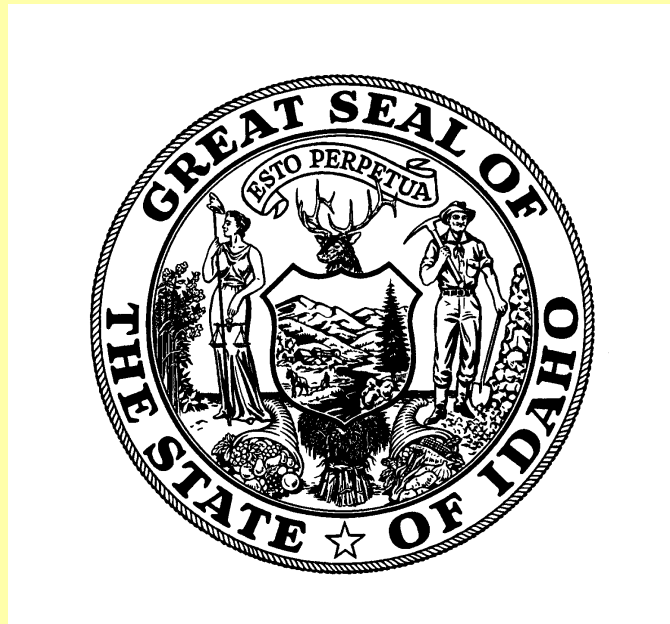


PENDING RULES COMMITTEE RULES REVIEW BOOK

**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. 02-0000-1900

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING 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. The pending rules become final and effective upon the conclusion of the legislative session, unless the rules are approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rules are approved or rejected in part by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted these pending rules. This action is authorized pursuant to Sections 22-5404, 25-203, and 25-305, Idaho Code.

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

These pending 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

02.04.24, *Rules Governing Tuberculosis*

02.05.01, *Rules Governing Produce Safety*

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 Idaho State Department of Agriculture.

IDAPA 02

- **(VACATED)** 02.02.04, *Idaho Standards for Grades of Apples*
- **(VACATED)** 02.02.05, *Prune Standards*
- **(VACATED)** 02.02.06, *Idaho Standards for Grades of Sweet Cherries*
- **(VACATED)** 02.02.10, *Idaho Standards for Apricots*
- **(VACATED)** 02.04.05, *Rules Governing Manufacture Grade Milk*
- **(VACATED)** 02.04.06, *Rules Governing Licensed Dairy Plants*
- **(VACATED)** 02.04.22, *Rules Governing Animal Health Emergencies*

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 56-113](#).

Additionally, all changes between the text of the 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, eliminate unnecessarily restrictive language and redundancy:

IDAPA 02.04.24, *Rules Governing Tuberculosis*: This rule has been amended in accordance with Section 67-5227, Idaho Code.

IDAPA 02.05.01, *Rules Governing Produce Safety*: This rule is adopted to establish standards for growing, harvesting, packing, and holding safe, unadulterated produce for human consumption. This rule is being adopted as proposed with no changes.

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.

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 these pending rules, contact Brian Oakey at (208) 332-8550.

Dated this 16th day of October, 2019.

Brian Oakey
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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 22-702, 22-802, 22-5404, 25-203, 25-212, 25-305, 25-401, 25-601, 37-303, 37-405, and 37-516, 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 Department of Agriculture:

IDAPA 02

02.02.04, *Idaho Standards for Grades of Apples*; adds required sections 000-006

02.02.05, *Prune Standards*, adds required Sections 000-006

02.02.06, *Idaho Standards for Grades of Sweet Cherries*; adds required sections 000-006

02.02.10, *Idaho Standards for Apricots*; adds required sections 000-006

02.04.05, *Rules Governing Manufacture Grade Milk*

02.04.06, *Rules Governing Licensed Dairy Plants*

02.04.22, *Rules Governing Animal Health Emergencies*, modifies Section 010; eliminates Section 990

02.04.24, *Rules Governing Tuberculosis*, modifies Section 010; eliminates Sections 990 and 999.
02.05.01, *Rules Governing Produce Safety*

IDAHO CODE SECTION 22-101A STATEMENT: These rules do not regulate an activity not already regulated by the federal government, nor are they 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.

Rules promulgated and implemented by the Idaho State Department of Agriculture (ISDA) protect commodity and livestock markets by ensuring consistent application of rules limiting the spread of pests, diseases and pathogens. ISDA rules are also designed to protect producers and consumers of agricultural products from unfair practices in the marketing, sale and promotion of agricultural commodities and products. Lastly, ISDA rules are designed to minimize environmental impacts of land use practices commonly part of agricultural production.

FEE SUMMARY: This rulemaking does not impose a fee or charge.

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 21st day of May, 2019.

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

02.04.24 – RULES GOVERNING TUBERCULOSIS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 25-203 and 25-305, Idaho Code. ()

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is “Rules Governing Tuberculosis.” (3-20-04)

02. **Scope.** These rules govern procedures for the prevention, surveillance, control, management, and eradication of tuberculosis in the state of Idaho. (3-20-04)

002. -- 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

01. **The January 1, 2005, Edition of “Bovine Tuberculosis Eradication Uniform Methods and Rules.”** (4-11-06)

02. **The Code of Federal Regulations, Title 9, Parts 71, 77, and 161, January 1, 2005.** This document can be viewed online at <https://www.govinfo.gov/app/details/CFR-2011-title9-vol1/CFR-2011-title9-vol1-part71>. (4-11-06)

005. -- 009. (RESERVED)

010. DEFINITIONS.

In addition to the definitions found in Section 25-239, Idaho Code, these terms apply in the interpretation and enforcement of this Rule: ()

01. **Accredited Herd.** A herd that meets the standards of the UMR for bovine tuberculosis. (3-20-04)

02. **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. (3-20-04)

03. **Affected Herd.** A herd in which there is strong and substantial evidence that *Mycobacterium bovis* may exist. (3-20-04)

04. **Approved Laboratory.** A state or federal veterinary diagnostic laboratory. The primary laboratory for tuberculosis histopathology and bacteriology culture will be the National Veterinary Services Laboratories, Ames, Iowa. (3-20-04)

05. **Approved Feedlot.** A feedlot approved by the Administrator to feed cattle and domestic bison of unknown Tuberculosis test status. (4-11-15)

06. **Area-Veterinarian-in-Charge.** The veterinary official of USDA/APHIS/VS, who is assigned by the deputy administrator of APHIS to supervise and perform official APHIS animal health work. (3-20-04)

07. **Bovine Tuberculosis.** A disease caused by *Mycobacterium bovis*. (3-20-04)

08. **Cattle.** All domestic bovidae, including domestic bison. (3-20-04)

09. **Domestic Bison.** All animals of the genus *Bison*, which are owned by a person. (3-20-04)

10. **Domestic Cervidae.** Elk, fallow deer, and reindeer owned by a person. (3-20-04)

11. **Eradication.** The complete elimination of bovine tuberculosis from cattle, domestic cervidae, bison and goats in a state so that the disease does not appear unless introduced from another species or from outside the state. (3-20-04)

12. **Exposed.** Animals that have had contact with other animals, herds, or materials that have been determined to be infected with or affected by *Mycobacterium bovis*. (3-20-04)

- 13. Federal Animal Health Official.** An employee of USDA/APHIS/VS who is authorized to perform animal health activities. (3-20-04)
- 14. Free Area.** The counties, areas or districts not quarantined by the Division of Animal Industries for tuberculosis. (3-20-04)
- 15. Herd.** Any group of cattle, bison, goats, and domestic cervidae maintained on common ground, or two (2) or more groups of cattle, bison, goats, and domestic cervidae under common ownership or supervision that are geographically separated from other groups but can have an interchange or movement without regard to health status. (3-20-04)
- 16. Herd Depopulation.** The destruction of all cattle, bison, goats, and domestic cervidae exposed to bovine tuberculosis in a herd. (3-20-04)
- 17. Interstate Movement.** Movements of cattle, bison, goats, and domestic cervidae 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. (3-20-04)
- 18. Intrastate Movement.** Movement of cattle, bison, goats, and domestic cervidae within Idaho. (3-20-04)
- 19. Negative.** Any cattle, bison, domestic cervidae, or goats that show no response to the tuberculin test, or are classified by the testing laboratory as negative for tuberculosis. (3-20-04)
- 20. Official Tuberculin Test.** A test for bovine tuberculosis, approved by APHIS, applied and reported by approved personnel in accordance with the UMR. (3-20-04)
- 21. Public Stockyards.** Premises where trading in cattle, bison, goats, and domestic cervidae is carried on, where yarding, feeding and watering places are provided by the stockyards or transportation companies, or where cattle, bison, goats, and domestic cervidae associations or similar companies maintain corrals for feeding, shearing, dipping and separating animals. (3-20-04)
- 22. Quarantined Area.** The counties, areas, or portions thereof, quarantined by the Division of Animal Industries for tuberculosis. (3-20-04)
- 23. 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. (3-20-04)
- 24. Reactor.** Any cattle, domestic cervidae, bison or goat that shows a response to an official tuberculosis test and is classified a reactor by the testing veterinarian or DTE; or any animal that is classified a reactor upon slaughter inspection or necropsy. (3-20-04)
- 25. Restrain.** The confinement of cattle, bison, goats, or domestic cervidae in a chute, or other device, for the purpose of efficiently, effectively, and safely inspecting, treating, vaccinating, or testing. (3-20-04)
- 26. State Animal Health Official.** The Administrator, or his designee, responsible for animal disease control and eradication activities. (3-20-04)
- 27. Suspect.** Any cattle, bison, domestic cervidae, or goat that shows a response to a tuberculin test as stated in the UMR for bovine tuberculosis, and is not classified a reactor. (3-20-04)
- 28. Tuberculin.** A product that is approved by, and produced under, USDA license for injection into cattle, bison, goats, and domestic cervidae for the purpose of detecting bovine tuberculosis. (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. CCT. Comparative Cervical Tuberculin Test. (3-20-04)
- 04. CFR. Code of Federal Regulations. (3-20-04)
- 05. CFT. Caudal-Fold Tuberculin Test. (3-20-04)
- 06. DTE. Designated Tuberculosis Epidemiologist. (3-20-04)
- 07. NGL. No Gross Lesion(s). (3-20-04)
- 08. NVSL. National Veterinary Services Laboratories in Ames, Iowa. (3-20-04)
- 09. UMR. Uniform Methods and Rules. (3-20-04)
- 10. USDA. United States Department of Agriculture. (3-20-04)
- 11. VS. Veterinary Services. (3-20-04)

012. -- 019. (RESERVED)

020. APPLICABILITY.

These rules apply to all cattle, bison, domestic cervidae, and goats located within, imported into, or exported from the state of Idaho, and other tuberculosis-susceptible animals. (3-20-04)

021. SUPERVISION.

The official tuberculosis eradication program will be supervised by full-time state or federal veterinarians. (3-20-04)

022. INSPECTIONS.

In order to ascertain compliance with this chapter, state and federal animal health officials are authorized to inspect animals, records, premises and other areas where cattle, bison, goats, domestic cervidae and other animals are held or kept. (3-20-04)

01. Entering Premises. In order to conduct activities authorized by this chapter, state or federal animal health officials are authorized to enter premises, other areas, or conveyances in the state where cattle, bison, goats, domestic cervidae or other tuberculosis susceptible animals are held or kept. State or federal animal health officials will attempt to notify the owner or operator of the premises or conveyance prior to conducting an inspection. (3-20-04)

02. Emergencies. In the event of an emergency, as determined by the Administrator, the notification requirements of Section 022 may be waived. (3-20-04)

023. TUBERCULOSIS TESTS.

Official tests for tuberculosis will be conducted only by persons authorized by the Administrator, and USDA/APHIS/VS. (3-20-04)

01. Authorized Person. The Administrator may authorize state or federal animal health officials, or accredited veterinarians to perform official tuberculin tests. (3-20-04)

02. Tuberculin Test Interpretation. The injection site on each animal shall be palpated by the authorized person that administered the tuberculin injection. The Administrator may grant variances from Subsection 023.02 on a case by case basis. (3-20-04)

024. REPORTING.

01. Test Results. Results of all official tuberculin tests shall be submitted to the Division of Animal Industries on a form, approved by the Administrator, within seven (7) days of initiation of the test. (3-20-04)

02. Disease. All owners of animals, and veterinarians, shall report evidence of tuberculosis infection to the Administrator, by telephone or facsimile, within twenty-four (24) hours of the discovery of the disease. (3-20-04)

025. QUARANTINES.

All cattle, bison, goats, and domestic cervidae animals or herds that are exposed to, or infected with tuberculosis shall be quarantined. (3-20-04)

01. Infected Herds. Infected herds or animals remain under quarantine until such time as the herd has been completely depopulated or the provisions for release of quarantine provided in the UMR for bovine tuberculosis have been met. (3-20-04)

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 negative or the provisions for release of quarantine provided in the UMR for bovine tuberculosis are met. (3-20-04)

03. Validity of Quarantine. The quarantine is valid whether or not it is acknowledged by signature of the owner. (3-20-04)

026. CLEANING AND DISINFECTING.

The Administrator is authorized to order the owner or operator of stockyards, pens, trucks, trailers, cars, vessels, chutes, and other conveyances and premises to clean and disinfect the same, at the owner's expense, whenever necessary for the eradication of tuberculosis. Cleaning and disinfecting shall be done under the supervision of state or federal animal health officials. (3-20-04)

01. Infected Premises. Premises, conveyances, or other areas where infected animals have been held or kept shall be cleaned and disinfected within fifteen (15) days following the removal of reactors or the entire herd. (3-20-04)

02. Exemptions. The Administrator may authorize an exemption from cleaning and disinfection requirements on a case-by-case basis. (3-20-04)

03. Extension of Time. The Administrator may authorize an extension of time for cleaning and disinfection under extenuating circumstances. (3-20-04)

027. (RESERVED)

028. TUBERCULOSIS TESTING.

The Administrator may require tuberculosis testing of cattle, bison, goats, domestic cervidae, or other animals. (3-20-04)

01. Duty to Restrain. It is the duty of each person who owns cattle, bison, goats, domestic cervidae, or other animals to pen the animals in suitable pens and restrain them for the test when directed to do so in writing by the Administrator. (3-20-04)

02. Records of Tests. When any cattle, bison, goats, domestic cervidae, or other animals are tested for tuberculosis a complete test record shall be made and the record shown on an official tuberculosis test form provided by the Administrator, which includes all of the following information: ()

- a. The name and address of the owner and the location of the animals at the time of the test. (3-20-04)
- b. The name and signature of the person conducting the test. (3-20-04)
- c. Individual identification number of each animal and the registration name and number of each

- purebred animal. (3-20-04)
- d.** Age of each animal. (3-20-04)
 - e.** Sex of each animal. (3-20-04)
 - f.** Breed of each animal. (3-20-04)
 - g.** Species of animals tested. (3-20-04)
 - h.** Test results for each animal. (3-20-04)

029. TUBERCULOSIS EMERGENCY.

In order to prevent the re-establishment of tuberculosis infection in cattle, bison, goats or domestic cervidae in the state, the Director may declare an animal health emergency. (3-20-04)

01. Tuberculosis in Idaho. The Director may declare a tuberculosis emergency in the event that tuberculosis is diagnosed in any cattle, bison, goats or domestic cervidae in Idaho. (3-20-04)

02. Tuberculosis in Adjacent Area. The Director may declare a tuberculosis emergency in the event that tuberculosis is discovered in areas outside the state that could result in transmission of tuberculosis to Idaho cattle, bison, goats, or domestic cervidae. (3-20-04)

030. TUBERCULOSIS INDEMNITY.

Owners of animals that are condemned and depopulated because of tuberculosis shall be indemnified for such animals, and for reasonable costs of disposal and cleaning and disinfection in accordance with the provisions of this chapter, except as provided in Section 031. (3-20-04)

01. Indemnity Payments. Payments are based upon the appraised value, less federal indemnity and salvage value for the animals. (3-20-04)

02. Time Limit for Slaughter. Payment of indemnity is made under Section 030 for animals destroyed because of tuberculosis, only if the animals are shipped to slaughter or die otherwise within fifteen (15) days after the date of individual identification and tagging. The Administrator may extend the period for thirty (30) days. (3-20-04)

03. Verification of Reactors That Die. Indemnity may be paid on tuberculosis reactors that die before being sent to slaughter provided: (3-20-04)

a. The reactors have been appraised and identified and die within fifteen (15) days from the date of appraisal; and (3-20-04)

b. The state or federal animal health officials directing the disease control work are furnished with a signed statement by a veterinarian attesting that he observed the carcass of the dead animal, the reactor tag number found in the left ear of the animal, and date of death. (3-20-04)

04. Other Costs. Reimbursement for disposal costs and cleaning and disinfection costs will not exceed the actual cost. (3-20-04)

031. TUBERCULOSIS INDEMNITY -- CLAIMS NOT ALLOWED.

Claims for compensation for animals destroyed because of tuberculosis are not allowed if any of the following circumstances exist: (3-20-04)

01. Failure to Comply. The owner has failed to comply with any of these rules. (3-20-04)

02. Illegal Imports. The animals were illegally imported into the state. (3-20-04)

03. Animals Sold for Slaughter. At the time of the test or condemnation, the animals belonged to or were upon the premises of any person to whom the animals had been sold, shipped, or delivered for slaughter.

(3-20-04)

04. Unapproved Test. The animals were subject to a test not approved by the Administrator. (3-20-04)

05. Untested Animals. All animals in the owner's herd have not been tested for tuberculosis under state or federal supervision. (3-20-04)

06. Premises Not Cleaned. The premises occupied by the tuberculosis infected animals were not cleaned and disinfected as directed, under state or federal supervision. (3-20-04)

07. Attempt to Improperly Obtain Funds. There is substantial evidence that the owner or his agent has in any way been responsible for any attempt unlawfully or improperly to obtain indemnity funds for such animals. (3-20-04)

08. Unidentified Cattle and Bison. Cattle or bison destroyed because of tuberculosis, unless they were marked for identification by branding the letter "T" on the left hip near the tailhead, not less than two (2) inches high, and unless a metal tag bearing a serial number and inscription "US REACTOR" or similar US Reactor tag, was suitably attached to the left ear of each animal. (3-20-04)

09. Calves. If the entire herd is not depopulated and the cattle or bison were calves under one hundred eighty (180) days of age. (3-20-04)

032. -- 099. (RESERVED)

100. OFFICIAL IDENTIFICATION.

All cattle, bison, domestic cervidae, and goats tested for tuberculosis shall be individually identified by official eartag, individual tattoo, or individual brand, as provided in the UMR for bovine tuberculosis, at the time of injection. (3-20-04)

101. CATTLE, BISON, GOATS, AND DOMESTIC CERVIDAE MARKET RELEASE.

The accredited veterinarian authorized to provide veterinary services at a specifically approved livestock market shall perform a clinical inspection of all cattle, bison, goats, and domestic cervidae and accurately complete a "Saleyard Release" form, certificate of veterinary inspection, or other market release mechanism certifying that the animals meet the health requirements for movement to the point of destination prior to any animals being released from the livestock market. (3-20-04)

102. -- 119. (RESERVED)

120. CLASSIFICATION OF CATTLE, BISON, AND DOMESTIC CERVIDAE.

Classification of cattle, bison, and domestic cervidae tested for tuberculosis is determined pursuant to the UMR for bovine tuberculosis. (3-20-04)

121. -- 199. (RESERVED)

200. PROCEDURES FOR INFECTED HERDS.

Disclosure of tuberculosis in any herd shall be followed by a complete epidemiological investigation and testing as provided in the UMR for bovine tuberculosis. (3-20-04)

201. -- 209. (RESERVED)

210. PROCEDURES FOR TUBERCULOSIS - INFECTED FEEDLOTS.

A tuberculosis-infected feedlot is handled in the same manner as an affected herd in regard to epidemiological investigation and the development of epidemiological tracings for animal movements into and out of the feedlot. (3-20-04)

211. -- 219. (RESERVED)

220. DISPOSITION OF TUBERCULIN-RESPONDING CATTLE, BISON, AND DOMESTIC CERVIDAE.

Cattle, bison, and domestic cervidae that respond to the tuberculin test shall be handled according to the UMR for bovine tuberculosis. (3-20-04)

221. -- 249. (RESERVED)

250. IDENTIFICATION OF REACTOR CATTLE AND BISON.

01. "T" Branding and Tagging. Reactor cattle and bison shall be identified by branding the letter "T" on the left hip near the tailhead, not less than two (2) inches and not more than three (3) inches high, and by tagging with an approved metal eartag bearing a serial number and inscription "U.S. Reactor" or a similar State reactor tag suitably attached to the left ear of each animal. (3-20-04)

02. Shipping Without Branding. In lieu of branding, the reactor(s) may be shipped to slaughter in an officially sealed vehicle or accompanied to slaughter by a state or federal animal health official provided such reactor(s) have the letters "TB" sprayed on the left hip with yellow paint. (4-11-06)

251. -- 259. (RESERVED)

260. IDENTIFICATION OF EXPOSED CATTLE AND BISON.

Cattle and bison exposed to bovine tuberculosis are to be identified in the following manner: (3-20-04)

01. "S" Branding and Tagging. To be eligible for federal indemnity, exposed cattle and bison shall be identified by branding the letter "S" on the left hip near the tailhead, not less than two (2) inches nor more than three (3) inches high, and by tagging with an approved metal eartag bearing a serial number attached to either ear of each animal. (3-20-04)

02. Shipping Without Branding. In lieu of branding, such animals may be accompanied to slaughter by a state or federal animal health official or be shipped in vehicles sealed with official seals. (3-20-04)

261. -- 299. (RESERVED)

300. RETESTING OF HIGH-RISK HERDS.

Retesting schedules for high-risk herds of cattle and bison are determined pursuant to the UMR for bovine tuberculosis. (3-20-04)

301. -- 399. (RESERVED)

401. APPROVED FEEDLOT.

Cattle and domestic bison of unknown Tuberculosis test status may be fed for slaughter only in an Approved Feedlot, with no provisions for pasturing, grazing, or removal from the feedlot other than to slaughter. (4-11-15)

402. APPLICATION FOR DESIGNATION AS AN APPROVED FEEDLOT

Applications for Approved Feedlot status are made on forms available from the Administrator. ()

403. ADMINISTRATOR APPROVAL.

The Administrator may approve feedlot applications after the feedlot has been inspected by state or federal animal health officials and: (4-11-15)

01. Cattle Secured. The feedlot management has demonstrated that cattle of unknown Tuberculosis test status can be secured in the feedlot; and (4-11-15)

02. Adequate Records. Feedlot records are adequate to show the origin and disposition of the cattle in the feedlot; and (4-11-15)

03. Adequate Resources. The Administrator determines that the Division of Animal Industries has adequate human and fiscal resources to assure that the feedlot abides by the provisions of this chapter; and (4-11-15)

04. Past History. The Administrator may take any past enforcement or violation history into consideration when making the final determination of whether or not to approve a feedlot. (4-11-15)

