are suspected to be exposed to or infected with any contagious, infectious, or communicable disease, or the animals are not in compliance with the provisions of this chapter. ()
26. **Quarantined Area.** The counties, areas, or districts, portions thereof, quarantined by the Division of Animal Industries for specific contagious, infectious, or communicable animal diseases. ()
27. **Quarantined.** Isolation of all animals diseased or exposed thereto, from contact with healthy animals and exclusion of such healthy animals from enclosures or grounds where said diseased or exposed animals are, or have been kept. ()

28. Ratites. Large, non-flying birds including, but not limited to ostriches, emus, cassowaries, and rheas. ()

29. Registered Veterinarians. Veterinarians registered with, and approved by, the Division of Animal Industries to collect Trichomoniasis samples for official Trichomoniasis culture testing. ()

30. Restrain. The confinement of livestock, or other animals, in a chute, or other device, for the purpose of efficiently, effectively, and safely inspecting, treating, vaccinating, or testing, as approved by the Administrator. ()

31. Stockyards. A facility where trading in livestock is carried on, where yarding, feeding and watering places are provided by the stockyards or transportation companies, or where livestock associations or similar companies maintain corrals for feeding, shearing, dipping and separating animals. ()

32. Suppuration. The formation of pus. ()

33. Suspect. An animal that has a response to an official test, but the response is not sufficient to determine the disease status of the animal tested. ()

34. Swine. All breeds of domestic porcine and all wild and exotic porcine. ()

35. Swine Feedlot. Premises designed and used exclusively for the finish feeding of swine, from which the swine will be moved directly to slaughter. ()

36. Waterfowl. Domesticated fowl that normally swim such as ducks and geese. ()

37. Wildfowl. Wild gallinaceous fowl, turkeys, and waterfowl. ()

111. ABBREVIATIONS.

01. AGID. Agar gel immunodiffusion. ()

02. c-ELISA. Competitive Enzyme Linked Immunosorbent Assay. ()

03. EIA. Equine Infectious Anemia. ()

04. NPIP. National Poultry Improvement Plan. ()

112. -- 113. (RESERVED)

114. SAMPLES FOR OFFICIAL REGULATORY TESTS.

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

01. Accredited Veterinarians. ()

02. State or Federal Animal Health Officials. ()

03. Persons Approved by the Administrator. ()

115. QUARANTINE.

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

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

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

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

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

116. -- 119. (RESERVED)

120. DISINFECTION OF PREMISES, BUILDINGS AND VEHICLES.

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

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

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

03. Moving Contaminated Vehicle. Any conveyance that has contained cattle, swine or other livestock exposed to, or affected by, any contagious, infectious or communicable disease, may not be moved for any purpose unless the Administrator has approved the movement in writing, prior to the movement occurring. ()

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

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

121. -- 124. (RESERVED)

125. TRANSIT INSPECTION.

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

126. -- 129. (RESERVED)

130. SLAUGHTERING OF DISEASED ANIMALS.

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

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

Disposal.” ()

131. -- 139. (RESERVED)

140. INSPECTION OF ANIMALS.

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

141. -- 144. (RESERVED)

145. CERTIFICATES OF VETERINARY INSPECTION.

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

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

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

146. -- 149. (RESERVED)

150. STATE AND FEDERAL SEALS.

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

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

02. Persons Designated by the Administrator. ()

151. NOTIFICATION OF BROKEN SEALS.

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

152. LIVESTOCK IDENTIFICATION REMOVAL.

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

01. Official Vaccination Tags. ()

02. Official Identification Tags. ()

03. Trichomoniasis Tags. ()

04. Identification Tattoos. ()

153. -- 199. (RESERVED)

200. ARTIFICIAL INSEMINATION.

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

02. Training. Each applicant is required to take a course of training in artificial insemination at the

place and time designated by the Administrator. ()

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

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

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

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

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

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

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

201. -- 209. (RESERVED)

210. CANCER EYE - EPITHELIOMA.

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

01. Animal Rendering Plants; or ()

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

211. EPITHELIOMA -- PUBLIC LIVESTOCK MARKETS.

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

212. -- 219. (RESERVED)

220. RABIES.

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

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

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

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

- b.** Quarantine, clean and disinfect all premises where such animals have been kept. ()
- c.** Call upon sheriffs, constables and other peace officers to assist them in the discharge of their duties. ()

221. -- 229. (RESERVED)

230. BIOLOGICALS.

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

231. -- 239. (RESERVED)

240. POULTRY AND RATITES.

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

- 01. Sale of Live Birds or Hatching Eggs.** The sale of live birds or hatching eggs; or ()
- 02. Release of Live Birds.** Release of live birds, such as hunting clubs, hunting preserves, or dog trials; or the release of live birds into the wild. ()

241. RECORD REQUIREMENTS.

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

242. INSPECTIONS.

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

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

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

243. NPIP CERTIFICATES OF PARTICIPATION.

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

- 01. Records.** Each NPIP participant must have on file records of their flock qualification testing; and ()
- 02. Inspection Forms.** Each NPIP participant shall have on file a copy of the annual inspection form from the previous year documenting compliance with the NPIP program. ()

244. -- 249. (RESERVED)

250. EQUIDAE -- EQUINE INFECTIOUS ANEMIA.

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

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

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

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

251. EIA IS A REPORTABLE DISEASE.

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

252. EIA INFECTED ANIMALS.

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

253. DISPOSITION OF EIA REACTORS.

Equidae found to be infected with EIA shall: ()

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

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

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

b. Euthanized and buried or incinerated; or ()

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

254. ISOLATION OF EIA REACTORS.

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

255. IDENTIFICATION OF EIA REACTORS.

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

256. EXPOSED EQUIDAE.

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

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

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

257. EXTENDED VALIDITY EQUINE CERTIFICATES.

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

258. -- 299. (RESERVED)

300. FOREIGN ANIMAL AND REPORTABLE DISEASES.

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

301. FOREIGN ANIMAL AND REPORTABLE DISEASES: MULTIPLE SPECIES.

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

17. Vesicular Stomatitis. ()
302. FOREIGN ANIMAL AND REPORTABLE DISEASES - AVIAN DISEASES.
01. Avian Influenza. ()
02. Avian Chlamydiosis (*Psittacosis*). ()
03. Exotic Newcastle Disease. ()
303. FOREIGN ANIMAL AND REPORTABLE DISEASES - BOVINE DISEASES.
01. Babesiosis. ()
02. Bovine Brucellosis (*B. abortus*). ()
03. Bovine Spongiform Encephalopathy. ()
04. Bovine Tuberculosis. ()
05. Contagious Bovine Pleuropneumonia. ()
06. Crimean Congo Hemorrhagic Fever. ()
07. Lumpy Skin Disease. ()
08. Malignant Catarrhal Fever (Foreign Type). ()
09. Rinderpest. ()
10. Trichomoniasis. ()
304. FOREIGN ANIMAL AND REPORTABLE DISEASES - CERVIDAE DISEASES.
Chronic Wasting Disease is a reportable disease. ()
305. FOREIGN ANIMAL AND REPORTABLE DISEASES - EQUINE DISEASES.
01. African Horse Sickness. ()
02. Contagious Equine Metritis. ()
03. Dourine. ()
04. Equine Encephalomyelitis (Eastern, Western, Venezuelan). ()
05. Equine Infectious Anemia. ()
06. Equine Piroplasmosis (*Babesiosis*). ()
07. Equine Viral Arteritis. ()
08. Glanders. ()
09. Hendra Virus. ()
10. Japanese Encephalitis. ()

11. Surra (*Trypanosoma evansi*). ()
306. FOREIGN ANIMAL AND REPORTABLE DISEASES - FISH DISEASES.
01. Asian Tapeworm of Carp. ()
02. Oncorhynchus Masou Virus Disease. ()
03. Spring Viremia of Carp. ()
04. Viral Hemorrhagic Septicemia. ()
307. FOREIGN ANIMAL AND REPORTABLE DISEASES - LAGOMORPH DISEASES.
Rabbit Hemorrhagic Disease is a reportable disease. ()
308. FOREIGN ANIMAL AND REPORTABLE DISEASES - SHEEP AND GOAT DISEASES.
01. Contagious Caprine Pleuropneumonia. ()
02. Nairobi Sheep Disease. ()
03. Ovine Brucellosis (*B. melitensis*). ()
04. Peste des Petits Ruminants. ()
05. Scrapie. ()
06. Sheep and Goat Pox. ()
309. FOREIGN ANIMAL AND REPORTABLE DISEASES - SWINE DISEASES.
01. African Swine Fever. ()
02. Classical Swine Fever (Hog Cholera). ()
03. Enterovirus Encephalitis (Teschén Disease). ()
04. Nipah Virus Encephalitis. ()
05. Porcine Brucellosis (*B. suis*). ()
06. Swine Vesicular Disease. ()
310. -- 329. (RESERVED)
330. NOTIFIABLE DISEASES.
All veterinarians licensed to practice in Idaho shall report any notifiable diseases listed in Subchapter A to the Administrator. The Administrator may add a notifiable disease by issuing an administrative order explaining in writing the reasons for requiring the disease to be reported. ()
331. NOTIFIABLE DISEASES: MIXED SPECIES DISEASES.
West Nile Virus is a notifiable disease. ()
332. NOTIFIABLE DISEASES: AVIAN DISEASES.
01. Avian Mycoplasmosis (*M. gallisepticum* and *M. synoviae*). ()

- 02. Fowl Typhoid (*Salmonella gallinarum*). ()
- 03. Pullorum Disease (*Salmonella pullorum*). ()
- 333. NOTIFIABLE DISEASES: BOVINE DISEASES.
 - 01. Hemorrhagic Septicemia (*Pasteurella multocida*). ()
 - 02. Malignant Catarrhal Fever (Sheep Associated). ()
- 334. NOTIFIABLE DISEASES: EQUINE DISEASES.
 - 01. Equine Herpesvirus Myeloencephalopathy. ()
 - 02. Equine Rhinopneumonitis. ()
- 335. NOTIFIABLE DISEASES: FISH DISEASES.
 - 01. Epizootic Hematopoietic Necrosis. ()
 - 02. Infectious Hematopoietic Necrosis. ()
 - 03. Whirling Disease. ()
- 336. NOTIFIABLE DISEASES: LAGOMORPH DISEASES.
Myxomatosis is a notifiable disease. ()
- 337. NOTIFIABLE DISEASES: SHEEP AND GOAT DISEASES.
 - 01. Bluetongue. ()
 - 02. Caprine Arthritis/Encephalitis (CAE). ()
 - 03. Caseous Lymphadenitis. ()
 - 04. Contagious Agalactia (*Mycoplasma spp.*). ()
 - 05. Enzootic Abortion (*Chlamydia psittici*). ()
 - 06. Footrot. ()
 - 07. Haemonchus Contortus (drug-resistant). ()
 - 08. Johne's Disease. ()
 - 09. Maedi-Visna/Ovine Progressive Pneumonia (OPP). ()
 - 10. Ovine Epididymitis (*Brucella ovis*). ()
 - 11. Toxoplasma Gondii Abortion. ()
 - 12. Vibrionic Abortion (*Campylobacter fetus*). ()
- 338. NOTIFIABLE DISEASES: SWINE DISEASES.
 - 01. Porcine Reproductive and Respiratory Syndrome (PRRS). ()

02. Transmissible Gastroenteritis. ()

339. -- 359. (RESERVED)

360. ACTINOMYCOSIS (LUMP JAW).

01. Selling Diseased Animal. It is unlawful for any person to knowingly sell, offer for sale, or in any manner transfer ownership to another person any animal infected or affected with the disease known as actinomycosis or lump jaw if the disease shows well-marked clinical symptoms, or is in the advanced stage, except for immediate slaughter, and then only in accordance with the meat inspection rules and regulations of the USDA. ()

02. Public Livestock Markets. Animals showing well marked clinical symptoms or in the advanced stage of actinomycosis or lump jaw passing through public livestock markets shall be placed and sold only from quarantine pens. ()

361. -- 399. (RESERVED)

400. GARBAGE FEEDING.

No person shall feed garbage to swine. ()

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

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

401. PSEUDORABIES -- PROCEDURES FOR CONTROL AND ERADICATION.

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

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

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

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

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

402. PSEUDORABIES VACCINE.

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

403. VACCINATED SWINE.

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

404. -- 419. (RESERVED)

420. ERADICATION METHODS.

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

421. -- 429. (RESERVED)

430. IDENTIFICATION OF INFECTED SWINE.

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

431. IDENTIFICATION OF EXPOSED SWINE.

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

432. -- 449. (RESERVED)

450. QUALIFIED PSEUDORABIES-NEGATIVE HERDS.

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

451. -- 459. (RESERVED)

460. CLEANING AND DISINFECTION.

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

461. -- 503. (RESERVED)

SUBCHAPTER B - ANIMAL HEALTH EMERGENCIES

504. INCORPORATION BY REFERENCE.

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

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

510. DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Quarantine. A written order, executed by the Administrator, to confine or hold animals on a premises or any other location, where found, and prevent movement of animals from a premises or any other location when the Administrator has determined that the animals are infected with or exposed to a disease, or are not in compliance with the provisions of this chapter. ()

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

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

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

511. -- 520. (RESERVED)

521. CIRCUMSTANCES OF AN ANIMAL HEALTH EMERGENCY.

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

522. DECLARATION OF AN ANIMAL HEALTH EMERGENCY.

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

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

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

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

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

523. QUARANTINE AUTHORITY.

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

524. UTILIZATION OF VACCINATION IN ANIMAL HEALTH EMERGENCIES.

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

525. -- 529. (RESERVED)

530. QUARANTINE PROCEDURES FOR AN ANIMAL HEALTH EMERGENCY.

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

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

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

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

531. QUARANTINE AREA.

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

532. QUARANTINE AREA SECURITY.

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

533. QUARANTINE AREA BIO-SECURITY.

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

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

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

534. ANIMAL MOVEMENT IN QUARANTINE AREA.

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

535. SALE OF DISEASED OR EXPOSED ANIMALS NOT ALLOWED.

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

536. EXPOSURE OF ANOTHER'S ANIMALS NOT ALLOWED.

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

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

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

537. MOVEMENT OR SALE OF ANIMAL PRODUCTS.

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

538. -- 539. (RESERVED)

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

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

541. ANIMALS IN TRANSIT AT TIME OF DECLARED EMERGENCY.

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

542. -- 549. (RESERVED)

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

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

551. -- 559. (RESERVED)

560. DEPOPULATION OF ANIMALS.

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

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

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

561. METHOD OF DEPOPULATION.

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

562. TIME LIMIT FOR DEPOPULATION.

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

563. -- 569. (RESERVED)

570. COMPENSATION FOR APPRAISED ANIMALS.

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

571. COMPENSATION FOR ANIMALS DESTROYED.

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

572. APPRAISAL PROCEDURE FOR ANIMALS DEPOPULATED.

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

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

b. The owner; and ()

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

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

573. TIME LIMIT FOR APPRAISAL.

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

574. -- 579. (RESERVED)

580. COMPENSATION FOR LABOR EMPLOYED.

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

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

581. COMPENSATION FOR PROPERTY DESTROYED.

The Department will compensate owners for property ordered destroyed by the Administrator. ()

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

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

582. -- 589. (RESERVED)

590. CLEANING AND DISINFECTION OF PREMISES.

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

591. CLEANING AND DISINFECTION OF ANIMAL CONVEYANCE.

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

572. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.05 – RULES GOVERNING GRADE A MILK AND MANUFACTURE GRADE MILK

DOCKET NO. 02-0405-1901 (NEW CHAPTER)

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 37-303, 37-402, 37-405, and 37-516, Idaho Code.

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

Four rules administered by the ISDA are related to the inspection, production, processing, analysis and transport of Grade A and Manufacture Grade Milk and Milk Products. These rules are IDAPA 02.04.05, “Rules Governing Manufacture Grade Milk,” IDAPA 02.04.06, “Rules Governing Licensed Dairy Plants,” IDAPA 02.04.08, “Rules Governing Grade A Milk and Milk Products,” and IDAPA 02.04.09, “Rules Governing Milk and Cream Procurement and Testing.” Each of these rules addresses regulations pertaining to different variations of milk production. In order to streamline and simplify all rules related to milk production, the ISDA is proposing to combine all four rules into a single rule to be titled 02.04.05, “Rules Governing Grade A and Manufacture Grade Milk.” No substantive changes are being made to the four rules cited above. However, these rules were reviewed for repeal and amendment of certain sections consistent with the guidance and direction provided in the Red Tape Reduction Act. Therefore, the consolidated rule was reviewed to update authorities, eliminate unnecessarily restrictive language and redundancy.

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the November Idaho Administrative Bulletin, [Vol. 19-11, pages 84-112](#).

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

02.04.05.120 - More stringent than federal law or regulations

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. Official laboratories, licensed to test milk or cream components or quality parameters for the purpose of determining the value of the product when sold or purchased by producers or processors must first obtain a license for \$25.00. The laboratory license is valid for three calendar years after issuance. No changes were made to the fee already included in the original Rule Governing Milk and Cream Procurement in the new combined rule, 02.04.05- Rules Governing Grade A Milk and Manufacture Grade Milk. Fees under this rule are authorized pursuant to Sections 37-407 and 37-503, Idaho Code.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Dr. Scott Leibsle, Deputy Administrator – Division of Animal Industries at (208) 332-8540.

Dated this 27th day of November, 2019.

Brian Oakey, Deputy Director
Idaho Department of Agriculture
Ph: (208) 332-8552 / Fax: (208) 334-2170

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

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 37-303, 37-402, 37-405, and 37-516 Idaho Code.

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

PUBLIC HEARING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

rating methods for evaluating the sanitary quality of milk and/or milk products measures the extent to which a shipper complies with the standards contained in the Grade “A” Pasteurized Milk Ordinance (PMO).

10. The 2017 Interstate Milk Shipments; The Procedures Governing the Cooperative State-Public Health Service/ Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, published by the U. S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, and the National Conference on Interstate Milk Shipments (NCIMS). Contains the bylaws to maintain a national dairy program that is uniform and acceptable to all States, the U.S. Public Health Service and Drug Administration and the dairy industry.

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

Dated this 3rd day of October, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 02-0405-1901

02.04.05 – RULES GOVERNING GRADE A MILK AND MANUFACTURE GRADE MILK

000. LEGAL AUTHORITY.

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

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001. TITLE AND SCOPE.

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

()

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

()

002. -- 103. (RESERVED)

SUBCHAPTER A – GRADE A MILK AND MILK PRODUCTS

104. INCORPORATION BY REFERENCE.

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

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

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02. Evaluation of Milk Laboratories. The Evaluation of Milk Laboratories, 2017 revision, published by the U. S. Department of Health and Human Services, Public Health Service, Food and Drug Administration. Available online at <https://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Milk/UCM615021.pdf>. ()

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

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

105. REGULATORY FRAMEWORK.

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

106. -- 119. (RESERVED)

120 GRADE A MILK AND MILK PRODUCTS QUALITY STANDARDS.

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

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

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

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

121. -- 209. (RESERVED)

SUBCHAPTER B – MILK AND CREAM PROCUREMENT AND TESTING

210. DEFINITIONS.

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

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

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

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

04. Calibration. The settings established on a testing device that will result in an average number of

results that are within tolerance. ()

05. Clearance Test. A sample set issued to an official laboratory, by the Department, to maintain a probationary testing license or reinstate a suspended testing license. ()

06. Control Samples. Milk samples used to determine or set the calibration of the testing device. ()

07. Component Testing. An analysis of milk or cream constituents including milkfat, protein, lactose or solids-nonfat, which is used as a basis of payment. ()

08. Detailed Pricing Description. The method used by the purchaser of milk or cream as the criteria for determining the price paid. ()

09. Milk Component or Component. A unique compound within milk whose relative mass within the milk may be used to determine the payment to producers. Component parts of milk include milkfat, protein, lactose, solids-nonfat, other solids, and total solids. ()

10. Official Laboratory. A facility, licensed by the department, that tests milk or cream components or quality parameters for the purpose of determining the value of the product when sold or purchased by producers or processors. ()

11. Outlier. A regulatory sample result that appears to deviate markedly from other members of the sample set in which it occurs. ()

12. Pay Records. Signed written or printed records, which itemize milk volume, milk component and quality parameters used as payment to a producer or other processor. ()

13. Performance Error. The difference between the known percentage content of each milk component in the control sample, as determined by the sample provider, and the percentage content as measured by the testing device. ()

14. Producer. A dairy farm permitted by the department to sell milk for human consumption. ()

15. Processor. A creamery, milk plant, shipping or cream buying station, milk condensing plant, cheese factory, mix making plant, ice cream factory, reprocessing plant, casein plant, powdered milk plant, or factory of milk products, or other person receiving or purchasing milk or cream in bulk other than a retail vendor of milk on the basis of volume, milk components, or milk quality. ()

16. Quality Parameter. The quality of milk or cream as determined by the bacteria/plate count method, somatic cell count, temperature, drug residues or other parameters as approved by the department. ()

17. Rolling Group of Thirteen (13). A series of thirteen (13) consecutive sample testing dates where the lab performance error of each biweekly component test is averaged together to represent the long-term accuracy of the lab. To be considered a valid testing date, a lab must evaluate and provide results on no less than nine (9) component samples from each round of testing. ()

18. Testing Device. The equipment used to determine the percentage of milk or cream components. ()

19. Sample Set. A group of not less than nine (9) milk samples issued by the Department to each official laboratory to evaluate component testing accuracy. ()

20. Tolerance. The acceptable performance error from the control values of each sample set as determined by the sample provider. ()

211 - 219. (RESERVED)

220. MILK AND CREAM PROCUREMENT AND TESTING REQUIREMENTS.

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

221. LABORATORY LICENSING REQUIREMENTS.

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

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

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

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

222 - 229. (RESERVED)

230. OFFICIAL LABORATORIES - RESPONSIBILITIES AND OPERATING PROCEDURES.

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

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

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

231. THIRD PARTY LABORATORIES.

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

232. - 239. (RESERVED)

240. MILK COMPONENT TESTING DEVICES.

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

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

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

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

()

241. CALIBRATION OF MILK COMPONENT TESTING DEVICES.

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

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

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

a. Cannot be more than twenty-one (21) days old; ()

b. Must be a fresh milk sample preserved with bronopol (2-bromo-2-nitro-1, 3-propanediol) or another approved preservative. Preservative methods, formulations and concentrations must be approved by the department. ()

c. Must have a known percentage content of each relevant milk component, determined by the sample provider. ()

d. Must meet the requirements of Section 250 of this rule. ()

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

a. The performance error on each calibration sample shall be as near as practicable to zero (0). ()

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

c. The standard deviation of test results, calculated for the set of calibration samples shall not exceed forty-four thousandths percent (.044%) for milkfat or protein, or eighty-four thousandths percent (.084%) for total solids or solids-nonfat. ()

242. DAILY PERFORMANCE CHECKS.

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

01. Daily Performance Check Samples. ()

a. Source. A set of daily performance check samples must be obtained from a sample provider approved by the department, or may be made by the official laboratory. ()

b. Number. Unless otherwise specified by the manufacturer of the testing device, a minimum of two (2) control milk samples must be analyzed before daily component testing begins. ()

c. Requirements. The control samples must comply with the requirements set forth in Section 241 of Subchapter B and fall within the component ranges typically found in the samples to be tested. ()

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

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

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

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

243. ACCURACY CHECKS.

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

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

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

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

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

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

244 - 249. (RESERVED)

250. SAMPLE INTEGRITY.

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

251. -- 259. (RESERVED)

260. ABNORMAL TESTS.

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

01. Alternate Tests. In the case of an abnormal test, the official laboratory will use an average of the

previous three (3) tests from that producer or another department approved method. ()

02. Accidents and Sampling Errors. Laboratory accidents or sampling errors on milk or cream to be tested will not be used as official results and the criteria in Subsection 260.01 will be instituted. ()

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

261. -- 269. (RESERVED)

270. DETAILED PRICING DESCRIPTION.

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

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

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

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

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

d. Fixed pricing type. ()

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

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

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

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

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

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

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

271. -- 279. (RESERVED)

280. REGULATORY COMPLIANCE - INSPECTIONS AND RECORDS REVIEW.

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

281. REGULATORY SAMPLES.

01. Sample Set. ()

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

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

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

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

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

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

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

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

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

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

282. LICENSE SUSPENSION AND REVOCATION BASED ON REGULATORY SAMPLES.

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

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

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

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

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

i. The records demonstrate all calibration and performance checks of all testing devices were performed, as required under these rules, and are operating within the tolerances set forth in Sections 240, 241, and 243 of this rule; and ()

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

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

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

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

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

283. – 289. (RESERVED)

290. RECORD KEEPING.

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

01. General Provisions. ()

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

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

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

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

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

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

a. Instrument identification. ()

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

- maintenance. ()
- c. Time and date of the calibration check or maintenance. ()
 - d. Type of analytical test or maintenance performed. ()
 - e. Results of the analytical test or maintenance. ()
 - f. Details of action taken to correct calibration tolerances or mechanical problems. ()

03. Records Retention - Time Limit. The dairy plant operator or the official laboratory must maintain the records required under this section of Subchapter B for at least one (1) year. ()

291. ENFORCEMENT.

01. License Suspension. The director may suspend official laboratory component testing from any laboratory not meeting the requirements set forth in Subchapter B until the official laboratory has satisfactorily demonstrated compliance with Subchapter B. ()

02. Effect of License Suspension. If an official laboratory's license is suspended, the official laboratory cannot conduct component testing for use as a basis of payment and must use a licensed third-party laboratory. Procurers of milk who must use a licensed third-party laboratory must pay any associated component testing fees. ()

292. -- 303. (RESERVED)

SUBCHAPTER C – MANUFACTURE GRADE MILK

304. INCORPORATION BY REFERENCE.
The following documents are incorporated by reference into Subchapter C only. ()

01. Standard Methods for the Examination of Dairy Products (Standard Methods). (17th Edition, June 1, 2004) published by the American Public Health Association. ()

02. Official Methods of Analysis of AOAC International (OMA), 19th Edition, 2012. ()

03. United States Sediment Standards for Milk and Milk Products (September 1, 1977) (USDA AMS Dairy Division). This document is available online at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELDEV3004474>. ()

04. United States Standards for Grades of Butter (August 31, 1989) (USDA AMS Dairy Division). This document is available online at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELDEV3004470>. ()

05. Appendix D “Standards for Water Sources” of the Grade “A” Pasteurized Milk Ordinance. The Grade “A” Pasteurized Milk Ordinance, 2013 revision, published by the U. S. Department of Health and Human Services, Public Health Service, Food and Drug Administration. ()

305. -- 309. (RESERVED)

310. DEFINITIONS.
In addition to the definitions found in Chapters 3, 4, and 5, Title 37, Idaho Code, the following definitions apply to the interpretation and enforcement of Subchapter C only: ()

01. 3-A Sanitary Standards. The standards for dairy equipment formulated by the 3-A Sanitary Standards, Inc. (3-A SSI). 3-A SSI is comprised of equipment fabricators, Dairy Processors, and regulatory

sanitarians, which include state milk regulatory officials, USDA Agricultural Marketing Service Dairy Programs, the US. Public Health Service, the Food and Drug Administration, academic representatives, and others. ()

02. Acceptable Milk. Milk that qualifies as to appearance and odor and that is classified No. 1 or No. 2 for sediment content. ()

03. Atmosphere Relatively Free From Mold. No more than ten (10) mold colonies per cubic foot of air as determined in Standard Methods. ()

04. Bulk Milk Hauler or Bulk Milk Sampler. A person licensed by the Department who is qualified and trained for the grading or sampling of raw milk in accordance with the quality standards and procedures of these rules and the Universal Sample. ()

05. C-I-P or Cleaned-in-Place. The procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation. ()

06. Commingled Milk. Milk that has left the Dairy Farm and has been mixed with other individual Producer milk in a Transportation Tank or at a Dairy Plant. ()

07. Dairy Farm or Farm. A place or premise certified by the Department where one (1) or more milking cows, sheep, goats, or water buffalo are kept, and from which all or a portion of the milk produced thereon is delivered, sold, or offered for sale to a Dairy Plant. ()

08. Dairy Certification. Certification by an Inspector or Approved Fieldman that a Producer's herd, milking facility and housing, milking procedure, cooling, milkhouse or milkroom, utensils and equipment and water supply have been found to meet the applicable requirements of Section 360 for the production of milk to be used for manufacturing purposes. ()

09. Dairy Plant or Dairy Processor. Any place, premise, or establishment licensed by the Department where milk or dairy products are transported, graded, received or handled for processing or manufacturing and/or prepared for distribution. ()

10. Dairy Products. Butter, cheese (natural or processed), dry whole milk, nonfat dry milk, dry buttermilk, dry whey, evaporated milk (whole or skim), condensed whole milk and condensed skim milk (plain or sweetened), and such other products, for human consumption, as may be otherwise designated. ()

11. Excluded Milk. All of a Producer's milk excluded from the market by the provisions of Section 341. ()

12. Farm Tank. A tank used to cool, store or cool, and store milk prior to transportation to the processing plant. ()

13. Fieldman. A person qualified and trained in the sanitary methods of production and handling of milk as set forth herein, and generally employed by a Dairy Plant for the purpose of making Dairy Farm surveys and doing quality control work. ()

14. Fieldman, Approved. A Fieldman qualified, trained, and approved by the Department to perform Dairy Farm inspections and raw milk grading or sampling. ()

15. Inspector. A qualified, trained person employed by the Department to perform Dairy Farm or Dairy Plant inspections and raw milk grading or sampling. ()

16. Milk. The lacteal secretion practically free from colostrum obtained by the complete milking of one (1) or more healthy cows, goats, sheep, or water buffalo for manufacturing purposes. ()

17. Milk for Manufacturing Purposes. Milk produced from a Department certified Dairy Farm for processing and manufacturing into products for human consumption but not subject to Grade A or comparable

requirements. ()

18. Probational Milk. Milk classified No. 3 for sediment content. ()

19. Producer. The person or persons who exercise control over the production of the milk delivered to a Dairy Plant. ()

20. Rejected Milk. Milk rejected from the market according to the provisions of Section 340. ()

21. Sanitizing Treatment. Application of any effective method or sanitizing agent to clean surface for the destruction of pathogens and other organisms as far as is practicable. The sanitizing agents used shall comply with the Standard Methods. ()

22. Transportation Tank. A tank used to transport milk or supply milk from a Dairy Farm to a Dairy Plant. ()

23. Universal Sample. A single milk sample taken for the purpose of chemical, biochemical, or bacterial analyses typically used for regulatory purposes. ()

311. -- 319. (RESERVED)

320. RAW MANUFACTURE GRADE MILK OR CREAM.

All raw milk or cream for manufacturing purposes from all sources shall be based on the following quality specifications. ()

01. Raw Milk. The appearance and odor of acceptable raw milk is normal, fresh, and sweet and free from objectionable feed and other off odors that would adversely affect the finished dairy product. ()

02. Milk or Cream. Milk or cream is unacceptable which: ()

a. Is other than the lacteal secretion obtained by the complete milking of one (1) or more healthy cows, goats, sheep, or water buffalo properly kept and fed; ()

b. Contains added water; ()

c. Contains colostrum, is ropy, bloody or gives any indication of having come from diseased or injured udders; ()

d. Contains filth, is contaminated with flies, earwigs or other insects, dirt, oil, economic poisons, pesticides or other foreign matter which renders it unfit for human consumption; ()

e. Tests positive for antibiotics or inhibitors as tested by the accepted methods of the Standard Methods or by tests approved by the Department; ()

f. Has more than seventeen one hundredths of one percent (.17%) acid calculated as lactic and does not meet the criteria in Subsection 320.01; ()

g. In the case of cream, is rancid, putrid, or actively foaming; ()

h. In the case of cream, contains more than eight tenths of one percent (.8%) acid calculated as lactic; ()

i. Is more than three (3) days or seventy-two (72) hours old when picked up at the Dairy Farm; ()

j. Does not meet the quality standards as set forth in Subchapter C. ()

321. QUALITY REQUIREMENTS FOR MILK FOR MANUFACTURING PURPOSES.

01. Basis. The quality classification of raw milk for manufacturing purposes from each Producer shall be based on an organoleptic examination for appearance and odor, a drug residue test and quality control tests for sediment content, bacterial estimate and somatic cell count. ()

a. At least once each month the Bulk Milk Haulers shall bring in not less than a two (2) ounce sample of mixed milk from a Producer's Farm Tank. The sample shall be taken in accordance with recommended procedures outlined in the Standard Methods. ()

02. Appearance and Odor. The appearance of acceptable raw milk shall be normal and free of excessive coarse sediment when examined visually or by an acceptable test procedure. The milk shall not show any abnormal condition (including but not limited to curdles, ropy, bloody or mastitic condition), as indicated by sight or other test procedures. The odor shall be fresh and sweet. The milk shall be free from objectionable feed and other off-odors that would adversely affect the finished dairy product. ()

03. Sediment Content Classification. Milk shall be classified for sediment content, regardless of the results of the appearance and odor examination described in Subsection 321.02. The USDA Sediment Standard is as follows. ()

a. No. 1 (acceptable) - not to exceed five tenths (.5) milligram or equivalent. ()

b. No. 2 (acceptable) - not to exceed one and five tenths (1.5) milligram or equivalent. ()

c. No. 3 (probational, not over ten (10) days) - not to exceed two and five tenths (2.5) milligram or equivalent. ()

d. No. 4 (reject) - over two and five tenths (2.5) milligram or equivalent. ()

04. Method of Testing. Methods for determining the sediment content of the milk of individual Producers shall be those described in the Standard Methods. Sediment content shall be based on comparison with applicable charts of the United States Sediment Standards for Milk and Milk Products as incorporated by reference. ()

05. Frequency of Test. At least once each month, at irregular intervals, the milk from each Producer shall be tested as follows: ()

a. Milk in Cans. One (1) or more cans of milk selected at random from each Producer. ()

b. Milk in Farm Tanks. A sample taken from each Farm Tank. ()

06. Acceptance or Rejection of Milk. If the sediment disc is classified as No. 1, No. 2, or No. 3, the Producer's milk may be accepted. If the sediment disc is classified No. 4 the milk shall be rejected: provided, that if the shipment of milk is commingled with other milk in a Transport Tank the next shipment shall not be accepted until its quality has been determined at the Dairy Farm before being picked up; however, if the person making the test is unable to get to the farm before the next shipment it may be accepted but no further shipments shall be accepted unless the milk meets the requirements of No. 3 or better. In the case of milk classified as No. 3 or No. 4, if in cans, all cans shall be tested. Producers in No. 3 or No. 4 (milk cans or bulk) shall be notified immediately, and furnished applicable sediment discs and the next shipment will be tested. ()

07. Retests. On test of the next shipment (if in cans, all cans shall be tested) milk classified as No. 1, No. 2, or No. 3, may be accepted, but No. 4 milk shall be rejected. Retests of bulk milk classified as No. 4 shall be made at the Dairy Farm before pickup. The Producers of No. 3 or No. 4 milk shall be notified immediately, furnished applicable sediment discs and the next shipment tested. This procedure of retesting successive shipments and accepting probational (No. 3) milk and rejecting No. 4 milk may be continued for not to exceed ten (10) calendar days. If at the end of this time all of the Producer's milk does not meet the acceptable sediment content classification (No. 1 or No. 2) the milk shall be excluded from market. ()

322. -- 329. (RESERVED)

330. BACTERIAL ESTIMATE CLASSIFICATION.

A laboratory examination to determine the bacterial estimate shall be made on each Producer's milk at least once each month at irregular intervals. Samples shall be analyzed at a laboratory approved by the Department. ()

01. Methods of Testing. Milk shall be tested for bacterial estimate by using one (1) of the following methods or any other method approved by Standard Methods or a test approved by the Department: ()

- a. BactoScan FC. ()
- b. Direct microscopic clump count. ()
- c. Standard plate count. ()
- d. Plate loop count. ()
- e. Petrifilm aerobic count. ()
- f. Spiral plate count. ()

02. Bacterial Estimate Procedures. Whenever the bacterial estimate indicates the presence of more than two hundred thousand (200,000) bacteria per milliliter, the following procedures shall be applied: ()

- a. The Producer will be notified with a warning of the excessive bacterial estimate. ()
- b. Whenever two (2) of the last four (4) consecutive bacterial estimates exceed two hundred thousand (200,000) per milliliter, the Department shall be notified and a written warning notice given to the Producer. The notice is in effect so long as two (2) of the last four (4) consecutive samples exceed two hundred thousand (200,000) per milliliter. ()
- c. An additional sample will be taken after a lapse of three (3) days but within twenty one (21) days of the notice required in Subsection 330.02.b. If this sample also exceeds two hundred thousand (200,000) per milliliter, subsequent milkings shall be excluded from the market until satisfactory compliance is obtained. Shipment may be resumed and a temporary status assigned to the Producer by the Department when an additional sample of herd milk is tested and found satisfactory. The Producer will be assigned a full reinstatement status when three (3) out of four (4) consecutive bacterial estimate test do not exceed two hundred thousand (200,000) per milliliter. ()

331. -- 339. (RESERVED)

340. REJECTED MILK.

A plant shall reject specific milk from a Producer if the milk fails to meet the requirements for appearance and odor, if it is classified No. 4 for sediment content, or if it tests positive for drug residue. All reject milk shall be identified with a reject tag and/or colored with harmless food coloring. ()

341. EXCLUDED MILK.

A Dairy Plant shall not accept milk from a Producer if: ()

01. Probational Sediment Content. The milk has been in a probational (No. 3) sediment content classification for more than ten (10) calendar days. ()

02. Exceeding Maximum Bacteria. Three (3) of the last five (5) milk samples have exceeded the maximum bacteria estimate of two hundred thousand (200,000) per milliliter. ()

03. Insanitary Conditions. If the milk is produced in unclean conditions such as, but not limited to, unclean milk contact surfaces, unclean conditions in the parlor or milk room, poor milking procedures, or poor

animal housing conditions. ()

04. Maximum Somatic Cell Count. Three (3) of the last five (5) milk samples have exceeded the maximum somatic cell count level of seven hundred fifty thousand (750,000) per milliliter or one million (1,000,000) per milliliter for goat or sheep milk. ()

05. Positive Drug Test. The Producer's milk shipments to either the Grade A or the manufacturing grade milk market currently are not permitted due to a positive drug residue test. ()

342. -- 349. (RESERVED)

350. RECORDS OF TESTS.

Accurate records of the results of the milk quality and drug residue tests for each Producer shall be kept on file for a period of not less than twelve (12) months. The records shall be available for examination by the Department. ()

351. SOMATIC CELL COUNT.

01. Level of Somatic Cells. A laboratory examination to determine the level of somatic cells shall be made on each Producer's milk at least four (4) times in each six (6) month period at irregular intervals. Samples shall be analyzed at a laboratory and by a method approved by the Department. ()

02. Procedures. Whenever the confirmatory somatic cell count indicates the presence of more than seven hundred fifty thousand (750,000) somatic cells per milliliter, (one million (1,000,000) per milliliter for goat and sheep) the following procedures shall be applied: ()

a. The producer will be notified with a warning of the excessive somatic cell count. ()

b. Whenever two (2) of the last four (4) consecutive somatic cell counts exceed seven hundred fifty thousand (750,000) per milliliter, (one million (1,000,000) per milliliter for goat and sheep) the Department shall be notified and a written warning notice given to the Producer. The notice will be in effect so long as two (2) of the last four (4) consecutive samples exceed seven hundred fifty thousand (750,000) per milliliter, (one million (1,000,000) per milliliter for goat and sheep). ()

c. An additional sample shall be taken after a lapse of three (3) days but within twenty-one (21) days of the notice required in Subsection 351.02.b. If this sample also exceeds seven hundred fifty thousand (750,000) per milliliter, (one million (1,000,000) per milliliter for goat and sheep) subsequent milkings shall be excluded from the market until satisfactory compliance is obtained. Shipment may be resumed and a temporary status assigned to the producer by the Department when an additional sample of herd milk is tested and found satisfactory. The Producer will be assigned a full reinstatement status when three (3) out of four (4) consecutive somatic cell count tests do not exceed seven hundred fifty thousand (750,000) per milliliter, (one million (1,000,000) per milliliter for goat and sheep). ()

352. DRUG RESIDUE LEVEL.

01. Dairy Plant's Sampling and Testing Responsibilities. All milk shipped for processing or intended to be processed on the Dairy Farm where it was produced will be sampled and tested, prior to processing, for beta lactam drug residue or other drugs as determined by the Department. Collection, handling and testing of samples shall be done according to procedures established by the Department. ()

a. When so specified by the US. Food and Drug Administration (FDA), all milk shipped for processing, or intended to be processed on the Dairy Farm where it was produced, will be sampled and tested, prior to processing, for other drug residues under a random drug sampling program. A random drug sampling program may be conducted at a frequency determined by the Department. ()

b. When the Commissioner of the FDA determines that a potential problem exists with an animal drug residue or other contaminant in the milk supply, a sampling and testing program will be conducted, as determined by

the FDA. ()

c. Dairy Plants shall analyze samples for beta lactams and other drug residues by methods evaluated by OMA and accepted by the FDA as effective in determining compliance with established “safe levels” or tolerances. “Safe levels” and tolerances for particular drugs are established and amended by the FDA. ()

d. Individual Producer sampling. ()

i. Bulk Milk. A milk sample for beta lactam drug residue testing shall be taken at each farm and will include milk from each Dairy Farm Tank. ()

ii. Can Milk. A milk sample for beta lactam drug residue testing shall be performed separately at the receiving Dairy Plant for each can milk Producer included in a delivery, and be representative of all milk received from the Producer. ()

iii. Producer Dairy Plant. For those Producers who also have a licensed Dairy Plant, a milk sample for beta lactam drug residue testing shall be performed on each batch of milk to be processed. ()

e. Load sampling and testing. ()

i. Bulk milk. A load sample shall be taken from the Transport Tank after its arrival at the Dairy Plant and prior to further commingling. ()

ii. Can milk. A load sample representing all of the milk received on a shipment shall be formed at the plant, using a sampling procedure that includes milk from every can on the vehicle. ()

iii. Producer Dairy Plant. A load sample shall be tested at the Dairy Plant using a sampling procedure that includes all milk produced and received. ()

f. Sample and record retention. A load sample that tests positive for drug residue shall be retained according to guidelines established by the Department. The records of all sample test results shall be retained for a period of not less than twelve (12) months. ()

g. Dairy Plant follow-up. ()

i. When a load sample or individual Producer sample tests positive for drug residue, Dairy Plant personnel shall notify the Department immediately, of the positive test result and of the intended disposition of the shipment of milk containing the drug residue. All milk testing positive for drug residue shall be disposed of in a manner that removes it from the human or animal food chain, except when acceptably reconditioned under FDA compliance policy guidelines. ()

ii. Each individual Producer sample represented in the positive-testing load sample shall be individually tested as directed by the Department to determine the Producer of the milk sample testing positive for drug residue. Identification of the Producer responsible for producing the milk testing positive for drug residue, and details of the final disposition of the shipment of milk containing the drug residue, shall be reported immediately to the Department. ()

iii. Milk shipment from the Producer identified as the source of milk testing positive for drug residue shall cease immediately and may resume only after a sample from a subsequent milking does not test positive for drug residue. ()

02. Department’s Monitoring and Surveillance Responsibilities. The Department will monitor the Dairy Plant’s drug residue program by conducting unannounced on-site inspections to observe testing and sampling procedures and to collect samples for comparison drug residue testing. In addition, the Department will review industry records for compliance with these rules. The review will seek to determine that: ()

a. Each Producer is included in a routine, effective drug residue milk monitoring program utilizing

AOAC-evaluated and FDA-approved methods to test samples for the presence of drug residue; ()

b. The Department receives prompt notification from industry personnel of each occurrence of a sample testing positive for drug residue, and of the identity of each Producer identified as a source of milk testing positive for drug residue; ()

c. The Department receives prompt notification from industry personnel of the intended and final disposition of milk testing positive for drug residue, and that disposal of the load is conducted in a manner that removes it from the human or animal food chain, except when acceptably reconditioned under FDA compliance policy guidelines; and ()

d. Milk shipment from a Producer identified as a source of milk testing positive for drug residue completely and immediately ceases until a milk sample taken from the dairy herd does not test positive for drug residue. ()

03. Enforcement. If a Producer ships milk testing positive for drug residue three (3) times within a twelve (12) month period, the Department may initiate procedures to suspend the Producer's milk shipping privileges. ()

353. RADIONUCLIDES.

Composite milk samples from selected areas within in the state of Idaho should be tested for biologically significant radionuclides at a frequency which the FDA determines to be adequate to protect the consumer. ()

354. PESTICIDES AND HERBICIDES.

Composite milk samples should be tested for pesticides and herbicides at a frequency the FDA determines is adequate to protect the consumer. The test results from the samples shall not exceed established FDA limits. ()

355. ADDED WATER.

Milk samples from each Producer should be tested for added water at a frequency the Department determines is adequate to prevent the addition of water to the milk. ()

356. -- 359. (RESERVED)

360. FARM REQUIREMENTS OF MILK FOR MANUFACTURING.

01. Health of Herd. ()

a. General Health. All animals in the herd shall be maintained in a healthy condition, properly fed and kept. ()

b. Tuberculin Test. The cows and water buffalo shall be located in a Modified Accredited Area, an Accredited Free State, or an Accredited Free Herd as determined by the US. Department of Agriculture (USDA). The goats shall be located in States meeting the current USDA Uniform Methods and Rules and for Bovine Tuberculosis Eradication or an Accredited Free Goat Herd. If the animals are not located in such areas, they shall be tested annually under the jurisdiction of the aforesaid program. All additions to the herd shall be from an area or from herds meeting those same requirements. ()

c. Brucellosis Test. The cows shall be located in States meeting Class B status, or Certified-Free Herds, or shall be involved in a milk ring test program or state of Idaho blood testing program. All additions to the herd shall be from an area or from herds meeting these same requirements. ()

d. Abnormal Milk. Milk from animals known to be infected with mastitis or milk containing residues of antibiotics or others drugs, or milk containing pesticides or other chemical residues in excess of the established limits shall not be sold or offered for sale for human consumption. The milk shall be disposed of in a method approved by the Department. ()

02. Milking and Facility Housing. ()

a. A milking barn or milking parlor of adequate size and arrangement shall be provided to permit normal sanitary milking operations. It shall be well lighted and ventilated, and the floors and gutters in the milking area shall be constructed of concrete or other impervious material. The facility shall be kept clean, the manure removed daily and stored to prevent access of animals to accumulation thereof. No swine or fowl are permitted in any part of the milking area. ()

b. If milk is exposed during straining or transferring in the milking areas it shall be protected from falling particles from areas above milk facility. ()

c. The yard or loafing area shall be of ample size to prevent overcrowding, drained to prevent forming of standing water pools, insofar as practicable, and kept clean. ()

03. Milking Procedure. ()

a. The udders and flanks of all milking animals shall be kept clean. The udders and teats shall be washed or wiped immediately before milking with a clean, damp cloth or paper towel moistened with a sanitizing solution and wiped dry, or by any other sanitary method. ()

b. The milker's outer clothing shall be clean and hands clean and dry. No person with an infected cut or open sores on their hands or arms shall milk animals, or handle milk or milk containers, utensils or equipment. ()

c. Animals that secrete abnormal milk shall be milked last or with separate equipment. This milk shall be excluded from the supply as required in Subsection 360.01.d. ()

d. Milk stools, surcingles and antikickers shall be kept clean and properly stored. Dusty operations should not be conducted immediately before or during milking. Strong flavored feeds should only be fed after milking. ()

04. Cooling. ()

a. Milk in cans shall be cooled immediately after milking to forty-five (45) degrees Fahrenheit or lower unless delivered to the Dairy Plant within two (2) hours after milking. The devices, such as cooler, tank, or refrigerated unit to cool milk can or canned milk, shall be kept clean. ()

b. Milk in Dairy Farm Tanks shall be cooled to forty (40) degrees Fahrenheit or lower within two (2) hours after the first milking and maintained at forty-five (45) degrees Fahrenheit or lower until transferred to the Transport Tank. ()

05. Milkhouse or Milkroom. ()

a. A milkhouse or milkroom conveniently located and properly constructed, lighted, and ventilated shall be provided for handling and cooling milk and for washing, handling, and storing the utensils and equipment. Other products shall not be handled in the milkroom which would be likely to contaminate milk, or otherwise create a public health hazard. ()

b. It shall be equipped with wash and rinse vat, utensil rack, milk cooling facilities and have an adequate supply of hot water available for cleaning milking equipment. If a part of the barn or other building, it shall be partitioned, screened, and sealed to prevent the entrance of dust, flies, or other contamination. A milking parlor used strictly as a milking facility in combination with a milkhouse or milkroom, when properly equipped, arranged and maintained, need not be partitioned. Concentrates and feed, if stored in the building, shall be kept in a tightly covered box or bin. The floor of the building shall be of concrete or other impervious material and graded to provide proper drainage. The walls and ceilings shall be constructed of smooth easily cleaned material. All outside doors shall open outward and be self-closing, unless they are provided with tight-fitting screen doors that open outward or unless other effective means are provided to prevent the entrance of flies. ()

c. If a Dairy Farm Tank is used, it shall be properly located in the milkhouse or milkroom for access to all areas for cleaning and servicing. It shall not be located over a floor drain or under a ventilator. ()

d. A small platform or slab constructed of concrete or other impervious material shall be provided outside the milkhouse, properly centered under a suitable port opening in the wall for milkhouse connections. The opening shall be fitted with a tight, self-closing door. The truck approach to the milkhouse or milkroom shall be properly graded and surfaced to prevent mud or pooling of water at point of loading. ()

e. The milkhouse or milkroom shall be kept clean and free of trash. Animals and fowl are not allowed access to the milkhouse or milkroom at any time. ()

06. Farm Chemicals and Animal Drugs. ()

a. Animal biologics and other drugs intended for treatment of animals, and insecticides approved for use in dairy operations, shall be properly labeled and used in accordance with label instructions, and stored in a manner which will prevent accidental contact with milk and milk contact surfaces. ()

b. Only drugs that are approved by the FDA or biologics approved by the USDA for use in dairy animals that are properly labeled according to FDA or USDA regulations shall be administered to such animals. ()

c. When drug storage is located in the milkroom, milkhouse, or milking area, the drugs shall be segregated in such a way so that drugs labeled for use in lactating dairy animals are separated from drugs labeled for use in non-lactating dairy animals. ()

d. Herbicides, fertilizers, pesticides, and insecticides that are not approved for use in dairy operations shall not be stored in the milkhouse, milkroom, or milking area. ()

07. Utensils and Equipment. ()

a. Utensils, milk cans, milking machines (including pipeline systems), and other equipment used in the handling of milk shall be maintained in good condition, shall be free from rust, open seams, milkstone, or any unsanitary condition, and shall be washed, rinsed, and drained after each milking, stored in suitable facilities, and sanitized immediately before use with at least fifty (50) parts per million chlorine solution or its equivalent. New or replacement can lids shall be umbrella type. All new utensils and equipment shall comply with applicable 3-A Sanitary Standards. ()

b. Dairy Farm Tanks shall meet 3-A Sanitary Standards for construction at the time of installation and shall be installed in accordance with regulations of the Department. ()

c. Single service articles shall be properly stored and not reused. ()

08. Water Supply. The Dairy Farm water supply shall meet the requirements in Appendix D of the Pasteurized Milk Ordinance as incorporated herein by reference. A source that does not conform with the construction requirements of Appendix D, but is tested annually by an approved laboratory and found to be safe and of sanitary quality, shall be satisfactory: provided any new sources of water supply or any farm water supply requiring repairs or reconstruction or any source from which tested samples have been found unsatisfactory shall meet the construction requirements of the Department. ()

09. Sewage Disposal. House, milkhouse or milkroom and toilet wastes shall be disposed of in a manner that will not pollute the soil surface, contaminate any water supply, or be exposed to insects. ()

10. Qualifications for Dairy Farm Certification. Dairy Farm certification requires satisfactory compliance with the requirements in Section 360. ()

361. -- 369. (RESERVED)

370. DAIRY FARM CERTIFICATION.

No milk for manufacturing purposes produced on an uncertified Dairy Farm shall be bought or sold for human consumption. ()

01. Initial Inspection. Certified Dairy Farms shall be inspected at least annually after initial certification to determine eligibility for recertification. The inspection criteria for recertification is the same as that for initial certification. ()

02. Inspection. Each Dairy Farm shall be inspected by an Inspector or Approved Fieldman. When evidence indicates that it is advisable to do so, the Department may require an examination of the herd by a licensed veterinarian. If the Dairy Farm meets the applicable requirements for Dairy Farm certification described in Section 360, as indicated by the Farm Certification Report Form, the Dairy Farm shall be certified as described in Subsection 370.03. If the Dairy Farm does not meet the requirements for certification, the Dairy Farm shall be reinspected within thirty (30) days after the initial inspection. If the Dairy Farm then meets the requirements for certification, the Dairy Farm shall be certified. If the Dairy Farm does not meet the requirements for certification, the Dairy Farm shall not be certified, and the Producer's authorization to sell milk for human consumption from that Dairy Farm will be withheld by the Department until such time as the Dairy Farm qualifies for certification. Repeat violations on any item may cause a Dairy Farm to lose certification. Provided that, if the Inspector determines during any of these inspections that corrections on the Dairy Farm will require some capital investment, a reasonable extension of the prescribed time limits may be granted by the Department. ()

03. Certification. An Inspector or Approved Fieldman will certify Dairy Farms that meet the requirements of Section 360, as applicable, based upon the inspection criteria described in Subsection 370.02. The scoring criteria approved by the Department will be utilized in determining compliance with the provisions of Section 360. Dairy Farm certification shall authorize the sale from that Dairy Farm of milk for manufacturing purposes that meets the quality standards. ()

04. Probationary Period. If at any time an Inspector or Approved Fieldman determines that a certified Dairy Farm does not meet the requirements for certification, the Department may allow a reasonable probationary period for the Producer to bring the Dairy Farm within the requirements for certification. If at the end of this time the Dairy Farm does not meet the requirements for certification, the Department may revoke the Dairy Farm certification. ()

05. Reinstatement. If, after a period of withholding, probation, or revocation of Dairy Farm certification, a Producer makes the necessary corrections at the Dairy Farm, the Producer may apply for reinspection. When conditions have been corrected, the Dairy Farm will be reinspected by an inspector or Approved Fieldman. When the Inspector or Approved Fieldman determines that requirements for certification have been met, the Dairy Farm will be certified. ()

371. -- 379. (RESERVED)

380. STANDARDS FOR BULK MILK HAULERS.

01. Permits. All Bulk Milk Haulers must possess a permit issued by the Department. The permit will cost twenty-five dollars (\$25) and will be issued to the applicant after a training session on proper procedures and successfully passing an examination administered by the Department. ()

a. No permit will be issued unless a score of seventy percent (70%) or better is made on the examination. ()

b. A training and refresher course conducted by the Department will be given in each area of the state of Idaho once each year. ()

c. Every holder of a permit must attend a training and refresher course every third year. ()

d. Each new Bulk Milk Hauler shall apply to the Department for a permit. The bulk milk hauling company shall provide basic instructions on bulk milk protocols, including milk sample collection, pick-up

procedures, and safety measures. A permit will be issued upon satisfactory completion of a special training and licensing session held by the Department. ()

e. A substitute Bulk Milk Hauler in case of emergency can haul milk for three (3) days without a permit provided the Department has been notified and the substitute Bulk Milk Hauler is provided instruction on approved milk pickup and delivery requirements by the bulk milk hauling company. At the end of three (3) days the substitute Bulk Milk Hauler must apply for a permit. ()

02. Adulteration. If the truck is left unattended, Bulk Milk Haulers shall affix a seal or lock on all Transportation Tank ports, covers, and doors to protect the milk from possible adulteration. ()

03. Authorization. No Bulk Milk Hauler shall grade, measure or sample his own milk without written authorization from the Dairy Plant receiving the milk. ()

04. Permit Revocation. The permit may be revoked if: ()

a. The Bulk Milk Hauler fails to grade milk in a Dairy Farm Tank to its odor and appearance and fails to reject all milk that is abnormal in odor or flavor or that contains visible garget or other extraneous matter. ()

b. The Bulk Milk Hauler does not accurately take and record the temperature of milk or if he fails to reject the milk in excess of forty-five (45) degrees Fahrenheit. ()

c. The Bulk Milk Hauler fails to wash his hands before he proceeds to measure and sample the milk. ()

d. The Bulk Milk Hauler fails to follow acceptable procedures in measuring the amount of milk in the Farm Tank or if he does not, immediately after taking the reading convert the reading to pounds or gallons using the chart of the Farm Tank manufacturer and record it on duplicate forms, with one (1) copy to be posted in the milk house and one (1) transmitted to the Dairy Plant. ()

e. The Bulk Milk Hauler fails to agitate the milk for at least five (5) minutes in Farm Tanks less than one thousand (1,000) gallons and ten minutes in Farm Tanks over one thousand (1,000) gallons before taking a sample or if he withdraws any part of the milk from the Farm Tank before the sample is taken. ()

f. The Bulk Milk Hauler does not take a sample for component testing and/or milk quality analysis in an approved manner or sufficient size in an approved container properly labeled, and that the sample has been cooled and maintained between thirty-two (32) degrees Fahrenheit to forty (40) degrees Fahrenheit. ()

g. The Bulk Milk Hauler rinses the bulk Farm Tank before disconnecting and capping the hose. ()

h. The Bulk Milk Hauler siphons milk from milk cans, water troughs or other containers other than the Farm Tank. Milk poured into the bulk Farm Tank from other than regular milking machine pails will not be allowed. ()

381. -- 389. (RESERVED)

390. STANDARDS OF IDENTITY, LABELING, AND QUALITY STANDARDS FOR ICE CREAM AND FROZEN DAIRY PRODUCTS AND DESSERTS.

01. Definitions. The standards of identity for ice cream and frozen custards, frozen yogurt, frozen yogurt dessert mix, frozen yogurt dairy products, frozen dairy dessert, ice milk, sherbet and water ices are as defined by the Food and Drug Administration, United States Department of Health Education and Welfare, in Title 21, Part 135, of the Code of Federal Regulations. ()

02. Labeling. Each of the products required to be labeled by Section 37-1202, Idaho Code shall also bear on each container an identifiable code identifying the lot and/or date in which the product was manufactured.

- ()
- 03. Quality Standards.** The following quality standards must be met: ()
- a.** Coliform Standard. Compliance with the coliform standard is deemed to have been met if the coliform count does not exceed ten (10) colonies per gram in two (2) of the last four (4) consecutive samples. No enforcement action will be taken if the last sample is within the standard. ()
- b.** Bacteria Standard. Compliance with the bacteria standard is deemed to have been met if the bacteria count per gram does not exceed twenty thousand (20,000) bacteria per gram in two (2) of the last four (4) consecutive samples. Whenever the dairy product is cultured, the bacteria test, using the standard plate count or equivalent method would not be applicable. ()
- c.** Frequency of Tests. During any consecutive six (6) months, at least four (4) samples of ice cream and frozen dairy products and deserts will be collected and tested. If the test or tests exceed the coliform or bacteria limit three (3) out of five (5) consecutive tests, the dairy product cannot be sold for human consumption. For the dairy product to be eligible for human consumption, a subsequent sample must meet the quality standards. ()
- 04. Licensed Manufacturers.** All frozen dessert mixes except nondairy frozen dessert shall be secured from a licensed manufacturer and manufactured into a semifrozen state without adulteration. Freezing device salvage shall not be reused as a mix. ()
- 05. Violations.** The Director will issue and enforce a written stop sale order to the owner or custodian of any quantity of frozen desserts or frozen novelties which are in violation of Title 37 Chapters 3, 5, and 12, Idaho Code, or Subchapter C of these rules. Disposition of products not in compliance will be at the discretion of the Director. ()

391. STANDARDS FOR BUTTER.

- 01. Grading.** Butter grading will be performed in accordance with the United States Standards for grades of butter as incorporated by reference. ()
- 02. Quality Standards.** The following quality standards must be met: ()
- a.** Coliform Standard. Compliance with the coliform standard is deemed to have been met if the coliform count does not exceed ten (10) colonies per gram in two (2) of the last four (4) consecutive samples. ()
- b.** Bacteria Standard. Compliance with the bacteria standard is deemed to have been met if the bacteria count per gram does not exceed twenty thousand (20,000) bacteria per gram in two (2) of the last four (4) consecutive samples. Whenever the butter is cultured, the bacteria test using the standard plate count or equivalent method would not be applicable. ()
- c.** Frequency of Tests. During any consecutive six (6) months, at least four (4) samples of butter will be collected and tested. If the test or tests exceed the coliform or bacteria limit three (3) out of five (5) consecutive tests, the butter cannot be sold for human consumption. For the butter to be eligible for human consumption, a subsequent sample must meet the quality standards. ()

392. STANDARDS FOR WHEY BUTTER.

- 01. Basis for Determining the Acceptability of Whey Butter.** The acceptability of whey butter is determined on the basis of classifying first the flavor characteristics and then the characteristics in body, color and salt. Flavor is the basic quality factor in grading whey butter and is determined organoleptically by taste and smell. The flavor characteristic is identified and together with it relative intensity, is rated according to the applicable classification. When more than one flavor characteristic is discernible in a sample of whey butter, the flavor classification of the sample is established on the basis of the flavor that carries the lowest rating. Body, color and salt characteristics are then noted and any defects are disrated in accordance with the established classification. Acceptability for the sample is then established in accordance with the flavor classification, subject to disratings for

body, color and salt. When the disratings for body, color and salt exceed the permitted amount or if the flavor is not acceptable, the whey butter will not be allowed to be sold or distributed within the state of Idaho unless the packages are labeled as provided. ()

02. Specifications for Acceptability of Whey Butter. Whey butter shall be free of foreign materials and visible mold. It shall possess a fine and highly pleasing whey butter flavor. May possess any of the following flavors to a slight degree: flat, malty, musty, neutralized, scorched, utensil, stale, and woody. May possess the following flavors to a definite degree: cooked, aged, bitter, coarse-acid, smothered, storage and old cream. May possess feed flavor to a pronounced degree. The permitted total disratings in body, color and salt characteristics are limited to one and one-half (1 1/2). ()

03. Whey Butter Label Requirements. It is hereby declared to be unlawful to sell or offer for sale any whey butter within the state of Idaho unless the wrappers and containers in which said butter is packaged are conspicuously labeled as herein provided: ()

- a.** The name of the product is whey butter or whey cream butter or “Butter made from whey cream.” ()
- b.** The name of the product is placed on the principal display panel(s) and shall be of uniform type and prominence. ()
- c.** The manufacturer identification number is conspicuously placed on each wrapper and container of whey butter. ()
- d.** Labels of whey butter sold or distributed within Idaho shall be approved by the Department. ()

04. Quality Standards. The following quality standards must be met: ()

- a.** Coliform Standard. Compliance with the coliform standard is deemed to have been met if the coliform count does not exceed ten (10) colonies per gram in two (2) of the last four (4) consecutive samples. ()
- b.** Bacteria Standard. Compliance with the bacteria standard shall be deemed to have been met if the bacteria count per gram does not exceed twenty thousand (20,000) bacteria per gram in two (2) of the last four (4) consecutive samples. Whenever the whey butter is cultured, the bacteria test using the standard plate count or equivalent method would not be applicable. ()
- c.** Frequency of Tests. During any consecutive six (6) months, at least four (4) samples of whey butter will be collected and tested. If the test or tests exceed the coliform or bacteria limit three (3) out of five (5) consecutive tests, the Butter cannot be sold for human consumption. For the whey butter to be eligible for human consumption, a subsequent sample must meet the quality standards. ()

05. Enforcement. Whey butter which fails to meet flavor or body, color and salt requirements as defined in Section 392.01 may be sold or distributed within the state of Idaho, provided the word, “undergrade” is placed on the principal display panel(s) immediately preceding or following the product name and is of uniform type size and prominence. ()

06. Table I -- Classification of Flavor Characteristics.

Identified Flavors	Acceptable	Unacceptable
Flat	S	D
Malty	S	D
Musty	S	D
Neutralized	S	D

Identified Flavors	Acceptable	Unacceptable
Scorched	S	D
Utensil	S	D
Cooked	D	P
Aged	D	P
Bitter	D	P
Smothered	D	P
Storage	D	P
Old Cream	D	P
Feed	P	-
Acid	D	P
Weed	S	D

()

07. Table II -- Characteristics and Disratings in Body, Color, and Salt.

Characteristics	Body Disratings		
	S	D	P
Crumbly	1/2	1	
Gummy	1/2	1	
Leaky		1/2	1
Mealy or grainy		1/2	1
Short		1/2	1
Weak	1/2	1	
Sticky	1/2	1	
Ragged boring	1	2	

S -- Slight; D -- Definite; P -- Pronounced

()

08. Explanation of Terms with Respect to Flavor, Intensity, and Characteristics:

()

a. Slight: Detected only upon critical examination.

()

b. Definite: Detectable but not intense.

()

c. Pronounced: Readily detectable and intense.

()

d. Aged: Characterized by lack of freshness.

()

e. Bitter: Astringent, similar to taste of quinine and produces a puckery sensation.

()

f. Coarse-acid: Lacks a delicate flavor or aroma and is associated with an acid condition but there is

- no indication of sourness. ()
- g.** Cooked (fine): Smooth, nutty-like character resembling a custard flavor. ()
 - h.** Feed: Aromatic flavor characteristic of feeds eaten by cows. ()
 - i.** Flat: Lacks natural butter flavor. ()
 - j.** Malty: A distinctive, harsh flavor suggestive of malt. ()
 - k.** Musty: Suggestive of the aroma of a damp vegetable cellar. ()
 - l.** Neutralizer: Suggestive of a bicarbonate of soda flavor or the flavor of similar compounds. ()
 - m.** Old Cream: Aged cream characterized by lack of freshness and imparts a rough aftertaste on the tongue. ()
 - n.** Scorched: A more intensified flavor than cooked (coarse) and imparts a harsh aftertaste. ()
 - o.** Sour: Characterized by an acid flavor and aroma. ()
 - p.** Smothered: Suggestive of improperly cooled cream. ()
 - q.** Storage: Characterized by a lack of freshness and more intensified than “aged” flavor. ()
 - r.** Utensil: A flavor suggestive of unclean cans, utensils and equipment. ()
 - s.** Weed: Aromatic flavor characteristic of the weeds eaten by cows. ()
- 09. With Respect to Body:** ()
- a.** Crumbly: The particles lack cohesion. The intensity is described as “slight” when the trier plug tends to break and the butter lacks plasticity; and “definite” when the butter breaks roughly or crumbles. ()
 - b.** Gummy: Gummy-bodied-butter does not melt readily and is inclined to stick to the roof of the mouth. The intensity is described as “slight” when the butter tends to become chewy and “definite” when it imparts a gum-like impression in the mouth. ()
 - c.** Leaky: Present when on visual examination there are beads of moisture on the surface of the trier plug and on the back of the trier or when slight pressure is applied to the butter on the trier plug. The intensity is described as “slight” when the droplets or beads of moisture are barely visible and about the size of a pinhead; “definite” when the moisture drops are somewhat larger or the droplets are more numerous and tend to run together; and “pronounced” when the leaky condition is so evident that drops of water drip from the trier plug. ()
 - d.** Mealy or grainy: Condition that imparts a granular consistency when the butter is melted on the tongue. The intensity is described as “slight” when the mealiness or graininess is barely detectable on the tongue and “definite” when the mealiness or graininess is readily detectable. ()
 - e.** Ragged boring: In contrast to solid boring, ragged boring is when a sticky-crumbly condition is presented to such a degree that a full trier of butter cannot be drawn. The intensity is described as “slight” when there is a considerable adherence “definite” when it is practically impossible to draw a full plug of the butter. ()
 - f.** Short: The texture is short-grained, lacks plasticity and tends toward brittleness. The intensity is described as “slight” when the butter lacks pliability and tends to be brittle; and “definite” when sharp and distinct breaks form as pressure is applied against the plug. ()
 - g.** Sticky: The butter adheres to the trier as a smear and possesses excessive adhesion. The intensity is

described as “slight” when the smear is present only on a portion of the back of the trier and “definite” when the trier becomes smeary throughout its length. ()

h. Weak: Body lacks firmness and tends to be spongy. The intensity is described as “slight” when the plug of butter, under slight pressure, tends to depress and is not firm and compact; and “definite” when the plug of butter, under slight pressure, tends to depress easily and definitely lacks firmness and compactness. ()

10. With Respect to Color: ()

a. Mottled: Appears as a dappled condition with spots of lighter and deeper shades of yellow. The intensity is described as “slight” when the small spots of different shades of yellow, irregular in shape, are barely discernible on the plug of butter and “definite” when the mottles are readily discernible on the plug of butter. ()

b. Specks: Usually appear in butter as small white or yellow spots, however, the latter may be of variable size. The intensity is described as “slight” when the spots are few in number and “definite” when they are noticeable in large numbers. ()

c. Streaked: Appears as light colored portions surrounded by more highly colored portions. The intensity is described as “slight” when only a few are present and “definite” when they are more numerous on the trier plug. ()

d. Wavy: Uneven in the color in the butter that appears as waves of different shades of yellow. The intensity is described as “slight” when the waves are barely discernible and “definite” when they are readily noticeable on the trier plug. ()

11. With Respect to Salt: ()

a. Sharp: Characterized by taste sensations suggestive of salt. The intensity is described as “slight” when the salt taste predominates in flavor; and “definite” when the salt taste distinctly predominates in flavor. ()

b. Gritty: Condition detected by the gritty feel of the grains of undissolved salt, imparting a sand-like feeling on the tongue. The intensity is described as “slight” when only a few grains of undissolved salt are detected and “definite” when the condition is more readily noticeable. ()

393. -- 394. (RESERVED)

395. NEW DAIRY PRODUCTS.

01. General. Upon request of any interested person, the Director may establish a temporary definition and standard for a new dairy product provided, all the following conditions exist: ()

a. Research in the uses of milk and the products or by products of milk has developed a new dairy product for which no definition or standard is prescribed. ()

b. The new dairy product cannot be produced or marketed because no definition in standard is prescribed for it. ()

c. The public interest would be served by the dairy product. ()

d. The quality, wholesomeness and manufacturing requirements of the dairy product are at least equal to established standards for similar dairy products. ()

e. The dairy product is labeled in accordance to guidelines for a food product and approved by the Department. ()

02. Permits. The Director may issue a special permit to the manufacturer/distributor for the production

and sale of a new dairy product(s). The fee for this permit will be twenty five dollars (\$25) per dairy product. Such manufacturer/distributor is subject to the provisions of Title 37 Idaho Code and regulations adopted pursuant thereto applicable to Dairy Plants and milk products. ()

03. Expiration. After two (2) years from the date a temporary permit has been issued for a new dairy product(s), the Department will promulgate rules to establish definitions and standards for the new, nonstandardized dairy product(s). ()

396. -- 403. (RESERVED)

SUBCHAPTER D – LICENSED DAIRY PLANTS

404. INCORPORATION BY REFERENCE.

The following document is incorporated by reference in this subchapter D only:

01. “Subpart E -- Requirements for Licensed Dairy Plants,” of the ‘Milk for Manufacturing Purposes and Its Production and Processing, Recommended Requirements’ published by USDA, AMS, Dairy Programs and made effective July 21, 2011. Copies of this document may be obtained from the Idaho State Department of Agriculture or accessed online at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELDEV3004791>. ()

405. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.26 – RULES GOVERNING THE PUBLIC EXCHANGE OF LIVESTOCK

DOCKET NO. 02-0426-1901 (NEW CHAPTER)

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 25-203, 25-305, 25-401, 25-601, 25-1723, and 25-3520, Idaho Code.

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

Two rules administered by the ISDA are related to the sale, trade, exchange, identification and movement of livestock through public livestock markets, buying stations or trader lots. These rules are IDAPA 02.04.26, “Rules Governing Livestock Marketing,” and IDAPA 02.04.28, “Rules Governing Livestock Dealers, Buying Stations, and Livestock Trader Lots.” Each of these rules addresses regulations pertaining to how livestock must be properly identified, quarantined and have their movement documented when being bought, sold or exchanged. In order to streamline and simplify all rules related to disease prevention, disease surveillance and reporting, the ISDA is proposing to combine both rules into a single rule to be titled “02.04.26, Rules Governing the Public Exchange of Livestock.” No substantive changes are being made to the two rules cited above. However, these rules were reviewed for repeal and amendment of certain sections consistent with the guidance and direction provided in the Red Tape Reduction Act. Therefore, the consolidated rule was reviewed to update authorities, eliminate unnecessarily restrictive language and redundancy.

The text of the pending fee 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 November Idaho Administrative Bulletin, [Vol. 19-11, pages 121-136](#).

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

02.04.26.100-570	- Broader in scope than federal law or regulations
02.04.26.700	- Broader in scope than federal law or regulations
02.04.26.701	- Broader in scope than federal law or regulations
02.04.26.710	- Broader in scope than federal law or regulations
02.04.26.715	- Broader in scope than federal law or regulations

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. A fee of \$100.00 annually is required to obtain or renew a public livestock market charter. No changes were made to the fee

already included in the Rules Governing Livestock Marketing now found in the new combined rule, 02.04.26, Rules Governing the Public Exchange of Livestock. These fees are authorized pursuant to Section 25-1724, Idaho Code.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Dr. Scott Leibsle, Deputy Administrator – Division of Animal Industries at (208) 332-8540.

Dated this 27th day of November, 2019.

Brian Oakey, Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8552
Fax: (208) 334-2170

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 25-203, 25-305, 25-401, 25-601, 25-1723, and 25-3520, Idaho Code.

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

PUBLIC HEARING

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

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

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

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

Two rules administered by the ISDA are related to the sale, trade, exchange, identification and movement of livestock through public livestock markets, buying stations or trader lots. These rules are IDAPA 02.04.26, “Rules Governing Livestock Marketing,” and IDAPA 02.04.28, “Rules Governing Livestock Dealers, Buying Stations, and Livestock Trader Lots.” Each of these rules addresses regulations pertaining to how livestock must be properly identified, quarantined and have their movement documented when being bought, sold or exchanged. In order to streamline and simplify all rules related to disease prevention, disease surveillance and reporting, the ISDA is proposing to combine both rules into a single rule to be titled “02.04.26, *Rules Governing the Public Exchange of Livestock.*” No substantive changes are being made to the two rules cited above. All rules were reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: No changes were made to the fee already included in the Rules Governing Livestock Marketing now found in the new combined rule, 02.04.26, Rules Governing the Public Exchange of Livestock. These fees are authorized pursuant to Section 25-1724, Idaho Code.

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

02.04.26.100-570	Broader in scope
02.04.26.700	Broader in scope
02.04.26.701	Broader in scope
02.04.26.710	Broader in scope
02.04.26.715	Broader in scope

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

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

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

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

No documents are incorporated by reference into Subchapter A of this Rule.

The following materials are incorporated by reference into Subchapter B:

1. Code of Federal Regulations, Title 9, Parts 71, 75, 77, 78, 85 and 161, January 1, 2003. Include requirements for the interstate movement of livestock, approval and maintenance of livestock marketing facilities, control of communicable diseases, tuberculosis, brucellosis and pseudorabies, requirements and standards for accredited veterinarians.