404. APPROVED FEEDLOT NUMBER.
Feedlots approved by the Administrator will receive an Idaho Approved Feedlot Number. (4-11-15)

405. EXPIRATION OF APPROVED STATUS.
Approved Feedlot status expires on September 1 of each year. It is the responsibility of feedlot management to apply each year for renewal of approved status. (4-11-15)

406. -- 499. (RESERVED)

500. MOVEMENT OF INFECTED AND EXPOSED CATTLE, DOMESTIC CERVIDAE, OR BISON.
All movement of infected or exposed cattle, domestic cervidae, or bison is on a restricted movement permit in accordance with the UMR for bovine tuberculosis. (3-20-04)

501. -- 999. (RESERVED)

02.05.01 – RULES GOVERNING PRODUCE SAFETY

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 22-5404, Idaho Code. (4-11-19)

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is “Rules Governing Produce Safety.” (4-11-19)

02. **Scope.** The purpose of these rules is to establish standards for growing, harvesting, packing, and holding of safe and unadulterated produce for human consumption. (4-11-19)

002. INCORPORATION BY REFERENCE.

The following document is incorporated by reference pursuant to Idaho Code Section 67-5229. Copies of this document may be obtained from the Idaho State Department of Agriculture central office. (4-11-19)

01. **Code of Federal Regulations, Title 21, Part 112, January 1, 2018.** Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption. This document can be viewed online at <https://www.ecfr.gov/cgi-bin/text-idx?SID=7f8ab876ff3e20c6cdd06c9de9141296&mc=true&node=pt21.2.112&rgn=div5>. (4-11-19)

003. – 009. (RESERVED)

010. DEFINITIONS.

The Idaho State Department of Agriculture adopts the definitions set forth in Section 22-5403, Idaho Code. In addition as used in this chapter: (4-11-19)

01. **Petition.** A petition for submission to the U.S. Food and Drug Administration requesting a variance from the requirements of 21 CFR Part 112. (4-11-19)

02. **Petitioner.** An individual, business, group, association, or entity who submits a petition to the Department for submission to the U.S. Food and Drug Administration requesting a variance from the requirements of 21 CFR Part 112. (4-11-19)

011. ABBREVIATIONS.

01. **FDA.** The U.S. Food and Drug Administration. (4-11-19)

012. VARIANCE.

01. **Procedure for Seeking a Variance.** Under the Produce Safety Rule, only a State, tribe, or a foreign country may request a variance from the Produce Safety Rule’s requirements by submitting a petition to the FDA in accordance with Subpart P of the Produce Safety Rule and with 21 CFR 10.30. Pursuant to 22-5404, Idaho Code, the Idaho Legislature designated the Department to administer the Produce Safety Rule, which includes the authority to decide whether to submit petitions to the FDA. The Department will submit a petition to the FDA if the following procedures are followed: (4-11-19)

a. The petitioner must prepare the petition in accordance with the requirements of Subpart P of the Produce Safety Rule and 21 CFR 10.30. Additionally, the petitioner must attach all required documentation and any other supporting documentation. The petitioner must submit the petition and all attached documents to the Department via the Department’s food safety email at fsma@isda.idaho.gov or mailed to the Department at the mailing address above or hand delivered to the Department at the physical address above. (4-11-19)

b. Within thirty (30) days of receiving a petition, the Department will complete a review of a petition to determine whether it meets the requirements of Subpart P of the Produce Safety Rule and 21 CFR 10.30. (4-11-19)

i. If, after reviewing the petition, the Department determines that the petition meets the requirements of Subpart P of the Produce Safety Rule and 21 CFR 10.30, the Department will submit the petition to the FDA within ten (10) days of that determination. (4-11-19)

ii. If, after reviewing the petition, the Department determines that the petition does not meet the requirements of Subpart P of the Produce Safety Rule and 21 CFR 10.30, the Department will notify the petitioner

and return the petition for correction. After correcting the deficiencies, the petitioner must resubmit the petition to the Department. Within thirty (30) days, the Department will complete an additional review of the petition to determine if the petition meets the requirements of Subpart P of the Produce Safety Rule and 21 CFR 10.30. (4-11-19)

iii. If, after reviewing the petition, the Department determines that the petition meets the requirements of Subpart P of the Produce Safety Rule and 21 CFR 10.30, the Department will submit the petition to the FDA within ten (10) days of that determination. If, after reviewing the petition, the Department determines that the petition still does not meet the requirements of Subpart P of the Produce Safety Rule and 21 CFR 10.30, the Department will follow the procedure in Subparagraph 012.01.b.ii. (4-11-19)

02. Support and Withdrawal of Petitions. (4-11-19)

a. When the Department submits a petition to the FDA, the petitioner who prepared the petition, or an individual, business, group, association, or entity that supports the petition, shall assist the Department in responding to inquiries or directions from the FDA regarding the petition. If neither the petitioner nor an individual, business, group, association, or entity that supports the petition provides this assistance to the Department within thirty (30) days, the Department may withdraw the petition. (4-11-19)

b. If the FDA takes action to modify or revoke a variance previously granted to the Department, the Department may waive the opportunity for a hearing unless a petitioner or an interested person adequately supports the Department in defending the variance in whole or in part from modification or revocation by FDA. (4-11-19)

013. – 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

DOCKET NO. 02-0000-1900A

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING 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. The pending rules become final and effective upon the conclusion of the legislative session, unless the rules are approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rules are approved or rejected in part by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted the following pending rules. This action is authorized pursuant to Sections 22-102A, 22-108(2), 22-505, 22-702, 22-802, 22-803, 22-901, 22-911, 22-1907, 22- 2004, 22-2006, 22-2013, 22-2403, 25-203, 25-207A(1), 25-305, 25-401, 25-601, 25-3704, 25-3902, 25-3903, 37- 303, 37-405, 37-515, 37-516, 37-1101(5), Idaho Code.

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

These pending rules adopt and re-publish the following existing and previously approved and codified chapters under IDAPA 02, rules of the Department of Agriculture:

- 02.01.03, *Airborne Control of Unprotected and Predatory Animals Rules*
- 02.04.04, *Rules for Artificial Dairy Products*
- 02.04.13, *Rules Governing Raw Milk*
- 02.04.20, *Rules Governing Brucellosis*
- 02.04.21, *Rules Governing the Importation of Animals*
- 02.04.25, *Rules Governing Private Feeding of Big Game Animals*
- 02.04.27, *Rules Governing Deleterious Exotic Animals*
- 02.04.29, *Rules Governing Trichomoniasis*

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 132-288](#).

Additionally, all changes between the text of the 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 eliminate unnecessarily restrictive language and redundancy:

CONSOLIDATION OF RULES: 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. These rules have been consolidated into rules with similar subject matter:

- **(VACATED)** 02.02.02, *Controlled Atmosphere Storage* (Consolidated into new chapter 02.02.02, “Rules Governing Grading and Controlled Atmosphere Storage of Apples”)
- **(VACATED)** 02.04.08, *Rules Governing Grade A Milk and Milk Products* (Consolidated into new chapter 02.04.05, “Rules Governing Grade A and Manufacture Grade Milk”)
- **(VACATED)** 02.02.09, *Rules Requiring Inspection of Potatoes Intended for Sale or Offered for Sale in Retail Outlets* (Consolidated into new chapter 02.02.07, “Rules Governing Bulk Permits and Retail Sale of Potatoes”)
- **(VACATED)** 02.04.18, *Rules Governing CAFO Site Advisory Team* (Consolidated into new chapter 02.04.30. “Rules Governing Environmental and Nutrient Management”)

- **(VACATED)** 02.04.28, *Rules Governing Livestock Dealers, Buying Stations, and Livestock Trader Lots* (Consolidated into new chapter 02.04.26, “Rules Governing the Public Exchange of Livestock”)

The following chapters have been consolidated into new chapter 02.06.05, “Rules Governing Plant Disease and Quarantines”

- **(VACATED)** 02.06.07, *Rules Governing White Rot Disease of Onion;*
- **(VACATED)** 02.06.08, *Quarantine Rules Pertaining to Apples and Cherries;*
- **(VACATED)** 02.06.11, *Rules Governing European Corn Borer;*
- **(VACATED)** 02.06.15, *Rules Governing Peach Tree Diseases;*
- **(VACATED)** 02.06.32, *Rules Concerning the Anthracnose Disease of Lentil;*
- **(VACATED)** 02.06.38, *Rules Governing Plum Curculio;*
- **(VACATED)** 02.06.24, *Rules Governing the Japanese Beetle;*
- **(VACATED)** 02.06.20, *Rules Governing Grape Planting Stock*

The following chapters have been consolidated into new chapter 02.06.09, “Rules Governing Invasive Species and Noxious Weeds”

- **(VACATED)** 02.06.09, *Rules Governing Invasive Species;*
- **(VACATED)** 02.06.22, *Noxious Weeds Rules;*

The following chapters have been consolidated into new chapter 02.06.10, “Rules Governing the Growing of Potatoes”

- **(VACATED)** 02.06.10, *Rules Governing the Potato Cyst Nematode;*
- **(VACATED)** 02.06.26, *Rules Concerning Seed Potato Crop Management Areas; and,*
- **(VACATED)** 02.06.39, *Rules Governing Minimum Standards for Planting Uncertified Seed Potatoes*
- **(VACATED)** 02.06.13, *Rules Relating to Rapeseed Production and Establishment of Rapeseed Districts* (Consolidated into new chapter 02.06.01, “Rules Governing the Production and Distribution of Seed”)

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	Rule Title	Identified portions
02.01.03	Idaho Department of Agriculture Control of Unprotected or Predatory Animals Rules	Entire rule is more stringent than federal law or regulations.
02.04.04	Rules Governing Artificial Dairy Products	Entire rule regulates an activity not regulated by the federal government.
02.04.13	Rules Governing Raw Milk	Entire rule regulates an activity not regulated by the federal government.
02.04.20	Rules Governing Brucellosis	02.04.20.027; 02.04.028.03-04; 02.04.100-102; 02.04.20.200-204; and 02.04.20.250-256 all regulate activity not regulated by federal government. 02.04.20.029; 02.04.20.105; 02.04.20.120-123; 02.04.20.321; and 02.04.20.421 are broader in scope than federal laws or regulations.

IDAPA	Rule Title	Identified portions
02.04.21	Rules Governing the Importation of Animals	02.04.21.100.03, 02.04.21.108, 02.04.21.111, 02.04.21.201-202, 02.04.21.210, 02.04.21.300-302, 02.04.21.600-605, 02.04.21.650, 02.04.21.660-670, 02.04.21.705-707. 02.04.21.710, 02.04.21.720 are all more stringent than federal laws or regulations. 02.04.21.104-105, 02.04.21.109, 02.04.21.260, 02.04.21.500 all regulate activity not regulated by federal government.
02.04.25	Rules Governing Private Feeding of Big Game Animals	Entire rule regulates activity not regulated by the federal government.
02.04.27	Rules Governing Deleterious Exotic Animals	Entire rule regulates activity not regulated by the federal government.
02.04.29	Rules Governing Trichomoniasis	Entire rule regulates 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: 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 these pending rules, 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
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8552
Fax: (208) 334-2170

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 22-102A, 22-108(2), 22-505, 22-702, 22-802, 22-803, 22-901, 22-911, 22-1907, 22-2004, 22-2006, 22-2013, 22-2403, 25-203, 25-207A(1), 25-305, 25-401, 25-601, 25-3704, 25-3902, 25-3903, 37-303, 37-405, 37-515, 37-516, 37-1101(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 02, rules of the Department of Agriculture:

IDAPA 02

- 02.01.03, *Idaho Department of Agriculture Airborne Control of Unprotected and Predatory Animals Rules*, **except rule Section 500**, which is eliminated; adds required Sections 004-006
- 02.02.02, *Idaho Department of Agriculture Controlled Atmosphere Storage Rules*; adds required Sections 004-006
- 02.02.09, *Rules Requiring Inspection of Potatoes Intended for Sale or Offered for Sale in Retail Outlets*, eliminates Sections 104 and 108
- 02.04.04, *Rules for Artificial Dairy Products*, adds required Sections 000-006; modifies Section 100
- 02.04.08, *Rules Governing Grade A Milk and Milk Products*
- 02.04.13, *Rules Governing Raw Milk*, with modifications to Section 010; eliminates Section 060
- 02.04.18, *Rules Governing CAFO Site Advisory Team*, modifies Sections 000, 001, 005, and 010
- 02.04.20, *Rules Governing Brucellosis*, modifies Sections 000, 001, and 010
- 02.04.21, *Rules Governing the Importation of Animals*, modifies Sections 000 and 010
- 02.04.25, *Rules Governing Private Feeding of Big Game Animals*, modifies Section 010; eliminates Sections 990 and 995
- 02.04.27, *Rules Governing Deleterious Exotic Animals*
- 02.04.28, *Rules Governing Livestock Dealers, Buying Stations, and Livestock Trader Lots*, modifies Sections 000, 001, 005, and 010; eliminates Sections 990 and 999
- 02.04.29, *Rules Governing Trichomoniasis*
- 02.06.07, *Rules Governing White Rot Disease of Onion*, eliminates Sections 007 and 300; modifies Section 001
- 02.06.08, *Quarantine Rules Pertaining to Apples and Cherries*, eliminates Sections 012, 510, and 650
- 02.06.09, *Rules Governing Invasive Species*, eliminates Section 011
- 02.06.10, *Rules Governing the Potato Cyst Nematode*, eliminates Section 025
- 02.06.11, *Rules Governing European Corn Borer*, eliminates Sections 007 and 200; modifies Section 150
- 02.06.13, *Rules Relating to Rapeseed Production and Establishment of Rapeseed Districts in the State of Idaho*, modifies Sections 010 and 200; adds required Sections 004-006
- 02.06.15, *Rules Governing Peach Tree Diseases*, modifies Section 300; eliminates Sections 007, 400, 450
- 02.06.17, *Rules Governing the Disposal of Cull Onion and Potatoes*, eliminates Sections 008 and 150
- 02.06.20, *Rules Governing Grape Planting Stock*, eliminates Section 300
- 02.06.22, *Noxious Weeds Rules*, eliminates Section 600
- 02.06.24, *Rules Governing the Japanese Beetle*, eliminates Section 007

02.06.26, *Rules Concerning Seed Potato Crop Management Areas*, eliminates Sections 007 and 450
 02.06.32, *Rules Concerning the Anthracnose Disease of Lentil*, eliminates Sections 007 and 350
 02.06.38, *Rules Governing Plum Curculio*, modifies Section 010; eliminates Sections 007 and 250
 02.06.39, *Rules Governing Minimum Standards for Planting Uncertified Seed Potatoes in Idaho*, eliminates Section 070; adds required Sections 004-006

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

IDAPA	Rule Title	22-101A
02.01.03	Control of Unprotected or Predatory Animals Rules	02.01.03.100-999
02.02.02	Controlled Atmosphere Storage Rules	02.02.02.000-999
02.02.09	Rules Requiring Inspection of Potatoes Intended for Sale or Offered for Sale in Retail Outlets	02.02.09.000-999
02.04.04	Rules for Artificial Dairy Products	02.04.04.010-999
02.04.08	Rules Governing Grade A Milk and Milk Products	02.04.08.008
02.04.13	Rules Governing Raw Milk	02.04.13.007-999
02.04.18	Rules Governing CAFO Site Advisory Team	02.04.18.010-999
02.04.20	Rules Governing Brucellosis	02.04.20.027, 02.04.20.028.03-04, 02.04.20.029, 02.04.100-102, 02.04.20.105, 02.04.20.120-123, 02.04.20.200-204, 02.04.20.250-256, 02.04.20.321, 02.04.20.421
02.04.21	Rules Governing the Importation of Animals	02.04.21.100.03, 02.04.21.104-105, 02.04.21.108-109, 02.04.21.111, 02.04.21.200-202, 02.04.21.210, 02.04.21.220, 02.04.21.260, 02.04.21.300-302, 02.04.21.500, 02.04.21.600-606, 02.04.21.650, 02.04.21.660-670, 02.04.21.705-707, 02.04.21.710, 02.04.21.720
02.04.25	Rules Governing Private Feeding of Big Game Animals	02.04.25.010-999
02.04.27	Rules Governing Deleterious Exotic Animals	02.04.27.010-999
02.04.28	Rules Governing Livestock Dealers, Buying Stations, and Livestock Trader Lots	02.04.28
02.04.29	Rules Governing Trichomoniasis	02.04.29.010-999
02.06.07	Rules Governing White Rot Disease of Onion	02.06.07.012-999
02.06.08	Quarantine Rules Pertaining to Apples and Cherries	02.06.08.012-999

IDAPA	Rule Title	22-101A
02.06.09	Rules Governing Invasive Species	02.06.09.101-999
02.06.10	Rules Governing the Pale Cyst Nematode	02.06.10.014
02.06.11	Rules Governing European Corn Borer	02.06.11.012-999
02.06.13	Rules Relating to Rapeseed Production and Establishment of Rapeseed Districts	02.06.13.050-999
02.06.15	Rules Governing Peach Tree Diseases	02.06.15.012-999
02.06.17	Rules Governing the Disposal of Cull Onion and Potatoes	02.06.17.050-999
02.06.20	Rules Governing Grape Planting Stock	02.06.20.050-999
02.06.22	Noxious Weed Rules	02.06.22.100-999
02.06.24	Rules Governing the Japanese Beetle	02.06.24.012-999
02.06.26	Rules Concerning Seed Potato Crop Management Areas	02.06.26.020-999
02.06.32	Rules Concerning the Anthracnose Disease of Lentil	02.06.32.050-999
02.06.38	Rules Governing Plum Curculio	02.06.38.050-999
02.06.39	Rules Governing Minimum Standards for Planting Uncertified Seed Potatoes	02.06.39.050-999

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.

Rules promulgated and implemented by the Idaho State Department of Agriculture (ISDA) protect commodity and livestock markets by ensuring consistent application of rules limiting the spread of pests, diseases and pathogens. ISDA rules are also designed to protect producers and consumers of agricultural products from unfair practices in the marketing, sale and promotion of agricultural commodities and products. Lastly, ISDA rules are designed to minimize environmental impacts of land use practices commonly part of agricultural production.

FEE SUMMARY: This rulemaking does not impose a fee or charge.

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 rules, 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 DOCKET NO. 02-0000-1900A

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.01.03 – AIRBORNE CONTROL OF UNPROTECTED OR PREDATORY ANIMALS RULES

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 22-102A, Idaho Code. (5-24-95)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is the “Airborne Control of Unprotected or Predatory Animals Rules,” IDAPA 02.01.03. (5-24-95)

02. Scope. These rules govern the issuance of permits for the airborne control of unprotected or predatory animals and establish the duties of permittees. ()

002. – 009. (RESERVED)

010. DEFINITIONS.

01. Airborne Control. While airborne in any aircraft, to shoot or attempt to shoot, drive off, or kill unprotected or predatory animals. (5-24-95)

02. Aircraft. Any contrivance used for flight in the air. (5-24-95)

03. Predatory Animal. For the purpose of administering Section 22-102A, Idaho Code, and these rules, the following animals are designated as predatory animals: (1) coyotes; and (2) red fox. Red fox may be controlled in the areas where the Idaho Department of Fish and Game has established a year-round hunting season for red fox, and, in consultation with the Idaho Department of Fish and Game, in specific areas, outside the areas where a year-round hunting season has been established, where red fox are causing predation problems. ()

04. Unprotected Animal. An animal which is not designated as protected, threatened, or endangered under federal or state law. (5-24-95)

011. -- 099. (RESERVED)

100. APPLICATION TO OBTAIN A PERMIT.

01. Airborne Control Permit Required. Any person who engages in the airborne control of unprotected or predatory animals must obtain a permit from the Department. (5-24-95)

02. Required Application Form. An application for an airborne control permit shall be on a form provided by the Department. (5-24-95)

03. Required Information on Application. The applicant shall provide all information requested on the application form, including: (5-24-95)

a. Name and address of the applicant; (5-24-95)

b. The purpose for the permit, specifically identifying whether the resource to be protected is land, water, wildlife, livestock, domestic animals, crops, or human life; (5-24-95)

c. A statement regarding the threat, danger, or menace to the resource requiring protection; (5-24-95)

d. Common name of animal to be controlled; (5-24-95)

e. The geographic location of the property where the applicant intends to conduct airborne control; (5-24-95)

f. Description of the aircraft to be used, including make, model, aircraft number, owner, pilot, and location where the aircraft is based; and (5-24-95)

- g.** The period of time for which the permit is requested. (5-24-95)

04. Written Consent from Private Landowner Required. The applicant must submit a written document from each owner of private land on whose property the applicant plans to conduct airborne control operations indicating that the applicant has the permission of the owner to engage in such activities on that property. The applicant must also provide the name, address, and telephone number of the owner of the property from whom such permission was obtained. (5-24-95)

05. Incomplete Application. Failure to provide any of the required information for the application is cause for denial of a permit. (5-24-95)

101. -- 149. (RESERVED)

150. ISSUANCE OF AIRBORNE CONTROL PERMITS.

In determining whether the permit application should be granted or denied, the Director may give reasonable consideration to the following factors: (5-24-95)

- 01. Threat to Resource.** The threat, danger, or menace to the resource requiring protection. (5-24-95)

- 02. Type of Control.** Whether the animals are to be driven off or killed. (5-24-95)

03. Number of Permits Issued. The number of permits issued for the same type of animal in the same geographic location. (5-24-95)

151. NOTIFICATION TO FEDERAL LAND MANAGEMENT AGENCIES.

Information concerning airborne control activities authorized to be conducted under these rules will be provided to those federal land management agencies on whose land the activities are to be conducted. This provision will not be interpreted to require a permit applicant to obtain permission from the federal land management agency to conduct airborne control activities as a condition of receiving the permit from the Department. (5-24-95)

152. -- 199. (RESERVED)

200. LIMITATIONS ON USE AND VALIDITY OF AIRBORNE CONTROL PERMITS.

01. Possession of Permits by Permittee. Permits must be in the possession of the permittee when exercising any privileges thereunder. (5-24-95)

02. Expiration of Permits. Permits will be valid from the date of issuance and will expire on June 30 of each year. (5-24-95)

- 03. Exclusive to Permittee.** Permits are not transferable. (5-24-95)

- 04. Geographic Limitation.** Permits are valid only for the geographic area specified. (5-24-95)

05. Changes in Application Information. Any person who has been issued a permit under the provisions of these rules shall immediately notify the Department of any changes in the information supplied in the application or any changes in the conditions under which the permit was issued. (5-24-95)

201. -- 299. (RESERVED)

300. RECORDKEEPING REQUIREMENTS.

01. Recordkeeping by Permittee. Any person who has been issued a permit under the provisions of these rules shall maintain records of airborne control activities including the following information: (5-24-95)

- a.** The resource protected; (5-24-95)

- b.** The common name of animal and number of animals controlled; (5-24-95)
- c.** The geographic location of the property where airborne control was conducted; and (5-24-95)
- d.** The specific dates on which the person was engaged in airborne control activity. (5-24-95)

02. Summary of Control Activities. A summary of all control activities, including the information specified in Subsection 300.01, shall be submitted to the Director within thirty (30) working days after the end of each calendar quarter. (5-24-95)

301. -- 399. (RESERVED)

400. PROHIBITED ACTS.

- 01. Prohibited Acts Defined.** No person may: (5-24-95)
 - a.** Engage in airborne control activities without a valid airborne control permit. (5-24-95)
 - b.** Use an airborne control permit to hunt for sport. (5-24-95)
 - c.** Kill any type of animal different from the type of animal specified on the permit. (5-24-95)
 - d.** Transfer an airborne control permit to another person. (5-24-95)
 - e.** Engage in airborne control activities in a geographic area different from the area specified on the permit. (5-24-95)
 - f.** Engage in airborne control activities after the time limit on the permit expires. (5-24-95)

401. – 999. (RESERVED)

02.04.04 – RULES FOR ARTIFICIAL DAIRY PRODUCTS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 37-303, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.04.04, “Rules for Artificial Dairy Products.” ()

02. Scope. These rules govern the process, sale, and distribution of artificial dairy products. ()

002. – 011. (RESERVED)

100. GENERAL.

The Director of the Idaho Department of Agriculture or the Director’s authorized representative will issue and enforce a written stop sale order to the owner or custodian of any quantity of artificial dairy products that has been determined by the Department of Agriculture to be in violation of Sections 37-315 through 37-318, Idaho Code. The order shall prohibit further sale, processing, or movement of such artificial dairy products, until the Department has evidence that the law has been complied with. ()

101. – 999. (RESERVED)

02.04.13 – RULES GOVERNING RAW MILK

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 37-1101(5), Idaho Code. (4-7-11)

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is “Rules Governing Raw Milk.” (3-29-10)

02. **Scope.** These rules govern the production, processing, distribution, and sale of raw milk for human consumption, but not intended for pasteurization. (4-7-11)

002. -- 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

The following document is incorporated by reference: The Grade A Pasteurized Milk Ordinance 2017 Revision, U.S. Department of Health and Human Services Public Health Service Food and Drug Administration (“2017 Pasteurized Milk Ordinance”), except those provisions establishing raw milk standards for raw milk for pasteurization. This document is available online at <https://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Milk/UCM612027.pdf>. ()

005. -- 009. (RESERVED)

010. DEFINITIONS.

The following definitions apply in the interpretation and the enforcement of this chapter: (3-29-10)

01. **Adulterated.** The meaning of adulterated includes the following: (4-7-11)

a. The addition or inclusion of unclean, unwholesome, inferior, impure or foreign material into a food product; or (4-7-11)

b. The production, distribution, or sale of raw milk or raw milk products from a facility that does not possess a valid permit from the Department or is not registered with the Department as a Herd Share program; or (4-7-11)

c. Any raw milk product or facility that fails to meet any of the requirements of these rules. (4-7-11)

02. **Dairy Farm.** Any place or premises where one (1) or more cows, goats or sheep are milked and where a part or all of the raw milk or raw milk products are produced that are not intended for pasteurization, or are intended for human consumption without pasteurization, and are distributed, sold or offered for sale to persons other than members of the dairy farm’s immediate household. (4-7-11)

03. **Denatured.** To change the usual or normal nature of a material or substance by either chemical or physical means. (3-29-10)

04. **Herd Share.** The undivided ownership interest in no more than seven (7) cows, fifteen (15) goats, or fifteen (15) sheep resulting from an investment of monetary value through a written contractual agreement between an owner and a farmer in exchange for raw milk or raw milk products. (4-7-11)

05. **Official Laboratory.** A biological, chemical, or physical laboratory that is approved by the Department. (4-7-11)

06. **Owner.** A person who has made an investment of monetary value in the ownership or care of cows, goats, or sheep and participates in a Herd Share program pursuant to a written contractual agreement. (4-7-11)

07. **Raw Milk.** The lacteal secretion, practically free from colostrum, obtained by the complete milking of one (1) or more healthy cows, goats, or sheep, and that has not been pasteurized and is intended for human consumption. (4-7-11)

08. **Raw Milk Permit.** Authorization from the Department allowing raw milk and raw milk products to be sold for human consumption by a dairy farm or raw milk plant that complies with the requirements of these rules. (4-7-11)

09. Raw Milk Plant. Any place, premises, or establishment where raw milk is collected, handled, stored, bottled, or processed into raw milk or raw milk products for sale or offered for sale for human consumption. (4-7-11)

10. Raw Milk Products. Raw milk products include any milk product processed from raw milk that has not been pasteurized and is intended for human consumption by persons other than members of the dairy farm's immediate household. Cheese made from raw milk that has been processed and aged for a minimum of sixty (60) days at a temperature greater than thirty-five degrees Fahrenheit (35°F) in a licensed dairy processing plant is exempt from these rules. (4-7-11)

11. Registration. A requirement by the Department for the authorization of a Herd Share to provide raw milk and raw milk products for human consumption to owners of that Herd Share as provided in Section 040 of these rules. (4-7-11)

12. Sanitization. The application of any effective method or substance to a clean surface for the destruction of pathogens, and of other organisms as far as is practicable. Such treatment may not adversely affect the equipment, the raw milk or raw milk products or the health of consumers, and be acceptable to the Department. (3-29-10)

13. Small Herd. The production of raw milk or raw milk products for human consumption, for use by people other than members of their immediate household or non-paying guests, in a facility with no more than three (3) lactating cows, seven (7) lactating goats, or seven (7) lactating sheep. The dairy farm herd may include other cows, goats, or sheep that are dry or are producing milk for purposes other than human consumption. (4-7-11)

14. Small Herd Raw Milk Permit. Written authorization from the Department to a small herd dairy farm allowing raw milk and raw milk products to be sold for human consumption as provided in Section 030 of these rules. (4-7-11)

15. Sterilized. The condition achieved by application of heat, chemical sterilant or other appropriate treatment that renders the piping, equipment and containers used for raw milk and raw milk products free of viable microorganisms. (3-29-10)

011. (RESERVED)

012. ADULTERATED OR MISBRANDED RAW MILK OR RAW MILK PRODUCTS.

01. Prohibited Acts. No person shall produce, provide, sell, offer, or expose for sale, or possess with intent to sell, within the State or its jurisdiction, any adulterated or misbranded raw milk or raw milk products for human consumption. (4-7-11)

02. Restriction on Sale. Raw milk or raw milk products may not be sold or offered for sale through restaurants or other food service establishments. Grocery stores and similar establishments where raw milk or raw milk products are sold at retail, but not processed there, are exempt from the requirements of these rules, provided those stores and establishments receive raw milk or raw milk products from Department-authorized facilities. (4-7-11)

03. Disposition of Adulterated or Misbranded Product. Any adulterated or misbranded raw milk or raw milk product may be impounded and disposed of as directed by the Department. The Department may issue a hold order when it is deemed necessary to protect human health. (4-7-11)

013. STANDARDS FOR RAW MILK AND RAW MILK PRODUCTS.

01. Requirements. All raw milk and raw milk products shall be produced and processed to conform with the standards listed in Subsection 013.02 of this rule. Permitted dairy farms and raw milk plants must meet the sanitation requirements of the 2017 Pasteurized Milk Ordinance, unless the dairy farm has a Small Herd Raw Milk Permit or has registered a herd share arrangement with the Department. (4-11-19)

02. Chemical, Bacteriological, and Temperature Standards.

RAW MILK	
Temperature	Cooled to forty degrees Fahrenheit (40F or 5C) or less within two (2) hour after milking provided that the blend temperature after the first and subsequent milking does not exceed forty-five degrees Fahrenheit (45F or 7C).
Bacterial Limits	Raw milk and raw milk products except cultured raw milk products shall not exceed fifteen thousand (15,000) per ml.
Coliform Limits	Raw milk and raw milk products may not exceed twenty-five (25) per ml.
Drugs	Raw milk must test negative by a test method approved by the Department.
Somatic Cell Counts	Raw milk must not exceed five hundred thousand (500,000) per ml. Goat or sheep raw milk must not exceed seven hundred and fifty thousand (750,000) per ml.
Brucellosis Test	Raw milk obtained from sheep or goats must be from animals that have tested negative on an annual brucellosis test performed by an official laboratory. Raw milk obtained from bovines must be from animals that have tested negative on the Brucellosis Ring Test performed by an official laboratory.
Tuberculosis Test	All raw milk must be from animals that have been accredited as tuberculosis free or must have passed an annual tuberculosis test.

(4-7-11)

03. Commingled Milk. Milk from commingled species must meet the somatic cell count of the most restrictive species. (4-7-11)

014. LABELING.

01. Applicability. Section 014 applies to holders of Raw Milk Permits and holders of Small Herd Raw Milk Permits. (4-7-11)

02. Requirements. All raw milk and raw milk products must have Department-approved labeling. All bottles, containers, and packages enclosing raw milk or raw milk products must be conspicuously marked with the following: (4-7-11)

- a. The words “not pasteurized,” or “unpasteurized” in addition to “raw” must precede the name of the product; (4-7-11)
- b. The quantity of contents; (4-7-11)
- c. The name and address or permit number of the permit holder; and (4-7-11)
- d. When applicable, the word “goat” or “sheep” must precede the name of the raw milk or raw milk products. (4-7-11)

03. Commingled Milk Label. The label of raw milk or raw milk products containing milk from commingled species must identify the species from which the raw milk was obtained. (4-7-11)

04. Small Herds. Department-approved labels are not required for the holders of Small Herd Raw Milk Permits if the raw milk or raw milk products are sold at the point of production. (4-7-11)

05. Misleading Labels. It is a violation of these rules to use any misleading marks, words, or

endorsements on the label. Registered trade designs or similar terms on the bottle cap or label may be used if the Department determines that the designs or terms are not misleading and do not obscure the labeling required by these rules. Any misleading labeling on the final container will cause the product to be considered misbranded. (3-29-10)

015. -- 019. (RESERVED)

020. RAW MILK PERMITS.

01. Requirements. It is unlawful for any person who does not possess a Raw Milk Permit from the Department to produce, process, sell or offer for sale raw milk or raw milk products for human consumption to persons other than members of the dairy farm's immediate household. (4-7-11)

02. Obtaining a Raw Milk Permit. Only a person who complies with these rules may receive and retain a Raw Milk Permit. Raw Milk Permits are not transferable with respect to persons or locations. Prior to the issuance of a permit each dairy farm whose raw milk or raw milk products are intended for human consumption within the state of Idaho must comply with the following requirements: (4-7-11)

- a. Submit to and pass a qualifying inspection conducted by the Department; (4-7-11)
- b. Meet the applicable sanitation, construction, and procedural requirements of the 2017 Pasteurized Milk Ordinance; (4-11-19)
- c. Meet the raw milk and raw milk products quality standards in Section 013 of these rules; (4-7-11)
- d. Meet the tuberculosis and brucellosis standards in Section 013 of these rules; and (4-7-11)
- e. Produce and process all raw milk and raw milk products on the same premises. (4-7-11)

03. Inspection Frequency. Following the issuance of a permit, the Department will inspect each Raw Milk Permit holder operation at least once every three (3) months. (4-7-11)

04. Sanitation Requirements. All raw milk dairy farms and raw milk plants that process raw milk or raw milk products into final containers for human consumption must meet the requirements of the 2017 Pasteurized Milk Ordinance and Section 013 of these rules if the raw milk or raw milk products are for use by persons other than the dairy farm's immediate household. (4-11-19)

021. -- 029. (RESERVED)

030. SMALL HERD RAW MILK PERMITS.

It is unlawful for any person with a small herd to sell raw milk and raw milk products for human consumption without a Small Herd Raw Milk Permit issued by the Department. The Small Herd Raw Milk Permit applies to raw milk and raw milk products intended for human consumption for persons other than members of the dairy farm's immediate household. (4-7-11)

01. Obtaining a Small Herd Raw Milk Permit. Only a person who complies with these rules may receive and retain a Small Herd Raw Milk Permit. The Small Herd Raw Milk Permit will indicate the physical location of the small herd and the mailing address of the owner or operator in charge of the herd's care and milk quality. Small Herd Raw Milk Permits are not transferable to another person or location. Applications for a Small Herd Raw Milk Permit may be upon a form provided by the Department. All holders of Small Herd Raw Milk Permits issued by the Department must meet the following conditions: (4-7-11)

- a. Meet the raw milk and raw milk products quality standards as set forth in Section 013 of these rules; (4-7-11)
- b. Meet the tuberculosis and brucellosis standards as set forth in Section 013 of these rules; (4-7-11)
- c. Meet the applicable drug testing requirements as determined by the Department based on dairy

farm drug therapy and milk quality history; and (4-7-11)

- d. All raw milk and raw milk products must be produced and processed on the same premises. (4-7-11)

02. Testing Frequency. Raw milk or raw milk products must be tested at a frequency of at least four (4) times in separate months during any consecutive six-month period. (4-7-11)

03. Product Quality. Whenever three (3) out of five (5) consecutive bacteria, coliform, or somatic cell counts exceed milk quality standards, the milk may not be offered for human consumption until subsequent product testing shows that the raw milk or raw milk products comply with Section 013 of these rules. (4-7-11)

04. Test Results Made Available. A Small Herd Raw Milk Permit holder must provide raw milk and raw milk product quality tests results if requested by individuals who purchase raw milk and raw milk products. (4-7-11)

05. Exemption from Pasteurized Milk Ordinance. A small herd operation that is in compliance with a Small Herd Raw Milk Permit requirements is exempt from the sanitary, construction, inspection, and operation requirements of the 2017 Pasteurized Milk Ordinance. (4-11-19)

031. -- 039. (RESERVED)

040. HERD SHARE PROGRAMS.

01. Registration. The dairy farm or farmer responsible for a herd participating in a herd share program must register the farm or dairy with the Department. Registration may be upon a form provided by the Department or may be a written statement containing, at a minimum, the following information: (4-7-11)

- a. The name of the farmer, farm, or dairy; (4-7-11)
- b. A valid, current address for the farmer, farm, or dairy; and (4-7-11)
- c. A statement that raw milk or raw milk products are being produced at the farm or dairy. (4-7-11)

02. Proof of Ownership Interest. The farmer and each owner of the herd share must enter into a written contract evidencing the herd share arrangement. The contractual documents must include, at a minimum, the following: (4-7-11)

- a. A bill of sale, stock certificate, or other written evidence satisfactory to the Department; (4-7-11)
- b. A boarding and care plan for the livestock; (4-7-11)
- c. A conspicuous notice that the milk or milk products received under the contract will be raw; and (4-7-11)
- d. Proof that written information regarding the herd health and production standards used by the dairy or farm have been provided to each herd share owner. (4-7-11)

03. Testing and Results. The farm or dairy must comply with the testing frequency and standards set forth in Section 37-1101, Idaho Code. A copy of all test results, the name of the tests performed, and an explanation of the tests and test results must be provided to each owner. Proof that the information has been provided to the owners must be sent to the Department. (4-7-11)

04. Product Quality. Whenever three (3) out of five (5) consecutive bacteria, coliform, or somatic cell counts exceed milk quality standards, the milk may not be offered for human consumption until subsequent product testing shows that the raw milk or raw milk products comply with Section 013 of these rules. (4-7-11)

05. Restriction on Sale. No person who obtains raw milk or raw milk products under a herd share arrangement may sell, offer for sale, advertise for sale, or distribute such raw milk or raw milk products to any person, restaurant, food establishment, grocery store, or farmers' market. (4-7-11)

06. Procurement of Raw Milk or Raw Milk Products. Raw milk or raw milk products may only be received directly from the dairy farm by the owners of a herd share or by an owner on behalf of another herd share owner participating in the same herd share program. (4-7-11)

041. -- 049. (RESERVED)

050. PERMIT ENFORCEMENT.

Section 050 applies to the enforcement of Raw Milk Permits and Small Herd Raw Milk Permits. (4-7-11)

01. Permit Suspension. The Department may suspend a permit whenever it has reason to believe that a public health hazard exists, whenever the permit holder has violated any of the requirements of these rules, or whenever the permit holder has interfered with the Department in the performance of its duties. (4-7-11)

a. Prior to suspending a permit, the Department will serve a written notice of intent to suspend permit on the permit holder. The notice will specify the alleged violation(s) and afford the permit holder a reasonable opportunity to correct such violation(s) in a manner agreed to by the parties. In the absence of such agreement, the corrective actions may be designated by the Department. The reasonable opportunity to comply will be given before the permit suspension order becomes effective. A permit suspension will remain in effect until the violation has been corrected to the satisfaction of the Department. (4-7-11)

b. Whenever the raw milk or raw milk products create or appear to create an imminent hazard to the public health, or in the event of a willful refusal to permit an authorized inspection, the Department may immediately suspend the permit without the prior notice procedure set forth in these rules. The Department will provide notice and opportunity for hearing after the suspension, in accordance with Title 67, Chapter 52, Idaho Code. (4-7-11)

c. Upon written request by any person whose permit has been suspended, or by any person who has been served with a notice of intent to suspend, the Department will proceed to a hearing and, upon evidence presented at such hearing, may affirm, modify, or rescind the suspension or intention to suspend. (4-7-11)

d. The Department may forego permit suspension provided the raw milk or raw milk products in violation are not sold, offered for sale, or distributed for human consumption. (4-7-11)

02. Permit Revocation. If repeated violations occur, the Department may revoke a permit after reasonable notice and an opportunity for a hearing have been given to the permit holder. This section is not intended to preclude the institution of court action. (4-7-11)

03. Permit Reinstatement. Any raw milk producer whose permit has been suspended or revoked may make written application for the reinstatement of the permit. (4-7-11)

a. When the permit has been suspended due to a violation of any of the bacterial, somatic cell, coliform, drug, or cooling-temperature standards, the Department may issue a temporary permit after raw milk samples show that the conditions responsible for the violation have been corrected. (4-7-11)

b. Whenever the permit has been suspended due to a violation of a requirement other than bacteriological, coliform, somatic cell count, or cooling-temperature standards, the application for reinstatement must show that the violation has been corrected. Within one (1) week of the receipt of such application, the Department will make an inspection of the applicant's establishment and may make additional subsequent inspections as deemed necessary. If the inspection shows that the raw milk or raw milk products meet the applicable standards and are in compliance with these rules, the permit will be reinstated. (4-7-11)

051. -- 999. (RESERVED)

02.04.20 – RULES GOVERNING BRUCELLOSIS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 25-203, 25-601, and 25-3520, Idaho Code. (5-3-03)

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is “Rules Governing Brucellosis.” (5-3-03)

02. **Scope.** These rules govern prevention, surveillance, diagnosis, control, management and eradication of brucellosis in the state of Idaho. (5-3-03)

002. – 003. (RESERVED)

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 and the State Law Library: (5-3-03)

01. **The October 1, 2003 Edition of the Brucellosis Eradication Uniform Methods and Rules.** (4-11-06)

02. **The September 30, 2003 Edition of the Brucellosis in Cervidae: Uniform Methods and Rules.** (4-11-06)

03. **The April 1998 Edition of the Swine Brucellosis Control/Eradication: State-Federal-Industry Uniform Methods and Rules.** (5-3-03)

04. **The Code of Federal Regulations Title 9, Parts 71, 78, and 161, January 1, 2005.** This document can be viewed online at http://www.access.gpo.gov/nara/cfr/waisidx_00/9cfrv1_00.html. (4-11-06)

005. -- 009. (RESERVED)

010. DEFINITIONS.

The following definitions apply in the interpretation and enforcement of this chapter. (5-3-03)

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. (5-3-03)

02. **Approved Brucella Vaccine.** A vaccine product that is approved by and produced under license of the USDA for administration to cattle, domestic bison, swine or domestic cervidae for the purpose of enhancing the resistance to *brucellosis*. (5-3-03)

03. **Approved Feedlot.** A feedlot approved by the Administrator to feed female cattle and domestic bison, which have not been officially vaccinated against *brucellosis*. (5-3-03)

04. **Brucellosis.** An infectious disease of animals and humans caused by bacteria of the genus *Brucella*. (5-3-03)

05. **Brucellosis Emergency.** The declaration of an animal health emergency by the director as the result of the diagnosis of *brucellosis* in cattle, domestic bison, swine or domestic cervidae in the state of Idaho or in areas outside the state that could result in transmission of *brucellosis* to Idaho cattle, domestic bison, swine, or domestic cervidae. (5-3-03)

06. **Brucellosis Herd Management Plan.** A written document outlining management practices a livestock producer will take to minimize the exposure of cattle or domestic bison to brucellosis. The herd management plan shall be valid when signed by the owner and the State Veterinarian or his designee. (3-29-12)

07. **Cattle.** All bovidae. (5-3-03)

08. **Commuter Herd.** A herd of cattle or domestic bison that moves from Idaho to another state

pursuant to the provisions of IDAPA 02.04.21, "Rules Governing the Importation of Animals," Section 220.