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

Dated this 3rd day of October, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 02-0426-1901

02.04.26 – RULES GOVERNING THE PUBLIC EXCHANGE OF LIVESTOCK

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 25-203, 25-305, 25-401, 25-601, 25-1723(b), and 25-3520, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is “Rules Governing the Public Exchange of Livestock.” ()

02. Scope. These rules govern the record keeping of livestock dealers and facilities, record keeping, identification, quarantine and movement of livestock through buying stations, trader lots and livestock markets. ()

002. -- 109. (RESERVED)

SUBCHAPTER A – LIVESTOCK DEALERS, BUYING STATIONS, AND LIVESTOCK TRADER LOTS

110. DEFINITIONS.

The definitions apply in the interpretation and enforcement of Subchapter A only. ()

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

02. Approved Slaughter Establishment. A USDA inspected slaughter establishment where ante-mortem and post-mortem inspection is conducted by USDA inspectors. ()

03. Cattle. All domestic bovidae including domestic bison. ()

04. Domestic Bison. All animals in the genus *Bison* owned by a person. ()

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

06. Epithelioma of the Eye. A carcinoma of the eye of cattle commonly known as cancer eye. ()

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

08. Interstate Movement. Movement of livestock from Idaho into any other state, territory or the District of Columbia, or from any other state, territory or the District of Columbia into Idaho. ()

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

10. Lump Jaw. Condition also known as actinomycosis in cattle. ()

11. Official Ear Tag. APHIS approved identification ear tags conforming to the alphanumeric national uniform ear tagging system including official brucellosis vaccination ear tags, or NAIS compliant ear tags, that provide unique identification for each animal. ()

12. Official Identification. Official USDA approved ear tag, USDA Backtag, breed registration tattoo, or identification method approved by the Administrator. ()

- 13. Official Brucellosis Vaccination Ear Tag.** An APHIS approved identification ear tag conforming to the alphanumeric national uniform ear tagging system that provides unique identification for each animal. ()
- 14. Operator.** The person who has authority to manage or direct a buying station or livestock trader lot. ()
- 15. Owner.** The person who owns or has financial control of a buying station, livestock trader lot or cattle. ()
- 16. Parturient.** Visibly prepared to give birth or within two (2) weeks before giving birth. ()
- 17. Postparturient.** Having already given birth. ()
- 18. Premises.** The ground, area, buildings, corrals, and equipment utilized to keep, hold, or maintain animals. ()
- 19. Previous Location.** The premises where cattle were confined immediately prior to delivery to a buying station, livestock trader lot, or purchase by a livestock dealer. ()
- 20. Restraint.** The confinement of cattle in a chute, or other device, for the purpose of efficiently, effectively, and safely inspecting, treating, vaccinating, or testing. ()
- 21. State Animal Health Official.** The Administrator, or his designee, responsible for disease control and eradication activities. ()
- 22. Test Eligible.** Unless otherwise specifically provided in these rules, all sexually intact cattle and domestic bison eighteen (18) months of age and over, and all parturient, and postparturient cattle and domestic bison regardless of age. ()
- 23. USDA Backtag.** A backtag issued by APHIS that conforms to the eight-character alphanumeric National Backtagging System that provides unique identification for each animal. ()

111. ABBREVIATIONS.

- 01. APHIS.** Animal and Plant Health Inspection Service. ()
- 02. AVIC.** Area Veterinarian In Charge. ()
- 03. CAFO.** Concentrated Animal Feeding Operation. ()
- 04. CFR.** Code of Federal Regulations. ()
- 05. NAIS.** National Animal Identification System. ()
- 06. USDA.** United States Department of Agriculture. ()
- 07. VS.** Veterinary Services. ()

112. -- 119. (RESERVED)

120. APPLICABILITY.

Subchapter A applies to livestock dealers, buying stations, and livestock trader lots operating in Idaho. ()

121. -- 129. (RESERVED)

130. INSPECTIONS.

To prevent the introduction and dissemination, or to control and eradicate diseases, state and federal animal health officials are authorized to inspect livestock records, premises, facilities, and livestock to ensure compliance with the provisions of this chapter and other state or federal laws or rules applicable to livestock dealers, buying stations and livestock trader lots. ()

01. Entering Premises. In order to conduct activities authorized by this chapter, state or federal animal health officials are authorized to enter buying stations or livestock trader lots. State or federal officials will attempt to notify the owner or operator of the premises prior to conducting an inspection. ()

02. Inspecting Records. To ensure compliance with the provisions of this chapter, state or federal animal health officials are authorized to access, inspect, review, and copy any records deemed necessary during normal business hours. State or federal animal health officials will attempt to notify the owner or operator of the premises prior to inspecting records. ()

03. Emergencies. In the event of an emergency, as determined by the Administrator, the notification requirements of this section are not required. ()

131. -- 139. (RESERVED)

140. LIVESTOCK TREATMENT.

Each livestock dealer, buying station and livestock trader lot shall humanely treat all livestock. All non-ambulatory livestock shall be: ()

01. Returned. Returned to premises of origin; or ()

02. Fed and Watered. Provided adequate feed and clean water; or ()

03. Euthanized. Humanely euthanized. ()

141. -- 149. (RESERVED)

150. DEAD ANIMAL DISPOSAL.

The movement and disposal of all dead animals shall be pursuant to the provisions of IDAPA 02.04.17, "Rules Governing Dead Animal Movement and Disposal." ()

151. -- 159. (RESERVED)

160. ENVIRONMENTAL REQUIREMENTS.

All buying stations and livestock trader lots shall meet the provisions of IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations." ()

161. -- 199. (RESERVED)

200. LIVESTOCK DEALERS.

Livestock dealers that do not operate buying stations or livestock trader lots shall keep complete and accurate records such that cattle purchased may be traced to the previous location, previous owner and the subsequent owner. ()

201. -- 209. (RESERVED)

220. CONTENT OF RECORDS.

Livestock dealer records shall include, but are not limited to: ()

01. Name, Telephone Number, and Address. The name, telephone number, and address of the owner of the cattle prior to purchase by the livestock dealer. ()

02. Identification. All cattle shall be identified to their previous location with a form of identification approved by the Administrator. ()

03. Previous Location. The location where cattle were held prior to purchase by the livestock dealer shall be either the NAIS premises identification number or the physical address. ()

04. The Date of Purchase. The date individual cattle were purchased. ()

05. Date of Sale. Date individual cattle were sold or changed ownership. ()

06. Name, Telephone Number, and Address of the Purchaser of Cattle. The name, telephone number, and address of the person that purchased cattle from the livestock dealer. ()

07. Death Loss. An accurate account of all death loss, including identification, and disposition of the dead cattle. ()

221. -- 229. (RESERVED)

230. RECORDS RETENTION.

Livestock dealers shall retain all records relating to cattle for a period of not less than two (2) years. Records must be made available to the administrator upon request. ()

231. -- 239. (RESERVED)

240. APPROVED FORMS OF IDENTIFICATION.

The following are approved forms of identification. ()

01. USDA Approved Backtag. ()

02. Official USDA Ear Tag. ()

03. Registration Tattoo. Breed registration tattoo and corresponding registration papers. ()

04. Brand Inspection. Statement of ownership such as a brand inspection certificate. ()

05. Administrator Approval. The Administrator may approve other forms of individual identification on a case-by-case basis. ()

06. Removal of Animal Identification. No approved or official animal identification shall be removed, tampered with or otherwise altered. ()

241. -- 299. (RESERVED)

300. APPROVED BUYING STATIONS.

No livestock dealer shall operate a buying station prior to receiving approval from the Administrator. All cattle entering the buying station shall be shipped to an approved slaughter establishment within seven (7) days of arrival at the buying station. ()

301. APPLICATION FOR DESIGNATION AS AN IDAHO APPROVED BUYING STATION.

Application for designation as an Idaho approved buying station shall be made on application forms available from the Administrator. ()

302. ADMINISTRATOR APPROVAL.

State or federal animal health officials will inspect all buying stations prior to approval by the Administrator. The Administrator may take any past enforcement or violation history of the owner or operator of the buying station into consideration when making the final approval determination. ()

303. APPROVED BUYING STATION NUMBER.

The license number issued to the livestock dealer by the State Brand Board will be used to identify the approved

buying station. ()

304. EXPIRATION OF APPROVED STATUS.

Approved buying station status will remain in effect unless the status is revoked by the Administrator or there is a change in ownership or operator. If there is a change in ownership or operator, it is the responsibility of the new buying station owner or operator to apply for reinstatement of approved status. ()

305. REVOCATION OF APPROVED BUYING STATION STATUS.

In addition to any other Department administrative or civil action, the Administrator may withdraw or deny the approval of any buying station, by notifying the owner in writing, when one (1) or more of the following conditions exist: ()

01. Recordkeeping Requirements. There is evidence that the owner or operator of the buying station violated the recordkeeping requirements of this rule, or animal health regulations. ()

02. Inability to Trace Animals. There is a repeated history of an inability to trace the affected, exposed or reactor cattle handled by the buying station to the previous location and owner. ()

03. Violations. A buying station violates any of the provisions of Subchapter A. ()

04. Owner Request. Owners may have the approved status revoked by emptying the buying station and requesting in writing that the status be revoked. ()

05. Regulation Changes. Idaho approved buying station status may be revoked as required by changes in state or federal rules or regulations. ()

306. DISPOSITION OF CATTLE.

When approved buying station status is revoked, cattle still in the buying station shall be removed directly to an approved slaughter establishment within seven (7) days. ()

307. -- 314. (RESERVED)

315. IDENTIFICATION.

All cattle shall be individually identified with an official USDA backtag immediately upon arrival at a buying station. Animal identification is to be maintained to slaughter and shall not be removed, tampered with or otherwise altered. ()

316. -- 319. (RESERVED)

320. BUYING STATION RECORDS.

Each buying station shall keep sufficient records of all livestock that enter, leave, or die on the premises to enable state or federal animal health officials to trace such animals satisfactorily to their previous location. ()

321. CONTENT OF RECORDS -- BUYING STATIONS.

Buying station records shall include, but are not limited to: ()

01. Name, Telephone Number, and Address. The name, telephone number, and address of: ()

a. The owner of the livestock entering the buying station; and ()

b. The person delivering the livestock to the buying station. ()

02. Individual Identification. Individual USDA Backtag number for each animal entering the buying station. ()

03. Previous Location. The location where cattle were held prior to purchase by the buying station shall be either the NAIS premises identification number or the physical address. ()

- 04. The Date of Entry.** The date individual cattle enter a buying station. ()
- 05. Date of Shipment to Slaughter.** ()
- 06. Approved Slaughter Establishment Destination.** Name and address of the approved slaughter establishment. ()
- 07. Death Loss.** An accurate account of all death loss, including individual identification number and disposition of the dead cattle. ()
- 08. Dead Animals.** An accurate description, including any forms of identification, of any dead animals that are left at the buying station by other persons. ()
- 322. BUYING STATION RECORDS RETENTION.**
All records relating to cattle that have been in the buying station facility shall be retained for a period of not less than two (2) years. Records must be made available to the administrator upon request. ()
- 323. -- 329. (RESERVED)**
- 330. CATTLE SUBJECT TO QUARANTINE -- BUYING STATIONS.**
No cattle that have reacted to the brucellosis or tuberculosis test, or cattle affected with, or suspected of being affected with a foreign animal disease, shall be allowed to enter, occupy, or be sold from a buying station. ()
- 331. -- 339. (RESERVED)**
- 340. PREMISES REQUIREMENTS.**
An approved buying station shall meet the following requirements: ()
- 01. Restraint System.** A restraint system, approved by the Administrator, for humanely, efficiently and effectively restraining livestock for the purpose of inspecting, identifying or testing of animals by state or federal animal health officials. ()
- 02. Feed and Water.** Provide access to a clean source of water sufficient for the number of animals present, and an adequate quality and quantity of feed for all cattle that are on the premises for over twelve (12) hours. ()
- 03. Pens.** Comply with IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," and pens that contain cattle on the premises for over twelve (12) hours provide adequate pen space for the cattle to rest and ruminant, and provide adequate drainage. ()
- 04. Fences.** Construct fences sufficient to prevent the escape of livestock from the premises, as determined by the Administrator. ()
- 05. Condition.** Maintain premises in good repair. ()
- 341. -- 349. (RESERVED)**
- 350. SANITATION.**
All buying stations shall be maintained in a sanitary condition. The buying station shall provide the necessary equipment to clean and disinfect the premises, and the owner or operator of the buying station shall clean and disinfect the premises at the direction of the Administrator. ()
- 351. -- 359. (RESERVED)**
- 360. SIGNAGE.**
Each buying station shall comply with the following signage requirements: ()

01. Wording. Signs state “ALL CATTLE ENTERING THIS FACILITY SHALL GO DIRECTLY TO SLAUGHTER.” ()

02. Color. Lettering in red and not less than four (4) inches in height on a white background. ()

03. Location. Signs placed prominently at each entrance, exit and cattle loading or unloading facility. ()

361. -- 369. (RESERVED)

370. LOCATION OF BUYING STATIONS.

All buying stations shall be located separate and apart from any other cattle handling facilities, as determined by the Administrator, that handle any cattle not destined to slaughter within seven (7) days. ()

371. -- 499. (RESERVED)

500. APPROVED LIVESTOCK TRADER LOTS.

All livestock dealers licensed by the Idaho State Brand Board shall receive approval from the Administrator as an Idaho approved feedlot or approved livestock trader lot if the following conditions exist: ()

01. Cattle Are Received. Cattle of unknown disease status are received from the farm or ranch of origin. ()

02. Sold to Individuals. Brucellosis test eligible cattle are sold and transported to destinations other than an approved slaughter establishment, a specifically approved livestock market, an Idaho approved feedlot, or out of the state of Idaho. ()

501. APPLICATION FOR APPROVED LIVESTOCK TRADER LOT STATUS.

Application for approved livestock trader lot status is made on application forms available from the Administrator. ()

502. ADMINISTRATOR APPROVAL.

The Administrator may approve livestock trader lot applications after state or federal animal health officials have inspected the trader lot facility and: ()

01. Adequate Facilities. The livestock dealer has demonstrated that cattle can be secured and restrained in the facility. ()

02. Adequate Records. The livestock dealer’s records are adequate to show the origin and disposition of the cattle that enter the facility. ()

03. Past History. The Administrator may take any past enforcement or violation history of the owner or operator of the livestock trader lot into consideration when making the final approval determination. ()

503. APPROVED LIVESTOCK TRADER LOT NUMBER.

The license number issued by the State Brand Board to livestock dealers shall be used to identify the livestock trader lot. ()

504. EXPIRATION OF APPROVED STATUS.

Approved livestock trader lot status remains in effect unless there is a material change in operation, as determined by the Administrator, or the status is revoked by the Administrator. If there is a material change in operation, as determined by the Administrator, it is the responsibility of the livestock dealer to apply for reinstatement of approved status. ()

505. -- 519. (RESERVED)

520. IDENTIFICATION.

All cattle shall be identified, to their previous location, with a form of identification approved by the Administrator immediately upon arrival at a livestock trader lot. Animal identification is to be maintained and not be removed, tampered with, or otherwise altered at the livestock trader lot. ()

521. APPROVED FORMS OF IDENTIFICATION.

The following are approved forms of individual identification. ()

01. USDA Approved Backtag. All brucellosis test eligible cattle shipped to approved slaughter establishments must be individually identified with an approved USDA Backtag. ()

02. Official USDA Ear Tag. ()

03. Registration Tattoo. A breed registration tattoo accompanied by registration papers. ()

04. Brand Inspection. Statement of ownership such as a brand inspection certificate. ()

05. Administrator Approval. The Administrator may approve other forms of identification on a case-by-case basis. ()

06. Removal of Individual Animal Identification. No approved animal identification shall be removed, tampered with or otherwise altered. ()

522. CONTENT OF RECORDS FOR APPROVED LIVESTOCK TRADER LOTS.

All approved livestock trader lots shall keep accurate and complete records of all cattle that enter, leave or die on the premises. These records shall readily show: ()

01. Name, Telephone Number, and Address. The name, telephone number, and address of: ()

a. The owner of the cattle prior to acquisition by the livestock dealer; and ()

b. The person delivering the cattle to the livestock trader lot. ()

02. Identification. Identification, approved by the Administrator, for the cattle entering the livestock trader lot. ()

03. Previous Location. The location where cattle were held prior to entering the livestock trader lot shall be either the NAIS premises identification number or the physical address of the premises. ()

04. The Date of Entry. The date the cattle enter a livestock trader lot. ()

05. Date of Shipment Out of the Livestock Trader Lot. ()

06. Name, Telephone Number, and Address of Shipment Destination. ()

07. Death Loss. An accurate account of all death loss, including identification and disposition of the dead cattle. ()

08. Dead Animals. An accurate description of any dead animals, including any forms of identification, that are left at the livestock trader lot by other persons. ()

09. Requirements. That all applicable state and federal permit, test, examination, identification and vaccination requirements have been met. ()

523. TRADER LOT RECORDS RETENTION.

Livestock trader lots shall retain their records for a period of not less than two (2) years following removal of the cattle from the premises. Records must be made available to the administrator upon request. ()

524 -- 529. (RESERVED)

530. CATTLE SUBJECT TO QUARANTINE -- TRADER LOTS.

No cattle that have reacted to the brucellosis or tuberculosis test, or animals affected with, or suspected of being affected with a foreign animal or reportable disease shall be allowed to enter, occupy, or be sold from a livestock trader lot. ()

531. -- 539. (RESERVED)

540. REMOVAL REQUIREMENTS.

All brucellosis test eligible cattle that are removed from an approved livestock trader lot shall be accompanied by a certificate of veterinary inspection issued by an accredited veterinarian prior to removal, except: ()

01. Livestock Markets. Cattle shipped directly to a specifically approved livestock market. ()

02. Slaughter. Cattle shipped directly to an approved slaughter establishment must be individually identified with an approved USDA Backtag. ()

03. Approved Feedlots. Cattle shipped directly to an Idaho approved feedlot. ()

541. LIVESTOCK DEALER'S DUTY.

It is the duty of a livestock dealer to ensure that all livestock removed from a livestock trader lot are in compliance with the animal health requirements of the state of Idaho and the point of destination. ()

542. -- 549. (RESERVED)

550. LIVESTOCK TRADER LOT PREMISES.

Approved livestock trader lots shall meet the following requirements: ()

01. Restraint System. A restraint system, approved by the Administrator, for humanely, efficiently and effectively restraining cattle for the purpose of inspecting, identifying, treating or testing of animals by state or federal animal health officials. ()

02. Feed and Water. Provide access to a clean source of water sufficient for the number of cattle present, and an adequate quality and quantity of feed for all cattle on the premises for over twelve (12) hours. ()

03. Pens. Comply with IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," and pens that contain cattle on the premises for over twelve (12) hours provide adequate pen space for the cattle to rest and ruminant and be adequately drained. ()

04. Fences. Construct fences sufficient to prevent the escape of cattle from the premises, as determined by the Administrator. ()

05. Condition. Maintain premises in good repair. ()

551. -- 559. (RESERVED)

560. SANITATION.

All livestock trader lots shall be maintained in a sanitary manner. The livestock dealer shall provide the necessary equipment to clean and disinfect the premises, and the livestock dealer shall clean and disinfect the premises at the direction of the Administrator. ()

561. -- 569. (RESERVED)

570. REVOCATION OF APPROVED STATUS.

In addition to any other Department administrative or civil action, the Administrator may withdraw or deny the

approval of any livestock trader lot by notifying the dealer in writing when one or more of the following conditions exist: ()

01. Recordkeeping Requirements. There is evidence that the livestock dealer violated the recordkeeping requirements of this rule or animal health regulations. ()

02. Inability to Trace Animals. There is a repeated history of inability to trace to the affected, exposed, or reactor cattle that enter the livestock trader lot to the previous location and owner. ()

03. Violations. A livestock dealer violates any of the provisions of Subchapter A. ()

04. Dealer Request. The livestock dealer may have the approved status revoked by emptying the livestock trader lot and requesting in writing that the status be revoked. ()

05. Regulation Changes. Approved trader lot status may be revoked as required by changes in state or federal rules or regulations. ()

571. -- 603. (RESERVED)

SUBCHAPTER B – LIVESTOCK MARKETING

604. INCORPORATION BY REFERENCE.

The following document is incorporated by reference into Subchapter B, sections 604-770 only: ()

01. Incorporated Documents. The following documents are incorporated by reference: Code of Federal Regulations, Title 9, Parts 71, 75, 77, 78, 85, and 161, CFR, January 1, 2003, which can be viewed online at <https://www.govinfo.gov/content/pkg/CFR-2003-title9-vol1/pdf/CFR-2003-title9-vol1-chapI.pdf>. ()

605. -- 609. (RESERVED)

610. DEFINITIONS.

In addition to the definitions found in Idaho Code sections 25-239 and 25-1721, the following definitions apply in the interpretation and enforcement of Subchapter B only: ()

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

02. Approved Slaughter Establishment. A USDA inspected slaughter establishment where ante-mortem and post-mortem inspections are conducted by USDA inspectors. ()

03. Brucellosis. An infectious disease of animals and humans caused by bacteria of the genus *Brucella*. ()

04. Cattle. All domestic bovidae, including domestic bison. ()

05. Domestic Bison. All animals in the genus *Bison* owned by a person. ()

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

07. Epithelioma of the Eye. Carcinoma of the eye of cattle commonly known as cancer eye. ()

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

09. Herd. Any group of livestock maintained on common ground, or two (2) or more groups of

livestock under common ownership or supervision that are geographically separated from other groups but can have an interchange or movement without regard to health status. ()

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

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

12. Lump Jaw. A condition known as actinomycosis or actinobacillosis in cattle. ()

13. Official Ear Tag. An APHIS approved identification ear tag conforming to an alphanumeric national uniform ear tagging system, that provides unique identification for each animal. ()

14. Official Individual Identification. Official USDA approved ear tag, USDA back tag, registration tattoo, or identification approved by the Administrator. ()

15. Official Vaccination Ear Tag. An APHIS approved identification ear tag conforming to the alphanumeric national uniform ear tagging system that provides unique identification for each animal. ()

16. Operator. The person who has authority to manage or direct a public livestock market. ()

17. Owner. The person who owns or has financial control of a public livestock market. ()

18. Restraint. The confinement of livestock in a chute, or other device, for the purpose of efficiently, effectively, and safely inspecting, treating, vaccinating, or testing. ()

19. State Animal Health Official. The Administrator, or his designee, responsible for disease control and eradication activities. ()

20. Tuberculosis. An infectious disease of humans and animals caused by *Mycobacterium bovis*. ()

21. USDA Back Tag. A back tag issued by APHIS that conforms to the eight (8) character alphanumeric National Back Tagging System and that provides unique identification for each animal. ()

611. -- 629. (RESERVED)

630. INSPECTIONS.

To prevent the introduction and dissemination, or to control and eradicate diseases, state and federal animal health officials are authorized to inspect livestock records, premises, facilities, and livestock to ensure compliance with the provisions of Subchapter B and other state or federal laws or rules applicable to public livestock markets. ()

01. Entering Premises. In order to conduct activities authorized by Subchapter B, state or federal animal health officials are authorized to enter public livestock market premises during normal business hours. ()

02. Inspecting Records. To ensure compliance with the provisions of Subchapter B, state or federal animal health officials are authorized, during normal business hours, to have access to, inspect, review, and copy any livestock records deemed necessary. ()

631. -- 639. (RESERVED)

640. LIVESTOCK TREATMENT.

Each public livestock market shall humanely treat all livestock. All non-ambulatory livestock shall be: ()

01. Returned. Returned to the owner; or ()

- 02. Feed and Water.** Provided adequate feed and clean water; or ()
- 03. Euthanized.** Humanely euthanized, and disposed of in accordance with IDAPA 02.04.17 “Rules Governing Dead Animal Movement and Disposal.” ()
- 641. -- 649. (RESERVED)**
- 650. DEAD ANIMAL DISPOSAL.**
The movement and disposal of all dead animals shall be pursuant to the provisions of IDAPA 02.04.17 “Rules Governing Dead Animal Movement and Disposal.” ()
- 651. -- 659. (RESERVED)**
- 660. ENVIRONMENTAL REQUIREMENTS.**
All public livestock markets shall meet the provisions of IDAPA 02.04.15 “Rules Governing Beef Cattle Animal Feeding Operations.” ()
- 661. -- 699. (RESERVED)**
- 700. PUBLIC LIVESTOCK MARKET CHARTER.**
No person shall conduct or operate a public livestock market without first securing a charter from the Department. Charters expire on April 30 of each year. It is the responsibility of the public livestock market operator to apply each year for charter renewal on a form prescribed by the Department. The charter renewal form must be accompanied by an annual market charter fee of one hundred dollars (\$100) and be received by the Department on or before May 1 of each year. ()
- 701. PUBLIC LIVESTOCK MARKET MINIMUM SALE REQUIREMENT.**
Each chartered public livestock market shall conduct a minimum of one (1) sale during each calendar year. ()
- 702. -- 709. (RESERVED)**
- 710. MARKET RELEASE.**
Prior to any livestock being released from a public livestock market, the following conditions shall be fulfilled: ()
- 01. Veterinary Inspection.** A visual inspection, of each animal, made by an accredited veterinarian authorized to provide veterinary services to the market. ()
- 02. Affected Animals.** Immediate isolation of animals affected by any infectious or contagious disease in quarantine pens subject to the market’s bio-security protocol or any animals determined to be affected by any infectious or contagious disease. ()
- 03. Removal of Animals.** Animals may not be removed from the livestock market until all animals determined to be affected with a contagious or infectious disease have been examined by an accredited veterinarian authorized to provide veterinary services to the market. ()
- 04. Saleyard Release Form.** Complete an accurate and legible “saleyard release” form, certificate of veterinary inspection, or other market release mechanism, approved by the Administrator certifying that the animals meet the health requirements for movement to the point of destination. ()
- 711. -- 714. (RESERVED)**
- 715. BIO-SECURITY PLAN.**
All public livestock markets shall submit a bio-security plan to the Administrator for approval. All approved bio-security plans shall be implemented by the public livestock market. Each bio-security plan includes, but is not limited to, the following elements: ()

01. Identification. Procedures for identifying animals that are affected by any contagious or infectious disease. ()

02. Diagnosis. Procedures for examination and diagnosis, by an accredited veterinarian, of any animals affected by any contagious or infectious disease. ()

03. Disposition. Procedures for the disposition of any livestock diagnosed as affected by any contagious or infectious disease. ()

04. Records. Keep complete and accurate records on site at the livestock market, showing that the market's bio-security plan is being implemented. ()

716. -- 719. (RESERVED)

720. IDENTIFICATION.
All livestock entering a public livestock market shall be individually identified to the herd of origin. ()

721. APPROVED FORMS OF IDENTIFICATION.
The following are approved methods of identification. ()

01. Back Tag. USDA approved back tag; or ()

02. Ear Tag. Official USDA ear tag; or ()

03. Registration Tattoo; or ()

04. Brand Inspection. Statement of ownership such as a brand inspection certificate. ()

05. Administrator Approval. The Administrator may approve other forms of identification on a case by case basis. ()

06. Removal of Identification. No animal identification may be intentionally removed, tampered with, or otherwise altered, except as approved by the Administrator. ()

722. -- 729. (RESERVED)

730. QUARANTINE PENS.
A quarantine pen or pens shall be provided at all public livestock markets and such pens used only to hold animals that have reacted to the brucellosis or tuberculosis test or animals affected with, or suspected of being affected with a contagious or infectious disease, epithelioma of the eye, or lump jaw. The pens shall comply with the following requirements: ()

01. Hard Surface. Hard surfaced with concrete or similar impervious material in good repair; and ()

02. Feed and Water. Adequate feed and clean water facilities that are completely separate from all other livestock; and ()

03. Signage. Identified with the word "QUARANTINE" in red letters, not less than four (4) inches high, on a white background on the pen gate; and ()

04. Cleaning and Disinfection. Cleaned and disinfected no later than the day following date of sale; and ()

05. Fence Construction. Solid fences, constructed by boards or other material approved by the Administrator, and be a minimum of five and one-half (5 ½) feet high; and ()

06. Drainage. Drainage shall not be onto adjoining pens, restraint facilities or alleys. ()

731. -- 749. (RESERVED)

750. RESTRAINT FACILITIES.

Each public livestock market shall have a restraint system, approved by the Administrator, for humanely, efficiently, and effectively restraining livestock for the purpose of inspecting, identifying, treating, or testing of animals by state or federal animal health officials. ()

751. -- 759. (RESERVED)

760. SANITARY CONDITIONS.

All pens, alleys, troughs, restraint facilities, and runways shall be kept in a sanitary condition. Operators of public livestock markets shall clean and disinfect livestock market facilities, under the supervision of a state or federal animal health official, upon request by the Administrator. ()

761. -- 769. (RESERVED)

770. RECORDS.

Each public livestock market shall keep sufficient records of animals presented for sale to enable state or federal animal health officials to trace such animals satisfactorily to their herd of origin, and such records shall be maintained for a minimum of five (5) years. ()

771. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.32 – RULES GOVERNING POULTRY OPERATIONS

DOCKET NO. 02-0432-1901

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 25-4012, Idaho Code.

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

This pending fee rule adopts a previously approved and codified chapter under IDAPA 02, rules of the Idaho State Department of Agriculture. The Rules Governing Poultry Operations establish standards for the storage, management and application of nutrients from commercial poultry facilities. This rule was reviewed for amendment or repeal of select sections to comply with the Red Tape Reduction Act.

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, pages 115-127](#).

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

02.04.32.100	Broader in scope
02.04.32.110	Broader in scope
02.04.32.120	Broader in scope
02.04.32.130	Broader in scope
02.04.32.140	Broader in scope
02.04.32.150	Broader in scope
02.04.32.160	Broader in scope
02.04.32.170	Broader in scope
02.04.32.250	Broader in scope
02.04.32.251	Broader in scope
02.04.32.252	Broader in scope
02.04.32.253	Broader in scope
02.04.32.260	Broader in scope
02.04.32.300	Broader in scope
02.04.32.310	Broader in scope
02.04.32.400	Broader in scope
02.04.32.500	Broader in scope
02.04.32.550	Broader in scope

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

An annual fee or assessment for each permittee of no more than three cents (\$0.03) per square foot of containment area.

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

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Dr. Scott Leibsle, Deputy Administrator – Division of Animal Industries at (208) 332-8540.

Dated this 3rd day of October, 2019.

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

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 September 18, 2019.

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

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

This proposed rule adopts a previously approved and codified chapter under IDAPA 02, rules of the Idaho State Department of Agriculture. The Rules Governing Poultry Operations establish standards for the storage, management and application of nutrients from commercial poultry facilities. This rule was reviewed for amendment or repeal of non-substantive sections to comply with the Red Tape Reduction Act.

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

An annual fee or assessment for each permittee of no more than three cents (\$0.03) per square foot of containment area.

IDAHO CODE SECTION 22-101A(1) STATEMENT: This rule is broader in scope than an activity regulated by the federal government in the following sections:

02.04.32.100	Broader in scope
02.04.32.110	Broader in scope
02.04.32.120	Broader in scope
02.04.32.130	Broader in scope
02.04.32.140	Broader in scope
02.04.32.150	Broader in scope
02.04.32.160	Broader in scope
02.04.32.170	Broader in scope
02.04.32.250	Broader in scope
02.04.32.251	Broader in scope
02.04.32.252	Broader in scope
02.04.32.253	Broader in scope
02.04.32.260	Broader in scope
02.04.32.300	Broader in scope
02.04.32.310	Broader in scope
02.04.32.400	Broader in scope
02.04.32.500	Broader in scope
02.04.32.550	Broader in scope

For a more detailed analysis, please see Rulemaking Record for Docket No. 02-0432-1901.

IDAHO CODE SECTION 22-101A(4) STATEMENT: Idaho Code § 22-101A(4) requires that in proposing any rule necessary to protect human health and the environment, the Director shall include a summary of information in the rulemaking record by Idaho Code § 22-101A(3). This summary of Idaho Code § 22-101A(3) information is as follows:

IDAPA 02.04.32 regulates the public health and environmental effects associated with poultry operations. The upper bound risks associated with phosphorus storage and application by Idaho poultry operations are elevated phosphorus concentrations in phosphorus sensitive water bodies which can lead to blue-green algae blooms and the presence of cyanotoxins in waterbodies. Algal blooms can impair water use for industry, recreation, drinking and fisheries. Further, cyanotoxins create the upper bound risk of physical illness to approximately 400,000 private domestic well users, wildlife and domestic animals. Because the long term health and environmental effects of harmful algal blooms remain unclear, the absolute central and lower bound risks are not quantifiable.

ISDA uses the best available, peer reviewed studies to support and implement IDAPA 02.04.32, including studies done by U.S. Environmental Protection Agency, USDA Agricultural Resource Service, and other professional and scientific journals. However, even with such data, uncertainties remain, including variability in phosphorus sampling and testing.

To view ISDA's complete Idaho Code § 22-101A analysis and a comprehensive list of studies supporting and directly relevant to this Rule, please see the IDAPA 02.04.32 Rulemaking Record located at <https://agri.idaho.gov/main/i-need-to-see-lawsrules/rulemaking/isda-rulemaking-2019-2020/animal-industries-temporary-rulemaking-2019-2020/>.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this existing chapter of IDAPA is being re-published and re-authorized as previously promulgated and approved by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules would have inhibited the agency from executing its responsibilities to serve the citizens of Idaho and to protect their health, safety, and welfare.

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 Dr. Scott Leibsle, Deputy Administrator – Division of Animal Industries at (208) 332-8540.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2019.

DATED this 2nd day of August, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 02-0432-1901

02.04.32 – RULES GOVERNING POULTRY OPERATIONS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 25-4012, Idaho Code. (3-21-12)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.04.32, “Rules Governing Poultry Operations.” (3-21-12)

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. (3-21-12)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (3-21-12)

003. ADMINISTRATIVE APPEAL.

Hearing and appeal rights are set forth in Title 67, Chapter 52, Idaho Code. There is no provision for administrative appeal before the department of Agriculture under these rules. (3-21-12)

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference and copies of these documents may be obtained from the Idaho State Department of Agriculture central office. (3-21-12)

01. The 2004 Code of Federal Regulations (CFR) Title 40 Part 122 Section 122.23 (b). This document can be viewed online at http://www.access.gpo.gov/nara/cfr/waisidx_04/40cfrv20_04.html. (3-21-12)

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://agri.idaho.gov/main/wp-content/uploads/2017/10/2008_Appendix_10D.pdf. (3-21-12)

03. 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. (3-21-12)

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. (3-21-12)

05. American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004. This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/10/asae_EP393.3_Feb_04.pdf. (3-21-12)

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/>. (3-21-12)

006. IDAHO PUBLIC RECORDS ACT.

These rules are public records and are available for inspection and copying at the Idaho State Department of Agriculture central office. (3-21-12)

007. -- 009. (RESERVED)

010. DEFINITIONS.

In addition to the definitions set forth in Section 25-4002, Idaho Code, the following definitions apply in the interpretation and the enforcement of this chapter. ()

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. (3-21-12)

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. (3-29-17)

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. (3-21-12)

011. ABBREVIATIONS.

- 01. AFO.** Animal Feeding Operation. (3-21-12)
- 02. ASABE.** American Society of Agricultural and Biological Engineers. (3-21-12)
- 03. CAFO.** Concentrated Animal Feeding Operation. (3-21-12)
- 04. DEQ.** Department of Environmental Quality. (3-21-12)

- 05. FEMA. Federal Emergency Management Agency. (3-21-12)
- 06. IPDES. Idaho Pollutant Discharge Elimination System. (3-29-17)
- 07. NMP. Nutrient Management Plan. (3-21-12)
- 08. NMS. Nutrient Management Standard. (3-21-12)
- 09. NRCS. United States Department of Agriculture, Natural Resources Conservation Service. (3-21-12)
- 10. USGS. United States Geological Survey. (3-21-12)

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. ()

02. Contents of Application. Each application 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:** ()

- a. Name, mailing address and phone number of the facility owner. (3-21-12)
- b. Name, mailing address and phone number of the facility operator. (3-21-12)
- c. Name and mailing address of the facility. (3-21-12)
- d. Legal description of the facility location. (3-21-12)
- e. The one-time animal capacity, by head, of the facility. (3-21-12)
- f. The type of animals to be confined at the facility. (3-21-12)
- g. The facility's biosecurity and sanitary standards. (3-21-12)

03. Construction Plans. Plans and specifications for the facility's animal waste management system that include the following information: (3-21-12)

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: (3-21-12)

- i. Layout of the facility, including buildings and animal waste management system; (3-21-12)
- 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 (3-21-12)
- 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. (3-21-12)

- b.** A site plan showing: (3-21-12)
 - i. Building locations; (3-21-12)

- ii. Waste facilities; (3-21-12)
- iii. All waste conveyance systems; and (3-21-12)
- iv. All irrigation systems used for land application, including details of approved water supply protection devices. (3-21-12)
- c. Building plans showing: (3-21-12)
 - i. All wastewater collection systems in housed units; (3-21-12)
 - ii. All freshwater supply systems, including details of approved water supply protection devices; (3-21-12)
 - iii. Detailed drawings of wastewater collection and conveyance systems and containment construction. (3-21-12)
- d. If a CAFO Site Advisory Team suitability determination was not conducted for the facility, the following additional information must be provided: (3-21-12)
 - i. Idaho DEQ delineated source water assessment areas within a one (1) mile radius of the facility and land application area; (3-21-12)
 - ii. Idaho DEQ delineated nitrate priority areas that intersect the facility or land application area; (3-21-12)
 - iii. Soil characteristics from NRCS; and (3-21-12)
 - iv. Well logs associated with wells listed in Subsection 110.04.a.iii. (3-21-12)
- 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. (3-21-12)

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. (3-21-12)

111. -- 129. (RESERVED)

130. PERMIT CONDITIONS.

The following conditions will apply to all permittees: (3-21-12)

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. (3-21-12)

02. Construction, Operation, and Maintenance of the Facility. The permittee must ensure that construction, operation, and maintenance of the facility proceed according to the construction plans and specifications and the approved nutrient management plans, and comply with the following: (3-21-12)

- a. Within thirty (30) days of construction completion, submit as-built construction plans. (3-21-12)
- b. Apply best management practices as approved by the director. (3-21-12)

c. The facility or operations associated with the facility must not adversely affect waters of the state or create nuisance conditions including odor. (3-21-12)

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. (3-21-12)

e. Dead animals must be handled in accordance with IDAPA 02.04.17, "Rules Governing Dead Animal Movement and Disposal." (3-21-12)

f. Nutrient management plans must be amended in accordance with IDAPA 02.04.30.000 et seq. "Rules Governing Nutrient Management." (3-21-12)

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. (3-21-12)

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. (3-21-12)

04. Entry and Access. The permittee must allow the director entry and access in accordance with Section 25-4008, Idaho Code. (3-21-12)

05. Reporting. Permittees must report discharges or noncompliance issues within the following time frames: (3-21-12)

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. (3-21-12)

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: ()

i. A description of the event and its cause or if the cause is not known, steps taken to investigate and determine the cause; (3-21-12)

ii. The period of the event including, to the extent possible, times and dates; (3-21-12)

iii. Measures taken to mitigate or eliminate the event; and (3-21-12)

iv. Steps taken to prevent recurrence of the event. (3-21-12)

c. 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. (3-21-12)

06. 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. (3-21-12)

07. 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. (3-21-12)

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. (3-21-12)

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. (3-21-12)

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 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: (3-21-12)

- a. The correction of typographical or clerical errors; (3-21-12)
- b. Transfer of ownership or operational control in accordance with Section 160; or (3-21-12)
- c. Certain minor changes in monitoring or operational conditions. (3-21-12)

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. (3-21-12)

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 that includes at least the following: (3-21-12)

- a. The relevant information required by Subsection 110.03; and (3-21-12)
- b. Any change of conditions at the facility resulting from the ownership or operation transfer. (3-21-12)

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. (3-21-12)

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. (3-21-12)

b. If the director denies the transfer application, 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. (3-21-12)

161. -- 199. (RESERVED)

200. WASTE STORAGE AND CONTAINMENT FACILITIES.

01. Wastewater Storage and Containment Facilities. 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: (3-21-12)

- a. All process wastewater generated on the facility during the non-land application season; (3-21-12)
- b. The runoff from a twenty-five (25) year, twenty-four (24) hour rainfall event; and (3-21-12)
- 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. (3-21-12)

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. (3-21-12)

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. (3-21-12)

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. (3-21-12)

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. (3-21-12)

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. (3-21-12)

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. (3-21-12)

02. NMP Approval. The director will respond to or approve an NMP in writing within forty-five (45) days of submission. (3-21-12)

03. NMP Updates or Amendments. Nutrient management plans must be updated as needed to accurately reflect the facility and its nutrient management system. (3-21-12)

251. NUTRIENT MANAGEMENT PLAN RETENTION.

All NMPs which have been approved by the department and returned to the CAFO must be maintained on site at the CAFO and available to the department upon request. The department will retain a copy of the NMP. (3-21-12)

252. NUTRIENT MANAGEMENT RECORDS.

- 01. Required Nutrient Management Records.** The CAFO operator must keep complete and accurate records of: (3-21-12)
- a.** Land application records, consisting of, at a minimum: (3-21-12)
 - i.** The dates, methods and approximate amounts of any manure or process wastewater applied on land owned or controlled by the operator. (3-21-12)
 - ii.** Weather conditions and soil moisture at the time of application. (3-21-12)
 - iii.** The lapsed time to manure incorporation, rainfall or irrigation event. (3-21-12)
 - 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. (3-21-12)
 - 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. (3-21-12)
 - c.** Nutrient Application. The quantities, analyses and sources of nutrients applied. (3-21-12)
 - d.** Soil Analysis. Complete soil analysis to create nutrient budget. (3-21-12)
 - e.** Crops. Crops planted, planting and harvest dates, yields and crop residues removed. (3-21-12)
 - f.** Record Review. Dates of annual review, person performing the review, and recommendations determined from the review. (3-21-12)
- 02. Records Retention.** All nutrient management records must be maintained for a period of five (5) years and provided to the department upon request. (3-21-12)
- 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. (3-21-12)
- 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. (3-21-12)
- 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. (3-21-12)
- 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. (3-21-12)
- 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. (3-21-12)

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. (3-21-12)

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. (3-21-12)

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. (3-21-12)

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. (3-21-12)

03. Discharge. Any discharge or unauthorized discharge from a facility is a violation of these rules. (3-21-12)

551. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.06.01 – RULES GOVERNING THE PRODUCTION AND DISTRIBUTION OF SEED

DOCKET NO. 02-0601-1901 (NEW CHAPTER)

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 22-108(2), 22-418(4), 22-418(11), 22-2004, and 22-2006, Idaho Code.

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

Three rules administered by the ISDA are related to the regulation of seed production. These rules are IDAPA 02.06.01, “Rules Governing the Pure Seed Law,” and IDAPA 02.06.13, “Rules Relating to Rapeseed Production and Establishment of Rapeseed Districts in the State of Idaho,” and IDAPA 02.06.14, “Rules Governing Bluegrass.” The rules were promulgated to carry out the requirements described in Title 22, Chapters 1, 4, and 20, Idaho Code. In order to streamline and simplify rules related to seed production, the ISDA has decided to combine all three rules into a single rule to be titled “02.06.01, Rules Governing the Production and Distribution of Seed.” No substantive changes are being made to the rules cited above. However, these rules were reviewed for repeal and amendment of certain sections consistent with the guidance and direction provided in the Red Tape Reduction Act. Therefore, the consolidated rule was reviewed to update authorities, eliminate unnecessarily restrictive language and redundancy.

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the November Idaho Administrative Bulletin, [Vol. 19-11, pages 157-181](#).

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

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. Service testing fees for purity, germination and tetrazolium are established by seed type and seed dealer’s license fees are established according to category. In addition, fees for sampling, seed analysis, inspection and quarantine release tags are established for bluegrass. Fees included in the original rules have not been changed in the new combined rule. Fees associated with these rules are imposed pursuant to Sections 22-108 and 22-2006, Idaho Code.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Lloyd Knight, (208) 332-8664.

Dated this 27th day of November, 2019.

Brian Oakey, Deputy Director
Idaho Department of Agriculture
Ph: (208) 332-8552 / Fax: (208) 334-2170

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

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 22-108(2), 22-418(4), 22-418(11), 22-2004, and 22-2006, Idaho Code.

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

PUBLIC HEARING

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

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

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: Three rules administered by the ISDA are related to the regulation of seed production. These rules are IDAPA 02.06.01, "Rules Governing the Pure Seed Law," and IDAPA 02.06.13, "Rules Relating to Rapeseed Production and Establishment of Rapeseed Districts in the State of Idaho," and IDAPA 02.06.14, "Rules Governing Bluegrass." The rules were promulgated to carry out the requirements described in Title 22, Chapters 1, 4, and 20, Idaho Code. In order to streamline and simplify rules related to seed production, the ISDA has decided to combine all three rules into a single rule to be titled "*02.06.01, Rules Governing the Production and Distribution of Seed.*" No substantive change are being made to the rules cited above. All rules were reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Fees included in the original rules have not been changed in the new combined rule. Fees associated with these rules are imposed pursuant to Sections 22-108 and 22-2006, Idaho Code.

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

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted on September 18, 2019. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, Page 15-19](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: This section is not applicable because there are no materials incorporated by reference into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd Knight, (208) 332-8664.

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

Dated this 3rd day of October, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 02-0601-1901

02.06.01 – RULES GOVERNING THE PRODUCTION AND DISTRIBUTION OF SEED

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 22-108(2), 22-418(4), 22-418(11), 22-2004 and 22-2006, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is “Rules Governing the Production and Distribution of Seed.” ()

02. Scope. These rules govern procedures for sale or distribution of seed in Idaho, including rapeseed and bluegrass. These rules will also establish seed service testing fees for purity, germination, tetrazolium and special tests. ()

002. -- 109. (RESERVED)

SUBCHAPTER A – PURE SEED

110. DEFINITIONS.

In addition to the definitions set forth in Section 22-414, Idaho Code, the definition in Section 110 apply to the interpretation and enforcement of Subchapter A only: ()

01. Condition. “Condition” means drying, cleaning, scarifying and other operations that could change the purity or germination of the seed and require the seed lot to be retested to determine the label information. ()

111. (RESERVED)

112. METHODS OF SAMPLING -- GENERAL PROCEDURE.

01. Sample. In order to secure a representative sample, equal portions are taken from evenly distributed parts of the quantity of seed or screenings to be sampled with access to all parts of that quantity. When

more than one (1) trierful of seed is drawn from a bag, different paths will be followed. When more than one (1) handful is taken from a bag, the handfuls will be taken from well-separated points. ()

02. Free Flowing Seed. For free-flowing seed in bags or bulk, a probe or trier is used. For small free-flowing seed in bags a probe or trier long enough to sample all portions of the bag is used. ()

03. Non-Free Flowing Seed. Non-free-flowing seed, such as certain grass seed, uncleaned seed or screenings difficult to sample with a probe or trier, is sampled by thrusting the hand into the bulk and withdrawing representative portions. The hand is inserted in an open position and the fingers are held closely together while the hand is being inserted and the portion withdrawn. ()

04. Composite Samples. Composite samples will be obtained to determine the quality of a lot of seed (i.e., percentages of pure seed, other crop seed, weed seed, inert matter and germination). Individual bag samples may be obtained to determine if the lot of seed is uniform. ()

a. To determine if there is an obvious lack of uniformity of seed from which a composite sample is being obtained, each portion will be examined and the portions then combined to form a composite sample or samples. ()

b. If the lot is found not to be uniform when obtaining a composite sample to determine its quality then additional individual bag samples are taken for the purpose of testing for uniformity. ()

c. Such individual bag samples may also be taken for the purpose of testing for uniformity even though a composite sample has not previously been obtained. The identity of each individual bag sample must be maintained. ()

05. Bulk. Bulk seed or screenings are sampled by inserting a long probe or thrusting the hand into the bulk, as circumstances require, in at least seven (7) uniformly distributed parts of the quantity being sampled. At least as many trierfuls or handfuls are taken as the minimum that would be required for the same quantity of seed or screenings in bags of a size customarily used for such seed or screenings. ()

06. Bags. ()

a. For lots of six (6) bags or less, each bag will be sampled with a total of at least five (5) trierfuls taken. ()

b. For lots of more than six (6) bags, five (5) bags plus at least ten percent (10%) of the number of bags in the lots will be sampled. (Round off numbers with decimals to the nearest whole number, raising five tenths (.5) to the next whole number.) Regardless of the lot size it is not necessary that more than thirty (30) bags be sampled. ()

c. Samples are drawn from unopened bags except under circumstances where the identity of the seed has been preserved. ()

07. Packets. In sampling seed in packets, entire unopened packets are taken. ()

08. Size of Sample. ()

a. For composite sample to test for quality, the following are minimum weights for samples of seed to be submitted for analysis, test or examination ()

i. Two (2) ounces (approximately fifty five (55) grams) of grass seed not otherwise mentioned, white or alsike clover, or seeds not larger than these. ()

ii. Five (5) ounces (approximately one hundred fifty (150) grams) of red or crimson clover, alfalfa, lespedezas, ryegrasses, bromegrasses, millet, flax, rape, or seeds of similar size. ()

- iii. One (1) pound of Sudangrass, sorghum, proso, hemp seed, or seeds of similar size. ()
- iv. Two (2) pounds (approximately one thousand (1,000) grams) of cereals, vetches, or seeds of similar or larger size. ()
- b. For individual bag samples to test for uniformity. ()
 - i. The size of any individual bag sample to determine uniformity in a lot of seed is not less than the quantities set out in the “Rules and Regulations, under the Federal Seed Act” (53 Statute 1275) (Subsection 201.46). ()
 - ii. If the sample drawn is larger than desired, it is thoroughly mixed before it is divided to the desired size. ()

09. Forwarding and Receipt of Official Samples. Before being forwarded for analysis test or examination, the containers of official samples shall be properly sealed and identified with the containers of official samples initialed and dated and the sample weighed by the person who breaks the seals. ()

113. -- 119. (RESERVED)

120. GERMINATION STANDARDS FOR VEGETABLE SEEDS.
 Includes hard seed.

	Percent
Artichoke	60
Asparagus	70
Asparagusbean	75
Bean, garden	70
Bean, lima	70
Bean, runner	75
Beet	65
Broadbean	75
Broccoli	75
Brussels sprouts	70
Burdock, great	60
Cabbage	75
Cabbage, tronchuda	75
Cantaloupe (See muskmelon)	
Cardoon	60
Carrot	55
Cauliflower	75
Celeriac	55
Celery	55

	Percent
Eggplant	60
Endive	70
Kale	75
Kale, Chinese	75
Kohlrabi	75
Leek	60
Lettuce	80
Muskmelon	75
Mustard, India	75
Mustard, spinach	75
Okra	50
Onion	70
Onion, Welsh	70
Pak-choi	75
Parsley	60
Parsnip	60
Pea	80
Pepper	55
Pumpkin	75

	Percent
Chard, Swiss	65
Chicory	65
Chinese Cabbage	75
Chives	50
Citron	65
Collards	80
Corn, sweet	75
Cornsalad	70
Cowpea	75
Cress, garden	75
Cress, upland	60
Cress, water	40
Cucumber	80
Dandelion	60

	Percent
Radish	75
Rhubarb	60
Rutabaga	75
Salsify	75
Sorrel	65
Soybean	75
Spinach	60
Spinach, New Zealand	40
Squash	75
Tomato	75
Tomato, husk	50
Turnip	80
Watermelon	70

()

121. -- 129. (RESERVED)

130. GERMINATION STANDARDS FOR FLOWER SEEDS.

The kinds of flower seeds listed below are those for which standard testing procedures have been prescribed by the Association of Official Seed Analysts (AOSA) and that are required by the labeling provisions of Section 22-415, Idaho Code. The percentage listed opposite each kind is the germination standard for that kind. For the kinds marked with an asterisk, the percentage is arrived at by totaling the percent germination and percent hard seed. ()

01. Table 1.

Kind	Percent
Achillea (The Pearl) - Achillea ptarmica	50
African Daisy - Dimorphotheca aurantiaca	55
African Violet - Saintpaulia spp.	30
Ageratum - Ageratum mexicanum	60
Agrostemma (rose champion) - Agrostemma coronaria	65
Alyssum - Alyssum campactum, A. maritimum, A. procumbens, A. saxatile	60
Amaranthus - Amaranthus spp.	65
Anagalis (pimpernel) - Anagalis arvensis, Anagalis coerulea, Anagalis grandiflora	60
Anemone - Anemone coronaria, A. pulsatilla	55
Angel's Trumpet - Datura arborea	60

Kind	Percent
Arabis - <i>Arabis alpina</i>	60
Arctotis (African lilac daisy) - <i>Arctotis grandis</i>	45
Armeria - <i>Armeria formosa</i>	55
Asparagus, fern - <i>Asparagus plumosus</i>	50
Asparagus, sprenger - <i>Asparagus sprengeri</i>	55
Aster, China - <i>Callistephus chinensis</i> ; except Pompon, Powderpuff, and Princess types	55
Aster, China - <i>Callistephus chinensis</i> ; Pompon, Powderpuff, and Princess types	50
Aubretia - <i>Aubretia deltoidea</i>	45
Baby Smilax - <i>Asparagus asparagoides</i>	25
Balsam - <i>Impatiens balsamina</i>	70
Begonia - <i>Begonia fibrous rooted</i>	60
Begonia - <i>Begonia tuberos rooted</i>	50
Bells of Ireland - <i>Molucella laevis</i>	60
Brachycome (swan river daisy) - <i>Brachycome iberidifolia</i>	60
Browallia - <i>Browallia elata</i> and <i>B. speciosa</i>	65
Bupthalam (sunwheel) - <i>Bupthalam salicifolium</i>	60
Calceolaria - <i>Calceolaria</i> spp.	60
Calendula - <i>Calendula officinalis</i>	65
California Poppy - <i>Eschscholtzia californica</i>	60
Calliopsis - <i>Coreopsis bicolor</i> , <i>C. drummondii</i> , <i>C. elegans</i>	65
Campanula:	
Canterbury Bells - <i>Campanula medium</i>	60
Cup and Saucer Bellflower - <i>Campanula medium calycanthemata</i>	60
Carpathian Bellflower - <i>Campanula carpatica</i>	50
Peach Bellflower - <i>Campanula persicifolia</i>	50
Candytuft, Annual - <i>Iberis amara</i> , <i>I. umbellata</i>	65
Candytuft, Perennial - <i>Iberis gibraltarica</i> , <i>I. sempervirens</i>	55
*Castor Bean - <i>Ricinus communis</i>	60
Cathedral Bells - <i>Cobaea scandens</i>	65
Celosia - <i>Celosia argentea</i>	65

Kind	Percent
Centaurea: Basket Flower - <i>Centaurea americana</i> , Cornflower - <i>C. cyanus</i> , Dusty Miller - <i>C. candidissima</i> , Royal Centaurea - <i>C. imperialis</i> , Sweet Sultan - <i>C. moschata</i> , Velvet Centaurea - <i>C. gymnocarpa</i>	60
Cerastium (snow-in-summer) - <i>Cerastium biebersteini</i> and <i>C. tomentosum</i>	65
Chinese Forget-me-not - <i>Cynoglossum amabile</i>	55
Chrysanthemum, Annual - <i>Chrysanthemum carinatum</i> , <i>C. coronarium</i> , <i>C. segetum</i>	40
Cineraria - <i>Senecio cruentus</i>	60
Clarkia - <i>Clarkia elegans</i>	65
Cleome - <i>Cleome gigantea</i>	65
Coleus - <i>Coleus blumei</i>	65
Columbine - <i>Aquilegia</i> spp.	50
Coral Bells - <i>Heuchera sanguinea</i>	55
Coreopsis, Perennial - <i>Coreopsis lanceolata</i>	40
Corn, ornamental - <i>Zea mays</i>	75
Cosmos: Sensation, Mammoth and Crested types - <i>Cosmos bipinnatus</i> ; Klondyke type - <i>C. sulphureus</i>	65
Crossandra - (<i>Crossandra infundibuliformis</i>)	50
Dahlia - <i>Dahlia</i> spp.	55
Daylily - <i>Hemerocallis</i> spp.	45
Delphinium, Perennial: Belladonna and Bellamosum types; Cardinal Larkspur - <i>Delphinium cardinale</i> ; Chinensis types; Pacific Giant, Gold Medal and other hybrids of <i>D. elatum</i>	55
Dianthus: Carnation - <i>Dianthus caryophyllus</i> China Pinks - <i>Dianthus chinensis</i> , <i>heddewigi</i> , <i>heddensis</i> Grass Pinks - <i>Dianthus plumarius</i> Maiden Pinks - <i>Dianthus deltoides</i> Sweet William - <i>Dianthus barbatus</i> Sweet Wivelsfield - <i>Dianthus allwoodi</i>	60 70 60 60 70 60
Didiscus - (blue lace flower) - <i>Didiscus coerulea</i>	65
Doronicum (leopard's bane) - <i>Doronicum caucasicum</i>	60

Kind	Percent
Dracaena - <i>Dracaena indivisa</i>	55
Dragon Tree - <i>Dracaena draco</i>	40
English Daisy - <i>Bellis perennis</i>	55
Flax - Golden flax (<i>Linum flavum</i>); Flowering flax <i>L. grandiflorum</i> ; Perennial flax, <i>L. perenne</i>	60
Flowering Maple - <i>Abutilon</i> spp.	35
Foxglove - <i>Digitalis</i> spp.	60
Gaillardia, Annual - <i>Gaillardia pulchella</i> ; <i>G. picta</i> ; Perennial - <i>G. grandiflora</i>	45
Gerbera (transvaal daisy) - <i>Gerbera jamesoni</i>	60
Geum - <i>Geum</i> spp.	55
Gilia - <i>Gilia</i> spp.	65
Gloriosa daisy (rudbeckia) - <i>Echinacea purpurea</i> and <i>Rudbeckia hirta</i>	60
Gloxinia - (<i>Sinningia speciosa</i>)	40
Godetia - <i>Godetia amoena</i> , <i>G. grandiflora</i>	65
Gourds: Yellow Flowered - <i>Cucurbita pepo</i> ; White Flowered - <i>Lagenaria siceraria</i> ; Dishcloth - <i>Luffa cylindrica</i>	70
Gypsophila: Annual Baby's Breath - <i>Gypsophila elegans</i> ; Perennial Baby's Breath - <i>G. paniculata</i> , <i>G. pacifica</i> , <i>G. repens</i>	70
Helenium - <i>Helenium autumnale</i>	40
Helichrysum - <i>Helichrysum monstrosum</i>	60
Heliopsis - <i>Heliopsis scabra</i>	55
Heliotrope - <i>Heliotropium</i> spp.	35
Helipterum (<i>Acroclinium</i>) - <i>Helipterum roseum</i>	60
Hesperis (sweet rocket) - <i>Hesperis matronalis</i>	65
*Hollyhock - <i>Althea rosea</i>	65
Hunnemania (Mexican tulip poppy) - <i>Hunnemania fumariaefolia</i>	60
*Hyacinth bean - <i>Dolichos lablab</i>	70
Impatiens - <i>Impatiens holstii</i> , <i>I. sultani</i>	55

Kind	Percent
*Ipomea - Cypress Vine - Ipomea quamoclit; Moonflower - I. noctiflora; Morning Glories, Cardinal Climber, Hearts and Honey Vine - Ipomea spp.	75
Jerusalem cross (maltese cross) - Lychnis chalconica	70
Job's Tears - Coix lacrymajobi	70
Kochia - Kochia childsii	55
Larkspur, Annual - Delphinium ajacis	60
Lantana - Lantana camara, L. hybrida	35
Lilium (regal lily) - Lilium regale	50
Linaria - Linaria spp.	65
Lobelia, Annual - Lobelia erinus	65
Lunaria, Annual - Lunaria annua	65
*Lupine - Lupinus spp.	65
Marigold - Tagetes spp.	65
Marvel of Peru - Mirabilis jalapa	60
Matricaria (feverfew) - Matricaria spp.	60
Mignonette - Reseda odorata	55
Myosotis - Myosotis alpestris, M. oblongata, M. palustris	50
Nasturtium - Tropaeolum spp.	60
Nemesia - Nemesia spp.	65
Nemophila - Nemophila insignis	70
Nemophila, spotted - Nemophila maculata	60
Nicotiana - Nicotiana affinis, N. sanderae, N. sylvestris	65
Nierembergia - Nierembergia spp.	55
Nigella - Nigella damascena	55
Pansy - Viola tricolor	60
Penstemon - Penstemon barbatus, P. grandiflorus, P. laevigatus, P. pubescens	60
Petunia - Petunia spp.	45
Phacelia - Phacelia campanularia, P. minor, P. tanacetifolia	65
Phlox, Annual - Phlox drummondii all types and varieties	55
Physalis - Physalis spp.	60
Platycodon (balloon flower) - Platycodon grandiflorum	60
Plumbago, cape - Plumbago capensis	50
Ponytail - Beaucarnea recurvata	40

Kind	Percent
Poppy: Shirley Poppy - <i>Papaver rhoeas</i> ; Iceland Poppy - <i>P. nudicaule</i> ; Oriental Poppy - <i>P. orientale</i> ; Tulip Poppy - <i>P. glaucum</i>	60
Portulace - <i>Portulace grandiflora</i>	55
Primula (Primrose) - <i>Primula</i> spp.	50
Pyrethrum (painted daisy) - <i>Pyrethrum coccineum</i>	60
Salpiglossis - <i>Salpiglossis gloxinaeflora</i> , <i>S. sinuata</i>	60
Salvia: Scarlet Sage - <i>Salvia splendens</i> ; Mealycup Sage (blue bedder) - <i>Salvia farinacea</i>	50
Saponaria - <i>Saponaria ocymoides</i> , <i>S. vaccaria</i>	60
Scabiosa, Annual - <i>Scabiosa atropurpurea</i>	50
Scabiosa, Perennial - <i>Scabiosa caucasica</i>	40
Schizanthus - <i>Schizanthus</i> spp.	60
*Sensitive plant (mimosa) - <i>Mimosa pudica</i>	65
Shasta Daisy - <i>Chrysanthemum maximum</i> , <i>C. leucanthemum</i>	65
Silk Oak - <i>Grevillea robusta</i>	25
Snapdragon - <i>Antirrhinum</i> spp.	55
Solanum - <i>Solanum</i> spp.	60
Statice - <i>Statice sinuata</i> , <i>S. suworonii</i> (flower heads)	50
Stocks: Common - <i>Mathiola incana</i> ; Evening Scented - <i>Mathiola bicornis</i>	65
Sunflower - <i>Helianthus</i> spp.	70
Sunrose - <i>Helianthemum</i> spp.	30
*Sweet Pea, Annual and Perennial other than dwarf bush - <i>Lathyrus odoratus</i> , <i>L. latifolius</i>	75
*Sweet Pea, dwarf bush - <i>Lathyrus odoratus</i>	65
Tahoka daisy - <i>Machaeantha tanacetifolia</i>	60
Thunbergia - <i>Thunbergia alata</i>	60
Torch Flower - <i>Tithonia speciosa</i>	70
Torenia (wishbone flower) - <i>Torenia fournieri</i>	70
Tritoma Kniphofia spp.	65
Verbena, Annual - <i>Verbena hybrida</i>	35
Vinca - <i>Vinca rosea</i>	60

Kind	Percent
Viola - Viola cornuta	55
Virginian stocks - Malcolmia maritima	65
Wallflower - Cheiranthus allioni	65
Yucca (Adam's needle) - Yucca filamentosa	50
Zinnia (except Linearis and Creeping) - Zinnia angustifolia, Z. elegans, Z. grandiflora, Z. gracillima, Z. haegeana, Z. multiflora, Z. pumila	65
Zinnia, Linearis and Creeping - Zinnia linearis, Sanvitalia procumbens	50
All other kinds	50

()

02. Below Standard. A mixture of kinds of flower seeds will be considered to be below standard if the germination of any kind or combination of kinds constituting twenty-five percent (25%) or more of the mixture by number is below standard for the kind or kinds involved. ()

131. -- 139. (RESERVED)

140. GERMINATION STANDARDS FOR SEED IN HERMETICALLY SEALED CONTAINERS.

The period of validity of germination tests is extended to the following period for seed packaged in hermetically sealed containers under conditions and label requirements set forth in Subchapter A. ()

01. Germination Tests. The germination test for agricultural and vegetable seed shall have been completed within the following period, exclusive of the calendar month in which the test was completed, immediately prior to shipment, delivery, transportation or sales: ()

a. In the case of agricultural or vegetable seeds shipped, delivered, transported or sold to a dealer for resale, eighteen (18) months; ()

b. In the case of agricultural or vegetable seeds for sale or sold at retail, thirty-six (36) months. ()

02. Conditions of Packaging. The following standards, requirements, conditions must be met before seed is considered to be hermetically sealed under the provisions of Subchapter A: ()

a. The seed was packaged within nine months after harvest. ()

b. The container used does not allow water vapor penetration through any wall, including the seals, greater than five hundredths (0.05) gram of water per twenty-four (24) hours per one hundred (100) square inches of surface at one hundred degrees F. (100F) with a relative humidity on one side of ninety percent (90%) and on the other of zero percent (0%). Water vapor penetration or WVP is measured by the standards of the U.S. Bureau of Standards as-gm. H₂O/24 hr./100 sq. in./100 F/ 90% RHV. 0% RH. ()

03. Moisture. The seed in the container does not exceed the percentage of moisture, on a wet weight basis, as listed below: ()

a. Table 1.

Agricultural Seeds	Percent
Beet, field	7.5
Beet, sugar	7.5
Bluegrass, Kentucky	6.0
Clover, crimson	8.0
Fescue, red	8.0
Ryegrass, annual	8.0
Ryegrass, perennial	8.0
All other agricultural seeds	6.0
Mixtures of above	8.0

()

b. Table 2.

Vegetable Seeds	Percent
Bean, garden	7.0
Bean, lima	7.0
Beet	7.5
Broccoli	5.0
Brussels sprouts	5.0
Cabbage	5.0
Carrot	7.0
Cauliflower	5.0
Celeriac	7.0
Celery	7.0
Chard, Swiss	7.5
Chinese cabbage	5.0
Chives	6.5
Collards	5.0
Corn, sweet	8.0
Cucumber	6.0
Eggplant	6.0
Kale	5.0
Kohlrabi	5.0
Leek	6.5

Vegetable Seeds	Percent
Lettuce	5.5
Muskmelon	6.0
Mustard, India	5.0
Onion	6.5
Onion, Welsh	6.5
Parsley	6.5
Parsnip	6.0
Pea	7.0
Pepper	4.5
Pumpkin	6.0
Radish	5.0
Rutabaga	5.0
Spinach	8.0
Squash	6.0
Tomato	5.5
Turnip	5.0
Watermelon	6.5
All other vegetable seeds	6.0

()

04. Labeling. The container is conspicuously labeled in not less than eight (8) point type to indicate that the container is hermetically sealed, that the seed has been preconditioned as to moisture content, and the calendar month and year in which the germination test was completed. ()

05. Germination. The percentage of germination of seed at the time of packaging was equal to or above the standards specified elsewhere in Subchapter A of these rules. ()

141. -- 149. (RESERVED)

150. NOXIOUS WEEDS.

01. Prohibited Noxious Weed Seeds -- Table 1.

Common Name	Scientific Name
1. Beancaper, Syrian	1. <i>Zygophyllum fabago L.</i>
2. Bindweed, Field	2. <i>Convolvulus arvensis L.</i>
3. Buffalobur	3. <i>Solanum rostratum Dun.</i>
4. Bursage, Skeleton leaf	4. <i>Ambrosia tomentosa Nutt.</i>
5. Camelthorn	5. <i>Alhagi camelorum Fisch.</i>

Common Name	Scientific Name
6. Carrot, Wild	6. <i>Daucus carota</i> L.
7. Cress, Hoary	7. <i>Cardaria draba</i> (L.) Desv.
8. Crupina, Common	8. <i>Crupina vulgaris</i> Cass.
9. Fieldcress, Austrian	9. <i>Rorippa austriaca</i> (Crantz) Bess.
10. Goatgrass	10. <i>Aegilops cylindrica</i> Host
11. Groundcherry, Smooth	11. <i>Physalis subglabrata</i> Mackenz. & Bush
12. Henbane, Black	12. <i>Hyoscyamus niger</i> L.
13. Johnsongrass	13. <i>Sorghum halepense</i> L.
14. Knapweed, Diffuse	14. <i>Centaurea diffusa</i> Lam.
15. Knapweed, Russian	15. <i>Centaurea repens</i> L.
16. Knapweed, Spotted	16. <i>Centaurea maculosa</i> Lam.
17. Lythrum, Purple	17. <i>Lythrum salicaria</i> L.
18. Nightshade, Silverleaf	18. <i>Solanum elaeagnifolium</i> Cav.
19. Pepperweed, Perennial	19. <i>Lepidium latifolium</i> L.
20. Poison-Hemlock	20. <i>Conium maculatum</i> L.
21. Puncturevine	21. <i>Tribulus terrestris</i> L.
22. Quackgrass	22. <i>Elytrigia repens</i> ; <i>Agropyron repens</i> (L.) Beauv.
23. Ragwort, Tansy	23. <i>Senecio jacobaea</i> L.
24. Skeletonweed, Rush	24. <i>Chondrilla juncea</i> L.
25. Sowthistle, Perennial	25. <i>Sonchus arvensis</i> L.
26. Spurge, Leafy	26. <i>Euphorbia esula</i> L.
27. St. Johnswort, Common	27. <i>Hypericum perforatum</i> L.
28. Starthistle, Yellow	28. <i>Centaurea solstitialis</i> L.
29. Swainsonpea	29. <i>Sphaerophys salsula</i> (Pall.) DC; <i>Swainsona salsula</i> (Pallas) Taubert
30. Thistle, Canada	30. <i>Cirsium arvense</i> (L.) Scop.
31. Thistle, Musk	31. <i>Carduus nutans</i> L.
32. Thistle, Scotch	32. <i>Onopordum acanthium</i> L.
33. Toadflax, Dalmatian	33. <i>Linaria genistifolia</i> spp. <i>dalmatica</i> (L.) Maire & Petitmengin
34. Toadflax, Yellow	34. <i>Linaria vulgaris</i> Mill.
35. Woad, Dyers	35. <i>Isatis tinctoria</i> L.

()

02. Restricted Noxious Weed Seeds -- Table 2.

Common Name	Scientific Name
1. Dodder	1. <i>Cuscuta</i> spp.
2. Halogeton	2. <i>Halogeton glomeratus</i> (Stephen ex Bieb.) C.A. Mey
3. Lettuce, Blue	3. <i>Lactuca pulchella</i> (Pursch) DC.
4. Oats, Wild	4. <i>Avena fatua</i> L.
5. Plantain, Buckhorn	5. <i>Plantago lanceolata</i> L.
6. Ragweed, Western and Perennial	6. <i>Ambrosia psilostachya</i> DC., (T. & G.) Farw.
7. Rye, Medusahead	7. <i>Taeniatherum caput-medusae</i> (L.) Nevski; <i>Elymus caput-medusae</i> (L.)
8. Sumpweed, Poverty	8. <i>Iva axillaris</i> Pursh

()

03. Restricted Noxious Weed Tolerances.

()

a. Seven (7) seeds in fifty (50) grams of Agrotis species, Poa species, Rhodes grass, Bermudagrass, timothy, celery, and other agricultural or vegetable seeds of similar size and weight, within this group. ()

b. Seven (7) seeds in each fifty (50) grams of Dallisgrass, ryegrass, fescue species, foxtail millets, alfalfa, red clover, sweetclover, lespedeza, bromegrass, Brassica species, carrot, onion, and other agricultural or vegetable seeds of similar size and weight or mixtures within this group, or mixtures of this group with those in group A. ()

c. Seven (7) seeds in fifty (50) grams of alsike clover, white clover, and other agricultural or vegetable seeds of similar size and weight or mixtures within this group, with those in group A or group B. ()

d. Eight (8) seeds in one hundred fifty (150) grams of Proso millet, Sudangrass, and seeds of similar size and weight, or mixtures of seed within this group. ()

e. Forty-five (45) seeds in each pound for all wheatgrass species. ()

f. Four (4) seeds in each five hundred (500) grams of wheat, oats, rye, barley, buckwheat, sorghums, vetches, field peas, and other seeds of a size and weight similar to or greater than those within this group, or any mixtures within this group. ()

g. Containing more than one percent (1%) by weight of weed seeds including restricted noxious weed seeds referred to in Section 22-414(18)(b), Idaho Code, provided, that three percent (3%) of cheat, chess, or downy brome will be allowed in grass seed in which these weeds are found. ()

151. -- 159. (RESERVED)

160. LABEL REQUIREMENTS OF SEEDS FOR SPROUTING.

The following information shall be indicated on all labels of seeds sold for sprouting in health food stores or other outlets: ()

01. Name. Commonly accepted name of kind. ()

02. Lot. Lot number. ()

03. Percentage. Percentage by weight of the pure seed, crop seeds, inert matter, and weed seeds if required. ()

04. Germination Percentage. Percentage of germination. ()

05. Date. The calendar month and year the test was completed to determine such percentage. ()

161. -- 169. (RESERVED)

170. VIABILITY BY TZ%.

A TZ (tetrazolium) test may be used in lieu of germination for the following species with the label reading “viability by TZ%”: Bitterbrush; Saltbush; Sagebrush; Indian Ricegrass; and Winterfat. ()

171. -- 179. (RESERVED)

180. METHODS OF TESTING.

All methods used in testing and analyzing seed subject to Subchapter A and the tolerances used in the enforcement of Subchapter A shall conform as nearly as practicable to the current “Rules for Testing Seed adopted by the Association of Official Seed Analysts” (AOSA) file at the Idaho Department of Agriculture, State Seed Lab located at 2240 Kellogg Lane, Boise, Idaho 83712. ()

181. -- 189. (RESERVED)

190. SERVICE TESTING FEES -- PURITY, GERMINATION AND TETRAZOLIUM FEES.

Purity, Germination, and Tetrazolium Fees			
Kind of Seeds	Purity* \$/Unit	Germination \$/Unit	Tetrazolium** \$/Unit
AGRICULTURAL GRASS SEED			
Bluegrasses	\$45	\$25	\$40
Bromegrasses	\$38	\$24	\$40
Fescues	\$35	\$22	\$40
Orchardgrass	\$38	\$25	\$40
Ryegrasses	\$38	\$23***	\$40
Timothy	\$28	\$23	\$40
For all others the hourly rate will apply			
FIELD SEED			
Alfalfa, clovers and trefoils	\$20	\$17	\$40
Cereals (Barley, Oats, Rice, Rye, Triticale and Wheat	\$25	\$17	\$40
Beans	\$18	\$16	\$40
Corn (all types)	\$20	\$17	\$40
Peas, and Lentils	\$18	\$17.50	\$40
For all others the hourly rate will apply			

Purity, Germination, and Tetrazolium Fees			
Kind of Seeds	Purity* \$/Unit	Germination \$/Unit	Tetrazolium** \$/Unit
VEGETABLES, FLOWERS AND HERB SEED			
Brassica (Canola, Cauliflower, Broccoli, Radish, etc.)	\$40	\$17	\$50
Beets and Swiss chard	\$29	\$32	\$40
Carrots, celery, dill and parsley	\$27	\$20	\$40
Curcubits (Squash, melons, etc.)	\$25	\$20	\$40
Flowers (Bachelors button, poppy, etc.)	\$40	\$25	\$50
Lettuce, tomato, and pepper	\$25	\$20	\$40
Onion and Chives	\$25	\$20	\$40
For all others the hourly rate will apply			
TREE AND SHRUB SEED			
Bitterbrush	\$40	\$30	\$50
Saltbush	\$60	\$30	\$50
Chokecherry and Woods' rose	\$25	\$60	\$60
Serviceberry, cliff-rose and mahogany	\$30	\$30	\$40
Trees (Firs, pines, spruces, etc.)	\$25	\$30	\$40
For all others the hourly rate will apply			
RANGE AND NATIVE SEED			
Bluestems and grammas	Hourly Rate	\$30	\$50
Globemallow and penstemons	\$40	\$30	\$50
Kochia and forage Kochia	\$30	\$30	\$40
Rushes and Sedges	Hourly Rate	\$30	\$50
Sagebrush and Rabbitbrush	Hourly Rate	\$30	\$40
Wheatgrasses, wildryes, and squirreltail	\$40	\$25	\$40
Winterfat	Hourly Rate	\$30	Hourly Rate
For all others the hourly rate will apply			

* Samples with high levels of impurities (i.e. other crops, weeds, multiple florets, inert materials) requiring more than one (1) hour analyst time for purity testing will be charged the standard hourly rate of forty dollars (\$40) for each additional hour.