(3-30-07)

09. Designated Surveillance Area. An area of Idaho, as ordered by the director or his designee, where brucellosis positive wildlife are known or believed to exist and where comingling of wildlife and livestock may lead to transmission of brucellosis from wildlife to livestock. (3-29-12)

10. Domestic Bison. All animals in the genus *Bison* that are owned by a person. (5-3-03)

11. Domestic Cervidae. Elk, fallow deer and reindeer that are owned by a person. (5-3-03)

12. Exposed. Animals that have had contact with other animals, herds, or materials that have been determined to be infected with or affected by *Brucella*. (5-3-03)

13. Federal Animal Health Official. An employee of USDA, APHIS, VS who is authorized to perform animal health activities. (5-3-03)

14. Infected Animals or Herds. Animals that are classified as reactors by the designated *brucellosis* epidemiologist or herds that contain one or more reactor animals. (5-3-03)

15. Negative. Cattle, domestic bison, swine or domestic cervidae are classified negative: (5-3-03)

a. When their blood serum has been subjected to official serological tests and the test results fail to disclose evidence of *Brucella* infection; and (5-3-03)

b. If blood, milk or tissues are subjected to bacteriological methods for cultivating field-strain *Brucella* and none are recovered. An animal is classified as negative when all tests that are performed fail to disclose evidence of *brucellosis*. (5-3-03)

16. Official Identification. The unique individual identification of cattle, domestic bison, swine, or domestic cervidae in accordance with these rules. (5-3-03)

17. Official Vaccinate. A bovine or domestic bison female that was inoculated, in accordance with these rules and the *brucellosis* Eradication UM&R, with an approved *Brucella* vaccine. (5-3-03)

18. Operator. The person who has authority to manage or direct a cattle, domestic bison, swine, or domestic cervidae premises, or conveyance and the animals thereon. (3-30-07)

19. Parturient. Visibly prepared to give birth or within two (2) weeks before giving birth. (3-30-07)

20. Postparturient. Having already given birth. (3-30-07)

21. Premises. The ground, area, buildings, corrals, and equipment utilized to keep, hold, or maintain animals. (3-30-07)

22. Quarantine. 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 to be or are suspected to be exposed to or infected with *Brucella*, or the animals are not in compliance with the provisions of this chapter. (3-30-07)

23. Reactor. Cattle, domestic bison, swine or domestic cervidae are classified as reactors when their blood serum has been subjected to official serological tests and the test results indicate that the animal has been exposed to and infected with *Brucella*. Cattle, domestic bison, swine or domestic cervidae are also classified as reactors in the absence of significant serologic test results when other diagnostic methods, such as bacteriologic methods, result in the recovery of field-strain *Brucella* organisms, or a significant rise in the serologic titer occurs, or when other epidemiologic evidence of *Brucella* infection is demonstrated. (5-3-03)

24. Re-Identification of Official Vaccinates. The identification of female cattle or other animals which have been officially vaccinated and identified, as provided in this chapter, and which have lost the official identification device or the tattoo has faded to the extent that it cannot be discerned. (5-3-03)

25. Restrain. The confinement of cattle, domestic bison, swine, or domestic cervidae in a chute, or other device, for the purpose of efficiently, effectively, and safely inspecting, treating, vaccinating, or testing. (5-3-03)

26. Restricted Movement Permit. A VS Form 1-27, or other document approved by the Administrator for movement of reactor or exposed animals in commerce. (5-3-03)

27. State Animal Health Official. The Administrator, or his designee, responsible for disease control and eradication programs. (5-3-03)

28. State/Federal Animal Health Laboratory. The official laboratory in Idaho that is approved by the Administrator and USDA/APHIS/VS, to conduct serologic and bacteriologic tests to detect Brucella. (5-3-03)

29. Suspect. Cattle, domestic bison, swine, or domestic cervidae are classified as suspects when their blood serum has been subjected to official serologic tests and the results suggest infection but are inconclusive. If bacteriologic methods to culture Brucella from blood, milk or tissues were used, they did not yield field-strain Brucella. (5-3-03)

30. Swine. All animals in the family suidae. (5-3-03)

31. Test Eligible. Unless otherwise specifically provided in these rules, all sexually intact cattle and domestic bison twelve (12) months of age and over, and all parturient, and postparturient cattle and domestic bison regardless of age. ()

32. Wild Bison. All animals in the genus Bison that are not owned by a person. (5-3-03)

33. Wild Elk. All elk that are not owned by a person. (5-3-03)

011. ABBREVIATIONS.

01. APHIS. Animal Plant Health Inspection Service. (5-3-03)

02. AVIC. Area Veterinarian in Charge. (5-3-03)

03. CFR. Code of Federal Regulations. (5-3-03)

04. DSA. Designated Surveillance Area. (3-29-12)

05. MCI. Market Cattle Identification. (5-3-03)

06. UM&R. Uniform Methods and Rules. (5-3-03)

07. USDA. United States Department of Agriculture. (5-3-03)

08. VS. Veterinary Services. (5-3-03)

012. -- 019. (RESERVED)

020. APPLICABILITY.

These rules apply to all cattle, domestic bison, swine, and domestic cervidae located within, imported into, transported through or exported from the state of Idaho. (5-3-03)

021. SUPERVISION.

The official brucellosis eradication program will be supervised by full-time state or federal veterinarians. (5-3-03)

022. INSPECTIONS.

In order to ascertain compliance with this chapter, state and federal animal health officials are authorized to inspect animals, records, premises and other areas where cattle, domestic bison, swine, domestic cervidae and other animals are held or kept. (5-3-03)

01. Entering Premises. In order to conduct activities authorized by this chapter, state or federal animal health officials are authorized to enter premises, other areas, or conveyances in the state where cattle, domestic bison, swine, domestic cervidae or other brucellosis susceptible animals are held or kept. State or federal animal health officials will attempt to notify the owner or operator of the premises or conveyance prior to conducting an inspection. (5-3-03)

02. Inspecting Records. To ensure compliance with the provisions of this chapter, state or federal animal health officials are authorized to have access to, 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 where the records are located prior to inspecting records. (5-3-03)

03. Emergencies. In the event of an emergency, as determined by the Administrator, the notification requirements of this section may be waived. (5-3-03)

023. LABORATORIES.

Biological samples tested for brucellosis shall be tested only by official state-federal animal health laboratories or by persons authorized by the Administrator, and USDA/VS. (5-3-03)

01. Blood, Milk, Tissue, or Other Samples. All biologic samples shall be collected and tested in accordance with the UM&R for that species. (5-3-03)

02. Authorized Persons. The Administrator may authorize qualified persons to conduct serologic tests for brucellosis. All samples initially tested at other than official state-federal animal health laboratories shall be promptly submitted to the official state-federal animal health laboratory for confirmation of test results. (5-3-03)

03. Retest of Reactors. Within three days (3) days after being notified of the results of an initial herd blood test, the owner may request an additional blood test on reactors, such test shall be made at owner's expense. The request shall be based on sound epidemiologic evidence, and all animals shall remain under herd quarantine. The request shall be made to the Administrator, who will approve or deny the request. (5-3-03)

04. Reclassification of Reactors. Any reclassification of reactor animals shall be in accordance with the UM&R for that species. (5-3-03)

024. REPORTING.

Brucellosis activities conducted privately or as part of the official brucellosis eradication program shall be reported to the Administrator. (5-3-03)

01. Test Results. All test results shall be reported immediately. (5-3-03)

02. Vaccinations. All vaccination reports shall be submitted on a form approved by the Administrator within fifteen (15) days of date of vaccination. (5-3-03)

03. Disease. All owners of animals and veterinarians shall report evidence of brucellosis infection to the Administrator immediately. (5-3-03)

025. QUARANTINES.

All cattle, domestic bison, swine and domestic cervidae animals or herds determined to be exposed to or infected with brucellosis shall be quarantined. (5-3-03)

01. Infected Herds. Infected herds or animals shall remain under quarantine until such time that the

herd has been completely depopulated and the premise has been cleaned and disinfected as provided by the administrator or the provisions for release of quarantine established in these rules have been met. (5-3-03)

02. Exposed Herds. The quarantine for exposed herds or animals may take the form of a hold-order which shall remain 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. (5-3-03)

03. Validity of Quarantine. The quarantine shall be valid whether or not it is acknowledged by signature of the owner. (5-3-03)

026. CLEANING AND DISINFECTING.

The Administrator is authorized to order the owner or operator of stockyards, pens, trucks, trailers, cars, vessels, chutes, and other conveyances and premises to clean and disinfect the same, at the owner's expense, whenever necessary for the eradication of brucellosis. Cleaning and disinfecting shall be done under the supervision of state or federal animal health officials. (5-3-03)

01. Infected Animals. Premises, conveyances, or other areas where infected animals have been held or kept shall be cleaned and disinfected under regulatory supervision within fifteen (15) days following the removal of reactors or the entire herd for slaughter. (5-3-03)

02. Exemptions. The Administrator may authorize an exemption from cleaning and disinfection requirements on a case by case basis. (5-3-03)

03. Extension of Time. The Administrator may authorize an extension of time for cleaning and disinfection under extenuating circumstances. (5-3-03)

027. WILD BISON AND WILD ELK.

01. Wild Bison. When wild bison enter into or are otherwise present within the state of Idaho, one (1) of the following actions shall be taken by the department: (5-3-03)

a. If feasible, the wild bison shall be physically removed by the safest and most expeditious means from within the state boundaries or delivered to a slaughterhouse approved by the department. (5-3-03)

b. If wild bison cannot safely or by reasonable and permanent means be removed from the state, the wild bison may be destroyed where they stand by the use of firearms. If firearms cannot be used with due regard for human safety and public and private property, the wild bison shall be relocated to a danger free area and destroyed by any practicable means of euthanasia, including the use of firearms. (5-3-03)

c. When wild bison are killed, the carcass remains will be disposed of in accordance with IDAPA 02.04.17, "Rules Governing Dead Animal Movement and Disposal," or field dressed for delivery to a slaughterhouse or slaughter destination approved by the Administrator. (5-3-03)

02. Exposure of Livestock to Wild Bison. All cattle, domestic bison, and domestic cervidae animals and herds that come into contact with brucellosis affected wild bison, such that transmission of brucellosis could occur, shall be considered exposed to brucellosis. (5-3-03)

03. Exposure of Livestock to Wild Elk. All cattle, domestic bison, and domestic cervidae animals and herds that have feed-line or other contact, during winter months, with wild elk that have been determined to be affected with brucellosis, such that transmission of brucellosis could occur, shall be considered exposed to brucellosis. (5-3-03)

028. BRUCELLOSIS TESTING.

The Administrator may require *brucellosis* testing of cattle, domestic bison, swine, domestic cervidae, or other animals. (5-3-03)

01. Duty to Restrain. It is the duty of each person who has control of such animals to pen the animals

in suitable pens and restrain them for the test when directed to do so in writing by the Administrator. (5-3-03)

02. Records of Tests. When any cattle, domestic bison, swine, or domestic cervidae are tested for *brucellosis* a complete test record shall be made and the record shall be shown on an official *brucellosis* test form provided by the Administrator. The test form shall be completely filled out, including the following information: (5-3-03)

- a. The name and address of the owner and the location of the animals at the time of test. (5-3-03)
- b. The name and signature of the person conducting the test. (5-3-03)
- c. Individual identification number of each animal and the registration name and number of each purebred animal. (5-3-03)
- d. Age of each animal. (5-3-03)
- e. Sex of each animal. (5-3-03)
- f. Breed of each animal. (5-3-03)
- g. Species of animals tested. (5-3-03)
- h. Vaccination status, including the vaccination tattoo for each vaccinated animal. (5-3-03)
- i. Test results, if a *brucellosis* test has been performed, for each animal. (5-3-03)
- j. Date sample was collected for testing. (3-30-07)

03. Interstate Movement. All test eligible cattle and domestic bison exported from Idaho shall be tested negative for *brucellosis* within thirty (30) days prior to the interstate movement if required by the state of destination, or if the cattle or domestic bison are being moved from a DSA. (3-29-12)

04. Dairy Herds. *Brucellosis* ring tests shall be conducted on all dairy herds at least once every six (6) months. (4-2-08)

029. BRUCELLOSIS EMERGENCY.

In order to prevent the re-establishment of brucellosis infection in cattle, domestic bison, swine or domestic cervidae in the state, the Director may declare an animal health emergency. (5-3-03)

01. Brucellosis in Idaho. The Director may declare a *brucellosis* emergency in the event brucellosis is diagnosed in any cattle, domestic bison, swine or domestic cervidae in Idaho. (5-3-03)

02. Brucellosis in Adjacent Area. The Director may declare a *brucellosis* emergency in the event that brucellosis is discovered in areas in or outside the state that could result in transmission of *brucellosis* to Idaho cattle, domestic bison, swine, or domestic cervidae. (5-3-03)

03. Infected Herd(s) to Be Condemned and Depopulated. Pursuant to the provisions of Section 25-212, Idaho Code, animals and herds found to be infected with *brucellosis* shall be condemned and completely depopulated or slaughtered. (5-3-03)

030. BRUCELLOSIS INDEMNITY.

Owners of animals that are condemned and depopulated because of brucellosis shall be indemnified for such animals, and for reasonable costs of disposal and cleaning and disinfection in accordance with the provisions of this chapter, except as provided in Section 031. (5-3-03)

01. Indemnity Payments. Payments shall be based upon the appraised value, less federal indemnity and salvage value for the animals. (5-3-03)

02. Time Limit for Slaughter. Payment of indemnity shall be made under Section 030 for animals destroyed because of brucellosis, only if the animals are shipped to slaughter or die otherwise within fifteen (15) days after the date of individual identification and tagging, except that the appropriate veterinarian in charge, for reasons satisfactory to him, may extend the period to thirty (30) days and the Deputy Administrator, Veterinary Services, for reasons satisfactory to him may extend it beyond thirty (30) days. (5-3-03)

03. Reactors That Die. Indemnity may be paid on brucellosis reactors that die before being sent to slaughter provided: (5-3-03)

a. The reactors have been appraised and identified and die within fifteen (15) days from date of appraisal; and (5-3-03)

b. The state or federal animal health officials directing the disease control work are furnished with a signed statement by a veterinarian attesting that he observed the carcass of the dead animal and providing the reactor tag number found in the left ear of the animal and date of death. (5-3-03)

04. Other Costs. Reimbursement for disposal costs and cleaning and disinfection costs shall not exceed the actual cost. (5-3-03)

031. BRUCELLOSIS INDEMNITY: CLAIMS NOT ALLOWED. Claims for compensation for animals destroyed because of *brucellosis* shall not be allowed if any of the following circumstances exist: (5-3-03)

01. Failure to Comply. The owner has failed to comply with any of the rules governing the handling of *brucellosis* reactors. (5-3-03)

02. Illegal Imports. The animals were illegally imported into the state. (5-3-03)

03. Animals Sold for Slaughter. At the time of the test or condemnation, the animals belonged to or were upon the premises of any person to whom the animals had been sold, shipped, or delivered for slaughter. (5-3-03)

04. Unapproved Test. The animals were subject to a test not approved by the Administrator. (5-3-03)

05. Untested Animals. All animals in the owner's herd have not been tested for *brucellosis* under state or federal supervision. (5-3-03)

06. Premises Not Cleaned. The premises occupied by the *brucellosis* infected animals were not cleaned and disinfected as directed, under state or federal supervision. (5-3-03)

07. Neutered Animals. The animals were neutered. (5-3-03)

08. Attempt to Improperly Obtain Funds. There is substantial evidence that the owner or his agent has in any way been responsible for any attempt unlawfully or improperly to obtain indemnity funds for such animals. (5-3-03)

09. Unidentified Cattle and Domestic Bison. Cattle or domestic bison destroyed because of *brucellosis*, unless they were marked for identification in accordance with the October 1, 2003, Edition of the *brucellosis* Eradication Uniform Methods and Rules. (3-30-07)

10. Calves. If the entire herd is not depopulated and the cattle or domestic bison were calves under one-hundred eighty (180) days of age. (5-3-03)

032. -- 099. (RESERVED)

100. OFFICIAL VACCINATION REQUIRED FOR CATTLE AND DOMESTIC BISON.

All female cattle and domestic bison utilized for breeding, dairy, or grazing purposes shall be officially vaccinated for brucellosis. Utilization of female cattle or domestic bison, which are not officially vaccinated, for breeding, dairy or grazing purposes is a violation of this chapter. (5-3-03)

101. OFFICIAL VACCINATION.

Female cattle and domestic bison may be officially vaccinated through one (1) of the following methods: (5-3-03)

01. Calfhood Vaccination. Female cattle and domestic bison native to the state of Idaho or imported into the state of Idaho shall be calfhood vaccinated while not less than one hundred twenty (120) days of age or more than three-hundred sixty-five (365) days of age or be consigned to an approved feedlot, for finish feeding for slaughter only, prior to becoming three hundred sixty-five (365) days of age. (5-3-03)

02. Adult Vaccination. Female cattle or domestic bison may be vaccinated as adults with the approval of the Administrator. ()

a. Female cattle or bison which are three hundred sixty-five (365) days of age or older shall be negative to an official brucellosis test within ten (10) days prior to being vaccinated. ()

b. The Administrator may make exceptions to the provisions of Section 101 of this rule on a case-by-case basis. (4-11-06)

03. Approval for Adult Vaccination. Accredited veterinarians representing owners, or accredited veterinarians authorized to perform services for specifically approved livestock markets who desire to have female cattle or domestic bison, which are over three hundred sixty-five (365) days of age vaccinated shall request approval from the Administrator. The Administrator may grant or deny the request to adult vaccinate the cattle based upon origin, history, age, pregnancy status and the potential of the cattle or domestic bison to spread other diseases of concern, such as tuberculosis or trichomoniasis. Approval or denial of the request to adult vaccinate the cattle shall be made within seven (7) working days of the date of the request. (4-11-06)

04. Adult Vaccinations Required. The Administrator may require animals at risk of becoming infected with brucellosis to be adult vaccinated. The animals shall be vaccinated at intervals and with the vaccinal dose determined by the designated brucellosis epidemiologist. Such vaccination shall be accomplished whether or not the animals have been previously vaccinated. (5-3-03)

102. SALE OF FEMALE CATTLE OR DOMESTIC BISON THAT ARE NOT OFFICIALLY VACCINATED.

Female cattle and domestic bison that are not officially vaccinated, and are sold or otherwise transferred to another person by private treaty or through a specifically approved livestock market shall meet the following requirements: (5-3-03)

01. Less Than Three Hundred Sixty Five Days of Age. Female cattle and domestic bison that are more than one hundred twenty (120) days of age and not more than three hundred sixty five (365) days of age at the time of sale or transfer to another person, may be sold to approved feedlots, directly to slaughter, to out of state destinations, or be consigned for sale at specifically approved livestock markets without being officially vaccinated. Such female cattle or domestic bison sold for breeding, grazing, or dairy purposes within Idaho shall be officially vaccinated prior to or immediately upon consummation of the sale. (5-3-03)

02. Over Three Hundred Sixty Five Days of Age. Female cattle and domestic bison over three hundred sixty five (365) days of age at the time of sale or transfer to another person may be consigned directly to an approved feedlot, out of state destination, slaughter, or specifically approved livestock market for sale to an approved feedlot, out of state destination, or slaughter. (4-11-06)

103. OFFICIAL IDENTIFICATION OF CATTLE AND DOMESTIC BISON.

01. Official Calfhood Vaccinates. Official calfhood vaccinates shall be permanently identified as vaccinates by tattoo and official vaccination eartag. (5-3-03)

a. Vaccination tattoos shall be applied to the right ear. The tattoo shall start with the letter “R,” followed by the U.S. registered “shield and V,” followed by a number corresponding to the last digit of the year in which the vaccination was done. (5-3-03)

b. Official vaccination (orange) eartags shall be applied to the right ear. (5-3-03)

c. Individual animal registration tattoos or individual animal registration brands may be used for identifying animals in place of official eartags if the cattle or domestic bison are registered by a breed association. (5-3-03)

02. Official Adult Vaccinates. Official adult vaccinates shall be permanently identified as vaccinates by tattoo and by official identification eartag. Animals that have previously been officially identified as vaccinates shall have the prior official identification recorded on a vaccination certificate or test chart in lieu of the identification provided for in this subsection. (5-3-03)

a. Adult vaccinated cattle or bison must be identified with a vaccination tattoo applied to the right ear that begins with the letter “R,” followed by “AV,” followed by the last digit of the year in which the vaccination is performed. (4-11-06)

b. Official identification (silver) eartags shall be applied to the right ear. (5-3-03)

c. Individual animal registration tattoos or individual animal registration brands may be used for identifying animals in place of official eartags if the cattle or domestic bison are registered by a breed association. (5-3-03)

03. Reactor Animals. All animals designated as reactors by the designated *brucellosis* epidemiologist shall be marked in accordance with the October 1, 2003, Edition of the *brucellosis* Eradication Uniform Methods and Rules. (3-30-07)

04. Suspect Animals. All suspect animals shall be marked in accordance with the October 1, 2003 Edition of the *brucellosis* Eradication Uniform Methods and Rules. (3-30-07)

05. Spayed Heifers. Spayed heifers may be officially identified by applying a hot iron brand high on the tailhead on either or both sides using an open spade symbol as used in playing cards, of not less than three (3) inches high, or as provided by the administrator. (5-3-03)

104. RE-IDENTIFICATION OF OFFICIAL VACCINATES.

No female cattle or domestic bison that were officially vaccinated against brucellosis shall be re-tattooed for the purpose of re-establishing their status as official brucellosis vaccinates nor shall any officially vaccinated animals be re-ear-tagged with the official vaccination eartag at any time subsequent to the original vaccination, except that re-tattooing for the purpose of re-establishing the status as official *brucellosis* vaccinates shall be allowed under the following conditions: (5-3-03)

01. Administrator Grants Permission. Animals may be re-tattooed only by accredited veterinarians who have obtained permission from Administrator prior to the time the animals are re-tattooed. (5-3-03)

02. Permanent Identification. Animals that are presented for re-tattooing shall have some permanent identification which will identify the animals as those originally tattooed, such as the *brucellosis* vaccination tag, individual animal registration tattoo, or other approved permanent identification, provided that such identification was submitted on the original official vaccination record. (5-3-03)

03. Reproduction of Original Tattoo. Re-tattooing shall reproduce the original tattoo, which was placed in the animal’s ear at the time of vaccination. (5-3-03)

04. Records. The veterinarian who performs the re-tattooing shall record the eartag or other identification numbers, the tattoo symbols and the owner’s name and address on a new vaccination record form and submit the re-tattooing record to the Division of Animal Industries within ten (10) days of the date of re-tattooing. (5-3-03)

105. LIVESTOCK MARKET RELEASE.

The accredited veterinarian authorized to provide veterinary services at a specifically approved livestock market shall perform a clinical inspection of all livestock and accurately complete a "Saleyard Release" form, certificate of veterinary inspection, or other market release mechanism certifying that the animals meet the health requirements for movement to the point of destination prior to any animals being released from the livestock market. (5-3-03)

106. -- 119. (RESERVED)

120. BRUCELLOSIS ERADICATION AREAS.

The Director is authorized to declare the entire state, a portion of the state, entire county or part of a county an eradication area, pursuant to Idaho Code, Section 25-604, in order to contain an outbreak of brucellosis and prevent spread of brucellosis to herds in other counties and areas of the state. (5-3-03)

01. Circumstances Under Which Testing Is Required. Test eligible cattle, domestic bison, or other brucellosis susceptible species: (5-3-03)

a. Shall be subjected to an official brucellosis test within the thirty (30) days immediately preceding sale or movement out of an eradication area. (5-3-03)

b. For cattle or domestic bison consigned on a permit to a specifically approved stockyard, the brucellosis test requirement may be fulfilled at the stockyard by testing the cattle or domestic bison prior to sale. (5-3-03)

02. Test Exemptions. Test eligible cattle and domestic bison from eradication areas, consigned on a permit directly from a farm or ranch of origin to an approved slaughter establishment, or to a specifically approved stockyard for sale directly to an approved slaughter establishment, shall be exempt from pre-movement testing. (5-3-03)

03. Discontinuance of Eradication Area. The eradication area designation shall exist only for the period of time necessary for the elimination of brucellosis infection from cattle and domestic bison in the area. After infection has been eliminated and Idaho has retained or regained brucellosis free status, the Director shall remove the eradication status from the area and the testing requirements shall be discontinued. (5-3-03)

121. TEST ELIGIBLE CATTLE AND DOMESTIC BISON IN AN ERADICATION AREA. Test eligible cattle and domestic bison in an eradication area are: (3-30-07)

01. Unvaccinated or Vaccinated with Brucella Abortus Strain RB 51 Vaccine. Intact male and female cattle and domestic bison six (6) months of age or older. ()

122. MOVEMENT INTO OR OUT OF ERADICATION AREAS. Cattle or domestic bison shall not be moved into or out of an eradication area except by the authorization of the Administrator. (5-3-03)

01. Permits Authorizing Movement. Movement of cattle or domestic bison into or out of an eradication area shall require a permit issued by the Administrator. (5-3-03)

02. Contents of Permits. Permits for movement into or out of an eradication area shall be of the form and content prescribed by the Administrator. (5-3-03)

123. DESIGNATED SURVEILLANCE AREA (DSA). All intact cattle and domestic bison within a DSA are subject to additional rule requirements for the prevention or eradication of brucellosis. (3-29-12)

01. Individual Identification Requirements. All intact cattle and domestic bison, regardless of age, that leave the DSA must be identified with official individual identification. (3-29-12)

02. Testing Requirements Within The DSA. The following official brucellosis test requirements apply to all test eligible cattle and domestic bison that are or have been located within the DSA at any time between January 1 and June 15 of any calendar year. (3-29-12)

a. All test eligible cattle and domestic bison must have a negative brucellosis test within thirty (30) days prior to a change of ownership, interstate movement or prior to leaving the DSA, except cattle or domestic bison moving directly to an approved Idaho livestock market or a federally-inspected slaughter plant that will test the animals for brucellosis on arrival. (3-29-12)

b. Variances or exceptions to the brucellosis testing requirements may be considered on an individual basis by the administrator, based upon a brucellosis herd management plan. (3-29-12)

03. Permit Required for Movement Out of the DSA. In addition to the above testing requirements and prior to movement, all persons transporting Test Eligible cattle or domestic bison from within the DSA to a location outside the DSA, shall be required to obtain a movement permit via telephone from the Division of Animal Industries at least twenty-four (24) hours in advance. (3-20-14)

a. Telephone Requests. DSA movement permits may be requested by telephone at (208) 332-8540 or facsimile at (208) 334-4062. (3-20-14)

b. Contents of a Permit Request. The request for a movement permit shall include the following information: (3-20-14)

i. Name and address of the consignor and consignee; (3-20-14)

ii. Number and kind of animals; (3-20-14)

iii. Origin of shipment; (3-20-14)

iv. Final destination; and (3-20-14)

v. Date of required brucellosis test. (3-20-14)

c. Period of Validity. Permits shall be valid for no longer than fifteen (15) days from the date of issuance unless otherwise specified. (3-20-14)

d. Penalties. Any person that fails to obtain a permit prior to movement of cattle out of the DSA may be assessed penalties pursuant to Section 990 of this rule. (3-20-14)

124. -- 129. (RESERVED).

130. MOVEMENT OF INFECTED AND EXPOSED CATTLE OR DOMESTIC BISON.

All movement of infected or exposed cattle or domestic bison shall be on a restricted movement permit in accordance with the October 1, 2003, edition of the *brucellosis* Eradication Uniform Methods and Rules. (3-30-07)

01. Restricted Movement Permit. The permit shall be completed in full and signed by the shipper of the animals. (5-3-03)

02. Original Copy of Permit. The original copy of the permit shall accompany the animal being moved. (5-3-03)

131. -- 199. (RESERVED)

200. IDAHO APPROVED FEEDLOT.

Female cattle and domestic bison that have not been officially vaccinated for brucellosis shall not be fed for slaughter except in Idaho approved feedlots, with no provisions for pasturing or grazing. ()

201. APPLICATION FOR DESIGNATION AS AN IDAHO APPROVED FEEDLOT.

Application for Idaho Approved Feedlot status shall be made on application forms available from the Administrator. (5-3-03)

202. ADMINISTRATOR APPROVAL.

The Administrator may approve feedlot applications after the feedlot has been inspected by state or federal animal health officials and: (5-3-03)

01. Cattle Secured. The feedlot management has demonstrated that cattle which have not been officially vaccinated can be secured in the feedlot; and (5-3-03)

02. Adequate Records. Feedlot records are adequate to show the origin and disposition of the cattle in the feedlot; and (5-3-03)

03. Adequate Resources. The Administrator determines that the Division of Animal Industries has adequate human and fiscal resources to assure that the feedlot abides by the provisions of this chapter; and (5-3-03)

04. Past History. The Administrator may take any past enforcement or violation history into consideration when making the final determination of whether or not to approve a feedlot. (5-3-03)

203. APPROVED FEEDLOT NUMBER.

Feedlots approved by the Administrator shall receive an Idaho Approved Feedlot Number. (5-3-03)

204. EXPIRATION OF APPROVED STATUS.

Approved feedlot status shall expire on September 1 of each year. It shall be the responsibility of feedlot management to apply each year for renewal of approved status. (5-3-03)

205. -- 249. (RESERVED)

250. CONTENT OF RECORDS FOR APPROVED FEEDLOTS.

All approved feedlots shall keep accurate and complete records of all cattle and domestic bison that enter the approved feedlot. These records shall readily show: (5-3-03)

01. Animals Received. The number, species, age, sex, brand, origin, date of entry, individual identification when required, and final disposition of all cattle and domestic bison received at the feedlot; and (5-3-03)

02. Animals Removed from Feedlot. The date of removal or sale, and destination of any animals removed; and (5-3-03)

03. Death Loss. Cattle and domestic bison losses by accident, disease or death shall be accurately recorded; and (5-3-03)

04. Requirements. That all applicable permit, test, examination, identification, and vaccination requirements have been met. (5-3-03)

251. RECORDS RETENTION.

Feedlot records shall be retained by the feedlot for a period of not less than one (1) year following removal of the cattle or domestic bison from the feedlot. (5-3-03)

252. ENTRY REQUIREMENTS.

Idaho Approved Feedlots are allowed to feed all classes of cattle and domestic bison, except brucellosis-exposed, suspect, or reactor cattle and domestic bison. Test eligible cattle and domestic bison from Class A, and B states or areas, as defined in Title 9, Part 78, CFR, shall be tested negative prior to entry. (5-3-03)

253. REMOVAL REQUIREMENTS.

All cattle and domestic bison, except steers and spayed heifers, leaving Idaho Approved Feedlots shall conform to the

following provisions: (5-3-03)

01. Direct to Slaughter. Shall be identified on a weigh bill or other certificate and moved directly to slaughter at an approved slaughter establishment; or (5-3-03)

02. Direct to Another Idaho Approved Feedlot. Shall be identified on a Certificate of Veterinary Inspection and moved directly to another Idaho Approved Feedlot; or (5-3-03)

03. Direct to Livestock Market. Shall be consigned directly to a specifically approved livestock market for sale to slaughter, or other qualified destination; or (5-3-03)

04. Direct Out of State. Shall be consigned directly to a qualified out of state destination. (5-3-03)

05. Official Calftood Vaccinates. Officially calftood vaccinated female cattle or domestic bison may be removed from an Idaho Approved Feedlot for breeding, dairy, or grazing purposes provided that the female cattle or domestic bison have been isolated in pens separate and apart from all other feedlot cattle since arrival at the feedlot, and the isolation is maintained until the vaccinated cattle or domestic bison are removed from the feedlot. (5-3-03)

06. Official Adult Vaccinates. Officially adult vaccinated female cattle or domestic bison may be removed from an Idaho Approved Feedlot for breeding, dairy, or grazing purposes provided that the following conditions are met: (5-3-03)

a. Female cattle or domestic bison that are three-hundred sixty-five (365) days of age or older at the time of vaccination have tested negative to an official brucellosis test within ten (10) days prior to vaccination; and (5-3-03)

b. The female cattle or domestic bison are vaccinated with Strain RB 51 Brucella abortus vaccine, with a dose approved by the Administrator, within ten days of the negative brucellosis test; and (5-3-03)

c. The female cattle or domestic bison have been isolated in pens separate and apart from all other feedlot cattle since arrival at the feedlot and the isolation is maintained until the vaccinated cattle or domestic bison are removed from the feedlot; and (5-3-03)

d. All female cattle or domestic bison in the isolation pen are negative on an official brucellosis test prior to the vaccination and removal of any cattle from the isolation pen; and (5-3-03)

e. The female cattle or domestic bison are identified on a Certificate of Veterinary Inspection at the time of removal. (5-3-03)

07. Intact Males. Intact male cattle and domestic bison may be removed from an Idaho Approved Feedlot for breeding, dairy, or grazing purposes provided that the following conditions are met: (5-3-03)

a. The intact male cattle or domestic bison have been tested negative to trichomoniasis tests as provided in the trichomoniasis rules, IDAPA 02.04.03, "Rules of the Department of Agriculture Governing Animal Industry," Section 220. (5-3-03)

b. The intact male cattle or domestic bison have been isolated in pens separate and apart from other feedlot cattle since arrival at the feedlot. (5-3-03)

c. The intact male cattle or domestic bison are examined, tested for brucellosis, and identified on a Certificate of Veterinary Inspection at the time of removal. (5-3-03)

08. Interstate Commerce. Animal(s) moved in interstate commerce shall meet all applicable state and federal requirements. (5-3-03)

09. Approval of the Administrator. Vaccinated female cattle and intact male cattle being removed

from the feedlot for breeding, dairy or grazing purposes shall not be removed without notification, and if required, approval of and under the conditions determined by the administrator. (5-3-03)

254. TESTING.

Under the Brucellosis UM&R, Idaho Approved Feedlots are considered herds, not Quarantined Feedlots. (5-3-03)

01. MCI. In the event that MCI slaughter testing discloses reactor(s) that came from the approved feedlot, the test-eligible animals remaining in the feedlot will be subjected to a herd test for brucellosis, unless feedlot records are adequate to identify the herd from which the reactor(s) originated and an epidemiological investigation demonstrates that the cattle remaining in the feedlot are not exposed. (5-3-03)

02. Exposed Cattle. Cattle in an approved feedlot may be subject to testing for brucellosis if a brucellosis test conducted in the feedlot or an epidemiological investigation reveals that brucellosis exposed cattle have entered the feedlot. (5-3-03)

255. INSPECTION.

The feedlot premises, the cattle or domestic bison therein, and the feedlot records shall be presented for inspection to the Administrator at any reasonable time. (5-3-03)

256. REVOCATION OF APPROVED FEEDLOT STATUS.

The Administrator may revoke approved feedlot status by notifying the owner in writing. (5-3-03)

01. Failure to Comply. In addition to any other department administrative or civil action, failure on the part of the feedlot operator to comply with the requirements of this chapter shall result in revocation of the Idaho Approved Feedlot status. (5-3-03)

02. Operator Request. Operators may have the approved status revoked by emptying the feedlot and requesting in writing that the status be revoked. (5-3-03)

03. Regulation Changes. Idaho Approved Feedlot status may be revoked at such time as revocation is required by changes in state or federal rules or regulations. (5-3-03)

04. Disposition of Cattle and Domestic Bison. Should the Idaho Approved Feedlot status be revoked, cattle and domestic bison still in the feedlot shall be removed from the feedlot as provided in Section 252 of this rules. The Administrator shall have the authority to impose time limits for removal of cattle and bison. (5-3-03)

257. -- 299. (RESERVED)

300. OFFICIAL IDENTIFICATION OF DOMESTIC CERVIDAE.

01. Identification at Time of Brucellosis Testing. Domestic cervidae shall be individually identified with an official identification device and the individual identification recorded on an official test form, or any existing official identification on the animal shall be recorded on an official test form at the time of brucellosis testing. (5-3-03)

02. Identification of Reactors. Animals classified as reactors to an approved brucellosis test shall be identified by hot branding the letter "B" (at least two by two (2 x 2) inches) on the left hip and by placing an official reactor tag in the left ear before movement of the animal from the premises where tested. (5-3-03)

03. Identification of Suspect and Exposed Animals. Suspect and exposed animals shall be identified by hot branding the letter "S" (at least two by two (2 x 2) inches) on the left hip and the official eartag number shall be recorded on movement documents before movement of the animal from the premises where found or tested. (5-3-03)

04. Exception to Identification of Reactor, Suspect, and Exposed Animals. In lieu of tagging and branding reactor, suspect, or exposed animals, the Administrator may approve movement of these animals directly to slaughter in a sealed vehicle or accompanied by a state or federal animal health official. (5-3-03)

301. -- 319. (RESERVED)

320. TESTING REQUIREMENTS.

01. Issuance of Order for Testing, Quarantine, or Disposal of Domestic Cervidae. The Administrator shall determine when testing, quarantine, or disposal of domestic cervidae infected with or exposed to brucellosis is required, pursuant to Title 25, Chapters 2, 6, and [37] 35, Idaho Code. If the Administrator determines that testing or disposal of domestic cervidae or disinfection or sterilization of facilities is required, a written order shall be issued to the owner describing the procedure to be followed and the time period for carrying out such actions. (5-3-03)

02. Brucellosis-Free Certification of Domestic Cervid Herds. Domestic cervidae shall be tested in accordance with the UM&R for Brucellosis in Cervidae to obtain certification of a herd as brucellosis-free. All sexually intact animals six (6) months of age or older must have three consecutive negative tests nine (9) to fifteen (15) months apart for initial herd certification. (5-3-03)

321. DOMESTIC CERVIDAE BRUCELLOSIS ERADICATION AREA.

The Director is authorized to declare the entire state, a portion of the state, entire county or part of a county a domestic cervidae brucellosis eradication area, pursuant to Section 25-604, Idaho Code, in order to contain an outbreak of brucellosis and prevent spread of brucellosis to herds in other counties and areas of the state. (5-3-03)

322. TESTING AND MOVEMENT.

Testing and movement requirements related to cervidae brucellosis eradication areas shall be in accordance with the UM&R for Brucellosis in Cervidae. (5-3-03)

323. -- 399. (RESERVED)

400. OFFICIAL IDENTIFICATION OF SWINE.

01. Swine Tested at Farm. All swine bled on the farm as part of a complete herd test for swine brucellosis shall be individually identified by official VS-approved ear tags, visible tattoos, or ear notches, provided the ear notch has been recorded in the book of record of a purebred registry association. (5-3-03)

02. Swine Tested at Market or Slaughter. Sows and boars six (6) months of age and older shall be identified by an official VS-approved paper or plastic backtag applied to the head or poll region and/or an official VS-approved ear tag when tested for swine brucellosis at markets or slaughter establishments. (5-3-03)

03. Reactor Swine. Swine reacting to the swine brucellosis test shall be identified by placing an official VS-approved reactor tag in the left ear. (5-3-03)

401. -- 419. (RESERVED)

420. TESTING REQUIREMENTS.

01. Test Eligible Swine. Brucellosis testing of swine at markets, at slaughter establishments and farms when required by the UM&R for Control/Eradication of Swine Brucellosis shall be performed on sexually intact animals 6 months of age and older. (5-3-03)

02. Imported Domestic Swine. Test eligible swine shall be negative to a swine brucellosis test thirty (30) days prior to importation into Idaho unless, the swine are from a validated swine brucellosis-free herd or state. (5-3-03)

03. Semen Sold for Artificial Insemination. All herds that market swine semen shall be subjected to a complete herd test annually and be validated swine brucellosis free. (5-3-03)

421. SWINE BRUCELLOSIS ERADICATION AREA.

The Director is authorized to declare the entire state, a portion of the state, entire county or part of a county a swine brucellosis eradication area, pursuant to Section 25-604, Idaho Code, in order to contain an outbreak of brucellosis and prevent spread of brucellosis to herds in other counties and areas of the state. (5-3-03)

422. TESTING AND MOVEMENT.

Testing and movement requirements related to swine brucellosis eradication areas shall be in accordance with the UM&R for control/eradication of swine brucellosis. (5-3-03)

423. -- 999. (RESERVED)

02.04.21 – RULES GOVERNING THE IMPORTATION OF ANIMALS

000. LEGAL AUTHORITY.

This chapter is adapted under the legal authority of Sections 25-203, 25-305, 25-401, 25-601, 25-3704, Idaho Code. (5-3-03)

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is “Rules Governing the Importation of Animals.” (5-3-03)

02. **Scope.** These rules govern procedures, requirements, and qualifications for the importation of animals into the state of Idaho. (5-3-03)

002. – 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

Copies of these documents may be obtained from the Idaho State Department of Agriculture Central Office. IDAPA 02.04.21 incorporates by reference: (4-11-06)

01. **The October 1, 2003 Edition of the Brucellosis Eradication Uniform Methods and Rules.** This document can be viewed online at https://www.aphis.usda.gov/animal_health/animal_diseases/brucellosis/downloads/umr_bovine_bruc.pdf. (3-29-17)

02. **The September 30, 2003 Edition of the Brucellosis in Cervidae: Uniform Methods and Rules.** This document can be viewed online at https://www.aphis.usda.gov/animal_health/animal_diseases/brucellosis/downloads/bcervumr.pdf. (3-29-17)

03. **The April 1998 Edition of the Swine Brucellosis Control/Eradication: State-Federal-Industry Uniform Methods and Rules.** This document can be viewed online at https://www.aphis.usda.gov/animal_health/animal_dis_spec/swine/downloads/sbruumr.pdf. (3-29-17)

04. **The Code of Federal Regulations Title 9, Parts 71, 75, 77, 78, 85, 145, 147, and 161, January 1, 2016.** This document can be viewed online at http://www.ecfr.gov/cgi-bin/text-idx?SID=9e3e2eff1a42367841dc92eee8d5324d&mc=true&tpl=/ecfrbrowse/Title09/9cfrv1_02.tpl#0. (3-29-17)

05. **The January 1, 2005 Edition of the Bovine Tuberculosis Eradication Uniform Methods and Rules.** This document can be viewed online at https://www.aphis.usda.gov/animal_health/animal_diseases/tuberculosis/downloads/tb-umr.pdf. (3-29-17)

06. **The November 1, 2003 Edition of the Pseudorabies Eradication, State-Federal-Industry Program Standards.** This document can be viewed online at http://www.aphis.usda.gov/animal_health/animal_diseases/pseudorabies/downloads/program_stds.pdf. (4-11-06)

07. **The January 10, 2007 Edition of the Equine Infectious Anemia: Uniform Methods and Rules.** This document can be viewed online at https://www.aphis.usda.gov/vs/nahss/equine/eia/eia_umr_jan_10_2007.pdf. (3-29-17)

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. (5-3-03)

02. **Animals.** All vertebrates, except humans. (5-3-03)

03. **Approved Brucella Vaccine.** A vaccine product that is approved by and produced under license of the United States Department of Agriculture for administration to cattle, domestic bison, swine or domestic cervidae for the purpose of enhancing the resistance to brucellosis. (5-3-03)

- 04. Approved Equine Feedlot.** A feedlot approved by the Administrator to feed equids intended to be shipped directly to slaughter within sixty (60) days of arrival to the feedlot and have not been officially tested for Equine Infectious Anemia (EIA) prior to importation into Idaho. (3-20-14)
- 05. Approved Feedlot.** A feedlot approved by the Administrator to feed female cattle and domestic bison which have not been officially vaccinated against brucellosis or other bovidae not in compliance with Idaho's rules. (5-3-03)
- 06. Approved Slaughter Establishment.** A USDA inspected slaughter establishment at which ante-mortem and post-mortem inspection is conducted by USDA inspectors. (5-3-03)
- 07. Brucellosis.** An infectious disease of animals and humans caused by bacteria of the genus *Brucella*. (5-3-03)
- 08. Brucellosis Surveillance Area or High Risk Areas.** Any area of a state that has been identified by USDA/APHIS/VS or state animal health officials as an area that poses a greater risk for transmission of brucellosis than would be expected based upon the official classification of the state. (5-3-03)
- 09. Camelids.** Llamas, alpacas, vicunas, camels. (5-3-03)
- 10. Cattle.** All bovidae including domestic bison. (5-3-03)
- 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. (5-3-03)
- 12. Domesticated.** Propagated and maintained under the control of a person. (5-3-03)
- 13. Domestic Bison.** All animals in the family *Bison* that are owned by a person. (5-3-03)
- 14. Domestic Cervidae.** Elk, fallow deer, and reindeer that are owned by a person. (5-3-03)
- 15. Equidae.** Horses, ponies, asses, mules, zebras. (5-8-09)
- 16. 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. (5-3-03)
- 17. Federal Animal Health Official.** An employee of USDA/APHIS/VS who has been authorized to perform animal health activities. (5-3-03)
- 18. Feeder Animals.** Animals to be fed for slaughter only. (5-3-03)
- 19. Game Birds.** Domesticated gallinaceous fowl such as pheasants, partridge, quail, grouse and guineas. (5-3-03)
- 20. Hatching Eggs.** Fertilized eggs. (5-3-03)
- 21. Livestock.** Means cattle, swine, horses, mules, asses, domestic cervidae, sheep, goats, camelids, and ratites. (5-3-03)
- 22. National CWD Herd Certification Program.** A federal-state-industry cooperative program, as provided for in the Code of Federal Regulations, Title 9, Part 55, January 1, 2013. The program, administered by APHIS and implemented by participating states, establishes CWD surveillance and testing standards cervidae owners must achieve before interstate transport will be permitted. (3-20-14)
- 23. 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. (5-3-03)

- 24. Official Identification.** The unique individual identification of cattle, domestic bison, swine, or domestic cervidae in accordance with the rules governing each species. (5-3-03)
- 25. Official Vaccinate.** Cattle or domestic bison female that was inoculated, in accordance with IDAPA 02.04.20 “Rules Governing Brucellosis” or the Brucellosis Eradication UM&R, with an approved Brucella vaccine. (5-3-03)
- 26. Poultry.** The term means chickens, turkeys, ducks, geese, guinea fowl, pigeons, pheasants, domestic fowl, waterfowl and gamebirds. (5-3-03)
- 27. Quarantine.** A written order executed by the Administrator to confine or hold animals on a premise, or any other location where found, and prevent movement of animals from a premise 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. (5-3-03)
- 28. Ratites.** Ostrich, emu, rhea and cassowaries. (5-3-03)
- 29. Slaughter Animals.** Animals of any kind for immediate slaughter, or those consigned for slaughter within fourteen (14) days of date of shipment. (5-3-03)
- 30. State Animal Health Official.** The Administrator or his designee responsible for disease control and eradication programs. (5-3-03)
- 31. VHSV Positive Area.** Any area or region that has been identified by USDA as affected by VHSV. (4-2-08)
- 32. Waterfowl.** Domestic fowl that normally swim, such as ducks and geese. (5-3-03)
- 33. Wildlife.** Any animal generally living in a state of nature except, domestic bison, domestic cervidae, domestic fur bearing animals, and fish. (4-2-08)

011. ABBREVIATIONS.

- 01. APHIS.** Animal and Plant Health Inspection Service. (4-2-08)
- 02. AVIC.** Area Veterinarian in Charge. (5-3-03)
- 03. AZA.** Association of Zoos and Aquariums. (4-4-13)
- 04. BAPA.** Buffered Acidified Plate Assay. (3-29-17)
- 05. BPAT.** Buffered Antigen Plate-Agglutination Test. (3-29-17)
- 06. CF.** Complement Fixation Test. (3-30-07)
- 07. CFR.** Code of Federal Regulations. (5-3-03)
- 08. CWD.** Chronic Wasting Disease. (5-3-03)
- 09. EIA.** Equine Infectious Anemia. (5-3-03)
- 10. EVA.** Equine Viral Arteritis. (5-8-09)
- 11. FPA.** Fluorescence Polarization Assay. (3-29-17)
- 12. NAEBA.** North American Elk Breeders Association. (5-3-03)