** For all samples submitted for a TZ or Germination test requiring more than one (1) hour for cleaning and/or preparing will be charged at the standard hourly rate of forty dollars (\$40) for each additional hour.

*** With germination fluorescence testing thirty dollars (\$30). ()

191. SERVICE TESTING FEES -- SPECIAL TESTS.

Special Testing Fees	
Test Procedures:	Fees \$/Unit
All States Noxious	\$25
Canada:	
Purity	\$13 - Added to purity fee
Germination	\$2.50 - Added to germination fee
Certified Grains	\$13 - Added to purity fee
Cold Test	\$23.50
Crop & Weed Check	\$24.50
Dormancy Percentage	\$10 - Minimum or Dormant % found x germination fee
E.C. Norms	\$20
Ergot Check	\$13.50
Noxious Weed Germination (Compost/Mulch, etc.)	\$18
Noxious Weed Purity (Hay, Straw, etc.)	\$40
Identification	\$5 - Minimum or hourly if necessary
Inventory Germinations (For Carryover Seed Only, when requested)	20% discount of listed germination fee; Available only for the months of March through July.
ISTA:	
Purity	\$13 - Added to purity fee
Germination	\$2.50 - Added to germination fee
Mixtures:	
Purity	\$12.50 - Added per kind exceeding 5%
Germination	\$12.50 - Added per kind exceeding 5%
Tetrazolium	\$18 - Added per kind exceeding 5%
Moisture Test	\$14
Round-Up-Ready Trait Test (Alfalfa, Canola, Corn)	\$40
Sand Germination	\$25
Seed Count	\$13.50
Soil Exam	\$13.50
Sod Quality:	
Bentgrass	\$66
Bermudagrass	\$64
Bluegrass	\$64

Special Testing Fees	
Test Procedures:	Fees \$/Unit
Soil Germination	\$23.50
Species Exam	\$24.50
Undesirable Grass Species	\$25.50

()

192. SERVICE TESTING FEES -- MISCELLANEOUS FEES.

Miscellaneous Fees	
Type of Service:	Fees \$/Unit
Administrative Charge per Test for Internet Access and Data Processing.	Not to exceed \$2 per test
Hourly Charge	\$40
Reports:	
Merge Records	\$4
Rush Service	\$25

()

193. -- (RESERVED)

194. SEED DEALER'S LICENSE FEES.

Seed dealers shall obtain a seed dealer's license for each location in Idaho before they can sell, offer for sale, expose for sale or deliver agricultural seeds in packages of eight (8) ounces or more or bulk under contract within the state of Idaho. Seed dealers pay only for the service or services they render according to the following fee schedule: ()

- 01. In-State Seed Dealer's License Fees:** ()
 - a.** License to condition or clean agricultural seeds in Idaho - one-hundred dollars (\$100). ()
 - b.** License to label container or bulk agricultural seeds for sale in Idaho - fifty dollars (\$50). ()
 - c.** License to sell, offer for sale, expose for sale, or deliver agricultural seeds in packages of eight (8) ounces or more or in bulk under a contract in Idaho: ()
 - i.** For annual gross sales of five hundred dollars (\$500) or more, but less than one thousand dollars (\$1,000) - fifty dollars (\$50). ()
 - ii.** For annual gross sales of one thousand dollars (\$1,000) or more - one hundred dollars (\$100). ()
- 02. Out-of-State Seed Dealer's License Fee.** Three hundred fifty dollars (\$350). ()
- 03. Exemptions.** ()
 - a.** Any person selling seed who has total annual gross seed sales not exceeding five hundred dollars

(\$500) is exempt from Section 194. ()

b. An in-state dealer or out-of-state dealer who sells, offers for sale, exposes for sale or delivers seed only in packages of less than eight (8) ounces is exempt from Section 194. ()

195. -- 209. (RESERVED)

SUBCHAPTER B – RAPESEED

210. DEFINITIONS.

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

01. **Producer.** Any person who is the owner, tenant, or operator of land who has an interest in and is entitled to receive all or any part of the proceeds from the sale of any commodity produced on that land. ()

02. **Rapeseed.** Those species of *Brassica napus*, *Brassica rapa* (formerly *Brassica campestris*), and *Brassica juncea*. ()

03. **Types.** Those species and varieties of rapeseed classified as follows: ()

a. Edible: ()

i. Low Erucic Acid Rapeseed -- Low Glucosinolates (LEAR-LG), commonly called “canola,” is the seed of the species *Brassica napus*, *Brassica juncea*, or *Brassica rapa*, the oil components of which seed contain less than two percent (2.0%) erucic acid and the seed meal will contain less than thirty (30) micromoles of any one (1) or any mixture of 3-butenyl glucosinolate, 4-pentenyl glucosinolate, 2-hydroxy - 3-butenyl glucosinolate, and 2-hydroxy - 4 pentenyl glucosinolate per gram ($\mu\text{m/g}$) of air dry, oil free solid as determined by any approved method. ()

ii. Low Erucic Acid Rapeseed -- High Glucosinolates (LEAR-HG) Rapeseed varieties shall contain less than two percent (2.0%) erucic acid in the oil of the rapeseed and more than thirty (30) micromoles per one (1) gram ($\mu\text{m/g}$) glucosinolates in the rapeseed meal. ()

b. Industrial: ()

i. High Erucic Acid Rapeseed -- Low Glucosinolates (HEAR-LG) Rapeseed are rapeseed varieties used for production of industrial oil that shall contain erucic acid levels above forty percent (40%) in the oil of the rapeseed and less than thirty (30) micromoles per one (1) gram ($\mu\text{m/g}$) glucosinolates in the meal of the rapeseed. ()

ii. High Erucic Acid Rapeseed -- High Glucosinolates (HEAR-HG) Rapeseed are rapeseed varieties used for production of industrial oil that shall contain erucic acid levels above forty percent (40%) in the oil of the rapeseed and more than thirty (30) micromoles per one (1) gram ($\mu\text{m/g}$) glucosinolates in the meal of the rapeseed. ()

04. **Volunteer Rapeseed.** A plant that arises from accidental or unintentional scattering of seed. ()

05. **Condiment Mustard.** Varieties of *Brassica juncea* produced for seed to be used for spice or condiment. ()

06. **Green Manure Rapeseed.** Varieties of rapeseed used as a cover crop to be plowed down prior to flowering and maturity. ()

211. (RESERVED)

212. PRODUCTION DISTRICTS.

01. District I. All land in Idaho not listed under District II in Subsection 212.02 of Subchapter B. ()

02. District II. All land within the boundaries of Ada, Canyon, Gem, Owyhee (north of Murphy) and Payette counties. ()

213. -- 219. (RESERVED)

220. RESTRICTIONS.

01. District I. Except as otherwise provided in Subchapter B, industrial and edible types of rapeseed may be planted in District I. ()

02. District II. Except as otherwise provided in Subchapter B, no rapeseed of either variety may be planted in District II. ()

03. Restrictions: ()

a. Industrial types of rapeseed planted in District I must adhere to the following conditions: ()

i. It is the responsibility of the person planting industrial types of rapeseed in District I to consult with and obtain the written approval from all farmers bordering the fields to be planted with industrial types of rapeseed. ()

ii. Industrial types of rapeseed planted in District I must be at least one (1) mile from a field planted to edible types of rapeseed. ()

221. -- 229. (RESERVED)

230. REQUIREMENTS FOR ALL BRASSICA SEEDS TO BE PLANTED IN IDAHO.

01. Requirements. All *Brassica* seeds to be planted in Idaho shall meet the following requirements. ()

a. *Brassica* seeds shall be treated with an EPA and State registered fungicide for the control of blackleg (*Leptosphaeria maculans*). ()

b. *Brassica* seed lots produced outside Idaho shall be accompanied by a phytosanitary certificate stating that the seed is free (zero tolerance) from blackleg based on a laboratory test of a minimum of two point nine (2.9) grams or one thousand (1,000) seeds. ()

02. Exemptions. The following are not subject to the provisions of Subsections 230.01.a. and 230.01.b. ()

a. *Brassica* seeds sold in lots of two (2) pounds or less. ()

b. *Brassica* seeds produced in Idaho. ()

231. -- 239. (RESERVED)

240. RAPESEED GROWING OUTSIDE CULTIVATED FIELDS ENFORCEMENT AND PENALTIES.

Volunteer rapeseed plants within designated production districts shall be destroyed prior to flowering. The Director has the authority to require destruction of any rapeseed prior to flowering that has not met the provisions of Subchapter B. In the event that the person responsible for planting the rapeseed does not comply with the destruction order, the Director is authorized to have the rapeseed destroyed by a third party and the cost of destruction charged to

the party responsible for planting the rapeseed. ()

241. -- 249. (RESERVED)

250. TRANSPORTATION OF BRASSICA SEEDS INTO AND THROUGHOUT IDAHO.

Any transport of *Brassica* seeds shall be accomplished in suitably packaged, covered or sealed containers or vehicles in order to avoid the accidental spread of seed in non-production and prohibited areas. ()

251. -- 309. (RESERVED)

SUBCHAPTER C – BLUEGRASS

310. DEFINITIONS.

In addition to the definitions found in Section 22-2005, Idaho Code, the definitions found in Section 310 apply to the interpretation and enforcement of Subchapter C only. ()

01. Annual Bluegrass. *Poa annua* and all related species off-types or sub-species of *Poa annua*, hereinafter referred to as annual bluegrass. ()

02. Annual Bluegrass Analysis Certificate. A test report from an official laboratory showing freedom from annual bluegrass. ()

03. Grass Species. All bluegrass (*Poa*) species, fescue (*Festuca*) species, ryegrass (*Lolium*) species and all bentgrass (*Acrostic*) species. ()

04. Official Seed Laboratory. A seed testing laboratory approved by the Director. ()

05. Annual Bluegrass Quarantine Release Tag. A numbered tag printed and issued by the Idaho Department of Agriculture to be attached to each bag showing said seed has met quarantine requirements and giving the following information: “This lot of seed was tested and found to be apparently free of annual bluegrass and is eligible for planting in Idaho.” ()

06. Rough Bluegrass Quarantine Release Tag. A numbered tag printed and issued by the Idaho State Department of Agriculture to be attached to each bag showing said seed has met quarantine requirements and giving the following information: “This lot of seed was tested and found to be apparently free of rough bluegrass and is eligible for planting in Idaho.” ()

07. Regulated Pest. The seeds of *Poa annua* (Annual bluegrass) and all related off-types or sub-species of *Poa annua* hereinafter referred to as Annual bluegrass that are objectionable in grass seed stock, are considered weeds for the purposes of this chapter. ()

08. Representative Sample. A sample of seed drawn in accordance to Subchapter A of this rule. ()

09. Rough Bluegrass. *Poa trivialis* and all related off-types or sub-species of *Poa trivialis*, hereinafter referred to as rough bluegrass. ()

10. Rough Bluegrass Analysis Certificate. A test report from an official laboratory showing freedom from rough bluegrass. ()

11. Seed Stock. Those seeds of grass species that are to be planted for seed increase or with intent of seed increase. ()

311. -- 319. (RESERVED)

320. ANNUAL BLUEGRASS REGULATED AREA.

The regulated area is the entire state of Idaho. ()

321. ROUGH BLUEGRASS REGULATED AREA.

The regulated areas are the Idaho counties of Benewah, Bingham, Blaine, Bonner, Camas, Clark, Clearwater, Elmore, Idaho, Jerome, Kootenai, Latah, Lewis, Madison, Nez Perce, Power, Shoshone and Twin Falls. ()

322. ROUGH BLUEGRASS QUARANTINE – RESTRICTIONS.

No rough bluegrass shall be planted for seed production in the regulated areas. ()

323. -- 329. (RESERVED)

330. REGULATED ARTICLES.

Those articles that are regulated are seed stocks as defined in Subsection 310.11. ()

331. -- 339. (RESERVED)

340. RULES GOVERNING PLANTING OF REGULATED ARTICLES (ANNUAL BLUEGRASS).

01. Requirements. Prior to any person planting any grass species seed stock in Idaho, that person shall comply with the following requirements: ()

a. Submit for an official laboratory analysis a representative sample showing freedom from annual bluegrass based on a five (5) gram sample for bentgrass or redtop, a twenty-five (25) gram sample for bluegrass, or a fifty (50) gram sample for other grasses; or ()

b. Have a representative sample submitted for testing. ()

02. Tags. Upon receipt by the Director of an official seed laboratory analysis showing freedom from annual bluegrass, sequentially numbered tags will be issued for each bag found free of annual bluegrass from those lots according to Subsection 310.06. ()

03. Analysis Certificate. In lieu of tags, a seed analysis certificate from an official seed laboratory showing each lot being planted to be free from annual bluegrass must be kept on file for a minimum of one (1) year after all of the inventory of that lot's harvested seed has been sold. ()

341. QUALIFICATIONS OF REGULATED ARTICLES FOR QUARANTINE RELEASE (ROUGH BLUEGRASS).

01. Planting Seed Stock of Regulated Articles. Any person planting seed stock of regulated articles shall comply with the following requirements: ()

a. Submit to the Director an official laboratory analysis of a representative sample showing freedom from rough bluegrass based on a five (5) gram sample for bentgrass or redtop, a twenty-five (25) gram sample for bluegrass, or a fifty (50) gram sample for other grasses; or ()

b. Submit to the Director a representative sample for laboratory analysis. ()

02. Quarantine Release Tag. Upon receipt of an official seed laboratory analysis, the Director may upon request issue sequentially numbered tags for each bag of regulated article found free of rough bluegrass. ()

03. Analysis Certificate. In lieu of tags, a seed analysis certificate from an official seed laboratory showing each lot being planted to be free from rough bluegrass must be kept on file for a minimum of one (1) year after all of the inventory of that lots harvested seed has been sold. ()

342. -- 349. (RESERVED)

350. INFESTED SEED STOCK (ANNUAL BLUEGRASS).

Each lot of seed found to contain annual bluegrass shall be placed under a “Hold Order” pursuant to Section 22-103(20), Idaho Code, to be released only for shipment out of Idaho or for planting in nurseries of two (2) acres or less under supervision of the Director. The nursery shall be seeded in rows spaced twenty-four (24) inches apart and it is the duty of the person receiving such seed to rogue this increase area or chemically treat to eradicate the annual bluegrass. Seed increases shall be inspected by the department or the Idaho Crop Improvement Association at least three (3) times during the seedling year. Any areas not passing inspection shall not be harvested but is destroyed upon the order of the Director at the owner’s expense. ()

351. ROUGH BLUEGRASS QUARANTINE - INSPECTIONS.

The Director will cause inspections to be made in accordance with the provisions of Section 22-2007, Idaho Code. ()

01. Infested Seed Stock. Lots of turf seed stock contaminated with rough bluegrass seeds may be planted in an approved nursery of two (2) acres or less under the supervision of the Director. The nursery shall be seeded in rows spaced twenty-four (24) inches apart and it is the duty of the person receiving such seed stock to rogue the planting or chemically treat to eradicate the rough bluegrass. The approved nursery will be inspected by the Department or the Idaho Crop Improvement Association at least three (3) times during the seedling year. Any approved nursery not passing inspection shall not be harvested but will be destroyed upon the order of the Director at the owner’s expense. ()

352. -- 359. (RESERVED)

360. APPLICATION FOR NURSERY INSPECTION.

A person shall make application for nursery inspection to the Idaho Department of Agriculture or the Idaho Crop Improvement Association at least fourteen (14) days prior to planting. ()

361. -- 369. (RESERVED)

370. EXEMPTIONS (ANNUAL BLUEGRASS).

- 01. Forage.** These rules do not apply to seed sown for forage. ()
- 02. Experiments.** These rules do not apply to: ()
 - a.** Experiments or trial grounds of the United States Department of Agriculture; or ()
 - b.** Experiments or trial grounds of the Idaho State Experiment Station; or ()
 - c.** Trial grounds of any person, firm, or corporation provided said trial ground plantings are approved by the Director and under supervision of technically-trained personnel familiar with annual bluegrass control. ()

371. EXEMPTIONS (ROUGH BLUEGRASS).

01. Experiments or Trial Grounds. This quarantine shall not apply to: experiments or trial grounds of the United States Department of Agriculture, experiments or trial grounds of the University of Idaho Agriculture Experiment Station, or trial grounds of any person, provided said trial ground plantings are approved by the Director and under supervision of technically-trained personnel familiar with rough bluegrass. ()

02. Rough Bluegrass. Rough bluegrass may be planted in the regulated areas for turf but shall not be allowed to mature to the seed producing stage. ()

372. -- 379. (RESERVED)

380. FEES AND CHARGES.

- 01. Sampling.** Fees for official sampling drawn by the Director are twelve dollars (\$12) per sample.

()

02. Seed Analysis. Fees for seed analysis are that fee provided in the fee schedule of the official Seed Testing Laboratory. ()

03. Inspection. Inspection fees for nursery plantings are fifty dollars (\$50) per acre or portion thereof for each inspection. Any field of less than one acre is a minimum fee of fifty dollars (\$50). ()

04. Quarantine Release Tags. Quarantine release tags will be twenty-five cents (\$0.25) per tag and charged to person(s) when issued. ()

381. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.06.02 – RULES GOVERNING REGISTRATIONS AND LICENSES

DOCKET NO. 02-0602-1902 (NEW CHAPTER)

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE 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 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 22-604, 22-2204, 22-2303(5), 22-2511, & 25-2710, Idaho Code.

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

Five rules administered by the ISDA either require a license or registration of certain agricultural activities or agricultural products. These rules are IDAPA 02.06.03, “Rules Pertaining to the Idaho Nurseries and Florists Law,” IDAPA 02.06.30, “Rules Under the Idaho Bee Inspection Law,” IDAPA 02.06.02, “Rules Pertaining to the Idaho Commercial Feed Law,” IDAPA 02.06.12, “Rules Pertaining to the Idaho Fertilizer Law,” and IDAPA 02.06.41, “Rules Pertaining to the Soil and Plant Amendment Act.” These rules were promulgated to carry out the requirements described in Title 22, Chapters 6, 22, 23, and 25; and Title 25, Chapter 27, Idaho Code. In order to streamline and simplify rules related to licenses and registration, the ISDA has decided to combine all five rules into a single rule to be titled “02.06.02, Rules Governing Registrations and Licenses.” No substantive changes are being made to the five rules cited above. However, these rules were reviewed for repeal and amendment of certain sections consistent with the guidance and direction provided in the Red Tape Reduction Act. Therefore, the consolidated rule was reviewed to update authorities, eliminate unnecessarily restrictive language and redundancy.

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the November Idaho Administrative Bulletin, [Vol. 19-11, pages 182-205](#).

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

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. Nursery or florists are charged a license and an inspection or special service fee according to category. Apiaries are charged a fee for inspection, sampling and other field work according to category. Commercial feed distributed in Idaho is assessed a forty dollar fee per product. Fertilizers distributed in Idaho are assessed a registration fee per product in addition to a fee per ton distributed. Soil and plant amendments distributed in Idaho are assessed a registration fee per product in addition to a fee per ton distributed. Fees included in the original rules have not been changed in the new combined rule. Fees associated with these rules are imposed pursuant to Sections 22-608, 22-2208, 22-2305, 22-2503, and 25-2704, Idaho Code.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Lloyd Knight, Administrator, at (208) 332-8664.

Dated this 27th day of November, 2019.

Brian Oakey, Deputy Director
Idaho Department of Agriculture
Ph: (208) 332-8552 / Fax: (208) 334-2170

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

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), 22-2511, and 25-2710, Idaho Code.

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

PUBLIC HEARING

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

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

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: Five rules administered by the ISDA either require a license or registration of certain agricultural activities or agricultural products. These rules are IDAPA 02.06.03, "Rules Pertaining to the Idaho Nurseries and Florists Law," IDAPA 02.06.30, "Rules Under the Idaho Bee Inspection Law," IDAPA 02.06.02, "Rules Pertaining to the Idaho Commercial Feed Law," IDAPA 02.06.12, "Rules Pertaining to the Idaho Fertilizer Law," and IDAPA 02.06.41, "Rules Pertaining to the Soil and Plant Amendment Act." The rules were promulgated to carry out the requirements described in Title 22, Chapters 6, 22, 23, and 25; and Title 25, Chapter 27, Idaho Code. In order to streamline and simplify rules related to licenses and registration, the ISDA has decided to combine all five rules into a single rule to be titled "*02.06.02, Rules Governing Registrations and Licenses.*" No substantive changes are being made to the five rules cited above. All rules were reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Fees included in the original rules have not been changed in the new combined rule. Fees associated with these rules are imposed pursuant to Sections 22-608, 22-2208, 22-2305, 22-2503, and 25-2704, Idaho Code.

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

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted on September 18, 2019. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, Page 15-19](#).

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

1. The Association of American Feed Control Officials (AAFCO) Official Publication. The Terms, Ingredient Definitions and Policies as published in the “2019 Official Publication” of AAFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 25, Chapter 27, Idaho Code, and any rule promulgated thereunder.
2. The Merck Index. The “2013 Merck Index,” 15th Edition, as published by Merck Research Laboratories Division of Merck & Co., Incorporated. The Merck Index is a copyrighted publication and not available in an electronic format.
3. The Association of American Plant Food Control Officials (AAPFCO) Official Publication. The Terms, Ingredient Definitions, and Policies, as published in the “2020 Official Publication” of AAPFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 22, Chapter 6, Idaho Code, and any rule promulgated thereunder.
4. The Association of Official Agricultural Chemists (AOAC) International. The “2019 Official Methods of Analysis (OMA) of the AOAC,” 21st Edition, a copyrighted publication, is maintained and published by the AOAC International.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd Knight, Administrator, at (208) 332-8664.

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

Dated this 3rd day of October, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 02-0602-1902

02.06.02 – RULES GOVERNING REGISTRATIONS AND LICENSES

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 22-604, 22-2204, 22-2303(5), 22-2503, 22-2511, and 25-2710, Idaho Code. ()

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is IDAPA 02.06.02, “Rules Governing Registrations and Licenses.” ()

02. Scope. These rules specify general commercial feed, fertilizer, and soil and plant amendment product registration and label requirements, and provide inspection authorities. These rules establish a fee schedule for special nursery and florist services and set forth conditions under which a shipping permit will be issued. These rules are also to prevent the introduction or further dissemination of certain bee diseases by providing authority to enter, inspect, and control bee pests and levy penalties. ()

002. -- 103. (RESERVED)

SUBCHAPTER A – COMMERCIAL FEED

104. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into this Subchapter A: ()

01. The Association of American Feed Control Officials (AAFCO) Official Publication. The Terms, Ingredient Definitions and Policies as published in the “2020 Official Publication” of AAFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 25, Chapter 27, Idaho Code, and any rule promulgated thereunder. A copy may be purchased online from the AAFCO website at: www.aafco.org. ()

02. The Merck Index. The “2013 Merck Index,” 15th Edition, as published by Merck Research Laboratories Division of Merck & Co., Incorporated. The Merck Index is a copyrighted publication and not available in an electronic format. A copy may be purchased online from Merck & Co., Inc at: <http://www.rsc.org/merckindex>. ()

105. -- 109. (RESERVED)

110. DEFINITIONS AND TERMS.

In addition to the definitions found in Section 25-2703, Idaho Code, the following definitions apply in the interpretation and enforcement of Subchapter A only: ()

01. All Life Stages. Gestation/lactation, growth, and adult maintenance life stages. ()

02. Family. A group of products, which are nutritionally adequate for any or all life stages based on their nutritional similarity to a lead product, that has been successfully test-fed according to an AAFCO feeding protocol(s). ()

03. Hay. The aerial portion of grass or herbage especially cut, cured and baled or stacked for animal feeding, without further processing. ()

04. Immediate Container. The unit, can, box, tin, bag, or other receptacle or covering in which a pet food or specialty pet food is displayed for sale to retail purchasers, but does not include containers used as shipping containers. ()

05. Ingredient Statement. A collective and contiguous listing on the label of the ingredients of which the pet food or specialty pet food is composed. ()

06. Principal Display Panel. The part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale and may include the front, back, or side panels of the package. ()

07. Viable Noxious Weed Seed. Any seed or propagule of a noxious weed, as identified or listed by Title 22, Chapter 24, Idaho Code, or any rules promulgated thereunder, that has not been ground fine enough or otherwise treated to destroy the ability to germinate. ()

111. -- 114. (RESERVED)

115. REGISTRATION AND FEES.

01. Product Registration Fee. Whenever a commercial feed is registered for distribution in the state of Idaho, a fee of forty dollars (\$40) per product will be collected. ()

a. The Department will utilize these funds for the operation of all program activities, including but not limited to, registration, label review, inspection and sampling, and laboratory analysis. ()

b. The fee will be set by the Department such that all costs associated with the commercial feed program will be covered by the registration fee without the need for additional state general or dedicated funding. ()

02. Product Registration Fee Exemption. Sellers who are not regularly engaged in the business of manufacturing or selling commercial feed and whose total amount of gross annual sales does not exceed five hundred dollars (\$500) are exempt from payment of the registration fee. However, the Department retains the right to inspect any feed in the possession of those persons exempted by Subsection 115.02 at any time. ()

a. This exemption pertains to the registration fee only, and does not exempt a person or business from other sections of Subchapter A and/or the Idaho Commercial Feed Law. ()

b. The Department reserves the right to review the records of sellers who are claiming or who have claimed that they are exempt from the payment of the registration fee, in order to ensure that they qualify for the exemption. ()

c. The Department further reserves the right to conduct any and all inspections allowed under Section 25-2709, Idaho Code, in order to ensure compliance with Subchapter A and/or the Idaho Commercial Feed Law. ()

116. -- 119. (RESERVED)

120. LABEL FORMAT.

01. Label Format. Commercial feeds shall be labeled with the information prescribed in Subchapter A on the principal display panel of the product and in the following general format. ()

a. Net Weight. ()

b. Product name and brand name if any. ()

c. If a drug is used, the required directions for use and precautionary statements or reference to their location if the detailed feeding directions and precautionary statements appear elsewhere on the label. ()

d. The guaranteed analysis of the feed as required under the provisions of Section 25-2705(1)(c) of the Commercial Feed Law includes the following items, unless exempted, and in the order listed: ()

i. Minimum percentage of crude protein. ()

ii. Maximum or minimum percentage of equivalent protein from non-protein nitrogen. ()

iii. Minimum percentage of crude fat. ()

iv. Maximum percentage of crude fiber. ()

v. Minerals, to include, in the following order: minimum and maximum percentages of calcium (Ca), minimum percentage of phosphorus (P), minimum and maximum percentages of salt (NaCl), and other minerals. ()

- vi. Vitamins. ()
 - vii. Total sugars as invert on dried molasses products or products being sold primarily for their sugar content. ()
 - viii. Exemptions. Guarantees for minerals are not required when there are no specific label claims and when the commercial feed contains less than six and one-half percent (6 1/2%) of Calcium, Phosphorus, Sodium, or Chloride. Guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin supplement. Guarantees for crude protein, crude fat, and crude fiber are not required when the commercial feed is intended for purposes other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, such as drug premixes, mineral or vitamin supplements, and molasses. ()
 - e. Feed ingredients, collective terms for the grouping of feed ingredients, or appropriate statements as provided under the provisions of Section 25-2705(1)(d) of the Commercial Feed Law shall be listed in decreasing order of predominance by weight: ()
 - i. The name of each ingredient as defined in the Official Publication of the Association of American Feed Control Officials, common or usual name, or one approved by the Director. ()
 - ii. Collective terms for the grouping of feed ingredients as defined in the Official Definitions of Feed Ingredients published in the Official Publication of the Association of American Feed Control Officials in lieu of the individual ingredients; provided that when a collective term for a group of ingredients is used on the label, individual ingredients within that group shall not be listed on the label. The manufacturer shall provide the feed control official, upon request, with a list of individual ingredients within a defined group, that are or have been used at manufacturing facilities distributing in or into the state. ()
 - iii. The registrant may affix the statement, "ingredients as registered with the State" in lieu of the ingredient list on the label. The list of ingredients must be on file with the Director. This list shall be made available to the feed purchaser upon request. ()
 - f. Name and principal mailing address of the manufacturer or person responsible for distributing the feed. The principal mailing address shall include the street address, city, state, and zip code; however, the street address may be omitted if it is shown in the current city directory or telephone directory. ()
 - g. The information required in Section 25-2705 of the Commercial Feed Law must appear in its entirety on the principal display panel of the container. ()
 - h. Labeling shall include all statements and promotion on company websites or other internet based customer interfaces. ()
- 02. Customer Formula Invoice and Tag Requirements. ()**
- a. Bulk shipments of customer-formula feed shall be accompanied by an invoice, delivery slip or other shipping documents identifying the shipment as customer-formula feed and the name and address of the customer to whose order it is made. ()
 - b. Bagged customer-formula feed will be labeled with a tag identifying each bag as such. The total bags in each customer's shipment will be segregated from other bagged feed and identified with the name and address of the customer to whose order it is made. ()
 - c. Nutritional guarantees and guarantees of other analytes, and a list of ingredients, in descending order of predominance by weight, of a customer-formula feed may be used in lieu of specific weights or volumes of each ingredient, as required in Section 25-2705(2)(d), Idaho Code, when so ordered by the customer. ()

121. -- 124. (RESERVED)

125. BRAND AND PRODUCT NAMES.

01. Intended Use. The brand or product name must be appropriate for the intended use of the feed and must not be misleading. If the name indicates the feed is made for a specific use, the character of the feed must conform therewith. A mixture labeled "Dairy Feed," for example, must be suitable for that purpose. ()

126. -- 129. (RESERVED)

130. EXPRESSION OF GUARANTEES.

01. Percentage by Weight. The guarantees for crude protein, equivalent protein from non-protein nitrogen, crude fat, crude fiber and mineral guarantees (when required) will be in terms of percentage by weight. ()

02. Commercial Feeds. Commercial feeds containing six and one-half percent (6 1/2%) or more Calcium, Phosphorus, Sodium or Chloride shall include in the guaranteed analysis the minimum and maximum percentages of calcium (Ca), the minimum percentage of phosphorus (P), and if salt is added, the minimum and maximum percentage of salt (NaCl). Minerals, except salt (NaCl) shall be guaranteed in terms of percentage of the element. When calcium and/or salt guarantees are given in the guaranteed analysis such shall be stated and conform to the following: ()

a. When the minimum is five percent (5%) or less, the maximum will not exceed the minimum by more than one (1) percentage point. ()

b. When the minimum is above five percent (5%), the maximum will not exceed the minimum by more than twenty percent (20%) and in no case shall the maximum exceed the minimum by more than five (5) percentage points. ()

03. Vitamin Content. Guarantees for minimum vitamin content of commercial feeds and feed supplements, when made, shall be stated on the label in milligrams per pound of feed except that: ()

a. Vitamin A, other than precursors of vitamin A, shall be stated in International or USP units per pound. ()

b. Vitamin D, in products offered for poultry feeding, shall be stated in International Chick Units per pound. ()

c. Vitamin D for other uses shall be stated in International or USP units per pound. ()

d. Vitamin E shall be stated in International USP units per pound. ()

e. Guarantees for vitamin content on the label of a commercial feed shall state the guarantee as true vitamins, not compounds, with the exception of the compounds, Pyridoxine Hydrochloride, Choline Chloride, Thiamine, and d-Pantothenic Acid. ()

f. Oils and premixes containing vitamin A or vitamin D or both may be labeled to show vitamin content in terms of units per gram. ()

131. -- 134. (RESERVED)

135. NON-PROTEIN NITROGEN.

01. Urea. Urea and other non-protein nitrogen products defined in the Official Publication of the Association of American Feed Control Officials or by the Director are acceptable ingredients only in commercial feeds for ruminant animals as a source of equivalent crude protein. If the commercial feed contains more than eight and seventy-five hundredths percent (8.75%) of equivalent crude protein from all forms of non-protein nitrogen, added as such, or the equivalent crude protein from all forms of non-protein nitrogen, added as such, exceeds one-

third (1/3) of the total crude protein, the label shall bear adequate directions for the safe use of feeds and a precautionary statement: "CAUTION: USE AS DIRECTED." The directions for use and the caution statement shall be in type of such size so placed on the label that they will be read and understood by ordinary persons under customary conditions of purchase and use. ()

02. Non-Protein Nitrogen Defined. Non-protein nitrogen defined in the Official Publication of the Association of American Feed Control Officials, when so indicated, are acceptable ingredients in commercial feeds distributed to non-ruminant animals as a source of nutrients other than equivalent crude protein. The maximum equivalent crude protein from non-protein nitrogen sources when used in non-ruminant rations shall not exceed one and twenty-five hundredths percent (1.25%) of the total daily ration. ()

03. Labels for Medicated Feeds. On labels such as those for medicated feeds that bear adequate feeding directions and/or warning statements, the presence of added non-protein nitrogen shall not require a duplication of the feeding directions or the precautionary statements as long as those statements include sufficient information to ensure the safe and effective use of this product due to the presence of non-protein nitrogen. ()

136. -- 139. (RESERVED)

140. DRUG AND FEED ADDITIVES.

01. Satisfactory Evidence. Satisfactory evidence of safety and efficacy of a commercial feed may be: ()

a. When the commercial feed contains such additives, the use of which conforms to the requirements of the applicable regulation in the Code of Federal Regulations, Title 21, or which are "prior sanctioned" or "generally recognized as safe" for such use; or ()

b. When the commercial feed is itself a drug and is generally recognized as safe and effective for the labeled use or is marketed subject to an application approved by the Food and Drug Administration under Title 21 U.S.C. 360(b). ()

141. -- 144. (RESERVED)

145. ADULTERANTS.

01. Substances. For the purpose of Section 25-2707, Idaho Code, of the Commercial Feed Law, the terms "poisonous or deleterious substances" include, but are not limited to, the following: ()

a. Fluorine and any mineral or mineral mixture that is to be used directly for the feeding of domestic animals and in which the fluorine exceeds two tenths percent (0.2%) for breeding and dairy cattle; three tenths percent (0.3%) for slaughter cattle; three tenths percent (0.3%) for sheep; thirty-five hundredths percent (0.35%) for lambs; forty-five hundredths percent (0.45%) for swine; and six tenths percent (0.6%) for poultry. ()

b. Fluorine bearing ingredients when used in such amounts that they raise the fluorine content of the total ration (exclusive of roughage) above the following amounts: four thousandths percent (0.004%) for breeding and dairy cattle; nine thousandths percent (0.009%) for slaughter cattle; six thousandths percent (0.006%) for sheep; one hundredths percent (0.01%) for lambs; fifteen thousandths percent (0.015%) for swine and three hundredths percent (0.03%) for poultry. ()

c. Fluorine bearing ingredients incorporated in any feed that is fed directly to cattle, sheep or goats consuming roughage (with or without) limited amounts of grain, that results in a daily fluorine intake in excess of fifty (50) milligrams of fluorine per one hundred (100) pounds of body weight. ()

d. Soybean meal, flakes or pellets or other vegetable meals, flakes or pellets that have been extracted with trichlorethylene or other chlorinated solvents. ()

e. Sulfur dioxide, Sulfurous acid, and salts of Sulfurous acid when used in or on feeds of feed ()

ingredients that are considered or reported to be a significant source of vitamin B1 (Thiamine). ()

02. Screenings or By-Products. All screenings or by-products of grains and seeds containing weed seeds, when used in commercial feed or sold as such to the ultimate consumer, shall be ground fine enough or otherwise treated to destroy the viability of such weed seeds. ()

03. Viable Noxious Weed Seed. Viable noxious weed seed as defined in Subsection 110.07. ()

146. -- 149. (RESERVED)

150. ADOPTIONS AND PROMULGATION.

All rules heretofore adopted and promulgated August 16, 1971 pertaining to the Idaho Commercial Feed Law, Title 25, Chapter 27, Idaho Code, are hereby repealed, and are replaced by Subchapter A. ()

151. -- 159. (RESERVED)

160. COTTONSEED.

01. Certification. Prior to entry into the state of Idaho all shipments of cottonseed or cottonseed seed products destined for animal feed shall be certified as having been sampled and analyzed and no greater amount than twenty (20) ppb of aflatoxin shall be contained within the product or products, except that cottonseed meal intended for use as an animal feed or feed ingredient for beef cattle, swine and poultry, may be certified to contain more than twenty (20) ppb but less than three hundred (300) ppb of aflatoxin. ()

02. Storage Location and Destination. Whole cottonseed, cottonseed meal or cottonseed seed products entering the state certified to contain no greater than twenty (20) ppb aflatoxin, or cottonseed meal certified to contain more than twenty (20) ppb but less than three hundred (300) ppb aflatoxin shall be accompanied by the certification document aboard carrier, be identified with a storage location at destination, and the certification document shall be maintained on file at the shipment destination for no less than one (1) year. In the case of bulk rail car shipments, the certification document shall accompany the invoice or bill-of-lading and be identified with a storage location at destination. The certification document shall be maintained on file at the shipment destination for no less than one (1) year. ()

03. Registration. Idaho firms wishing to import into the state and/or handle cottonseed meal containing more than twenty (20) ppb but less than three hundred (300) ppb aflatoxin for distribution or sale shall register annually with the Department their intent to do so. Feedlots and other end user operations importing the cottonseed meal as defined above in this paragraph for their own use are exempted from registration requirement. The importing firm shall also register the cottonseed meal (if not already registered by another firm) with the Department and pay any applicable registration fees (Sections 25-2704, Idaho Code). As a condition of registration, firms importing and/or handling cottonseed meal certified to contain more than twenty (20) ppb but less than three hundred (300) ppb aflatoxin, shall enter into a compliance agreement with the Department agreeing to: ()

a. Store and label cottonseed meal certified to contain more than twenty (20) ppb but less than three hundred (300) ppb aflatoxin separately from cottonseed meal certified to contain less than twenty (20) ppb aflatoxin; ()

b. Inform the purchaser in writing of the certified aflatoxin level in the meal purchased; and ()

c. Submit to periodic record and facility inspections, and product testing by the Department. ()

04. Certification Performance. Required certification will be performed by any state government or Federal government engaged in this type of certification. In the event that a state government or Federal government laboratory is not available, an independent or company laboratory may upon request be approved by the Department. Requests and approval shall be made in advance of the shipment entering the state. ()

161. -- 169. (RESERVED)

170. COTTONSEED – EXEMPTIONS.

Cottonseed hulls are exempted from laboratory certification requirements as stated in Subsections 160.01 through 160.04, provided that, cottonseed hulls shall not contain greater than twenty (20) ppb aflatoxin as required by the U. S. Food and Drug Administration. Any invoice or bill of lading accompanying or sent in regard to a shipment of cottonseed hulls shall state the level of aflatoxin in parts per billion contained in the shipment. ()

171. -- 179. (RESERVED)

180. DETAINED COMMERCIAL FEEDS.

01. Stop Sale, Use, or Removal. Any commercial feed or identified lot of commercial feed that is the subject of a “stop sale, use, or removal” order under Section 25-2711(1), Idaho Code, may be released from such an order by the following means: ()

a. A commercial feed detained for nutritional violation(s) may be: ()

i. Remanufactured, using ingredients listed on the approved label, to meet label guarantees. The remixed feed shall be resampled and analyzed to ensure compliance prior to its return to sale. ()

ii. Relabeled to reflect actual values, upon approval of a new label and registration, provided that these values are appropriate for their intended use. ()

iii. Returned to the manufacturer if the seller and manufacturer are not the same. ()

iv. Diverted to an alternate use such as inclusion into another feed, or feeding to the manufacturer’s own livestock, provided that it is appropriate for the diverted use and that it does not conflict with labeling or other State or Federal requirements for the diverted use. ()

v. Destroyed. ()

b. A commercial feed detained for a drug or antibiotic violation may be: ()

i. Remanufactured to meet label guarantees. The remixed feed shall be resampled and analyzed prior to its return to sale. ()

ii. Returned to the manufacturer if the seller and manufacturer are not the same. ()

iii. Diverted to an alternate use, provided that it is appropriate for the diverted use labeling or other State or Federal requirements for the diverted use. ()

iv. Destroyed. ()

c. A commercial feed deemed to be adulterated under Section 25-2707(1), Idaho Code, or that cannot safely be remanufactured, relabeled, or diverted to an alternate use may be: ()

i. Returned to the manufacturer if the seller and manufacturer are not the same. ()

ii. Destroyed. ()

02. Appropriate Compliance Procedure. The Department will indicate which of the above listed compliance procedures are appropriate for the particular “withdrawal from sale” order. The seller shall indicate which procedure is to be followed and, upon approval from the Department, shall carry out the procedure within thirty (30) days. Other procedures may be considered upon application by the state inspector or seller to the Department, Bureau of Feeds and Plant Services, Idaho Department of Agriculture, Boise, Idaho. ()

03. Violation of Stop Sale, Use, or Removal Order. Any violation of the terms or conditions of a Stop Sale, Use, or Removal Order is considered a prohibited act. ()

181. -- 211. (RESERVED)

SUBCHAPTER B – NURSERIES AND FLORISTS

212. SPECIAL SERVICE.

When nurseries or florists require additional inspections and special services, a special service fee will be charged. Refer to IDAPA 02.06.04, "Rules Governing Plant Exports," Section 195, "Fees and Charges," for a complete schedule of services and fees. ()

213. -- 219. (RESERVED)

220. SHIPPING PERMIT NUMBER.

Upon request, a licensed nurseryman who holds a valid certificate of inspection from the Idaho Department of Agriculture for his nursery will be issued a shipping permit number. Application for a number must be made annually, and the use of the number is subject to the following conditions: ()

01. Accompaniment. The shipping permit number shall accompany all shipments and deliveries of nursery stock. ()

02. Changes. Once issued, the shipping permit number will not change unless request is made for a new number. ()

03. Application Deadline. Application for a number or renewal of a number must be made by January 1 of each year. Failure to do so will result in suspension of the shipping permit number. ()

04. Fees. A number will be issued or renewed only after the proper nursery license fees have been paid for the current license year. A shipping permit number will be held in abeyance until the proper license fees are paid. ()

05. Reissue Application. If the business entity of a licensee is changed, or if the membership of a partnership is changed, irrespective of whether or not the business name is changed, application for reissuance of the shipping permit number must be made to the Idaho Department of Agriculture. ()

06. Permit Number. The shipping permit number, if printed on containers or cartons, will read as follows:

(SEAL)

IDAHO DEPARTMENT OF AGRICULTURE
DIVISION OF PLANT INDUSTRIES
BOISE, IDAHO 83701

SHIPPING
PERMIT NO.

The nursery doing business under the above permit number has been regularly inspected and, to the best of our knowledge, is free from dangerous insect pests and diseases.

()

07. No Other Statements. No other statements, other than the business name and address, may appear on the side of the container on which the shipping permit number and accompanying statement are printed. The printing of the shipping permit number is the responsibility of the licensee and all costs incurred in printing are his responsibility. ()

221. -- 309. (RESERVED)

SUBCHAPTER C – BEE INSPECTION

310. DEFINITIONS.

The Department adopts the definitions set forth in Section 22-2502, Idaho Code for the interpretation and enforcement of Subchapter C only. ()

311. -- 314. (RESERVED)

315. REGULATED BEE DISEASES.

Specifically, American foulbrood, European foulbrood, sac brood and bee paralysis, Varroa mite, tracheal mite, or any other disease or abnormal condition of egg, larval, pupal, or adult stages of honey bees, hereinafter is referred to as bee diseases. ()

316. -- 329. (RESERVED)

330. REGULATED PRODUCTS AND RELATED EQUIPMENT.

Subchapter C concerns any stage of the common honey bee, *Apis mellifera* L., all equipment used in handling and manipulation of bees, wax, and hives, and includes any containers for honey and wax that may be used in any apiary or in transporting bees and their products and apiary supplies that are located within the state of Idaho. ()

331. -- 339. (RESERVED)

340. REGISTRATION AND COLLECTION OF FEES.

On or before July 1 of each year any person engaging in the activities of apicultural shall file with the Idaho Department of Agriculture a “Registration” form provided by the Idaho Department of Agriculture specifying the name, residence, place of apiaries, number of hives or colonies of bees owned or controlled, and such other information as may be required, accompanied by the applicable registration fee. ()

341. -- 349. (RESERVED)

350. INSPECTION PROCEDURES.

01. Request for Inspection. All beekeepers requiring an apiary inspection shall complete the “Request for Inspection” form provided by the Department of Agriculture that includes name, address, telephone number of the applicant, number of colonies to be inspected and the state(s) to which entry is desired. The applicant agrees to pay the costs of the inspection according to the fee schedule in Section 370. The request for inspection must be returned to the Department of Agriculture no later than August 15 of each year. Late requests will be accepted through August 31, after which no requests for inspection will be accepted. No inspections will be conducted after November 15 of each year. Apiaries found free of disease will be entitled to receive a health certificate valid for one (1) year from date of issuance permitting access to those states that require and recognize Idaho certification. ()

02. Disease Inspection. The apiary inspector will inspect for all diseases and pests cited in Section 315, specifically for American foulbrood and Varroa mite or other bee diseases as specified by the importing state regulatory agency. ()

03. Posting of Registration. All apiaries located within the state of Idaho shall be conspicuously posted with the name, address and telephone number and state registration number of the owner. ()

04. Necessary Precautions. The apiary inspector will take all necessary precautions to properly disinfect all tools and any other thing that may have come into contact with diseased bees or equipment to prevent spread of the disease. ()

351. -- 359. (RESERVED)

360. DUTY OF OWNER OF BEES.

01. Compliance With Rules. Upon receipt of disease notification, the owner shall control the disease through the use of registered and approved agents in accordance with label directions or eradicate the disease by burning, then burying under not less than eighteen (18) inches of soil, the contaminated bees and equipment. ()

02. Quarantined Apiary. Bees shall not be removed from an infested or quarantined apiary without permission, in writing, from the Director or the Director's agents. ()

361. -- 369. (RESERVED)

370. FEES AND CHARGES.

01. Inspection, Sampling and Other Field Work: ()

a. Inspection time: fifteen dollars (\$15) per hour. ()

b. Travel costs: mileage, meals and lodging will be charged according to established state rates. ()

02. Laboratory Examination. Twenty-five dollars (\$25) per worker hour. ()

371. -- 403. (RESERVED)

SUBCHAPTER D – FERTILIZER

404. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into Subchapter D: ()

01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication. The Terms, Ingredient Definitions, and Policies, as published in the "2020 Official Publication" of AAPFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 22, Chapter 6, Idaho Code, and any rule promulgated thereunder. A copy may be purchased online from the AAPFCO website at: www.aapfco.org. ()

02. The Merck Index. The "2013 Merck Index," 15th Edition as published by Merck Research Laboratories Division of Merck & Co., Incorporated. The Merck Index is a copyrighted publication and not available in an electronic format. A copy may be purchased online from Merck & Co., Inc. (now hosted by the Royal Society of Chemistry) at: <http://www.rsc.org/merckindex>. ()

03. The Association of Official Agricultural Chemists (AOAC) International. The "2019 Official Methods of Analysis (OMA) of the AOAC," 21st Edition, a copyrighted publication, is maintained and published by the AOAC International. The AOAC OMA is available in electronic format at: www.EOMA.AOAC.org. A copy may be purchased online from AOAC International. ()

405. -- 409. (RESERVED)

410. DEFINITIONS.

In addition to the definitions found in Section 22-603, Idaho Code, the definitions in Subsection 410 apply in the interpretation and enforcement of Subchapter D only. ()

01. Guarantee. An affirmation or promise made by the seller to the buyer that relates to the goods and becomes part of the basis of the bargain and creates an express warranty that the fertilizer shall conform to the affirmation or promise. ()

02. Ultimate Dealer. The person who distributes fertilizer product to the end-user. ()

411. -- 419. (RESERVED)

420. SAMPLING AND ANALYSIS.

The methods of sampling and analysis are those of the Association of Official Analytical Chemists (AOAC) or other methods as approved by the department. ()

421. -- 429. (RESERVED)

430. RULES REGARDING THE REGISTRATION OF FERTILIZERS CONTAINING PLANT NUTRIENTS IN ADDITION TO NITROGEN, PHOSPHATE, AND POTASH.

01. Other Plant Nutrients. A fertilizer may contain plant nutrients in addition to nitrogen, phosphate and potash. When these other nutrients are mentioned on the label in any form or manner, the fertilizer shall be registered. In addition, each nutrient amount shall be guaranteed, with the guarantee reported on the label on an elemental basis. Sources of the nutrients subjected to the guaranteed analysis, and proof of availability shall be provided to the department upon request. Any additional nutrients, contained in a fertilizer submitted for registration, must be present in the following minimum concentrations:

Element	Percent
Calcium (Ca)	1.0000
Magnesium (Mg)	0.5000
Sulfur (S)	1.0000
Boron (B)	0.0200
Chlorine (Cl)	0.1000
Cobalt (Co)	0.0005
Copper (Cu)	0.0500
Iron (Fe)	0.1000
Manganese (Mn)	0.0500
Molybdenum (Mo)	0.0005
Nickel (Ni)	0.0010
Sodium (Na)	0.1000
Zinc (Zn)	0.0500

()

02. Labeling. The label shall constitute a guarantee regarding the nutrient content of the fertilizer. No nutrients, other than those listed in Subsection 430.01, will be accepted by the department as guaranteed. Proposed labels and directions for the use of the fertilizer shall be furnished with the application for registration upon request. Any of the above listed elements that are guaranteed shall appear in the order listed immediately following guarantees for the primary nutrients of nitrogen, phosphate and potash. ()

03. Exemptions. Guarantees for water soluble nutrients labeled for ready-to-use foliar fertilizers, ready-to-use specialty liquid fertilizers, hydroponic or continuous liquid feed programs, and potting soils, are exempted from the minimum element percentages listed in Subsection 430.01. ()

431. -- 439. (RESERVED)

440. WARNING OR CAUTION STATEMENTS.

A warning or cautionary statement is required on any fertilizer product: ()

01. Containing Boron. If the fertilizer product contains one tenth of a percent (.10%) or more boron in a water soluble form, the statement shall include: ()

a. The word “Warning” or “Caution” conspicuously displayed; ()

b. The crops for which the fertilizer is recommended; and ()

c. That the use of the fertilizer on any crop(s) other than those recommended may result in serious injury to the crop(s). ()

02. Containing Molybdenum. If the fertilizer product contains one thousandths of a percent (.001%) or more molybdenum, the statement shall include: ()

a. The word “Warning” or “Caution” conspicuously displayed; and ()

b. That the application of fertilizers containing molybdenum may result in forage crops containing levels of molybdenum that are toxic to ruminant animals. ()

03. Other Fertilizer Products. The department may require a registrant to include a warning or caution statement for any other fertilizer product that contains a micro-nutrient in water soluble form for which there is evidence that application of the micro-nutrient may be harmful to certain crops or where there are unusual environmental conditions. ()

04. Examples. The following are examples of warning or caution statements: ()

a. Directions: Apply this fertilizer at a maximum rate of (number of pounds) per acre for (name of crop). ()

b. CAUTION: Do not use on other crops. The (name of micro-nutrient) may cause injury to them. ()

c. CAUTION: Apply this fertilizer at a maximum rate of (number of pounds) per acre for (name of crop). Do not use on other crops; the (name of micro-nutrient) may cause serious injury to them. ()

d. WARNING: This fertilizer carries added (name(s) of micro-nutrient(s)) and is intended for use only on (name of crop). Its use on any other crops or under conditions other than those recommended may result in serious injury to the crops. ()

e. CAUTION: This fertilizer is to be used only on soil that responds to (name of micro-nutrient). Crops high in (name of micro-nutrient) are toxic to grazing animals (ruminants). ()

f. Caution: (Name of micro-nutrient) is recommended for all crops where (name of micro-nutrient) may be deficient; however excessive application to susceptible crops may cause damage. ()

441. -- 449. (RESERVED)

450. FERTILIZER LABELS.

The following information, in the format presented, is the minimum required for all fertilizer labels. For packaged products, this information shall either appear on the package, or be printed on a tag and attached to the package. This information shall be in a readable and conspicuous form. For bulk products, this same information in written or printed form shall accompany delivery and be supplied to the purchaser at time of delivery. ()

01. Net Weight or Net Volume, If Liquid. Weight per gallon shall be included on the label of liquid fertilizers if net volume is stated. ()

02. Brand. ()

03. Grade. Grade (provided that the grade shall not be required when no primary nutrients are claimed). ()

04. Guaranteed Analysis. A fertilizer label must contain the results of the guaranteed analysis. Zero (0) guarantees should not be made and shall not appear in any statement except in nutrient guarantee itemizations. The sliding scale method of expressing a guaranteed analysis on fertilizer labels (for example, “Available Phosphate fifteen to eighteen percent (15-18%)”) is prohibited. If chemical forms of nitrogen are claimed or required, said form shall be set forth on the label. Nutrients other than nitrogen, phosphate and potash shall be set forth, on an elemental basis, as required by Subsection 430.01. The results of the guaranteed analysis required by Subchapter D of this rule shall be in the following form:

Total Nitrogen	(N). _____%
_____%	Ammoniacal Nitrogen
_____%	Nitrate Nitrogen
_____%	Water Insoluble Nitrogen
_____%	Urea Nitrogen
_____%	(Other recognized and determinable forms of N)
Available Phosphate (P ₂ O ₅)	_____%
Soluble Potash (K ₂ O)	_____%
(Other nutrients, elemental basis)	_____%

()

05. Sources. Sources of nutrients shall be listed below the completed guaranteed analysis statement. ()

06. Name and Address. Name and address of manufacturer, guarantor or registrant. ()

07. Specialty Fertilizers. For specialty fertilizers distributed to the end user, the label shall set forth adequate directions for use. Such directions may include, but are not limited to: ()

a. The recommended application rate or rates in units of weight or volume per unit of area coverage (where application rates are given in volume, the manufacturer shall provide the bulk density for the product on the label); ()

b. Proper seasonal times and minimum intervals to apply the product when plants can rapidly utilize nutrients and loss to the environment can be minimized; and ()

c. The statement “Apply Only As Directed” or a statement of similar designation. ()

08. Packaging. Refer to Idaho Department of Agriculture rules, IDAPA 02.02.14, “Rules for Weights and Measures,” for the specific requirements relating to product identity, declaration of quantity and prescribed units. ()

451. -- 454. (RESERVED)

455. PRODUCT REGISTRATION.

01. Registration. All fertilizer companies, including companies engaged in custom-formula mixing of dry or liquid fertilizers, shall comply with the product registration requirements of the Idaho Fertilizer Act of 2000, Section 22-605, Idaho Code, subject to the provisions of this Subchapter D. ()

02. Alteration From Original State. When a fertilizer is mixed, added to, or in any way changed from its original grade or its content of secondary or minor nutrients, it is a different product, and must be registered as provided under Section 22-605, Idaho Code. ()

03. Registering -- Altered Fertilizers. When a registered grade is altered by any commercial fertilizer manufacturer or ultimate dealer, such manufacturer or ultimate dealer, shall register the altered grade as provided under Section 22-605, Idaho Code. ()

04. Brand Name. The addition of another prominent name or graphic design to the brand displayed on the label, other than descriptive words associated with the grade, constitutes a different brand and thus, must be registered as provided under Section 22-605, Idaho Code. For example, changing "Rose Bud 5-10-5" to "Kilmer's Rose Bud 5-10-5" would constitute a change in brand. ()

05. Sale of Fertilizer. When a commercial fertilizer is removed from the package or vehicle in which it was placed by the original registrant and then offered for sale by a person other than the original registrant, it is a different product and shall be registered in accordance with Section 22-605, Idaho Code, except that it is not subject to an additional inspection fee as provided under Section 22-608, Idaho Code, provided that said fee was paid on the product by the original or prior registrant. ()

456. -- 459. (RESERVED)

460. SLOWLY RELEASED PLANT NUTRIENTS.

01. Slow Release. No fertilizer label shall bear a statement that connotes or implies that certain plant nutrients contained in a fertilizer are released slowly over a period of time, unless the slow release components are identified and guaranteed at a level of at least fifteen percent (15%) of the total guarantee for that nutrient(s). ()

02. Slow Release Properties. Types of products with slow release properties currently recognized by the department for the purposes of a guarantee include: ()

a. Water insoluble, such as natural organics, ureaform materials, urea-formaldehyde products, isobutylidene diurea, oxamide, etc.; ()

b. Coated slow release, such as sulfur coated urea and other encapsulated soluble fertilizers; ()

c. Occluded slow release, where fertilizers or fertilizer materials are mixed with waxes, resins, or other inert materials and formed into particles; and ()

d. Products containing water soluble nitrogen such as ureaform materials, urea-formaldehyde products, methylenediurea (MDU), dimethylenetriura (DMTU), dicyanodiamide (DCD), etc. ()

03. Additional Products May Be Added to List of Slow Release Nutrients. The department may add additional products to the list of recognized slow release nutrients upon an appropriate showing by a registrant. The terms, "water insoluble," "coated slow release," "slow release," "controlled release," "slowly available water soluble," and "occluded slow release," are accepted as descriptive of these products, provided the manufacturer can show a testing program substantiating the claim. Testing shall be under guidance of Experiment Station personnel or a recognized researcher acceptable to the department. A laboratory procedure, acceptable to the department for evaluating the release characteristics of the product(s), must also be provided by the manufacturer. ()

04. Methods. Unless otherwise specified by the department, AOAC International Method 970.04 (15th

Edition) is to be used to confirm the coated slow release and occluded slow release nutrients and others whose slow release characteristics depend on particle size. AOAC International Method 945.01 (15th Edition) shall be used to determine the water insoluble nitrogen of organic materials. ()

461. -- 469. (RESERVED)

470. INVESTIGATIONAL ALLOWANCES.

01. Use of Investigational Allowances. Investigational Allowances will be used in determining whether a fertilizer is deficient. Fertilizers that are deemed deficient are subject to penalty. Penalties for deficient fertilizers are found in Section 22-611, Idaho Code. ()

02. Deeming a Fertilizer Deficient. A fertilizer will be deemed deficient if the analysis of any nutrient is below the guarantee by an amount exceeding the values in the following schedules, or if the overall index value of the fertilizer is below ninety-seven percent (97%). Note: For these investigational allowances to be applicable, the recommended AOAC International procedures for obtaining samples, preparation and analysis must be used. These are described in Official Methods of Analysis of the Association of Official Analytical Chemists, 13th Edition, 1980, and in succeeding issues of the Journal of the Association of Official Analytical Chemists. In evaluating replicate data, Table 19, page 935, Journal of the Association of Official Analytical Chemists, Volume 49, No. 5, October, 1966, should be followed. ()

03. Investigational Allowances for Nitrogen, Phosphate and Potash. For guaranteed percentages not listed in the following table, calculate the appropriate investigational allowance by interpolation.

Guaranteed Percent	Nitrogen Percent	Available Phosphate Percent	Potash Percent
04 or less	0.49	0.67	0.41
05	0.51	0.67	0.43
06	0.52	0.67	0.47
07	0.54	0.68	0.53
08	0.55	0.68	0.60
09	0.57	0.68	0.65
10	0.58	0.69	0.70
12	0.61	0.69	0.79
14	0.63	0.70	0.87
16	0.67	0.70	0.94
18	0.70	0.71	1.01
20	0.73	0.72	1.08
22	0.75	0.72	1.15
24	0.78	0.73	1.21
26	0.81	0.73	1.27
28	0.83	0.74	1.33
30	0.86	0.75	1.39
32 or more (*)	0.88	0.76	1.44

(*For DAP and MAP, the Investigational Allowance for Available Phosphate is zero point seventy (0.70); for TSP, the Investigational Allowance shall be: one point fifty-two (1.52)). For dry custom mix fertilizers, an additional five percent (5%) of the guaranteed percentage shall be granted in addition to the allowances made in Subsection 470.03.

()

04. Investigational Allowance for Other Nutrients. Secondary and minor elements shall be deemed deficient if any element is below the guarantee by an amount exceeding the values in the following schedule:

Element	Investigational Allowance
Calcium	) 0.2 unit + 5% of guarantee
Magnesium	) 0.2 unit + 5% of guarantee
Sulfur	) 0.2 unit + 5% of guarantee
Boron	) 0.003 unit + 15% of guarantee
Cobalt	) 0.0001 unit + 30% of guarantee
Chlorine	) 0.005 unit + 10% of guarantee
Copper	) 0.005 unit + 10% of guarantee
Iron	) 0.005 unit + 10% of guarantee
Manganese	) 0.005 unit + 10% of guarantee
Molybdenum	) 0.0001 unit + 30% of guarantee
Sodium	) 0.005 unit + 10% of guarantee
Zinc	) 0.005 unit + 10% of guarantee

The maximum allowance when calculated as specified shall be one (1) unit (one percent (1%)). For dry custom mix fertilizers, an additional five percent (5%) of the guarantee shall be granted in addition to the allowances made above in this section.

()

05. Overall Index Value. The overall index value is calculated by comparing the commercial dollar value guaranteed with the commercial dollar value found (Commercial Dollar Value found / Commercial dollar value guaranteed) x 100). Unit dollar values of the nutrients used are those referred to in Section 22-612, Idaho Code. The Department will conduct periodic surveys of the industry to determine unit dollar values.

()

06. Examples. The following are examples of calculations for a custom mixed fertilizer of a 12-16-14 grade. For the purpose of these examples, the nutrient unit dollar values for all of the examples are assumed to be twenty-three cents (\$.23) per pound of nitrogen, twenty-seven cents (\$.27) per pound of available phosphate (P2O5), and eighteen cents (\$.18) per pound of potash (K2O).

Example 1. A ten thousand (10,000) pound batch of customer formula fertilizer guaranteed at 12.0-16.0-14.0 is analyzed and found at 10.6-16.4-14.3

Nutrient	Guaranteed	x price/lb	Found	x price/lb
N	12.0	\$2.76 (\$.23 x 12.0)	10.6	\$2.438 (\$.23 x 10.6)
P ₂ O ₅	16.0	\$4.32 (\$.27 x 16.0)	16.4	\$4.428 (\$.27 x 16.4)
K ₂ O	14.0	\$2.52 (\$.18 x 14.0)	14.3	\$2.574 (\$.18 x 14.3)
Total		\$9.60		\$9.44

Overall Index Value = $(\$9.44/\$9.60) \times 100 = 98.3\%$

However, the nitrogen value is in violation. The investigational allowance for a nitrogen guarantee of 12.0% is 0.61% (see the chart in section 02.06.12.050.03 above) plus an additional 5% of the guarantee for customer formula mixes. Therefore the nitrogen value must be at least 10.79%: $(12.0 - [.61 + 12.0(.05)] = 10.79\%)$ in order to be within permissible values.

To find the amount (Lbs.) of N deficiency multiply the percent guaranteed by the weight of the lot minus the percentage found multiplied by the weight of the lot.

$$(.12) (12\%) \text{ guaranteed} \times 10,000 \text{ lbs}) - (.106) (10.6\%) \text{ found} \times 10,000 \text{ lbs}) = 140 \text{ pounds}$$

The penalty will be calculated as three times the value of a deficiency of 140 pounds of nitrogen in the 10,000 pound batch. $3 \times [140 (\$.23)] = \96.60

Example 2. A ten thousand (10,000) pound batch of customer formula fertilizer guaranteed at 12.0-16.0-14.0 is analyzed at 11.1-15.3-13.1.

Nutrient	Guaranteed	x price/lb	Found	x price/lb
N	12.0	\$2.76 (\$.23 x 12.0)	11.1	\$2.553 (\$.23 x 11.1)
P ₂ O ₅	16.0	\$4.32 (\$.27 x 16.0)	15.3	\$4.131 (\$.27 x 15.3)
K ₂ O	14.0	\$2.52 (\$.18 x 14.0)	13.1	\$2.358 (\$.18 x 13.1)
Total		\$9.60		\$9.042

Overall Index Value = $(\$9.042/\$9.60) \times 100 = 94.2\%$

Although each of the individual nutrients is within the investigational allowance, the cumulative deficiency is reflected in the Overall Index Value.

The investigational allowance table shows for a nitrogen guarantee of 12%, the allowance is 0.61%. An additional allowance of 5% of the guarantee is 0.60%. The minimum nitrogen value is then $12.0 - [0.61 + (.05 \times 12)] = 10.79$.

The minimum acceptable values for P₂O₅ and K₂O will be 14.50 and 12.43, respectively.

The penalty will be calculated as follows:

Nutrient	Guaranteed lbs	-	Found lbs	=	Deficient lbs	x	price/lb
N	1200 (.12 x 10,000)	-	1110 (.111 x 10,000)	=	90	x	\$20.70 (\$.23 x 90 lbs)
P ₂ O ₅	1600 (.16 x 10,000)	-	1530 (.153 x 10,000)	=	70	x	\$18.90 (\$.27 x 70 lbs)
K ₂ O	1400 (.14 x 10,000)	-	1310 (.131 x 10,000)	=	90	x	\$16.20 (\$.18 x 90 lbs)
Total							\$55.80

$$3 (\$55.80) = \$167.40$$

If the examples were specialty fertilizers rather than customer formula mixes, the penalties will be assessed in accordance with Section 22-611, Idaho Code. ()

471. -- 479. (RESERVED)

480. ITEMIZATION OF PLANT FOOD ELEMENTS WITHIN THE GUARANTEED ANALYSIS.

When a product label sets forth the different components of plant nutrients, the percentage for each component shall be shown before that component's name.

EXAMPLES:	
Total Nitrogen (N)	_____ %
_____ %	Ammoniacal Nitrogen
_____ %	Nitrate Nitrogen
Magnesium (Mg)	_____ %
_____ %	Water Soluble Magnesium (Mg)
Sulfur (S)	_____ %
_____ %	Free Sulfur (S)
_____ %	Combined Sulfur (S)
Iron (Fe)	_____ %
_____ %	Chelated Iron (Fe)
Manganese (Mn)	_____ %
_____ %	Water Soluble Manganese (Mn)

()

481. -- 489. (RESERVED)

490. ORGANIC NITROGEN.

If an amount of nitrogen is designated as organic then the water insoluble nitrogen or the slow release nitrogen guarantee must not be less than sixty percent (60%) of the nitrogen so designated. Coated urea shall not be included in meeting the sixty percent (60%) requirement.

()

491. -- 503. (RESERVED)

SUBCHAPTER E – SOIL AND PLANT AMENDMENTS

504. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into Subchapter E: ()

01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication. The Terms, Ingredient Definitions, and Policies, as published in the “2020 Official Publication” of AAPFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 22, Chapter 6, Idaho Code, and any rule promulgated thereunder. A copy may be purchased online from the AAPFCO website at: www.aapfco.org. ()

02. The Merck Index. The “2013 Merck Index,” 15th Edition as published by Merck Research Laboratories Division of Merck & Co., Incorporated. The Merck Index is a copyrighted publication and not available in an electronic format. A copy may be purchased online from Merck & Co., Inc. (now hosted by the Royal Society of Chemistry) at <http://www.rsc.org/merckindex>. ()

03. The Association of Official Agricultural Chemists (AOAC) International. The “2019 Official Methods of Analysis (OMA) of the AOAC,” 21st Edition, a copyrighted publication, is maintained and published by the AOAC International. The AOAC OMA is available in electronic format at: www.EOMA.AOAC.org. A copy may be purchased online from AOAC International. ()

505. -- 509. (RESERVED)

510. DEFINITIONS.

In addition to the definitions found in Section 22-2203, Idaho Code, the following definitions apply in the interpretation and enforcement of this Subchapter E only: ()

01. Animal Manure. The excreta of animals together with whatever bedding material is present. ()

02. Dried Animal Manure. Animal manure resulting from confined animal feeding operations manipulated only to reduce the moisture content. ()

511. ABBREVIATIONS.

01. AAPFCO. Association of American Plant Food Control Officials. ()

02. AOAC. Association of Official Analytical Chemists, International. ()

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

512. -- 519. (RESERVED)

520. SOIL AMENDMENT AND PLANT AMENDMENT REGISTRATION.

Each separately identifiable soil amendment or plant amendment product shall be registered pursuant to Section 22-2205, Idaho Code. ()

01. Product Registration. All soil amendment and plant amendment companies, including companies engaged in custom-formula mixing of dry or liquid soil amendments or plant amendments, will comply with the product registration requirements of the Idaho Soil and Plant Amendment Act, Section 22-2205, Idaho Code, subject to the provisions of this chapter. ()

02. Exemptions from Registration. ()

- a. Dried animal manure without nutrient claims and not commercially packaged or labeled. ()
- b. Horticultural growing media containing live plant material. ()

03. Alteration from Original State. When a soil amendment or plant amendment that has been registered is mixed, added to, or in any way changed from its original content, it is a different product, and must be registered as provided under Section 22-2205, Idaho Code. ()

04. Sale of Soil Amendment or Plant Amendment. When a commercial soil amendment or plant amendment is removed from the package or container in which it was placed by the original registrant and then offered for sale by a person other than the original registrant, it is a different product and shall be registered in accordance with Section 22-2205, Idaho Code, except that it is not subject to an additional inspection fee as provided under Section 22-2208, Idaho Code, provided that said fee was paid on the product by the original or prior registrant. ()

521. -- 529. (RESERVED)

530. SOIL AMENDMENT AND PLANT AMENDMENT LABELS.

01. Content or Guaranteed Analysis Exemptions. ()

a. The labeling requirements of the Idaho Soil and Plant Amendments Act, Section 22-2207(1)(c), Idaho Code, requiring that soil and plant amending ingredients and other ingredients shall be stated in terms of percentage is required except the following single ingredient soil amendments, when clearly and conspicuously identified as such on the label, are exempt from the content or guaranteed analysis: ()

- i. Mulch; ()
- ii. Peat; ()
- iii. Perlite; ()
- iv. Vermiculite; and ()
- v. Vermicompost. ()

b. In lieu of a content or guaranteed analysis as required in Section 22-2207(1)(c), Idaho Code, the label of the following soil amendments when clearly and conspicuously identified as such on the label may include an ingredient statement: ()

- i. Compost; ()
- ii. Garden Soil; ()
- iii. Landscape Soil; ()
- iv. Mulch; ()
- v. Planting Mix; and ()
- vi. Potting Mix. ()

c. In lieu of a content or guaranteed analysis as required in Section 22-2207(1)(c), Idaho Code, a product that claims the presence of a microbe(s), other than naturally occurring microbes, shall guarantee the microbe(s) as follows: ()

- i. Minimum number of each claimed viable organism at the genus and species level in colony

forming units (CFU), spores or propagules per gram or milliliter (cm3); ()

ii. Expiration date; and ()

iii. Storage & handling instructions. ()

02. Nutrient Claims and the Use of the Term “Fertilizer.” ()

a. The term “fertilizer” and like terms shall not be used in labeling or literature to describe a soil amendment or plant amendment. ()

b. Nutrient claims do not change the primary intended use of a soil or plant amendment product. Any nutrient claim shall be provided on the labeling and literature as an estimated range and stated as a percentage. Nutrient claims and estimates must be supported by lab analysis or documentation acceptable by the ISDA. ()

c. Labeling or literature that makes nutrient claims or estimates is required to contain the following statement: “This product is recognized for its soil amendment characteristics. It is recognized that it has nutrient value. Any nutrient claims, verbal or written, are estimates and not guaranteed.” ()

d. At the discretion of the registrant, labeling or literature that does not make nutrient claims or estimates may contain the following statement: “This product is recognized for its soil amendment characteristics. It is recognized that it has nutrient value. Any nutrient claims, verbal or written, are estimates and not guaranteed.” ()

e. A guaranteed analysis of plant nutrients will be permitted on potting soils, landscape and garden soils, and related amendment products containing only levels of fertilizer sufficient to initiate growth. ()

03. Microbiological Product. If the soil amendment or plant amendment is a microbiological product intended as an inoculum, the product label shall include an expiration date and state the number and kind of viable organisms per milliliter or, if the product is other than liquid, state the number and kind of viable organisms per gram. However, if the soil amendment or plant amendment is derived from a microbiological process or culture but is not intended as an inoculum, then the product label shall state that the product is not a viable culture. ()

04. Ninety-Five Percent Rule. When a soil amendment or plant amendment is labeled as a specific material, such as peat moss or leaf mold, the product shall consist of not less than ninety-five percent (95%) of that specific material. ()

05. Other Ingredients. When the name of an ingredient(s) appears on the label of a soil amendment or plant amendment and is not one of the ingredients required to be listed, the percentage of that ingredient(s) shall appear prominently in print of the same size and color. ()

06. Warning or Caution Statements. The ISDA may require a registrant to include a warning or caution statement to ensure safety to handlers, crops, and the environment. ()

07. Precautionary Statements. ISDA may require precautionary statements when needed for safe and effective use of the soil amendment or plant amendment. ()

531. -- 539. (RESERVED)

540. SAMPLING AND ANALYSIS.
The methods of sampling and analysis shall be those of AAPFCO, AOAC, or other methods as approved by the ISDA. ()

541. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.06.04 – RULES GOVERNING PLANT EXPORTS

DOCKET NO. 02-0604-1901 (NEW CHAPTER)

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 22-107, 22-112, and 22-2303(5), Idaho Code.

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

Three rules administered by the ISDA are related to plant exports. These rules are IDAPA 02.06.34, “Rules Concerning Virus-Free Certification of Nursery Stock,” IDAPA 02.06.40, “Rules Governing Ginseng Export,” and IDAPA 02.06.04, “Phytosanitary and Post-Entry Seed Certification Rules.” These rules were promulgated to carry out requirements described in Title 22, Chapters 1, 7, and 23. In order to streamline and simplify rules related to plant exports, the ISDA has decided to combine all three rules into a single rule to be titled “02.06.04, Rules Governing Plant Exports.” No substantive changes are being made to the three rules cited above. However, these rules were reviewed for repeal and amendment of certain sections consistent with the guidance and direction provided in the Red Tape Reduction Act. Therefore, the consolidated rule was reviewed to update authorities, eliminate unnecessarily restrictive language and redundancy.