- 13. NPIP. National Poultry Improvement Plan. (5-3-03)
- 14. *P. tenuis*. *Paralephastromylylus tenuis* (meningeal worm of deer). (4-11-15)
- 15. PCR. Polymerase Chain Reaction. (4-2-08)
- 16. RDGF. Red Deer Genetic Factor. (4-4-13)
- 17. TB. Tuberculosis. (5-3-03)
- 18. UM&R. Uniform Methods and Rules. (5-3-03)
- 19. USDA. United States Department of Agriculture. (5-3-03)
- 20. VHSV. Viral Hemorrhagic Septicemia Virus. (4-2-08)
- 21. VS. Veterinary Services. (5-3-03)

012. APPLICABILITY.

These rules apply to all animals imported into the state of Idaho. (5-3-03)

013. -- 049. (RESERVED)

050. REQUIREMENTS OF TITLE 9, PARTS 71, 75, 77, 78, 85, 145, 146, 147, AND 161, CFR.

In addition to meeting the requirements of this chapter for entry, animals imported into Idaho shall meet all applicable requirements set forth in the Title 9, Parts 71, 75, 77, 78, 85, 145, 146, 147, and 161, CFR, January 1, 2006. (5-8-09)

051. POST ENTRY INSPECTIONS.

All animals entering Idaho may be subject to a post-entry inspection by state or federal animal health officials. (5-3-03)

052. -- 099. (RESERVED)

100. CERTIFICATES OR PERMIT REQUIRED.

Unless otherwise specifically provided in this chapter, all animals transported or moved into the state of Idaho shall be accompanied by: (5-3-03)

- 01. **Certificate of Veterinary Inspection.** An official certificate of veterinary inspection; or (5-3-03)
- 02. **Other Approved Certificates.** Other certificate approved by the Administrator; and (5-3-03)
- 03. **Permit.** A permit issued by the Administrator, if required. (5-3-03)

04. **Possession.** The certificate, and permit if required, shall be attached to the waybill or be in the possession of the driver of the vehicle at the time of importation. (5-3-03)

101. CONTENTS OF CERTIFICATES.

All certificates shall provide a written, legible record attesting the animal(s) meet the importation requirements of the state of Idaho. The certificate shall be on an official form of the state of origin, if applicable, be approved by its livestock sanitary official and be issued by an accredited veterinarian. All certificates shall contain the following information: ()

- 01. **Name and Address.** Name and address of the consignor and consignee; and (5-3-03)
- 02. **Origin of Shipment.** Including city and state; and (5-3-03)

- 03. Final Destination of Shipment.** Including city and state; and (5-3-03)
- 04. Description of Animals.** An accurate description and identification of each animal if required; and (5-3-03)
- 05. Purpose of Shipment.** The purposes for which the animals were shipped, and method of transportation; and (5-3-03)
- 06. Health Status.** The certificate shall indicate the health status of the animals involved including dates and results of inspection and of tests and vaccinations, if any, required by the state of Idaho; and (5-3-03)
- 07. Signature.** The signature of the accredited veterinarian, or state or federal animal health official, conducting the veterinary inspection. (5-3-03)
- 08. Mailing Certificate to Idaho.** The required copies of certificates of veterinary inspection or other approved certificates shall be mailed, within seven (7) days of inspection, to the Division of Animal Industries, P.O. Box 7249, Boise, ID 83707. ()
- 09. Period of Certificate Validity.** Certificates of veterinary inspection shall be valid for no longer than thirty (30) days after the date issued. ()

102. EXTENDED VALIDITY EQUINE CERTIFICATES.

Equidae from other states may enter the state of Idaho for shows, rides or other equine events and return to the state of origin on an extended validity equine certificate provided there is a written agreement between the Administrator and the chief livestock official of the state of origin or the provider of an approved electronic extended validity equine certificate system. ()

01. Valid for One Animal. An extended validity equine certificate shall be valid for only one (1) animal. Each animal shall have a separate certificate. (5-3-03)

02. Contents. Extended validity equine certificates shall contain the following information: name and address of the owner, location at which the animal is stabled, housed, pastured or kept, if different from that of the owner, an accurate description and identification of the animal, date of veterinary inspection, dates and results of EIA or other required tests or vaccinations, if applicable, and signature of inspecting veterinarian. ()

03. Period of Validity. Extended validity equine certificates are valid for no longer than six (6) months from date of veterinary inspection for the certificate. (3-30-07)

04. Travel Itinerary. Recipients of extended validity equine certificates shall submit travel itinerary information to the Division of Animal Industries or electronic certificate provider prior to movement into Idaho or to a new destination within Idaho. The travel itinerary shall provide a listing of all travel into the state of Idaho, including travel dates, purpose for travel and destinations, during the period of validity of the certificate. ()

05. Cancellation. Extended validity equine certificates may be canceled at any time by the Administrator in the event of serious or emergency disease situations or for non-compliance with the provisions of these rules. (5-3-03)

103. NPIP CERTIFICATE.

Poultry imported from NPIP certified flocks may be moved with VS Form 9-3 in lieu of a certificate of veterinary inspection. (5-3-03)

104. IMPORT PERMITS.

Request for permits to import animals, when applicable, into the state of Idaho shall be directed to the Division of Animal Industries online Import Permit System at <https://www.isda.idaho.gov/AnimalImport/> or by telephone (208) 332-8540. ()

01. Telephone Requests. Import permits may be requested by telephone during office hours as stated in Section 005. ()

02. Contents of a Permit Request. The request for an import permit shall include the following information: (5-3-03)

- a.** Name, physical address, and phone number of the consignor and consignee; ()
- b.** Number and kind of animals; (5-3-03)
- c.** Origin of shipments; (5-3-03)
- d.** Final destination; (5-3-03)
- e.** Purpose of shipment; (5-3-03)
- f.** Date of shipment; (5-3-03)
- g.** Results of any required tests, inspections or vaccinations; and (5-3-03)
- h.** Issuing veterinarian contact information. ()

03. Timeframe for Requesting a Permit. Permits may be requested no more than seventy-two (72) hours in advance of the shipment of the animals. (5-3-03)

04. Period of Validity. Permits are valid for no longer than fifteen (15) days from the date of issuance unless otherwise specified. (5-3-03)

105. TO WHOM MAY ANIMALS BE CONSIGNED.

Animals transported or moved into the state shall be consigned to a person residing in Idaho or to a person authorized by law to do business in the state of Idaho. (5-3-03)

106. DIVERSION OF ANIMALS AFTER SHIPMENT.

No person consigning, transporting or receiving animals in the state of Idaho shall authorize, order or carry out diversion of such animals to a destination or consignee other than set forth on the certificate of veterinary inspection or permit without notifying the Division of Animal Industries within seventy-two (72) hours of the diversion. (5-3-03)

107. ANIMALS EXPOSED TO DISEASE OR ORIGINATING IN A QUARANTINED AREA.

No animals affected with or which have been exposed to any infectious, contagious, or communicable disease, or which originate in a quarantined area shall be transported or moved into the state of Idaho unless a permit for such entry is first obtained from the Division of Animal Industries, except such animals in classifications allowed interstate shipment under specified requirements of the USDA may move without permit if in compliance with Title 9, Parts 71, 77, 78, 85, 145, and 147 CFR requirements. (5-3-03)

108. QUARANTINE IMPOSED IF NO CERTIFICATE OR PERMIT ISSUED.

Animals entering the state of Idaho without a valid certificate of veterinary inspection or other approved certificate, and a permit, if required, shall be held in quarantine at the risk and expense of the owner. (5-3-03)

01. Duration of Quarantine. Such animals shall remain under quarantine until the quarantine is released by a state or federal animal health official. (5-3-03)

02. Animals Without a Certificate. The Administrator may order animals that are not in compliance with certificate of veterinary inspection requirements to be slaughtered, removed from the state, or confined to an approved feedlot. (5-3-03)

03. Hold Order. Quarantines may take the form of a hold order. (5-3-03)

109. VESICULAR STOMATITIS.

No livestock may enter Idaho from another state if Vesicular Stomatitis has been diagnosed on the premises of origin of the shipment within the last thirty (30) days. (4-11-15)

01. Certificate of Inspection. Any livestock entering Idaho from a state where Vesicular Stomatitis has been diagnosed within the last thirty (30) days shall be accompanied by a certificate of veterinary inspection with the following statement written by the accredited veterinarian on the certificate: "All animals identified on this certificate of veterinary inspection have neither been exposed to Vesicular Stomatitis nor located within an area where Vesicular Stomatitis has been diagnosed." ()

02. Permit for Entry. Livestock from states in which Vesicular Stomatitis has been diagnosed within the last thirty (30) days shall be accompanied by a permit for entry into Idaho. The permit number shall be written on the certificate of veterinary inspection. (5-3-03)

110. GENERAL DUTIES OF CARRIER.

All owners and operators of railroads, trucks, airplanes, or other conveyances shall conform to all rules and statutes of the state of Idaho in transporting or moving any animals into, within or through the state of Idaho. (5-3-03)

01. Duties of Carrier Regarding Certificates of Veterinary Inspection or Permits. All owners and operators of conveyances used in the transportation of animals into or within the state of Idaho shall assure each consignment or shipment is in conformity with the applicable statutes and rules of the state of Idaho, and is accompanied by an official certificate of veterinary inspection or by a permit, or by both, where so required. Such certificate of veterinary inspection or permit shall be in the possession of the attendant in charge of the animals. ()

02. Sanitary Condition of Cars, Trucks and Airplanes. All railroad cars, trucks, airplanes, or other conveyances used in the transportation of animals shall be maintained in a clean and sanitary condition. (5-3-03)

03. Disinfection of Conveyances. All owners and operators of conveyances that have been used for movement of animals infected with or exposed to any infectious disease shall have such conveyances thoroughly cleaned and disinfected under official supervision by any accredited veterinarian or state or federal animal health official, at the point of destination or by permit from the sanitary officials, may be moved to some other point for cleaning and disinfecting. ()

111. ADDITIONAL IMPORT REQUIREMENTS.

The Administrator 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. (5-3-03)

112. -- 199. (RESERVED)

200. IMPORTATION OF CATTLE INTO IDAHO.

All cattle that enter the state of Idaho shall possess appropriate official individual identification, if required, and be accompanied by a certificate of veterinary inspection attesting they are free from evidence of any infectious disease, or exposure thereto, and by a permit if required, except: ()

01. Approved Slaughter Establishments. Cattle consigned directly to approved slaughter establishments shall be accompanied by a statement of ownership such as a brand certificate or waybill, and a permit, if required; or (5-3-03)

02. Specifically Approved Livestock Market. Cattle consigned directly to specifically approved livestock markets shall be accompanied by a statement of ownership such as a brand certificate or waybill, and a permit, if required; or (5-3-03)

03. Feedlots Approved by the Administrator. Cattle consigned directly to feedlots approved by the Administrator for conducting veterinary inspections upon the arrival of the cattle. (5-3-03)

04. Post-Entry Inspection. All cattle entering Idaho may be subject to a post-entry inspection by state or federal animal health officials. (5-3-03)

201. CATTLE AND BISON IMPORTED FROM CANADA.

All cattle and bison imported into Idaho from Canada, except those imported directly to slaughter, must: (5-8-09)

01. Idaho Requirements. Meet all Idaho import requirements. (5-8-09)

02. USDA Requirements. Meet all USDA import requirements. (5-8-09)

03. Individually Identified. Be individually identified on a certificate of veterinary inspection. (5-8-09)

04. Import Permit. Be accompanied by an import permit issued by the Division. (5-8-09)

202. WHEN PERMITS ARE REQUIRED FOR CATTLE.

01. Dairy. For all intact male and female cattle of dairy breeds not consigned directly to an approved slaughter establishment, or to a specifically approved livestock market. All dairy cattle shall be officially identified as provided in Section 203 of these rules. (3-29-17)

02. Beef Bulls. All bulls of beef breeds not consigned directly to an approved slaughter establishment, or to a specifically approved livestock market, except intact male calves accompanying their dams. (5-3-03)

03. Female Beef Cattle. All intact female cattle of beef breeds not consigned directly to an approved slaughter establishment or to a specifically approved livestock market that are: (5-3-03)

a. From states or areas that are not Brucellosis Class Free; or (5-3-03)

b. Not officially vaccinated pursuant to IDAPA 02.04.20, "Rules Governing Brucellosis," except calves over one hundred twenty (120) days of age accompanying their dam; or (4-11-06)

c. Under one hundred twenty (120) days of age, except calves accompanying their dam. (5-3-03)

04. Restricted Areas. All cattle from areas or states on which Idaho or USDA has imposed restrictions. (5-3-03)

05. Domestic Bison. Domestic bison imported into Idaho shall be in compliance with the same requirements as cattle. ()

06. Canadian Cattle and Canadian Domestic Bison. All cattle and Canadian domestic bison imported into Idaho from Canada, except those imported directly to slaughter, must have an import permit prior to importation. (4-4-13)

07. Other. Cattle of any classification that do not meet other entry requirements. (5-3-03)

203. OFFICIAL IDENTIFICATION OF IMPORTED CATTLE.

01. Beef Cattle. All sexually intact beef breed cattle, eighteen (18) months of age or older, shall possess official individual identification. (3-29-17)

02. Dairy Cattle. All dairy breed cattle, regardless of age, shall possess official individual identification. (3-29-17)

204. -- 209. (RESERVED)

210. BRUCELLOSIS VACCINATION REQUIREMENTS.

All intact female cattle entering Idaho shall have been officially vaccinated for brucellosis except: (5-3-03)

01. Cattle Consigned to Slaughter. Female cattle consigned directly to an approved slaughter establishment; or (5-3-03)

02. Cattle Consigned to Specifically Approved Livestock Markets. Female cattle consigned directly to a specifically approved livestock market; or (5-3-03)

03. Approved Feedlot. Female cattle consigned directly to an Idaho approved feedlot, by permit; or (5-3-03)

04. Calves. Female calves less than one hundred twenty (120) days of age by permit; or (5-3-03)

05. Vaccination on Arrival. Non-vaccinated females may, by permit, be consigned to a qualified destination approved by the Administrator to be officially vaccinated on arrival pursuant to IDAPA 02.04.20, "Rules Governing Brucellosis"; or ()

06. Show Cattle. Female cattle may enter Idaho for the purpose of participating in shows or exhibitions, by permit. (5-3-03)

211. BRUCELLOSIS TEST REQUIREMENTS.

01. Class A States or Areas. All test eligible cattle from Class A states or areas shall have been tested negative within thirty (30) days of importation unless consigned to slaughter. (5-3-03)

02. Brucellosis Surveillance or High Risk Areas. Test eligible cattle from brucellosis surveillance areas or brucellosis high risk areas shall be tested negative to an official brucellosis test within thirty (30) days before importation into Idaho except those cattle consigned directly to an approved slaughter establishment, or a specifically approved livestock market where they shall be tested prior to sale. Such cattle sold to a destination other than an approved slaughter establishment may be held under quarantine for forty-five (45) to one hundred twenty (120) days to allow for additional brucellosis tests. (5-3-03)

212. TEST ELIGIBLE CATTLE.

Test eligible cattle are: (5-3-03)

01. Unvaccinated or Vaccinated with Brucella Abortus Strain RB 51 Vaccine. All intact male and female cattle, twelve (12) months of age or older. ()

02. All Test Eligible Cattle Entering Idaho. All test eligible cattle entering Idaho shall be officially identified on the certificate of veterinary inspection. (5-3-03)

213. -- 219. (RESERVED)

220. GRAZING CATTLE.

Cattle herds moved into Idaho or from Idaho to other states for seasonal grazing periods shall be moved only under special grazing permits issued jointly by the Division of Animal Industries and the chief livestock sanitary official in a state which reciprocates with Idaho in honoring grazing permits. (3-30-07)

01. Grazing Permits. Grazing permits shall be for one (1) specified season only and be issued prior to movement on a case-by-case basis. ()

02. Tests. The Administrator, in cooperation with the appropriate agency of the reciprocating state, shall have the authority to impose tuberculosis, brucellosis, trichomoniasis, or other tests on cattle entering for grazing purposes. This test requirement shall be evaluated on an annual basis by the Administrator and the chief livestock sanitary official of the reciprocating state. (4-2-08)

03. Herd Ownership. Cattle herds permitted to move under the provisions of Section 220 shall be

established herds. Change of ownership of the herd shall not be allowed while the herd is under the requirements of the grazing permit, and the cattle shall be moved interstate with such certification, identification and testing requirements as the Administrator may require. (3-20-04)

221. -- 229. (RESERVED)

230. EMERGENCY SITUATIONS.

Cattle may be imported into the state of Idaho in emergency situations under special permit from the Administrator. (5-3-03)

01. Cattle Held Separate. Cattle allowed entrance under this provision shall be held separate and apart from Idaho cattle and quarantined for a specific time period to a specific area for grazing or feeding purposes. (5-3-03)

02. Cattle Returned to State of Origin. At the end of the quarantine time period the cattle will be returned to the state of origin, but shall meet the state of origin's import requirements prior to departure from Idaho. (5-3-03)

03. Cattle That Remain in Idaho. If an owner desires to leave such cattle in Idaho after the time period has expired, then such cattle shall meet the same health and test requirements as would normally be required of any imported cattle and this shall be done at the owner's expense. (5-3-03)

231. -- 239. (RESERVED)

240. TUBERCULOSIS TEST REQUIREMENTS.

Cattle and domestic bison may enter the state of Idaho provided: (5-3-03)

01. Tuberculosis Accredited Free State or Zone. Cattle and bison that originate from a bovine tuberculosis accredited free state or zone, as defined by USDA in Title 9, Part 77, CFR, in which there are no animals or herds infected with or exposed to tuberculosis may be imported upon meeting the following requirements: (4-11-06)

a. Cattle of beef breeds may enter the state without a tuberculosis test. (4-11-06)

b. All sexually intact male and female cattle, six (6) months of age and older, of dairy breeds, shall be officially identified and tested negative for tuberculosis, within sixty (60) days prior to entry into the state of Idaho except intact male and female cattle of dairy breeds consigned directly to a feedlot approved for finish feeding of cattle for slaughter may enter by permit without a tuberculosis test provided the cattle have been individually identified on a certificate of veterinary inspection. ()

c. All sexually intact male and female cattle, six (6) months of age and older, of dairy breeds, may enter Idaho for the purpose of participating in shows or exhibitions, by permit, without a tuberculosis test. (4-11-06)

02. Tuberculosis Accredited Free Herd. Cattle and bison that originate in an accredited tuberculosis free herd in either an accredited free state or zone, a modified accredited advanced state or zone, or a modified accredited state or zone, as defined by USDA in Title 9, Part 77, CFR, and for which both an accredited herd number and date of last tuberculosis test are shown on the certificate of veterinary inspection, may enter the state without a tuberculosis test. (5-3-03)

03. Tuberculosis Modified Accredited Advanced State or Zone. Cattle and bison that originate from a modified accredited advanced state or zone, as defined by USDA in Title 9, Part 77, CFR, and are not known to be infected with or exposed to tuberculosis, may be imported upon meeting the following requirements: (5-3-03)

a. Steers, spayed heifers, and intact heifers of beef and dairy breeds that are less than fifteen (15) months of age, which are consigned for grazing, or steers, spayed heifers, and intact heifers of beef and dairy breeds that are consigned directly to a feedlot approved for finish feeding of cattle or bison, may enter without individual identification or testing for tuberculosis; and ()

b. All other cattle and bison, except those moving on grazing permits issued by the Administrator under the provisions of Section 220 and those consigned directly to slaughter at an approved slaughter establishment, shall be tested for tuberculosis with negative results within sixty (60) days prior to entry into Idaho. (3-29-17)

c. Tuberculosis testing requirements in Subsection 240.03 may be waived, with administrator-approval, for feeder animals of beef breeds and bison originating from a modified accredited advanced state or zone previously classified as accredited free if the state of origin has had no laboratory confirmed case or other epidemiological evidence of tuberculosis in the previous twelve (12) months and the herd of origin is not under hold order, quarantine, or epidemiological investigation for tuberculosis. (4-7-11)

04. Tuberculosis Modified Accredited State or Zone. Cattle and bison that originate in a modified accredited state or zone, as defined by USDA in Title 9, Part 77, CFR, and which are not known to be infected with or exposed to tuberculosis, may enter Idaho under one (1) of the following conditions: (5-3-03)

a. The cattle and bison are steers, spayed heifers or intact heifers which are consigned directly to a feedlot approved for finish feeding of cattle and bison and that have been individually identified and classified negative on an official tuberculosis test within sixty (60) days prior to entry into Idaho; or ()

b. The cattle and bison are consigned directly to slaughter at an approved slaughter establishment; or (3-29-17)

c. The cattle and bison have been subjected to two (2) official tuberculosis tests, the results of which are negative, the first test shall be a whole herd test, the second test shall be at least sixty (60) days, and no more than six (6) months, after the whole herd test and shall be not more than sixty (60) days prior to entry into Idaho. (5-3-03)

05. Tuberculosis Accredited Preparatory State or Zone. Cattle and bison that originate in an accredited preparatory state or zone, as defined by USDA in Title 9, Part 77, CFR, and which are not known to be infected with or exposed to tuberculosis, may enter Idaho under one (1) of the following conditions: (5-3-03)

a. The cattle and bison are steers, spayed heifers or intact heifers which are consigned directly to a feedlot approved for finish feeding of cattle and bison and that are individually identified and have been classified negative on two (2) official tuberculosis tests conducted at least sixty (60) days, but not more than six (6) months apart, with the second test being conducted not more than sixty (60) days prior to entry into Idaho; or ()

b. The cattle and bison originate in a tuberculosis accredited free herd, are individually identified, and have been tested negative on an official tuberculosis test within sixty (60) days prior to entry into Idaho; or (5-3-03)

c. The cattle and bison are individually identified, are from a herd that has been subjected to a complete tuberculosis herd test with negative results within the past twelve (12) months and the animals being imported have been subjected to two (2) additional official tuberculosis tests with negative results, conducted not less than sixty (60) days apart with the second test being conducted not more than sixty (60) days prior to the date of importation. (5-3-03)

06. Tuberculosis Non-Accredited State or Zone. Cattle and bison that originate in a non-accredited state or zone, as defined by USDA in Title 9, Part 77, CFR, may not enter Idaho except by special permit issued by the administrator and under the conditions specified by the administrator at the time the permit is issued. (5-3-03)

07. Rodeo Stock. All cattle six (6) months of age or older imported into Idaho for rodeo or timed events must have been tested negative for bovine tuberculosis within twelve (12) months prior to importation into Idaho. (4-7-11)

241. -- 259. (RESERVED)

260. TRICHOMONIASIS.

The Certificate of Veterinary Inspection for bulls imported into Idaho shall contain a statement certifying that trichomoniasis is not known to exist in the herd of origin, and: (5-3-03)

01. Virgin Bulls Less Than Eighteen Months of Age. The virgin bull(s) are less than eighteen (18) months of age and have not serviced a cow; or (3-25-16)

02. Tested Bulls. The bull(s) have been tested by culture or PCR for trichomoniasis within sixty (60) days of shipment, were negative to the test, and have not been exposed to female cattle since the test sample was collected. (3-25-16)

03. Exceptions. Exceptions to certification and testing: (5-3-03)

a. Bulls consigned directly to slaughter at an approved slaughter establishment; or (5-3-03)

b. Bulls consigned directly to an approved feedlot; or (5-3-03)

c. Bulls consigned directly to a specifically approved livestock market; or (5-3-03)

d. Rodeo bulls imported by an Idaho based rodeo producer, with an approved rodeo bull lot as described in IDAPA 02.04.29, "Rules Governing Trichomoniasis," Section 400 or rodeo bulls imported to perform at specific rodeos in Idaho. (4-7-11)

e. Bulls imported for exhibition at livestock shows, provided the bull will be returned to its state of origin, will not be exposed to female cattle, and will not be offered for sale. (4-7-11)

261. -- 299. (RESERVED)

300. EQUIDAE.

All horses, mules, asses and other equidae that are to be transported or moved into the state of Idaho shall be accompanied by an official certificate of veterinary inspection or extended validity equine certificate, from the state of origin, stating that the equidae are free from evidence of any communicable disease and have completed EIA test requirements, except as provided in this section. (4-4-13)

01. EIA Test Requirements. An official EIA test is a blood test conducted by a USDA approved laboratory, within twelve (12) months prior of entry of the equidae into Idaho. (3-30-07)

a. Entry of equidae into Idaho shall not be allowed until the EIA test has been completed and reported negative. Equidae which test positive to the EIA test shall not be permitted entry into Idaho, except by special written permission from the Administrator. (5-3-03)

b. A nursing foal less than six (6) months of age accompanied by its EIA negative dam is exempt from the test requirements. (5-3-03)

02. Working Horses Included on Grazing Permits. "Working horses" used for seasonal ranching purposes may be exempt from the requirements of this section if the horses have been included on a current grazing permit which has received prior approval from the Administrator and the chief livestock official in a state which reciprocates with Idaho in honoring grazing permits. ()

03. Approved Equine Feedlot. Equids imported to be fed for slaughter in an equine feedlot approved by the Administrator may be exempt from EIA test requirements provided: (3-29-17)

a. Horses qualified into the approved facility must be sent directly to slaughter within sixty (60) days; (3-29-17)

b. A distance of no less than two hundred (200) yards is maintained at all times between designated slaughter horses and all other equids; (3-29-17)

c. Feedlot owners maintain complete and accurate records of the disposition of all equids qualified into the approved equine feedlot; and (3-29-17)

d. Feedlot owners annually apply for renewal of approved feedlot status prior to expiration on December 31st of each calendar year. (3-29-17)

04. Reciprocal Agreements. The Administrator may enter into cooperative reciprocal agreements with neighboring states which exempt EIA testing requirements for movement of equidae between the cooperating states. (5-3-03)

301. -- 399. (RESERVED)

400. IMPORTATION OF SWINE.

Swine may enter the state of Idaho provided, they are individually identified by official ear tags or other approved techniques indicating the state and herd of origin, a permit has been issued for their entry by the Division of Animal Industries, and they are accompanied by a certificate of veterinary inspection attesting to the following: (3-30-07)

01. Animals Inspected. All swine have been inspected within thirty (30) days prior to the date of shipment, and that they are free from evidence of all infectious diseases, or known exposure thereto during the preceding sixty (60) days; and ()

02. Vaccination. The swine have not been vaccinated with any pseudorabies vaccine; and (5-3-03)

03. Garbage. The swine have not been fed raw garbage. (5-3-03)

04. Slaughter Swine Exceptions. Swine directly to slaughter that are apparently healthy may enter the state of Idaho without a certificate of veterinary inspection, provided the applicable permit requirements are met and the swine are consigned directly to an approved slaughter establishment, or to a specifically approved livestock market for sale to an approved slaughter establishment. (3-29-17)

401. BRUCELLOSIS REQUIREMENTS.

Breeding swine shall be tested negative for brucellosis at a dilution of one to twenty-five (1:25) on the standard tube test within thirty (30) days prior to entry or negative to Official Card Test, within thirty (30) days prior to entry, or originate from a validated brucellosis free herd or validated brucellosis free state. (5-3-03)

402. PSEUDORABIES REQUIREMENTS.

01. Breeding Swine. Breeding swine may be shipped directly from: (5-3-03)

a. A farm of origin or a specifically approved livestock market in a Stage IV or V state/area without Pseudorabies testing; or (5-3-03)

b. A qualified Pseudorabies-negative herd with a negative official Pseudorabies test within thirty (30) days prior to entry into Idaho; or (5-3-03)

c. A farm of origin or a specifically approved livestock market in any other state or area with a negative official Pseudorabies test within thirty (30) days prior to entry and such swine must be quarantined in isolation at destination and retested thirty (30) to sixty (60) days following importation. (5-3-03)

02. Feeder Pigs. Feeder pigs may be shipped directly from: (5-3-03)

a. A farm of origin or a specifically approved livestock market in a Stage IV or V state/area, or be shipped directly from a qualified Pseudorabies-negative herd without a Pseudorabies test; or (5-3-03)

b. A farm of origin or a specifically approved livestock market in any other state or area with a negative official Pseudorabies test within thirty (30) days prior to entry. Such swine must be quarantined in isolation at destination and retested thirty (30) to sixty (60) days following importation. (5-3-03)

03. Slaughter Swine. Slaughter swine that are known to be exposed to Pseudorabies may be shipped

directly to an approved slaughter establishment by permit. Slaughter swine, which are not known to be infected or exposed, may be imported from a state/area with a program status up to and including Stage III, for movement directly to an approved slaughter establishment, with a permit. Slaughter swine from Stage IV or V state/area, which are not known to be infected or exposed, may be imported directly to approved slaughter establishments or to specifically approved livestock markets for sale to approved slaughter establishments, without a permit. (5-3-03)

403. -- 499. (RESERVED)

500. DOGS AND CATS.

01. Dogs. All dogs imported into the state of Idaho shall be accompanied by an official certificate of veterinary inspection attesting that such dogs are apparently free from any infectious. Dogs three (3) months of age or older shall have been vaccinated for rabies. Dogs three (3) months of age or older originating from a rabies quarantined area must have a permit from the Division of Animal Industries prior to importation. ()

02. Cats. All cats imported into the state of Idaho shall be accompanied by an official certificate of veterinary inspection attesting that such cats are apparently free from any infectious disease. Cats three (3) months of age or older shall have been vaccinated for rabies. ()

03. Permits Required. The Administrator may require any dog or cat, from an area that has been determined to pose a significant threat of disease, to have an import permit prior to movement into Idaho. (5-3-03)

501. -- 599. (RESERVED)

600. IMPORTATION OF DOMESTIC CERVIDAE.

Domestic cervidae may enter the state of Idaho, by permit, provided: (5-3-03)

01. Certificate of Veterinary Inspection. The cervidae are accompanied by a certificate of veterinary inspection certifying that they have been inspected within thirty (30) days prior to the date of shipment, that they are free from evidence of infectious diseases, or known exposure thereto during the preceding sixty (60) days; and ()

02. Meet Testing Requirements. The cervidae shall meet the testing requirements of Section 601. (5-3-03)

03. National CWD Herd Certification Program Participation. All cervidae must originate from a herd that is in good standing and actively participating in the National CWD Herd Certification Program. (3-20-14)

04. Deworming Requirement. All cervidae, except those consigned directly to slaughter at an approved slaughter establishment, are required to receive anthelmintic, approved for treatment of *P. tenuis*, within thirty (30) days prior to import into Idaho. Treatment must be documented on the certificate of veterinary inspection. (3-29-17)

05. *P. tenuis* Statement. The certificate of veterinary inspection accompanying the cervidae shipment must contain the following written statement from the accredited veterinarian on the certificate: "No cervids identified on this certificate of veterinary inspection have displayed symptoms consistent with *P. tenuis* infection. These cervids have neither been exposed to *P. tenuis* or originated from a premises where *P. tenuis* has been identified." (4-11-15)

601. TESTING REQUIREMENTS.

All cervidae imported into Idaho shall meet the following test requirements: (3-29-17)

01. Brucellosis. Animals six (6) months of age and older originating from a brucellosis surveillance area or brucellosis high risk area shall be negative to at least two (2) different official brucellosis tests from a single blood sample, one (1) of which shall be the BAPA/BPAT and the other shall be the FPA, within sixty (60) days prior to entry, or the animals shall originate directly from a Brucellosis certified free herd or a brucellosis class free state for cervidae. ()

02. Red Deer Genetic Factor. Elk shall have either tested negative for red deer genetic factor (RDGF) by a laboratory approved by the Division of Animal Industries, or shall have been registered with NAEBA or the Canadian Food Inspection Agency, or a state with an ISDA approved RDGF prevention program. (4-4-13)

03. Tuberculosis. Cervid imports shall comply with all provisions of the “Uniform Methods and Rules – Bovine Tuberculosis Eradication” and Title 9, Part 77 CFR, which is incorporated by reference in Subsection 004.05 of this Chapter. (3-29-17)

04. Exceptions. Domestic cervids consigned directly to slaughter at an approved slaughter establishment. (3-29-17)

602. INDIVIDUAL IDENTIFICATION.

Each cervid animal imported shall be individually identified in accordance with the National CWD Herd Certification Program requirements, with two (2) forms of official identification for each animal according to IDAPA 02.04.19, “Rules Governing Domestic Cervidae.”. (3-20-14)

603. DESTINATION.

Imported domestic cervidae shall be delivered only to approved slaughter establishments, or domestic cervidae ranches, which are in compliance with the domestic cervidae rules. (4-2-08)

604. IMPORT PERMIT.

Domestic cervidae imported into Idaho shall require a permit issued by the Division of Animal Industries. (5-3-03)

605. MENINGEAL WORM.

Importation of domestic cervidae known to be infected with *P. tenuis* is prohibited. (4-11-15)

606. MOVEMENT OF CERVIDAE BETWEEN AZA AND USDA FACILITIES.

Movement of cervidae between facilities that are either AZA accredited or hold a USDA exhibitor permit are exempt from the tuberculosis testing requirements of this rule. All other movement to or from facilities that are not AZA-accredited or hold a USDA exhibitor permit shall comply with the tuberculosis testing requirements. (4-4-13)

607. FROM CERTIFIED CWD FREE HERD.

All elk imported into Idaho shall originate from a herd that has been enrolled in a CWD monitoring program for at least sixty (60) months and which has been determined to have certified CWD free cervid herd status by the animal health official of the state of origin. (5-3-03)

01. Records. In order to qualify for CWD free status, the records and causes of death for the past five (5) years in the herd shall be made available to the state animal health official of the state of origin, and the Division of Animal Industries upon request. (5-3-03)

02. Exceptions. The Administrator, after conducting an evaluation, may grant exceptions to the provisions of this Section on a case-by-case basis. (5-3-03)

608. -- 649. (RESERVED)

650. FISH.

No person shall import, transport, receive or otherwise bring into the State of Idaho any live fish or viable hatching eggs that are listed as Deleterious Exotic Animals in IDAPA 02.04.27 “Rules Governing Deleterious Exotic Animals,” or Invasive Species as listed in IDAPA 02.06.09, “Rules Governing Invasive Species.” (4-4-13)

651. -- 659. (RESERVED)

660. CERTIFICATE AND PERMIT.

In addition to any permits or certifications required by the Idaho Department of Fish and Game, all live fish and viable hatching eggs imported into Idaho must be accompanied by an import permit issued by the Administrator; and (5-8-09)

- 01. A Certificate of Veterinary Inspection Issued in the State of Origin; or (5-8-09)
- 02. Title 50 Certification; or (5-8-09)
- 03. American Fisheries Society Certified Fish Health Inspector's Certification. (5-8-09)

661. ORIGIN OF FISH.

All shipments of live fish and viable hatching eggs imported into Idaho must be accompanied by an invoice or bill of lading that clearly describes the origin(s), species, inventory, lot number, and destination of all fish in the shipment. (4-2-08)

662. -- 669. (RESERVED)

670. VHSV POSITIVE AREAS.

No fish or viable hatching eggs from any VHSV positive area shall be imported into Idaho unless the shipment has been authorized and is accompanied by a permit issued by the director of the Idaho Department of Fish and Game. (4-2-08)

671. -- 699. (RESERVED)

700. AVIAN SPECIES.

All birds imported into Idaho shall have either a certificate of veterinary inspection or other approved certificate. (5-3-03)

701. POULTRY.

All poultry imported into the state of Idaho shall either: (5-3-03)

01. **Originate from NPIP Flock.** Originate from a certified NPIP flock and have a valid VS Form 9-3 accompanying the shipment; or (5-3-03)

02. **Salmonella Test.** Every bird in the shipment shall be tested negative for *Salmonella pullorum-typhoid*, *Salmonella enteritidis*, *Mycoplasma synoviae*, and *Mycoplasma gallisepticum* within the past thirty (30) days and have a valid certificate of veterinary inspection accompany the shipment. Test results shall be recorded on the certificate of veterinary inspection. (5-3-03)

702. POULTRY HATCHING EGGS.

All poultry hatching eggs being imported into Idaho shall: (5-3-03)

01. **NPIP Flock.** Originate from a certified NPIP flock and have a valid VS Form 9-3 accompanying the shipment; or (5-3-03)

02. **Negative Birds.** Come from birds that have been tested negative to *Salmonella pullorum-typhoid*, *Salmonella enteritidis*, *Mycoplasma synoviae*, and *Mycoplasma gallisepticum* within the past thirty (30) days prior to shipment and the test results for the parent birds shall be recorded on a valid certificate of veterinary inspection issued within the last thirty (30) days, which shall accompany the egg shipment. ()

703. RATITES.

Ratites imported in the state of Idaho shall: (5-3-03)

01. **Originate from NPIP Flock.** Originate from a certified NPIP flock and have a valid VS Form 9-3 accompanying the shipment, and an accompanying statement signed by the owner that contains one (1) of the following statement(s): (5-3-03)

- a. "These birds have been inspected and are visibly free of external parasites"; or (5-3-03)
- b. "These birds have been treated for external parasites prior to shipment." (5-3-03)

02. Not Originating From a NPIP Flock. Ratites originating from a non-NPIP flock shall be tested negative for *Salmonella pullorum-typhoid* and *Salmonella enteritidis* within the past thirty (30) days prior to shipment, and the test results shall be recorded on a valid certificate of veterinary inspection issued within the last thirty (30) days, which shall accompany the shipment. The certificate of veterinary inspection shall contain one (1) of the following statement(s): (5-3-03)

a. "These birds have been inspected and are visibly free of external parasites"; or (5-3-03)

b. "These birds have been treated for external parasites prior to shipment"; and (5-3-03)

704. RATITE HATCHING EGGS.

All ratite hatching eggs imported into the state of Idaho shall: (5-3-03)

01. NPIP Flock. Originate from a certified NPIP ratite flock and have a valid VS Form 9-3 accompanying the shipment; or (5-3-03)

02. Negative Birds. Come from birds that have been tested negative to *Salmonella pullorum-typhoid* and *Salmonella enteritidis* within the past thirty (30) days prior to shipment and the test results for the parent birds shall be recorded on a valid certificate of veterinary inspection issued within the last thirty (30) days, which shall accompany the egg shipment. (5-3-03)

705. PSITTACINE BIRDS.

Parakeets and other psittacine birds that will not be commercially exchanged in any manner may enter the state of Idaho with a certificate of veterinary inspection. Parakeets and other psittacine birds that are being imported for the purposes of commercial sale or exchange shall have both a permit and a certificate of veterinary inspection. (5-3-03)

706. -- 709. (RESERVED)

710. DOMESTIC FUR-BEARING ANIMALS.

All domestic fur bearing animals which are transported or moved into the state of Idaho are required to have a certificate of veterinary inspection from the state of origin and an import permit from the Division of Animal Industries. (3-30-07)

01. Certificate and Permit. The certificate and permit shall accompany the shipment of the animals. (3-30-07)

02. Mink. All mink imported into the state of Idaho shall be tested negative for Aleutian Disease using the counterelectrophoresis (CEP) test, within thirty (30) days prior to import. Negative test results shall be recorded on the certificate of veterinary inspection. (3-30-07)

03. Other Tests. The Administrator may approve tests other than CEP for Aleutian Disease testing. (4-2-08)

711. -- 719. (RESERVED)

720. WILDLIFE AND EXOTIC ANIMALS.

All native and non-native wildlife, and all exotic animals imported into Idaho: (5-3-03)

01. Deleterious Exotic Animals. No person shall import deleterious exotic animals into the state of Idaho except as provided in IDAPA 02.04.27, "Rules Governing Deleterious Exotic Animals." (3-20-04)

02. Wildlife and Exotic Animals, Except Deleterious Exotic Animals. Wildlife and exotic animals, except deleterious exotic animals, and all matters pertaining to any restrictions governing their movement into the state of Idaho, are under the authority of the Idaho Department of Fish and Game. (3-20-04)

03. Certificate and Permit. In addition to any requirements of the Idaho Department of Fish and Game, wildlife and exotic animals are required to have a certificate of veterinary inspection from the state of origin

and an import permit from the Division of Animal Industries. (3-20-04)

04. Additional Requirements. The Administrator may impose test and certification requirements, for diseases of concern, on any native or non-native wildlife, or exotic animals imported into Idaho. (5-3-03)

721. -- 799. (RESERVED)

800. BIOLOGICS.

01. USDA License. Serum, vaccines, bacterins and biological remedies of all kinds used as diagnostic agents or used in the treatment of diseases of animals shall not be sold, distributed or used within the state of Idaho or imported into the state for sale, distribution or use unless such serum, vaccines, bacterins and biological remedies have been produced under a license issued by USDA/AHPIS/VS. (5-8-09)

02. Shipping Virulent Blood or Living Virus. All manufacturers, dealers and distributors of biological products are hereby prohibited from shipping any virulent blood or living virus or bacteria (*Brucella abortus* vaccine) of any disease affecting animals into the state of Idaho except with the written permission of the Administrator, and no living virus for use in animals or poultry shall be distributed or used within the state of Idaho unless approved by the Administrator in writing. (5-3-03)

03. Labels. No permit under Subsections 800.01 and 800.02 of this rule shall be issued unless the product is contained in vessels bearing labels approved by the Division of Animal Industries, properly identifying the product by proper name and description, bearing adequate directions for the use of the product, and bearing no statement, design, or device that may deceive the purchaser, or that is false or misleading in any particular. (5-3-03)

801. -- 899. (RESERVED)

900. VIOLATION OF RULES.

In addition to any other civil, criminal, or administrative action, the Administrator may require any animals imported into Idaho in violation of these rules to be placed under strict quarantine and consigned to immediate slaughter, removed from the state or to an approved feedlot within fifteen (15) days, or such shipment shall be returned to the point of origin by the importer. (5-3-03)

901. -- 999. (RESERVED)

02.04.25 – RULES GOVERNING PRIVATE FEEDING OF BIG GAME ANIMALS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 25-207A, Idaho Code. ()

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is IDAPA 02.04.25, “Rules Governing Private Feeding of Big Game Animals.” (4-6-05)

02. **Scope.** These rules govern the private feeding of big game animals in areas of the state of Idaho that have been designated for regulation. (4-6-05)

002. -- 009. (RESERVED)

010. DEFINITIONS.

The following definitions apply in the interpretation and enforcement of this chapter. (4-6-05)

01. **Big Game Animals.** All wild cervidae. (4-6-05)

02. **Brucellosis.** An infectious disease of animals and humans caused by bacteria of the genus *Brucella*. (4-6-05)

03. **Cattle.** All bovidae, including domestic bison. (4-6-05)

04. **Domestic Bison.** All animals in the genus *Bison* that are owned by a person. (4-6-05)

05. **Domestic Cervidae.** Elk, fallow deer and reindeer that are owned by a person. (4-6-05)

06. **Emergency Feeding.** Feeding of big game animals authorized by IDFG pursuant to IDAPA 13.01.18 “Rules Governing Emergency Feeding of Antelope, Elk, and Deer of the Idaho Fish and Game Commission,” and IDFG written policies. (4-6-05)

07. **Federal Animal Health Official.** An employee of the United States Department of Agriculture, Animal Plant Health Inspection Service, Veterinary Services who is authorized to perform animal health activities. (4-6-05)

08. **Livestock.** Cattle, domestic cervidae, domestic bison, sheep, goats, camelids, and horses. (4-6-05)

09. **Operator.** The person who has authority to manage or direct a premises or other area where livestock are fed, feed is stored, or the private feeding of big game animals may occur. (4-6-05)

10. **Owner.** The person who owns or has financial control of livestock, premises or other areas where livestock are fed, where feed is stored, or where the private feeding of big game animals may occur. (4-6-05)

11. **Premises.** The ground, area, buildings, corrals, and equipment utilized to keep, hold, or maintain animals. (4-6-05)

12. **State Animal Health Official.** The Administrator, or his designee, responsible for disease control and eradication activities. (4-6-05)

13. **Supplemental Feed.** Harvested hay, grain, baled straw, or pellet rations. (4-6-05)

14. **Wild Cervidae.** All cervidae that are not owned by a person. (4-6-05)

011. ABBREVIATIONS.

01. **IDFG.** Idaho Department of Fish and Game. (4-6-05)

02. **ISDA.** Idaho State Department of Agriculture. (4-6-05)

012. -- 019. (RESERVED)

020. APPLICABILITY.

In order to prevent the spread of brucellosis and other diseases between big game animals and from big game animals to livestock, these rules apply to all persons who purposely or knowingly provide supplemental feed to big game animals within the area designated in Section 100 of these rules, except supplemental feeding activities conducted by, or emergency feeding activities authorized by IDFG. (4-6-05)

021. -- 099. (RESERVED)

100. EASTERN IDAHO BIG GAME PRIVATE FEEDING PROHIBITION ZONE.

In order to prevent the spread of brucellosis and other diseases between big game animals and from big game animals to livestock, the following portion of Idaho is designated as the eastern Idaho big game private feeding prohibition zone: (4-6-05)

- 01. Clark County.** All of Clark County east of Interstate Highway 15. (4-6-05)
- 02. Fremont County.** All of Fremont County. (4-6-05)
- 03. Teton County.** All of Teton County. (4-6-05)
- 04. Madison County.** All of Madison County. (4-6-05)
- 05. Jefferson County.** All of Jefferson County east of Interstate Highway 15. (4-6-05)
- 06. Bonneville County.** All of Bonneville County east of Interstate Highway 15. (4-6-05)
- 07. Caribou County.** All of Caribou County. (4-6-05)
- 08. Bear Lake County.** All of Bear Lake County. (4-6-05)