The text of the pending fee 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 November Idaho Administrative Bulletin, [Vol. 19-11, pages 206-220](#).

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

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. Idaho nurseries are assessed an application, laboratory or service fee according to category for virus-free certification. Ginseng producers are assessed a registration, certification and inspection fee for export. Phytosanitary inspections are assessed a fee by category. Fees included in the original rules have not been changed in the new combined rule. Fees associated with these rules are imposed pursuant to Sections 22-107, 22-112, and 22-2305, Idaho Code.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Lloyd Knight, Administrator, at (208) 332-8664.

Dated this 27th day of November, 2019.

Brian Oakey, Deputy Director
Idaho Department of Agriculture
Ph: (208) 332-8552 / Fax: (208) 334-2170

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

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

PUBLIC HEARING

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

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

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: Three rules administered by the ISDA are related to plant exports. These rules are IDAPA 02.06.34, "Rules Concerning Virus-Free Certification of Nursery Stock," IDAPA 02.06.40, "Rules Governing Ginseng Export," and IDAPA 02.06.04, "Phytosanitary and Post-Entry Seed Certification Rules." These rules were promulgated to carry out requirements described in Title 22, Chapters 1, 7, and 23. In order to streamline and simplify rules related to plant exports, the ISDA has decided to combine all three rules into a single rule to be titled "*02.06.04, Rules Governing Plant Exports.*" No substantive changes are being made to the three rules cited above. All rules were reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Fees included in the original rules have not been changed in the new combined rule. Fees associated with these rules are imposed pursuant to Sections 22-107, 22-112, and 22-2305, Idaho Code.

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

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

There is no change in fiscal impact because of this consolidation rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted on September 18, 2019. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, Pages 15-19](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: This section is not applicable as there are no materials incorporated by reference in this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd Knight, Administrator, at (208) 332-8664.

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

Dated this 3rd day of October, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 02-0604-1901

02.06.04 – RULES GOVERNING PLANT EXPORTS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 22-107, 22-112, and 22-2303(5), Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is “Rules Governing Plant Exports.” ()

02. Scope. These rules govern the production of pest-free plants and plant products, and provide procedures for compliance with phytosanitary regulations of other states and foreign countries, in order to protect Idaho agriculture from the introduction of foreign pests on imported plant materials. These rules also govern procedures for voluntary certification of virus-free nursery stock for export. ()

002. – 109. (RESERVED)

SUBCHAPTER A – PHYTOSANITARY AND POST-ENTRY SEED CERTIFICATION

110. DEFINITIONS.

The definitions found in Section 110 apply to the interpretation and enforcement of Subchapter A only: ()

01. Applicant. Any person applying for an inspection or certification under Subchapter A. ()

02. Federal Phytosanitary Certificate. This certificate is issued by the Department pursuant to a “Memorandum of Understanding” with the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, in accordance with the Code of Federal Regulations, Title 7, Part 353, Sections 353.1 - 353.7 as amended. This type certificate may only be issued for domestic plants and plant products being exported into a foreign country. ()

03. Federal Phytosanitary Certificate for Reexport. This certificate is issued by the Department pursuant to a “Memorandum of Understanding” as referenced in Subsection 110.02 above. This type certificate may only be issued for plants and plant products of foreign origin to certify that, based on the original foreign

phytosanitary certificate and/or an additional inspection, the plants and plant products entered the United States in conformance with the phytosanitary regulations of the importing country and have not been subjected to the risk of infestation or infection during storage in the United States. Shipments transiting the United States under a Customs bond are not eligible for reexport certification. ()

04. Post-Entry Quarantine Certification. This program is carried out pursuant to a “Memorandum of Understanding” between the Department and the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, in accordance with the Code of Federal Regulations, Title 7, Part 319.37-7 as amended. The purpose of this program is to prevent the accidental introduction of plant pests in living plants that are imported into the United States and Idaho under permit. ()

05. Rush Service. This service is to accommodate phytosanitary certification applications that must be issued earlier than the routine three (3) to four (4) day turn-around. This service will be carried out only after a mutual agreement between the applicant and the Department. ()

06. State Phytosanitary Certificate. This certificate may be issued for shipments of Idaho produced plants and plant products to foreign or domestic locations. This certificate is issued to confirm a field or commodity inspection for foreign destinations. This certificate must be issued to the same standard as a federal certificate as outlined in Subsection 110.02. Idaho Crop Improvement Association field inspections may serve as the basis for the issuance of a state phytosanitary certificate for domestic markets only. This certificate will also bear any notation or comment the Director may make as to any findings concerning the inspection or import requirements of the products being certified. ()

111. -- 119. (RESERVED)

120. DESIGNATED INSPECTION AREAS.

The land mass of the state has been divided into fourteen (14) “inspection areas” to facilitate the inspection of all seed-producing localities and to confine the loci of disease infestations when they arise. These areas will be numbered serially and the boundaries of each remain fixed as described below. The cultural conditions, i.e., weather, elevation, soil type and general farming practices, are relatively uniform within each area; therefore, the disease content of the seed produced within each respective area may be expected to be uniform. ()

01. Area 1. Kootenai County. ()

02. Area 2. Benewah County. ()

03. Area 3. That portion of Latah County above two thousand (2,000) feet elevation and that portion of Nez Perce County north of the Clearwater River and above two thousand (2,000) feet elevation. ()

04. Area 4. That portion of Latah County below two thousand (2,000) feet elevation and all of the Clearwater River and below two thousand (2,000) feet elevation ()

05. Area 5. Lewis County. ()

06. Area 6. Canyon, Ada, Owyhee, Payette, Washington and Gem Counties. ()

07. Area 7. Gooding, Jerome, Lincoln and Elmore Counties. ()

08. Area 8. Twin Falls County. ()

09. Area 9. Cassia County. ()

10. Area 10. That portion of Minidoka County lying south of the main line of the Union Pacific Railroad. ()

11. Area 11. That portion of Minidoka County lying north of the main line of the Union Pacific Railroad. ()

12. Area 12. Bingham, Bonneville, Power and Bannock Counties. ()

13. Area 13. Jefferson, Madison, Fremont, Teton, Clark and Butte Counties. ()

14. Area 14. All other agricultural areas of the state not specifically designated above. ()

121. -- 129. (RESERVED)

130. CROP/COMMODITY, DISEASE AND PEST(S) INSPECTIONS.

01. Minimum Field Inspection(s). Unless otherwise requested by the applicant, minimum field inspections for diseases will be as follows: ()

a. Corn: Stewart's wilt, - *Erwinia stewartii* ((E.F.Sm.)Dye), head smut - *Sphacelotheca reiliana*, common smut - *Ustilago zeae* (*U. maydis*), and maize dwarf mosaic virus. ()

b. Peas: Bacterial blight, *Pseudomonas* species. ()

c. Beans: Halo Blight, caused by *Pseudomonas syringae* pv. *phaseolicola* (Burkholder 1926) Young, Dye & Wilkie 1978, (synonym *P. phaseolicola* (Burkholder 1926) Dawson 1943); common blight caused by *Xanthomonas campestris* pv. *phaseoli* (Smith 1897) Dye 1978, (synonyms *X. phaseoli* (Smith 1897) Dawson 1939, *X. phaseoli* var. *fuscans* (Burkholder 1930) Starr and Burkholder 1942); brown spot, caused by *Pseudomonas syringae* pv. *syringae*, van Hall 1902, (synonym *P. syringae*, van Hall 1902) only strains virulent to *Phaseolus* sp.; bacterial wilt, caused by *Corynebacterium flaccumfaciens* (Hedges 1922) Dawson 1942; or any variations or new strains of these bacteria, which are recognized as virulent to and seedborne in *Phaseolus* spp., and are a potential threat to seed production, all of which are hereafter referred to as bacterial diseases of beans. Anthracnose, *Colletotrichum lindemuthianum* (Sacc. and Magn.) Scrib. ()

d. Alfalfa: Verticillium Wilt - *Verticillium albo-atrum*, stem and bulb nematode - *Ditylenchus dipsaci*. ()

e. Lettuce: Lettuce mosaic virus. ()

f. Radish: Bacterial spot - *Xanthomonas campestris* pv. *vesicatoria*, Anthracnose -- *Colletotrichum higginsianum*, blackleg - *Leptosphaera maculans*. ()

g. Onion: Stem and bulb nematode -- *Ditylenchus dipsaci*, Onion white rot -- *Sclerotium cepivorum*, onion smut -- *Urocystis cepulae*, neck rot -- *Botrytis alli*, purple blotch -- *Alternari porri*. ()

h. Carrot: Bacterial blight *Xanthomonas campestris* pv. *carotae*, soft rot - *Erwinia carotovera*. ()

02. Special Inspection Requests. Requests for inspection of plants and plant products for plant diseases or pests not specifically listed in Subchapter A will be performed subject to the availability of Department inspectors and the biology of the pest and plant or plant products for which the request is being made. Procedures for conducting the special field or commodity inspections, the time the inspection is to be made, and any charges or fees will be made at the discretion of the Department and may be in addition to those listed in Section 195. ()

131. -- 139. (RESERVED)

140. APPLICATION FOR INSPECTION - PROCEDURES.

01. Application for Field Inspection. Application(s) must include but will not be limited to the following: company name, grower name, crop, variety, lot number (if available), pest(s)/disease(s) inspections being requested, field location, number of acres and type of irrigation. Application(s) must be filed with the Idaho Department of Agriculture, Division of Plant Industries, P.O. Box 7249, Boise, ID 83707 or Idaho Department of Agriculture, Division of Plant Industries, P.O. Box 401, 434 Shoshone St. West, Twin Falls, Idaho 83303-0401, on

forms provided by the Department. ()

02. Application for Area Inspection (Peas and Corn Only). Application shall be made in writing on company letterhead listing crop, grower name, variety, lot number, acres, and area grown in as outlined in Subsections 120.01 through 120.14. A minimum of two hundred (200) acres per company per designated inspection area must be submitted to be eligible for an area inspection. Applicants submitting under two hundred (200) acres within a designated inspection area must do so pursuant to Subsection 140.01 above. ()

03. Deadlines. Applications for individual and/or area field inspections are to be submitted no later than: April 30 for Alfalfa, May 1 for peas and mint, May 15 for lettuce, radish, onion, or other vegetable crops, and July 1 for beans and corn. Applications submitted after these dates will be performed only at the discretion of the Director. ()

04. Special Field Inspection Requests. Requests for field inspections of plants and plant products for diseases or pests not listed in Subsections 130.01.a. through 130.01.h. above shall be written in on the application as provided in Subsection 140.01 above and be subject to the conditions as outlined in Subsection 130.02. ()

141. -- 149. (RESERVED)

150. INSPECTION AUTHORITY.

The Director will authorize the crop inspections and will delegate competent agents or agencies to conduct the work. Phytosanitary certificates will be issued only by the Director. ()

151. -- 159. (RESERVED)

160. INSPECTION PROCEDURES.

01. Mechanics of Inspection. The mechanics of inspection for a particular crop(s) will be left to the discretion of the Department, but will take into account sound sampling procedures, the biology of the pest, and the crop being inspected. A crop will be inspected a minimum of, but not limited to, one (1) time during the growing season, depending on the biology of the pest or disease being inspected. ()

02. Reports of Inspection Summaries and Requests for Inventory. Written reports of the field and area inspections will be filed and retained in the office of the Director, for a minimum of five (5) years after the inspection of the fields is completed. At the end of each inspection season, each applicant will be sent a summary of the inspections performed with a request for any corrections or adjustments to be made as far as lot numbers, varietal names, or other information is concerned. A request will also be made at that time for the clean weights of the product harvested from each lot inspected. No phytosanitary certificate will be issued for any inspected lot for which there is incomplete documentation. ()

03. Notification of the Detection of Disease(s) or Pest(s). The Department will notify the applicant in writing upon the confirmation of the presence of a disease or pest. Notification will be limited to those disease(s) or pest(s) outlined in Subsections 130.01.a. through 130.01.h. above or as specifically requested on the applicant's application for inspection for phytosanitary certification pursuant to Subsection 140.04. ()

161. -- 169. (RESERVED)

170. PROCEDURE FOR OBTAINING PHYTOSANITARY CERTIFICATES.

01. Requests for Phytosanitary Certificates. Application shall be made in writing to the Department on the appropriate application form(s) provided by the Department for the certificate(s) being requested. Only fully completed applications will be accepted. Applications can be submitted to either the State of Idaho, Department of Agriculture, Plant Industries Division, P.O. Box 7249, Boise, ID 83707, or State of Idaho, Department of Agriculture, P.O. Box 401, Twin Falls, Idaho 83301. ()

02. Application Information. Applications for phytosanitary certificates must include, but will not be limited to the following information: variety, crop (including scientific name), lot number (in the case of blends, all

lots used in the blend must be included), number of pounds in each lot, name of grower, area and year in which crop was grown, state number, consignor and consignee, and chemical treatment applied. ()

03. “Rush” Service. As defined in Subsection 110.05 must be requested before or upon submission of an application for phytosanitary certification. The request may be made by telephone. “Rush” service will be subject to the fees as outlined in Subsection 195.02.d. ()

171. -- 179. (RESERVED)

180. SIZE OF SAMPLES.

Size of samples for visual inspection for phytosanitary seed inspection certificates shall be: When shipment is: under two hundred (200) pounds - one half (1/2) pound sample (minimum); two hundred (200) pounds up to one thousand (1,000) pounds - two (2) pound samples; over one thousand (1,000) pounds - five (5) pound samples (maximum); or as may be required by the importing state or country. ()

181. – 189. (RESERVED)

190. POST-ENTRY QUARANTINE CERTIFICATION.

Applications shall be made on forms provided by the Department and accompanied by the fee as stated in Subsection 195.05. The applicant must allow inspection by the Department as a condition of application approval, and additional inspections as required by the Department or the United States Department of Agriculture. The United States Department of Agriculture has final approval authority. The minimum period of the quarantine is two (2) years, with a minimum of one (1) inspection being performed during each of the two (2) years. ()

191. -- 194. (RESERVED)

195. FEES AND CHARGES.

01. Phytosanitary Certificates. ()

a. Federal Phytosanitary Inspection Certificates or like documents: sixty dollars (\$60) per certificate. ()

b. State Phytosanitary Inspection Certificates or like documents: twenty-five dollars (\$25) per certificate. ()

02. Phytosanitary Certification and Like Inspections and Official Treatment Observations.()

a. Officially Drawn Samples: (i.e., purity and germ samples, referee samples, lab analysis) - twenty dollars (\$20) per sample. ()

b. Submitted Samples: twenty dollars (\$20) per item submitted. ()

c. Treatment Observations: for official verification of seed and plant treatment, seed lot fumigation, cold storage treatments, and treatment of agricultural products brought into the state in violation of a state quarantine, fees are thirty dollars (\$30) per hour (including travel time), and any per diem incurred. Per diem will be at established state rates. ()

d. Rush service fees will be one hundred dollars (\$100) per certification, which will be in addition to the normal phytosanitary certification charges outlined in this Section 195. ()

e. Request for phytosanitary or treatment observation services after normal working hours, on weekends, or holidays are subject to overtime and state per diem charges in addition to the normal charges outlined in this section. ()

03. Area Inspections. Area Inspection: fourteen cents (\$.14) per hundred-weight. ()

- 04. Field or Lot Inspections.** ()
- a.** Application for Field Inspection: five dollars (\$5) per application. ()
- b.** Acreage Inspection Fee: three dollars and fifty cents (\$3.50) per acre per inspection. A minimum of fifty dollars (\$50) per inspection will be charged when the total acreage submitted by any one (1) applicant is fifteen (15) acres or less. ()
- 05. Post-Entry Quarantine Inspections.** The inspection fee is two hundred dollars (\$200) for the required two (2) year quarantine and an additional one hundred dollars (\$100) per year for each year beyond the initial two (2) years, if required. For rejected applications, twenty-five dollars (\$25) of the two hundred dollar (\$200) inspection fee is non-refundable, and will be retained to cover administrative costs. ()
- 06. Plant Pathological Laboratory Services.** Fees available upon request. ()
- 07. Special Project Fee.** ()
- a.** Special projects not covered by the existing fee schedule may be billed at twenty-five dollars (\$25) per hour with a minimum twenty-five dollar (\$25) fee. Special projects include, but are not limited to, the following: ()
- i.** Research; ()
- ii.** Lot history verification; ()
- iii.** Data entry; ()
- iv.** Sales and purchases; ()
- v.** Transfer of lots into ISDA database; ()
- vi.** ISDA training of private company personnel; ()
- vii.** Special plant pest detection surveys; or ()
- viii.** Any other circumstance approved by the Director. ()
- b.** This fee does not include any laboratory analysis fees that might be required as part of a special plant pest detection survey. ()
- 196. -- 209. (RESERVED)**

SUBCHAPTER B - VIRUS-FREE NURSERY STOCK CERTIFICATION

210. DEFINITIONS.

In addition to the definitions found in Section 22-2302, Idaho Code, the definitions in Section 210 apply in the interpretation and enforcement of Subchapter B only: ()

01. Certification. Verification that proper field sampling procedures were followed and that the indexing results as outlined in this rule are those determined by an approved laboratory designated to test for virus diseases under Subchapter B. ()

02. Idaho Certified Nursery Seed. Seed produced from registered seed trees or commercial seed having been tested and found to have a transmissible virus content that does not exceed five percent (5%). ()

03. Idaho Certified Nursery Stock. Nursery-grown, true seedlings, clonal rootstocks originating from

certified virus-free trees, and nursery-grown trees or seedlings propagated by using top-stock from certified virus-free trees and rootstock originating from certified virus-free trees except as herein provided for certain rootstocks. ()

04. Index. To determine virus infection by means of inoculation from the plant to be tested to an indicator plant or by any other acceptable method as designated by the Director. ()

05. Indicator Plant. Any herbaceous or woody plant used to index or determine virus infection. ()

06. Interstock. Scionwood used for compatibility purposes to graft between a particular top-stock and rootstock. ()

07. Nursery Stock. For purposes of this rule includes the plants and plant parts of the genera *Prunus*, *Malus*, *Pyrus*, *Chaenomeles* and *Cydonia*. ()

08. Off-Type. Not true-to-name (phenotype) as registered under Subchapter B. ()

09. Registered Tree. A tree or clonal planting that has been inspected and tested in accordance with the provisions of this program and assigned a registration number by the Department. ()

10. Rootstock. That part of a plant including the roots on which another variety of plant material may be grafted. ()

11. Scion-Block. A planting of certified virus-free trees that serves as a source of scionwood for the propagation of "Idaho certified nursery stock." ()

12. Scion (Scionwood). A detached shoot or other portion of a plant consisting of one or more buds used in propagation by grafting. ()

13. Seed Block. A planting of certified virus-free trees that serves as a source of seed for producing rootstock used in the propagation of "Idaho certified nursery stock." ()

14. Stool Bed. A clonal planting of self-rooted, certified virus-free trees for the specific purpose of producing vegetatively propagated rootstock used in the propagation of "Idaho certified nursery stock." ()

15. Top-Stock. Usually scionwood used for grafting onto interstock or rootstock, may include seed. ()

16. True Seedling. A tree that has been grown from seed. ()

17. Virus-Infected. The presence of a harmful virus(es) in a plant or plant part. ()

18. Virus-Like. A disorder of genetic or non-transmissible origin and also includes mycoplasma-like organisms and rickettsia-like organisms. ()

211. – 219. (RESERVED)

220. REQUIREMENTS.

01. Participation. Participation is open only to those nurseries registered under Title 22, Chapter 23, Idaho Code, and is voluntary. ()

02. Application. Application forms for the establishment of new blocks will be provided by the Idaho Department of Agriculture. The applicant nurseryman shall furnish to the Department all information pertinent to the operation of this program, including a diagram of each block and give consent to the Department to take plant parts (buds, leaves, roots, etc.) from any tree for testing purposes. ()

03. Registration. Trees may be registered as rootstock, top-stock, or seedstock sources for the propagation of certified nursery stock when inspected, tested, and found to be true-to-name and discernibly free from known harmful virus and virus-like diseases by procedures outlined in this program. ()

04. Responsibility. The applicant nurseryman is responsible, subject to the approval of the Director, for the selection of the location and the proper maintenance of registered plantings grown under the provisions of Subchapter B. The applicant nurseryman is responsible for maintaining the identity of all nursery stock entered into this program in a manner approved by the Department. Any planting entered into this program shall be kept in a healthy growing condition and free of plant pests. ()

05. Filing Date. Application for inspection and testing of new or existing blocks of registered scion, seed, and stool-bed trees and for inspection of nursery stock for certification shall be filed by June 1 of each year with the Idaho Department of Agriculture. ()

06. Nematode Sampling. The ground being submitted for planting with virus-free stock as outlined in Subchapter B shall be officially sampled, using established procedures acceptable to the Director, tested, and found free of virus transmitting nematodes prior to planting of any stock. Subsequent sampling for the presence of nematodes after planting may be carried out at the discretion of the Director, to ensure that a nematode-free status is maintained. ()

07. Grafting. There shall be no budding, grafting, or top-working of registered trees in any scion-block, seed-block, or stool-block. ()

08. Inspection. Maintenance of virus-free integrity of all plants entered into this program will be by inspection and spot-testing at a minimum of every three (3) years or as stated elsewhere in this rule. ()

09. Diseased Plants. Immediately following notice from the Director or his agent, any plant found to be infected by a virus or virus-like disease or if off-type, the plant(s) shall be removed and destroyed. Any ground found to be infested with virus transmitting nematodes must be fumigated with a fumigant registered and approved by the Idaho Department of Agriculture prior to planting, at the grower's expense. ()

221. -- 229. (RESERVED)

230. SCION-BLOCKS.

01. Location. A scion-block shall be located not less than one hundred (100) feet away from any non-registered cultivated plant of the Rosaceae family. The ground in a scion-block and for a distance of twenty (20) feet surrounding it shall be kept either clean-cultivated or in an approved, properly controlled ground cover. Registered scion-block trees shall be planted and maintained in a manner and at sufficient distance so that branches of different varieties do not overlap. Care shall be taken in the use of pollenizing insects and pollen application to prevent the transmission and spread of virus diseases through the use of infected pollen or its application. Registered scion-block trees may not be used for propagation purposes until trueness-to-name or variety has been established. Each tree will bear a permanent registration number. The ground in the scion-block will be sampled, using established procedures acceptable to the Director, and be tested and found free of virus transmitting nematodes prior to planting of any stock. ()

02. Acceptability. The rootstock and top-stock sources of the scion-block trees shall have originated from foundation trees established under this program or from virus-tested trees originating through the USDA-ARS Inter-Regional Project No. 2 (IR-2) or other approved programs. If the tree is scion-rooted, its source shall have met the requirements stated in Subchapter B. Only registered trees are permitted in the scion-block. ()

231. -- 234. (RESERVED)

235. SEED-BLOCKS.

01. Location. A Prunus seed-block shall be located not less than three hundred (300) feet from any non-registered flowering plant of the Prunus species. The ground in a seed-block and for a distance of twenty (20)

feet surrounding it shall be kept clean-cultivated or in an approved, controlled ground cover. Care shall be taken in the use of pollenizing insects and pollen application to prevent the transmission and spread of virus diseases through the use of infected pollen or its application. Each tree will bear a permanent registration number. ()

02. Acceptability. The rootstock and top-stock sources of the seed-tree shall have originated from foundation trees established under this program or from virus-tested trees originating through the USDA-ARS Inter-Regional Project No. 2 (IR-2) or other approved program. If the tree is scion-rooted, its source shall have met the requirements stated in Subchapter B. Only registered trees are permitted in the seed-block. ()

236. -- 239. (RESERVED)

240. STOOL-BEDS.

01. Location. A stool-bed shall be located not less than fifty (50) feet from any non-registered cultivated plant of the Rosaceae family. The following exception will apply: Non-registered stool-beds may be located not less than ten (10) feet from registered stool-bed plantings. The ground in a stool-bed and for a distance of ten (10) feet surrounding it shall be kept clean-cultivated. ()

02. Acceptability. Existing stool-beds that index clean on the commonly used virus indicators will qualify as Registered Stool-Beds. New stool-beds (those planted after the effective date of Subchapter B) shall have originated from foundation stock established under this program or from virus-tested plants originating through the USDA-ARS Inter-Regional No. 2 (IR-2) or other approved program. If the tree is scion-rooted, its source shall have met the requirements stated in Subchapter B. Only registered trees are permitted in the stool-beds. ()

241. -- 244. (RESERVED)

245. NURSERY STOCK.

01. Rootstocks. All nursery stock being grown for certification, shall be on rootstock from registered trees except for stone fruit trees grown on peach seedlings and pome fruit trees grown on apple and pear seedlings. These seedling rootstocks, when grown from commercial seed, will be acceptable if seed transmissible virus content does not exceed five percent (5%). Clonal rootstock used in the production of Idaho Certified Nursery Stock must originate from Registered Stool-Beds. ()

02. Location. The isolation distances between certified and non-certified nursery stock shall be: ()

a. Not less than fifty (50) feet from non-certified plants of the Rosaceae family; ()

b. Not less than twenty (20) feet from other non-certified nursery stock; ()

c. Program participants shall maintain a twenty (20) foot clean-cultivated area around all certified nursery stock beds. Nursery stock shall be designated as to rootstock, top-stock, and inter-stock sources. There shall be no re-budding or re-grafting of nursery raw stock unless such stock is re-worked with scions from the original registered scion-tree. ()

03. Identity Maintenance. The maintenance of certified stock identity shall be a tagging program identifying trees produced from: ()

a. Registered rootstock produced from registered seed or stool-beds; ()

b. Registered scion source trees. The tracking system involves a numbering diagram system of each participant's nursery stock beds in the program. ()

04. Seed. Certified seed shall have been produced on Registered Seed Trees or commercial seed having been tested and found to have a transmissible virus content that does not exceed five percent (5%). ()

05. Tagging. An Idaho Certified Nursery Stock Tag designates trees produced from registered scion-source trees and that have been propagated on rootstocks produced from registered seed-source or stool-bed trees, or that are self-rooted. All nursery stock meeting the requirements of this program when sold shall have the variety, inter-stock, and rootstock designated where applicable as follows: variety/inter-stock/rootstock. ()

06. Acceptability. All nursery stock meeting the requirements of this program are known as Idaho Certified Nursery Stock. ()

246. -- 249. (RESERVED)

250. BLOCK EXPANSION.

Expansion within a scion or stool-bed will be allowed with no restriction regarding the number of generations, provided accepted tissue culture methods are employed. Only two (2) propagative steps will be allowed between "mother plants" and foundation trees for scion, seed, and stool-bed blocks. ()

251. -- 259. (RESERVED)

260. INSPECTION PROCEDURES.

01. Time of Inspection. Inspections will be made at the discretion of the Department and at times when specific disease symptoms are most likely to be expressed. ()

02. Inspection of Nursery Stock for Certification. At least one (1) visual inspection will be made of nursery rootstock in a planting being grown for certification during the first growing season. At the request of the Department, any undesirable rootstock will be rogued before propagation. At least two (2) visual inspections will be made of nursery stock during the growing season following bud or graft placement. ()

03. Refusal of Certification. The Department will refuse certification if plants have been propagated from registered trees determined to be affected by a virus or virus-like disease or if other requirements of this program have not been met. ()

261. -- 264. (RESERVED)

265. TESTING PROCEDURES.

Testing standards prescribed in this program will conform to USDA-ARS Inter-Regional Project No. 2 (IR-2) standards or to any other acceptable and approved procedures developed and used for determining the presence of virus diseases in nursery stock. All testing results shall be made available directly to the Department by the approved agency or laboratory. ()

266. -- 269. (RESERVED)

270. TAGGING, IDENTITY, AND RECORDS.

01. Official Certification Tags. The Department will authorize the use of official certification tags for identification of nursery stock or seed that meet the requirements of this program. These tags will be supplied at cost to all program cooperators by the Department. ()

02. Identity. Any person selling Idaho Certified Nursery Stock is responsible for the identity of the stock bearing each tag and for such nursery stock meeting the requirements of this program. ()

03. Records. Any person selling Idaho Certified Nursery Stock shall keep record on a form prescribed by the Director that includes but is not limited to the source of the stock, quantity, and disposition. ()

271. -- 279. (RESERVED)

280. FEES.

01. Application Fees. A fee of fifty dollars (\$50) per application submitted plus ten cents (\$.10) per tree being certified shall be submitted with each application. ()

02. Laboratory Fees. Laboratory fees are established by a Department approved testing facility and will be paid directly to the facility. ()

03. Service Fees. Fees for plant or soil sampling and inspection services provided by the Idaho Department of Agriculture are in accordance with the following schedule. ()

a. A fee of twenty-five dollars (\$25) per hour for inspection and travel time with a minimum charge of fifty dollars (\$50). ()

b. Per diem costs will be charged according to established state rates. ()

c. The fees charged for tags will be at cost plus an administrative fee of ten percent (10%) for each order. ()

281. -- 309. (RESERVED)

SUBCHAPTER C - GINSENG EXPORT

310. DEFINITIONS.

In addition to the definitions found in Section 22-2005, Idaho Code, the definitions in Subchapter C apply in the interpretation and enforcement of Subchapter C, only. ()

01. Cultivated Ginseng. Any part of a ginseng plant that is growing or grown in managed beds under artificial or natural shade and cultivated according to recognized ginseng horticultural practices. Cultivated ginseng includes woodsgrown ginseng. ()

02. Dealer. Anyone who buys ginseng for resale, or grows and sells it for export. This definition does not apply to persons who buy ginseng solely for the purpose of final retail sale to consumers in the United States. ()

03. Dealer Registration. An annual registration issued by the department authorizing a dealer to buy, collect, or otherwise acquire ginseng for resale or export. ()

04. Dry Weight. The weight in pounds and ounces of harvested or collected ginseng root that is dried and is no longer viable. ()

05. Export. Outside the boundaries of the United States. ()

06. Ginseng. Any and all parts of the plant known as American ginseng (*Panax quinquefolius*) including, but not limited to: plants; whole roots; essentially intact roots; root chunks; slices; seeds; and tissue. ()

07. Green Ginseng. A ginseng root from which the moisture has not been removed by drying. ()

08. Green Weight. The weight in pounds and ounces of freshly harvested or collected ginseng root that is not dried and is still viable. ()

09. Grower. A person who grows “cultivated,” “wild simulated,” and or “woodsgrown” ginseng, and sells it to a dealer. ()

10. Grower Registration. An annual registration issued by the department that enables a grower to sell cultivated ginseng that the grower has produced. ()

11. Out-of-State Ginseng. Ginseng that is grown or originated outside the state of Idaho. ()

- 12. Wild Ginseng.** Ginseng growing naturally within its native range. ()
- 13. Wild Simulated Ginseng.** Wild ginseng seeds or roots planted in natural habitat, within the natural range, in suitable ginseng habitat that is not further cultivated. ()
- 14. Woodsgrown Ginseng.** Ginseng grown in managed beds under natural shade. ()
- 311. -- 319. (RESERVED)**
- 320. REGULATED PRODUCTS.**
American ginseng (*Panax quinquefolius*). ()
- 321. -- 329. (RESERVED)**
- 330. COLLECTION OF WILD GINSENG.**
No grower's or dealer's registration will be issued for the collection, sale or distribution of wild ginseng. ()
- 331. DEALERS AND GROWERS ANNUAL REGISTRATION WITH THE DEPARTMENT.**
No person may act as a dealer or grower without first registering with the department. Any person who acts as a dealer and a grower shall register as both. The department will assign a registration number to each person registered. Registration with the applicable fee will be made annually no later than January 15 of each year on a form provided by the department and the registration will expire on December 31. ()
- 332. --339. (RESERVED)**
- 340. GROWER RECORDS.**
A grower selling cultivated ginseng shall do all of the following when selling to a dealer: ()
- 01. Record of Sale.** Provide to the dealer a record of sale containing all of the following information: grower's name and address; grower's registration number; ginseng certificate number; ginseng dry weight; year harvested; county of harvest; and date of transaction. ()
- 02. Certificate of Origin.** Certify that the ginseng was grown in the state of Idaho. The certificate of origin form is prescribed by the department. ()
- 03. Records.** Maintain records of all ginseng production and sales. Records must be maintained for a period of three (3) years. ()
- 341. -- 349. (RESERVED)**
- 350. DEALER RECORDS.**
Dealers shall keep true and accurate records of transactions, including both sales and purchase records, in a format prescribed by the department. Records must be maintained for a period of three (3) years. ()
- 01. Purchase Records.** Purchase records include dealer's name, address and registration number; grower/seller name and registration number; ginseng weight in pounds and ounces; designation of green or dry ginseng; designation of wild or cultivated ginseng; harvest year of ginseng; county in which the ginseng was harvested; and date of transaction. ()
- 02. Sales Records.** Sales records shall include the following information: dealer's name, address and registration number; buyer's name, address and registration number; ginseng weight in pounds and ounces; designation of green or dry ginseng; designation of wild or cultivated ginseng; harvest year; county in which the ginseng was harvested; and date of transaction. ()
- 351. -- 359. (RESERVED)**

360. OUT-OF-STATE GINSENG.

01. Certificate of Origin. No dealer may purchase, receive or import out-of-state ginseng unless it is accompanied by a valid certificate of origin issued by the state or country of origin. The certificate must include the state or country of origin, the source (wild or cultivated), year of harvest, and dry weight of the out-of-state ginseng. ()

02. Recordkeeping. The dealer shall retain for a period of three (3) years a copy of each written certificate of origin received. ()

03. Uncertified Ginseng. If a dealer receives ginseng not accompanied by a valid certificate of origin, the uncertified ginseng must be returned within thirty (30) days to the state or country of origin. Failure to do so renders the ginseng illegal for commerce. ()

361. SELLING OR SHIPPING OF GINSENG -- CERTIFICATES.

01. Export. Except as described in Subsection 361.06, no person may sell or ship ginseng out-of-state or export Idaho grown ginseng unless it is accompanied by a valid, prenumbered certificate of origin on a form issued by the department. The department will, upon request and receipt of the required fee(s), provide each registered grower or dealer with forms for certificates of origin. The department will identify each certificate of origin form with a serial number, and the registration number of the grower or dealer. Registered growers or dealers may certify their own cultivated ginseng by filling out and signing a certificate of origin form. The certificate of origin contains the following information: ()

- a. State of origin; ()
- b. Serial number of certificate; ()
- c. Dealer's and/or grower's state registration number; ()
- d. Year of harvest of ginseng being certified; ()
- e. Designation as cultivated roots or plants; ()
- f. Designation as dried or fresh (green) roots, or live plants; ()
- g. Weight of roots or plants (or number of plants) separately expressed both numerically and in writing; ()
- h. Date of certification; and ()
- i. Signature of grower or dealer making certification. ()

02. Idaho Certificate of Origin. All of the following conditions must be met in order for an Idaho certificate of origin to be valid: ()

- a. The grower or dealer whose registration number was entered on it by the department shall sign the certificate; and ()
- b. The ginseng is cultivated ginseng grown in Idaho. ()

03. Forms. Forms for certificates of origin are issued by the department in triplicate. The original is designated for the dealer's use in commerce; the first copy is for the dealer's records; and the grower or dealer shall send the second copy, within two (2) weeks of issuance, to the Division of Plant Industries, Idaho State Department of Agriculture, P.O. Box 7249, Boise, ID 83707. ()

04. Out-of-State Issued Certificates. No person may export ginseng grown in Idaho using an out-of-

state issued certificate. ()

05. Wild Ginseng Certificates. Certificates of origin will not be issued for wild ginseng. ()

06. Final Retail Sales. Subsection 361.01 does not apply to a person who sells or ships cultivated ginseng out-of-state to a person who is buying or receiving it solely for the purpose of final retail sale to consumers in the United States, if the person selling or shipping keeps a record for a period of three (3) years that includes: name and address of the buyer or receiver; weight of the ginseng in pounds and ounces; date of the sale or shipment; county of harvest of the ginseng; and year of harvest of the ginseng. ()

362. -- 369. (RESERVED)

370. MAINTAINING SEPARATE LOTS OF GINSENG.

Dealers shall maintain separation between lots of out-of-state ginseng and that harvested in Idaho until a certificate of origin has been issued for the ginseng harvested in Idaho. ()

371. DEALER OR GROWER HOLDING GINSENG AFTER DECEMBER 31 OF THE YEAR.

Any grower or dealer holding ginseng on or after December 31 shall report all carryover stocks on a form provided by the department. The form shall list the name and address of the grower or dealer; location of the lot; lot identification; county of harvest; dry or green weight in pounds and ounces; and year of harvest. ()

372. -- 379. (RESERVED)

380. INSPECTION AND DISCLOSURE OF RECORDS.

01. Inspection. All records required to be kept under Subchapter C shall be made available to the department upon request for inspection and copying. ()

02. Disclosure. The department will not disclose information obtained regarding purchases, sales, or production of an individual ginseng dealer, except for providing reports to the United States Fish and Wildlife Service. ()

381. -- 389. (RESERVED)

390. EXPORT PROCEDURES.

Valid federal Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) documents are necessary to export ginseng. ()

391. FEES - HOURLY, OVERTIME.

Fees will be charged to cover the department's cost of implementing Subchapter C. ()

01. Certification and Overtime Rate. Ginseng certification services will be provided at an hourly and overtime rate as provided in Section 392 of Subchapter C. The overtime rate will apply for service provided subsequent to a regularly scheduled eight (8) hour week day shift or on Saturdays, Sundays, and state legal holidays. No service will be performed on Thanksgiving Day, Christmas Day or New Year's Day, beginning at 5 p.m., on the previous day. ()

02. Minimum Charges. Charges will be for a minimum of one (1) hour. Additional time will be charged in one-half (1/2) hour increments. ()

392. SCHEDULE OF FEES AND CHARGES.

The following schedule for ginseng certification services apply: ()

01. Registration. Registration (grower or dealer or grower and dealer), twenty-five dollars (\$25). ()

02. Certificate of Origin Form. Certificate of origin form, each, ten dollars (\$10). ()

- 03. Hourly Rate.** Hourly rate for certification services, twenty-eight dollars (\$28). ()
- 04. Overtime Rate.** Overtime rate for certification services, thirty-three dollars (\$33). ()
- 393. -- 999. (RESERVED)**

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.06.05 – RULES GOVERNING PLANT DISEASE AND QUARANTINES
DOCKET NO. 02-0605-1901 (NEW CHAPTER)
NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 22-2004 and 22-2006, Idaho Code.

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

Eleven rules administered by the ISDA are related to the regulation and quarantine of certain crops to prevent the spread of plant disease and pests. These rules are IDAPA 02.06.05, “Rules Governing Diseases of Hops,” IDAPA 02.06.11, “Rules Governing European Corn Borer,” IDAPA 02.06.15, “Rules Governing Peach Tree Diseases,” IDAPA 02.06.18, “Rules Governing Mint Rootstock and Clone Production,” IDAPA 02.06.20, “Rules Governing Grape Planting Stock,” IDAPA 02.06.24, “Rules Governing the Japanese Beetle,” IDAPA 02.06.32, “Rules Concerning the Anthracnose Disease of Lentil,” IDAPA 02.06.38, “Rules Governing Plum Curculio,” IDAPA 02.06.08, “Quarantine Rules Pertaining to Apples and Cherries,” IDAPA 02.06.07, “Rules Governing White Rot Disease of Onion,” and IDAPA 02.06.17, “Rules Governing the Disposal of Cull Onion and Potatoes.” These rules put in place a number of restrictions, as requested by the regulated industry, to ensure that quarantine and disease free areas within and outside the state of Idaho are maintained and protected. These rules were promulgated to carry out requirements described in Title 22, Chapters 19, 20 and 38, Idaho Code. In order to streamline and simplify rules related to plant disease and quarantines, the ISDA is proposing to combine all eleven rules into a single rule to be titled “02.06.05, Rules Governing Plant Disease and Quarantines.” No substantive changes are being made to the eleven rules cited above. However, these rules were reviewed for repeal and amendment of certain sections consistent with the guidance and direction provided in the Red Tape Reduction Act. Therefore, the consolidated rule was reviewed to update authorities, eliminate unnecessarily restrictive language and redundancy.

The text of the pending fee 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 November Idaho Administrative Bulletin, [Vol. 19-11, pages 221-247](#).

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

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. Hop producers are assessed a special permit fee and inspection, certificate and general permit fee by category. Mint rootstock growers are assessed a transfer permit and field inspection fee by category. Fees included in the original rules (Rules Governing Diseases of Hops and Rules Governing Mint Rootstock and Clone Production) have not been changed in the new combined rule. Fees associated with these rules are imposed pursuant to Sections 22-107, 22-112 and 22-2006, Idaho Code.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Lloyd Knight, Administrator, at (208) 332-8664.

Dated this 27th day of November, 2019.

Brian Oakey, Deputy Director
Idaho Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8552
Fax: (208) 334-2170

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 22-2004 and 22-2006, Idaho Code.

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

PUBLIC HEARING

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

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

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: Eleven rules administered by the ISDA are related to the regulation and quarantine of certain crops to prevent the spread of plant disease and pests. These rules are IDAPA 02.06.05, "Rules Governing Diseases of Hops," IDAPA 02.06.11, "Rules Governing European Corn Borer," IDAPA 02.06.15, "Rules Governing Peach Tree Diseases," IDAPA 02.06.18, "Rules Governing Mint Rootstock and Clone Production," IDAPA 02.06.20, "Rules Governing Grape Planting Stock," IDAPA 02.06.24, "Rules Governing the Japanese Beetle," IDAPA 02.06.32, "Rules Concerning the Anthracnose Disease of Lentil," IDAPA 02.06.38, "Rules Governing Plum Curculio," IDAPA 02.06.08, "Quarantine Rules Pertaining to Apples and Cherries," IDAPA 02.06.07, "Rules Governing White Rot Disease of Onion," and IDAPA 02.06.17, "Rules Governing the Disposal of Cull Onion and Potatoes." These rules put in place a number of restrictions, as requested by the regulated industry, to ensure that quarantine and disease free areas within and outside the state of Idaho are maintained and protected. These rules were promulgated to carry out requirements described in Title 22, Chapters 19, 20 and 38, Idaho Code. In order to streamline and simplify rules related to plant disease and quarantines, the ISDA is proposing to combine all eleven rules into a single rule to be titled "*02.06.05, Rules Governing Plant Disease and Quarantines.*" No substantive changes are being made to the eleven rules cited above. All rules were reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Fees included in the original rules (Rules Governing Diseases of Hops and Rules Governing Mint Rootstock and Clone Production) have not been changed in the new combined rule. Fees associated with these rules are imposed pursuant to Sections 22-107, 22-112 and 22-2006, Idaho Code.

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

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted on September 18, 2019. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, Pages 15-19](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: This section is not applicable, as there are no materials incorporated by reference in this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd Knight, Administrator, at (208) 332-8664.

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

Dated this 3rd day of October, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 02-0605-1901

02.06.05 – RULES GOVERNING PLANT DISEASE AND QUARANTINES

000. LEGAL AUTHORITY.

This chapter is adopted under legal authority of Sections 22-2004, and 22-2006, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.06.05, “Rules Governing Plant Disease and Quarantines.” ()

02. Scope. This rule establishes regulated pests, regulated products, regulated articles, control areas, quarantine areas and special permits for certain crops to prevent the spread of plant disease and pests. This rule will provide regional consistency for plant pest quarantines. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

The definitions set forth in Section 22-2005, Idaho Code, apply in the interpretation and enforcement of this rule.

()

SUBCHAPTER A – DISEASES OF HOPS

011. -- 111. (RESERVED)

112. REGULATED PESTS.

01. Verticillium Wilt. Plant Material infected with the disease caused by the fungus *Verticillium nonalfalfae* (formerly known as *Verticillium albo-atrum Reinke* and *Berth*) and any species or strains of the genus *Verticillium* pathogenic to hops. ()

02. Powdery Mildew. Plant Material infected with the disease caused by the fungus *Podosphaera macularis* (Wallr. Fr.), synonyms *Sphaerotheca macularis* (Wallr. Fr.) Lind and *Sphaerotheca humuli* (Burril) Lind. ()

03. Hop Stunt Viroid. Plant Material infected with the disease caused by the viroid *Hostuviroid hop stunt viroid* and all strains and genetic variants associated with the genus. ()

04. Ilarvirus Species. Plant Material infected with the disease caused by virus species within the Genus *Ilarvis*, including but not limited to Apple Mosaic Virus and Prunus Necrotic Ringspot Virus. ()

113. -- 119. (RESERVED)

120. REGULATED ARTICLES.

01. Plant Material. Plants and all plant parts of hops, except kiln dried cones. ()

02. Machinery. Machinery, vehicles, tools, equipment, trellis poles, wire, anchor irons, and any other appurtenances used in the culture and/or production of hops. ()

121. -- 129. (RESERVED)

130. QUARANTINE AREA.

All areas outside of the territorial borders of Idaho, Oregon, and Washington.

()

131. -- 139. (RESERVED)

140. RESTRICTIONS ON IMPORT.

No person may import restricted articles from the quarantined area into Idaho unless the person importing the regulated articles first obtains a special permit from the department as set forth in Section 160. ()

141. --149. (RESERVED)

150. MOVEMENT OF USED FARMING EQUIPMENT.

01. Clean and Free. Used farm equipment including, but not limited to, tillage equipment, vehicles, and hop yard appurtenances moving into Idaho from the quarantine area, must be clean and free of soil and plant material including, but not limited to, hop debris. ()

02. Requirements. Freedom from plant material and soil may be accomplished by washing, steam cleaning, and/or use of a disinfectant appropriately labeled for the purpose. ()

151. -- 159. (RESERVED)

160. SPECIAL PERMITS.

Any person(s) or agencies wishing to import covered commodities from the area under quarantine must apply in writing for a special permit as authorized by the director of the department. ()

01. Application. Application for special permits must list the prospective buyer and seller; the number, and origin of stock; location of proposed planting site; and any other relevant information. ()

02. Conditions. Special permits, when granted, may include such conditions as may be necessary to prevent disease establishment. All permitted material must be found free from regulated pests by the Clean Plant Center at Washington State University, Prosser, Washington, or an equivalent lab approved by the department. ()

161. -- 169. (RESERVED)

170. PEST DETECTION.

01. Inspection. If evidence of a regulated pest is detected by visual inspection, the Department, in cooperation with the University of Idaho, Department of Plant, Soil and Entomological Sciences, will perform laboratory procedures sufficient to determine the causal organism. ()

02. Consequences. Positive identification of the presence of Verticillium wilt, hop stunt viroid, ilar viruses, or powdery mildew virulently pathogenic to hops will result in loss of eligibility for sale or transfer for those rootstocks within the infested field. The director may also order that the infested area be removed from hop production and the soil be disinfested. ()

171. -- 179. (RESERVED)

180. AUTHORITY TO ENTER AND INSPECT.

The Director of the Idaho State Department of Agriculture or his designated agent is authorized to enter and inspect any and all hop plantings within the state of Idaho. ()

181. -- 189. (RESERVED)

190. FEES AND CHARGES.

01. Special Permits. For special permits for importation of hops from areas under quarantine, the fee will be sixty dollars (\$60) per permit. ()

02. General Fees and Charges. The fees and charges for inspection, certificates, and permits are as set forth in IDAPA 02.06.04, "Idaho Department of Agriculture, Rules Governing Plant Exports," Section 195. ()

191. -- 211. (RESERVED)

SUBCHAPTER B – WHITE ROT DISEASE OF ONION

212. REGULATED PEST.

Onion white rot (*Sclerotium cepivorum*). ()

213. -- 219. (RESERVED)

220. DESIGNATED COUNTIES.

Ada, Bingham, Blaine, Boise, Bonneville, Canyon, Cassia, Elmore, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Owyhee, Payette, Power, Twin Falls, and Washington Counties, state of Idaho. ()

221. -- 229. (RESERVED)

230. REGULATED PRODUCTS.

Bulbs, sets, or seedlings of onion, garlic, leek, chive, shallot or other Allium species, including all ornamental Allium species, for planting purposes, and all machinery, tools, and equipment used in the production of Allium species. ()

231. -- 249. (RESERVED)

250. RULES GOVERNING SHIPMENTS.

01. Shipment for Planting Purposes. No person may import into the designated counties bulbs, sets or seedlings of onion, garlic, leek, chives, shallots or other Allium species, including ornamentals, for planting purposes except as provided in Subsections 250.02 through 250.04. ()

02. Designated Counties. Allium production within the designated counties shall be limited to production from seed, or from vegetative propagative material produced from seed within the designated counties. Bulbs, sets or seedlings of Allium species produced within the designated counties then exported from the designated counties for processing or other purposes cannot be returned to the designated counties for planting purposes. ()

03. Vegetative Propagative Material. Vegetative propagative material, produced under aseptic conditions, may be brought into the designated counties if an exemption is granted by the Director, or the Director's designated agent. ()

04. Allium Exemption. Bulbs, sets, or seedlings of Allium species, for planting purposes, produced in Malheur County, Oregon, and regulated by similar rules are exempt from the restrictions of Subsection 250.01. ()

05. Machinery, Tools and Equipment. Except as provided in Subsections 250.06 and 250.07, no person shall, in any manner, import or move into the designated counties any machinery, tools, or equipment that have been previously used in any manner on fields outside the designated counties where the host plants named in Section 230 have ever been cultivated. ()

06. Cleaning Machinery, Tools and Equipment. Machinery, tools, or equipment may be imported or moved into the designated counties if they are first steam cleaned and disinfested to the satisfaction of, and with the prior approval of, the Director. The cleaning shall include the complete removal of all soil by the use of steam under pressure. Disinfestation is accomplished as specified by the Director. For the purpose of Subchapter B, machinery, tools and equipment includes, but is not limited to, farm trucks, harvesters, and tillage equipment. ()

07. Exemptions. Machinery, tools or equipment utilized in Malheur County, Oregon, are exempt from the prohibition in Subsections 250.05 and 250.06. ()

08. Authority of Director. The Director may stop the movement into or within any designated county of any machinery, tools, or equipment that have not been cleaned and disinfested as provided for in Subsection 250.06 until such machinery, tools and equipment are so cleaned and disinfested. ()

251. -- 259. (RESERVED)

260. DISPOSITION OF VIOLATIONS.

Any plant material, plant products or machinery, tools or equipment, imported into any designated county in violation of Subchapter B shall immediately be sent out of the county and all counties specified in Section 220 or destroyed at the option and expense of the owner or owners, his or their agents and under the direction of the Director. ()

261. -- 269. (RESERVED)

270. INSPECTION AND CONTROL PROCEDURES.

01. Inspection. The Director may inspect any regulated product or regulated product planting areas within the designated counties during any time of the year to determine if the disease organism is present therein. If the Director finds that any of the regulated products enumerated in Section 230, whether or not being transported, or any fields are infested with the disease organism, the Director will, by written control order, delivered or mailed to the grower and/or land owner, direct the control of the infestation, and may, prior to issuance of the order, seize any infected regulated products that are separated from the land on which grown. ()

02. Movement. Movement of such regulated products within the designated counties or removal of such from the designated counties may be carried out only with the Director's prior approval and under the Director's supervision. ()

03. Controls. Control methods used are only those approved by the Director and may include, but are not limited to, the following directives: ()

a. Any infected regulated products will be destroyed. ()

b. A directive that a specific part or all of any infested area will be taken out of Allium species production. ()

c. Any infested area will be fenced, properly diked to prevent runoff or irrigation or rainwater, and planted to an approved crop that will prevent soil erosion and will not require annual tillage. ()

d. The pasturing of animals on any infested area is prohibited. ()

e. Equipment, tools and machinery used on an infested area will be cleaned and disinfested prior to removal from said area. ()

271. -- 279. (RESERVED)

280. SPECIAL EXEMPTIONS.

The Director may, with the consent of the owner, allow use of an infested growing area as an experimental plot in cooperation with the University of Idaho for onion white rot research. ()

281. -- 309. (RESERVED)

SUBCHAPTER C – APPLE AND CHERRY PESTS

310. DEFINITIONS.

The definitions found in section 310 apply to the interpretation and enforcement of Subchapter C only: ()

01. Commercial Fruit. Fruit harvested from a commercial orchard and destined to a commercial processing plant, packing plant, or for retail or wholesale sales. ()

02. Commercial Orchard. An orchard in which fruit is grown for commercial purposes under accepted industry, university agricultural extension service, and regulatory guidelines. ()

03. Graded Culls. Apples that have failed to meet industry quality standards for fresh markets, yet meet industry quality standards for processing purposes. ()

04. Infested Area. An area where a regulated pest is known to be present and is capable of reproducing and maintaining a viable population. ()

05. Threatened with Infestation. The entire commercial orchard is threatened with infestation when an outside boundary is within one-half (1/2) mile of an established regulated pest even if a portion of the commercial orchard is beyond one-half (1/2) mile of an established regulated pest. ()

311. – 319. (RESERVED)

320. REGULATED PESTS.

01. Apple Maggot (*Rhagoletis pomonella*). ()

02. Cherry Fruit Fly (*Rhagoletis cingulata* complex, including *R. indifferens* and *R. fausta*). ()

321. REGULATED ARTICLES.

01. Apple Maggot. All fresh fruit of apple (including crabapple), cherry (except cherries that are commercial fruit), hawthorn (haw), pear (except pears that are commercial fruit from California, Idaho, Oregon, Utah, and Washington), plum, prune, quince, and rose hips are regulated under quarantine for apple maggot. ()

02. Cherry Fruit Fly. All domestic and wild cherries and cherry trees. ()

322. --329. (RESERVED)

330. REGULATED AREAS - APPLE MAGGOT.

01. Non-Infested Areas -- Within Idaho. The entire counties of Canyon, Owyhee and Payette; portions of the counties of Gem and Washington lying south of the quarantine areas as outlined in Subsections 330.02.a. and 330.02.b. ()

02. Infested Areas -- Within Idaho. The following areas are declared by the director to be under quarantine for Apple maggot: the counties of Franklin, Oneida, Caribou, Ada, Boise and Gooding; and portions of Gem and Washington counties as outlined in Subsections 330.02.a. and 330.02.b. ()

a. Gem County Quarantine Area. Those portions of Gem county lying northerly of a line described as follows: Commencing at the Northwest corner of Section 3, T.7N, R.2W; thence East along section lines to the Northwest corner of Section 6, T.7N, R.1W; thence South along section lines to the Southwest corner of Section 7; thence East along section lines to the Northeast corner of Section 15, T.7N, R.1W; thence South along section lines to the middle of the main channel of the Payette River; thence easterly along said river to the East line of the county. ()

b. Washington County Quarantine Area. Those portions of Washington county lying northerly of a line described as follows. Commencing at the Snake River at the Southern boundary of T.12N, R.7W; thence East along section lines to the Southwest corner of Section 35, T.12N, R.5W; thence North along section lines to the Northwest corner of Section 23, T.12N, R.5W; thence East along section lines to the Northwest corner of Section 21, T.12N, R.4W; thence South along section lines to the Southwest corner of Section 33, T.12N, R.4W; thence East along section lines to the Southwest corner of Section 31, T.12N, R.1E; thence East along section lines to the East line of the county. ()

03. Infested Areas -- Outside of Idaho. All states or foreign countries or portion thereof where Apple maggot is known to occur. ()

331. -- 339. (RESERVED)

340. RESTRICTIONS - APPLE MAGGOT.

01. Certification Required. Regulated articles described in this quarantine that are produced in or shipped from infested areas are prohibited movement into or within the state of Idaho unless a certificate accompanies the shipment evidencing compliance with Subsections 340.03, 340.04, 340.05, or 340.07. No certificate is required for regulated articles meeting the requirements of Subsections 340.02 or 340.06. ()

02. Reshipments in Original Containers. Regulated articles in original unopened containers, each

bearing labels or other identifying marks evidencing origin outside an infested area, may be reshipped to the regulated area from any point within the area under quarantine. ()

03. Repacked Regulated Articles. Regulated articles may be repacked and shipped by common carrier from any point within an infested regulated area provided that each lot or shipment is accompanied by a certificate stating that the regulated articles have been grown outside an infested regulated area and have had their identity continuously maintained while in an infested regulated area. The certificate shall contain the following information: ()

- a. The county in which the regulated articles were grown. ()
- b. The point of repacking and reshipment. ()
- c. The amount and kind of regulated articles comprising the lot or shipment. ()
- d. The names and addresses of the shipper and consignee. ()

04. Apples Exposed to Controlled Atmosphere Storage. Apples exposed for a continuous period of ninety (90) days, during which period the temperature within the storage room has been maintained at thirty-eight (38) degrees Fahrenheit or less, may be admitted into the regulated area, provided that the storage room or building is approved by the Director as a controlled atmosphere facility, and each lot or shipment of such apples to the regulated area is accompanied by a certificate, as provided in Subsection 340.01. ()

05. Shipments From Cold Storage. Regulated articles described in Subsection 321.01 that are held in cold storage for a continuous period of forty (40) days or more, during which period the temperature within the storage room is maintained at thirty-two (32) degrees Fahrenheit or less, may be admitted into the regulated area, provided that each lot or shipment is accompanied by a certificate as stated in Subsection 340.01 evidencing compliance with the minimum temperature requirements. ()

06. Solid Frozen Fruits Exempt. No restrictions are placed on the movement of fruits that upon arrival are frozen solid and that are under refrigeration to assure their solid frozen state. ()

07. Regulatory and Control Measures. Regulatory and control measures may be prescribed by the Director within designated areas to prevent or minimize the possible movement of Apple maggot from commercial orchards. When it has been determined that commercial fruit of apple (including crabapple), hawthorn (both native and ornamental), plum, prune, peach and apricot trees (except graded culls – see Subsection 340.07.b.iii.) may be infested with or threatened with infestation by Apple maggot, the fruit will be sampled by an investigator, following accepted industry procedures for sampling and inspection for presence of Apple maggot. ()

a. If found to be free from Apple maggot, a certificate as provided for in Subsection 340.01 will be issued. ()

b. If found to be infested with Apple maggot, one (1) or more of the following procedures will be prescribed before fresh fruit of apple (including crabapple) and hawthorn (both native and ornamental) are moved from designated or regulated areas. ()

- i. Fresh fruit to be exposed to controlled atmosphere storage as provided in Subsection 340.04. ()
- ii. Fresh fruit to be exposed to cold storage as provided in Subsection 340.05. ()
- iii. Graded culls are subject to Subsections 340.07.b.i. or 340.07.b.ii. ()

08. Infested or Damaged Regulated Articles. All regulated articles as described in Section 321.01 known, or found to be infested with, or damaged by Apple maggot shall not be sold, held for sale, or offered for sale, except as provided for in Subsections 340.04 and 340.05. ()

341. -- 349. (RESERVED)

350. REGULATED AREAS - CHERRY FRUIT FLY.

01. Canyon County, Idaho. The following is hereby designated an area of mandatory control for Cherry fruit fly: Commencing at the corner common to Sections 22, 23, 26 and 27 of Township 4 North, Range 5 West, Boise, Meridian; thence South to the Snake River to the point formed by section line between Sections 11 and 14 in Township 2 North, Range 4 West, Boise, Meridian; then East along said section line projected to where said line meets Lake Lowell; thence northwesterly across Lake Lowell to a point on the section line between Sections 26 and 27 of Township 3 West, Range 3 North, Boise, Meridian where said line meets Lake Lowell; then North along said section line to a point which is the corner common to Sections 10, 11, 14 and 15 of Township 3 North, Range 3 West, Boise, Meridian; thence West to a point, the west corner common to Sections 7, 12, 13 and 18, Township 3 North, Range 3 West Boise, Meridian; thence North to a point the east corner common to Sections 1 and 12, Township 3 North, Range 4 West, Boise, Meridian; thence West to a point the corner common to Sections 2, 3, 10 and 11, Township 3 North, Range 4 West, Boise, Meridian; thence North to a point which is the section corner common to Sections 26, 27, 34 and 35 of Township 4 North, Range 4 West, Boise, Meridian; thence West to a point which is the section corner common to Sections 27, 28, 33 and 34 of Township 4 North, Range 4 West, Boise, Meridian; thence North to a point which is the section corner common to Sections 21, 22, 27 and 28, Township 4 North, Range 4 West, Boise, Meridian; thence West to the point of beginning. ()

02. Gem County, Idaho. The following is hereby designated an area of mandatory control for Cherry fruit fly: Commencing at the corner common to Sections 4 and 5 of T. 6 N., R. 3 W. B. M. and Sections 32 and 33 of T. 7 N., R. 3 W., B. M., which corner is on the West line of Gem County, Idaho; thence South along said county line to a point which is the Southwest corner of Section 33 of T. 6 N., R. 3 W., B. M.; thence East along the South line of said Section 33 to its Southeast corner; thence North along the East line of said Section 33; and continuing North along the extension of said line to a point which is the corner common to Sections 15, 16, 22 and 23 of T. 6 N., R. 3 W., B. M.; thence East along the section line between Sections 15 and 22 of T. 6 N., R. 3 W., B. M. to a point on the division line between Ranges 2 and 3 W., T. 6 N., B. M.; thence South along the division line between the said Ranges 2 and 3 W., T. 6 N., B. M., to the East corner common to Sections 24 and 25, T. 6 N., R. 3 W., B. M.; thence East to a point which is the East corner common to Sections 19 and 30 of T. 6 N., R. 2 W., B. M.; thence South to a point which is the East corner common to Sections 30 and 31, T. 6 N., R. 2 W., B. M.; thence East along the section line between said Sections 30 and 31, extended to a point which is the East corner common to Sections 29 and 32, T. 6 N., R. 1 W., B. M.; thence North to a point which is the East corner common to Sections 20 and 29, T. 6 N., R. 1 W., B. M.; thence East to a point which is the East corner common to Sections 21 and 28, T. 6 N., R. 1 W., B. M.; thence North to a point which is the East corner common to Sections 16 and 21, T. 6 N., R. 1 W., B. M.; thence East to a point which is the East corner common to Sections 15 and 22, T. 6 N., R. 1 W., B. M.; thence North to a point which is the East corner common to Sections 8 and 10, T. 6 N., R. 1 W., B. M.; thence East to a point which is the East corner common to Sections 2 and 11, T. 6 N., R. 1 W., B. M.; thence North to a point which would be the East corner common to Sections 23 and 26, T. 7 N., R. 1 W., B. M.; thence West to a point which is the Northwest corner of Section 25, T. 7 N., R. 2 W., B. M.; thence South to a point which is the Northwest corner of Section 1, T. 6 N., R. 2 W., B. M.; thence West to the point of beginning. ()

351. -- 359. (RESERVED)

360. RESTRICTIONS - CHERRY FRUIT FLY.

01. Treatments Required. Each person, or person's agent, located in Cherry fruit fly regulated areas as stated in Section 350 shall treat, or cause to be treated at his own expense, each of the regulated articles as listed in Subsection 321.02 on their property in order to minimize the population of the Cherry fruit fly. ()

02. Chemical Treatments. Chemical treatments shall be carried out utilizing proper timing, methods and pesticides as recommended by the University of Idaho Cooperative Extension Service, approved for use on the commodity by the Environmental Protection Agency, and registered with the Idaho State Department of Agriculture. The regulated articles will be treated so as to effect the best control of the Cherry fruit fly, as per the pesticide label and University recommendations. ()

03. Emergence. The date of the emergence of the first Cherry fruit fly in the county will be made

public in the Cherry fruit fly regulated areas by the Department. The date of first emergence is determined by historical evidence, a population model utilizing degree-day accumulations or by actual trapping of adult individuals. ()

04. Additional Spraying Responsibilities. The duty to treat cherry trees includes a similar duty to treat all parts of any type of tree within twenty (20) feet of any portion of a cherry tree, using methods specified in Subsection 360.02. ()

05. Failure to Treat. In the event that the person or person's agent fails or refuses to effect the treatment specified in Subsection 360.02, the Director will carry out the treatment at the expense of the person in charge or possession of the tree(s), as provided under Section 22-2010, Idaho Code. ()

361. – 369. (RESERVED)

370. SPECIAL PERMITS.

The Director may issue special permits admitting regulated articles covered in this quarantine not otherwise eligible for entry from the area under quarantine, subject to conditions and provisions, that the Director may prescribe to prevent introduction, escape or spread of the quarantine pests. ()

371. -- 411. (RESERVED)

SUBCHAPTER D – EUROPEAN CORN BORER

412. REGULATED PEST.

European corn borer (*Ostrinia nubilalis*). ()

413. -- 419. (RESERVED)

420. AREA AND ARTICLES UNDER QUARANTINE.

01. Infested Area. ()

a. Alabama, Arkansas, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, Wyoming, and the District of Columbia. ()

b. In Florida, the counties of Calhoun, Escambia, Gadsden, Hamilton, Holmes, Jackson, Jefferson, Madison, Okaloosa, and Santa Rosa. ()

c. In Louisiana, the parishes of Bossier, Caddo, Concordia, East Carroll, Franklin, Madison, Morehouse, Natchitoches, Ouachita, Red River, Richland, Tensas, and West Carroll. ()

d. In Texas, the counties of Bowie, Carson, Castro, Dallam, Deaf Smith, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, and Sherman. ()

02. Noninfested Area. All parishes, counties, states, districts, and territories of the United States not named in the infested area are known as the non-infested area. ()

03. Articles and Commodities Covered. ()

a. Corn, broomcorn, sorghum, and sudan grass plants and all parts thereof (including shelled grain and stalks, ears, cobs, and all other parts, fragments, or debris of said plants); ()

b. Beans in the pod and pepper fruits; ()

- c. Plants of aster, chrysanthemum, geranium, hollyhock, dahlia, and gladiolus. ()

421. -- 429. (RESERVED)

430. RESTRICTIONS AND EXEMPTIONS.

01. Restrictions. ()

a. Articles and commodities covered are prohibited entry into Idaho from the infested area unless accompanied by a certificate, issued by an authorized representative of the origin state Department of Agriculture, as provided below in Subsections 430.01.a.i. and 430.01.a.ii. ()

i. Shelled grain certificate of treatment stating that the grain has passed through a one-half (1/2) inch or smaller size mesh screen. ()

ii. Shelled grain not screened as in Subsection 430.01.a.i. or other articles and commodities certificate of processing and inspection specifying that all of the commodities and articles in the lot or shipment were processed and inspected in conformity with a method and in a manner prescribed by the Director, or the Director's agent. Such methods are obtainable on request from the Department. ()

iii. Articles and commodities covered originating in the parishes of Louisiana and the counties of Florida and Texas that are not infested with European corn borer may enter Idaho if accompanied by a certificate of origin issued by an authorized representative of the origin state Department of Agriculture specifying that no portion of the articles or commodities in the lot or shipment was grown in an area where the European corn borer is known to occur. Origin certification is not required for entry into Idaho of articles and commodities covered that originated in states, districts, and territories in the noninfested area. ()

b. All certificates must be dated and set forth the kind and quantity of articles or commodities constituting the lot or shipment covered thereby, the initials and number of the railway car or license number of the truck, and the names and addresses of the shipper and consignee. ()

02. Exemptions. Certification requirements are waived on the following articles and commodities covered, with the stipulation that such articles and commodities are subject to inspection by the Director and must be free of plant portions or fragments capable of harboring European corn borer. ()

a. Shelled popcorn, seed for planting or clean sacked grain for human consumption. ()

b. Beans in the pod or pepper fruits in lots or shipments of ten (10) pounds or less. ()

c. Seedling plants or divisions without stems of the previous year's growth of aster, chrysanthemum or hollyhock. ()

d. Dahlia tubers without stems. ()

e. Gladiolus corms without stems. ()

f. Very pungent types of pepper fruits. ()

g. Articles and commodities covered when they have been processed or manufactured in a manner that in the judgement of the Director eliminates all danger of carrying European corn borer. ()

h. The Director may, upon application, issue a permit to a recognized research agency to import specified quantities of the quarantined articles listed in Subsection 420.03 for experimental purposes. ()

431. -- 439. (RESERVED)

440. VIOLATIONS.

01. Incoming Shipments. ()

a. Any or all shipments of lots of the quarantined articles enumerated in Subsection 420.03 arriving in Idaho in violation of this quarantine shall immediately be sent out of the state, destroyed, or treated by a method and in a manner prescribed by the Director at the option and expense of the owner or owners, or responsible agents. ()

b. If any lot or shipment certified by the state of origin as prescribed in Subsection 430.01 is found to contain materials capable of harboring an infestation, the Director may review the program of the state of origin to determine if it meets the requirements of Subchapter D. ()

441. -- 511. (RESERVED)

SUBCHAPTER E – PEACH TREE DISEASES

512. REGULATED PESTS.

The viral diseases known as Peach Yellows, Peach Rosette, and Little Peach. ()

513. -- 519. (RESERVED)

520. AREA UNDER QUARANTINE.

The entire states of Alabama, Arkansas, (except counties of Benton, Clark, Columbia, Garland and White), Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland (except counties of Worcester and Somerset), Massachusetts, Michigan, Mississippi, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia. ()

521. -- 524. (RESERVED)

525. REGULATED ARTICLES.

All trees, cuttings, grafts, scions, or buds of all species and varieties including the flowering forms of peach, nectarine, apricot, almond, plum, and prune, and any trees budded or grafted on peach stock or peach roots, coming from a regulated area. ()

526. -- 529. (RESERVED)

530. RESTRICTIONS GOVERNING SHIPMENTS.

The regulated articles will not be admitted into Idaho from the regulated areas unless the state of origin certifies that they were produced in a county free from infection with the regulated pests, as determined by adequate annual surveys satisfactory to the Director, and from disease-free bud sources, rootstocks, and environs. ()

531. -- 539. (RESERVED)

540. OFFICIAL CERTIFICATE REQUIREMENTS.

The certificates required by Section 530 of these rules, will state the names and addresses of the shipper and consignee, the number and kind of regulated articles in the shipments, and the area where grown. A copy of the certificate accompanies the shipment, and one (1) copy is forwarded at the time of shipment to the Division of Plant Industry, Idaho State Department of Agriculture, Boise, Idaho. ()

541. -- 549. (RESERVED)

550. EXEMPTIONS.

This quarantine does not apply to experiments of the United States Department of Agriculture in the state of Idaho nor to experiments of the College of Agriculture, Department of Pathology of the University of Idaho. ()

551. -- 559. (RESERVED)

560. PENALTY.

Any or all shipments or lots of the regulated articles enumerated in Section 525, *of these rules*, arriving in Idaho in violation of this chapter shall immediately be sent out of the state or destroyed at the option and expense of the owner or owners, or responsible agents and under the direction of the Director. ()

561. – 569. (RESERVED)

570. COMMON CARRIER AGENTS MUST HOLD SHIPMENTS.

Any and all lots of shipments of commodities covered by this quarantine must be held and not delivered to consignee or agent until inspected and passed by the Director. ()

571. – 609. (RESERVED)

SUBCHAPTER F – DISPOSAL OF CULL ONIONS AND POTATOES

610. DEFINITIONS.

The definitions found in section 610 apply to the interpretation and enforcement of Subchapter F only. ()

01. Cull Onions. Refers to those onions that are not marketable or useable for consumption or are generally considered waste, and includes the residue left in the field from the production of onion seed as well as commercial onions. ()

02. Cull Potatoes. Refers to those potatoes that are not marketable or useable for consumption or as seed potatoes and includes the residue left in the field from commercial or seed potato production, or as a result of spoilage while in storage. ()

611. -- 619. (RESERVED)

620. REGULATED AREA.

01. Onions. Ada, Canyon, Gem, Payette, Owyhee, and Washington Counties, state of Idaho. ()

02. Potatoes. The entire state of Idaho. ()

621. -- 629. (RESERVED)

630. REGULATED PRODUCTS.

01. Cull Onions. All cull onions produced as a result of market conditions, the grading process, or as a result of breakdown in storage or sorted out in the field during harvest and bulbs and waste left over from seed production. ()

02. Cull Potatoes. All cull potatoes produced as a result of market conditions, the grading process, or as a result of breakdown in storage, or sorted out in the field during harvest and tubers and waste left over from potato seed production. ()

631. -- 639. (RESERVED)

640. DISPOSITION OF CULL ONIONS.

All cull onions existing in the control area shall be disposed of by a method approved of in Section 641 of this rule, to prevent sprouting. Disposal of all existing cull onions and debris must be completed prior to March 15th, of each year; provided; however, that in the case of onions sorted on or after March 15th of each year, the cull onions resulting therefrom shall be disposed of within one (1) week after such sorting regardless of the disposal method. The

Department only enforces the cull onion disposal portions of this rule from March 15th through July 1st of each year. ()

641. DISPOSAL METHODS.

To control the spread of the onion maggot and related onion diseases, all disposal methods listed in Section 641 must be carried out to the extent that control of the regulated pest(s) is achieved in order to be in compliance with Subchapter F. ()

01. Disposal by Covering in Dumps or Pits. ()

a. Cull onions disposed of by being dumped in pits shall be managed and covered as recommended by the University of Idaho Agricultural Extension Service. ()

b. Covering shall be accomplished by March 15th of each year or as provided in Section 640 of this rule. ()

02. Disposal by Feeding After March 15th of Each Year. ()

a. Sheep or goats shall be fed no more than fifty-three (53) pounds of cull onions per individual animal per day. Cull onions shall be fed from either bunks or by spreading throughout the pasture or feedlot. Cull onions may not be fed from piles. ()

b. Cattle may be fed a ration containing no more than twenty-five percent (25%) cull onions on a dry matter basis. ()

c. Onion debris shall be completely removed from feeding areas and buried under twelve (12) inches or more of onion-free soil by March 15th of each year. ()

d. In the case of residues of onion debris two (2) inches or less in depth, or onions tramped into the soil so that they cannot be removed, such areas shall be disked and plowed as deep as possible, and such that all onions and debris are buried under eight (8) inches or more of onion-free soil by March 15th of each year. ()

e. Feeding areas and areas where onions are buried shall be treated in the manner set out in Section 641. ()

f. Cattle and sheep being finished for market or dairy cattle shall not be fed forage or grains grown on feeding areas treated in the manner set forth in Section 641. ()

03. Disposal by Composting. Cull onions being composted shall be covered by twelve (12) inches or more of onion-free soil or composting material until the onions have turned to compost. ()

04. Disposal of Residue in Onion Producing Fields. ()

a. Commercial onion fields where sort-out bulbs are left at harvest shall be disked and plowed as deep as possible, and such that all onions and debris are buried under eight (8) inches or more of onion-free soil by March 15th of each year. ()

b. Following final seed harvest, seed bulbs shall be disked and plowed as deep as possible, and such that all onions and debris are buried under eight (8) inches or more of onion-free soil by March 15th of each year. ()

05. Disposal by Chopping or Shredding. Cull onions that have been chopped or shredded to the point that they are incapable of sprouting, shall be disked and plowed as deep as possible, and such that all onions and debris are buried under eight (8) inches or more of onion-free soil by March 15th of each year. ()

06. Disposal by Spreading. Cull Onions may be disposed of by being spread on agricultural fields destined to be planted to a crop other than onions provided the onions are disked and plowed as deep as possible, and

such that all onions and debris are buried under eight (8) inches or more of onion-free soil. ()

642. INCLEMENT WEATHER.

If inclement weather prevents disposal by the methods in Subsections 641.01 through 641.06, culls shall be treated with an EPA-labeled insecticide at prescribed intervals as recommended by the University of Idaho Agricultural Extension Service until proper disposal as prescribed in Subsections 641.01 through 641.06 can be carried out.()

643. (RESERVED)

644. NOTIFICATION REQUIRED.

Any person or entity delivering cull onions for disposal in the area regulated for cull onion disposal shall provide written notification to the recipient of those cull onions advising the recipient of this rule and the recipient's obligations for the disposal of the cull onions under this rule. If the recipient is not the property owner, written notification shall also be made to the owner of the property where the onions are to be disposed of. Failure to make such notification in writing is a violation of Subchapter F. ()

645. -- 649. (RESERVED)

650. DISPOSITION OF CULL POTATOES.

All cull potatoes existing west of the Raft River shall be rendered non-viable by April 15th of each year and all cull potatoes generated after April 15th shall be rendered non-viable on a daily basis until September 20th. All cull potatoes existing east of the Raft River shall be rendered non-viable by May 15th of each year and all cull potatoes generated after May 15th shall be rendered non-viable on a daily basis until September 20th. ()

651. CULL POTATO DISPOSAL METHODS.

Cull potatoes shall be disposed of in a manner as to render them non-viable. Disposal methods are those as recommended by the University of Idaho Agricultural Extension Service. ()

652. -- 659. (RESERVED)

660. AUTHORITY TO ENTER AND INSPECT.

The Director or Director's agents are authorized to enter and inspect all onion and potato cull dumps and disposal sites in the state of Idaho for the purpose of insuring compliance with Subchapter F. ()

661. – 709. (RESERVED)

SUBCHAPTER G - MINT ROOTSTOCK AND CLONE PRODUCTION

710. DEFINITIONS.

The definitions found in section 710 apply in the interpretation and enforcement of Subchapter G only: ()

01. Certified Defined Generation. The origin of mint rootstock is in the restricted area and its history may be directly traced, not to exceed five (5) generations, to its source as healthy clones. ()

02. Healthy Clones (HC). Those plants, which are cloned, having been cleansed, tested and maintained in an approved greenhouse and under the supervision of the state of origin's agricultural regulatory authority. The origin of all clones shall be listed on all clone transfer permits. ()

03. Nuclear Planting Stock (NPS). Those rootstocks originating from healthy clones. ()

04. Certified Defined Generation 1 (CDG-1). Those rootstocks one (1) generation removed from nuclear planting stock, and fulfilling the requirements as herein provided. ()

05. Certified Defined Generation 2 (CDG-2). Those rootstocks one (1) generation removed from CDG-1 planting stock and fulfilling the requirements as herein provided. ()

06. Certified Defined Generation 3 (CDG-3). Those rootstocks one (1) generation removed from CDG-2 planting stock and fulfilling the requirements as herein provided. ()

07. Certified Defined Generation 4 (CDG-4). Those rootstocks one (1) generation removed from CDG-3 planting stock and fulfilling the requirements as herein provided. ()

08. In-State Defined Generation. The roots have been grown in the commercial production area and their history may be directly traced, not to exceed five (5) generations, to their source as healthy clones. ()

09. In-State Defined Generation 1 (SDG-1). Those rootstocks one (1) generation removed from nuclear planting stock, and fulfilling the requirements as herein provided. ()

10. In-State Defined Generation 2 (SDG-2). Those rootstocks one (1) generation removed from SDG-1 or CDG-1 planting stock and fulfilling the requirements as herein provided. ()

11. In-State Defined Generation 3 (SDG-3). Those rootstocks one (1) generation removed from SDG-2 or CDG-2 planting stock and fulfilling the requirements as herein provided. ()

12. In-State Defined Generation 4 (SDG-4). Those rootstocks one (1) generation removed from SDG-3 or CDG-3 planting stock and fulfilling the requirements as herein provided. ()

13. Field. A parcel of land submitted to the department for inspection of the mint being grown thereon, and physically separated by a minimum of five (5) feet of bare ground, or irrigation ditch, or road, or other physically discernible barrier separating it from an adjacent parcel of land planted with mint. ()

711. (RESERVED)

712. REGULATED PESTS.

01. Diseases. Verticillium wilt (*Verticillium dahliae* Kleb) a persistent soil-borne fungal disease of mint and any virulently pathogenic, persistent disease known to be detrimental to the production of mint rootstock in the restricted area and the commercial production area. ()

02. Insects. ()

a. Restricted area as defined in Subsection 720.02: Mint stem borer (*Pseudobaris nigrina*), insect pests of mint rootstocks and any persistent insect pest known to be detrimental to the production of mint rootstocks and without effective control options. ()

b. Commercial production area as defined in Subsection 720.01: Mint stem borer (*Pseudobaris nigrina*), insect pest of mint rootstocks and any persistent insect pest known to be detrimental to the production of mint rootstocks and without effective control options. ()

03. Noxious Weeds. ()

a. In both the commercial production area and restricted area as defined in Subsections 720.01 and 720.02: those weeds declared noxious by authority of Title 22, Chapter 24, Idaho Code (Noxious Weed Law) and Rules. ()

b. Growers will be notified by the Department of existing noxious weed problems. If noxious weeds have not been effectively controlled as determined by the Department, prior to the second inspection, the field will be rejected for certification by the Department. ()

713. -- 714. (RESERVED)

715. REGULATED PRODUCTS.

01. Mentha. Rootstocks of all species of the genus *Mentha*. ()

02. Mentha Production Equipment. Machinery, tools, and equipment used in the production of *Mentha* species. ()

716. -- 719. (RESERVED)

720. CONTROL AREAS.

To facilitate inspection and control, the land mass of the state of Idaho is divided into two (2) areas, currently defined as: ()

01. Commercial Production Area. Ada, Canyon, Elmore, Gem, Gooding, Payette, Owyhee, and Washington Counties. ()

02. Restricted Area. That land mass of the state of Idaho not included in the commercial production area. ()

a. Certified defined generation mint shall not be grown when the specific location is within five (5) miles of uncertified mint unless there are adequate physical and cultural barriers. ()

721. -- 729. (RESERVED)

730. REQUIREMENTS FOR MINT ROOTSTOCK TO BE PLANTED IN IDAHO.

01. Restricted Area as Defined in Subsection 720.02. ()

a. Healthy clones shall be accompanied by a phytosanitary certificate issued by a regulatory agency of the state of origin with zero (0) tolerance for regulated disease(s), insect(s) and noxious weed(s); or ()

b. Certified rootstock from the restricted area shall be accompanied by a certified defined generation transfer permit with the parent rootstock number and with zero (0) tolerance for stem borer, or insect(s) without effective control options (i.e. stem borer), regulated disease(s) and noxious weed(s). ()

02. Commercial Production Area. As defined in Subsection 720.01, has no restrictions except for those wishing to participate in the inspection program who will adhere to the following rules: ()

a. Healthy clones shall be accompanied by a phytosanitary certificate, issued by a regulatory agent of the state of origin with zero (0) tolerance for regulated disease(s), insect(s) and noxious weeds; or ()

b. Certified rootstock from the restricted area shall be accompanied by a certified defined generation transfer permit with the parent rootstock number, level of mint root borer infestation and zero (0) tolerance for stem borer, or, insect(s) without effective control options (i.e., stem borer) regulated disease(s) and weed(s); or ()

c. In-state defined generation rootstock from the commercial production area shall be accompanied by a transfer permit with the parent rootstock number, level of mint root borer infestation and zero (0) tolerance for stem borer, regulated disease(s) and weed(s). ()

731. -- 739. (RESERVED)

740. INSPECTION PROCEDURES.

01. Inspection Requests. All requests for inspection shall be made prior to May 1 of each year on forms provided by the Department. ()

a. Incomplete applications for inspection will not be accepted. ()

b. No application for field inspection will be accepted after June 1 of each year except in the case of

healthy clones. ()

02. First Field Inspection. Mint fields submitted for inspection will be inspected during active growth prior to oil harvest, but not earlier than the third week of July and not later than the first week of August, by the Idaho Department of Agriculture inspector. The inspection protocol is as follows: ()

a. Inspectors will walk the entire field at ten (10) row intervals. ()

b. The inspector will wear rubber boots that are sanitized between each field. A ten percent (10%) solution of sodium hypochlorite will be used to sanitize boots. ()

c. The site of any sample taken for a Verticillium wilt determination will be marked. ()

d. Fields found with Verticillium wilt during the first inspection will result in the entire field being disapproved and permanently ineligible for certification purposes by the Department. ()

03. Second Field Inspection. Mint fields submitted for inspection will be sampled after oil harvest or removal of foliage in early to mid September for the presence of the mint root borer. The sampling protocol is as follows: ()

a. Three (3) samples per five (5) acres will be collected. ()

b. Sampling sites will include areas of plant stress. ()

c. In each sampling site one (1) square foot samples of mint roots and two (2) to three (3) inches of soil will be selected. ()

d. The mint roots and the soil in each sample will be examined for evidence of regulated pests. ()

e. The site of any sample taken will be appropriately marked. ()

f. Fields found with Verticillium wilt during the second inspection will result in the entire field being disapproved by the Department and permanently ineligible for certification purposes, by the Department. ()

g. Fields with stem borer or other insects without control options (i.e., stem borer), will be disapproved by the Department for certification but, if proven clean at a later date, could again be considered for certification. ()

04. Notification of Infestation. The Idaho Department of Agriculture will notify the grower immediately upon the completion of any test results for regulated pest(s). ()

05. Issuance of Certified Defined Generation and In-State Defined Generation Transfer Permits. ()

a. Restricted area as defined in Subsection 740.02: a certified defined generation transfer permit with the parent rootstock number will be issued for rootstock that meets the following requirements: ()

i. Roots shall be grown in restricted areas. ()

ii. Field submitted and inspected per Subsections 740.01 through 740.04. ()

iii. Zero (0) tolerance for regulated disease(s), insect(s) without effective control options (i.e., stem borer), and noxious weed(s). ()

iv. Levels of mint root borer infestation will be listed in the transfer permit. ()

b. Commercial production area as defined in Subsection 720.01: an in-state defined generation

transfer permit with the parent rootstock number and level of mint root borer infestation issued for rootstock that meets the following requirements: ()

- i. Field submitted and inspected per Subsections 740.01 through 740.04. ()
- ii. Zero (0) tolerance for regulated disease(s), insect(s) without effective control options (i.e., stem borer), and noxious weed(s). ()
- iii. Levels of mint root borer infestation will be listed in the transfer permit. ()

06. Exemptions -- Issuance of In-State Transfer Numbers. ()

a. Restricted area as defined in Subsection 720.02: rootstock found to be infested with noxious weed(s), shall not be eligible for a certified defined generation transfer permit for the current year. The Department of Agriculture will issue an in-state transfer number to allow the grower to plant rootstock within their farm for the purpose of controlling the infestation. The field must be submitted for inspection per Subsections 740.01 through 740.04. If the rootstock is found to be free of the noxious weed(s), the rootstock will be eligible for a certified defined generation transfer permit with parent rootstock number. The eligible rootstock will be assigned a certified defined generation transfer permit with parent rootstock number corresponding to the next generation had it not been denied certification the previous year. Rootstock denied certification two consecutive years shall not be eligible for future certification. ()

b. Commercial production area as defined in Subsection 720.01: rootstock found to be infested with a noxious weed(s) or insect(s) shall not be eligible for an in-state defined generation transfer permit for the current year. The Department of Agriculture will issue an in-state transfer number to allow the grower to plant the rootstock within their farm for the purpose of controlling the infestation. The field must be submitted for inspection per Subsections 740.01 through 740.04. If the rootstock is found to be free from the noxious weed(s) the rootstock will be eligible for an in-state defined generation transfer permit with parent rootstock number. The eligible rootstock will be assigned an in-state defined generation transfer permit corresponding to the next generation had it not been denied certification the previous year. Rootstock denied certification two consecutive years is not eligible for future certification. ()

07. Laboratory Tests. In the event visual examination reveals evidence of a regulated pest, laboratory tests, if necessary to determine the causal organism, will be conducted by the Idaho Department of Agriculture laboratory on official samples in addition to the field inspection. In the case of a disagreement between the state Department of Agriculture and the interested party concerning the identity of the regulated pest in question, the state Department of Agriculture will submit an official sample to any lab of the University of Idaho, for a final determination. ()

08. Transfer Permits and Resale. ()

a. It is the responsibility of each grower producing certified or in-state defined generation mint rootstock originating within the state to obtain transfer permits from the Department prior to moving planting stocks for resale. ()

b. Each time a transfer permit is issued, the Idaho Department of Agriculture will send a copy and/or notification to the office of the Idaho Mint Commission. ()

741. MOVEMENT OF FARM EQUIPMENT.

Farm equipment, including but not limited to tillage equipment, planters and digging equipment moving from the infested area into the restricted area shall be clean and free of soil to the satisfaction of the Director or the Director's designated agent. ()

742. -- 744. (RESERVED)

745. GREENHOUSES.

Greenhouses shall be screened and tightly constructed to preclude the entry of any regulated insect or noxious weed as defined in Subsections 712.02 and 712.03 above. Planting media shall be sterilized prior to planting, and not re-

used for planting of any mint destined to be entered in the mint certification process as outlined in this rule. Greenhouses shall be disinfected annually with a ten percent (10%) sodium hypochlorite solution and licensed as such under Chapter 23, Title 22, Idaho Code. ()

746. -- 749. (RESERVED)

750. POSTING OF FIELDS.

01. Posting. All mint fields within the restricted area shall be posted to prevent entry of unauthorized personnel. ()

02. Approval by Department. Signs and method of placement shall be of a type and manner approved by the Department with the advice of the Idaho Mint Commission. ()

751. -- 759. (RESERVED)

760. AUTHORITY TO ENTER, INSPECT, AND CONTROL REQUIREMENTS.

01. Agent Authorization. The Idaho Director of Agriculture or the Director's designated agents are authorized to enter and inspect any and all mint plantings in the restricted area and any and all mint plantings that have been submitted for inspection. ()

02. Submission for Inspection. Additionally, all mint planted in the restricted area shall be submitted to the Idaho Department of Agriculture for annual inspection. ()

761. -- 769. (RESERVED)

770. PENALTY.

Restricted area as defined in Subsection 720.02: any field of mint rootstock determined to be infected with a regulated pest including those without control options may be destroyed to eliminate the regulated pest by or at the expense of the grower or landlord. Except if the county, or any portion thereof, as determined by the Department, in which a field of mint rootstock determined to be infected with the regulated disease(s) or infested with insects without control options is to be made part of the commercial production area, then destruction of the field shall not be required. The method of destruction includes but is not limited to uprooting to expose and desiccate the rootstocks. All destruction must be completed by November 1st of each year. ()

771. -- 779. (RESERVED)

780. EXEMPTIONS.

01. Government Agencies. Subchapter G does not apply to any governmental agency growing mint in experimental plots approved by the Director of the Idaho Department of Agriculture and under the supervision of qualified plant scientists. ()

02. Private, Non-Commercial Home Use. These rules do not apply to species of the genus *Mentha* intended for private, non-commercial home use. However, species of the genus *Mentha* intended for private, non-commercial home use entering Idaho shall be accompanied by a phytosanitary certificate issued by the state of origin's department of agriculture certifying them free of pests and diseases listed under Section 712. ()

781. -- 789. (RESERVED)

790. FEES AND CHARGES.

Under provisions of Section 22-2006, Idaho Code, the fees and charges for inspections, certificates, and permits under Subchapter G are as follows: ()

01. Transfer Permits. For in-state sale or movement of certified or in-state defined generation rootstock: ten dollars (\$10) per permit. ()

- 02. Field Inspections.** ()
- a.** Application for field inspection: five dollars (\$5) per field. ()
- b.** Field inspection, collection of samples and examination of samples will be assessed at a rate of fifteen dollars (\$15) per acre per inspection. ()
- c.** Travel costs and lodging will be charged according to established state rates and policy. ()
- d.** Every effort will be made to schedule field inspections to insure the most efficient use of travel time. Charges for travel time will be charged on a prorated basis when more than one (1) farm is inspected during a trip. ()
- 791. -- 819. (RESERVED)**

SUBCHAPTER H – GRAPE PLANTING STOCK

- 820. REGULATED AREAS.**
All areas outside of the territorial borders of the state of Idaho. ()
- 821. -- 829. (RESERVED)**
- 830. REGULATED COMMODITIES.**
Planting stock of grape (*Vitis* species) including live plants, hardwood cuttings, softwood cuttings, rootstocks, and any other parts of the grape plant, except fruit, capable of propagation (except fruit). ()
- 831. REGULATED PESTS.**
Regulated pests include, but are not limited to: ()
- 01. Grapevine Fanleaf Virus.** ()
- 02. Grapevine Leaf Roll - Associated Viruses.** ()
- 03. Red Blotch Virus.** ()
- 04. Grapevine Corky Bark Disease.** Which include, but may not be limited to: ()
- a.** Grapevine virus A. ()
- b.** Grapevine virus B. ()
- 05. Grape Phylloxera.** (*Daktulosphaira vitifoliae*); ()
- 06. Pierce's Disease.** As caused by the bacterium *Xylella fastidiosa*; ()
- 07. Vine Mealybug.** (*Planococcus ficus*) ()
- 08. Glassy-Winged Sharpshooter.** (*Homalodisca vitripennis*). ()
- 09. European Grapevine Moth.** (*Lobesia botrana*) ()
- 10. Xiphinema Index.** ()
- 832. -- 834. (RESERVED)**

835. RULES GOVERNING SHIPMENTS.

01. Admittance into Idaho. Each shipment of a regulated article from a regulated area must be accompanied by a certificate issued by the state or country of origin's plant protection organization, stating that the grape planting stock to be imported has been certified in accordance with the regulations of an official grapevine certification program of the state or country of origin's plant protection organization, that includes annual inspections at all certification levels and testing at the foundation level for regulated pests and: ()

a. The grapevines, rootstock and/or softwood cuttings were grown in and shipped from an area known to be free from regulated pests; or ()

b. For small shipments (five hundred (500) or less) of un-rooted softwood cuttings, were individually inspected by an authorized inspector and were found to be free from regulated pests; or ()

c. The grapevines, rootstock or softwood cuttings were grown under a sterile soil-less media and treated with a soil or systemic insecticide and a hot water dip treatment, as outlined in Section 840 of this rule, proven to be effective against vine mealybug and any other pests that may be present on the roots; or ()

d. The grapevines, rootstock, and/or softwood cuttings were subject to one (1) of the two (2) treatments outlined in Section 840 of this rule, or such additional methods as may be determined to be effective and are approved by the director and were stored in a manner after treatment that would prevent re-infestation. ()

02. Marking Contents. All shipments of grape planting stock must be plainly marked with the contents on the outside of the package or container. ()

03. Shipment Notification. Persons shipping or transporting grape planting stock into this state from areas under regulation shall notify the department by electronic mail, regular mail or fax prior to shipment including the nature of the grape planting stock (such as live plants, hardwood cuttings, softwood cuttings, rootstocks, or other similar categories), the quantity in each shipment, the expected date of arrival, the name of the intended receiver and the destination. An official certificate issued by the plant protection organization of the state of origin certifying that the grapevines meet the requirements of this chapter must accompany the grape planting stock into the state. All treatments and inspections must have been witnessed or performed by an official of the state of origin's plant protection organization. ()

836. -- 839. (RESERVED)

840. ACCEPTABLE TREATMENTS.

01. Hot Water Treatment. Dormant, rooted grapevines or rootstock shall be washed to remove all soil or other propagative media by immersing in a hot water bath for a period of not less than three (3) minutes, nor more than five (5) minutes, at a temperature of not less than one hundred twenty-five degrees Fahrenheit (125° F.) or fifty-two degrees Celsius (52° C.), nor more than one hundred thirty degrees Fahrenheit (130° F.) or fifty-five degrees Celsius (55° C.) at any time during immersion; or ()

02. Fumigation. Grapevines, rootstock or softwood cuttings may be treated with a fumigant approved for the regulated pests. ()

03. Other Methods. Upon written application to the Director, variations to the above mentioned acceptable treatments or additional treatment methods may be considered. ()

841. -- 844. (RESERVED)

845. DISPOSITION OF COMMODITIES IN VIOLATION OF RULES.

Any commodity set forth in Section 835 of Subchapter H or any grape plants or parts thereof, not meeting the requirements of Subchapter H shall immediately be sent out of the state of Idaho or destroyed at the option and expense of the owner or owners, or responsible agents and under the direction of the Director. ()

846. -- 849. (RESERVED)

850. AUTHORITY TO ENTER, INSPECT, AND CONTROL.

01. Entry and Inspection. The Director is authorized to enter and inspect any or all grape plantings in the state of Idaho. ()

02. Control and Destruction of Infected Plants. Whenever the Director finds that there is imminent peril that virus diseases or plant pests will spread from infected grape plantings to and contaminate other uninfected grape plantings because of refusal, failure, or neglect to control the already infected grape plantings, the Director may at once give notice in writing to control or destroy in part or total the infected grape plantings under the provisions of Title 22, Chapter 20, Idaho Code, and may thereafter, if necessary, proceed to destroy such infected grape plantings under the terms and provisions of Title 22, Chapter 20, Idaho Code. ()

851. -- 854. (RESERVED)

SUBCHAPTER I – JAPANESE BEETLE

855. REGULATED PEST.
Japanese beetle (*Popillia japonica*). ()

856. -- 859. (RESERVED)

860. AREAS UNDER QUARANTINE.

01. States. The entire states of Alabama, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and the District of Columbia. ()

02. Canada. In Canada: ()

a. In the Province of Ontario: Lincoln, Welland and Wentworth. ()

b. In the Province of Quebec: Missiquoi and St. Jean. ()

03. Other Areas. Any areas not mentioned above and subsequently found to be infested. ()

861. -- 869. (RESERVED)

870. ARTICLES AND COMMODITIES UNDER QUARANTINE.

01. Possible Hosts and Carriers. The following are hereby declared to be hosts and possible carriers of the Japanese beetle: ()

a. Soil, humus, compost, and manure (except when commercially packaged); ()

b. All plants with roots (except bareroot plants free from soil); ()

c. Grass sod; ()

d. Plant crowns or roots for propagation (except when free from soil); ()

e. Bulbs, corms, tubers, and rhizomes of ornamental plants (except when free from soil); ()

f. Any other plant, plant part, article, or means of conveyance when it is determined by the Director

or authorized agent to present a hazard of spreading live Japanese beetle due to infestation or exposure to infestation by Japanese beetle. ()

02. Soil. For the purposes of this quarantine, soil is defined as all growing media in which the plants are actually rooted. Packing material other than soil, added to bareroot plants after harvesting would not normally pose a pest risk. Packing material would be covered under (Subsection 930.01.f.), at the inspector's discretion. ()

03. Free from Soil. For the purposes of this quarantine, free from soil is defined as soil in amounts that could not contain concealed Japanese beetle larvae or pupae. ()

871. -- 879. (RESERVED)

880. RESTRICTIONS.

All articles and commodities under quarantine are prohibited entry into Idaho from an area under quarantine with the following exceptions: ()

01. Certificate of Treatment. All of the articles and commodities covered are approved for entry into Idaho when accompanied by a certificate issued by an authorized state agricultural official at origin stating that the article or shipment was treated for Japanese beetle or grown in accordance with methods and procedures approved and prescribed by the Director. A Certificate of Treatment shall include the date of treatment. Shipment of the articles or commodities shall not take place sooner than ten (10) days after the date of treatment, but no later than thirty (30) days after treatment. ()

02. Certificate of Origin. Commercial plant shipments with soil may be shipped from an area under quarantine into Idaho provided such shipments are accompanied by a certificate issued by an authorized state agricultural official at origin. Such certificates shall be issued only if the shipment confirms fully with either Subsections 880.02.a., 880.02.b., or 880.02.c. of Subchapter I: ()

a. The greenhouse in which the plants were produced was tightly constructed so that adult Japanese beetles would not gain entry, the plants and greenhouses were inspected and found to be free from all stages of Japanese beetle, and the plants and soil were protected from subsequent infestation while being stored, packed and shipped; or ()

b. The plants were not produced in the regulated area, were transported into the regulated area in a closed conveyance or closed containers and at all times thereafter were protected from becoming infested with Japanese beetle; or ()

c. States or portions of states listed in the area under quarantine may have counties that are not infested with Japanese beetle. Shipments of articles and commodities covered will be accepted from these noninfested counties if annual surveys are made in such counties and the results of such surveys are negative for Japanese beetle. A list of counties so approved will be maintained by the Director. Agricultural officials of other states may recommend a noninfested county be placed on the approved county list by writing for such approval and stating how the surveys were made giving the following information: ()

i. Area surveyed. ()

ii. How survey was carried out. ()

iii. Personnel involved. ()

iv. If county was previously infested, give date of last infestation. ()

v. The recommendation for approval of such counties will be evaluated by the Department of Feeds and Plant Services, Division of Plant Industries, Idaho Department of Agriculture. ()

03. Denial of Approval. If heavy infestations occur in neighboring counties, approval may be denied. To be maintained on the approved list, each county will be reapproved every twelve (12) months. Shipments of

articles and commodities under quarantine from noninfested counties will only be allowed entry into Idaho if the noninfested county has been placed on the approved list prior to the arrival of the shipment to Idaho. ()

04. Privately Owned House Plants. Up to twenty-five (25) privately owned house plants grown indoors may be inspected and approved for entry by the Director or Director's authorized agent if found free from Japanese beetle. ()

881. -- 889. (RESERVED)

890. PENALTY.

Any or all shipments or lots of quarantined articles or commodities listed in Section 870 above arriving in Idaho in violation of this quarantine shall immediately be sent out of the state, destroyed, or treated by a method and in a manner as directed by the Director. Treatment shall be performed at the expense of the owner, or owners, or their duly authorized agent. ()

891. -- 919. (RESERVED)

SUBCHAPTER J - ANTHRACNOSE DISEASE OF LENTIL

920. REGULATED DISEASE.

The anthracnose disease of lentil, caused by the fungi identified as *Colletotrichum truncatum* (Schwein) Andrus & W.D. Moore and *Colletotrichum destructivum*. ()

921. -- 929. (RESERVED)

930. REGULATED PRODUCTS.

The seeds and vegetative parts of lentil, *Vicia sp.*, faba beans, peas, Tangier pea, vetch, and other host of the regulated disease. ()

931. -- 934. (RESERVED)

935. AREA UNDER QUARANTINE.

The Canadian provinces of Manitoba and Saskatchewan and all states and territories of the United States and foreign countries known to have confirmed the presence of the anthracnose of lentil. ()

936. -- 939. (RESERVED)

940. SHIPMENTS.

No person shall import any regulated products into Idaho for planting purposes from any area under quarantine. ()

941. -- 949. (RESERVED)

950. INSPECTION AND CONTROL PROCEDURES.

01. Inspection. The Department may inspect any regulated product or planting of regulated products during any time of the year to determine if the regulated disease is present therein. If the Department finds that any regulated product or planting of the same is infected or otherwise in violation of Subchapter J, it shall direct the control and/or the eradication of the infection. ()

02. Control. The control and/or the eradication methods shall be only those approved by the Director, at the expense of the owner, and may include but are not limited to: ()

a. Any infected regulated product will be destroyed. ()

b. The infected crop will be sprayed with fungicide(s) registered with the United States

Environmental Protection Agency and the state of Idaho. ()

c. Any infested field will not be planted to any regulated products cited in Section 930. ()

d. Volunteer regulated products cited in Section 930 growing in any infested field shall be destroyed by a method(s) approved by the Director. ()

951. -- 959. (RESERVED)

SUBCHAPTER K - PLUM CURCULIO

960. REGULATED PEST.

Plum curculio (*Conotrachelus nenuphar* (Coleoptera: Curculionidae)). ()

961. -- 969. (RESERVED)

970. AREA UNDER QUARANTINE.

In the eastern United States and Canada, all states and provinces east of and including Manitoba, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma and Texas. In Utah, Box Elder County. ()

971. -- 979. (RESERVED)

980. ARTICLES AND COMMODITIES COVERED.

01. Fresh Fruit of All Plants Listed Below: ()

a. Apple (*Malus spp.*); ()

b. Apricot (*Prunus armeniaca*); ()

c. Cherry, black (*P. serotina*); ()

d. Cherry, choke (*P. virginiana*); ()

e. Cherry, pin (*P. pensylvanica*); ()

f. Cherry, sand (*P. pumila*); ()

g. Cherry, sour (*P. cerasus*); ()

h. Cherry, sweet (*P. avium*); ()

i. Crabapple (*Malus spp.*); ()

j. Hawthorn or haw (*Crataegus spp.*); ()

k. Nectarine (*Prunus persica nectarina*); ()

l. Peach (*P. persica*); ()

m. Pear (*Pyrus communis*); ()

n. Plum, American (wild) (*Prunus alleghaniensis*); ()

o. Plum, beach (*P. maritima*); ()

- p.** Plum, European (*P. domestica*); ()
- q.** Plum, Japanese (*P. salicina*); ()
- r.** Prune (*P. spp.*); ()
- s.** Quince (*Cydonia oblonga*). ()

02. Soil. Soil or other growing medium within the drip zone of plants producing or that have produced fruit as listed in Subsection 980.01. ()

981. -- 989. (RESERVED)

990. RESTRICTIONS.

01. Certification Required. Articles and commodities covered that are produced in or shipped from the area under quarantine are prohibited entry into the state of Idaho unless each lot or shipment is accompanied by a certificate issued by and bearing the original or facsimile signature of the authorized agricultural official of the state from which the article or commodity is shipped evidencing compliance with Subsections 990.03, 990.04, 990.06 or 990.07 of Subchapter K. No certificate is required for commodities meeting the requirements of Subsections 990.02 or 990.05 of Subchapter K. ()

02. Reshipments in Original Containers from Area Under Quarantine of Commodities Grown Outside Thereof. Commodities in original unopened containers, each bearing labels or other identifying marks evidencing origin outside the area under quarantine, may be reshipped to this state from any point within the area under quarantine. ()

03. Repacked Commodities Admissible from Area Under Quarantine If Certified Grown Outside Thereof. Provided each lot or shipment is certified by an authorized agricultural official to have been grown outside the area under quarantine and that continued identity has been maintained while within the area under quarantine, the commodities may be repacked and shipped by common carrier from any point within the area under quarantine to this state. The certificate shall set forth the state in which commodities were grown, point of repacking and reshipment, amount and kind of commodities comprising the lot or shipment, and the names and addresses of the shipper and consignee. ()

04. Apples Exposed to Controlled Atmosphere (CA) Storage Admissible Under Certificate. Apples that are exposed to controlled atmosphere (CA) storage for a continuous period of ninety (90) days, during which period the temperature within the storage room is maintained at thirty-eight degrees Fahrenheit (38° F), three point three degrees Celsius (3.3° C) or less, may be admitted into Idaho provided said storage room or building is approved by the proper authorities in the state of origin as a controlled atmosphere facility and further provided each lot or shipment of such apples to Idaho is accompanied by a certificate, as stated in Subsection 990.01, evidencing compliance with the minimum requirements of this section. ()

05. Solid Frozen Fruits Exempt. No restrictions are placed by this rule on the entry into this state of fruits that upon arrival are frozen solid and that are under refrigeration to assure their solid frozen state. ()

06. Shipments from Cold Storage at Thirty-Two Degrees Fahrenheit (32° F), Zero Degrees Celsius (0° C). Commodities covered that are held in cold storage for a continuous period of forty (40) days or more, during which period the temperature within the storage room is maintained at thirty-two degrees Fahrenheit (32° F) zero degrees Celsius (0° C) or less, may be admitted into Idaho provided each lot or shipment is accompanied by a certificate, as stated in Subsection 990.01, evidencing compliance with the minimum requirements of Subsection 990.06. ()

07. Soil or Growing Media When Certified. Soil or growing media specified in Subsection 980.02 is admissible when certified as treated at origin in a manner approved by the Director. ()

991. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.06.09 – RULES GOVERNING INVASIVE SPECIES AND NOXIOUS WEEDS

DOCKET NO. 02-0609-1901 (NEW CHAPTER)

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 22-1907, 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 fee rule and a statement of any change between the text of the proposed rule and the text of the pending fee rule with an explanation of the reasons for the change:

Three rules administered by the ISDA are related to the regulation of noxious weeds and invasive species, so as to prevent the spread of such species and their impacts on natural resources and crops. These rules are IDAPA 02.06.09, “Rules Governing Invasive Species,” IDAPA 02.06.22, “Noxious Weeds Rules,” and IDAPA 02.06.31, “Noxious Weed Free Forage and Straw Certification Rules.” These rules were promulgated to carry out requirements described in Title 22, Chapters 19, 20, and 24, Idaho Code. In order to streamline and simplify rules related to noxious weeds and invasive species, the ISDA has decided to combine all three rules into a single rule to be titled “02.06.09, Rules Governing Invasive Species and Noxious Weeds.” No substantive changes are being made to the three rules cited above. However, these rules were reviewed for repeal and amendment of certain sections consistent with the guidance and direction provided in the Red Tape Reduction Act. Therefore, the consolidated rule was reviewed to update authorities, eliminate unnecessarily restrictive language and redundancy.

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the November Idaho Administrative Bulletin, [Vol. 19-11, pages 248-276](#).

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

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. Certification fees for noxious weed free certification are assessed based on the number of acres inspected. Fees included in the original rule (Noxious Weed Free Storage Rules, 02.06.31) have not been changed in the new combined rule. Fees associated with these rules are imposed pursuant to Section 22-2412, Idaho Code.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Lloyd Knight, Administrator, at (208) 332-8664.

Dated this 27th day of November, 2019.

Brian Oakey, Deputy Director
Idaho Department of Agriculture
Ph: (208) 332-8552 / Fax: (208) 334-2170

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

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

PUBLIC HEARING

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

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

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

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

Three rules administered by the ISDA are related to the regulation of noxious weeds and invasive species, so as to prevent the spread of such species and their impacts on natural resources and crops. These rules are IDAPA 02.06.09, "Rules Governing Invasive Species," IDAPA 02.06.22, "Noxious Weeds Rules," and IDAPA 02.06.31, "Noxious Weed Free Forage and Straw Certification Rules." These rules were promulgated to carry out requirements described in Title 22, Chapters 19, 20, and 24, Idaho Code. In order to streamline and simplify rules related to noxious weeds and invasive species, the ISDA has decided to combine all three rules into a single rule to be titled "02.06.09, *Rules Governing Invasive Species and Noxious Weeds*." No substantive changes are being made to the three rules cited above. All rules were reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Fees included in the original rule (Noxious Weed Free Storage Rules, 02.06.31) have not been changed in the new combined rule. Fees associated with these rules are imposed pursuant to Section 22-2412, Idaho Code.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There is no change in fiscal impact as a result of this consolidation rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted on September 18, 2019. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the September 4, 2019 Idaho Administrative Bulletin, **Vol. 19-9, Pages 15-19**.

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

Subchapter C of this Rule has incorporated the following document:

The NAISMA Weed Free Forage Minimum Certification Standards, as published at https://www.naisma.org/images/NAISMA_WFF_Minimum_Standards_10_17_2018_Approved_Changes.pdf.

The Standards are updated periodically for the purposes of standardizing the voluntary certification of forage and straw. NAISMA is a nationally recognized organization that periodically updates standards for certification of forage and straw. Incorporating this document by reference allows Idaho to be consistent with the latest certification requirements.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd Knight, Administrator, at (208) 332-8664.

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

Dated this 3rd day of October, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 02-0609-1901

02.06.09 – RULES GOVERNING INVASIVE SPECIES AND NOXIOUS WEEDS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections, 22-1907, 22-2004, 22-2006, 22-2403, and 22-2412, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.06.09, “Rules Governing Invasive Species and Noxious Weeds.” ()

02. Scope. This rule governs the designation of invasive species, inspection, permitting, decontamination, recordkeeping and enforcement and apply to the possession, importation, shipping, transportation, eradication, and control of invasive species. This rule identifies those noxious weeds that have been officially designated by the Director as Noxious Weeds in the state of Idaho, designates articles capable of disseminating noxious weeds, requires treatment of articles to prevent dissemination of noxious weeds and provides authority to designate cooperative weed management areas for management of noxious weeds. Also this rule governs the inspection, certification, and marking of noxious weed free forage and straw to allow for the transportation and use of forage and straw in Idaho and states where regulations and restrictions are placed on such commodities. ()

002. -- 109. (RESERVED)

SUBCHAPTER A – INVASIVE SPECIES

110. DEFINITIONS.

In addition to the definitions found in Section 22-1904 and 22-2005, Idaho Code, the following definitions apply in the interpretation and enforcement of Subchapter A only: ()

01. Acts. Title 22, Chapter 19, Idaho Code, the “Idaho Invasive Species Act of 2008” and Title 22, Chapter 20, the “Idaho Plant Pest Act of 2002.” ()

02. Aquatic Invertebrate Invasive Species. Those species listed in Section 140. ()

03. Control. The abatement, suppression, or containment of an invasive species or pest population. ()

04. Conveyance. A terrestrial or aquatic vehicle or a vehicle part that may carry or contain an invasive species or plant pest. A conveyance includes a motor vehicle, a vessel, a motorboat, a sailboat, a personal watercraft, a container, a trailer, or any other means or method of transportation. “Conveyance” also includes a live well or a bilge area. ()

05. Dreissenia Infested Waterbody. Body of water designated by the United States Geological Survey, <http://nas.er.usgs.gov/taxgroup/mollusks/zebramussel/>, or the Director as having a population of any life stage of Dreissenia mussels. ()

06. Early Detection/Rapid Response. Finding invasive species during the initial stages of colonization and then responding within ten (10) days. ()

07. Energy Crop Invasive Species. An Energy Crop Invasive Species is a non-native plant grown to harvest for use in making biofuels, such as bioethanol, or combusted for its energy content to generate electricity or heat. Energy Crop Invasive Species are non-native plants that are cultivated for the purpose of producing (non-food) energy. ()

08. Equipment. An article, tool, implement, or device capable of carrying or containing: ()

a. Water; or ()

b. An invasive species. ()

09. Facility. Any place, site or location or part thereof where a species listed as invasive pursuant to Subchapter A are found, handled, housed, held, planted, or otherwise maintained for purposes governed by a possession, production, or transport permit issued pursuant to Subchapter A and includes, but is not limited to all fields, plats, buildings, lots, structures, and other appurtenances and improvements on the land. ()

10. Possession. The act of cultivating, importing, exporting, shipping or transporting a listed invasive species in Idaho. Possession does not include the act of having, releasing or transporting a listed invasive species through circumstances beyond individual control, including but not limited to infestations in a water supply system, infestations resulting from natural spread of the species or some other acts of nature. ()

11. Trap Crop Invasive Species. A Trap Crop Invasive Species is a non-native plant species planted for purposes of controlling or eradicating a Plant Pest, as defined in the Idaho Plant Pest Act of 2002. ()

12. Water Body. Natural or impounded surface water, including a stream, river, spring, lake, reservoir, pond, wetland, tank and fountain. ()

13. Water Supply System. A system used to treat, store, convey, or distribute water for irrigation, ()

industrial, waste water treatment, residential, or culinary use. A Water Supply System includes a pump, canal, ditch, regulating impoundment, in-canal forebay, pipeline, or associated wetland and water quality improvement project, but does not include a Water Body as defined in Subsection 110.12. ()

111. ABBREVIATIONS.

- 01. AIIS.** Aquatic Invertebrate Invasive Species. ()
- 02. EDRR.** Early Detection/Rapid Response. ()
- 03. HACCP.** Hazard Analysis and Critical Control Points. ()

112. – 119. (RESERVED)

120. PROHIBITION ON POSSESSION, IMPORTATION, SHIPPING OR TRANSPORTATION OF INVASIVE SPECIES.

No person may possess, cultivate, import, ship, or transport any invasive species, including but not limited to an Energy Crop Invasive Species or Trap Crop Invasive Species, into or through the state of Idaho following the effective date of Subchapter A, unless the person possessing, importing, shipping or transporting has obtained a permit under Section 122, or unless otherwise exempt by Subchapter A, as set forth in Section 123. Prohibited acts include but are not limited to: ()

01. Possession or Transportation. Possessing, cultivating, importing, exporting, shipping, or transporting an invasive species into or through the state of Idaho. ()

02. Releasing. Releasing, placing, planting, or causing to be released, an invasive species in a water body, facility, water supply system, field, garden, planted area, ecosystem, or otherwise into the environment within the state of Idaho. ()

03. Transporting From an Infested Environment. Transporting a conveyance or equipment into or through the state of Idaho that has been in an infested environment without obtaining a Department-approved decontamination of the conveyance or equipment. ()

04. Transporting an Infested Article. Transporting, importing or shipping any plant, animal, mode of transportation, conveyance, or article that is infested with an invasive species into or through the state of Idaho without obtaining a Department-approved decontamination of the object. ()

121. INTRODUCTION OF NEW SPECIES TO THE STATE.

Following the effective date of Subchapter A, no person may introduce or import a species not previously present in Idaho without first receiving a determination from the Department that the species is not an invasive species. ()

122. POSSESSION PERMITS.

Possession of invasive species is authorized only if the person possessing the species obtains a possession permit. ()

01. Application for Possession Permits. Persons seeking a possession permit must make application on a form prescribed by the Director. A separate application must be submitted for each facility where invasive species will be possessed. The application must include: ()

- a.** The applicant's name, address (residence and mailing), and Employer or Tax Identification Number. ()
- b.** Description of the proposed facility, including:
 - i.** A map identifying the location of the proposed facility; ()
 - ii.** The legal description of the real property for the proposed facility; ()

- iii. The approximate total area of the proposed facility; ()
- iv. A detailed diagram of proposed facility, ()
- v. A detailed confinement or HACCP Plan if applicable. ()
- c. Name and address of the owner(s) and/or operator(s) of the proposed facility, if different than the applicant. If the proposed facility will be leased, a written and notarized authorization by the property owner must be included. ()
- d. A copy of local zoning authority approval, if approval is required by the local zoning authority. ()
- e. Description of the invasive species to be possessed at the facility, including, to the extent possible, the genus, species, sex, life state, age, identification, and purpose for possessing each species. ()
- f. The date upon which the proposed facility will be available for inspection by the Department, which must be not less than seven (7) days prior to the time the invasive species are possessed at the proposed facility. ()

02. Application Process. The Director will consider all information in the application and issue a written decision granting or denying the application. In reviewing the application, the Director will consider factors including but not limited to: ()

- a. Proximity of the facility to agricultural operations, and environmentally sensitive lands and waters. ()
- b. Potential for access to the facility by unauthorized persons. ()
- c. Potential for vandalism, adverse weather, or other events that compromise the security of the facility. ()
- d. Potential for the invasive species to escape or be released from the facility. ()
- e. Whether, based on the applicant's certification and any other evidence received by the Director in connection with the application or proposed facility, all federal, state, county and city laws applicable to the facility have been met. ()
- f. Whether the applicant has adequate knowledge, experience and training to ensure that the invasive species will not harm agriculture, the natural resources and environment of the state of Idaho. Such experience may be documented by a log book, employment records, education records or other means by which experience may be authenticated. ()
- g. Whether the facility is or will be adequately designed, constructed, and managed to protect agriculture, the natural resources and environment of the state of Idaho from escape of the invasive species. ()
- h. Prior to issuing a possession permit, the Director or his designee may perform an inspection of the facility to determine if its design, construction and proposed operation is consistent with the applicable provisions of Idaho law. ()

03. Grant or Denial of the Permit. Following review of the application and any other relevant information, the Director will either issue the possession permit or deny the application and notify the applicant. If the Director issues the permit, he may include any necessary conditions to prevent release or escape of the invasive species, and to prevent harm to Idaho's agriculture, natural resources, and the environment. ()

04. Duration of Possession Permit. A possession permit is valid until the permitted person no longer

possesses the invasive species, or until the invasive species leaves the state. ()

05. Permit Revocation. Permits issued pursuant to Subchapter A may be revoked at any time if the Director or Director's designee finds that the permit holder has violated any of the provisions of this Subchapter A, the Invasive Species Act, the Plant Pest Act, or any of the conditions included in the permit. ()

06. Disposition of Non-Permitted Invasive Species. The Director may order non-permitted or illegally imported invasive species to be removed from the state or destroyed. ()

07. Annual Report. All permit holders shall submit a report no later than January 1 of each calendar year, on forms provided by the Department. ()

123. EXEMPT SPECIES.

The following species were present in portions of the state of Idaho prior to adoption of Subchapter A of these Rules. However, they are not present throughout the state, and in accordance with the policy of the state of Idaho, as expressed in Idaho Code, Section 22-1902, the spread of these species should be prevented to the greatest extent possible. Therefore, the species listed below are exempt from the permit requirements of Sections 121 and 122 above. However, those seeking to transport the species listed in Section 123.01 outside the known established distribution area must obtain a transport permit in accordance with Section 123.03. ()

01. Exempt Species List: ()

a. New Zealand Mud Snail, *Potamopyrgus antipodarum*; ()

b. Bullfrog, *Lithobates catesbeianus*; ()

c. Asian Clam, *Corbicula fluminea*. ()

02. Location of Known Established Populations. Known established distributions of the New Zealand Mud Snail, Bullfrog, and Asian Clam are identified and mapped online at <http://nas.er.usgs.gov/queries>. ()

03. Transport Permits. Any person seeking to transport one of the species listed in Subsection 123.01, above, outside of the known established distribution boundaries delineated in Subsection 123.02, above, must obtain a transport permit that will be valid for five (5) years. For the purposes of Subchapter A, transport of these exempt species is assumed when biological organisms and associated water from aquaculture facilities and hatcheries is moved from known infested areas in the state. ()

04. Application for Transport Permits. Persons seeking a transport permit must make application on a form prescribed by the Director. A separate application must be submitted for each facility from which invasive species will be transported. The application must include: ()

a. The applicant's name, address (residence and mailing), and Employer or Tax Identification Number. ()

b. Description of the facility of origin, including: ()

i. A map identifying the location of the facility; ()

ii. The legal description of the real property for the facility; ()

iii. The approximate total area of the facility; ()

iv. A detailed diagram of facility, ()

v. A detailed HACCP Plan if applicable. ()

c. Name and address of the owner(s) and/or operator(s) of the facility, if different than the applicant. If the proposed facility will be leased, a written and notarized authorization by the property owner must be included. ()

d. Description of the invasive species to be transported from the facility, including the genus, species, sex, life state, age, and purpose for transporting the species. ()

e. Description of self-contained areas needing draining or discharges of water during or after the transport of invasive species. ()

f. Description of procedures to drain self contained areas after transport is complete, including: ()

i. Into a municipal water treatment facility; or ()

ii. Into an on-site waste treatment facility incorporating sand filtration and chlorination; or ()

iii. As approved by the Department. ()

124. ENERGY CROP POSSESSION/PRODUCTION PERMITS.

Possession and/or production of Energy Crop Invasive Species is authorized only if the person possessing the species obtains an Energy Crop Invasive Species Possession/Production Permit (“Energy Crop Invasive Species Permit”). ()

01. Application for Energy Crop Invasive Species Permits. Persons seeking an Energy Crop Invasive Species Permit must make application on a form prescribed by the Director. A separate application must be submitted for each facility or field where the Energy Crop Invasive Species will be possessed and/or produced. The application must include: ()

a. The applicant’s name, address (residence and mailing), and Employer or Tax Identification Number. ()

b. Description of the proposed facility, including: ()

i. A map identifying the location of the proposed facility or field; ()

ii. The legal description of the real property for the proposed facility or field; ()

iii. The approximate total area of the proposed facility or field; ()

iv. A detailed diagram of proposed facility or field; ()

v. A detailed confinement plan if applicable; and ()

vi. A detailed plan outlining survey and reconnaissance for escaped Energy Crop Invasive Species and a detailed plan for their control or elimination. ()

c. Name and address of the owner(s) and/or operator(s) of the proposed facility or field, if different than the applicant. If the proposed facility or field will be leased, a written and notarized authorization by the property owner must be included. ()

d. A copy of local zoning authority approval, if approval is required by the local zoning authority. ()

e. Description of the Energy Crop Invasive Species to be possessed at the facility or field, including, to the extent possible, the genus, species, sex, life state, age, identification, and purpose for possessing each species. ()

f. The date upon which the proposed facility or field will be available for inspection by the Department, which must be not less than seven (7) days prior to the time the Energy Crop Invasive Species are possessed at the proposed facility. ()

02. Application Process. The Director will consider all information in the application and issue a written decision granting or denying the application. In reviewing the application, the Director will consider factors including but not limited to: ()

a. Proximity of the facility to other agricultural operations, and environmentally sensitive lands and waters. ()

b. Potential for access to the facility or field by unauthorized persons. ()

c. Potential for vandalism, adverse weather, or other events that compromise the security of the facility or field. ()

d. Potential for the Energy Crop Invasive Species to escape or be released from the facility or field. ()

e. Whether, based on the applicant's certification and any other evidence received by the Director in connection with the application or proposed facility, all federal, state, county and city laws applicable to the facility or field have been met. ()

f. Whether the applicant has adequate knowledge, experience and training to ensure that the Energy Crop Invasive Species will not harm agriculture, the natural resources and environment of the state of Idaho. Such experience may be documented by a log book, employment records, education records or other means by which experience may be authenticated. ()

g. Whether the facility or field is or will be adequately designed, constructed, and managed to protect agriculture, the natural resources and environment of the state of Idaho from release or escape of the Energy Crop Invasive Species. ()

h. Prior to issuing an Energy Crop Invasive Species Permit, the Director or his designee may perform an inspection of the facility or field to determine if its design, construction and proposed operation is consistent with the applicable provisions of Idaho law. ()

03. Grant or Denial of the Permit. Following review of the application and any other relevant information, the Director will either issue the permit or deny the application and notify the applicant. If the Director issues the permit, he may include any necessary conditions to prevent release or escape of the Energy Crop Invasive Species, and to prevent harm to Idaho's agriculture, natural resources, and the environment. ()

04. Duration of Possession Permit. An Energy Crop Invasive Species Permit is valid for one (1) year. ()

05. Permit Revocation. Permits issued pursuant to this section may be revoked at any time if the Director or his designee finds that the permit holder has violated any of the provisions of Subchapter A, the Invasive Species Act, the Plant Pest Act, or any of the conditions included in the permit. ()

06. Disposition of Non-Permitted Invasive Species. The Director may order non-permitted or illegally imported Energy Crop Invasive Species to be removed from the state or destroyed. ()

07. Annual Report. All permit holders shall submit a report no later than January 1 of each calendar year, on forms provided by the Department. ()

125. TRAP CROP INVASIVE SPECIES PERMITS.

Production/research of Trap Crop Invasive Species is authorized only if the person possessing the species obtains a

Trap Crop Production/Research Permit (“Trap Crop Invasive Species Permit”). ()

01. Application for Trap Crop Invasive Species Permits. Persons seeking a Trap Crop Invasive Species Permit must make application on a form prescribed by the Director. A separate application must be submitted for each facility where Trap Crop Invasive Species will be researched or produced. The application must include: ()

a. The applicant’s name, address (residence and mailing), and Employer or Tax Identification Number. ()

b. Description of the proposed facility, including: ()

i. A map identifying the location of the proposed facility; ()

ii. The legal description of the real property for the proposed facility; ()

iii. The approximate total area of the proposed facility; ()

iv. A detailed diagram of proposed facility; ()

v. A detailed confinement plan if applicable; and ()

vi. A detailed plan outlining survey and reconnaissance for escaped plants and a detailed plan for their control or elimination. ()

c. Name and address of the owner(s) and/or operator(s) of the proposed facility, if different than the applicant. If the proposed facility will be leased, a written and notarized authorization by the property owner must be included. ()

d. A copy of local zoning authority approval, if approval is required by the local zoning authority. ()

e. Description of the Trap Crop Invasive Species to be possessed at the facility, including, to the extent possible, the genus, species, sex, life state, age, identification, and purpose for possessing each species. ()

f. The date upon which the proposed facility will be available for inspection by the Department, which must be not less than seven (7) days prior to the time the Trap Crop Invasive Species is possessed at the proposed facility. ()

02. Application Process. The Director will consider all information in the application and issue a written decision granting or denying the application. In reviewing the application, the Director will consider factors including but not limited to: ()

a. Proximity of the facility to agricultural operations, and environmentally sensitive lands and waters. ()

b. Potential for access to the facility by unauthorized persons. ()

c. Potential for vandalism, adverse weather, or other events that compromise the security of the facility. ()

d. Potential for the Trap Crop Invasive Species to escape or be released from the facility. ()

e. Whether, based on the applicant’s certification and any other evidence received by the Director in connection with the application or proposed facility, all federal, state, county and city laws applicable to the facility have been met. ()

f. Whether the applicant has adequate knowledge, experience and training to ensure that the Trap Crop Invasive Species will not harm agriculture, the natural resources and environment of the state of Idaho. Such experience may be documented by a log book, employment records, education records or other means by which experience may be authenticated. ()

g. Whether the facility is or will be adequately designed, constructed, and managed to protect agriculture, the natural resources and environment of the state of Idaho from escape of the Trap Crop Invasive Species. ()

h. Prior to issuing a Trap Crop Invasive Species Permit, the Director or his designee may perform an inspection of the facility to determine if its design, construction and proposed operation is consistent with the applicable provisions of Idaho law. ()

03. Grant or Denial of the Trap Crop Invasive Species Permit. Following review of the application and any other relevant information, the Director will either issue the Trap Crop Invasive Species Permit or deny the application and notify the applicant. If the Director issues the Trap Crop Invasive Species Permit, he may include any necessary conditions to prevent release or escape of the Trap Crop Invasive Species, and to prevent harm to Idaho's agriculture, natural resources, and the environment. ()

04. Duration of Trap Crop Invasive Species Permit. A Trap Crop Invasive Species Permit is valid for one (1) year. ()

05. Permit Revocation. Permits issued pursuant to this section may be revoked at any time if the Director or his designee finds that the permit holder has violated any of the provisions of this Subchapter A, the Invasive Species Act, the Plant Pest Act, or any of the conditions included in the permit. ()

06. Disposition of Non-Permitted Invasive Species. The Director may order non-permitted or illegally imported Trap Crop Invasive Species to be removed from the state or destroyed. ()

07. Annual Report. All permit holders shall submit a report no later than January 1 of each calendar year, on forms provided by the Department. ()

126. -- 129. (RESERVED)

130. EARLY DETECTION AND RAPID RESPONSE AQUATIC INVERTEBRATE INVASIVE SPECIES.

01. Statewide EDRR AIIS List. If any of the species listed in the following table are found to occur in Idaho, they shall be reported to the Department immediately. Positive identification will be made by the Department or other qualified authority as approved by the Director. Subsections 130.02 through 130.05 are applicable to EDRR AIIS only and not to other invasive species listed in Sections 140 through 148.

Early Detection Rapid Response Aquatic Invertebrate Invasive Species (EDRR AIIS) List	
Common Name	Scientific Name
Quagga Mussel	<i>Dreissenia bugensis</i>
Zebra Mussel	<i>Dreissenia polymorpha</i>

()

02. Transporting EDRR AIIS Over Public Roads. No person may transport Equipment or any Conveyance containing EDRR AIIS over public roads within the state of Idaho without first being decontaminated. ()

03. Contaminated Conveyances in Idaho Waters. No person may place any EDRR AIIS contaminated Equipment or Conveyance into any Water Body or Water Supply System in the state of Idaho. ()

04. Firefighting Equipment. Precautions should be taken to prevent the introduction and spread of EDRR AIIS through firefighting activities. All firefighting agencies moving equipment into the state of Idaho shall follow protocols similar to the United States Forest Service decontamination protocols set forth in “Preventing Spread of Aquatic Invasive Organisms Common to the Intermountain Region.” Those protocols can be viewed online at http://www.fs.usda.gov/detail/r4/landmanagement/resourcemanagement/?cid=fsbdev3_016113. ()

05. Construction and Road Building and Maintenance Equipment. Construction and equipment used for road building and maintenance must be free of EDRR AIIS. If equipment that is being transported into the state of Idaho has been in an infested water body or water supply system within the preceding thirty (30) days, the equipment must be inspected in accordance with Section 132. The Department may require decontamination. ()

131. REPORTING REQUIREMENTS.

01. Discovery. Any person who discovers an EDRR AIIS within the state or who has reason to believe that an invasive species may exist at a specific location shall immediately report the discovery to the Department. ()

02. Contents. The report shall, to the best of the reporter’s ability, contain the following information: location of the invasive species; date of discovery; and identification of any conveyance, equipment, water body, or host in or upon which the invasive species may be found. ()

03. Methods of Reporting. The report shall be made in person or in writing (which may include electronic mail) as follows: ()

- a. At any Department office or headquarters; ()
- b. To the Department’s toll free hotline at 1-877-336-8676; or ()
- c. Via the Department’s website at www.agri.idaho.gov. ()

04. Hold Harmless. Reporting parties will be held harmless from violations pursuant to this Subchapter A regarding possession of EDRR AIS. ()

132. INSPECTIONS.

01. Qualified Inspectors. Inspections to detect the presence of EDRR AIIS may be conducted by any authorized agent, private inspector or peace officer qualified and trained in accordance with the Department’s requirements. ()

02. Conveyances That Have Been in Infested Waters. All persons transporting a conveyance must receive documentation of an inspection prior to launching in any water of the state if the vessel has been in infested water within the last thirty (30) days. ()

03. All Other Conveyances. All conveyances are subject to inspection. All compartments, equipment and containers that may hold water, including, but not limited to live wells and ballast and bilge areas will be drained as part of all inspections. ()

04. Inspection Methods. Inspectors will determine if EDRR AIIS are present by interviewing the person transporting the conveyance and using visual and/or tactile inspection methods, or such other methods as may be appropriate and using forms supplied by the Department. ()

05. Inspection Results. Any authorized agent or private inspector or private decontaminator who, through the course of an inspection, determines that AIIS are present shall advise the operator that the conveyance is suspected of possessing EDRR AIIS and that it must be decontaminated according to Departmental procedures. ()

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06. Decontamination. Any conveyance found or reasonably believed to contain EDRR AIIS shall be decontaminated in accordance with Section 134. ()

133. HOLD ORDERS.

01. Hold Order. If any person refuses to permit inspection or decontamination of his or her conveyance, that conveyance is subject to a hold order until the inspection and/or decontamination is complete. ()

02. Notification to Owner. If the person in charge of the conveyance is not the registered owner, the registered owner shall be notified by mail, return receipt requested, within five (5) days of the Hold Order. Such notification must also include Department contact information. If the registered owner is present when the Hold Order is issued, then the same information shall be provided to the registered owner at the time the order is issued. ()

03. Release of Hold Order. Decontamination and proof of decontamination, in accordance with Section 134, is necessary in order for the Hold Order to be released. The Hold Order must be released in writing, and may be released only by the Director or his designee. ()

134. EDRR AIIS DECONTAMINATION.

01. Decontamination Protocol. All decontamination must be accomplished by Department-approved service providers, using Department protocol. All decontamination methods must be in accordance with all applicable laws, disposal methods, recommended safety precautions, and safety equipment and procedures. ()

02. Reinspection. After decontamination, the Department or its authorized agent must re-inspect the conveyance to ensure complete decontamination prior to releasing the conveyance and any associated Hold Order. ()

03. Proof of Decontamination. Proof of decontamination will consist of a completed post-decontamination inspection form and application of a tamper-proof seal to the conveyance. ()

135. -- 139. (RESERVED)

140. INVASIVE SPECIES - AQUATIC INVERTEBRATES.

Invasive Species - Aquatic Invertebrates		
	Common Name	Scientific Name
01.	Zebra Mussel	<i>Dreissenia polymorpha</i>
02.	Quagga Mussel	<i>Dreissenia bugensis</i>
03.	New Zealand Mud Snail	<i>Potamopyrgus antipodarum</i>
04.	Red Claw Crayfish	<i>Cherax quadricarinatus</i>
05.	Yabby Crayfish	<i>Cherax albidus/C. destructor</i>
06.	Marone Crayfish	<i>Cherax tenuimanus</i>
07.	Marbled Crayfish	<i>(Procambarus marmoratus)</i>
08.	Rusty Crayfish	<i>Orconectes rusticus</i>
09.	Asian Clam	<i>Corbicula fluminea</i>

Invasive Species - Aquatic Invertebrates		
	Common Name	Scientific Name
10.	Spiny Waterflea	<i>Bythotrephes cederstroemi</i>
11.	Fishhook Waterflea	<i>Cercopagis pengoi</i>
12.	Marmorkrebs	<i>Procambarus sp.</i>

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141. INVASIVE SPECIES - FISH.

INVASIVE SPECIES - FISH		
	Common Name	Scientific Name
01.	Green Sturgeon	<i>Acipenser medirostris</i>
02.	Walking Catfish	<i>Clariidae</i>
03.	Bowfin	<i>Ania Calva</i>
04.	Gar	<i>Lepiostidae</i>
05.	Piranhas	<i>Serrasalmus spp., Rosseveltiella spp., Pygocentrus spp.</i>
06.	Rudd	<i>Scardinius erythrophthalmus</i>
07.	Ide	<i>Leuciscus idus</i>
08.	Diploid Grass Carp	<i>Ctenopharyngoden idella</i>
09.	Bighead Carp	<i>Hypophthalmichthys nobilis</i>
10.	Silver Carp	<i>Hypophthalmichthys molitrix</i>
11.	Black Carp	<i>Mylopharyngodeon piceus</i>
12.	Snakeheads	<i>Channa spp., Parachanna spp.</i>
13.	Round Goby	<i>Neogobius melanostomas</i>
14.	Ruffe	<i>Gymnocephalus cernuus</i>

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142. INVASIVE SPECIES - AMPHIBIANS

TABLE 1:

INVASIVE SPECIES - AMPHIBIANS		
	Common Name	Scientific Name
01.	Rough-skinned Newt	<i>Taricha granulose</i>
02.	Bullfrog	<i>Lithobates catesbeianus</i>

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143. INVASIVE SPECIES - REPTILES.

INVASIVE SPECIES - REPTILES		
	Common Name	Scientific Name
01.	Red-eared Slider	<i>Trachemys scripta elegans</i>
02.	Mediterranean Gecko	<i>Hemidactylus turcicus</i>
03.	Common Wall Lizard	<i>Podarcis muralis</i>
04.	Italian Wall Lizard	<i>Podarcis sicula</i>
05.	Brahminy Blindsnake	<i>Ramphotyphlops braminus</i>
06.	Snapping Turtle	<i>Chelydra serpentina</i>

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144. INVASIVE SPECIES - BIRDS.

INVASIVE SPECIES - BIRDS		
	Common Name	Scientific Name
01.	Monk Parakeet	<i>Myiopsitta monachus</i>

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145. INVASIVE SPECIES - MAMMALS.

INVASIVE SPECIES - MAMMALS		
	Common Name	Scientific Name
01.	Nutria	<i>Myocastor coypus</i>

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146. INVASIVE SPECIES - INSECTS.

INVASIVE SPECIES - INSECTS		
	Common Name	Scientific Name
01.	Asian Longhorned Beetle	<i>Anoplophora glabripennis</i>
02.	Citrus Longhorned Beetle	<i>Anoplophora chinensis</i>
03.	Emerald Ash Borer	<i>Agrilus planipennis</i>
04.	Marmorated Stink Bug	<i>Halyomorpha halys</i>
05.	European Woodwasp	<i>Sirex noctilio</i>
06.	European Gypsy Moth	<i>Lymantria dispar</i>
07.	Asian Gypsy Moth	<i>Lymantria dispar</i>

INVASIVE SPECIES - INSECTS		
	Common Name	Scientific Name
08.	Soybean Aphid	<i>Aphis glycines</i>
09.	Potato Tuber Moth	<i>Tecia solanivora</i>
10.	Japanese Beetle	<i>Popillia japonica</i>
11.	Mexican Bean Beetle	<i>Epilachna varivestis</i>
12.	Kaphra Beetle	<i>Trogoderma granarium</i>
13.	Red Imported Fire Ant	<i>Solenopsis invicta</i>
14.	Glassy-winged Sharpshooter	<i>Homalodisca vitripennis</i>
15.	Grape Phylloxera	<i>Daktulosphaira vitifoliae</i>
16.	Vine Mealybug	<i>Planococcus ficus</i>
17.	Summer Fruit Tortix	<i>Adoxophyes orana</i>
18.	Silver Y Moth	<i>Autographa gamma</i>
19.	False Codling Moth	<i>Cryptophlebia leucotreta</i>
20.	Light Brown Apple Moth	<i>Epiphyas postvittana</i>
21.	Apple Tortrix	<i>Archips fuscocupreanus</i>
22.	Pine Shoot Beetle	<i>Tomicus piniperda</i>
23.	Cherry Bark Tortrix	<i>Enarmonia formosana</i>
24.	Apple Ermine Moth	<i>Yponomeuta malinellus</i>
25.	Cherry Ermine Moth	<i>Enarmonia formosana</i>
26.	European Grape Vine Moth	<i>Lobesia botrana</i>
27.	European Grape Berry Moth	<i>Eupoecilia ambiguella</i>
28.	Plum Fruit Moth	<i>Cydia funebrana</i>
29.	Plum Curculio	<i>Conotrachelus nenuphar</i>
30.	Leek Moth	<i>Acrolepiopsis assectella</i>
31.	Bee Mite	<i>Tropilaelaps clareae</i>
32.	Small Hive Beetle	<i>Aethina tumida</i>
33.	Africanized Honey Bee	<i>Apis mellifera</i>
34.	Black Currant Gall Mite	<i>Cecidophyopsis ribis</i>
35.	Exotic Bark Beetles	(Scolytidae): a. <i>Scolytus mali</i> . b. <i>Xylosandrus crassiusculus</i> . c. <i>Xylosandrus germanus</i> . d. <i>Xyleborus californicus</i> .
36.	Sunni Bug	<i>Eurygaster integriceps</i>
37.	German Yellowjacket	<i>espula germanica</i>

INVASIVE SPECIES - INSECTS		
	Common Name	Scientific Name
38.	European Paper Wasp	<i>Polistes dominulus</i>
39.	European Elm Bark Beetle	<i>Scolytus multistriatus</i>
40.	Banded Elm Bark Beetle	<i>Scolytus schevyrewi</i>
41.	Wheat Blossom Midge,	<i>Sitodiplosis mosellana</i>
42.	Potato Tuberworm	<i>Phthorimeaea operculella</i>
43.	Pink Hibiscus Mealybug	<i>Maconellicoccus hirsutus</i>
44.	Bean Plataspid (Kudzu Bug)	<i>Megacopta cribraria</i>

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147. **INVASIVE SPECIES - PLANT PATHOGENS AND PARASITIC NEMATODES.**

INVASIVE SPECIES - PLANT PATHOGENS AND PARASITIC NEMATODES		
	Common Name	Scientific Name
01.	Phytophthora blight (nursery stock)	<i>Phytophthora ramorum,</i> <i>Phytophthora kernoviae</i>
02.	Karnal Bunt	<i>Tilletia indica</i>
03.	Bean Common Mosaic Necrosis Virus (strain NL-3 and NL-5)	
04.	Potato Wart	<i>Synchytrium endobioticum</i>
05.	Golden Nematode	<i>Globodera rostochiensis</i>
06.	Soybean Cyst Nematode	<i>Heterodera glycines</i>
07.	Bacterial Wilt of Alfalfa	<i>Clavibacter michiganensis spp. insidiosus</i>
08.	Wheat Seed Gall Nematode	<i>Anguina tritici</i>
09.	Pine Wilt Nematode	<i>Bursaphelenchus xylophilus</i>
10.	Brown Rot of Potatoes	<i>Ralstonia solanacearum</i> , race 3, biovar 2 (alternate hosts include tomato, pepper, eggplant, and some greenhouse plants including geranium)
11.	Java Downy Mildew of Corn	<i>Peronosclerospora maydis</i>
12.	Philippine Downy Mildew of Corn	<i>Peronosclerospora philipeninsis</i>
13.	Asian Soybean Rust	<i>Phakopsora pachyrhizi</i>
14.	Plum Pox Potyvirus	
15.	Cherry Leaf Roll Virus	
16.	Stewart's Wilt of Corn	<i>Pantoea stewartii</i>

INVASIVE SPECIES - PLANT PATHOGENS AND PARASITIC NEMATODES		
	Common Name	Scientific Name
17.	Brown Stripe Downy Mildew of Corn	<i>Sclerophthora rayssiae</i> var. <i>zeae</i> .
18.	Potato Spindle Tuber Viroid	
19.	Pierce's Disease of Grapes	<i>Xylella fastidiosa</i>
20.	Black Currant Reversion Disease	
21.	Powdery Mildew of Hops	<i>Sphaerotheca macularis</i> (s. <i>humuli</i>)
22.	Wheat Smut	<i>Tilletia tritici</i>
23.	Wheat Scab	<i>Fusarium graminearum</i>
24.	Potato Ring Rot	<i>Clavibacter michiganensis</i> subsp. <i>sepidonicus</i>
25.	Potato Late Blight	<i>Phytophthora infestans</i>
26.	Onion White Rot	<i>Sclerotium cepivorum</i>
27.	White Pine Blister Rust	<i>Cronartium ribicola</i>
28.	Potato Mop Top Virus, PMTV	
29.	Black Stem Rust	<i>Puccinia graminis</i> f.sp. <i>tritici</i> Race UG99
30.	Apple proliferation phytoplasma	<i>Candidatus Phytoplasma mali</i>

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148. INVASIVE SPECIES - INVASIVE MOLLUSKS (TERRESTRIAL SNAILS AND SLUGS).

INVASIVE SPECIES - INVASIVE MOLLUSKS (TERRESTRIAL SNAILS AND SLUGS)		
	Common Name	Scientific Name
01.	Green or Burrowing Snail	<i>Cantareus apertus</i>
02.	Pulmonate Snail	<i>Helix pomatia</i>
03.	White Garden Snail	<i>Theba pisana</i>
04.	Giant African Snail	<i>Achatha fulica</i>
05.	Lactea Snail	<i>Otala lacteal</i>
06.	Maritime Garden Snail	<i>Cerneuella virgata</i>
07.	Brown Garden Snail	<i>Cryptomphalus aspersa</i>
08.	Wrinkled Snail	<i>Candidula intersecta</i>
09.	Chinese Mysterysnail	<i>Bellamyia chinensis</i>
10.	Japanese Mysterysnail	<i>Bellamyia japonica</i>
11.	Applesnail	<i>Pomacea</i> spp.
12.	Marisa	<i>Marisa cornuarietis</i>

INVASIVE SPECIES - INVASIVE MOLLUSKS (TERRESTRIAL SNAILS AND SLUGS)		
	Common Name	Scientific Name
13.	Red-lipped Melania	<i>Melanoides tuberculata</i>
14.	Quilted Melania	<i>Tarebia granifera</i>
15.	Decollate Snail	<i>Rumina decollate</i>
16.	Faucet Snail	<i>Bithynia tentaculata</i>

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149. INVASIVE SPECIES - INVASIVE PLANTS: ENERGY CROPS.

INVASIVE SPECIES - INVASIVE PLANTS: ENERGY CROPS		
	Common Name	Scientific Name
01.	Giant Reed	<i>Arundo donax</i> (and hybrids)
02.	Switch Grass	<i>Panicum virgatum</i> (and hybrids)
03.	Kudzu	<i>Pueraria montana</i> (and hybrids)
04.	Chinese Silver Grass	<i>Miscanthus giganteus</i> (and hybrids)
05.	Purging Nut	<i>Jatropha curcus</i> (and hybrids)
06.	Cold Tolerant Eucalyptis (and hybrids)	

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150. INVASIVE SPECIES - INVASIVE PLANTS: TRAP CROPS.

INVASIVE SPECIES - INVASIVE PLANTS: TRAP CROPS		
	Common Name	Scientific Name
01.	Litchi Tomato	<i>Solanum sisymbriifolium</i> (and hybrids) (Otherwise known as Sticky Nightshade or Fire and Ice)
02.	Black Nightshade	<i>Solanum nigrus</i> (and hybrids)

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151. -- 209. (RESERVED)

SUBCHAPTER B – NOXIOUS WEEDS

210. DEFINITIONS.

In addition to the definitions found in Section 22-2402, Idaho Code, the definitions found in Section 210 apply in the interpretation and enforcement of Subchapter B only: ()

01. **Early Detection and Rapid Response (EDRR).** Finding invasive plant species during the initial stages of colonization and then responding within the same season to initiate eradication of the invasive plant species. ()

02. Implements of Husbandry. Every vehicle, including self-propelled units, designed or adapted and used exclusively in agricultural, horticultural, dairy and livestock growing and feeding operations when being incidentally operated as an implement of husbandry. Such implements include, but are not limited to, combines, discs, dry and liquid fertilizer spreaders, cargo tanks, harrows, hay balers, harvesting and stacking equipment, pesticide applicator equipment, plows, swathers, mint tubs and mint wagons, and farm wagons. A farm tractor when attached to or drawing any implement of husbandry shall be construed to be an implement of husbandry. Implements of husbandry do not include semi trailers, nor do they include motor vehicles or trailers, unless their design limits their use to agricultural, horticultural, dairy or livestock growing and feeding operations. ()

03. Subtaxa(on). A supplementary piece of identifying information in a plant’s or animal’s scientific name. ()

211. ABBREVIATIONS.

01. CWMA. Cooperative Weed Management Area. ()

02. EDRR. Early Detection/Rapid Response. ()

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

212. -- 219. (RESERVED)

220. NOXIOUS WEEDS - DESIGNATIONS.

The weeds listed on the Statewide Prohibited Genera, EDRR, Containment, and Control lists are hereby officially designated and published as noxious. ()

01. Statewide Prohibited Genera Noxious Weed List. ()

a. All plants and plant parts in the generas of: *Cytisus*, *Genista*, *Spartium*, and *Chamaecytisus* additionally including “all” subtaxa of these plant genera are prohibited in Idaho. ()

b. Weeds listed in the Prohibited Genera list may exist in varying populations throughout the state. The concentration of these weeds is at a level where control and/or eradication may be possible. A written plan for weeds on the Statewide Prohibited Genera Noxious Weed List shall be developed by the control authority that specifies active control methods to reduce known populations in not more than five (5) years. The plan shall be available to the Department upon request. ()

02. Statewide EDRR Noxious Weed List. If any of the listed plants (Subsection 220.02) are found to occur in Idaho, they shall be reported to the Department within ten (10) days following positive identification by the University of Idaho or other qualified authority as approved by the Director. These weeds shall be eradicated during the same growing season as identified.

	Common Name	Scientific Name
1.	Brazilian Elodea	<i>Egeria densa</i>
2.	Common/European Frogbit	<i>Hydrcharis morsus-ranae</i>
3.	Fanwort	<i>Cobomba caroliniana</i>
4.	Feathered Mosquito Fern	<i>Azolla pinnata</i>
5.	Giant Hogweed	<i>Heracleum mantegazzianum</i>
6.	Giant Salvinia	<i>Salvinia molesta</i>
7.	Hydrilla	<i>Hydrilla verticillata</i>

	Common Name	Scientific Name
8.	Iberian Starthistle	<i>Centaurea iberica</i>
9.	Policeman's Helmet	<i>Impatiens glandulifera</i>
10.	Purple Starthistle	<i>Centaurea calcitrapa</i>
11.	Squarrose Knapweed	<i>Centaurea triumfetti</i>
12.	Syrian Beancaper	<i>Zygophyllum fabago</i>
13.	Tall Hawkweed	<i>Hieracium piloselloides</i>
14.	Variable-Leaf-Milfoil	<i>Myriophyllum heterophyllum</i>
15.	Water Chestnut	<i>Trapa natans</i>
16.	Water Hyacinth	<i>Eichhornia crassipes</i>
17.	Yellow Devil Hawkweed	<i>Hieracium glomeratum</i>
18.	Yellow Floating Heart	<i>Nymphoides pelata</i>

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03. Statewide Control Noxious Weed List. Weeds listed in the control list are known to exist in varying populations throughout the state. The concentration of these weeds is at a level where control or eradication, or both, may be possible. A written plan for weeds on the Statewide Control Noxious Weed List shall be developed by the control authority that specifies active control methods to reduce known populations in not more than five (5) years. The plan shall be available to the Department upon request.

	Common Name	Scientific Name
1.	Black Henbane	<i>Hyoscyamus niger</i>
2.	Bohemian Knotweed	<i>Polygonum X bohemicum</i>
3.	Buffalobur	<i>Solanum rostratum</i>
4.	Common Crupina	<i>Crupina vulgaris</i>
5.	Common Reed (Phragmites)	<i>Phragmites australis</i>
6.	Dyer's Woad	<i>Isatis tinctoria</i>
7.	Eurasian Watermilfoil	<i>Myriophyllum spicatum</i>
8.	Giant Knotweed	<i>Polygonum sachalinense</i>
9.	Japanese Knotweed	<i>Polygonum cuspidatum</i>
10.	Johnsongrass	<i>Sorghum halepense</i>
11.	Matgrass	<i>Nardus stricta</i>
12.	Meadow Knapweed	<i>Centaurea debeauxii</i>
13.	Mediterranean Sage	<i>Salvia aethiopsis</i>
14.	Musk Thistle	<i>Carduus nutans</i>
15.	Orange Hawkweed	<i>Hieracium aurantiacum</i>
16.	Parrotfeather Milfoil	<i>Myriophyllum aquaticum</i>
17.	Perennial Sowthistle	<i>Sonchus arvensis</i>

	Common Name	Scientific Name
18.	Russian Knapweed	<i>Acroptilon repens</i>
19.	Scotch Broom	<i>Cytisus scoparius</i>
20.	Small Bugloss	<i>Anchusa arvensis</i>
21.	Vipers Bugloss	<i>Echium vulgare</i>
22.	Yellow Hawkweed	<i>Hieracium caespitosum</i>

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04. Statewide Containment Noxious Weed List. Weeds listed in the containment noxious weeds list are known to exist in various populations throughout the state. Weed control efforts may be directed at reducing or eliminating new or expanding weed populations while known and established weed populations, as determined by the weed control authority, may be managed by any approved weed control methodology, as determined by the weed control authority.

	Common Name	Scientific Name
1.	Canada Thistle	<i>Cirsium arvense</i>
2.	Curlyleaf Pondweed	<i>Potamogeton crispus</i>
3.	Dalmatian Toadflax	<i>Linaria dalmatica ssp. dalmatica</i>
4.	Diffuse Knapweed	<i>Centaurea diffusa</i>
5.	Field Bindweed	<i>Convolvulus arvensis</i>
6.	Flowering Rush	<i>Butomus umbellatus</i>
7.	Hoary Alyssum	<i>Berteroa incana</i>
8.	Houndstongue	<i>Cynoglossum officinale</i>
9.	Jointed Goatgrass	<i>Aegilops cylindrica</i>
10.	Leafy Spurge	<i>Euphorbia esula</i>
11.	Milium	<i>Milium vernale</i>
12.	Oxeye Daisy	<i>Leucanthemum vulgare</i>
13.	Perennial Pepperweed	<i>Lepidium latifolium</i>
14.	Plumeless Thistle	<i>Carduus acanthoides</i>
15.	Poison Hemlock	<i>Conium maculatum</i>
16.	Puncturevine	<i>Tribulus terrestris</i>
17.	Purple Loosestrife	<i>Lythrum salicaria</i>
18.	Rush Skeletonweed	<i>Chondrilla juncea</i>
19.	Saltcedar	<i>Tamarix sp.</i>
20.	Scotch Thistle	<i>Onopordum acanthium</i>
21.	Spotted Knapweed	<i>Centaurea stoebe</i>
22.	Tansy Ragwort	<i>Senecio jacobaea</i>
23.	White Bryony	<i>Bryonia alba</i>

	Common Name	Scientific Name
24.	Whitetop (Hoary Cress)	<i>Cardaria draba</i>
25.	Yellow Flag Iris	<i>Iris pseudocorus</i>
26.	Yellow Starthistle	<i>Centaurea solstitialis</i>
27.	Yellow Toadflax	<i>Linaria vulgaris</i>

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05. Designation of Articles Capable of Disseminating Noxious Weeds. The following articles are designated by the Director as capable of disseminating noxious weeds: ()

- a.** Construction equipment, road building and maintenance equipment, and implements of husbandry. ()
- b.** Motorized vehicles such as, all-terrain vehicles, motorcycles, and other off-road vehicles and non-motorized vehicles such as bicycles and trailers. ()
- c.** Grain and seed. ()
- d.** Hay, straw and other material of similar nature. ()
- e.** Nursery stock including plant material propagated for the support of aquarium, pet, or horticultural activities. ()
- f.** Feed and seed screenings. ()
- g.** Fence posts, fencing and railroad ties. ()
- h.** Sod. ()
- i.** Manure, fertilizers and material of similar nature. ()
- j.** Soil, sand, mulch, and gravel. ()
- k.** Boats, personal watercraft, watercraft trailers, and items of a similar nature. ()

221. -- 229. (RESERVED)

230. TREATMENT OF ARTICLES.

01. Duty. It is the duty of every person, before removing any article from any place that is infested with noxious weeds or before moving the article onto any public roadway, to enclose, clean, or treat the article in a manner that will prevent the spread of noxious weeds ()

02. Treatment. No article containing noxious weed propagules shall be sold or furnished to any person within this state, until it has been treated in a manner sufficient to eliminate all noxious weed propagating capability except when sold or furnished to a person for the purpose of destroying the viability of the noxious weed propagules. ()

231. – 303. (RESERVED)

SUBCHAPTER C - NOXIOUS WEED FREE FORAGE AND STRAW CERTIFICATION

304. INCORPORATION BY REFERENCE.

The following document is incorporated by reference and applies to Subchapter C, only: ()

01. The NAISMA Weed Free Forage Minimum Certification Standards, as published at https://www.naisma.org/images/NAISMA_WFF_Minimum_Standards_10_17_2018_Approved_Changes.pdf. ()

305. – 309. (RESERVED)

310. DEFINITIONS.

In addition to the definitions found in Section 22-2402, Idaho Code, the definitions found in section 310 apply to the interpretation and enforcement of Subchapter C only: ()

01. Agent. Any instrumentality or entity authorized by the Director of the Department, and acting in an official capacity and under the supervision of the Department, to administer the provisions of Subchapter C. The principal purpose of the agent is to establish, conduct, and maintain a uniform and reasonable system of inspection and certification of forage and straw crops to determine if such crops are noxious weed free. ()

02. Approved Inspector. An individual who has been accredited by the Department or by the Department's agent in the noxious weed free forage and straw certification program. ()

03. Bale. A mechanically compressed package of forage or straw bound by string or wire, or other binding material. ()

04. Bale Tag. A tag or label that is attached to the string or wire, or other binding material of a bale of certified forage or straw, and identifies the bale as being certified noxious weed free. ()

05. Certificate of Inspection. A record of inspection issued by an approved inspector that states the results of a field or commodity inspection. The certificate shall document that the inspected field or commodity is Idaho State Noxious Weed Free, NAISMA Noxious Weed Free, or that the field or commodity contains noxious weeds. ()

06. Certification. The process whereby an approved inspector conducts field or commodity inspections to determine that the field or commodity is noxious weed free. ()

07. Certification Markings. Bale tags, purple and yellow colored twine, compressed forage/straw bale binding material, and forage cubes/pellets container tags/labels. ()

08. Certified Compressed Forage/Straw Bale Binding Material. An ISDA approved binding material that is attached to a compressed forage/straw bale of certified noxious weed free forage/straw and identifies the bale as being certified to the NAISMA Standards. ()

09. Compressed Forage/Straw Bale. A bale that has been twice compressed, once in the field by a forage/straw baler and then recompressed a second time and bound by string, wire or other binding material. ()

10. Field. The land on which a forage or straw crop is grown and is not divided by streams, public roads, other crops, or other barriers. ()

11. Forage. Alfalfa, grain, and grass hay, and/or combinations of alfalfa, grain, or grass hay; the term "forage" includes forage cubes, compressed forage bales, and pellets. ()

12. Forage Cubes. Forage that is harvested from a field certified to NAISMA Standards and is mechanically compacted into wafers or cubes. ()

13. Forage Cube/Pellet Tag. A tag, label, or statement that is attached or printed on a container of certified noxious weed free forage cubes or pellets, and identifies the container as being certified to the NAISMA Standards. ()

14. Idaho State Noxious Weed Free. Forage and straw inspected for weeds designated by the Director as noxious as defined in Section 22-2402(17), Idaho Code, and determined to be free of such weeds. ()

15. Idaho State Noxious Weed Free Standards. Forage and straw that meets the requirements Idaho State Noxious Weed Free. ()

16. NAISMA Noxious Weed Free. Forage and straw inspected for, and determined to be free of, weeds designated as noxious by the Director as defined in Section 22-2402(17), Idaho Code, and noxious weeds listed on the NAISMA Designated Weed List. ()

17. NAISMA Weed Free Forage Certification Program. The North American Invasive Species Management Association standard for forage certification. ()

18. NAISMA Twine. Special purple and yellow colored twine approved by NAISMA that is used to mark bales as certified to the NAISMA Standards. ()

19. NAISMA Standards. Requirements of the NAISMA Weed Free Forage Certification Program. ()

20. Noxious Weed Free. No noxious weeds with viable seed, injurious portions, or propagating parts were found during inspection procedures. ()

21. Pellets. Forage that is harvested from a field certified to NAISMA Standards and is manufactured into an agglomerated feed, formed by compacting and forcing through die openings by a mechanical process. ()

23. Straw. The dried stalks or stems remaining after grain is harvested. ()

24. Transit Certificate. A document completed by an approved inspector to certify products proposed for movement as certified noxious weed free into states that require noxious weed free forage and straw certification. The transit certificate must be in the possession of the transporter. ()

311. ABBREVIATIONS.

01. ISDA. The Idaho State Department of Agriculture. ()

02. NAISMA. North American Invasive Species Management Association. ()

03. NWFF&S. Noxious Weed Free Forage and Straw. ()

312. -- 319. (RESERVED)

320. VOLUNTARY NOXIOUS WEED FREE FORAGE AND STRAW CERTIFICATION PROGRAM.

01. Purpose. The noxious weed free forage and straw certification program is a voluntary program, the purpose of which is to provide a means for the inspection, certification, and marking of forage and straw as noxious weed free. The program will be managed by the Department and may be implemented through an agent of the Department. The program will allow for the preparation of a transit certificate for the purpose of interstate transport or shipping of forage and straw into and through states that place regulations and restrictions on such commodities. The program is intended to reduce the exportation, importation, growth, and spread of noxious weeds. ()

02. Certifying Authority. The Department or its agent is the certifying authority. The certifying authority will appoint, as needed, approved inspectors throughout the state, who may issue certificates of inspection. ()

03. Certification Training. The Department will determine minimum training and accreditation standards for approved inspectors. Training will be provided annually by the Department or its agent. Attendance at annual training will certify accreditation for the inspector for that calendar year. Approved inspectors will be issued a

- certificate of training for the calendar year. Annual training includes: ()
- a. Field inspection techniques and procedures; ()
 - b. ISDA Noxious Weed Lists and NAISMA Weed Free Forage Prohibited Weed List plant identification; ()
 - c. ISDA and NAISMA certification standards and guidelines; ()
 - d. Knowledge of weed management, including: ()
 - i. Burning; ()
 - ii. Mowing, cutting or roguing; ()
 - iii. Mechanical methods; and ()
 - iv. Herbicides. ()
 - e. Inspection forms. ()
- 04. Certification Program.** ()
- a. The Department or its agent will: ()
 - i. Coordinate forage and straw inspections within the state; ()
 - ii. Select, train, and supervise persons who serve as approved inspectors; ()
 - iii. Issue certificates of inspection, transit certificates, NAISMA Twine, forage cubes/pellets tags/labels, certified compressed forage/straw bale binding material, and bale tags to qualifying participants; ()
 - iv. Maintain a record of inspections performed and certificates and tags issued; ()
 - b. Under the direction of the Department or its agent an approved inspector may perform inspections and issue certificates of inspection, transit certificates, NAISMA Twine, forage cubes/pellets tags/labels, and bale tags within the state at cost. ()
- 05. Application for Certification.** ()
- a. Application for certification inspection shall be made on forms available from the Department or its agent and submitted to the Department or its agent. ()
 - b. An applicant's signature on the application for certification is verification of the accuracy of the information submitted, and signifies the applicant's intent to comply with the post-certification and distribution requirements. ()
- 06. Field Inspection Procedures.** ()
- a. Forage or straw shall be inspected within a maximum of ten (10) days prior to cutting/harvesting in the field of origin for each field and cutting to be certified. Fields must be inspected again if circumstances prevent harvest of the forage/straw for a period greater than ten (10) days from the first inspection. ()
 - b. Each field inspected shall be identified by the name of the owner and a field name or number. The certification inspection may be performed on an entire field or a portion of a field, if the portion is plainly marked and identified prior to inspection. ()

- c.** Field inspections must take place prior to any operation that will limit the approved inspector's ability to properly inspect and certify the field. Fields that have been cut or harvested prior to inspection are ineligible for certification. ()
- d.** There shall be a minimum of two (2) entry points per field. ()
- e.** There shall be minimum of one (1) entry point per each ten (10) acres (four (4) hectares). ()
- f.** Each point of entry shall be at least one hundred fifty (150) feet (forty-five (45) meters) into the field, and each additional one hundred fifty (150) feet (forty-five (45) meters) traveled constitutes an entry point. Travel shall be uninterrupted, proceeding through the field being inspected. ()
- g.** The entire field border will be physically inspected. ()
- h.** The field inspection will include all ditches, fence rows, roads, easements, rights-of-way, or buffer zones surrounding the field. ()
- i.** Forage/straw that contains any noxious weeds as identified in Section 22-2402(17) or noxious weeds listed on the NAISMA Weed Free Forage Prohibited Weed List, may be certified if the following requirements are met: ()
- i.** Forage/straw that contains any noxious weeds may still be certified if the field upon which the forage/straw was produced is treated to prevent noxious weed seed or other propagule viability according to agricultural practices acceptable to, and to the satisfaction of, the approved inspector. ()
- ii.** Noxious weed(s) were treated not later than rosette to bud stage, or boot stage for grass species classified as noxious weeds, prior to cutting or harvesting; and ()
- iii.** Treatment method can include, but is not limited to burning, mowing, cutting or roguing, mechanical methods, or chemicals. ()
- j.** An inspection certificate shall document that the above requirements have been met. ()
- k.** Baling equipment must be cleaned of any noxious weeds prior to harvesting certified forage. If the baling equipment is not cleaned, the first three (3) small square bales or the first large round or square bale produced shall be considered non-certified. ()
- l.** Interstate shipment of baled forage and straw shall be accompanied by an original transit certificate issued by the approved inspector in the county of origin. The storage area shall also be inspected and be free of noxious weeds. ()
- m.** An approved inspector may not inspect fields of which said inspector has ownership or financial interest. ()
- 07. Certification Standards.** After completing an inspection, the approved inspector will complete a certificate of inspection. ()
- a.** If the field or commodity inspected is certified as NAISMA Noxious Weed Free, the approved inspector will issue a certificate of inspection for that harvest or cutting. If the field or commodity contains NAISMA Noxious Weeds, but does not contain Idaho State noxious weeds, it may be certified as Idaho State noxious weed free, and such certification will be noted on the certificate of inspection. ()
- b.** If the field or commodity inspected is certified as noxious weed free, as defined in Subchapter C, the approved inspector may also issue, upon request, any of the following documents: ()
- i.** Transit certificates. ()

- ii. Bale tags. The date on the bale tag must accurately reflect the year in which the bale was produced. ()
 - iii. NAISMA Twine only if the field or commodity is certified as NAISMA Noxious Weed Free. ()
 - iv. Forage cube/pellet tag/labels only if the field or commodity is certified as NAISMA Noxious Weed Free. ()
 - v. Certified compressed forage /straw bale binding material only if the field or commodity is certified as NAISMA Noxious Weed Free. ()
 - c. Certificates of inspection, transit certificates and bale tags shall be on forms prescribed by the Department or its agent. ()
 - d. NAISMA Twine and bale tags must be purchased from the Department or its agent. ()
- 08. Copy of Inspections and a List of Approved Inspectors.** Upon request, the agent shall provide the Department with a copy of certificates of inspections issued and a current list of approved inspectors. ()
- 09. Reciprocity.** Forage or straw certified under a reciprocal agreement between the Department and another state, and certified as NAISMA Noxious Weed Free according to the other state's approved certification standards, may be shipped into the state of Idaho and will be considered to meet the requirements of the Idaho program. ()
- 10. Exports.** Certification under Subchapter C does not qualify a commodity for export from the United States. Applications for certification for export should be made directly to the Division of Plant Industries within the Department. ()
- 11. Voluntary Posting.** After certification, a producer may post signs, or other forms of notification, on the certified commodity indicating that the commodity is certified as noxious weed free. ()
- 12. Post-Certification and Distribution Requirements.** After a producer's commodity has been inspected and certified, the producer shall: ()
- a. Take reasonable and prudent steps to protect the certified commodity from contamination; ()
 - b. Keep the certified commodity separated from all uncertified commodity; ()
 - c. Attach bale tags, certified compressed forage/straw bale binding material, or NAISMA Twine to each bale of certified forage or straw intended for sale as noxious weed free forage or straw prior to the bales leaving the producers stack yard or storage area; and ()
 - d. Attach cube/pellet tag/label to each container of certified forage cubes/pellets intended for sale as noxious weed free forage prior to the containers leaving the producer's facility. ()
 - e. Provide the shipper, trucker, or transporter with the appropriate number of transit certificates. ()
- 13. Cancellation for Failure to Comply.** Any person who provides false information on an application for inspection or who fails to comply with the post-certification and distribution requirements may, upon order of the Director, be suspended for a period of up to two (2) years from participating in the forage and straw certification program. ()
- 14. Enforcement and Cancellation.** Harvested lots of forage or straw from certified fields may be checked at any time by an approved inspector. Manufactured lots of forage cubes, pellets, and compressed forage/straw bales may be checked at any time by an approved inspector. Evidence that forage, straw, forage cubes/pellets,

or compressed forage/straw bales are not from a certified field or that any lot has not been protected from contamination shall be cause for cancellation of certification. ()

15. Misuse of Transit Certificate and Certification Markings. Using a transit certificate or certification marking for forage/straw from a field that has not been certified constitutes a violation of Subchapter C. ()

16. Certification Fees. A minimum of thirty dollars (\$30) per inspection will be charged for up to ten (10) acres, and three dollars (\$3) per acre thereafter, for fields up to ninety-nine (99) acres. Fields that are one-hundred (100) acres or larger in size, the fee is three dollars (\$3) per acre for the first one-hundred (100) acres and two dollars (\$2) per acre thereafter. The agent is authorized to assess a general fee of thirty dollars (\$30) per year to recover overhead costs. ()

321. – 329. (RESERVED)

330. NAISMA WEED FREE FORAGE PROHIBITED WEED LIST.

This list is incorporated by reference in Section 304.01 and is available in electronic format at: <https://www.naisma.org>. ()

331. -- 339. (RESERVED)

340. APPLICATION FORM REQUIREMENTS.

A person wishing to participate in the noxious weed free forage and straw program shall make an application in writing on a form prescribed by ISDA for NWFF&S certification annually. There are no fees for application. The application shall be made with the ISDA agent in the county in which the person resides or in the county in which the person owns or leases land on which forage/straw will be produced. ()

341. -- 349. (RESERVED)

350. CERTIFICATION MARKING.

Each certified bale or container shall be marked by one (1) of the following: ()

01. NAISMA Twine. Only one (1) strand is required per bale. ()

02. Bale Tag. The following information shall be shown on baled forage and straw: ()

a. The words - “NAISMA Weed Free Forage Certification Program” or “Idaho State Noxious Weed Free Forage & Straw Certification Program”; ()

b. Bale tag serial number; ()

c. County of origin identification; ()

d. ISDA emblem; ()

e. ISDA telephone number; and ()

f. A statement that the product is “Certified to the NAISMA Standards” or “Certified to the Idaho State Noxious Weed Free Standards.” ()

g. Year the bale tag was issued. ()

03. Forage Cube/Pellet Tag/Label. Certification tags/labels shall be attached to or a statement with the following information printed on each container of noxious weed free product: ()

a. The words - “NAISMA Weed Free Forage Certification Program”; ()

- b.** ISDA forage manufacturer identification number; ()
- c.** ISDA emblem; ()
- d.** ISDA telephone number; and ()
- e.** A statement that the product is “Certified to the NAISMA Standards.

04. Certified Compressed Forage/Straw Bale Binding Material. The following information shall be printed in purple ink on yellow binding material. Two (2) consecutive vertical purple lines approximately one-eighth of an inch (1/8”) wide, spaced approximately one and one-quarter inches (1 1/4”) apart, placed before and after written text that includes the acronym “ISDA NWFFS” and can include the manufacturer’s name. ()

351. -- 359. (RESERVED)

360. PROCEDURES FOR CERTIFICATION OF FORAGE CUBES/PELLETS/COMPRESSED FORAGE/STRAW BALES.

01. Application. A person desiring to certify forage cubes/pellets/compressed forage/straw bales as noxious weed free must make an annual application on the ISDA’s forage cube/pellet/compressed forage/straw bale certification application form. ()

02. Validity. The application will be valid from the date of Department approval through December 31 of that calendar year. ()

03. Equipment. Equipment will be cleaned of any noxious weed propagules prior to processing forage/straw for certification. ()

04. Purging. After cleaning equipment, a minimum of five hundred (500) pounds of certified forage/straw must be purged through the entire system prior to processing certified forage cubes/pellets/compressed forage/straw bales. The five hundred (500) pounds of forage/straw used to eliminate any noxious weed seeds shall not be certified. ()

05. Documentation. A person who manufactures products referenced in Section 360 shall retain the following records for two (2) years: ()

a. All NWFF&S inspection certificates relating to the certified forage/straw delivered to their manufacturing facility each calendar year. ()

b. Quantity of certified forage cubes/pellets/compressed forage/straw bales processed each calendar year; and ()

c. Quantity of non-certified forage cubes/pellets/compressed forage/straw bales processed each calendar year. ()

361. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.06.10 – RULES GOVERNING THE GROWING OF POTATOES

DOCKET NO. 02-0610-1901 (NEW CHAPTER)

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 22-505, 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 fee 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:

Four rules administered by the ISDA are related to the regulation of the planting and growing of potatoes, so as to prevent the spread of pests and disease of potatoes and their impacts on potato production. These rules are IDAPA 02.06.10, “Rules Governing the Pale Cyst Nematode,” IDAPA 02.06.26, “Rules Concerning Seed Potato Crop Management Areas,” IDAPA 02.06.27, “Rules Governing Bacterial Ring Rot,” and IDAPA 02.06.39, “Rules Governing Minimum Standards for Planting Uncertified Seed Potatoes in Idaho.” The rules were promulgated to carry out the requirements described in Title 22, Chapters 1, 5, and 20, Idaho Code. In order to streamline and simplify rules related to potato production, the ISDA has decided to combine all four rules into a single rule to be titled “02.06.10, Rules Governing the Growing of Potatoes.” No substantive changes are being made to the four rules cited above. However, these rules were reviewed for repeal and amendment of certain sections consistent with the guidance and direction provided in the Red Tape Reduction Act. Therefore, the consolidated rule was reviewed to update authorities, eliminate unnecessarily restrictive language and redundancy.

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the November Idaho Administrative Bulletin, [Vol. 19-11, pages 277-290](#).

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

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. A sampling fee for laboratory testing for bacterial ring rot is assessed based on market rates for the lab service. Fees included in the original rules have not been changed in the new combined rule. Fees associated with these rules are imposed pursuant to Section 22-505, Idaho Code.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Lloyd Knight, Administrator, at (208) 332-8664.

Dated this 27th day of November, 2019.

Brian Oakey, Deputy Director
Idaho Department of Agriculture
Ph: (208) 332-8552 / Fax: (208) 334-2170

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

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

PUBLIC HEARING

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

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

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

Four rules administered by the ISDA are related to the regulation of the planting and growing of potatoes, so as to prevent the spread of pests and disease of potatoes and their impacts on potato production. These rules are IDAPA 02.06.10, "Rules Governing the Pale Cyst Nematode, IDAPA 02.06.26, "Rules Concerning Seed Potato Crop Management Areas," IDAPA 02.06.27, "Rules Governing Bacterial Ring Rot," and IDAPA 02.06.39, "Rules Governing Minimum Standards for Planting Uncertified Seed Potatoes in Idaho." The rules were promulgated to carry out the requirements described in Title 22, Chapters 1, 5, and 20, Idaho Code. In order to streamline and simplify rules related to potato production, the ISDA has decided to combine all four rules into a single rule to be titled "02.06.10, *Rules Governing the Growing of Potatoes*." No substantive changes are being made to the four rules cited above. All rules were reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Fees included in the original rules have not been changed in the new combined rule. Fees associated with these rules are imposed pursuant to Section 22-505, Idaho Code.

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

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

No changes were made to the fees already included in the original rules.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted on September 18, 2019. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, Page 15-19](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Each of these materials represent regulations of extensive size that would be unduly cumbersome, expensive, or otherwise inexpedient to include in this rule.

The following materials are incorporated by reference into Subchapter A only:

1. 7 CFR Part 301 SubPart - Pale Cyst Nematode. Sections 301.86 through 301.86-9 as published under Docket No. APHIS-2006-0143 in the Federal Register Volume 72, No. 176, Wednesday, September 12, 2007, and as amended under Docket No. APHIS-2006-0143 published in the Federal Register Vol. 74, No. 81, Wednesday, April 29, 2009.
2. USDA APHIS PPQ Treatment Manual Schedule T406-d, Revision 10, September 2006.
3. 7 CFR Part 305 - Phytosanitary Treatments, as revised September 12, 2007.

Idaho Code 67-5229(1)(a) authorizes the incorporation by reference of applicable federal regulations or standard into a state rule and the incorporation by reference of these regulations and standards are an efficient way to put the public on notice of both state and federal requirements.

The following materials are incorporated by reference into Subchapter C only:

1. IDAPA 08.05.01.000 et seq., “Rules Governing Seed and Plant Certification” and materials incorporated therein by reference.

Section 67-5229(1)(d), Idaho Code, authorizes the incorporation by reference of an applicable state rule and its incorporation by reference is an efficient way to put the public on notice of the state requirements laid out by both rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd Knight, Administrator, at (208) 332-8664.

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

Dated this 3rd day of October, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 02-0610-1901

02.06.10 – RULES GOVERNING THE GROWING OF POTATOES

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections, 22-505, 22-1907, 22-2004, 22-2006, and 22-2013, Idaho

Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.06.10, "Rules Governing the Growing of Potatoes." ()

02. Scope. These rules govern the procedures for all potato management within Seed Potato Crop Management Areas and establish the procedures of identifying, handling and testing uncertified seed potatoes to be planted in Idaho. These rules also seek to prevent the spread of Pale Cyst Nematode and the introduction and/or spread of *Cms* and subsequently bacterial ring rot throughout Idaho and the United States. ()

002. -- 103. (RESERVED)

SUBCHAPTER A - PALE CYST NEMOTODE

104. INCORPORATION BY REFERENCE.

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

01. 7 CFR Part 301 SubPart - Pale Cyst Nematode. Sections 301.86 through 301.86-9 as published under Docket No. APHIS-2006-0143 in the Federal Register Volume 72, No. 176, Wednesday, September 12, 2007, and as amended under Docket No. APHIS-2006-0143 published in the Federal Register Vol. 74, No. 81, Wednesday, April 29, 2009, and except as amended below in Subchapter A of this rule. ()

02. USDA APHIS PPQ Treatment Manual Schedule T406-d, Revision 10, September 2006. ()

03. 7 CFR Part 305 - Phytosanitary Treatments, as revised September 12, 2007. ()

105. -- 109. (RESERVED)

110. DEFINITIONS AND TERMS.

In addition to the definitions found in Section 22-2005, Idaho Code, the following definitions found in Section 110 apply in the interpretation and enforcement of Subchapter A only: ()

01. Inspector. Any employee of ISDA, APHIS, the U.S. Department of Agriculture, or other person authorized by the USDA APHIS Administrator or ISDA Director to perform the duties required under Subchapter A. ()

02. Interstate. From any state into or through any other state. ()

03. Intrastate. Movement within the boundaries of the state of Idaho. ()

111. ABBREVIATIONS.

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

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

03. PCN. Pale Cyst Nematode. ()

04. PPQ. Plant Protection and Quarantine. ()

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

112. -- 119. (RESERVED)

120. INTRASTATE MOVEMENT.

No regulated articles may move within the state of Idaho without complying with the federal regulations, as incorporated by reference in Subsection 104.01 in Subchapter A. ()

121. QUARANTINED AREAS.

Those areas of the State quarantined or regulated for PCN under 7 CFR Part 301 Sections 301.86-3 as published on the USDA APHIS PPQ internet website at http://www.aphis.usda.gov/plant_health/plant_pest_info/potato/pcn.shtml. ()

122. RESTRICTIONS.

01. Movement From a Non-Quarantined Area. Movement of regulated articles from a non-quarantined area is subject to inspection by an inspector. Permits and certifications are not required. ()

02. Movement From a Quarantined Area. Movement of regulated articles from a quarantined area is subject to the provision of Section 123 of Subchapter A. ()

03. Other Restrictions. No potatoes, tomatoes, eggplants, or any other known host crops may be planted in the infested fields. Soil must not be moved from the infested fields. Any equipment leaving the infested fields must be sanitized and certified using USDA APHIS approved protocols. ()

04. Seed Potatoes. Seed potatoes may not be grown in a quarantined area. ()

05. Exemptions. Host plant material may be planted in infested fields under the authorization and supervision of the USDA and Idaho State Department of Agriculture eradication program. ()

123. CONDITIONS FOR INTRASTATE OR INTERSTATE MOVEMENT OF REGULATED ARTICLES.

Regulated articles may only be moved intrastate or interstate from a quarantined area by a person under a compliance agreement if accompanied by a certificate or limited permit issued by an inspector in accordance with 7 CFR Part 301 Sections 301.86-4 and 5, as incorporated by reference in Section 104 in Subchapter A of this rule. ()

124. -- 129. (RESERVED)

130. INSPECTION, SAMPLING, AND TESTING.

In order to accomplish the purposes of Subchapter A, an inspector may enter upon and inspect any public or private premises, lands, means of conveyance, or article of any person within this State, for the purpose of inspecting, surveying, sampling, testing, treating, controlling, or destroying any soil, plant, or plant material thought to or found to contain or be infested with Pale Cyst Nematode. ()

131. – 209. (RESERVED)

SUBCHAPTER B – SEED POTATO CROP MANAGEMENT AREA

210. DEFINITIONS.

In addition to the definitions found in Idaho Code Sections 22-501 and 22-2005, Idaho Code, the definitions found in section 210 apply to the interpretation and enforcement of Subchapter B. ()

01. Cull Potatoes. Potatoes not usable for planting or consumption. ()

02. Grower. Any person who plants and cultivates more than fifteen one-hundredths (.15) acres of potatoes within a Seed Potato Crop Management Area. ()

03. Volunteer Potatoes. Volunteer potatoes are defined as any residue left in a field from previous years of production that has sprouted and is growing. ()

211. ABBREVIATIONS.

- 01. ICIA.** Idaho Crop Improvement Association. ()

212. -- 219. (RESERVED)

220. SEED POTATO CROP MANAGEMENT AREAS.

01. Fremont Seed Potato Crop Management Area. That portion of Fremont county described as follows: Beginning at a point that is the southwest corner of Section 16, Township 7 North, Range 43 East, Boise, Meridian, Fremont County, Idaho; Thence north approximately 1 mile to the northwest corner of Section 16, Township 7 North, Range 43 East; Thence west approximately 2 miles to the southwest corner of Section 7, Township 7 North, Range 43 East; Thence north approximately 1 mile to the northwest corner of Section 7, Township 7 North, Range 43 East; Thence west approximately 3 miles to the southwest corner of Section 3, Township 7 North, Range 42 East; Thence north approximately 2 miles to the northwest corner of Section 34, Township 8 North, Range 42 East; Thence west approximately 2 miles to the southwest corner of Section 29, Township 8 North, Range 42 East; Thence north approximately 1-3/8 miles to the center line of Fall River; Thence northwest along Fall River approximately 1-1/8 miles to where Fall River intersects the west line of Section 8, Township 8 North, Range 41 East; Thence north approximately 1-7/8 miles to the northwest corner of Section 7, Township 18 North, Range 41 East; Thence west approximately 2 miles to the southwest corner of Section 2, Township 8 North, Range 41 East; Thence north approximately 1 mile to the northwest corner of Section 2, Township 8 North, Range 41 East; Thence west approximately 1/4 of 1 mile; Thence north along an existing road approximately 4 miles; Thence northeasterly along said road approximately 1-1/10 miles to the northwest corner of Section 11, Township 9 North, Range 41 East; Thence north approximately 1 mile to the northwest corner of Section 2, Township 9 North, Range 41 East; Thence east approximately 14 miles to the northeast corner of Section 1, Township 9 North, Range 43 East; Thence south approximately 2 miles to the southeast corner of Section 12, Township 9 North, Range 43 East; Thence east approximately 4 miles to the northeast corner of Section 15, Township 9 North, Range 44 East, which is the west boundary line of the Targhee National Forest; Thence south along said forest boundary approximately 3 miles to the southeast corner of Section 27, Township 9 North, Range 44 East; Thence east continuing along said forest boundary approximately 2 miles to the northeast corner of Section 36, Township 9 North, Range 44 East; Thence south along said forest boundary approximately 1 mile to the east 1/4 corner of Section 1, Township 8 North, Range 44 East; Thence east continuing along said forest boundary approximately 2 miles to the east 1/4 corner of Section 5, Township 8 North, Range 45 East; Thence south continuing along said forest boundary approximately 5 miles to the east 1/4 corner of Section 32, Township 8 North, Range 45 East; Thence east continuing along said forest boundary approximately 1-1/2 miles to the center of Section 34, Township 8 North, Range 45 East; Thence south continuing along said forest boundary approximately 1-1/8 miles to the center line of Bitch Creek; Thence southwesterly along the center line of Bitch Creek approximately 10-1/2 miles to the confluence of Bitch Creek with the Teton River; Thence westerly 8 miles along the center line of the Teton River to the west line of Section 21, Township 7 North, Range 43 East; Thence north approximately 1/10 of a mile to the southwest corner of Section 16, Township 7 North, Range 43 East and the point of beginning. ()

- 02. Teton And Portions Of Madison County Seed Potato Crop Management Area.** ()

- a.** All of Teton County, Idaho; ()

b. That portion of Madison County, Idaho, located in Township 6 North and Township 7 North lying East of Canyon Creek; and ()

c. That portion of Madison County, Idaho located in Township 6 North, Range 42 East, which includes portions of Sections 11 and 13 located south of Highway 33 and all of Sections 14, 15, 23, and 24. ()

03. Lost River Seed Potato Crop Management Area. Those portions of Butte and Custer Counties within Township 3 North to Township 7 North and Range 23 East to Range 27 East. ()

04. Caribou and Franklin County Seed Potato Crop Management Area. All of Caribou County, Idaho and all of Franklin County, Idaho. ()

- 05. Almo Valley Bridge Seed Potato Crop Management Area.** ()
- a.** That portion of Cassia County, Idaho located in Township 16 South, Range 24 East, which includes all of Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36; ()
- b.** That portion of Cassia County, Idaho located in Township 15 South, Range 24 East, which includes all of Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36; ()
- c.** That portion of Cassia County, Idaho located in Township 14 South, Range 24 East, which includes all of Section 36; ()
- d.** That portion of Cassia County, Idaho located in Township 14 South, Range 25 East, which includes all of Sections 19, 20, 29, 30, 31, and 32; ()
- e.** That portion of Cassia County, Idaho located in Township 15 South, Range 25 East, which includes all of Sections 5, 6, 7, 8, 18, 19, 20, 29, 30, 31, 32 and the Northeast $\frac{1}{4}$ of Section 33; ()
- f.** That portion of Cassia County, Idaho located in Township 16 South, Range 25 East, which includes all of Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 29, 30, 31, 32, 33, 34, 35, and 36; ()
- g.** That portion of Cassia County, Idaho located in Township 16 South, Range 26 East; and ()
- h.** That portion of Cassia County, Idaho located in Township 16 South, Range 27 East, which includes all of Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, and 30. ()
- 06. Ririe Reservoir Seed Potato Crop Management Area.** ()
- a.** That portion of Bonneville County, Idaho located in Township 3 North, Range 40 East, which includes all of Sections 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, and 36; ()
- b.** That portion of Bonneville County, Idaho located in Township 3 North, Range 41 East, which includes all of Sections 8, 15, 16, 17, 18, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36; ()
- c.** That portion of Bonneville County, Idaho located in Township 2 North, Range 42 East, which includes all of Sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34; and ()
- d.** That portion of Bonneville County, Idaho located in Township 3 North, Range 42 East, which includes all of Sections 31, 32, and 33. ()
- 07. Picabo Seed Potato Crop Management Area.** That portion of Blaine County, Idaho beginning with Township 1S, in Range 18, all of sections 23 and 24, leading into Township 1N, in Range 19 all of sections: 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, and 34. Leading into Township 1S, in Range 19, the W $\frac{1}{2}$ 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 $\frac{1}{2}$ 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 $\frac{1}{2}$ of section 28, and all of sections 29, 30, 31, 32, and the NW $\frac{1}{4}$ 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 $\frac{1}{2}$ of section 3, and all of the following sections: 4, 5, 6, 7, 8, E $\frac{1}{2}$ of section 9, all of sections 17, 18, 19, 20, 21, 28, 29, 30, and 31, W $\frac{1}{2}$ and the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of section 10. Leading into Township 1N, Range 21, all of sections: 30, 31, and 32. All U.S. Department of the Interior, Bureau of Land Management property and property owned by the state of Idaho existing within the above mentioned areas will not be considered part of the management area. ()
- 08. Little Camas Ranch Seed Potato Crop Management Area.** ()

a. That portion of Elmore County, Idaho located in Township 1 North, Range 9 East, Boise Meridian, which includes the S $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ of Section 27, the SE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, the S $\frac{1}{2}$ S $\frac{1}{2}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 32, the E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, and all of Section 34; and ()

b. That portion of Elmore County, Idaho located in Township 1 South, Range 9 East, Boise Meridian, which includes all of Section 4, all less the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and less the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 5, the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 8, and the NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 9; and ()

c. That portion of Elmore County, Idaho located in Township 1 South, Range 9 East, Boise Meridian, which includes Lots 1, 2, 3, and 4, and the S $\frac{1}{2}$ N $\frac{1}{2}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ of Section 3 less Tax Lot 1 described as follows: That portion of Elmore County, Idaho located in Township 1 South Range 9 East, Boise Meridian, described above as Tax Lot 1: Save and Except that portion of S $\frac{1}{2}$ SW $\frac{1}{4}$, Section 3, Township 1 South, Range 9 East, Boise Meridian, Elmore County, Idaho more particularly described as follows: Commencing at the Southwest corner of Section 3, Township 1 South, Range 9 East, Boise Meridian, and running thence South 89o51' East along the South Section line of said Section 3, a distance of 437 feet to a steel pin in the center of a graveled road, the Real Point of Beginning. Thence continuing from the Real Point of Beginning North 0o04' West a distance of 1,000 feet to a steel pin; thence South 89o51' East a distance of 1,742.4 feet to a steel pin; thence South 0o04' East a distance of 1,000 feet to a steel pin on the South Section line of said Section 3; thence North 89o51' West along the South Section line of said Section 3 a distance of 1,742.4 feet, more or less to the Real Point of Beginning more particularly described as Tax Lot 1. ()

09. Hog Hollow Seed Potato Crop Management Area. ()

a. Beginning at a point that is the northeast corner of Section 19, Township 7 North, Range 43 East, Boise Meridian; Thence south along the eastern border of Section 19, Township 7 North, Range 43 East approximately $\frac{3}{4}$ mile to the centerline of the Teton River as it enters said Section 19 at the eastern border of said Section 19; Thence southwesterly along the centerline of the Teton River as it runs through the southeast corner of Section 19, Township 7 North, Range 43 East; Continuing along the centerline of the Teton River as it runs southwesterly into the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 30, Township 7 North, Range 43 East and then northwesterly out of the N $\frac{1}{2}$ NE $\frac{1}{4}$ of said Section 30; Continuing along the centerline of the Teton River as it runs northwesterly from the southern borderline of Section 19, Township 7 North, Range 43 East and then as the river curves southwesterly to the western border of said Section 19; Continuing along the centerline of the Teton River as it runs generally north-northwesterly through Section 24, Township 7 North, Range 42 East to the western border of said Section 24; Continuing along the centerline of the Teton River as it runs generally northwesterly through Section 23, Township 7 North, Range 42 East and to the northern border of said Section 23; Continuing along the centerline of the Teton River as it runs northwesterly through the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, Township 7 North, Range 42 East to the western border of said Section 14; Continuing along the centerline of the Teton River as it runs generally westerly through Section 15, Township 7 North, Range 42 East to the western border of said Section 15; Continuing along the centerline of the Teton River as it runs southwesterly through the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16, Township 7 North, Range 42 East to the southern border of said Section 16; Thence west approximately $\frac{3}{4}$ mile along the southern border of Section 16, Township 7 North, Range 42 East to the southwest corner of said Section 16; Thence north 1 mile along the western border of Section 16, Township 7 North, Range 42 East to the northwest corner of said Section 16; Thence north approximately $\frac{1}{4}$ mile along the western border of Section 9, Township 7 North, Range 42 East to the northwest corner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 9; Thence west 1 mile along the northern border of the S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 8, Township 7 North, Range 42 East to the western border of said Section 8; Thence west 1 mile along the northern border of the S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 7, Township 7 North, Range 42 East to the western border of said Section 7; Thence south $\frac{1}{4}$ mile to the southeast corner of Section 12, Township 7 North, Range 41 East; Thence west approximately $\frac{3}{4}$ mile along the southern border of Section 12, Township 7 North, Range 41 East to the southwest corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 12; Thence north approximately $\frac{3}{4}$ mile to the northwest corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, Township 7 North, Range 41 East; Thence east $\frac{1}{4}$ mile along the northern border of the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 12, Township 7 North, Range 41 East to the southwest corner of the N $\frac{1}{2}$ NE $\frac{1}{4}$ of said Section 12; Thence north $\frac{1}{4}$ mile along the western border of the NE $\frac{1}{4}$ of Section 12, Township 7 North, Range 41 East to the northern border of said Section 12; Thence east along the northern border of Section 12, Township 7 North, Range 41 East to the northeast corner of said Section 12; Excluding from the described portion of Section 12, Township 7 North, Range 41 East, Boise Meridian the following parcel; Commencing at the northeast

corner of Section 12, Township 7 North, Range 41 East thence North 89°02'34" West, along the north line of said Section, 40.03 feet to a point on the westerly line of a county road; said point being the true point of beginning; thence continuing North 89°02'34" West, along the Section line, 612.05 feet; thence South 253.12 feet; thence East 611.96 feet, to a point on the westerly line of said county road: thence North 242.89 feet to the true point of beginning, containing 3.48 acres more or less; Thence east along the northern border of Section 7, Township 7 North, Range 42 East, Boise Meridian to the northeast corner of said Section 7; Thence east along the northern border of Section 8, Township 7 North, Range 42 East to the northeast corner of said Section 8; Thence east along the northern border of Section 9, Township 7 North, Range 42 East to the northeast corner of said Section 9; Thence east along the northern border of Section 10, Township 7 North, Range 42 East to the northeast corner of said Section 10; Thence east 1/4 mile along the northern border of Section 11, Township 7 North, Range 42 East to the northeast corner of the NW1/4 NW1/4 of said Section 11; Thence south approximately 3/4 mile to a county road known as the Old Hog Hollow Road, located approximately along the northern border of the S1/2 S1/2 of Section 11, Township 7 North, Range 42 East; Thence east along the county road known as the Old Hog Hollow Road as it travels easterly approximately along the northern border of the S1/2 S1/2 of Section 11, Township 7 North, Range 42 East approximately to the northeast corner of the SW1/4 SE1/4 of said Section 11; Thence southeast along the county road known as the Old Hog Hollow Road as it travels southeasterly through the SE1/4 SE1/4 of Section 11, Township 7 North, Range 42 East to the to the eastern border of said Section 11; Thence generally easterly along the county road known as the Old Hog Hollow Road as it travels generally easterly through the S1/2 S1/2 of Section 12, Township 7 North, Range 42 East to the eastern border of said Section 12; Thence south approximately 1/4 mile along the eastern border of Section 12, Township 7 North, Range 42 East to the southeast corner of said Section 12; Thence south 1 mile along the eastern border of Section 13, Township 7 North, Range 42 East to the southeast corner of said Section 13; Thence east 1 mile along the northern border of Section 19, Township 7 North, Range 43 East to the northeast corner of said Section 19 the point of beginning. ()

b. Including also the following non-contiguous parcel: Beginning at a point that is the northeast corner of Section 5, Township 7 North, Range 42 East, Boise Meridian and continuing south along the eastern border of said Section 5 to the southeast corner of the NE1/4 of said Section 5; Thence west 1 mile along the northern border of the S1/2 of Section 5, Township 7 North, Range 42 East to the western border of said Section 5; Thence north 1/2 mile along the western border of Section 5, Township 7 North, Range 42 East to the northwest corner of said Section 5; Thence north 1/4 mile along the western border of Section 32, Township 8 North, Range 42 East to the northwest corner of the SW1/4 SW1/4 of said Section 32; Thence east 1 mile along the northern border of the S1/2 S1/2 of Section 32, Township 8 North, Range 42 East to the eastern border of said Section 32; Thence south 1/4 mile along the eastern border of Section 32, Township 8 North, Range 42 East to the northeast corner of Section 5, Township 7 North, Range 42 East the point of beginning. ()

221. -- 229. (RESERVED)

230. REGULATED ARTICLES.

- 01. Irish Potato.** All plants and plant parts of the Irish potato, *Solanum tuberosum*. ()
- 02. Green Peach Aphid Hosts.** All plants that are hosts to the green peach aphid, *Myzus persicae*, including but not limited to peach and apricot trees and bedding plants. ()
- 03. Any Host.** Any host that may spread or assist in the spread of any of the diseases or pests of concern. ()
- 04. Equipment.** All ground working, earth moving, or potato handling equipment shall be cleaned of soil and plant debris and disinfected before entering the Seed Potato Crop Management Areas in order to prevent the introduction of disease(s) or pest(s) of concern. ()

231. -- 239. (RESERVED)

240. DISEASES AND PESTS OF CONCERN.

- 01. Introduction of Pests.** Introduction into the Seed Potato Crop Management Areas of any of the pests or diseases listed in this Section by a contaminated vehicle or any other means constitutes a violation of

Subchapter B of this rule. ()

02. Leaf Roll. *Net necrosis* or leaf roll, caused by potato leaf roll virus. ()

03. Ring Rot. Ring rot, *Corynebacterium sepedonicum*. ()

04. Columbia Root Knot Nematode. Columbia root knot nematode, *Meloidogyne chitwoodii*. ()

05. Green Peach Aphid. Green peach aphid, *Myzus persicae*, a vector of the leaf roll virus. ()

06. Northern Root Knot Nematode. Northern root knot nematode, *Meloidogyne hapla*. ()

07. Corky Ring Spot. Corky ring spot, a disease caused by tobacco rattle virus. ()

08. Powdery Scab. Powdery scab, *Spongospora subterranea* (Wallr.) Lagerh. f. sp. *subterranea*. ()

09. Stubby Root Nematode. Stubby root nematode, *Paratrichodorus pachydermus*, *Paratrichodorus christiei*, *Trichodorus primitivus*. ()

10. Potato Late Blight. Potato late blight, a disease caused by *Phytophthora infestans*. ()

241. -- 249. (RESERVED)

250. PLANTING OF POTATOES.

01. Seed Potato Crop Management Area. No person shall plant any potatoes in any of the Seed Potato Crop Management Areas except those that have met standards for recertification of the ICIA or equivalent agency of another state or political jurisdiction in accordance with Section 22-503, Idaho Code. ()

02. Certification. All plantings of potatoes shall be entered for certification with ICIA who notifies ISDA of any lots of potatoes rejected. Exceptions: ()

a. All plantings of potatoes in Lost River Seed Potato Crop Management Area; and ()

b. All plantings of potatoes in home gardens that are fifteen one-hundredths (.15) acre or less. ()

03. Home Gardens. Potatoes planted in home gardens within a Seed Potato Crop Management Area are subject to inspection by the ISDA for the pests and diseases listed in Section 240. ISDA ensures that proper control measures are taken. ()

04. Control. The grower shall spray with a pesticide or take other control measures approved by ISDA when potato late blight is found within a twenty-five (25) mile radius of a Seed Potato Crop Management Area boundary except the Lost River Seed Potato Crop Management Area. A grower in the Lost River Seed Potato Crop Management Area shall spray with a pesticide or take other control measures approved by ISDA when potato late blight is found within the boundaries of the Lost River Seed Potato Crop Management Area. ()

251. -- 259. (RESERVED)

260. PEACH, APRICOT TREES, OR ANY HOST.

Peach, apricot trees, or any host of green peach aphid growing in Seed Potato Crop Management Areas shall be controlled with an ISDA approved pesticide. ()

261. BEDDING PLANTS.

01. Aphid Inspection. All bedding plants are subject to inspection by the Director for aphids. If aphids are found, the plants shall be treated by a method approved by the Director. Such methods may include destruction of

infested plants. ()

02. Treatment for Infestation. Bedding plants in transit to Seed Potato Crop Management Areas are subject to inspection for aphids and if found infested, treated in a manner approved by the Director before delivery into Seed Potato Crop Management Areas. ()

03. Treatment of Property. The Director may order treatment of property on which there are bedding plants or cut floral arrangements where he determines such treatment is necessary to control aphids. ()

04. Treatment of Cemeteries. All cemeteries within Seed Potato Crop Management Areas shall be sprayed or controlled for insects immediately after the Memorial Day holiday. Such spraying or control will be done in compliance with all State and Federal laws, rules and regulations. ()

262. -- 269. (RESERVED)

270. STORAGE OF POTATOES.

01. Potatoes Produced Within Seed Potato Crop Management Areas. All potatoes grown within Seed Potato Crop Management Areas may be stored within Seed Potato Crop Management Areas. All potatoes found to be infested with any disease or pests of concern as defined in Section 240 shall be removed from Seed Potato Crop Management Areas no later than April 15 of the year following harvest. ()

02. Potatoes Produced Outside Seed Potato Crop Management Areas. Before any lot of potatoes can be brought into Seed Potato Crop Management Areas, the lot shall be inspected, certified, and tagged by ICIA, the Federal/State Inspection Service or a recognized equivalent agency of another state or territory in accordance with Section 22-503, Idaho Code except the Lost River Seed Potato Crop Management Area. Before any lot of potatoes can be brought into the Lost River Seed Potato Crop Management Area the lot shall pass ICIA summer inspection or inspected, certified, and tagged by the Federal/State Inspection Service or a recognized equivalent agency of another state or territory in accordance with Section 22-503, Idaho Code. ()

271. SEED DISPOSITION NOTIFICATION. The Federal/State Inspection Service will notify the ISDA of all seed lots rejected for certification. This notification will include the variety, grower, storage location and the certification number of each rejected lot. ()

272. -- 279. (RESERVED)

280. CULL AND VOLUNTEER POTATOES.

01. Plant Growth. All plant growth on cull potato piles shall be controlled by a state approved chemical or mechanical measure including, but not limited to, burial with a minimum of eighteen (18) inches of soil, field spreading no more than two (2) potato layers and composting. ()

02. Destroying Volunteer Potatoes. It is the responsibility of each grower within Seed Potato Crop Management Areas to destroy all cull piles and volunteer potatoes growing on summer fallow, set-aside and non-cultivated areas of the grower's property. In the event that the grower fails to destroy such plants, the Director may order them destroyed at the expense of the grower. ()

281. -- 289. (RESERVED)

290. TRANSPORTATION OF POTATOES.

01. Responsibilities. It is the responsibility of the growers of rejected lots to keep contaminated trucks and equipment, infested vegetable matter and foliage from contaminating public roadways, neighboring fields and cellars. ()

02. In Transit. Potatoes in transit through Seed Potato Crop Management Areas shall be in covered vehicles and not be unloaded in Seed Potato Crop Management Areas. ()

291. – 294. (RESERVED)

295. POTATOES FOR CONSUMPTION.

Potatoes for human and animal consumption, grown outside Seed Potato Crop Management Areas as defined in Section 220, shall be treated with a sprout inhibitor before being offered for sale within Seed Potato Crop Management Areas as defined in Section 220 of Subchapter B. ()

296. -- 303. (RESERVED)

SUBCHAPTER C – BACTERIAL RING ROT

304. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into Subchapter C only: ()

01. IDAPA 08.05.01.000 et seq., “Rules Governing Seed and Plant Certification” and Materials Incorporated Therein By Reference. A copy may be accessed online at: <http://adminrules.idaho.gov/rules/current/08/index.html>. ()

305. -- 309. (RESERVED)

310. DEFINITIONS.

In addition to the definitions in Sections 22-1904 and 22-2005, Idaho Code, the definitions in section 310 apply in the interpretation and the enforcement of this Subchapter C only: ()

01. Bacterial Ring Rot. Caused by a bacterium, *Clavibacter michiganensis subsp. sepedonicus* (Cms). ()

02. Contact Lot. A seed lot produced on a farming operation using common production and handling equipment or storage facilities, or both. ()

03. Idaho Crop Improvement Association, Inc. A grower association of certified seed producers and conditioners. In 1959, the Regents of the University of Idaho appointed the Idaho Crop Improvement Association, Inc. as its duly authorized agent to administer and conduct seed certification in Idaho. ()

04. Seed Lot. A field or a group of fields producing seed potatoes or the potatoes (tubers) harvested from a seed potato field, identified with a certification number and a North American Plant Health Certificate, enabling identity preservation and tracking. ()

05. Seed Potato Certification Process. The process, timing and requirements for the certification of seed potatoes in Idaho, as set forth in IDAPA 08.05.01, “Rules Governing Seed and Plant Certification” and the materials incorporated therein by reference. ()

06. Seed Stock. Seed potatoes intended for use as a planting source for certification that are “Identity Preserved” with a certification number and a North American Plant Health Certificate. ()

07. Sister Lot. Seed lots originating from the same lot of seed stock. ()

311. ABBREVIATIONS.

01. BRR. Bacterial Ring Rot. ()

02. Cms. *Clavibacter michiganensis* subsp. *sepedonicus*. ()

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

04. ICIA. Idaho Crop Improvement Association. ()

312. – 319. (RESERVED)

320. **REGULATED PEST - BACTERIAL RING ROT.**
Caused by a bacterium, *Clavibacter michiganensis* subsp. *sepedonicus* (*Cms*). ()

321. -- 329. (RESERVED)

330. **REPORTING OF BRR.**

01. **Mandatory Reporting.** It is mandatory for any person including, but not limited to, a grower, processor, shipper, laboratory staff member, field inspector, or shipping point inspector, to immediately report the presence of BRR to the Department when: ()

a. The BRR is discovered or observed in seed potato plants or tubers prior to final seed potato certification by ICIA; and ()

b. The presence of BRR is confirmed via laboratory testing; and ()

c. The positive tubers or plant parts are still in the possession of the original seed grower. ()

02. **Contents.** All reports shall, to the best of the reporter's ability, contain the following information: ()

a. The field, facility or other location at which *Cms* was found; ()

b. The date of discovery; ()

c. The location at which the suspect potatoes were grown; ()

d. The variety and generation of the suspect potatoes; ()

e. The laboratory submission report and test results; ()

f. The certification tags and origin of the seed potatoes used to produce the suspect crop; ()

g. North American Plant Health Certificate. ()

03. **Methods of Reporting.** The report shall be made by phone, in person or in writing (which may include electronic mail sent to BRR@agri.idaho.gov). ()

331. **HOLD HARMLESS.**

Reporting parties and those parties participating in and cooperating with the Department's trace back investigation of any alleged *Cms* contaminated potatoes will be held harmless from any civil penalties the Department has authority to issue. ()

332. **TRACE BACK INVESTIGATION, SAMPLING, AND TESTING.**

01. **Trace Back and Investigation.** The department, upon receiving a mandatory report of *Cms* infected potatoes, investigates the origin and destination of such potatoes. Trace back and investigation activities may include, but not be limited to: ()

a. A review of all inspection, certification, shipping and production records held by any person for the potatoes in question; ()

b. Inspection and sampling at the reporting operation as well as points for origin, storage and

destination related to that operation; and ()

c. Laboratory testing records of any samples. ()

02. Mutual Cooperation. The Department and the Idaho Crop Improvement Association will mutually cooperate with each other in trace back investigations where appropriate. ()

03. Testing Positive for Cms. If certified seed potatoes in a lot test positive for Cms after they have left the control of the grower of that lot, ISDA's trace back investigation may include Cms testing any remaining seed from that lot that is still at the seed potato grower's facility. The testing level will be at a rate, depending on lot size, up to a maximum of four hundred (400) randomly selected tubers. ()

04. Trace Back Investigations. The public disclosure of information obtained during an investigation conducted under Subchapter C of this rule is subject to disclosure to the public only insofar as it is allowed by Title 74, Chapter 1, Idaho Code. ()

333. RESTRICTION ON THE USE OF INFECTED POTATOES.
Those potatoes found to be infected with *Cms* may not be utilized for planting as seed. ()

334. -- 349. (RESERVED)

350. TESTING FOR BRR.

01. Compliance With Certification Standards. Seed potato tubers for planting for commercial production or for seed certification in Idaho or being imported into Idaho as seed potatoes for commercial production or certification as seed for planting must comply with the Rules Governing Seed and Plant Certification as they relate to *Cms*, as incorporated in Section 304 of Subsection C of this rule. ()

02. Seed Potatoes to Be Exported Tested. Seed potato tubers being exported from Idaho to a foreign country as seed potatoes for planting must meet all ICIA requirements for certification and export tag placement, as well as all phytosanitary certification requirements of the importing country. All costs for sampling, transport and testing are borne by the exporter. ()

351. -- 359. (RESERVED)

360. HOLD ORDERS.

The Director may authorize Hold Orders restricting the movement of infested or suspect potatoes until investigation, trace back, and sample analysis are complete. Hold Orders may require verification that said potatoes will not be utilized for any purposes not authorized in writing by the Department. When potatoes from a certified seed potato lot are sampled and test positive for BRR after the seed potatoes have left the seed potato grower's facility, the department will not issue a hold order on any seed potatoes from that lot that remain on the seed potato grower's facility unless and until potatoes from the affected lot are sampled at the seed potato grower's facility and test positive for BRR. ()

361. -- 369. (RESERVED)

370. FEES.

Fees for samples for laboratory testing for *Cms* are those normally charged by the approved laboratory doing the testing. ()

371. -- 409. (RESERVED)

SUBCHAPTER D – PLANTING SEED POTATOES

410. DEFINITIONS.

In addition to the definitions found in Section 22-501, Idaho Code, the definitions found in section 410 apply in the

interpretation and the enforcement of this subchapter D of this rule: ()

01. Disease. Any fungus, bacteria, virus, or other organism injurious to plant life or plant products, including the spore or any other propagative state thereof. ()

02. Pest. Any form of animal life that is or may be detrimental or injurious to plant life or plant products, including the egg, larva, pupa, or any other immature stage thereof. ()

411. -- 449. (RESERVED)

450. REQUIREMENTS FOR UNCERTIFIED SEED POTATOES ARE:

01. No More Than One Generation. No more than one (1) generation from certified parent seed potatoes. ()

02. Grown by the Farmer. Grown by the farmer and separated and graded at the storage of the farmer planting the uncertified seed potatoes. ()

03. Planting. Planted only on the farm of the farmer who produced the uncertified seed potatoes. ()

04. Disease Content. In compliance with ICIA rules of certification for seed potatoes by having a disease content that does not exceed the standard for the last generation of certified seed potatoes. ()

05. Laboratory Testing. Laboratory tested for bacterial ring rot prior to planting. ()

06. Laboratory Tested and/or Grown Out. Laboratory tested and/or grown-out for potato leaf roll virus and potato virus Y prior to planting. ()

07. Testing by Designated Agencies. Laboratory and/or grow-out tested by agencies designated by the department. ()

08. Sampling. Sampled in accordance with procedures established by the department. ()

451. -- 459. (RESERVED)

460. ENFORCEMENT.

01. Reporting – Uncertified Seed Potatoes. All growers planning to plant uncertified seed potatoes shall complete an uncertified seed potatoes report form approved by the department and submit it to the department prior to planting. ()

02. Records - Certified Seed Potatoes. All potato growers are required to keep seed potato certification records for a minimum of four years after planting. The records may be official tags or other official documentation issued by the certifying agency and representing each lot planted. These records must include the potato variety name, certification number and certifying agency. These records are to be made available to a Department representative upon request. ()

461. – 999. (RESERVED)

IDAPA 02.07 – IDAHO HOP GROWERS' COMMISSION

DOCKET NO. 02-0701-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Title 22, Chapter 31, Idaho Code.

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

This pending rule adopts and re-publishes the following existing and previously approved and codified chapters promulgated as proposed rules under this docket number under IDAPA 02.07.01, rules of the Idaho Hop Growers Commission.

- 02.07.01, *Rules of the Idaho Hop Growers' Commission*

The rule making was prompted by the expiration of the rules. The Commission considered the Red Tape Reduction Act and the continued efforts to clarify and streamline the rules. Minor housekeeping edits are intended to make the rules consistent with recent statutory changes, clarify and simplify existing language, and reduce or eliminate unnecessary restrictions.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), [Vol. 19-6SE, pages 529-530](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. The fee rule specifies the collection and remittance of the assessment contained in Section 22-3107, 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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Candi Fitch, (208) 722-5111.

Dated this 13th day of October, 2019.

Candi Fitch
Executive Director
Idaho Hop Growers Commission
P.O. Box 909
Parma, ID 83660
(208) 722-5111

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section Title 22, Chapter 31, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 02, rules of the Idaho Hop Growers' Commission

IDAPA 02

- 02.07.01, *Rules of the Idaho Hop Growers' Commission*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. The Idaho Hop Growers' Commission is of benefit to the Hop Growers of Idaho. The assessments levied are used for research and marketing to keep the hop industry vital for the growers and the State of Idaho. Relevant research and marketing can bring a higher price for hops, helping with returns to the growers.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the Commission and reviewed and approved by the Legislature. The fees collected by the Idaho Hop Growers' Association are not part of the dedicated fund of the state budget.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. The initial hop assessment levy shall be computed and paid on the basis of twenty cents (\$0.20) per net two hundred (200) pound bale of hops handled in the primary channels of trade. In addition to such initial assessment there may be levied an assessment not exceeding four dollars eighty cents (\$4.80) per net two hundred (200) pound bale on each bale of hops handled in the primary channels of trade. The amount of such additional assessment shall be determined annually by the Commission. Licensed hop dealers of the state of Idaho will be notified of the determined assessment amount by registered mail prior to the harvest period.

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 fiscal impact on the state general fund because the fees collected by the Idaho Hop Growers' Association are not part of the dedicated fund of the state budget.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact, Candi Fitch, Executive Director, Idaho Hop Growers' Association, (208) 722-5111

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 3rd day of May, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 02-0701-1900F

02.07.01 – RULES OF THE IDAHO HOP GROWERS' COMMISSION

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 22-3105(12), Idaho Code. ()

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is IDAPA 02.07.01, “Rules of the Idaho Hop Growers’ Commission.” (6-24-94)

02. **Scope.** These rules govern markings required on hop bales, substituting hops grown out of state as Idaho hops, payment of hop assessments, computation and establishing assessment rate, collection and remittance of assessment to the Idaho Hop Growers’ Commission, and dealer assessment returns, and grower assessment returns. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

The Idaho Hop Growers’ Commission adopts the definitions set forth in Section 22-3103, Idaho Code. (6-24-94)

011. -- 099. (RESERVED)

100. MARKINGS REQUIRED.

Each bale of hops grown within the state of Idaho are to be labeled on the head of the bale by an authorized representative of the Idaho Department of Agriculture at the time of Federal/State inspection. The grower of the hops are to have stenciled on each bale, their grower number and lot number or letter, prior to the Idaho Department of Agriculture representative stenciling the Federal/State inspection seal. (6-24-94)

101. REMOVAL OR DEFACING OF STENCILS.

It is unlawful for any grower, shipper, dealer, or any person other than the final consumer to remove, stencil over, substitute, mutilate, or in any other way deface the distinctive stencils the Idaho Hop Growers’ Commission has ordered affixed. However, in cases wherein definite proof of necessity is presented by a shipper and/or dealer to the Idaho Hop Growers’ Commission, the Commission may, in its discretion, permit the shipment of hops without the distinctive stencils affixed thereto. (“Proof of necessity” will be a certificate under oath that the shipment of hops in question is intended for export from the continental limits of the United States and that such shipment cannot be made without removal of all identifying marks. In addition to the above oath, the dealer and/or shipper is to furnish all such other information as may have a bearing on the Commission’s decision to allow or disallow removal of the stencil.) (6-24-94)

102. MISREPRESENTATION.

It is unlawful to substitute or in any manner represent any other hops as Idaho hops in any channel of trade and at any and all times. (6-24-94)

103. TIME OF PAYMENT OF HOP ASSESSMENT LEVY.

The hop assessment levy as imposed by Chapter 31, Title 22, Idaho Code, is to be paid not later than the last day of the month next succeeding the month in which such hops were first handled in the primary channels of trade. (6-24-94)

104. COMPUTATION OF ASSESSMENT.

The initial hop assessment levy is computed and paid on the basis of twenty cents (\$0.20) per net two hundred (200) pound bale of hops handled in the primary channels of trade. In addition to such initial assessment there may be levied an assessment not exceeding four dollars and eighty cents (\$4.80) per net two hundred (200) pound bale on each bale of hops handled in the primary channels of trade. The amount of such additional assessment is determined annually by the Commission. Licensed hop dealers of the state of Idaho will be notified of the determined assessment amount by registered mail prior to the harvest period. (6-24-94)

105. COLLECTION OF HOP ASSESSMENT LEVY.

All assessments levied and imposed under and pursuant to the provisions of Chapter 31, Title 22, Idaho Code, are deducted from the grower’s account by the person or dealer by whom the hops are first handled in the primary channels of trade. All such assessments will be made payable to the Idaho Hop Growers’ Commission, P.O. Box 909, Parma, Idaho 83660 together with a properly prepared assessment return as prescribed by Section 106. ()

106. ASSESSMENT RETURN.

01. Dealer Assessment Return. Every dealer or other person buying hops in primary channels of trade is to file an assessment return on forms available from the Commission each time assessments become due under and pursuant to the provisions of Chapter 31, Title 22, Idaho Code. Assessment returns and assessment payments will be mailed together to the Idaho Hop Growers' Commission, P.O. Box 909, Parma, Idaho 83660. (6-24-94)

02. Grower Assessment Return. Every grower of hops in the state of Idaho, upon the delivery of hops to a dealer or brewer, is to file a Commission assessment return form not later than the last day of the month next succeeding the month in which such hops were first handled in the primary channels of trade. Assessment returns are to state the number of bales of hops handled during the period prescribed and mailed by the grower to the Idaho Hop Growers' Commission, P.O. Box 909, Parma, Idaho 83660. ()

107. -- 999. (RESERVED)

IDAPA 02.08 – IDAHO SHEEP AND GOAT HEALTH BOARD

DOCKET NO. 02-0801-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 25-129(1), Idaho Code.

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

This pending rule adopts and re-publishes the following existing and previously approved and codified chapters promulgated as proposed rules under this docket number under IDAPA 02.08.01, rules of the Idaho Sheep and Goat Health Board:

- 02.08.01, *Sheep and Goat Rules of the Idaho Sheep and Goat Health Board*

Any amendments to the text of the pending rule have been made 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 original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), [Vol. 19-6SE, pages 533-545](#).

The pending fee rule changes are all in regards to updating verbiage for ease of understanding. There are no major rule changes.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. This includes the wool assessment fee of \$.08 per pound found in Section 700.01 and the \$.80 per goat found in Section 701.01. This fee or charge is being imposed pursuant to Section 700 and 701, 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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Naomi Gordon, Executive Secretary of the Idaho Sheep and Goat Health Board.

Dated this 15th of October, 2019.

Naomi LeGere-Gordon, Executive Secretary
Idaho Sheep and Goat Health Board
Department of Agriculture
2118 West Airport Way
Boise, ID 83705
(208) 803-5084

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 25-129(1), Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 02, rules of the Idaho Sheep and Goat Health Board.

IDAPA 02

- 02.08.01, *Sheep and Goat Rules of the Idaho Sheep and Goat Health Board*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. These temporary rules are necessary to prevent, control and eradicate scrapie, tuberculosis, brucellosis and other diseases in sheep and goats imported into Idaho and shipped interstate.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. The fees imposed by IDAPA 02.08.01 Sheep and Goat Rules of the Idaho Sheep and Goat Health Board fund the Board's permitting, inspection, disease control, and indemnity activities as established in Sections 25-126 through 25-160, Idaho Code.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. IDAPA 02.08.01 Sheep and Goat Rules of the Idaho Sheep and Goat Health Board impose fees of the owner of sheep of eight cents (\$.08) per pound on all wool, and on goat producers at the time of sale of eighty cents (\$.80) per goat sold.

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 fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact John Peterson, Chairman, (208) 365-1868.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 3rd day of May, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 02-0801-1900F

02.08.01 – SHEEP AND GOAT RULES OF THE IDAHO SHEEP AND GOAT HEALTH BOARD

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 25-129(1) and 25-147, Idaho Code. ()

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is the “Sheep and Goat Rules of the Idaho Sheep and Goat Health Board.” (3-20-04)

02. **Scope.** These rules govern procedures for the prevention, control and eradication of diseases among sheep and goats, the interstate and intrastate movement of sheep and goats and the assessment of fees on sheep and goats to provide resources to carry out these functions. (3-20-04)

002. – 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

Copies of the following documents may be obtained from the Idaho State Department of Agriculture Division of Animal Industries. IDAPA 02.08.01 incorporates by reference: ()

01. The Code of Federal Regulations Title 9, Parts 54.1, 54.2, 54.8, 54.9, 54.10, 54.11, 54.20, 54.21, 54.22 and 79, January 1, 2015. (3-28-18)

02. The Voluntary Scrapie Flock Certification Program Standards, USDA, June 2013. (3-28-18)

03. The Code of Federal Regulations, Title 9, Part 161, January 1, 2009. (3-28-18)

005. -- 009. (RESERVED)

010. DEFINITIONS.

01. **Accredited Veterinarian.** A veterinarian approved by the Administrator and USDA/APHIS/VS in accordance with provisions of Title 9, Part 161, Code of Federal Regulations to perform functions of State-Federal animal disease control programs. (3-20-04)

02. **Animals.** All vertebrates, except humans. (3-20-04)

03. **Authorized Federal Inspector.** An employee of USDA authorized by the Board to perform the functions of the Idaho Sheep and Goat Health Board. (3-20-04)

04. **Authorized State Inspector.** An employee of the state of Idaho authorized by the Board to perform the functions of the Idaho Sheep and Goat Health Board. (3-20-04)

05. **Board.** The Idaho Sheep and Goat Health Board or its designee. (4-6-15)

06. **Breeding Stock.** Intact male or female sheep or goats of any age. (3-20-04)

07. **Brucellosis.** An infectious disease of animals and humans caused by bacteria of the genus *Brucella*. (3-20-04)

08. ***Brucella Ovis* Test Positive.** An animal that tests in the positive range on an approved *Brucella Ovis* ELISA test. (3-20-04)

09. ***Brucella Ovis* Test Suspect.** An animal that tests in the suspect range on an approved *Brucella Ovis* ELISA test. (3-20-04)

10. ***Brucella Ovis* Test Negative.** An animal that tests in the negative range on an approved *Brucella Ovis* ELISA test. (3-20-04)

11. **Certificate.** An official certificate of veterinary inspection or other approved certificate issued by an accredited veterinarian, state or federal animal health official, or other approved official at the point of origin of the shipment of animal(s) being imported. (3-20-04)

- 12. Commercial Low-Risk Goats.** Intact or castrated goats, raised for fiber or meat, that are not registered or exhibited, that are not scrapie positive, suspect, high risk, or exposed animals and that have not been exposed to sheep or are not from a state that has scrapie in goats. (3-20-04)
- 13. Contemporary Lambing Group.** The time from the first birth to sixty (60) days post birthing of the entire group in a given lambing season. (3-20-04)
- 14. Exposed.** Animals that have had direct contact with other animals, herds, or materials that have been determined to be infected with or affected by any infectious, contagious, or communicable disease. (3-20-04)
- 15. Federal Animal Health Official.** An employee of USDA/APHIS/VS who has been authorized to perform animal health activities. (3-20-04)
- 16. Flock.** Flock or flocks are interchangeable with the terms herd or herds and denote a group of one (1) or more animals that are fed, housed and birthed together on the same premises, or animals maintained in separate geographic areas that have interchange at or around the time of birth. Changes in ownership of a flock do not change the identity of the flock or the regulatory requirements applicable to the flock. (3-20-04)
- 17. Flock Plan.** A written flock management agreement signed by the owner, his accredited veterinarian if there is one, a representative of the Division of Animal Industries, and an APHIS representative in which each signatory agrees to undertake action specified in the Flock Plan to eradicate or control scrapie as defined in 9 CFR Part 54.8 a-f. Goats exposed to scrapie will be subjected to the same rules as sheep. (3-20-04)
- 18. Goats Requiring Premises/Flock Identification Number.** Sexually intact goats or goats that have resided on the same premises as sheep or any other goats not defined in Subsection 010.13. (3-20-04)
- 19. Idaho Premises/Flock Identification Number.** A unique identification number or alphanumeric designation approved by APHIS, and assigned by the Board to each premises/flock of breeding sheep or goats, as defined in Subsection 010.21, in the state of Idaho. (3-20-04)
- 20. Low Risk Commercial Sheep.** Commercial whiteface, white-faced cross, or commercial hair sheep from a flock with no known risk factors for scrapie, including any exposure to female black-faced sheep, that are identified with a permanent brand or ear notch pattern registered with an official brand registry and that are not scrapie-positive, suspect, high-risk, or exposed animals and are not animals from an infected, source, or exposed flock. (3-20-04)
- 21. Negative.** Animals are classified as negative when they have been subjected to official tests for a disease, and the tests performed have failed to disclose evidence of the disease. (3-20-04)
- 22. Official Individual Identification.** The unique identification of individual animals with an alpha numeric number applied as a tag, a legible tattoo, electronic device, or any other device approved by APHIS. The Idaho Premises/Flock Identification number can serve as the official individual identification number if it contains a unique individual animal number in addition to the Idaho premises/flock identification number. (3-20-04)
- 23. Post Exposure Monitoring and Management Plan.** A monitoring plan which includes a written agreement signed by the owner of the flock and a representative of the Division of Animal Industries and an APHIS representative in which each participant agrees to undertake actions specified in the agreement to monitor for the occurrence of scrapie in the flock for at least five (5) years after an approved Flock Plan has been completed. The PEMMP requires at least once a year flock inspections and prompt reporting of any animal over fourteen (14) months of age which dies in the flock so that some of these animals can be selected and submitted for scrapie testing. The Plan also includes the requirements outlined in 9 CFR Part 54.8. Owners may request to join the Scrapie Flock Certification Program after two (2) years of participation in the PEMMP. (3-20-04)
- 24. Premises.** The ground, area, buildings and equipment utilized to raise, propagate or control sheep and goats. (3-20-04)

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

26. Scrapie. A transmissible spongiform encephalopathy that is a nonfebrile, transmissible, insidious, degenerative disease affecting the central nervous system of sheep and goats. (3-19-99)

27. Scrapie Exposed Animal. Any animal which has been in the same flock at the same time within the previous seventy-two (72) months as a scrapie positive female animal excluding limited contacts. Limited contacts are contacts between animals that occur off the premises of the flock and do not occur during or within sixty (60) days after parturition for any of the animals involved. (3-20-04)

28. Scrapie Flock Certification Program. A cooperative Federal-State-Industry voluntary program for reducing the incidence and controlling the spread of scrapie through flock certification. (3-20-04)

29. Scrapie High Risk Animal. An animal determined by epidemiologic investigation to face a high risk of developing clinical scrapie because the animal was: (3-20-04)

- a.** Progeny of a scrapie-positive dam; (3-20-04)
- b.** Born in the same contemporary lambing group as a scrapie-positive animal, or (3-20-04)
- c.** During any subsequent lambing season if born before the flock completes the requirements of a flock plan; or (3-20-04)

d. Born in the same contemporary lambing group as progeny of a scrapie-positive dam or any QQ, at codon 171, sheep present in the lambing facility/area where a scrapie-positive animal was born during the contemporary birth of a scrapie-positive animal. (3-20-04)

e. Animals that fit the criteria for high risk animals which are determined by genetic testing to be QR or RR at the 171 codon, or are determined by other recognized testing procedures to pose no risk, may be exempted as high risk animals by the Board, upon the recommendation of the State Scrapie Certification Board, based upon evidence from the latest research information available. (3-20-04)

30. Scrapie Infected Flock. Any flock in which a scrapie-positive animal has been born, birthed or aborted. A flock will no longer be considered infected after an approved Flock Plan has been completed. (3-20-04)

31. Scrapie-Positive Animal. An animal for which a diagnosis of scrapie has been made by the National Veterinary Services Laboratories, or another laboratory authorized by state or federal officials to conduct scrapie tests approved for scrapie diagnosis by APHIS or the Administrator. (3-20-04)

32. Scrapie Source Flock. A flock in which an animal was born and subsequently diagnosed as scrapie-positive at less than seventy-two (72) months of age. The flock will no longer be considered a source flock after the requirements of an approved Flock Plan have been completed. A trace to a flock must meet the following criteria to designate the flock as a source flock: The scrapie-positive animal must: (3-20-04)

- a.** Be identified with a Premises/Flock Identification Number, or on an official ear tag, electronic device, ear tattoo, or flank tattoo which is correlated to the Premises/Flock Identification number on flock records; or (3-20-04)
- b.** Be identified with a genetic heredity test or nose print; or (3-20-04)
- c.** Possess the original registry ear tag or individual identification ear tag along with the movement, production, or registry records indicating birth in the source flock; or (3-20-04)
- d.** Be traced to the flock by a veterinary epidemiologist through a thorough epidemiological investigation of records and all other available evidence. (3-19-99)

33. State Animal Health Official. The Administrator, or his designee, responsible for disease control and eradication programs. (3-20-04)

34. State Scrapie Certification Board. The State Scrapie Certification Board will consist of APHIS-AVIC, the State animal health official, animal producers and accredited veterinarians. Animal producers and accredited veterinarians will be appointed by the AVIC and the State animal health official. (3-20-04)

35. Terminal Feedlot. As defined in Title 9 CFR, Parts 54 and 79. (3-20-04)

36. Trace. All actions required to identify the flock of origin or destination of an animal. (3-20-04)

011. ABBREVIATIONS.

01. APHIS. Animal Plant Health Inspection Service. (3-20-04)

02. AVIC. Area Veterinarian in Charge. (3-20-04)

03. CFR. Code of Federal Regulations. (3-20-04)

04. PEMMP. Post Exposure Monitoring and Management Plan. (3-20-04)

05. USDA. United States Department of Agriculture. (3-20-04)

06. VS. Veterinary Services. (3-20-04)

012. APPLICABILITY.

These rules apply to all domestic sheep and goats located in, imported into, exported from, or transported through the state of Idaho. (3-20-04)

013. ADDITIONAL IMPORT REQUIREMENTS.

The Board may impose additional or more restrictive import requirements than the requirements in this chapter by issuing a written order stating the additional requirements and the reasons for the requirements. (3-20-04)

014. -- 099. (RESERVED)

100. SHEEP AND GOAT STATE ENTRANCE REQUIREMENTS.

01. Entrance Requirements. All breeding sheep and goat stock entering the state of Idaho except as provided in Sections 103, 105, and 107 of these rules will be accompanied by a permit issued by the Board together with a certificate of veterinary inspection certifying that such sheep or goats are free from scrapie, scabies, foot rot, brucella or symptoms of any communicable disease and are not known to have been exposed to scrapie for at least seventy-two (72) months prior to the date of inspection, scabies for a period of at least six (6) months immediately prior to date of inspection and are not known to have been exposed to any communicable disease for at least thirty (30) days immediately prior to date of inspection. All breeding sheep and goats with the exception of low-risk commercial goats imported into the state of Idaho must be individually identified with an official premises/flock identification number, or legible tattoo or other form of individual identification approved by the Board. The premises/flock identification number must be listed on the certificate of veterinary inspection. The original or true copy of the permit and certificate of veterinary inspection required by this rule must be attached to the waybill covering such shipments. No sheep must be shipped, trailed, or in any manner moved into the state of Idaho for any purpose if they originate in a state or area where sheep scabies is known to exist until the Board has been notified by the APHIS that such state or area where sheep scabies is known to exist has been classified by the APHIS as a sheep scabies eradication area. (3-28-18)

02. Brucella Ovis. Intact male sheep six (6) months of age or older must test negative for *Brucella Ovis* within thirty (30) days prior to entry. Rams entering for exhibition only and returning to the state of origin are exempt from testing. Rams imported from a state certified *Brucella Ovis* free flock are also exempt. (3-28-18)

101. PERMITS.

01. Request for Permits. Request for the permits required under Section 100 must be in writing, by telephone or facsimile and set forth the name and address of the owner of the animals offered for movement into the state of Idaho, the number and class of sheep and goats to be brought in, the destination, the name and address of the consignee, and the approximate date and place of entry. A copy of the permit, or permit number written on the face of the waybill or certificate of veterinary inspection accompanying movement, will be shown to a representative of the Board or any law enforcement officer of the state, county, or municipality of the state of Idaho upon request.

(3-20-04)

02. Certificates of Veterinary Inspection to Be Furnished. Copies of the certificates of veterinary inspection from the point of origin must accompany the shipment and include a copy of the permit or the permit number written on the face of the certificate of veterinary inspection and will be shown to a representative of the Board or any law enforcement officer of the state, county, or municipality of the state of Idaho upon request, and a copy forwarded to the Idaho Department of Agriculture, Division of Animal Industries, c/o Idaho Sheep and Goat Health Board, P.O. Box 7249, Boise, Idaho 83707, immediately after issuance for sheep and goats entering the state of Idaho.

(4-6-15)

03. Inspection Fees. An inspection fee of one hundred dollars (\$100) per incidence, plus mileage, will be paid on all sheep and goats exported from or imported into Idaho in violation of these rules. Such incidences require an inspection of animals, certificates of veterinary inspection and permit.

(3-20-04)

04. Examination and Treatment Fees. The Board may assess a fee on sheep and goat producers who receive services from the Board or its representatives, such as examination and treatment of animals for diseases or parasites. The fees assessed are not to exceed the actual costs for the services rendered.

(3-19-99)

102. SCABIES.

All sheep and goats, including rams and bucks, entering Idaho and which have originated in an area or areas in which scabies is known to exist within the past six (6) months must be treated with a product approved by the APHIS under the supervision of an authorized state or federal inspector or accredited veterinarian. At the time of shipment, such sheep or goats must be accompanied by a permit from the Board and a certificate of veterinary inspection from the state of origin and also a treatment certificate showing that such sheep or goats have been treated at point of origin as herein required. Any and all shipments of sheep and goats entering Idaho, and which have originated in states where scabies is known to exist, must be subject to a thirty (30) to sixty (60) day quarantine and inspection at the time of arrival at destination, and a second inspection at the time of quarantine release, or as often as it may be deemed necessary by the Board.

(3-20-04)

103. ANIMALS IN TRANSIT.

Sheep and goats in course of transit through the state of Idaho, in trucks, or other vehicles from a point outside the state of Idaho to another state or country, are not to be unloaded in Idaho except in pens designated by APHIS for purpose of feed, water and rest for a period of time not to exceed ten (10) days, need not comply with Section 100, provided waybills or other documents accompanying the sheep or goats show origin and destination of such sheep and goats. Failure to have such waybills or other documents with the sheep or goats constitutes a violation of these rules. The Board, however, may prohibit the transportation of any sheep or goats through the state it feels represents a threat to the general health and welfare of the Idaho sheep industry.

(3-20-04)

104. DAIRY GOATS.

All dairy type goats, including bucks, entering the state of Idaho must be accompanied by a permit issued by the Board, together with a certificate of veterinary inspection issued at point of origin by an authorized veterinarian. All dairy type goats, including bucks, aged six (6) months or older must have been tested negative for *Brucella Melitensis* within thirty (30) days of the date of entry into the state of Idaho accompanied by the negative test chart signed by the person in charge of the laboratory where the test was made and approved by the state animal health official of the state of origin and attached to the certificate of veterinary inspection. Goats entering Idaho on a short-term temporary basis for show or other temporary purposes may be exempted from having a negative test for *Brucella Melitensis* completed, with permission from the Board.

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105. IMPORTATION OF SCRAPIE EXPOSED, SUSPECT AND HIGH RISK ANIMALS.

Sheep and goats that are scrapie suspect, exposed, or high risk animals or from scrapie infected, source, or exposed

flocks, as defined Title 9, Parts 54.1 and 79.1, Code of Federal Regulations, are not allowed entry into Idaho except as follows: (3-20-04)

01. Valid Permit. Scrapie suspect, exposed or high-risk animals and animals from infected, source or exposed flocks may be imported directly to scrapie research facilities, or to approved slaughter establishments for immediate slaughter, or other destinations approved by the Administrator, if accompanied by a permit issued by the Board or its representative; and (3-20-04)

02. Officially Identified. The animals are individually identified by official identification tattoos, tags, or devices on a VS 1-27 or other approved movement document. (3-20-04)

106. IDAHO ORIGIN SHEEP INTERSTATE GRAZING PERMIT.

Idaho origin, low-risk commercial sheep breeding stock with no history of scrapie exposure returning to Idaho from seasonal grazing in other states may return to Idaho without a certificate of veterinary inspection if they are accompanied by an Idaho Origin Sheep Interstate Grazing Permit and a waybill. The Idaho Origin Sheep Interstate Grazing Permit is to be obtained from the Board. (3-20-04)

107. INTERSTATE SHIPMENTS.

01. Waybill Requirement. All sheep and goats leaving the state of Idaho by any common carrier, by private conveyance, or any kind of transportation must be accompanied by a waybill, stating the owner's name and indicating destination of sheep or goats, or be accompanied by a certificate of veterinary inspection issued by an inspector appointed by the Board or a representative of the APHIS or accredited veterinarian; said certificates of veterinary inspection to be dated not more than thirty (30) days prior to date of movement, and comply with the rules for the state of destination. ()

02. Waybill Violation. Failure to have such waybills or other documents accompanying the sheep or goats constitutes a violation of these rules and is punishable as provided in Section 900. (3-20-04)

03. Carriers. No common or contract carrier or owner or caretaker will unload any breeding sheep, breeding goats, or dairy goats within the state of Idaho from other states or country, other than as provided in Sections 103, 105, 106, and 107, of these rules, unless such shipments be accompanied by an Idaho Origin Sheep Interstate Grazing Permit issued by the Board or other permit issued by the Board, and the official certificate as provided herein. The original or true copy of each certificate with permit must be attached to the waybill covering such shipments or be in possession of the owner or caretaker of shipment. (4-6-15)

04. Who May Inspect. Authorized state or federal inspectors and accredited veterinarians may inspect sheep and goats. (3-20-04)

108. -- 199. (RESERVED)

200. SCRAPIE PROGRAM STANDARDS, SCRAPIE FLOCK CERTIFICATION, SCRAPIE CONTROL AND ERADICATION.

The Board adopts the provisions of the Voluntary Scrapie Flock Certification Program Standards, which were effective June 2013, and 9 CFR, Parts 54.1, 54.2, 54.8, 54.9, 54.10, 54.11, 54.20, 54.21, 54.22 and 79, January 1, 2015, as the minimum standards for the scrapie certification program in Idaho. (3-28-18)

201. IDENTIFICATION OF BREEDING SHEEP.

01. Assignment of APHIS Approved Idaho Premises/Flock Identification Numbers. The Board or its designee will assign APHIS-approved Idaho premises/flock identification numbers with unique individual animal identification numbers to Idaho sheep and goat flocks/herds. (3-20-04)

02. Responsibility for Identification. Owners and possessors of breeding sheep and goats bear the cost and responsibility of obtaining the identification devices and placing the device in or on the animal. (3-20-04)

03. Time of Identification. All owners or possessors of breeding sheep and goats in Idaho will identify all breeding stock in the flock of any age with a premises/flock identification number before transfer of ownership or

possession, show, sale, or other movement unless the animals are under eighteen (18) months of age and are in slaughter channels. (3-20-04)

04. Importation Identification. Breeding sheep or goats imported into the state must be identified with a premises/flock identification number before entry into the state. (3-20-04)

05. Loss of Identification. Breeding sheep or goats sold within the state retain the original premises/flock identification number. In the event an animal loses a premises/flock identification device, the owner of the animal will re-identify the animal with his or her flock identification number and maintain records to document the original and new flock identification numbers. (3-20-04)

06. Acceptable Identification. Acceptable devices for application of the premises/flock identification number to breeding sheep and goats include: APHIS-approved ear tags bearing the premises/flock identification number, legible tattoos bearing the premises/flock identification number, approved Scrapie Flock Certification Program identification devices, except electronic identification, and other identification devices approved by APHIS except electronic identification. (3-20-04)

07. Identification Exemption. Animals exempt from the requirement for identification with a premises/flock identification number include: (3-20-04)

a. Neutered animals under eighteen (18) months of age. (3-20-04)

b. Sexually intact market lambs under eighteen (18) months of age shipped directly to an approved slaughter establishment or shipped directly to a feedlot for finish feeding for slaughter only. (3-20-04)

c. Animals which have not been removed from their premises of origin and/or transferred ownership with the exception of white-face low-risk range sheep as defined in the 9 CFR Part 79 which are moved for grazing or other management purposes and do not change ownership. (3-20-04)

d. Castrated or low-risk commercial goats. (3-20-04)

e. Registered sheep and goats accompanied by registration papers or a certificate of veterinary inspection with legible unique registration tattoos. (3-20-04)

f. Goats registered with a National Goat Registry that allows for electronic implant identification, as recorded on a registration certificate, may be identified with an electronic implant. (3-20-04)

202. QUARANTINE.

Infected and source flocks or flocks that have received high-risk animals will be placed and held under quarantine until the infected or high-risk animals have been slaughtered or depopulated, an approved Flock Plan has been completed and the flock is participating in a Post Exposure Monitoring Program. Flocks that do not participate in a Post Exposure Monitoring Program remain under quarantine until the entire flock has been depopulated. Flocks which are removed from the Post Exposure Monitoring Program before the agreed time will be requarantined. (3-20-04)

203. RESTRICTION OF HIGH-RISK ANIMALS.

High-risk animals will be placed under a quarantine when the flock or animals are determined to be exposed. An epidemiological investigation will be conducted on the flock or animals to determine the risk of infection with scrapie. The flock or animals will be maintained under quarantine until the flock is in compliance with the Scrapie Uniform Methods and Rules in effect or until the scrapie epidemiologist has determined that the flock or animals do not pose a substantial risk to other flocks. (3-20-04)

204. MOVEMENT OF RESTRICTED ANIMALS.

Animals from infected and source flocks and high-risk animals may be moved from quarantined premises only under the following conditions: (3-19-99)

01. Individually Identified on Approved Document. The animals are individually identified on a VS 1-27 form or other approved document, by official ear tags, tattoos or devices; or (3-20-04)

02. Indelibly Marked. The animals are indelibly marked with an “S” at least one (1) inch high on the left jaw; and (3-20-04)

03. Consigned Directly to Approved Destination. The animals are consigned directly to an approved slaughter facility for immediate slaughter or to a terminal feedlot for finish feeding for slaughter only; or (3-20-04)

a. The animals are consigned directly to an approved livestock market for sale directly to an approved slaughter facility for immediate slaughter or to a feedlot for finish feeding for slaughter only. The animals must be individually identified on a VS 1-27 form or other approved document for movement from the approved livestock market to final destination; or (3-20-04)

b. The Board or its representative may, by written permission, allow the animals to be moved, under quarantine, to other pre-approved locations. The animals may be moved in sealed vehicles or be accompanied in transit by representatives of the Board in lieu of individual identification. Animals so moved will be retained under quarantine at the new location. (3-19-99)

205. -- 299. (RESERVED)

300. CERTIFIED BRUCELLA OVIS FREE FLOCK.

301. BRUCELLA OVIS FREE FLOCK PROGRAM STANDARDS.

Flocks may be certified as *Brucella Ovis* free by the Board under the following circumstances: (3-20-04)

01. Flocks from Which Rams Are Not Leased, Rented or Loaned. (3-20-04)

a. One (1) negative *Brucella Ovis* ELISA test annually for two (2) years on all rams over six (6) months of age. (3-20-04)

b. Any new ram over six (6) months of age entering the flock for breeding purposes must be tested after sixty (60) days of purchase and test negative. (3-20-04)

02. Flocks from Which Rams Are Leased, Rented or Loaned. (3-20-04)

a. One (1) negative *Brucella Ovis* ELISA test annually for two (2) years on all rams over six (6) months of age. (3-20-04)

b. All sexually active rams which leave the owners premises and return must be tested after sixty (60) days of sexual rest and test negative on a *Brucella Ovis* test. (3-20-04)

03. *Brucella Ovis* ELISA Positive Test Results. A positive test result cancels *Brucella Ovis* Free certification status. The certification process may be restarted after the following conditions have been met: (3-20-04)

a. The individual ram that has a positive test result is held in isolation; and (3-20-04)

b. Is retested at least thirty (30) days after, but not more than sixty (60) days after the initial positive test; and (3-20-04)

c. All rams that have a second positive test result are either castrated, slaughtered, or sold for slaughter only. (3-20-04)

04. Approved *Brucella Ovis* Tests: (3-20-04)

a. Tests must be performed by a laboratory approved by the board; and (3-20-04)

b. Blood samples must be taken and sent to the approved laboratory by a licensed, accredited veterinarian; and (3-20-04)

- c. Tests must be an approved ELISA test for *Brucella Ovis*. (3-20-04)

302. -- 399. (RESERVED)

400. CONDEMNATION AND DESTRUCTION OF DISEASED ANIMALS OR FLOCKS.

01. Animals or Flocks Infected. Animals or flocks determined by representatives of the Board or APHIS to be infected with scrapie or other contagious, infectious, or communicable diseases which have been identified by the Board to be diseases of concern to human health or the livestock industry of the state may be condemned by order of the Board. (3-20-04)

02. Animals or Flocks Condemned. Animals or flocks condemned by order of the Board will be destroyed or otherwise disposed of as directed by order of the Board and under the conditions set by the Board. (3-19-99)

401. -- 499. (RESERVED)

500. INDEMNIFICATION.

01. Owners, Individuals, Partnerships, Corporations or Other Legal Entities. Owners, individuals, partnerships, corporations or other legal entities whose animals or flocks have been destroyed or otherwise disposed of by order of the Board may be eligible for indemnification in the form of cash payment from the Sheep and Goat Disease Indemnity Fund for all or part of the value of the animals destroyed or otherwise disposed of and for the actual cost for burial or disposal of animal carcasses. (3-19-99)

02. Indemnity Payments Paid. Indemnity payments are paid only to an owner of sheep or goats that were born in the state of Idaho or were imported into the state in compliance with existing Idaho statutes and rules promulgated thereunder. (3-19-99)

03. Amount of Indemnity to Be Paid for Each Animal. The amount of indemnity to be paid for each animal is determined by the Board and does not exceed the difference between the appraised price, less federal indemnity, and the salvage value of the animal. In the event federal indemnity is not available the amount of indemnity will not exceed the difference between the appraised price and salvage value. (3-19-99)

04. Appraisals. Appraisals are to be performed by a team comprised of an Animal Health representative, the owner, and a person with experience in sheep or goat marketing. (3-20-04)

05. Maximum Amount of Indemnity. The maximum amount of indemnity for each animal will not exceed: (3-19-99)

- a. Ewes or does one (1) year of age or older - two hundred dollars (\$200) per head. (3-19-99)
- b. Rams or bucks one (1) year of age or older - four hundred dollars (\$400) per head. (3-20-04)
- c. Lambs or kids under one (1) year of age - current market price per pound with a maximum of one hundred dollars (\$100) per head. (3-19-99)

06. Indemnity Payment upon Approval of Appraisal. Upon approval of the appraisal by the Board, one-half (1/2) of the indemnity payment will be paid at that time. The other one-half (1/2) of the indemnity payment, or the prorated portion thereof, will be paid at the end of the fiscal year. Indemnity payments are paid in their entirety in a single fiscal year and do not exceed the amount in the fund. (3-20-04)

501. -- 599. (RESERVED)

600. CLEANING AND DISINFECTION.

Barns, sheds, stockyards, trucks, aircraft, ferryboats and other vehicles, feed yards, stables, pens, corrals, lanes and premises that have been used in confining, trailing, or transporting any sheep or goats affected or infected with any

contagious, infectious or communicable diseases, will be cleaned and disinfected under state or federal supervision as directed by the Board, or an authorized representative of the Board, and the owner of such premises, conveyances, or carrier are responsible for such cleaning and disinfecting. (3-19-99)

601. -- 699. (RESERVED)

700. SHEEP ASSESSMENTS.

The following rules apply to all sheep. (3-20-04)

01. Payment of Assessment. The owner of sheep on July 1st of the assessment year is responsible for the payment of the assessment levied by the Boards as provided for in Section 25-130 and 25-131, Idaho Code. The rate of assessment is eight cents (\$.08) per pound on all wool, in the grease basis, except tags, crutchings, and dead wool. (4-6-15)

02. Assessment as Resident Sheep. The assessment is levied and assessed to the producer at the time of the first sale of wool and is deducted by the first purchaser from the price paid to the producer at the time of such sale. (5-5-80)

03. Migratory Sheep. In the event that a sheep, which produces wool subject to this assessment, is located outside the state of Idaho during a part of the assessment year, the amount of the assessment is reduced on a prorated basis. A grower will be required to request a prorated adjustment in writing to the Board. ()

04. Costs of Collection. All costs of collection of delinquent assessments are borne as an additional charge against the delinquent assessee first purchaser. (7-1-93)

701. GOAT ASSESSMENTS.

The following rules apply to all goats. (4-6-15)

01. Payment of Assessment. The owner of goat(s) is responsible for the payment of the assessment levied by the Board as provided for in Sections 25-130 and 25-131, Idaho Code. The rate of assessment is eighty cents (\$.80) per head. (4-6-15)

02. Assessment as Resident Goats. The assessment is levied and assessed to the producer at the time of the sale of said goat(s). (4-11-19)

a. Auction Yards: Auction yards will deduct the assessment from the price paid to the producer at the time of sale. All goat assessments will be sent to the Idaho Sheep and Goat Health Board (ISGHB) from the auction yards after each sale, but no later than thirty (30) days after the sale. Assessments will be accompanied by a board approved form that includes a list of the producers (sellers) name, address, and number of head sold. (4-11-19)

b. Private Sales: The producer will handle assessment on private sales. The producer will send at minimum an annual assessment to the ISGHB on all private sales no later than the end of December of the current year. (4-11-19)

03. Costs of Collection. All costs of collection of delinquent assessments are borne as an additional charge against the delinquent assessee. (4-11-19)

702. -- 899. (RESERVED)

900. VIOLATIONS.

Any person, company, corporation or association, or any agent, servant or employee of such, who violates or disregard any of these sheep and goat rules or any other sanitary or quarantine rule, order of the Board or inspector thereof, is deemed guilty of a misdemeanor and upon conviction be fined not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) for each offense. (3-19-99)

901. -- 999. (RESERVED)

IDAPA 11 – IDAHO STATE POLICE STATE BRAND BOARD

DOCKET NO. 11-0200-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 25-1102, 25-1110, 25-1160 and 25-3302, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 11, rules of the Idaho State Police, Idaho State Brand Board:

IDAPA 11

- 11.02.01, *Rules of the Idaho State Brand Board*

This pending rule vacates the following proposed rule previously promulgated under this docket number as part of the omnibus proposed rulemaking under IDAPA 11, rules of the Idaho State Police, Idaho State Brand Board:

- **(*VACATED)** 11.02.02, *Idaho Livestock Dealer Licensing (*This chapter has been consolidated into 11.02.01 as Subchapter B.)*

The Idaho State Brand Board is tasked with serving and protecting the Idaho livestock industry, by creating a deterrent of theft, illegal transportation and slaughter of livestock. The adoption of these rules continue to authorize the Boards ability to carry out the statutory duties of protecting and regulating the livestock industry. The changes to these rules were housekeeping in nature and meet the requirements of the Red Tape Reduction Act by consolidating or eliminating definitions, combining, re-ordering and re-numbering similar sections and provisions, and removing unnecessary language. All the changes maintain the intent, scope, and purpose intended and previously approved.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), [Vol. 19-6SE, pages 1319-1334](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules.

IDAPA 11.02.01.

- 011.02.a.** - Recording and Use of Brands Fee;
- 011.02.d.** - Brand Recording Fee;
- 011.04.a.** - Brand Renewal Fee;
- 011.05.b.** - Brand Transfer Fee;
- 016.01** - Sheep Brand Recording Fee;
- 019.04** - Brand Inspection Fees;
- 020.03** - Fees for Owner Inspections;
- 021.05** - Annual Brand Inspection Certificate Fee;
- 031** - Idaho Livestock Moving to Pasture Out of State Fee;

- 032.03** – Livestock Auction Sales Fee;
- 034** – Schedule of Fees for the Idaho State Brand Board
- 101** - Application Fees (Subchapter B - Idaho Livestock Dealer Licensing)

These fees are being imposed pursuant to Section 25-1160, 25-3303, 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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Cody D. Burlile, State Brand Inspector, phone (208) 884-7070, Fax (208) 884-7097, email cody.burlile@isp.idaho.gov.

Dated this 15th day of October, 2019.

Charlie Spencer
Police Services Major
Rules Review Officer
Idaho State Police
700 S. Stratford Drive
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Phone: (208) 884-7203
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**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 25-1102, 25-1110, 25-1160 and 25-3302, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 11, rules of the Idaho State Police, Idaho State Brand Board:

- IDAPA 11**
- 11.02.01, *Rules of the Idaho State Brand Board*
 - 11.02.02, *Idaho Livestock Dealer Licensing*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. The Idaho State Brand Board is tasked with serving and protecting the Idaho livestock industry, by creating a deterrent of theft, illegal transportation and slaughter of livestock. The Brand Board finds failure to reauthorize these rules would eliminate the Boards ability to carry out the statutory duties of protecting and regulating the livestock industry.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state’s obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho’s constitutional requirement that it balance its budget. The Brand Board is solely operated by dedicated funds derived from Brand Recording, Brand Inspection and Dealer Licensing fees which are set in Rule. Failure to reauthorize these Rules would jeopardize Brand Board’s funding and eliminate the Board’s ability to provide necessary state service.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules.

IDAPA CHAPTER 11.02.01 “Rules of the Idaho State Brand Board”

IDAPA 11.02.01.011.02.a.	Brand Recording Fee
IDAPA 11.02.01.011.02.d.	Brand Renewal Fee
IDAPA 11.02.01.011.04.a.	Brand Renewal Fee
IDAPA 11.02.01.011.05.b.	Brand Transfer Fee
IDAPA 11.02.01.016.01	Sheep Brand Recording Fee
IDAPA 11.02.01.019.04	Brand Inspection Fees
IDAPA 11.02.01.020.03	Fees for Owner Inspections
IDAPA 11.02.01.021.05	Annual Brand Inspection Certificate Fee
IDAPA 11.02.01.031	Idaho Livestock Moving to Pasture Out of State Fee
IDAPA 11.02.01.032.03	Livestock Auction Sales Fee
IDAPA 11.02.01.034	Schedule of Fees for the Idaho State Brand Board

IDAPA CHAPTER 11.02.02 “Idaho Livestock Dealer Licensing”

IDAPA 11.02.02.012 Application Fees Livestock Dealers and Licensed Dealer

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 fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Cody D. Burlile, State Brand Inspector, phone (208) 884-7070, Fax (208) 884-7097, e-mail cody.burlile@isp.idaho.gov.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 10th day of May, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 11-0200-1900F

IDAHO STATE BRAND BOARD

11.02.01 – RULES OF THE IDAHO STATE BRAND BOARD

000. LEGAL AUTHORITY.

The State Brand Board has authority to make rules to implement and enforce the state brand laws pursuant to Title 25, Chapters 11 and 33, Idaho Code. ()

001. TITLE AND SCOPE.

01. **Title.** These rules are titled IDAPA 11.02.01, “Rules of the Idaho State Brand Board.” (3-30-01)

02. **Scope.** The rules relate to the governance and operation of the Idaho State Brand Board. These rules also provide for the issuance and administration of livestock dealer licenses, the collection of appropriate fees for licensure, the provision of requirements necessary for licensure. ()

002. -- 004. (RESERVED)

005. DEFINITIONS.

The definitions found in Sections 25-1101 and 25-3301, Idaho Code, also apply to these rules. Additionally, as used in rules 000 through 052, the following terms have the following definitions: ()

01. **Auction Brand Inspection Certificate.** A brand inspection certificate issued to the new owner only from organized auction market sales. In addition to the information required of a brand inspection certificate by Section 25-1101, Idaho Code, the auction brand certificate must contain: (7-1-93)

a. The names and addresses of the buyer and/or new owner; (7-1-93)

b. The destination of the livestock for the new owner; (7-1-93)

c. The auction market name and location and the date of the sale; (7-1-93)

d. The number of livestock inspected in each category of animals as designated on the auction brand inspection certificate. (7-1-93)

e. The signature of either an Idaho brand inspector or a clerk. (7-1-93)

02. **Auction Brand Inspection.** A brand inspection made at an Idaho Auction market with a record made of such inspection on a tally sheet. (7-1-93)

03. **Bar Brand.** A horizontal elongation of a line placed either above, between or below the main part of a brand, causing the name of the brand to be read to include the bar. (7-1-93)

04. **Bill of Sale.** The formal instrument for transfer of title to livestock. A bill of sale must include the date of the sale, a description of the livestock sold, the name of the purchaser, and the signature of the seller. (7-1-93)

05. **Board.** The Idaho State Brand Board. (7-1-93)

06. **Brand Card.** A wallet size card issued by the State Brand Inspector in a specific color for each brand renewal period, showing a drawing of the brand, the location of the brand, the name and address of each owner of the recorded brand. (7-1-93)

07. **Brand Inspection.** The physical examination of livestock by a brand inspector to determine ownership of the livestock. A brand inspection includes examination of proofs of ownership, including the visual examination of brands and marks. (7-1-93)

08. **Consignee.** Any person who has possession of livestock for feed, care or sale, but who is not deemed to be the owner of the livestock unless a later proper transfer of title to the livestock is completed. (7-1-93)

09. **Courtesy Brand Inspection.** An inventory of livestock requested by a financial institution or owner or a regulatory agency, shown on a tally sheet. (7-1-93)

- 10. Dash Brand.** A horizontal elongation of a line placed either ahead of, between or behind the main part of a brand causing the name of the brand to be read to include the dash. (7-1-93)
- 11. Destination.** The place where the livestock are to be transported. (7-1-93)
- 12. DOT Brands.** A brand that is a spot or blotch brand that is unreadable. (3-30-01)
- 13. Field Brand Inspection Certificate.** A brand inspection certificate issued following a field brand inspection. In addition to the information required of a brand inspection certificate by Section 25-1101, Idaho Code, the field brand certificate must contain: (7-1-93)
- a.** Names and address of the owner, seller, buyer and new owner; (7-1-93)
 - b.** The location where the brand inspection was made; (7-1-93)
 - c.** The date of the inspection; (7-1-93)
 - d.** The destination of the livestock designated by the new owner; (7-1-93)
 - e.** The number of livestock inspected on the field brand inspection certificate; ()
 - f.** The brand inspection fees paid by the owner/seller; and (7-1-93)
 - g.** The signature of the owner/seller or his agent and an Idaho brand inspector. (7-1-93)
- 14. Field Brand Inspection.** A brand inspection made for livestock other than those sold at an auction market. (7-1-93)
- 15. Hold Order.** A written order issued by an Idaho Brand Inspector, requiring an auction market, slaughter plant or feed lot to retain either livestock or the proceeds from the sale of livestock until a release order is filed by a brand inspector. (7-1-93)
- 16. Idaho Livestock Owner.** A livestock owner who owns real property in the state of Idaho, and uses such property to feed, pasture or otherwise hold livestock for at least four (4) consecutive months each year. (7-1-93)
- 17. Lifetime Certificate.** An ownership and transportation certificate. (7-1-93)
- 18. Livestock.** ()
- a.** Defined in Section 25-1101, Idaho Code, as used in Title 25, Chapter 11, Idaho Code. ()
 - b.** Defined in Section 25-3301, Idaho Code, as used in Title 25, Chapter 33, Idaho Code. ()
- 19. Order Buyer.** A livestock dealer. (7-1-93)
- 20. Ownership and Transportation Certificate.** A certificate issued pursuant to Section 25-1122, Idaho Code, that permits a horse owner to transport horses in Idaho or nationwide, for any purpose except for sale or trade. (7-1-93)
- 21. Person.** ()
- a.** Defined in Section 25-1101, Idaho Code, as used in Title 25, Chapter 11, Idaho Code. ()
 - b.** Defined in Section 25-3301(5), Idaho Code, as used in Title 25, Chapter 33, Idaho Code. ()
- 22. Release Order.** A written order issued by an Idaho Brand inspector that clears a release on a hold

order of livestock or the proceeds from a sale of livestock. (7-1-93)

23. Representative of a Licensee (“Representative”). Any full time employee, agent, or other person who buys, receives, sells, or assembles livestock for resale on behalf of a licensed livestock dealer. ()

24. Tally Sheet. A document containing a list of all livestock inspected at an auction market or courtesy brand inspection, which must include a listing of all livestock inspected. The tally sheet must indicate the name of the owner, the brands or brand inspection certificates on the animals, and the number of livestock inspected. The name of the owner must be either the name under which the brand is recorded or the name of the new owner as shown on the brand inspection certificate. (7-1-93)

006. -- 010. (RESERVED)

011. RECORDING, USE AND PLACEMENT OF BRANDS.

01. Recording and Use of Brands. (7-1-93)

a. All brands must be recorded with the State Brand Inspector, as required by Section 25-1144, Idaho Code. (7-1-93)

b. No person may brand livestock with an unrecorded brand. (7-1-93)

c. No person may use any brand registered to any other person. (7-1-93)

d. No person may lease a brand to any other person. (7-1-93)

02. Recording Procedures. (7-1-93)

a. Any person desiring to record a brand in the state of Idaho must submit an application and fee with the State Brand Inspector, at the main office as provided by Section 25-1144, Idaho Code. If the State Brand Inspector finds that the proposed brand does not conflict with any presently recorded brand, the State Brand inspector must record the proposed brand. (7-1-93)

b. Upon recording of the brand, the State Brand Inspector issues a certificate of recorded brand and a brand card to each owner of the brand. The brand card will be recognized by all brand inspectors as proof that the brand indicated thereon has been properly registered. (7-1-93)

c. A brand may be recorded in more than one name, subject to space limitations on the brand card. (7-1-93)

d. Section 25-1144, Idaho Code, authorizes the Idaho State Brand Board to prorate the brand recording fee to facilitate entry into the staggered brand renewal schedule. The staggered brand renewal system records a new brand on a five (5) year cycle determined by first initial of the applicant's last name. This is a continually staggered five (5) year renewal cycle and can be reviewed at any time at the Idaho State Brand Board Main Office. ()

03. Brands Acceptable for Recording. (7-1-93)

a. Dash brands and bar brands must be at least two (2) inches long and slashes at least four (4) inches long. ()

b. Recorded brands appearing on the neck, horns, hooves or jaw of livestock, or on any other location not expressly included within the definition of “brand” in Section 25-1101, Idaho Code, may not be recorded and are not relevant for identification. (7-1-93)

c. Markings made on the necks of equine animals made pursuant to the “International Horse Identification System,” otherwise known as the “Angle Numerical System,” U.S. Patent Number 3633584 may not be

recorded as brands, but may be recognized for identification purposes. (7-1-93)

d. A vertical arrangement of numbers in groups of two (2) or more made by freeze or hot iron branding for the purpose of individual identification of cattle must be preceded with the oval cipher “o” and must be placed on the shoulder, rib or hip. Such numbers may not be recorded as brands, but may be recognized for identification purposes. Said animals are also to be branded with an Idaho recorded ownership brand. (3-30-01)

e. Lip Tattoos may not be recorded as brands, but may be recognized for identification purposes. (7-1-93)

f. Wattles, earmarks, dewlaps or ear tags may not be recorded as brands, but may be recognized for identification purposes. (7-1-93)

g. No new DOT brands will be recorded. Existing DOT brands will be grandfathered in to the official brand records. (3-30-01)

04. Renewal of Brands. (7-1-93)

a. A brand may be renewed by making application and submitting the renewal fee to the Main Office of the Idaho State Brand Board. (7-1-93)

b. Recorded brands are renewed as provided in Section 25-1145, Idaho Code. ()

c. A minimum of two (2) new brand cards will be issued to the recorded owner(s) upon renewal. The State Brand Inspector maintains a record of each renewal of a recorded brand. (7-1-93)

05. Transfer of Recorded Brands. (7-1-93)

a. Brands must be transferred whenever brand is sold or otherwise transferred to a new owner; or whenever persons are added to or deleted from the list of owners of a particular recorded brand. (7-1-93)

b. A transfer fee is charged for all transfers; provided, however, if the change is made on or before July 1 of the renewal year, no fee will be charged whenever one (1) or more new owners are added to or deleted from the recorded brand; or whenever the brand is transferred to a corporation, the stockholders of which are the same persons who were the owners of the brand. (7-1-93)

c. If any owner of a recorded brand is deceased, the personal representative for the estate of the deceased person must file with the State Brand Inspector a certified copy of the court order showing his appointment. The personal representative may thereafter transfer the ownership interests of the deceased person in the brand. Alternatively, where no personal representative has been appointed, the surviving spouse of the owner of a recorded brand may submit a certified copy of a death certificate to effectuate transfer of the brand. ()

d. A brand inspection of the livestock must occur prior to the transfer of the recorded brand pursuant to Subsection 019.01.d. ()

06. Conflicts Between Brands. The State Brand Inspector may, at any time after recording, cancel any brand that infringes upon any previously recorded brand. Notice of cancellation of the brand will be mailed to the owners of the brand. The owners have thirty-five (35) days from the date indicated on the postmark of the notice to appeal the Brand Inspector’s decision to the Brand Board. (7-1-93)

012. -- 014. (RESERVED)

015. BRAND ALTERNATIVES.

01. Identification. Identification marks, devices or documents issued by the state brand inspector as an alternative to permanent marks may be used for each animal. Documents acceptable as an alternative to a permanent brand must be approved by the State Brand Inspector and are as follows: ()

- a. Lifetime Ownership and Transportation certificate for horses, mules and asses. Such certificate must show pictures of two (2) side views, including registration numbers where appropriate. ()
- b. Purebred registration papers for cattle used for breeding or show purposes. ()
- c. Any other form of positive identification requested to be used by a livestock owner. ()

016. BRANDING OF SHEEP.

Recording and placement of Sheep Brands. Brands for sheep may be recorded in the same manner and for the same fee as other recorded brands. Sheep brands must comply with Section 25-1142, Idaho Code. (7-1-93)

017. -- 018. (RESERVED)

019. BRAND INSPECTIONS.

- 01. Owners.** Owners of livestock must obtain a brand inspection in any of the following situations: (7-1-93)
 - a. When ownership of livestock changes in any manner; (7-1-93)
 - b. When livestock are to be moved out of the state within ninety-six (96) hours, unless the transportation of the livestock is covered by an ownership and transportation certificate or an annual inspection certificate; (7-1-93)
 - c. When livestock are to be slaughtered within ninety-six (96) hours; (7-1-93)
 - d. When a recorded brand is sold or transferred to a new owner, except that no brand inspection is required if no livestock carry the brand that is to be transferred; or the transfer involves the addition or deletion of owners to the recorded brand as provided in Subsection 011.05.b.; or when brand owners incorporate as provided in Subsection 011.05.b. (7-1-93)
- 02. General Procedures.** (7-1-93)
 - a. Brand inspectors will be available upon request to inspect livestock during the normal daylight working hours. At least twenty-four (24) hours notice should be given to the brand inspector when a brand inspection is required. Brand inspections should be performed at the point of origin of the livestock, unless otherwise approved by the State Brand Inspector or District Brand Supervisor. Requested brand inspections may be made in the nighttime by artificial light only with the expressed consent of the State Brand Inspector or the district brand supervisor. (3-30-01)
 - b. The livestock to be inspected should be gathered and ready for inspection prior to the arrival of the Brand Inspector. Brand inspectors are not responsible for gathering livestock to be inspected. (7-1-93)
 - c. The brand inspector must notify any owner of stray livestock found during the brand inspection process. If the owner of the stray animals cannot be found, the strays are sold pursuant to the estray statutes, Title 25, Chapter 23, Idaho Code. (7-1-93)
 - d. Upon change of ownership of livestock, any previous brand inspection certificate must be surrendered to the brand inspector. ()
- 03. Proof of Ownership.** (7-1-93)
 - a. The livestock owner must maintain proof of ownership of this livestock by branding them and/or by keeping brand inspection certificates. Proof of ownership of livestock may be established by: ()
 - i. The animals being branded with its owner's recorded brand. ()

- ii. A brand inspection certificate, issued by Idaho or another state. ()
- iii. An ownership and transportation certificate, or by an ownership and transportation certificate issued by another state (applies only to horses, mules or asses). ()
- iv. A bill of sale, providing that the brand inspection takes place within ten (10) days of the purchase and the brand inspector can be reasonably assured that the bill of sale is valid. Bills of sale may be issued in livestock transactions but do not replace a brand inspection certificate. ()
- b. Fresh brands on livestock bearing older brands, may or may not be accepted at the discretion of the State Brand Inspector or District Brand Supervisor as proof of ownership unless accompanied by a brand inspection certificate or a bill of sale covering the older brands as provided for in Subsection 019.03.a.iv. above. The State Brand Inspector may inquire into the ownership of all livestock bearing two (2) or more brands. (3-30-01)
- c. If the inspector finds that the livestock brands are not owned by the person claiming the same, such person is required to produce a bill of sale or other satisfactory evidence of ownership. (3-30-01)

04. Fees. (7-1-93)

- a. Except as provided in Subsection 019.04.b. of this rule, the fees for any brand inspection are as provided in Subsection 034.01. (7-1-93)
- b. Livestock owned by an Idaho livestock owner, bearing an Idaho recorded brand, leaving the state of Idaho for grazing purposes only and that will return to the state at a later date, will be inspected at a rate of one-half (1/2) of the regular per head inspection fee. (7-1-93)

020. BABY CALVES – OWNER INSPECTION.

01. General Requirements for Baby Calf Inspection. Baby calves that are ten (10) days or less old, may be sold within the state of Idaho, by their owner or the owner’s agent, without a state brand inspection established in the provisions of Section 019, under the following conditions: (10-1-93)

- a. The baby calf must have been given birth to by a cow that the owner of the baby calf owned at the time of the baby calf’s birth; (10-1-93)
- b. The owner of the baby calf, or the owner’s agent, must inspect the baby calf; (10-1-93)
- c. The owner of the baby calf, or the owner’s agent, must maintain an accurate baby calf sales report, that establishes proof of ownership and transfer of any baby calves; ()
- d. The completed baby calf sales report must fully and accurately set forth the names and addresses of the owner and the buyer and be signed by both the owner or the owner’s agent and the buyer and must be made available to a Brand Inspector upon request; ()
- e. At the time of the owner inspection, the baby calf must have no brand or have the owner’s brand; ()
- f. Conditions of Baby Calf Inspections by owner contained here do not apply to baby calves sold at public livestock markets, slaughter plants, or circumstances that require a brand inspection for baby calves leaving the state of Idaho. ()

02. Inspection of Calves Eleven Days or More Old. Any calf eleven (11) days old or older must be inspected pursuant to Section 019 whenever an inspection is required. (10-1-93)

021. ANNUAL BRAND INSPECTION CERTIFICATE.

01. Certificates. Annual brand inspection certificates for livestock may be used to transport livestock or for any purpose other than for the purpose of slaughter, sale or trade. (7-1-93)

02. Annual Brand Inspection Form Also Known as “Seasonal.” Annual brand inspection certificates will expire zero (0) to twelve (12) months from the date of issue as determined by the Brand Inspector and contain the breed, color, sex, markings, brands and location thereof, breed registry number if appropriate, and any other information that distinguishes the animal or animals for which the certificate is issued. ()

03. Annual Inspection. Subsection 030.01 which requires that livestock be transported out of the state within ninety-six (96) hours of the brand inspection of the livestock, does not apply to annual inspections. (7-1-93)

04. Agreements. The State Brand Inspector is authorized to enter into reciprocal agreements with brand authorities in adjacent states to allow livestock to move between the two states using the annual brand inspection issued in the home state. ()

05. Fee. The fee for an annual brand inspection certificate is provided in Subsection 034.01. (7-1-93)

022. LIFETIME OWNERSHIP AND TRANSPORTATION CERTIFICATES.

01. Owner. Any owner of a horse, mule or ass may request a lifetime ownership and transportation certificate by contacting a brand inspector. ()

02. Detain. In the event that a brand inspector or other law enforcement officer finds a person who is not the owner of an animal in possession of both the animal and the lifetime ownership and transportation certificate, the brand inspector or other law enforcement officer may detain the animal for a sufficient period of time to determine the validity of the non-owner’s possession of such animal. Any expenses caused by the detention are paid by the person in possession of the animal and certificate, or by the actual owner of the animal. ()

03. Nationwide. Lifetime ownership and transportation certificates issued under Section 25-1122, Idaho Code, may be used nationwide for transportation of horses, mules and asses. ()

04. Validity. Lifetime ownership and transportation certificates for any horse, mule or ass is valid so long as the animal remains within the ownership of the person to whom the certificate was issued. The lifetime ownership and transportation certificate is not transferable. ()

023. -- 029. (RESERVED)

030. TRANSPORTATION OF LIVESTOCK.

01. Out-of-State. Any person transporting livestock out of the state of Idaho must obtain a brand inspection before the animals leave the state, as provided by Section 25-1121, Idaho Code. The brand inspection must be obtained no more than ninety-six (96) hours prior to the transport of the livestock out of the state. Provided, however, that a brand inspection is not required if the livestock are accompanied by either of the following documents: (7-1-93)

a. The Idaho lifetime ownership and transportation certificate described in Section 022, which may be used by the owner to transport horses, mules or asses nationwide; and ()

b. The annual inspection certificate described in Section 021, which may be used to transport livestock out of the state of Idaho. (3-30-01)

02. In-State. Livestock may be transported intrastate as follows: (7-1-93)

a. Persons in possession of their brand cards may transport their livestock marked with the brand shown on the card any place within the state of Idaho without obtaining a brand inspection. (7-1-93)

b. In those instances where the livestock have been purchased, and such livestock does not carry a

brand or if the livestock carry the brand of the previous owner, the blue copy of the field brand inspection certificate or auction brand inspection certificate issued to the present owner may be used to transport the livestock within Idaho. ()

- c. By written ownership transportation permit, pursuant to Section 25-1101, Idaho Code. ()

031. IDAHO LIVESTOCK MOVING TO PASTURE OUT OF STATE.

Livestock owned by an Idaho livestock owner, bearing an Idaho recorded brand, leaving the state of Idaho for grazing or pasture purposes only, and to be returned to the state of Idaho at a later date, will be inspected by an Idaho brand inspector at one-half (1/2) of the regular per head inspection fee, provided that if the State Brand Inspector determines an inspection fee is not necessary, he may issue a brand inspection without charge. Livestock leaving the state of Idaho for pasture purposes, which are not to be returned to the state of Idaho by their owner, will be charged the regular inspection fee and additional fees provided in Subsection 034.01. ()

032. LIVESTOCK AUCTION SALES.

01. General. Livestock auction sales include all public livestock markets chartered by law, dispersal sales of livestock subject to brand inspection, and sales of livestock by an association of breeders subject to brand inspection where livestock are physically sold to the highest bidder. ()

02. Other Groups. Sales of livestock at county fairs within the state involving Future Farmers of America (FFA) and 4-H groups are not auction sales for the purpose of charging and collecting the minimum brand inspection fee in Subsection 034.01. (7-1-93)

03. Fee. The minimum brand inspection fee will be charged and collected at all auction sales described in this rule. The fee must be paid by the livestock auction sale, whether or not the inspection fees received from the owners of livestock inspected equals the minimum fee. If the fees paid by the owners of livestock inspected at the sale, as shown as to number of head on the brand inspector's auction tally sheet, exceed the minimum fee, the actual amount of fees collected by the auction operator must be paid, rather than the minimum amount. (7-1-93)

033. BRAND INSPECTIONS AT SLAUGHTER PLANTS AND MOBILE SLAUGHTER UNITS.

01. Notification. All livestock slaughtering plants and mobile slaughtering units must notify the local brand inspector in advance of any livestock slaughtering operation. Brand inspection of the animals to be slaughtered must be accomplished not more than ninety-six (96) hours prior to slaughtering, whether for commercial purposes or for the owner's immediate family needs. (7-1-93)

02. Records. Such slaughtering operations must keep accurate records indicating the number of animals slaughtered, the source of the animals, ownership and the brands on such animals. Such records must be available for inspection by the brand inspector during regular business hours. (7-1-93)

03. Record of Ownership. In the event no brand inspector is available for inspection prior to slaughter of livestock, the owner of such livestock and the persons slaughtering the livestock must complete a record of ownership. Such record must be retained by the person who slaughtered the animal(s) until it may be submitted to the brand inspector. ()

04. Collection. In situations when a brand inspector cannot be present before the time of slaughter, slaughter plants and mobile slaughter units must collect the brand inspection fees for each animal slaughtered and remit the same to the brand inspector. (7-1-93)

05. Inspection. All slaughter plants and mobile slaughter units must permit a brand inspector to inspect the hides removed from slaughtered livestock. The hides must be kept for ten (10) days. (7-1-93)

034. SCHEDULE OF FEES FOR THE IDAHO STATE BRAND BOARD.

01. Fees. Fees authorized by the State Brand Board and to be collected by the State 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)	\$1.19	\$5.00
Idaho livestock to pasture (per head)	\$.60	\$2.50
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	\$1.19	\$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

()

02. Due and Payable. Pursuant to Section 25-1160, Idaho Code, 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. ()

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. ()

04. Equine Farm Service Fee. See Section 25-1160(2), Idaho Code. ()

035. -- 039. (RESERVED)

040. CLAIMS FOR FUNDS OR LIVESTOCK SUBJECT TO A HOLD ORDER.

01. Claim. Any person claiming to be the owner of any animal sold under Section 25-1174, Idaho Code, may claim the proceeds of the sale by filing a written and verified claim for such proceeds together with any supporting documents with the State Brand Inspector, 700 S. Stratford, Meridian, Idaho 83642. The claim must contain the following information: (3-30-01)

a. The name and address of the claimant; (7-1-93)

b. A short, plain statement of the matters asserted in the claim, including but not limited to: facts as to ownership, a description of the animal including brands and marks, the location of the animals when they were last in the possession of the claimant, and any other pertinent facts tending to establish the claim; (7-1-93)

c. A claim for the proceeds, or portion of the proceeds, of the sale; (7-1-93)

d. Names and addresses, if known, of any other potential claimants to the funds; and (7-1-93)

e. A request for a hearing, if desired. (7-1-93)

02. More Than One Claimant. Where there is more than one (1) claimant, each claimant must serve a complete copy of his claims upon the other claimants to the funds. (7-1-93)

03. Investigation. The State Brand Inspector will then investigate the matter and will determine whether the claimants can stipulate to the disposition of the funds. If a stipulation is reached, the State Brand Inspector or Deputy Brand Inspector will issue a release order on the livestock or the funds in accordance with the stipulation. (3-30-01)

04. Hearing. In the event that a stipulation is not possible, or where a claimant has requested in writing that a hearing be held, a hearing will be held by the State Brand Inspector, after giving thirty (30) days notice to all claimants. (7-1-93)

041. – 099. (RESERVED)

SUBCHAPTER B – IDAHO LIVESTOCK DEALER LICENSING

100. APPLICATION FEES.

01. Annual Fees. The annual fees cover the period from July 1 to June 30 of the next year. (7-1-93)

02. Livestock Dealer. One hundred dollars (\$100). ()

03. Representative. Thirty-five dollars (\$35). ()

101. FINANCIAL INFORMATION.

Financial information must be filed with an application and show the gross amount of livestock purchases for the previous year. (7-1-93)

102. LIVESTOCK DEALER BONDS.

A surety bond must be filed to support the application for a livestock dealer license as follows: ()

01. Bond. File a bond from an Idaho surety or Packers and Stockyards U.S.D.A. in the amount required under “Coverage” shown herein. ()

a. Coverage. To compute the required amount of bond coverage, divide the total dollar value of livestock purchased in Idaho during the preceding year, by one-half the number of days on which business was conducted. The number of days in any business year, for the purpose of this rule is two hundred sixty (260). Therefore, the divisor is one hundred thirty (130). The amount of bond coverage must be the next multiple of five thousand dollars (\$5,000) above the amount so determined. When the computation exceeds seventy-five thousand dollars (\$75,000) the amount of bond coverage need not exceed seventy-five thousand dollars (\$75,000) plus ten percent (10%) of the excess over seventy-five thousand dollars (\$75,000), raised to the next five thousand dollars (\$5,000) multiple. In no case shall the amount of bond coverage be less than ten thousand dollars (\$10,000). ()

b. Evidence. Provide evidence of an Idaho surety or bond filed with the Packers and Stockyards U.S.D.A in the amount required. (Subject to verification). ()

103. APPLICATION FOR A LICENSE TO REPRESENT A LICENSED LIVESTOCK DEALER.

A representative may only represent one (1) licensed livestock dealer at any one time. If an individual desires to act on behalf of more than one (1) dealer, he must apply for a regular livestock dealer license. The licensed livestock dealer who sponsors the applicant must sign and approve the application as well as agree to cover this representative under the dealer's bond. ()

104. LICENSE CERTIFICATES AND CARDS.

Upon approval of the application for a livestock dealer's license, the State Brand Inspector will issue a card to the licensed livestock dealer and representative(s). ()

105. NOTIFICATION REQUIRED.

The office of the state brand inspector must be notified within two (2) days of cancellation of a bond affecting the license of the livestock dealer or, termination of a representative that has been previously approved. ()

106. BRAND INSPECTOR TO REQUIRE DEALER LICENSE NUMBER.

Each licensed livestock dealer and each representative shall provide a livestock dealer license number at the time a brand inspection is made for cattle, horses, mules or asses. The name of the licensed livestock dealer or representative together with the appropriate certificate or card number will be placed on the brand inspection certificate in the space for the "buyer." ()

107. RULES APPLY TO OUT OF STATE BUYERS.

01. Application. A livestock dealer who resides outside the state of Idaho may operate as a livestock dealer or representative within the state of Idaho by filing a proper application for an Idaho livestock dealer's license by complying with the bond requirements and receive a certificate authorizing such out of state livestock dealer to purchase livestock within the state of Idaho. ()

02. Applicability. These rules apply to any livestock dealer purchasing livestock within the state of Idaho, whether or not such livestock as a destination within or outside the state of Idaho. (7-1-93)

108. -- 999. (RESERVED)

IDAPA 42 – IDAHO WHEAT COMMISSION

DOCKET NO. 42-0101-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Title 22 Chapter 33 of the Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 42.01.01, Rules of the Idaho Wheat Commission:

IDAPA 42

- IDAPA 42.01.01, *Rules of the Idaho Wheat Commission*

The rule making was prompted by the expiration of the rules. The Commission considered the Red Tape Reduction Act and the continued efforts to clarify and streamline the rules. Minor housekeeping edits are intended to simplify existing language and reduce or eliminate unnecessary restrictions.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), [Vol. 19-6SE, pages 6522 - 6526](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. The first purchaser of wheat shall collect and remit to the Idaho Wheat Commission the assessed tax on each bushel of wheat. This fee or charge is being imposed pursuant to Section 22-3315, 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:

This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Blaine Jacobson at (208) 334-2353.

Dated this 27th day of September, 2019.

Blaine Jacobson, Executive Director
Idaho Wheat Commission
821 W. State Street
Boise, ID 83706
Phone: (208) 334-2353
Fax: (208) 334-2505

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 22-3309(2)(i), 22-3315(1), and 22-3315(5) Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 42 rules of the Idaho Wheat Commission.

IDAPA 42

- IDAPA 42.01.01, *Rules of the Idaho Wheat Commission*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. The expiration of these rules would hamper the ability of Idaho wheat growers to properly market their wheat in export and domestic channels and would force a shutdown of certain variety research programs.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. An inability to collect the Wheat Tax would jeopardize funding for critical research programs, causing some of them to be suspended.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Wheat growers pay a Wheat Tax of \$.035/bushel of wheat marketed which is collected at point of first purchase and remitted to the Idaho Wheat Commission.

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 fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Blaine Jacobson, Executive Director of Idaho Wheat Commission at (208) 332-1522.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 42-0101-1900F

42.01.01 – RULES OF THE IDAHO WHEAT COMMISSION

000. LEGAL AUTHORITY.

In accordance with Section 22-3309, Idaho Code, the Idaho Wheat Commission has promulgated rules implementing the provisions of Title 22, Chapter 33, Idaho Code. (3-14-16)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 42.01.01, “Rules of the Idaho Wheat Commission,” IDAPA 42, Title 01, Chapter 01. (3-14-16)

02. Scope. Pursuant to Section 22-3301, Idaho Code, the rules of the Idaho Wheat Commission promote the public health and welfare of the citizens of our state by providing means for the protection, promotion, study, research, analysis and development of markets concerning the growing and marketing of Idaho wheat. (3-14-16)

002. -- 009. (RESERVED)

010. DEFINITIONS.

The definitions set forth in Section 22-3303, Idaho Code, apply to this chapter. (3-14-16)

011 -- 099. (RESERVED)

100. WHEAT TAX RETURN FORM.

01. Form. Wheat Tax Return forms are available at the Commission office for use by the first purchaser (buyer) of Idaho grown wheat in transmitting the Idaho wheat tax to the Commission. (3-14-16)

02. Procedures. At the end of each quarter, buyers shall execute the Wheat Tax Return (form). One (1) copy of the form and a check covering the entire amount of all wheat tax collections made during the quarter shall be mailed to the Executive Director of the Commission not later than the fifteenth day of the month at the end of each quarter (October 15, January 15, April 15, and July 15, respectively) of each calendar year. If no wheat has been purchased during any quarter, one (1) copy of the Wheat Tax Return form declaring that no wheat has been purchased, shall be signed and mailed to the Executive Director of the Commission. (3-14-16)

101. MIXTURES.

When the grain is purchased as wheat, the tax must be collected on the full net weight of the grain purchased. The tax must also be collected on any mixtures containing fifty percent (50%) or more of wheat. (3-14-16)

102. NET WEIGHT.

The tax must be collected on the net weight of the wheat after deduction of dockage and smut, and not upon the gross weight. (3-14-16)

103. TRUCKERS.

When a trucker purchases wheat from a grower, it is his responsibility under the law to deduct the tax and remit the amount to the Commission. The trucker in such instances is liable for the deduction of tax. Those who purchase wheat from such truckers are not directly liable for the deduction of tax, but buyers should make sure that the trucker has in fact purchased the wheat from a grower and is not the person who produced the wheat. (3-14-16)

104. WHEAT DELIVERED ON ACCOUNT OR EXCHANGED FOR OTHER WHEAT.

When wheat is delivered and credited to the account of a grower who is purchasing mixed feeds and other commodities, such transactions are really sales of the wheat delivered. In these cases, the buyer must deduct the tax from the amount credited to the grower and remit to the Commission just as though the sale had been made for cash. On the other hand, if the grower delivers the wheat in exchange for other wheat and no sale of the wheat is involved, the tax should not be deducted. (7-1-93)

105. END USE.

Idaho wheat is subject to tax when it is first sold or contracted into commercial channels. Beside traditional uses of wheat for flour milling, domestic and export, commercial channels include sale of wheat for use as feed, or any industrial or chemurgic use. (3-14-16)

106. -- 199. (RESERVED)

200. PENALTY FOR LATE PAYMENT OF WHEAT TAX.

01. Interest Penalties. Any person or firm who makes payment of wheat tax collections to the Commission at a date later than the fifteenth day of the month at the end of each quarter as prescribed in Subsection 100.02 of these rules, is subject to a late payment penalty of fifteen percent (15%) per annum on the amount due, unless that person or firm, within fifteen (15) days of the date, notifies the Commission in writing of any delay in payment and submits the payment of wheat tax collections within thirty (30) days of the prescribed due date.

(3-14-16)

02. Additional Penalties. The Commission is entitled, in addition to the penalty of fifteen percent (15%) per annum, to recover from the buyer, all costs, fees, and reasonable attorney's fees incurred in collecting the wheat tax collections and penalty as prescribed in Section 22-3315, Idaho Code.

(3-14-16)

201. -- 299. (RESERVED)

300. WHEAT UNDER COMMODITY CREDIT CORPORATION LOANS.

01. Payee. The Commission will be named as payee to receive three and one half cents (\$.3½) per bushel when the producer's note and loan agreement is executed by the Farm Service Agency (FSA). In such cases, the lending agency will send the tax directly to the Commission. When the producer's note and loan agreement shows that the tax has been deducted and sent to the Commission, it will not be necessary for the buyer to deduct the tax when the wheat is purchased.

(3-14-16)

02. Tax. Since the legislature has made the tax a lien prior to all other liens and encumbrances of the wheat, it is necessary for the grain buyer to make sure the tax has been paid in order to obtain clear title to the wheat. The tax should be deducted in all cases where there is not evidence that the tax was previously paid by a lending agency. In case errors occur and the tax is deducted by a lending agency and again deducted by a grain buyer, refund will be made by the Commission.

(3-14-16)

301. INVOICES AND RECORDS.

01. Invoices. Section 22-3316, Idaho Code, provides for invoices to be delivered to the grower for each purchase. The Wheat Commission is not providing a special form for this purpose and suggests that buyers use the final settlement vouchers of accounts of sale commonly used in Idaho. The amount of the Idaho state wheat tax deducted must be shown on each settlement voucher.

(7-1-93)

02. Vouchers. Buyers do not need to send the Commission copies of their settlement vouchers issued to individual growers but should keep copies available for examination by representatives of the Commission at a later date. Where it is not the practice to issue settlement vouchers of accounts of sale, buyers should be sure that they have accurate records of all wheat bought from growers and the amount of wheat bought from each grower.

(7-1-93)

03. Delivery of Documents to Commission. The first purchaser of wheat shall complete and return the Report of Tax, or equivalent, to the Commission office at the end of each production year (July 1 through June 30). The report is due on the same date as the final quarter wheat tax as specified in Section 22-3315(1), Idaho Code, and along with the following:

(3-28-18)

a. Name or names of the grower and seller; and

(3-28-18)

b. Address or addresses of the grower and seller.

(3-28-18)

302. -- 999. (RESERVED)

IDAPA 43 – IDAHO OILSEED COMMISSION

DOCKET NO. 43-0101-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 22-4716, Idaho Code.

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

This pending fee rule adopts the following existing and previously approved and codified chapters under IDAPA 43, rules Governing the Idaho Oilseed Commission.

IDAPA 43

- IDAPA 43.01.01, *Rules Governing the Idaho Oilseed Commission*

The rule making was prompted by the expiration of the rules. The Commission considered the Red Tape Reduction Act and the continued efforts to clarify and streamline the rules. Minor housekeeping edits are intended to simplify existing language, and reduce or eliminate unnecessary restrictions.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), [Vol. 19-6SE, pages 6529-6530](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. If a person is late in paying the assessment on oilseed sold or contacted for, the fee rule sets a late payment penalty of twelve percent (12%) per annum on the amount due.

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 fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Benjamin Kelly, (208) 888-0988.

Dated this 15th day of October, 2019.

Benjamin Kelly
Administrator
Idaho Oilseed Commission
55 SW 5th Ave, Suite 100
Meridian, Idaho 83642
(208) 888-0988

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 22-4716, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 43, rules Governing the Idaho Oilseed Commission.

IDAPA 43

- IDAPA 43.01.01, *Rules Governing the Idaho Oilseed Commission*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. The expiration of these rules would hamper the ability of oilseed growers to properly research, provide education and promote oilseed commodities grow in the state of Idaho and would halt a variety of research programs.

The fee or charge imposed by the rule is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. An inability to collect oilseed assessments would jeopardize funding for critical research programs, causing some of them to be suspended.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. If a person is late in paying the assessment on oilseed sold or contacted for, the fee rule sets a late payment penalty of twelve percent (12%) per annum on the amount due.

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 fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Benjamin Kelly at (208) 888-0988.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 43-0101-1900F

43.01.01 – RULES GOVERNING THE IDAHO OILSEED COMMISSION

000. LEGAL AUTHORITY.

The Idaho Oilseed Commission (hereinafter “Commission”) promulgates these rules implementing the provisions of Title 22, Chapter 47, Idaho Code. ()

001. TITLE AND SCOPE.

These rules are titled IDAPA 43.01.01, “Rules Governing the Idaho Oilseed Commission.” (7-1-97)

002. -- 009. (RESERVED)

010. FIRST PURCHASER RULES.

01. Designated Quarters. In accordance with Section 22-4716, Idaho Code, the Commission shall designate the quarters (three (3) month periods) for the purpose of collecting the tax imposed by such statute as follows: (7-1-97)

a. The Commission’s first quarter will begin on the first day of July and end the thirtieth day of September. The first quarter tax is due on or before the fifteenth day of October. (7-1-97)

b. The Commission’s second quarter will begin on the first day of October and end the thirty-first day of December. The second quarter tax is due on or before the fifteenth day of January. (7-1-97)

c. The Commission’s third quarter will begin on the first day of January and end the thirty-first day of March. The third quarter tax is due on or before the fifteenth day of April. (7-1-97)

d. The Commission’s fourth quarter will begin on the first day of April and end the thirtieth day of June. The fourth quarter tax is due on or before the fifteenth day of July. (7-1-97)

02. Oilseed Tax Invoice (Form Number 1). Pursuant to Section 22-4719, Idaho Code, the first purchaser of oilseed is required to complete and send the Oilseed Tax Invoice (Form Number 1) to the Commission office each and every quarter on or before the dates specified in these rules. Form Number 1 shall be on official forms as prescribed by the Commission and be provided to the first purchaser by the Commission and, at a minimum, require the following legible information: ()

a. The date of purchases and tax reporting period. (7-1-97)

b. The name and address of the oilseed seller and purchaser. (7-1-97)

c. The net weight of the oilseed sold in pounds or hundredweights. (7-1-97)

d. The total amount of tax deducted from Idaho oilseed producers by the purchaser. (7-1-97)

e. The total amount of tax due the Commission. (7-1-97)

03. Late Payment Penalty. Per Section 22-4716(4), Idaho Code, any person or firm who makes payment to the Commission at a date later than prescribed by law, is subject to a late payment penalty of twelve percent (12%) per annum on the amount due. ()

011. -- 499. (RESERVED)

500. REFUND APPLICATIONS.

01. Assessment Refund. In accordance with Section 22-4717, Idaho Code, any seller may request from the Commission in writing, within thirty (30) days after payment thereof, a refund of all or any portion of an assessment levied on oilseed and paid by such seller. Sellers requesting an oilseed assessment refund, as specified in Section 22-4717, Idaho Code, are required to complete and return a refund application form (Form Number 2) to the Commission office no later than thirty (30) days after payment of the assessment. Form Number 2 will be available through the Commission office. Written requests for refund application forms must be sent to the Commission office. (7-1-97)

02. Refund Application Form Number 2. Form Number 2 shall, at a minimum, require the following

information from the applicant: (7-1-97)

- a. The applicant's name and address. (7-1-97)
- b. The applicant's federal tax identification number. (7-1-97)
- c. The first purchaser or lender who deducted the assessment from the applicant's settlement. (7-1-97)
- d. The applicant's date of settlement. (7-1-97)
- e. The hundredweight of oilseed sold by the applicant. (7-1-97)
- f. The dollar amount of oilseed assessment deducted from the applicant's settlement. (7-1-97)
- g. The applicant shall enclose evidence with the application proving the oilseed assessment was deducted by providing a copy of the invoice (Form Number 1) for which the refund is claimed. In the absence of a copy of the invoice, the Commission may, but is not bound to, accept other satisfactory evidence of payment. ()

501. -- 999. (RESERVED)

IDAPA 46 – IDAHO BOARD OF VETERINARY MEDICINE

DOCKET NO. 46-0101-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-2105, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter under IDAPA 46.01.01, rules of the Board of Veterinary Medicine:

IDAPA 46

- 46.01.01, *Rules of the State of Idaho Board of Veterinary Medicine*

The text of the pending fee 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 June 19, 2019 Idaho Administrative Bulletin, [Vol. 19-6SE, pages 6540-6574](#). This rule change includes language cleanup, removal of redundancies, removal of barriers to renewal, and simplification of practice act in compliance with the Red Tape Reduction Act.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Included in the fees are: veterinary license fee, vet license renewal fees, veterinary late fee, reactivation fee, CVT certificate fee, CVT certificate renewal fee, CVT late fee, CVT reactivation fee, CET certificate fee, CET certificate renewal fee, CEA certificate fee, CEA certificate renewal fee. These fees or charges are being imposed pursuant to Section 54-2105, 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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Jeremy Brown at (208) 332-8588.

Dated this 16th day of October, 2019.

Jeremy Brown
Executive Director
Idaho Board of Veterinary Medicine
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**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-2105(8)(m), Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 46, rules of the Idaho Board of Veterinary Medicine:

IDAPA 46

- 46.01.01, *Rules of the State of Idaho Board of Veterinary Medicine*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. We could see numerous adverse effects if the Board of Veterinary Medicines rules are not reauthorized. For example, the dairy and cattle industries in the state might be severely hindered because of federal regulations involving food supply restrictions due to zoonotic disease transmission. Without a functional Board, veterinary licenses might not be issued, which prevents Idaho veterinarians from acquiring a Board of Pharmacy license and a DEA permit; therefore, any Idaho veterinarian could not order necessary drugs.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. If the rules are not reauthorized the Board is rendered inert. Without an adequate budget many, if not all, Board functions would cease, because it is largely funded through licensing fees and carries a cash reserve of less than a year's budget.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. The Board's fees include: Original licensing fees, license renewal fees, fines, and miscellaneous service fees for veterinarians, veterinary technicians, certified euthanasia technicians, and certified euthanasia agencies.

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 fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Jeremy Brown at (208) 332-8588.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 46-0101-1900F

46.01.01 – 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. (7-1-97)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is the “Rules of the State of Idaho Board of Veterinary Medicine,” hereinafter referred to in these rules as the Board. (3-18-99)

02. Scope. These 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. The official citation of this chapter is IDAPA 46.01.01, et seq. For example, this Section’s citation is IDAPA 46.01.01.001. (3-18-99)

002. -- 004. (RESERVED)

005. 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. ()

006. -- 009. (RESERVED)

010. LICENSE.

Change of address. It is the responsibility of each licensed veterinarian to notify the Board office of any change of address. Failure to receive a renewal form from the Board does not constitute an excuse for failure to pay the renewal fee and fulfill the requirements of Section 54-2112, Idaho Code. ()

011. FEES.

Fees are established as authorized under Title 54, Chapter 21, Idaho Code, by action of the Board as follows:

01. Fees.

	New	Temporary Permit	Active Renewal	Inactive Renewal	Late/Reinstatement	Re-Activation Fee
Veterinary License	\$317	\$150	\$175	\$50	\$200	\$150
Certified Veterinary Technician	\$167	\$50	\$75	\$25	\$50	\$50
Certified Euthanasia Agency	\$100		\$200		\$50	
Certified Euthanasia Technician	\$100		\$100		\$50	

()

02. Administrative Services.

Duplicate Wall License/Certificate	\$25
Veterinary License Verification	\$20

()

012. MANDATORY CONTINUING VETERINARY EDUCATION.

01. Statement of Purpose. It is of primary importance to the public that veterinarians continue their veterinary education throughout the period of their active practice of veterinary medicine. These rules establish the minimum continuing veterinary education requirements necessary for veterinarians to maintain a license to engage in the practice of veterinary medicine in the state of Idaho. (7-1-97)

02. Approved Courses. Courses and providers accredited by the American Association of Veterinary

State Board's Continuing Education Registry and courses and providers approved by the Board. ()

03. Education Requirements. (7-1-93)

a. Minimum requirement. Beginning July 1 after the initial license is issued all active veterinarian in the state of Idaho shall complete a minimum of twenty (20) credit hours in every two-year period following the date of their admission to the practice of veterinary medicine in this state. ()

b. Credit requirements. The following are the minimum and maximum credits that may be earned for each reporting period and the number of credits that may be obtained by participating in on-line or correspondence courses. (3-30-07)

i. A minimum of fourteen (14) hours of continuing education in veterinary medicine, surgery, and dentistry. (3-30-07)

ii. A maximum of six (6) hours of continuing education in management. (3-30-07)

iii. Veterinarians may obtain a maximum of fifteen (15) credit hours through approved on-line or correspondence courses. (3-30-07)

c. Retention of Original Documentation. The supporting documentation for compliance with continuing education requirements shall not be submitted with the report. Rather, the veterinarian needs to retain original documentation of attendance or completion of twenty (20) credit hours of approved courses at least until December 31 following the two-year (2) renewal period covered by the courses. (3-25-16)

d. Audit. Within thirty (30) days of notification of an audit, a veterinarian shall provide to the Board all documentation supporting attendance or completion of the courses reported. ()

04. Credit for Attendance. ()

a. Credits can be earned by the active member in attendance at an accredited, domestic or foreign, course. No credit will be given for: ()

i. Time spent in introductory remarks, coffee and lunch breaks, business meetings or other activities not involving the educational aspects of the course. (3-18-99)

ii. Any course attended before admission to practice veterinary medicine in Idaho. (7-1-93)

iii. Journal and magazine articles, videos or correspondence courses, unless specially approved by the Board. (7-1-97)

b. In cases of solo presentation, the presenter of an approved course shall be entitled to claim one (1) credit hour for each fifty (50) minutes of actual course instruction. By way of limitation, in no case shall the presenter be allowed more than eight (8) credit hours for any particular course or substantially related topic during the applicable two (2) year reporting period, regardless of how many times the course is offered or given. (3-20-14)

c. In cases of panel presentations, the number of continuing credit hours each panel member is entitled to claim shall be calculated by multiplying the actual number of course hours by two (2) and dividing that number by the number of panel members involved. (3-20-14)

d. Carryover Credit. No credit for attending approved courses in continuing veterinary education shall be applicable to any reporting period other than that during which the credit is actually earned. (7-1-97)

013. -- 099. (RESERVED)

100. CERTIFICATION OF VETERINARY TECHNICIANS.

01. 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. ()

02. Application for Certification -- Contents -- Examinations. An individual desiring to be certified as a veterinary technician shall make written application to the Board upon a form furnished by the Board. Applicants for certified veterinary technician in Idaho should be of good moral character and reputation. 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. (4-2-08)

b. Documentation of education/training/experience as follows: (3-30-01)

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; (3-29-10)

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 (3-29-10)

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. (4-11-15)

c. 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. (3-30-01)

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. (3-30-01)

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. (3-30-01)

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, at three-month intervals. (3-29-10)

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. TEMPORARY CERTIFICATION.

The Board may, at its discretion, issue a temporary certification. The temporary certification shall be valid for one (1) year or until the next certification review by the Board, whichever comes first, and under no circumstances can a second temporary certification be issued to the same person. A temporary certification will not be issued to any applicant whose certification, license or registration has been revoked in any state for a reason other than nonpayment of fees or failure to fulfill the renewal requirements. An applicant granted a temporary certification shall provide notarized verification of twelve (12) months of active practice during the past year as a veterinary technician in another state or perform all veterinary technology procedures under the direct supervision of an Idaho licensed veterinarian. ()

01. Certification Requirements. Requirements for a temporary certification shall be the same as for the original certification. (3-30-01)

02. Responsibility. Nothing herein shall be construed to relieve the temporary certificate holder of any responsibility or liability for any of their own acts and omissions. (3-30-01)

102. MANDATORY CONTINUING EDUCATION FOR CERTIFIED VETERINARY TECHNICIANS.

01. Statement of Purpose. It is of primary importance to the public that certified veterinary technicians continue their veterinary technology education throughout the period of their active practice of veterinary technology. These rules establish the minimum continuing veterinary technology education requirements necessary for certified veterinary technicians to maintain a license to engage in the practice of veterinary technology in Idaho. ()

02. Approved Courses. Includes courses and providers listed on the American Association of Veterinary State Board's Continuing Education Registry and courses and providers approved by the Board. ()

03. Education Requirements. (3-29-17)

a. Minimum requirement. Each active certified veterinary technician in Idaho shall complete a minimum of fourteen (14) credit hours of accredited continuing veterinary technology education activity in each and every two-year period following the date of their admission to the practice of veterinary technology in Idaho. ()

b. Credit requirements. The following are minimum and maximum credits that may be earned for each reporting period and the number of credits that may be obtained by participating in on-line or correspondence courses. (3-29-17)

i. A minimum of ten (10) hours of continuing education in veterinary technology. (3-29-17)

ii. A maximum of four (4) hours of continuing education in management. (3-29-17)

c. Attendance period. The attendance period is based upon the fiscal year (July 1 through June 30). (3-29-17)

i. Retention of original documentation. The supporting documentation for compliance with continuing education requirements shall not be submitted with the report but rather, retained with the certified veterinary technician at least until December 31 following the two-year (2) renewal period covered by the course. ()

ii. Within thirty (30) days of notification of an audit, a certified veterinary technician shall provide to the Board all documentation supporting completion of the courses reported. (3-29-17)

04. Credit for Attendance. Continuing veterinary technology education credits may be earned by attending or presenting approved continuing veterinary technology education. (3-29-17)

a. Credits. One (1) credit hour will be given for each fifty (50) minutes actually spent by the active certificant in attendance at an accredited, domestic or foreign, course. No credit will be given for: ()

i. Time spent in introductory remarks, coffee and lunch breaks, business meetings or other activities not involving the educational aspects of the courses; (3-29-17)

ii. Any course attended before admission to practice veterinary technology in Idaho; or (3-29-17)

iii. Journal and magazine articles, videos or correspondence courses, unless specially approved by the Board. (3-29-17)

b. In cases of solo presentation, the presenter of an approved course shall be entitled to claim one (1) credit hour for each fifty (50) minutes of actual course instruction. By way of limitation, in no case shall the presenter be allowed more than eight (8) credit hours for any particular course or substantially related topic during the applicable two-year reporting period, regardless of how many times the course is offered or given. (3-29-17)

c. In cases of panel presentations, the number of continuing credit hours each panel member is entitled to claim shall be calculated by multiplying the actual number of course hours by two (2) and dividing that number by the number of panel members involved. (3-29-17)

d. Carryover Credit. No credit for attending approved courses in continuing veterinary technology education is applicable to any reporting period other than that during which the credit is actually earned. (3-29-17)

103. SUPERVISING VETERINARIANS.

01. Statement of Purpose. Veterinarians licensed under the provisions of Title 54, Chapter 21, Idaho Code, are responsible for all temporary licensees and temporary certification holders, 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. (3-29-10)

02. A Supervising Veterinarian Shall: (3-30-01)

a. Provide direct supervision for all procedures pertaining to the practice of veterinary medicine that are delegated to a certified veterinary technician, a veterinary technician working under a temporary certification, an assistant or any others with the exception of: (3-29-10)

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. (3-30-01)

ii. Previously prescribed antibiotics and medications, which may be administered, dispensed, and delivered under the indirect supervision of the veterinarian. Previously prescribed antibiotics and medications 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. (3-20-14)

iii. Emergency situations. In these situations, in order to stabilize the animal, 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. (3-29-10)

c. Bear legal responsibility for the health, safety and welfare of the animal patient that the temporary licensee, temporary certification holder, certified veterinary technician, assistant, or any others serves. (3-29-10)

d. Not delegate an animal health care task to an unqualified individual. (3-30-01)

e. Make all decisions relating to the diagnosis, treatment, management, and future disposition of an animal patient. (3-30-01)

f. Have examined the animal patient prior to the delegation of any animal health care task to a certified veterinary technician, temporary certification holder, 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. (3-30-01)

g. Diagnose and perform operative dentistry, oral surgery, and teeth 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. (3-30-01)

03. Limitations on Supervising Veterinarians. Unless otherwise provided by law or rule, a supervising veterinarian shall not authorize a certified veterinary technician, a veterinary technician working under a temporary certification, an assistant or anyone else, other than a licensed veterinarian or a veterinarian holding a valid temporary permit to perform the following functions: (3-29-10)

- a. Surgery; (7-1-93)
- b. Diagnosis and prognosis of animal disease; (7-1-93)
- c. Prescribing drugs, medicines and appliances; or (3-30-01)
- d. Diagnosis and performance of procedures that constitute operative dentistry/oral surgery as defined by Section 54-2103(13)(b), Idaho Code. (3-30-01)

104. VETERINARY TECHNICIAN CERTIFICATION -- RENEWAL.

Change of address. It is the responsibility of each certified veterinary technician to notify the Board office of any change of address. Failure to receive a renewal form from the Board does not constitute an excuse for failure to pay the renewal fee and completion of the prescribed form. ()

105. 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, 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 any of the following reasons: (3-30-01)

01. Fraud, Misrepresentation, or Deception. The employment of fraud, misrepresentation or deception in obtaining certification. (3-30-01)

02. Unethical or Unprofessional Conduct. Unethical or unprofessional conduct is conduct that includes, but is not limited to, any of the following: (3-30-01)

- a. False or misleading advertising or solicitation; (3-30-01)
- b. 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; (3-29-10)
- c. Working in conjunction with any unlicensed or uncertified person who is practicing veterinary medicine or veterinary technology; (3-30-01)
- d. Failing to apply sanitary methods or procedures in the treatment of any animal; (3-30-01)
- e. Physically abusing a patient or failing to conform to the currently accepted standards of care in the field of veterinary technology for any animal under their care; (3-30-01)
- f. 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; (3-30-01)
- g. 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; ()

h. Intentionally performing a duty, task or procedure in the field of veterinary technology for which the individual is not qualified; (3-30-01)

i. Swearing falsely in any testimony or affidavits relating to, or in the course of, the practice of veterinary technology. (3-30-01)

j. Engaging in conduct of a character likely to deceive or defraud the public. (3-30-01)

03. 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. (3-30-01)

04. 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 (3-30-01)

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. (3-30-01)

05. 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. (3-30-01)

06. 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. (3-30-01)

07. Malpractice or Negligence. Malpractice or negligence, in the practice of veterinary technology, which includes, but is not limited to: (3-30-01)

a. Treatment in a manner contrary to accepted practices in veterinary technology and with injurious results; (3-30-01)

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; (3-30-01)

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 (3-30-01)

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. (3-30-01)

08. 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. (3-30-01)

09. 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. (3-30-01)

10. Continuing Education. Failure to comply with the continuing education requirements outlined by Board rules. (3-30-01)

11. Failure to Cooperate. (3-30-01)

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. (3-30-01)

b. Failure to comply with the terms of any order, negotiated settlement or probationary agreement of the Board. (3-30-01)

c. Failure to comply with the terms for certification renewal or to timely pay certification renewal fees as specified by Section 104 of these rules. (3-30-01)

12. Aiding or Abetting. Knowingly aiding or abetting an unlicensed or uncertified person to practice veterinary medicine or veterinary technology. (3-30-01)

13. Current Certification. Practicing as a certified veterinary technician without a current certification. (3-30-01)

14. Acceptance of Fees. Accepting fees for veterinary technician services from a client. (3-30-01)

15. Unlawful Practice. Representing oneself as a doctor of veterinary medicine, which constitutes the unauthorized practice of veterinary medicine in violation of Title 54, Chapter 21, Idaho Code. (3-30-01)

16. 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. (3-30-01)

106. -- 149. (RESERVED)

150. VALID VETERINARIAN/CLIENT/PATIENT RELATIONSHIP.

An appropriate veterinarian/client/patient relationship will exist when: (7-1-97)

01. 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. (7-1-97)

02. 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 the last twelve (12) months. (4-7-11)

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. (3-30-07)

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; (4-5-00)

b. Rendering professional service in association with a person who is not licensed and does not hold a temporary permit; or (4-5-00)

c. Sharing fees with any person, except a licensed veterinarian, for services actually performed. (4-5-00)

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. (4-5-00)

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. (3-30-01)

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. (3-30-07)

06. Association with Others. Accepting fees from the providers of animal services or products when referring clients to such providers. (4-5-00)

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. (3-30-01)

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. (3-30-07)

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. ()

08. 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. ()

09. Consent for Transporting. Obtain written consent from a patient's owner or other caretaker before 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. ()

10. Patient Record. Maintain a patient record for each animal or herd that accurately reflects the veterinary problems and interventions and conforms to the standards set forth in Section 154 of these rules. ()

11. Supervision. Provide the proper form of supervision required for persons to whom veterinary functions are delegated or assigned. ()

12. Cooperation with Authorities. Cooperate with authorities in the investigation of the incompetent, unethical or illegal practice of veterinary medicine by any individual including another veterinarian. ()

13. Refusal to Render Services. 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. ()

14. Improper Disposal of Controlled Substances. Dispose of all controlled substances and the containers, instruments and equipment used in their administration in conformance with the requirements of the Code of Federal Regulations and the Idaho Board of Pharmacy law and rules. ()

153. STANDARDS OF PRACTICE.
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. ()

02. 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 in the last ninety (90) days, 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 as defined by Section 150 of these rules, 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 shall dispense or distribute such drug or medicine in good faith, within the context of a valid veterinarian/client/patient relationship as defined by Section 150 of these rules, and shall, 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 in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act, 21 CFR 201.105, affix or cause to be affixed to the container containing the drug or medicine a label indicating: ()

- a. The date on which such drug or medicine is dispensed; (4-5-00)
- b. The name of the owner and patient; (4-2-08)
- c. The last name of the person dispensing such drug or medicine; (4-5-00)
- d. Directions for use thereof, including dosage and quantity; and (4-5-00)
- e. The proprietary or generic name of the drug or medicine. (4-5-00)

05. Anesthesia Standards. All anesthetized animals shall be appropriately monitored and under supervision. ()

154. RECORD KEEPING STANDARDS.

Every veterinarian shall maintain detailed daily medical records of the animals treated that meet the professional standards set out in Section 153 of these rules. These records may be computerized and shall be readily retrievable to be inspected, duplicated, or submitted when requested by the Board. All records, including electronic records, shall be safeguarded against loss, defacement, tampering, and use by unauthorized personnel. If changes are made to any records (either hard-copy or electronic), the records must clearly reflect what the change is, who made the change, when the change was made, and why. In the case of electronic records, the veterinarian shall keep either a duplicate hard-copy record or a back-up electronic record. 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: (7-1-97)
 - a. Name, address and phone number of the animal's owner or other caretaker. (7-1-97)
 - b. Name and description, sex (if readily determinable), breed and age of animal; or description of group. (7-1-97)
 - c. Dates (beginning and ending) of custody of the animal. (7-1-97)
 - d. A short history of the animal's condition as it pertains to the animal's medical status. (7-1-97)
 - 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. (3-29-10)

g. Diagnostic and laboratory tests or techniques utilized, and results of each. (7-1-97)

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. (3-30-07)

03. Postoperative Instructions. Postoperative home-care instructions shall be provided in writing and be noted in the medical record. (3-30-07)

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. ()

05. Ownership of Medical Records. Medical records 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. Records shall be supplied within three (3) business days, counting the day of the request if a business day. ()

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. (4-2-08)

07. Estimates. A veterinarian shall make available to each client a written estimate on request. (3-30-07)

08. Controlled Substances and Prescription or Legend Drugs. A controlled substance is any substance classified by the federal Food and Drug Administration or the Idaho Board of Pharmacy in Schedules I through V of the state or federal Controlled Substances Act, Title 37, Chapter 27, Idaho Code, or 21 CFR 1308. A prescription or legend drug is any drug that under federal law is required, prior to being dispensed or delivered, to be labeled with one (1) of the following statements: "Caution federal law prohibits dispensing without a prescription"; or "RX Only"; or "Caution: Federal law restricts this drug to used by or on the order of a licensed veterinarian"; or a drug which is required by any applicable federal or state law or regulation or rule to be dispensed on prescription only, or is restricted to use by practitioners only. A veterinarian shall only dispense or distribute a controlled substance or prescription or legend drug within the context of a valid veterinarian/client/patient relationship as defined by Section 150 of these rules. (3-30-01)

a. Records shall be kept in compliance with all federal and state laws and be recorded in the patient records along with the initials of the veterinarian who authorized the dispensing or distribution of the controlled substances, prescription, or legend drugs. ()

b. A separate inventory record shall be kept for each controlled substance by name and strength including: ()

i. Records of the receipt, which include all information required by federal law, the date of the receipt, the amount received, the source of receipt, and the invoice number. (7-1-97)

ii. Records of dispensing, which include the date the controlled substance was dispensed, the amount dispensed, the animal's name, identification of the patient record, identification of the person who dispensed the drug, identification of the veterinarian who supervised the dispensing and any other information required by federal law. (7-1-97)

c. Records for all dispensed or distributed prescription or legend drugs shall be maintained in the individual patient or herd record and include the date the drug was dispensed or distribution was authorized, the amount dispensed or distributed, identification of the person who dispensed or authorized distribution of the drug, identification of the veterinarian who supervised the dispensing and any other information required by federal or state law, regulation or rule. (3-30-01)

d. Prescription drug order means a lawful written or verbal order of a veterinarian for a drug. (3-30-01)

i. When prescription drug orders are issued by a licensed veterinarian to be distributed to the animal's owner or legal caretaker by a retail veterinary drug outlet, all orders for prescription or legend drugs shall be written on an official numbered three (3) part order form available through the Idaho Department of Agriculture. The veterinarian shall retain the second copy in their medical record with the original and one (1) copy sent to the retail veterinary drug outlet. The retail veterinary drug outlet shall retain the original and attach the copy of the original to the order for delivery to the animal's owner or legal caretaker. ()

ii. Under no circumstances shall a prescription or legend drug be distributed by a retail veterinary drug outlet to an animal's owner or legal caretaker prior to the issuance of either a written or oral prescription drug order from the veterinarian: (3-30-01)

(1) When a written prescription drug order from the veterinarian has been issued to a retail veterinary drug outlet, a copy of the veterinarian's original numbered prescription drug order shall be attached to the prescription or legend drugs that are delivered to the animal's owner or legal caretaker. (5-8-09)

(2) When a retail veterinary drug outlet receives an oral prescription drug order from the veterinarian, the oral order shall be promptly reduced to writing on a Department of Agriculture unnumbered telephone drug order blank. A copy of this completed form shall be attached to the prescription or legend drugs that are delivered to the animal(s)'s owner or legal caretaker. (5-8-09)

(3) When a veterinarian issues an oral prescription drug order to a retail veterinary drug outlet, the oral order shall be followed by a written prescription drug order signed by the veterinarian using the official numbered three (3) part order form and procedures required under these rules. The written order shall be sent promptly by the veterinarian so that it is received by the retail veterinary drug outlet no later than seven (7) days after the retail veterinary drug outlet receives the oral order. The written confirmation order may be hand-delivered, mailed, faxed, attached to an e-mail, or otherwise properly delivered to the retail veterinary drug outlet. ()

e. When prescription or legend drugs are dispensed, the labeling on all containers shall be in compliance with the requirements of Paragraph 153.01.d. of these rules. (3-30-01)

f. When controlled substances are dispensed, all containers shall be properly labeled with: (4-5-00)

i. The clinic's name, address, and phone number; (4-5-00)

ii. The name of the client and patient; (3-30-01)

iii. The drug name and quantity; and (3-30-01)

iv. The directions for use, including dosage and quantity. (3-30-01)

g. All controlled substances shall be stored, dispensed, and disposed of in accordance with the requirements of the Uniform Controlled Substances Law and Code of Federal Regulations. (3-29-10)

09. Return or Disposal of Expired Pharmaceuticals and Biologicals. Except for controlled substances, which shall be disposed of in accordance with Paragraph 154.08.g. of these rules, all pharmaceuticals and biologicals that have exceeded their expiration date shall be removed from inventory and disposed of appropriately. (3-29-10)

155. -- 199. (RESERVED)

200. COMMITTEE ON HUMANE EUTHANASIA.

Pursuant to Section 54-2105(8), Idaho Code, a Committee on Humane Euthanasia (COHE) is established for the purpose of training, examining, and certifying euthanasia agencies and euthanasia technicians. The COHE will consist 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) as defined by Section 54-2103(9), Idaho Code, and employed by a certified euthanasia agency as defined by Section 54-2103(8), Idaho Code, or be an Idaho licensed veterinarian (3-29-17)

01. Term. Each member will 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: (7-1-93)

a. Coordinate and provide euthanasia training classes as needed. (7-1-97)

b. Inspect and certify agencies. (3-30-01)

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). (3-30-01)

d. Conduct written and practical examinations for applicants applying for certification and authorize certification through the Board. (3-30-01)

e. Recommend suspension or revocation of a certification when necessary. (3-30-01)

03. Compensation. Members of the COHE will be compensated as provided by Section 59-509(n), Idaho Code. (7-1-97)

201. METHODS OF EUTHANASIA, PRE-EUTHANASIA SEDATION, AND CHEMICAL CAPTURE.

Methods approved by the COHE and used for the purpose of humanely euthanizing, sedating, or remote chemical capturing injured, sick, homeless, or unwanted pets and animals: (4-7-11)

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. (4-7-11)

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. (4-7-11)

03. Remote Chemical Capture Restraint 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. Such remote chemical capture restraint drugs shall be limited to those approved in writing by the COHE and the Board. A list of approved remote chemical capture restraint drugs is on file at the

Board office. Use of remote chemical capture is limited to CEAs and CETs who are classified as law enforcement agencies or law enforcement personnel who have successfully completed a Board-approved course in remote chemical capture. (4-7-11)

202. PROCUREMENT AND ADMINISTRATION OF APPROVED 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: (3-30-01)

01. 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. (3-30-01)

02. 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. (3-30-01)

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. (5-8-09)

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. (3-30-01)

203. FEES.

01. Payment. All fees shall be paid prior to training, examination, certification, and renewal. (3-30-01)

02. Refunds. Fees are non-refundable. (7-1-93)

204. 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 and meet the following criteria: (4-4-13)

01. Approved Drugs. Approved drugs shall be kept in a locked cabinet securely attached to the building in which it is housed. (3-30-01)

a. Each agency shall maintain a current written list of CET(s). (4-4-13)

b. Access to the drug storage cabinet shall be limited to licensed veterinary supervisors and assigned CET. Such persons shall 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. (3-30-01)

c. All approved drugs shall be prepared according to the manufacturer's instructions. (7-1-97)

d. Needles in a range of sizes that are the appropriate gauge for the intended use. Needles shall be of medical quality, and not be used if they are dirty, clogged, barbed, or might otherwise cause unnecessary discomfort for the animal. (4-4-13)

e. Needles and syringes shall not be reused. (4-4-13)

- f.** Three (3) different syringe sizes are required: three (3), six (6), and twelve (12) cc. An agency may have other syringe sizes according to its needs. Syringes shall be of medical quality. (4-4-13)
- g.** Spent needles and syringes shall be disposed of in a manner that makes their re-use impossible. (7-1-93)
- 02. Proper Storage.** When no CET is on duty, proper storage for approved drugs is in a locked storage cabinet. (3-30-01)
- a.** The cabinet shall be of such material and construction that it will withstand strong attempts to break into it. A metal safe is preferred. (7-1-93)
- b.** The cabinet shall be securely attached to the building in which it is housed. (7-1-93)
- c.** The temperature and environment in the storage cabinet shall be adequate to assure the proper keeping of the drug. (7-1-93)
- 03. Proper Labeling.** Upon removal from the shipment carton, each individual container of an approved drug shall 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. (4-4-13)
- 04. 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 storage cabinet. When approved drugs are transported in a vehicle, the temporary storage cabinet shall be securely bolted to the vehicle. The cabinet shall be constructed of any strong material and be securely locked when not in use. 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. (4-4-13)
- 05. Record Keeping.** Proper record keeping of approved drugs shall include the following: (4-4-13)
- 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. (4-4-13)
- b.** Administration records showing the date an approved drug was: (4-4-13)
- i.** Administered; (4-4-13)
- ii.** Weight and species of animal; (4-4-13)
- iii.** Dosage of each drug administered for pre-euthanasia sedation, euthanasia, and remote chemical capture restraint; (4-4-13)
- iv.** Identification of the person who dispensed the approved drugs; and, if applicable; (4-4-13)
- v.** Identification of the veterinarian or CET who supervised the dispensing shall be maintained. (4-4-13)
- c.** Records of wastage shall be maintained and signed by the CET administering the approved drug and the CET responsible for security. (4-4-13)
- d.** A weekly record of the approved drugs on hand, minus the amounts withdrawn for administration, signed by the CET responsible for security. (4-4-13)
- e.** Disposal records of any expired or unwanted approved drugs shall be maintained. Disposal of unwanted drugs and the containers, instruments, and equipment used in the administration of the approved drugs shall be in conformance with the Idaho Board of Pharmacy law and rules and the Code of Federal Regulations. (4-4-13)

- 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 from the calendar date on the record. ()
- 06. Proper Sanitation.** The euthanasia area shall be clean and regularly disinfected. (3-30-01)
- 07. Other Site Conditions.** Other site conditions relevant to the proper euthanasia environment. (7-1-93)
- a. Each agency shall have a specific area designated for euthanasia that is: ()
- i. A separate room; or (7-1-93)
- ii. An area that is physically separated from the rest of the agency by a wall, barrier or other divider; or (7-1-93)
- iii. An area that is not used for any other purpose while animals are being euthanized. (7-1-93)
- b. The euthanasia area shall meet the following minimum standards: (7-1-93)
- i. Lighting shall be bright and even; (7-1-93)
- ii. The air temperature shall be within a reasonable comfort range for both the personnel and animals. A minimum sixty (60) degrees F and maximum ninety (90) degrees F is recommended; (7-1-93)
- iii. The area shall have adequate ventilation that prevents the accumulation of odors. At least one (1) exhaust fan vented directly to the outside is recommended; and (7-1-93)
- iv. The floor of the area shall provide dry, non-slip footing to prevent accidents. (7-1-93)
- c. The euthanasia area shall have the following equipment: (7-1-93)
- i. A table or other work area where animals can be handled while being euthanized. (7-1-93)
- ii. A cabinet, table or work bench where the drugs, needles, syringes and clippers can be placed. (7-1-93)
- d. The following items and materials shall either be kept in the euthanasia area or brought to the area each time an animal is euthanized: (3-29-10)
- i. A first aid kit that meets minimum first aid supply standards; (7-1-93)
- ii. One (1) or more tourniquets; (7-1-93)
- iii. Standard electric clippers with No. 40 blade; (7-1-93)
- iv. Animal control stick for dogs and animal net for cats (if the agency handles cats); (7-1-93)
- v. Stethoscope; (7-1-93)
- vi. Disinfectant. (3-29-10)
- 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. (3-29-10)
- e. All equipment shall be in good working order. (7-1-93)

08. Equipment Stored. All equipment shall be stored so that it does not create a safety hazard for the personnel. All drugs and other chemical agents used in the euthanasia area shall be clearly labeled as specified by Subsection 204.03 of these rules. (3-30-01)

09. 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. (3-30-01)

205. CERTIFIED EUTHANASIA TECHNICIAN.

01. Training and Examinations. The COHE or the Board will develop training sessions and materials that include, but are not limited to, the following topics: (3-30-01)

- a. Euthanasia:** (3-30-01)
 - i. Animal anatomy; (3-30-01)
 - ii. Proper animal handling to ease trauma and stress; (3-30-01)
 - iii. Dosages of chemical agents, record keeping and documentation of usage, storage, handling, and disposal of out-dated drugs and their containers, instruments and equipment used in their administration in accordance with the Idaho Board of Pharmacy law and rules and the Code of Federal Regulations; (3-30-01)
 - iv. Proper injection techniques; and (3-30-01)
 - v. Proper use and handling of approved euthanasia drugs and equipment; (3-30-01)
 - vi. Examination. Following the euthanasia training, a written examination covering the training topics will be given. (3-20-14)
- b. Remote Chemical Capture:** (3-30-01)
 - i. An overview of remote chemical capture; (3-30-01)
 - ii. Description and basic mechanism of action of approved drugs; (3-30-01)
 - iii. Laws, regulations and rules governing remote chemical capture; (3-30-01)
 - iv. Post-injection care; (3-30-01)
 - v. Proper use and handling of approved restraint drugs and equipment; (3-30-01)
 - vi. Human safety; (3-30-01)
 - vii. Tactics and strategy; and (3-30-01)
 - viii. Delivery systems and equipment. (3-30-01)

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: (4-7-11)

- a. Demonstrate competency in euthanasia techniques in the presence of a COHE or Board member, or a person approved by the Board:** (4-4-13)
 - 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; (3-30-01)

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. (4-4-13)

(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; (4-4-13)

(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. (4-4-13)

(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. (4-4-13)

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; (4-4-13)

iv. Oral administration of approved euthanasia drugs is permitted for any animal that cannot be captured or restrained without serious danger to human safety; (4-4-13)

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; (4-4-13)

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; (4-4-13)

iii. The species and approximate weight of each animal administered a drug; (3-30-01)

iv. The amount of the drug that was administered; (3-30-01)

v. The date the drug was administered; (4-4-13)

vi. The signature of the CET who administered the drug; (3-30-01)

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 (4-4-13)

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. (3-30-01)

c. Demonstrate understanding and concern for the needs and humane treatment of individual animals: (4-7-11)

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; (4-7-11)

ii. The use of control sticks and other similar devices shall be limited to fractious or potentially dangerous animals; and (3-30-01)

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: (4-7-11)

i. Rigor mortis; or (7-1-93)

ii. Complete lack of heartbeat (as checked with a stethoscope), complete lack of respiration, and complete lack of corneal and palpebral reflexes. (4-2-08)

e. Demonstrate ability to communicate with handlers during the euthanasia process. (3-18-99)

03. Certification. (3-20-14)

a. An individual shall not be certified as a CET until such time as he has successfully passed all of the following: (3-20-14)

i. A euthanasia written examination; (3-20-14)

ii. A practical or clinical examination; and (3-20-14)

iii. An Idaho euthanasia jurisprudence examination. (3-20-14)

b. The euthanasia written examination is the “written examination” referenced in Subparagraph 205.01.a.vii. of this rule. 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. (3-20-14)

c. 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. (3-20-14)

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. (3-20-14)

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. (3-20-14)

f. An individual who has not passed the written examination may not serve as a euthanasia technician. (3-20-14)

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. (3-20-14)

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. (4-7-11)

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. (3-29-10)

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. (4-7-11)

k. All certifications expire on July 1 of each year. (4-4-13)

04. Certification Renewal. (4-7-11)

a. 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. (4-7-11)

b. In addition to the above euthanasia training recertification requirement, CETs classified as law enforcement personnel who use chemical capture must recertify in remote chemical capture every third year following their original remote chemical capture certification. (4-7-11)

05. Duties. The duties of a CET include, but are not limited to: (7-1-97)

a. Preparing animals for euthanasia; (7-1-97)

b. Accurately recording the dosages for drugs that are administered and amounts for drugs wasted; (3-30-01)

c. Ordering supplies; (7-1-93)

d. Maintaining the security of all controlled substances and other approved drugs; (3-30-01)

e. Directly supervising probationary CET; (7-1-97)

f. Reporting to the Board violations or suspicions of a violation of these rules or any abuse of drugs; (3-30-01)

g. Humanely euthanizing animals; and (3-30-01)

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. (3-30-01)

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: (3-30-01)

- 01. Failure to Carry Out Duties.** Failure to carry out the duties of a CEA or CET. (3-30-01)
- 02. Abuse of Chemical Substances.** Abuse of any chemical substance by: (3-30-01)
 - a.** Selling or giving chemical substances away; or (7-1-97)
 - b.** Stealing chemical substances; or (7-1-97)
 - c.** The diversion or use of any chemical substances for other than legitimate chemical capture or euthanasia purposes; or (4-4-13)
 - d.** Abetting anyone in the foregoing activities. (7-1-97)
- 03. Euthanizing of Animals Without Proper Supervision.** Allowing uncertified individuals or probationary CETs to euthanize animals or personally euthanizing animals without proper supervision. (3-30-01)
- 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. (3-30-01)
- 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. (3-30-01)
- 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. (4-4-13)
- 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: (3-30-01)
 - a.** Working in conjunction with any agency or person illegally practicing as a CEA or CET; (3-30-01)
 - b.** Failing to provide sanitary facilities or apply sanitary procedures for the euthanizing of any animal; (3-30-01)
 - c.** 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; (3-30-01)
 - 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 (3-30-01)
 - f.** Swearing falsely in any testimony or affidavits relating to practicing as a CEA or CET. (3-30-01)
- 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. (3-30-01)

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 (3-30-01)

b. Any crime constituting or having as an element the abuse of any drug, including alcohol. (4-4-13)

c. 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. (3-30-01)

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. (4-4-13)

16. Failure to Cooperate. (3-30-01)

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 (3-30-01)

b. Failure to comply with the terms of any order, negotiated settlement, or probationary agreement of the Board; or (3-30-01)

c. Failure to comply with the terms for certification renewal or to timely pay certification renewal fees. (3-30-01)

17. Aiding and Abetting. Knowingly aiding or abetting an uncertified agency or person to practice as a CEA or CET. (3-30-01)

18. Current Certification. Practicing as a CEA or CET without a current certification. (3-30-01)

19. Improper Drug Preparation. Preparing approved drugs, contrary to manufacturer's instructions. (3-30-01)

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. (3-30-01)

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. (4-4-13)

208. -- 999. (RESERVED)

IDAPA 46 – BOARD OF VETERINARY MEDICINE

46.01.01 – RULES OF THE STATE OF IDAHO BOARD OF VETERINARY MEDICINE

DOCKET NO. 46-0101-1902

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE 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 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

Upon legislative approval of this pending rule the amendments made in this docket will overwrite those sections of the reauthorized rule promulgated under docket no. 46-0101-1900F, which will also be filed for review for final approval during the upcoming legislative session.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 54-2105, Idaho Code.

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

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 2, 2019 Idaho Administrative Bulletin, [Vol. 19-10, pages 331 through 333](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 54-2105, Idaho Code.

The rulemaking provides for fee increases of \$65 for veterinary license renewals, \$33 for veterinary original licenses, and \$10 for veterinary technician certification renewals. It also eliminates veterinary license verification fees of \$20. These fee increases go along with proposed statutory changes that allow for endorsement nationwide as well as less restrictive licensing requirements, and rule changes that diminish the need for temporary license.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Jeremy Brown, Executive Director, at (208) 332-8588 or at jeremy.brown@agri.idaho.gov.

Dated this 30th day of October 2019.

Jeremy Brown, Executive Director
Board of Veterinary Medicine
2230 Old Penitentiary Road
P. O. Box 7249
Boise, ID 83707
Phone: (208) 332-8588
Fax: (208) 332-8645
Email: jeremy.brown@agri.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 54-2105, 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 16, 2019.

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

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

This proposed rulemaking preserves a cash positive position in order to maintain the operational budget of the Board. The impetus for this rulemaking is the incremental increase of business expenses (legal fees, employee salaries/benefits, rent, risk insurance, etc.) These fee increases also go along with proposed statutory changes that allow for endorsement nationwide as well as less restrictive licensing requirements.

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

Pursuant to the authority provided in Section 54-2105, Idaho Code, the Board's proposed rulemaking provides for fee increases of \$65 for veterinary license renewals, \$33 for veterinary original licenses, and \$10 for veterinary technician certification renewals. It also eliminates veterinary license verification fees of \$20. These fee increases go along with proposed statutory changes that allow for endorsement nationwide as well as less restrictive licensing requirements, and rule changes that diminish the need for temporary license.

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: N/A

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 June 5, 2019 Idaho Administrative Bulletin, [Vol. 19-6, pages 101 through 102](#).

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 Jeremy Brown, Executive Director, at (208) 332-8588 or at jeremy.brown@agri.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2019.

Dated this 13th day of September, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 46-0101-1902

014. FEES.

Fees for licensure and certification are established, as authorized under Title 54, Chapter 21, Idaho Code, by action of the Board, as follows: ()

01. License and Certification:

	New	New and Temporary Permit	Active Renewal	Inactive Renewal	Late/ Reinstatement	Inactive to Active Fee
Veterinary License	\$350	\$500	\$240	\$50	\$200	\$150
Certified Veterinary Technician	\$125	\$217	\$85	\$25	\$50	\$50
Certified Euthanasia Agency	\$100	-	\$200	-	\$50	-
Certified Euthanasia Technician	\$100	-	\$100	-	\$50	-

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02. Administrative Fees.

Duplicate Wall License/Certificate	\$25
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IDAPA 51 – IDAHO BEEF COUNCIL

DOCKET NO. 51-0101-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 25-2906 (9), Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter under IDAPA 51, rules of the Idaho Beef Council:

IDAPA 51

- IDAPA 51.01.01, *Rules of the Idaho Beef Council*.

The rule making was prompted by the expiration of the rules. The Council considered the Red Tape Reduction Act and the continued efforts to clarify and streamline the rules. Minor housekeeping edits are intended to make the rules consistent with recent statutory changes, clarify and simplify existing language, and reduce or eliminate unnecessary restrictions.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), [Vol. 19-6SE, pages 6610 - 6614](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Assessments include \$1.50 per head of cattle at the time the cattle are sold. This includes one dollar (\$1) required by the National Beef Promotion and Research Act, and fifty cents (\$.50) authorized by Section 25-2907(1), 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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact T.K. Kuwahara at (208) 376-6004.

Dated this 15th day of October, 2019.

T.K. Kuwahara
Chief Executive Officer
Idaho Beef Council
1951 W Frederic Lane
Boise, ID 83705
Phone: (208) 376-6004
Fax: (208) 376-6002

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 25-2906 (9), Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 51, rules of the Idaho Beef Council:

IDAPA 51

- IDAPA 51.01.01, *Rules of the Idaho Beef Council* – All rules *except Sections 400, 500, and 600*. Section 300 was updated to reflect current personnel.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. Idaho Beef Council rules are critical to maintaining daily operations which outline funding in regard to assessments, collection and refunds, as well as disbursements in regard to the collection fee to Brand Inspector, National Beef Promotion and Research Board, and operational/activity expenses.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Assessments include \$1.50 per head of cattle at the time the cattle are sold. This includes one dollar (\$1.00) required by the National Beef Promotion and Research Act, and fifty cents (\$.50) authorized by Section 25-2907(1).

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 fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact T.K. Kuwahara at (208) 376-6004.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 51-0101-1900F

51.01.01 – IDAHO BEEF COUNCIL RULES

000. LEGAL AUTHORITY.

The Idaho Beef Council is authorized under Section 25-2906(9), Idaho Code, to adopt rules concerning the administration of the Beef Promotion Act. (7-1-93)

001. TITLE AND SCOPE.

These rules are titled IDAPA 51.01.01, "Idaho Beef Council Rules," IDAPA 51, Title 01, Chapter 01. These rules provide for a coordinated federal and state program of beef promotion and research funded by a one dollar and fifty cents (\$1.50) assessment on each head of cattle marketed in the state of Idaho. (3-29-10)

002. ADMINISTRATIVE APPEALS.

All contested cases are governed by the procedures set forth by the National Beef Promotion and Research Order, 7 CFR 1260, issued by the United States Department of Agriculture. All written communications and documents that are intended to be part of an official record for a decision in a contested case must be filed with the Chief Executive Officer of the Idaho Beef Council. All such documents are considered filed when the original and one (1) copy of each document is received by the Chief Executive Officer of the Idaho Beef Council. (7-1-93)

003. INCORPORATION BY REFERENCE.

The Idaho Beef Council operates under the rules and regulations of the National Beef Promotion and Research Order, 7 CFR 1260 (Federal Register July 18, 1986). (3-29-10)

004. -- 099. (RESERVED)

100. FUNDING.

01. Assessments. (7-1-93)

a. Each producer shall pay an assessment of one dollar and fifty cents (\$1.50) per head of cattle at the time the cattle are sold. This assessment consists of: (3-29-10)

i. One dollar (\$1) required by the National Beef Promotion and Research Order, and (3-29-10)

ii. Fifty cents (\$.50) authorized by Section 25-2907(1), Idaho Code. (3-29-10)

b. Producers selling or marketing cattle in interstate commerce will pay only one (1) assessment per individual sale of cattle. When cattle leave Idaho for the purpose of sale or slaughter, the assessment will be made at the time of brand inspection. When cattle leave Idaho for feeding or pasture where no change of ownership occurs, the promotion assessment will not be made. (7-1-93)

c. When cattle enter Idaho for sale or slaughter, the assessment will be made only if the assessment has not been paid when the cattle left their state of origin. These cattle will be assessed by the Idaho Brand Inspector, but they will be considered cattle from their state of origin. All assessments will be remitted to the Idaho Beef Council, with these cattle indicated by their state of origin. The Idaho Beef Council will pay to the originating state the assessments due them in a timely manner after payment has been received from the State Brand Inspector. (7-1-93)

d. The assessment implemented by this rule does not apply to the seller of cattle if the seller certifies that the seller's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee or other service fee; or if the seller certifies that he acquired ownership of cattle to facilitate the transfer of ownership of such cattle to a third party, establishes that such cattle are being resold not later than ten (10) days from the date on which the person acquired ownership and certifies that the assessment was collected from the seller when the person acquired ownership. A completed certificate of "non-producer status" must be given to the brand inspector or his agent at the time of inspection. If no certificate is produced the assessment will be levied. (7-1-93)

02. **Collection.** The State Brand Inspector shall collect the assessment in addition to and at the same time and manner as the fee charged for state brand inspection. The assessment will be submitted each month to the Beef Council, less collection fee. In addition, the State Brand Inspector will submit monthly, a written accounting of total number of head marketed, number of cattle assessed and not assessed (along with copies of the appropriate non-producer exemption forms), total collections, and state of origin documentation. (3-29-10)

03. **Refunds.** (3-29-10)

a. Producers/owners of cattle from whom an assessment is collected has the right to request a refund of not more than fifty cents (\$.50) per head (Section 25-2907, Idaho Code). Refund requests must be mailed to the Idaho Beef Council within ninety (90) calendar days of payment of the assessment and include the: ()

- i. Name and address of the producer; (3-29-10)
- ii. Name and address of the entity collecting the assessment (brand inspector or livestock market); (3-29-10)
- iii. Number of head on which a refund is requested; (3-29-10)
- iv. Total amount of refund requested; (3-29-10)
- v. Date of assessment; (3-29-10)
- vi. Producer's signature; and (3-29-10)
- vii. Proof of payment of the assessment. ()

b. The Idaho Beef Council will process the requested refunds on a calendar quarterly basis. Any refund request that is received by the Idaho Beef Council less than fifteen (15) days from the end of the calendar quarter shall be paid at the end of the next quarter. (3-29-10)

101. -- 199. (RESERVED)

200. DISBURSEMENTS.

01. Collection Fee, Brand Inspector. The Idaho Beef Council will reimburse the State Brand Inspector for the reasonable and necessary expenses incurred in the collection of the assessment in an amount determined by the Beef Council and the State Brand Inspector, not to exceed five percent (5%) of gross collections. (7-1-93)

02. National Beef Promotion and Research Board. The Idaho Beef Council will forward fifty cents (\$.50) credit per head of cattle assessed to the Cattlemen's Beef Promotion and Research Board. (3-29-10)

03. Idaho Beef Council. Assessment funds remaining after payment of collection fee and disbursement to the National Beef Promotion and Research Board will be retained by the Idaho Beef Council and used to fund its activities and operations. (3-29-10)

201. -- 299. (RESERVED)

300. PERSONNEL.

There will be a full time administrator whose title will be "Chief Executive Officer." Additional staff will be hired based upon Idaho Beef Council program needs and budget. (7-1-93)

301. -- 999. (RESERVED)

IDAPA 53 – IDAHO BARLEY COMMISSION

DOCKET NO. 53-0101-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 22-4009, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter under IDAPA 53, rules of the Idaho Barley Commission:

IDAPA 53

- IDAPA 53.01.01, *Rules of the Idaho Barley Commission*

The text of the pending fee 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 original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), [Vol. 19-6SE, pages 6,669-6,673](#).

These pending fee rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. The expiration of these rules would hamper the ability of Idaho barley growers to properly market their barley in export and domestic channels and would force a shutdown of certain barley variety research programs, as well as critical barley related agronomic research programs. In addition, expiration of these rules would hamper Idaho barley growers from receiving important barley industry information and best practices information needed to help them be successful.

The fee or charge imposed by the rule(s) is necessary to avoid immediate danger. The fee(s) or charge(s) reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. An inability to collect the Barley Tax would jeopardize funding for critical research, market development, and education and information programs, causing them to be suspended and significantly negatively impacting Idaho barley growers.

The changes in the proposed rules that differ from the previously proposed text include deleting language that duplicates language in Idaho Code, Chapter 40, Title 22.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Idaho barley growers pay a Barley Tax that is currently \$.03 per hundredweight of barley marketed which

is collected at point of first purchase and remitted to the Idaho Barley Commission. Idaho statute 22-4015 allows for the Barley Tax of up to \$.04 per hundredweight.

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 fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Laura Wilder, Administrator of Idaho Barley Commission at 208-334-2090 or 208-608-4519 (mobile) or lwilder@barley.idaho.gov.

Dated this 16th day of October, 2019.

Laura Wilder
Administrator
Idaho Barley Commission
821 W. State Street
Boise, ID 83706
Tel: 208-334-2090 (office)
Tel: 208-608-4519 (mobile)
Email: lwilder@barley.idaho.gov

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 22-4009, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 53 rules of the Idaho Barley Commission.

IDAPA 53

- IDAPA 53.01.01, *Rules of the Idaho Barley Commission*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. The expiration of these rules would hamper the ability of Idaho barley growers to properly market their barley in export and domestic channels and would force a shutdown of certain barley variety research programs, as well as critical barley related agronomic research programs. In addition, expiration of these rules would hamper Idaho barley growers from receiving important barley industry information and best practices information needed to help them be successful.

The fee or charge imposed by the rule is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. An inability to collect the Barley Tax would jeopardize funding for critical research, market development, and education and information programs, causing them to be suspended and significantly negatively impacting Idaho barley growers.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Idaho barley growers pay a Barley Tax that is currently \$.03 per hundredweight of barley marketed which is collected at point of first purchase and remitted to the Idaho Barley Commission. Idaho statute 22-4015 allows for the Barley Tax of up to \$.04 per hundredweight.

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 fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Laura Wilder, Administrator of Idaho Barley Commission at (208) 334-2090 or (208) 608-4519 (mobile) or lwilder@barley.idaho.gov.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 53-0101-1900F

53.01.01 – RULES OF THE IDAHO BARLEY COMMISSION

000. LEGAL AUTHORITY.

In accordance with Section 22-4009, Idaho Code, the Idaho Barley Commission has promulgated rules implementing the provisions of Chapter 40, Title 22, Idaho Code. (3-20-14)

001. TITLE AND SCOPE.

These rules are titled IDAPA 53.01.01, "Rules of the Idaho Barley Commission," IDAPA 53, Title 01, Chapter 01. These rules provide the means for the protection, promotion, study, research, analysis and development of markets concerning the growing and marketing of Idaho barley. (3-20-14)

002. -- 009. (RESERVED)

010. DEFINITIONS.

The definitions set forth in Section 22-4003, Idaho Code, apply to this chapter ()

011. -- 099. (RESERVED)

100. FIRST PURCHASER RULES.

In accordance with Section 22-4015(1), Idaho Code, the Commission will designate the quarters (three (3) month periods) for the purpose of collecting the tax imposed on all barley grown, delivered into, or stored within the state of Idaho and sold or contracted in the state. (3-20-14)

01. Designated Quarters. The quarters designated by the Commission for payment of tax are: ()

a. The Commission's first quarter will begin on the first day of July and end the thirtieth day of September. The first quarter barley tax is due on or before the fifteenth day of October. (7-1-93)

b. The Commission's second quarter will begin on the first day of October and end the thirty-first day of December. The second quarter barley tax is due on or before the fifteenth day of January. (7-1-93)

c. The Commission's third quarter will begin on the first day of January and end the thirty-first day of March. The third quarter barley tax is due on or before the fifteenth day of April. (7-1-93)

d. The Commission's fourth quarter will begin on the first day of April and end the thirtieth day of June. The fourth quarter barley tax is due on or before the fifteenth day of July. (7-1-93)

02. Barley Tax Return (Form Number 1). The first purchaser of barley is required to complete and send the Barley Tax Return (Form Number 1) to the commission office each and every quarter on or before the dates specified in these rules. The Barley Tax Return (Form Number 1) shall be provided to the first purchaser by the Commission and, at a minimum, require the following legible information: ()

a. The tax reporting period. (7-1-93)

b. The name and address of the barley purchaser. (7-1-93)

c. The net weight of the barley purchased (if any) in pounds or hundredweights. (7-1-93)

d. The total amount of tax deducted (if any) from sellers by the purchaser. (7-1-98)

e. The tax withheld by Commodity Credit Corporation loans. (7-1-93)

f. The total amount of tax due the Commission (if any). (7-1-93)

03. Delivery of Documents to Commission (Form Number 2). The first purchaser of barley shall complete and return the Report of Tax on Barley (Form Number 2), or equivalent, to the commission office each and every quarter on or before the dates specified in these rules. The Commission shall provide blank copies of Form Number 2 to the first purchaser. Form Number 2, or equivalent, will, at a minimum, require the following legible information: ()

a. The name and address of the purchaser. (7-1-93)

b. The quarter the barley was purchased. (7-1-93)

- c. The name or names and address or addresses of the grower and seller. (7-1-93)
- d. The number of pounds of barley purchased. (7-1-93)
- e. The total barley tax withheld from each purchase. (7-1-93)

04. Deduction of Tax on Net Weight of Barley. The first purchaser shall deduct the barley tax on the NET weight of the barley after deduction of dockage. (7-1-93)

05. Late Payment Penalty (As specified in Section 22-4018 (2), Idaho Code). Any person or firm who makes payment to the Commission at a date later than prescribed in Section 22-4015, Idaho Code, shall be subject to a late payment penalty of fifteen percent (15%) per annum on the amount due. (7-1-93)

101. -- 199. (RESERVED)

200. EXEMPTIONS.

In accordance with Section 22-4015, Idaho Code, the barley assessment shall be imposed on all barley grown, delivered into or stored within, and sold or contracted in Idaho. If a barley assessment that serves a comparable purpose to the Idaho assessment was previously paid in a jurisdiction outside Idaho, the seller of the barley is exempt from payment of the Idaho barley assessment. The Commission will determine jurisdictions outside of Idaho that collect an assessment that serves a comparable purpose, which includes, as a minimum, funding for research and market development programs. In order to qualify for the exemption, the seller must demonstrate to the first purchaser in the state of Idaho that an assessment has been previously paid to such a jurisdiction. (7-1-98)

201. -- 999. (RESERVED)

IDAPA 60 – IDAHO STATE SOIL AND WATER CONSERVATION COMMISSION

DOCKET NO. 60-0000-1900F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULE

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 22-2718, 22-2727, and 22-2730, Idaho Code.

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

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter(s) that are consolidated into a new chapter under IDAPA 60, rules of the Idaho State Soil and Water Conservation Commission:

IDAPA 60

- *60.05.01, *Rules of the Idaho State Soil and Water Conservation Commission (*New Chapter)*

This pending rule vacates the following proposed rules previously promulgated under this docket number as part of the omnibus proposed rulemaking under IDAPA 60, rules of the Idaho State Soil and Water Conservation Commission:

- **(VACATED)** IDAPA 60.05.01, *Rules for Administration of the Idaho Resource Conservation and Rangeland Development Program*
- **(VACATED)** IDAPA 60.05.04, *Rules for Allocation of Funds to Conservation Districts*

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), **Vol. 19-6SE, pages 7497 through 7504**.

In compliance with the Governor’s Red Tape Reduction Act (Executive Order No. 2019-02), the Idaho Soil and Water Conservation Commission has combined two rules into one new chapter designated under IDAPA 60.05.01 “Rules of the Idaho State Soil and Water Conservation Commission.” IDAPA 60.05.01 and 60.05.04, promulgated under docket 60-0000-1900 have been consolidated into one chapter containing two subchapters (A and B) as part of the pending rulemaking. This further simplifies the rules but makes no substantive changes to the previously codified rules.

Additionally, a proposed rulemaking promulgated under docket no. **60-0501-1901** that published in the October 2, 2019 Administrative Bulletin, and has been adopted as pending by the Commission, makes substantive changes in Sections 103 and 151 and these have been incorporated into the new chapter designated under IDAPA 60.05.01. The vacation of proposed rule 60.05.01 in this docket makes it necessary to incorporate the changes from 60-0501-1901 into the new chapter to ensure the changes are made to the correct rule chapter being promulgated for final legislative approval.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Rule 60.05.01.102.05 states, “[t]he applicant is required to cover all costs incurred for loan closure, title insurance, and recording 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:

This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Corrine Dalzell, Rules Review Officer, (208) 332-1792.

Dated this 29th day of August, 2019.

Corrine Dalzell
Rules Review Officer
Idaho Soil & Water Conservation Commission
322 E. Front St., Suite 560
P.O. Box 83720
Boise, ID 83720-0083
Phone: (208) 332-1792
Fax: (208) 332-1799

**THE FOLLOWING NOTICE PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 22-2718 (1), Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 60, rules of the Idaho State Soil and Water Conservation Commission:

IDAPA 60

- 60.05.01, *Rules for Administration of the Idaho Resource Conservation and Rangeland Development Program* – Reestablishes the existing rule and updates the definition of Five (5) Year Plans to fix an outdated reference.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. IDAPA 60.05.01 provides the specific procedures and specifications by which citizens may obtain low-interest loans in order to implement conservation projects on agriculture and rangeland throughout the State. Without these rules it would not be possible to administer this program and to provide the benefit of low-interest loans to private citizens as provided by statute (Sections 22-2730 through 22-2732, Idaho Code).

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. Subsection 60.05.01.102.05, of these rules, states, "The applicant is required to cover all costs incurred for loan closure, title insurance, and recording fees." If these costs were not imposed on the applicant, it otherwise would have to come out of the dedicated RCRDP fund or general fund appropriations. ISWCC did not include this item in its budget for FY2020 and does not have general funds appropriated for this expenditure. Additionally, paying these costs out of the RCRDP dedicated fund would reduce the dedicated fund and would be outside the expenditures allowed under Section 22-2731, Idaho Code.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Subsection 60.05.01.102.05, of these rules, states, "The applicant is required to cover all costs incurred for loan closure, title insurance, and recording 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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Corrine Dalzell, (208) 332-1792.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 9th day of May, 2019.

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 60-0000-1900F

60.05.01 – RULES OF THE IDAHO STATE SOIL AND WATER CONSERVATION COMMISSION

000. LEGAL AUTHORITY.

This chapter is adopted by the Idaho State Soil and Water Conservation Commission, under the legal authority of Sections 22-2718, 22-2727, and 22-2730, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 60.05.01, “Rules of the Idaho State Soil and Water Conservation Commission.” ()

02. Scope. The provisions of these rules set forth procedures and requirements for establishing, implementing, and administering a state loan from the RCRDP fund as provided in Sections 22-2730, through 22-2732, Idaho Code, and provide for the allocation of state funds appropriated for distribution to conservation districts pursuant to Section 22-2727, Idaho Code. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

For the purpose of these rules, unless the context indicates otherwise, the terms and phrases are used as defined herein: ()

01. Applicant. An eligible applicant as defined in Section 22-2717, Idaho Code. ()

02. Application. The loan request document that sets forth the information required by Section 22-2732, Idaho Code and Subsection 057.03 of these rules, including a conservation plan. ()

03. Base Funding. Funds appropriated to the Commission to be allocated equally to the various soil conservation districts in a sum not to exceed eight thousand five hundred dollars (\$8,500) per district per year. ()

04. Board of Supervisors. Governing body of a district as provided in Section 22-2717(25), Idaho Code. ()

05. Certify. To confirm formally as true, accurate, or genuine. ()

06. Commission. The Idaho State Soil and Water Conservation Commission as defined in Section 22-2718, Idaho Code. ()

07. Conservation District or District. A soil (and water) conservation district as defined in Section 22-2717, Idaho Code. ()

08. Conservation Plan. A conservation plan as defined in Sections 22-2717 and 22-2732, Idaho Code that sets forth the information required by Subchapter A. of these rules. ()

09. Contractee. The applicant when the loan has been closed and recorded. ()

10. Coordinated Resource Planning Process. A process that considers all the resources and resource users within a geographical area and encourages active involvement and input from all interested parties. ()

11. District. A Conservation District, Soil Conservation District, or Soil and Water Conservation District as defined in Section 22-2717, Idaho Code. ()

12. Eligible Land. Private, state, county, or federal lands within the state of Idaho. ()

13. Field Office. The local United States Department of Agriculture Natural Resources Conservation Service (NRCS) office usually located with the principal headquarters of the local District. ()

14. Field Office Technical Guide. The primary scientific reference for NRCS that contains technical information about the conservation of soil, water, air, and related plant and animal resources. Technical guides used in each field office are localized so that they apply specifically to the geographic area for which they are prepared. Copies of the field office technical guides may be obtained from a local District or field office. ()

15. **Financial and Match Report.** Documentation certified by the Board of Supervisors that: ()
- a. Itemizes local funds and services received by a district during the previous fiscal year; and ()
 - b. Describes how state base and match funds were utilized during the previous fiscal year. ()
16. **Fiscal Year.** As set forth in Section 67-2201, Idaho Code, the fiscal year will begin on July 1 and close on June 30 of the following year. ()
17. **Five (5) Year Plan.** The plan reviewed and updated annually by each district pursuant to the Final Agreement to implement an Antidegradation Policy for the State of Idaho (August 18, 1988). The plan will contain the following components, as further specified by Commission policy: physical characteristics, economic condition and outlook, assessment of the District's resource conditions and conservation needs, prioritized objectives, water quality component, and an annual work plan. ()
18. **Fund.** The RCRDP fund established pursuant to Section 22-2730, Idaho Code. ()
19. **Funding Criteria.** Criteria considered by the Commission to determine the amount of base and match funding to be allocated to the conservation districts. Criteria may include district budgets, district budget requests, district programs and work plans, and district work load analysis. The following documents may be required on an annual basis in order to consistently apply the criteria to all districts: ()
- a. Five (5) year plans; ()
 - b. Financial and match reports; and ()
 - c. Performance reports. ()
20. **Local Funds.** Monies received in the previous fiscal year from local units of government and organizations for the general purposes of a conservation district. Funds received for special projects, used as required match for specific grants or projects, or on a fee-for-service basis will not be used to calculate match funding. ()
21. **Local Services.** Non-cash contributions received in the previous fiscal year from local units of government and organizations for the general purposes of a conservation district. Services received for special projects, used as required match for specific grants or projects, or on a fee-for-service basis will not be used to calculate match funding. ()
22. **Local Units of Government.** Any general or special purpose political subdivision of the state which has the power to levy taxes and/or appropriate and spend funds. ()
23. **Match Funding.** Funds appropriated to the Commission for distribution to conservation districts in excess of base funding not to exceed twice the amount of local funds and services received by each district in the previous fiscal year. ()
24. **Maximum Allocation.** The total of base funding and match funding allocated to any one (1) conservation district shall not exceed fifty-eight thousand and five hundred dollars (\$58,500) in a fiscal year. ()
25. **Organizations.** A group of two (2) or more persons structured and managed to pursue a collective goal on a continuing basis. ()
26. **Other Funds.** Funds to be dedicated to conservation practice implementation costs which are not from the RCRDP fund or provided by the applicant. ()
27. **Performance Report.** Documentation summarizing conservation activities, projects, and programs implemented by a conservation district during the previous fiscal year. ()
28. **Practice or Eligible Practice for Loans.** A practice listed in the field office technical guide or a

special practice approved under Section 058 of these rules. ()

29. Practice Life. The number of years, with proper maintenance and operation, that a practice is expected to last, as shown in the field office technical guide. ()

30. Program Year. The state fiscal year as provided in Section 67-2201, Idaho Code. ()

31. Project. One (1) or more practices to be installed with a RCRDP loan. ()

32. Rangeland. Land used primarily for the grazing of domestic livestock and wildlife. ()

33. Riparian Areas. Riparian areas are sites directly influenced by free water. They have visible vegetation or physical characteristics that reflect free water influence. Lake shores and stream banks are typical riparian areas. Excluded are sites such as ephemeral streams or washes that do not exhibit the presence of vegetation dependent upon free water in the soil. ()

34. Security. Collateral provided by an approved applicant to secure requested RCRDP funds. ()

35. Special Practice. A practice (not listed in the field office technical guide) that includes a proven, modern technique that is necessary to solve a resource problem and meet program objectives. ()

011. ABBREVIATIONS.

01. RCRDP. The Idaho Resource Conservation and Rangeland Development Program. ()

02. NRCS. United States Department of Agriculture Natural Resources Conservation Service. ()

SUBCHAPTER A – RULES FOR ADMINISTRATION OF THE IDAHO RESOURCE CONSERVATION AND RANGELAND DEVELOPMENT PROGRAM

012. PROGRAM POLICY.

01. Administration. It is the policy of the Commission to administer the Resource Conservation and Rangeland Development Program to provide the greatest benefits to all concerned from the agricultural lands and rangelands within the state. ()

02. Equal Opportunity. Each applicant regardless of handicap, race, age, sex, creed, color or national origin, must be given the opportunity to apply for a loan. ()

03. Filing Applications. An application may be filed at anytime during the program year. ()

04. Use of Loan Money in Conjunction with State or Federal Programs. Requests for state or federal cost-share assistance and for loan approval are handled by different governmental agencies and approval for one does not guarantee approval for the other. ()

013. PROGRAM OBJECTIVES.

01. Objectives. The objectives of the RCRDP are to: ()

a. Conserve soil resources. ()

b. Conserve water resources. ()

c. Improve riparian areas for multiple use benefits. ()

d. Protect or improve existing beneficial uses of the state’s waters. ()

- e. Conserve and improve fish and wildlife habitat. ()
- f. Increase agricultural productivity of cropland, orchards, pasture and hayland, rangeland, and woodland. ()

02. Achieving Program Objectives. Decisions concerning the use of program funds must be based on achievement of program objectives. The administration of the program must emphasize coordinated resource management planning and decision-making to ensure maximum benefit of funds. ()

014. -- 055. (RESERVED)

056. RESPONSIBILITIES.

- 01. District.** The local District must: ()
 - a. Receive the conservation plan for program participation. ()
 - b. Within sixty (60) days of receipt, review and evaluate the conservation plan to determine if the project is consistent with the District's program goals and objectives. ()
 - c. Assign a priority of high, medium, or low to the project. ()
 - d. Forward conservation plans to the Commission with a recommendation for funding. ()
 - e. Prepare and forward to the Commission special practice requests. ()
 - f. The local District may assign a priority to practices in the field office technical guide and have that priority ranking apply to all future projects seeking to implement the pre-ranked practices. The local District Board must consider pre-ranking practices at a scheduled Board meeting. The Board's decision including the name and identification number of the practice(s), the assigned ranking and the recommendation for funding must be reflected in the meeting minutes and be forwarded to the Commission. ()
 - g. If the local District does not review and evaluate a conservation plan within sixty (60) days of receipt, the Commission may review and evaluate the conservation plan and assign a priority ranking for the project based on the District's five (5) year plan. ()
- 02. Commission.** The Commission must: ()
 - a. Review and evaluate applications. ()
 - b. Approve loans, if: ()
 - i. The applicant has adequate assets for security to protect the state from risk of loss. ()
 - ii. There is reasonable assurance that the borrower can repay the loan. ()
 - iii. Money is available in the RCRDP fund. ()
 - c. Disapprove loans for reasons including but not limited to: ()
 - i. The purpose of the loan is to pay for conservation plan practices that have been implemented prior to Commission approval. ()
 - ii. If all the requirements in Paragraph 056.02.b. of these rules are not met. ()
 - d. Reconsider loan disapproval if the applicant, within fifteen (15) business days after notice of

disapproval, requests the Commission, in writing, to reconsider its determination in any matter affecting the loan or the amount of loan funds. Reconsideration of the determination must take place within ninety (90) business days from the date the written request is received at the time, place, and date determined by the Commission. The applicant must be notified of the time, place, and date and must have the right to appear. ()

e. After loan approval, execute a promissory note and other security documents with the applicant for loan repayment. ()

f. Not less than once per year, determine the loan interest rate not to exceed six percent (6%) annually. ()

g. Prepare an annual report showing RCRDP accomplishments and benefits resulting from use of loan and grant funds. ()

h. Administer and monitor loan proceeds to assure that the intent of the law is met. ()

i. Approve or disapprove special practice requests. ()

057. APPLICATION FOR LOAN.

01. How to Apply. Any applicant desiring a loan from the RCRDP fund must: ()

a. Prepare and submit a conservation plan. The conservation plan must be presented by the applicant (or representative appointed by the applicant) to the local District Board at a scheduled meeting unless the project includes only practices that have been pre-ranked by the local District in accordance with Paragraph 56.01.f. of these rules. If the project includes only pre-ranked practices, the applicant must submit the conservation plan to the Commission. ()

b. Prepare and submit a completed application. The application including all information required under Subsection 57.03 of these rules must be submitted to the Commission. ()

02. Two or More Applicants. Two (2) or more applicants may install a practice(s) as a group providing the loan can be adequately collateralized and all parties agree to joint and several liability. ()

03. Application Form. The application must be on a form prescribed by the Commission and include: ()

a. Name of applicant, and the location, size, and type of agricultural enterprise. ()

b. Identification and extent of the resource problem (erosion, plant community deterioration, water loss, water quality, low production, etc.). ()

c. Statement of applicant's objectives and expected benefits. ()

d. Estimate of costs of implementing the project and of total loan funds needed. ()

i. Applicant must be required to supply at least five percent (5%) of the total project costs through personal funds or in-kind services. ()

ii. Total RCRDP loan funds combined with other funds cannot exceed ninety-five percent (95%) of total project costs. ()

e. Applicant's statement of security offered. ()

f. Applicant's statement of willingness to allow continued monitoring and evaluation of impacts resulting from applied land treatment and management practices. ()

g. All documentation required under Subsection 101.03 of these rules and any other documentation requested by the Commission needed to determine whether there is reasonable assurance that the applicant can repay the loan. ()

h. A copy of the applicant’s conservation plan which becomes a part of the application for assistance. The conservation plan must include: ()

i. A map showing project location and extent of the resource problem. ()

ii. The eligible practices to be installed. ()

iii. Estimated costs of applying the practices. ()

iv. An implementation schedule. ()

v. A statement whereby the applicant agrees to properly maintain and operate installed practices. ()

vi. Needed clearances, easements and rights of way. ()

vii. Any other appropriate documentation needed to complete the implementation of the conservation plan as requested by the local District or Commission. ()

058. SPECIAL PRACTICE(S) APPROVAL FOR LOANS.

01. Special Practice Approval. A special practice must be approved by the Commission before it becomes an eligible practice. ()

02. Special Practice Requests. Special practice requests may be prepared by the local District or the Commission and must include: ()

a. A description of the proposed practice. ()

b. A justification of need for the special practice. ()

c. Standards and specifications for the proposed practice. ()

d. A statement from the appropriate agency as to the technical adequacy of the special practice in solving the resource problem. ()

059. -- 080. (RESERVED)

081. ENCOURAGING PUBLIC BENEFITS WHEN INSTALLING PRACTICES.

District Boards must encourage persons responsible for any aspect of performing practices to promote public benefit by improving or preserving environmental quality and ecological balance when the practices are being installed. Multiple objective achievement and total resource evaluation and treatment must receive high priority consideration for loan funds. When reviewing loan requests the following considerations must be made: ()

01. Preventing Degradation. Preventing or abating pollution and other environmental degradation. ()

02. Benefiting the Community. Benefiting the community by means such as outdoor recreational opportunities or enhancing the appearance of the area. ()

03. Benefiting Habitat. Benefiting fish and wildlife habitat. ()

082. -- 100. (RESERVED)

101. CREDIT GUIDELINES.

01. Standards for Acceptable Loans. There must be adequate assets and collateral for security to protect the state from risk of loss. ()

02. Required Documentation. The applicant must provide documentation to the Commission sufficient to determine the applicant's ability and willingness to repay the loan. Such documentation may include: financial statements; balance sheets; profit and loss statements; driver's license; income tax returns; budgets; credit reports; estimates/quotes; deeds; leases; and other supporting documents as deemed necessary relative to the size, complexity, and financial responsibility of the individual or entity being financed. ()

03. Duty to Inform. After submitting the application and before funds are dispersed, the applicant must inform and provide documentation to the Commission of any significant change of circumstance that may impact their financial standing or ability to repay the loan. ()

04. Field Inspections. The Commission may require a field inspection in order to: ()

a. Determine loan and security positions, provide repayment estimates and verify assets. ()

b. Indicate the applicant's management ability. ()

c. Secure a complete and accurate description of collateral for the security agreement. ()

05. Additional Information Required for Loans Secured with Real Estate. Where real estate is offered as collateral the following information must be provided: ()

a. A legal description of the offered collateral. ()

b. Real estate appraisal, consisting of at least one (1) of the following: ()

i. Copy of appraisal made by a licensed professional appraiser approved by the Commission. ()

ii. Copy of the most recent property tax assessment. ()

iii. Evaluation made by Commission or the local District according to its knowledge of the estimated average value of the property in the area in which the project is to be implemented. ()

c. A map designating the location of the real estate. ()

06. Other Collateral. Any item having tangible value may be accepted as security for these loans. Condition of the collateral must be updated periodically and additions to the security agreement may be required over time. ()

102. LOAN CLOSURE AND ADMINISTRATION.

01. Servicing and Documentation. All loans must be assigned to a loan officer (Commission employee) who must be responsible for servicing the loan. ()

02. Loan Securing Documents. Following approval of the application, the Commission, must prepare all necessary loan securing documents. ()

03. Loan Note and Security Agreement. The loan must be secured by utilizing a promissory note and security document listing the parties and the collateral, as well as terms and conditions of the loan. A mortgage or deed of trust must be executed and recorded with the county recorder where the collateral is located if the collateral is real property. A security agreement and any other necessary documents must be executed if the collateral is not real property. Appropriate financing statements must be executed and filed with the Secretary of State on all collateral consisting of personal property. ()

04. Fund Obligation. Funds must be obligated when all loan conditions established by the Commission have been met and when all necessary loan securing documents are in order and appropriately signed by the applicant. Funds will then be obligated. Upon notification of fund obligation, the applicant who is now the contractee, may complete implementation of the project. ()

05. Cost Incurred. The applicant is required to cover all costs incurred for loan closure, title insurance, and recording fees. ()

103. IMPLEMENTATION OF AGREED TO PRACTICES.

The applicant may, at their own risk, begin installing practices as identified and scheduled in the conservation plan provided the project is not completed before the loan is approved and the conditions of approval are met. Should the applicant choose to begin installing practices prior to the conditions of approval being met, the Commission may require additional title insurance to protect against intervening materialman's liens. The applicant/contractee has the responsibility to obtain appropriate technical assistance to ensure practices are properly designed, constructed, and managed. The applicant/contractee may install practices themselves or contract work out. Whatever method is used, the applicant/contractee is responsible to ensure the quality of materials and workmanship meets the approved standards and specifications for each practice. ()

01. Practice Completion. Upon completion of the scheduled practice the applicant/contractee must notify the provider of technical assistance. The provider of technical assistance must inspect and document the amount and extent of the installed practice and certify its completion if it meets the quality standards and construction specifications of the practice and notify the applicant/contractee. If the practice does not meet practice standards and specifications the applicant/contractee must be notified by the provider of technical assistance, in writing, of the deficiencies and what needs to be done so the practice meets standards and specifications. ()

02. Submitting Vouchers and Bills. ()

a. The provider of technical assistance must provide a written certification of completion of the project to the Commission. The applicant/contractee must submit invoices, vouchers and bills for the project to the Commission. ()

b. Up to ninety-five percent (95%) of loan funds can be disbursed toward submitted bills during the loan installment period. The remaining loan funds will be disbursed upon receipt of written certification of project completion from the provider of technical assistance. ()

03. Warrant Requests. The Commission staff must prepare warrant request(s). The warrant(s) are paid to the order of the contractee(s) and the vendor, and are mailed to the contractee. ()

04. Drawing Loan Funds. The applicant/contractee must implement the practices as scheduled and the contractee may draw loan funds in multiple disbursements during installation of the project. ()

104. -- 125. (RESERVED)

126. REPAYMENT OF LOAN.

01. Repayment of the Loan. Repayment of the loan, together with interest, must commence no later than two (2) full years from the date the note is signed. ()

02. Repayment Schedule. The repayment schedule must be identified in the loan documents with a fifteen (15) year maximum loan period. One (1) month before payment is due, the commission will mail the contractee a notice of payment due. ()

03. First Payment. The first payment is due as required on the signed loan documents as prepared by the Commission. Any additional interest incurred during the installment period of the loan will be added to the first payment notice. ()

127. FORECLOSURE.

In the event of a contractee not adhering to the payment terms and conditions of the mortgage, promissory note, or security agreement, the Commission may seek foreclosure according to the laws of the state of Idaho. ()

128. -- 150. (RESERVED)

151. LOAN POLICIES.

The maximum amount of any one (1) loan is six hundred thousand dollars (\$600,000). ()

152. -- 199. (RESERVED)

SUBCHAPTER B – RULES FOR ALLOCATION OF FUNDS TO CONSERVATION DISTRICTS

200. ALLOCATION OF FUNDS TO DISTRICTS.

01. Base Funding. The Commission shall determine the dollar amount to allocate equally to conservation districts on an annual basis. As soon as practicable after the start of the fiscal year, the Commission shall immediately distribute base funding to the districts that submitted the required documents during the previous fiscal year. ()

02. Match Funding. Following determination of base funding, the Commission shall review and approve the additional amount of state appropriations available for proportional allocation to each district in match funding. The amount of match funding allocated will be based upon local funds and services received in the previous fiscal year by each conservation district for the general purposes of the district. Funds received for special projects, used as required match for specific grants or projects, or on a fee-for-service basis will not be used to calculate match funding. Once the required documents for match funding are submitted and determined to be complete, the Commission shall distribute match funding to each district as soon as practicable. ()

03. Required Documents. The Commission may require submission of certain documents prior to allocation of base and match funding to districts. These documents may include five (5) year plans, financial and match reports, and performance reports. ()

a. The Board of Supervisors shall certify in writing that the district has examined all documentation submitted and that the statements and representations in the documents are true and accurate. ()

b. The district shall submit any required documents by a date established by the Commission. ()

04. State Budget Requests. The Commission shall conduct a public hearing to consider the needs of the conservation districts on or before June 15th of each year, giving twenty (20) days' written notice of the hearing to each conservation district and to all other persons requesting notice of the hearing. The Commission shall hear and consider testimony at the hearing and all information submitted by the districts prior to submission of the annual budget request to the legislature and governor based upon the criteria of Subsection 010.19 of this rule. ()

201. -- 999. (RESERVED)