101. PRIVATE FEEDING OF BIG GAME ANIMALS PROHIBITED.

No person shall purposely or knowingly provide supplemental feed to big game animals within the eastern Idaho big game private feeding prohibition zone, except supplemental feeding activities conducted by, or emergency feeding activities authorized by IDFG. (4-6-05)

102. INCIDENTAL GRAZING.

Incidental grazing by big game animals on private rangeland forage, standing agricultural crops, or agricultural crop residue left on the ground following typical harvest practices is not considered providing supplemental feed. (4-6-05)

103. -- 119. (RESERVED)

120. INCIDENTAL FEEDING.

Incidental feeding of big game animals during the normal practice of providing feed to livestock in the winter is not a violation of this chapter, provided the owner and operator of the premises where the livestock are being fed cooperate with the ISDA, as determined by the Administrator, to facilitate conducting big game management activities that will eliminate the feeding of big game animals. (4-6-05)

121. SPATIAL SEPARATION.

When requested by the Administrator, IDFG will cooperate with ISDA in maintaining spatial separation of livestock and big game animals. (4-6-05)

122. -- 149. (RESERVED)

150. MANAGEMENT ACTIVITIES.

The Administrator may request that IDFG assist in conducting big game management activities, which include but are not limited to: ()

- 01. Trapping.** Trapping big game animals. (4-6-05)
- 02. Testing.** Testing big game animals for diseases. (4-6-05)
- 03. Moving Animals.** Transferring big game animals to areas where there is suitable winter habitat. (4-6-05)
- 04. Hazing.** Hazing or dispersing big game animals. (4-6-05)
- 05. Supplemental Feed.** Making supplemental feed unavailable or unpalatable to big game animals. (4-6-05)
- 06. Fencing.** Providing fencing materials to facilitate the separation of cattle and big game animals. (4-6-05)

151. ENTERING PREMISES.

State and federal animal health officials are authorized to enter premises during normal business hours, within the eastern Idaho big game private feeding prohibition zone where big game animals are being provided with supplemental feed or there is feedline contact between livestock and big game animals, to conduct big game management activities. (4-6-05)

01. Notification. ISDA will make reasonable efforts to notify the owner or operator of any premises prior to entry for the purpose of conducting big game management activities. (4-6-05)

02. Cooperation. The owner or operator of a premises shall cooperate with ISDA in developing plans for conducting big game management activities. (4-6-05)

152. -- 999. (RESERVED)

02.04.27 – RULES GOVERNING DELETERIOUS EXOTIC ANIMALS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 25-3903 and 25-3904, Idaho Code. ()

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is IDAPA 02.04.27, “Rules Governing Deleterious Exotic Animals.” (3-20-04)

02. **Scope.** These rules govern the designation, importation, and possession of deleterious exotic animals. (3-20-04)

002. -- 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

01. **Code of Federal Regulations.** Title 9, Parts 1, 2, 3, 4, and 161, CFR, January 1, 2005, which can be viewed online at http://www.access.gpo.gov/nara/cfr/waisidx_05/9cfrv1_05.html. (5-8-09)

02. **Association of Zoos and Aquariums Minimum Husbandry Guidelines for Mammals.** Issued November 14, 1997, which can be accessed online at <http://www.aza.org/>. (5-8-09)

005. -- 009. (RESERVED)

010. DEFINITIONS.

The following definitions apply to the interpretation and enforcement of this chapter. (5-8-09)

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. (3-20-04)

02. **Animal.** Any member of the animal kingdom, except man. (3-20-04)

03. **Deleterious Exotic Animal.** Any live animal, or hybrid thereof, that is not native to the state of Idaho and is determined by the Administrator to be dangerous to the environment, livestock, agriculture, or wildlife of the state. (4-11-06)

04. **Facility.** A location, including buildings, cages, corrals, pens, ponds, raceways, tanks, adjacent land, or other areas, where deleterious exotic animals are possessed. (5-8-09)

05. **Federal Animal Health Official.** An employee of the United States Department of Agriculture, Animal Plant Health Inspection Service, Veterinary Services who is authorized to perform animal health activities. (3-20-04)

06. **Livestock.** Cattle, domestic bison, swine, horses, mules, asses, domestic cervidae, sheep, goats, camelids, and ratites. (3-20-04)

07. **Operator.** The person who has authority to manage or direct a facility or other area where animals are kept. (5-8-09)

08. **Person.** Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, or any legal entity, which is recognized by law as the subject of rights and duties. (3-20-04)

09. **Possess.** To confine, control, keep, have, hold, house, or own for any period of time. (5-8-09)

10. **State Animal Health Official.** The Administrator, or his designee, responsible for disease control and eradication activities. (3-20-04)

11. Traveling Exhibition. A temporary exhibition, including, but not limited to, circus, carnival, group, show, or zoo, not permanently located in the state, that possesses deleterious exotic animals. (5-8-09)

011. ABBREVIATIONS.

01. AZA. Association of Zoos and Aquariums. (5-8-09)

02. CFR. Code of Federal Regulations. (3-20-04)

03. IDFG. Idaho Department of Fish and Game. (3-20-04)

04. ISIS. International Species Information System. (5-8-09)

05. PMP. Population Management Plan. (5-8-09)

06. SSP. Species Survival Plan. (5-8-09)

07. TAG. Taxon Advisory Group. (5-8-09)

08. USDA. United States Department of Agriculture. (3-20-04)

012. -- 019. (RESERVED)

020. APPLICABILITY.

These rules apply to the importation and possession of all deleterious exotic animals in Idaho. (3-20-04)

021. DELEGATION OF AUTHORITY.

The Administrator may designate IDFG to conduct permitting activities for deleterious exotic animals. (3-20-04)

022. INSPECTIONS.

In order to ascertain compliance with this chapter, the Administrator is authorized to enter and inspect premises and other areas where animals are held or kept. (3-20-04)

01. Entering Premises. State or federal animal health officials will attempt to notify the owner or operator of the premises or other area prior to conducting an inspection. (3-20-04)

02. Emergencies. In the event of an emergency, as determined by the Administrator, the notification requirements of Section 022 of this rule may be waived. (3-20-04)

023. -- 099. (RESERVED)

100. POSSESSION AND PROPAGATION OF DELETERIOUS EXOTIC ANIMALS.

01. Possession. No person may possess a deleterious exotic animal in the state, unless such person obtains a possession permit issued by the Administrator. (5-8-09)

02. Propagation. No person may propagate a deleterious exotic animal in the state without the approval of the Administrator. If the Administrator grants approval to propagate deleterious exotic animals, such approval will be noted on the applicable possession permit. Persons seeking permission to propagate a deleterious exotic animal must meet the following requirements: (5-8-09)

a. Obtain, and be in full compliance with, a possession permit issued by the Administrator; (5-8-09)

b. Obtain, and be in full compliance with, a USDA exhibitor's license for the facility where deleterious exotic animals will be possessed; (5-8-09)

c. Be a member in good standing of ISIS; and (5-8-09)

d. Participate in a PMP or SSP administered by an AZA TAG. (5-8-09)

e. In the event a PMP or SSP does not exist for the deleterious exotic animal(s) a person seeks to propagate, the Administrator will determine if the propagation of such deleterious exotic animal(s) carries a significant risk of injury to the agricultural industry, wildlife or environment of the state. The person must provide the following information to the Administrator to assist the Administrator in making that determination: (5-8-09)

i. The facility's capacity to hold deleterious exotic animals and any anticipated offspring; (5-8-09)

ii. The frequency of the proposed propagation; (5-8-09)

iii. The purpose(s) of the proposed propagation; and (5-8-09)

iv. The destination or use of the anticipated offspring. (5-8-09)

101. POSSESSION PERMITS.

01. Application for Possession Permits. Persons seeking a possession permit must make application on a form prescribed by the Administrator. Separate applications are to be submitted for each facility where deleterious exotic animals will be possessed. A person who receives a possession permit for deleterious exotic animals must submit a new application for each additional deleterious exotic animal that person seeks to possess. The application must include: ()

a. The applicant's name, address (residence and mailing), and Employer Identification Number or Social Security Number. (5-8-09)

b. Description of the proposed facility, including: (5-8-09)

i. A map identifying the location of the proposed facility; (5-8-09)

ii. The geographic location (township, range, and quarter quarter section) of the proposed facility; (5-8-09)

iii. The legal description of the real property for the proposed facility; (5-8-09)

iv. The approximate total area of the proposed facility; (5-8-09)

v. A detailed diagram of proposed facility, identifying fences, gates, confinement areas; and (5-8-09)

vi. The specifications of the confinement areas for all deleterious exotic animals listed on the application, identifying exterior fencing, interior fencing, fence height, fencing materials, size of confinement areas, etc. (5-8-09)

c. Name and address of the owner(s) of the proposed facility, if not the applicant. If the proposed facility will be leased, include a written and notarized statement by the owner of the property authorizing the use of the proposed facility to house deleterious exotic animals. (5-8-09)

d. Name and address of the operator(s) of the proposed facility, if not the applicant. (5-8-09)

e. Copy of approval by the local zoning authority, if approval is required by the local zoning authority. (5-8-09)

f. Description of each deleterious exotic animal to be possessed at the facility, including genus, species, sex, age, identification, and purpose for possessing each deleterious exotic animal. (5-8-09)

- g.** Name and address of the owner of each deleterious exotic animal listed on the application. (5-8-09)
 - h.** Name and address of the licensed Idaho veterinarian who will provide care for the deleterious exotic animal(s) listed on the application. (5-8-09)
 - i.** Written statement detailing the applicant's training and experience with the species listed on the application. (5-8-09)
 - j.** Written statement detailing the procedure in the event a deleterious exotic animal escapes from the facility. (5-8-09)
 - k.** Documentation of licenses issued by the USDA, if applicable. (5-8-09)
 - l.** Documentation of licenses issued by the U.S. Fish and Wildlife Service, if applicable. (5-8-09)
 - m.** Documentation of accreditation by the AZA, if applicable. (5-8-09)
 - n.** Documentation of membership in ISIS, if applicable. (5-8-09)
 - o.** Documentation of approved participation in a PMP or SSP administered by an AZA TAG, if applicable. (5-8-09)
 - p.** The required information set forth Paragraph 100.02.e., of these rules, if applicable. (5-8-09)
 - q.** For each deleterious exotic animal listed on the application, proof of sterilization or use of a method of birth control administered by a licensed veterinarian and approved by the Administrator, unless the applicant intends to propagate the deleterious exotic animal and fully satisfies the requirements of Subsection 100.02, of these rules. (5-8-09)
 - r.** 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 exotic animals are possessed at the proposed facility. (5-8-09)
- 02. Application Process.** The Administrator will consider all information in the application for a possession permit and issue a written decision granting or denying the application. (5-8-09)
- 03. Application Review.** The Administrator will review the possession permit application and, in determining whether to issue the possession permit, consider factors relating to protection of the state's agriculture industry, the wildlife of the state, and the environment. Such factors include, but are not limited to: (5-8-09)
- a.** Proximity of the facility to farms, ranches, wildlife migration routes, and other areas in which native Idaho wildlife may commonly be found. (5-8-09)
 - b.** Potential for unintended or accidental access to the facility. (5-8-09)
 - c.** Potential for vandalism that compromises the security of the facility. (5-8-09)
 - d.** Potential for escape from the facility. (5-8-09)
 - e.** The size of the facility relative to the number of animals proposed to be kept at the facility. (5-8-09)
 - f.** Whether, based on the applicant's certification and any other evidence received by the Administrator in connection with the proposed facility, all federal, state, county and city laws applicable to the facility have been met. (5-8-09)

g. Whether the applicant has adequate knowledge, experience and training to maintain the health, welfare and safety of the deleterious exotic animal(s), to handle the deleterious exotic animal(s) with safety and competence, and to ensure that the deleterious exotic animal(s) will not harm the state's agriculture, wildlife or the environment. Such experience may be documented by a log book, employment records, education records or other means by which experience may be authenticated. (5-8-09)

h. Whether the facility is adequately designed, constructed, and managed to protect agriculture, wildlife and the environment from escape of the confined animal(s), including those instances when the applicant is not present at the facility. (5-8-09)

i. Prior to issuing a possession permit, the Administrator or 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. (5-8-09)

04. Grant or Denial of the Permit. Following review of the application and any other relevant information, the Administrator will either issue the possession permit or deny the application and notify the applicant. If the Department issues the permit, it may include any conditions intended to ensure the health, welfare and safety of the animal(s) covered by the permit and, where the Department finds it necessary, conditions intended to assure the security of the facility so as to avoid undue risk to the state's agriculture, wildlife and the environment. (5-8-09)

05. Duration of Possession Permit. A possession permit is valid for the life of the deleterious exotic animal listed on a possession permit, until the permitted person no longer possess the deleterious exotic animal, or until the deleterious exotic animal leaves the state. ()

102. TEMPORARY EXHIBITOR PERMITS.

A traveling exhibition may not possess any deleterious exotic animal in the state unless the traveling exhibition obtains a temporary exhibitor permit issued by the Administrator. (5-8-09)

01. Application for Temporary Exhibitor Permits. Persons seeking a temporary exhibitor permit must make application on a form prescribed by the Administrator and include the following information: ()

a. The applicant's name, address (business and mailing) and Employer Identification Number or Social Security Number. (5-8-09)

b. The name and address of the owner(s) and operator(s) of the temporary exhibition, if not the applicant. (5-8-09)

c. Description of the cages or other housing in which the deleterious exotic animal(s) will be kept in the state. (5-8-09)

d. The physical address of each location(s) at which the deleterious exotic animal(s) will remain while in the state. (5-8-09)

e. A map identifying the location(s) at which the deleterious exotic animal(s) will be kept. (5-8-09)

f. Name and address of the owner(s) of the location(s) at which the deleterious exotic animal(s) will be kept. (5-8-09)

g. Written statement detailing the procedure(s) in the event a deleterious exotic animal escapes from the temporary exhibit. (5-8-09)

h. Documentation of licenses issued by the USDA, if applicable. (5-8-09)

02. Period of Validity. Temporary exhibitor permits are valid for no more than thirty (30) days after the date of issuance of the permit. (5-8-09)

03. Removal. All deleterious exotic animals subject to a temporary exhibitor permit must be removed

from Idaho prior to the expiration of the import permit. (5-8-09)

103. -- 109. (RESERVED)

110. IMPORTATION OF DELETERIOUS EXOTIC ANIMALS.

No person may import any deleterious exotic animal into the state unless the deleterious exotic animal is accompanied in transit by an import permit issued by the Administrator, any permits required by the Idaho Department of Fish and Game, and an official certificate of veterinary inspection. (5-8-09)

111. IMPORT PERMITS.

The Administrator will issue import permits in accordance with IDAPA 02.04.21, "Rules Governing the Importation of Animals." (5-8-09)

01. Application for Import Permits. In addition to the requirements set forth in IDAPA 02.04.21.104, persons seeking import permits must submit the following: (5-8-09)

- a. An application on a form prescribed by the Administrator; (5-8-09)
- b. A valid possession permit or temporary exhibitor permit issued by the Administrator; and (5-8-09)
- c. A certificate of veterinary inspection that meets the requirements in Section 112, of these rules. (5-8-09)

02. Period of Validity. Import permits are valid for fifteen (15) days from the date of issuance of the permit, unless stated otherwise on the permit. (5-8-09)

112. CERTIFICATES OF VETERINARY INSPECTION.

All deleterious exotic animals imported into the state must be accompanied in transit by an official certificate of veterinary inspection. All certificates must be written, legible, and attest that the animal(s) meet the importation requirements of the state, set forth in IDAPA 02.04.21, "Rules Governing the Importation of Animals." The certificate must be on an official form of the state of origin, be approved by its livestock sanitary official, and be issued by an accredited veterinarian. An equivalent form of the USDA issued by a federal animal health official is acceptable in lieu of a certificate of veterinary inspection. (5-8-09)

01. Required Information. All certificates of veterinary inspection must contain the following information: (5-8-09)

- a. Name and address of the consignor and consignee; and (5-8-09)
- b. Origin of shipment, including city and state; (5-8-09)
- c. Final destination of shipment in Idaho, including city; (5-8-09)
- d. An accurate description and identification of each animal; (5-8-09)
- e. Purposes for which the animals were shipped; (5-8-09)
- f. Method of transportation; (5-8-09)
- g. Health status of the animals involved including dates and results of inspection and of tests and vaccinations, if any, required by the state; and (5-8-09)
- h. The signature of the accredited veterinarian, or state or federal animal health official, conducting the veterinary inspection. (5-8-09)

02. Submission of Certificate. The required copies of certificates of veterinary inspection or other

approved certificates must be submitted, within thirty (30) days of inspection, to the Division. (5-8-09)

03. Period of Certificate Validity. Certificates of veterinary inspection are valid for no more than thirty (30) days after the date of inspection. (5-8-09)

113. -- 119. (RESERVED)

120. DISPOSITION OF NON-PERMITTED DELETERIOUS EXOTIC ANIMALS.

The Administrator may order non-permitted or illegally possessed or imported deleterious exotic animals to be removed from the state, moved to facilities that are in compliance with this chapter, or destroyed. (5-8-09)

121. TRANSFER OF DELETERIOUS EXOTIC ANIMALS.

No person may transfer, sell, barter, trade, change ownership, or change possession of any deleterious exotic animal, unless the person receiving the deleterious exotic animal has obtained a possession permit, issued by the Administrator, for the animal being transferred. (5-8-09)

122. RELEASE OF DELETERIOUS EXOTIC ANIMALS.

No person may release any deleterious exotic animal within the state. (5-8-09)

123. REVOCATION OF PERMITS.

Permits issued pursuant to this chapter may be revoked at any time if the Administrator finds violations of any of the provisions of this chapter. (4-11-06)

124. -- 199. (RESERVED)

200. CONFINEMENT OF DELETERIOUS EXOTIC ANIMALS.

All deleterious exotic animals must be confined in appropriate facilities, as determined by the Administrator, which are constructed and maintained to: ()

01. Prevent Escape. Prevent the escape of deleterious exotic animals for any length of time. (5-8-09)

02. Prevent Ingress of Wildlife. Prevent the ingress of free ranging wildlife that could be negatively impacted by the confined deleterious exotic animals. (3-20-04)

03. Assure Animal Care. Assure the appropriate level of animal care, including maintaining the facilities in a sanitary condition. (4-11-06)

201. CONSTRUCTION STANDARDS FOR CONFINEMENT AREAS.

Confinement areas for deleterious exotic must be constructed according to the following construction standards, depending on the species of the deleterious exotic animal: (5-8-09)

01. Birds. Confinement areas for birds on the list of deleterious exotic animal set forth in Section 401 of these Rules must be constructed to prevent egress and provide adequate space for the birds. Confinement areas must include a cover sufficient to prevent egress or escape of the species of birds contained therein. (5-8-09)

02. Mammals. Confinement areas for mammals on the list of deleterious exotic animal in Sections 402 through 413 of these Rules must comply with the construction standards in the AZA Minimum Husbandry Guidelines for Mammals. (5-8-09)

202. ESCAPE OF DELETERIOUS EXOTIC ANIMALS.

Persons possessing deleterious exotic animals must report the escape of any deleterious exotic animal to the Administrator within twenty-four (24) hours of the discovery of the escape. (5-8-09)

203. IDENTIFICATION OF DELETERIOUS EXOTIC ANIMALS.

All deleterious exotic animals must be identified with a unique identification according to the following standards, depending on the species of the deleterious exotic animal: (5-8-09)

- 01. Birds.** Birds are to be identified with a microchip and a leg band. (5-8-09)
- 02. Mammals.** Mammals are to be identified with a microchip and a tattoo. (5-8-09)
- 204. -- 299. (RESERVED)**
- 300. RECORDKEEPING.**
- 01. Annual Inventory.** Any person that possesses deleterious exotic animals must submit a complete and accurate annual inventory of such animals to the Administrator on or before the first day of July each year. The annual inventory includes the following information: (5-8-09)
- a.** Identify each deleterious exotic animal by genus, species, sex, and identification. (5-8-09)
- b.** Identify each deleterious exotic animal born during the last reporting year, including the genus, species, sex, identification, and date of birth. (5-8-09)
- c.** Identify each deleterious exotic animal that was transferred to another person, including the genus, species, sex, identification, date of transfer, and name and address of the person to whom the deleterious exotic animals was transferred. (5-8-09)
- d.** Identify each deleterious exotic animal that died during the last reporting year, including the genus, species, sex, identification, date of death, and cause of death. (5-8-09)
- 02. Records of Transfers.** All persons who transfer, sell, barter, trade, change ownership, or change possession of deleterious exotic animals must keep complete and accurate records of the disposition of any deleterious exotic animals, including the new contact information for persons in possession of the deleterious exotic animal and date of disposition. Such records must be maintained for a minimum of three (3) years and presented to the Administrator upon request. (5-8-09)
- 301. -- 309. (RESERVED)**
- 310. DEAD ANIMAL MOVEMENT AND DISPOSAL.**
All deleterious exotic animals that die, or are euthanized, must be disposed of in accordance with IDAPA 02.04.17 "Rules Governing Dead Animal Movement and Disposal" and the death of such animal reported to the Administrator within five (5) business days of the discovery of the death. ()
- 311. -- 399. (RESERVED)**
- 400. LIST OF DELETERIOUS EXOTIC ANIMALS.**
The Administrator may add or remove animal species to the list of deleterious exotic animals in this chapter by issuing a written order listing animals and the reasons for adding them to or removing them from the list deleterious exotic animals. (5-8-09)
- 401. DELETERIOUS EXOTIC ANIMALS - BIRDS.**
- 01. Mute Swan, (*Cygnus olor*).** Mute swans except those that have been pinioned. (3-20-04)
- 402. DELETERIOUS EXOTIC ANIMALS - MAMMALS: CANIDAE.**
All non-native canidae species. (4-11-06)
- 403. DELETERIOUS EXOTIC ANIMALS - MAMMALS: CERVIDAE.**
- 01. Red Deer (*Cervus elaphus elaphus*).** (3-20-04)
- 02. Sika Deer (*Cervus nippon*).** (3-20-04)

- 404. DELETERIOUS EXOTIC ANIMALS -- MAMMALS: FELIDAE.**
- 01. Caracal (*Felis caracal*). (4-11-06)
 - 02. Cheetah (*Acinonyx jubatus*). (4-11-06)
 - 03. Geoffroy's Cat (*Felis geoffroyi*). (4-11-06)
 - 04. Jaguar (*Panthera onca*). (4-11-06)
 - 05. Leopard (*Panthera pardus*). All leopards. (4-11-06)
 - 06. Lion (*Panthera leo*). (4-11-06)
 - 07. Margay (*Felis wiedii*). (4-11-06)
 - 08. Ocelot (*Felis pardalis*). (4-11-06)
 - 09. Serval (*Felis serval*). (4-11-06)
 - 10. Tiger (*Panthera tigris*). All tigers. (4-11-06)
- 405. DELETERIOUS EXOTIC ANIMALS - MAMMALS: INSECTIVORES.**
- 01. European Hedgehog (*Erinaceus europeus*). (4-11-06)
- 406. DELETERIOUS EXOTIC ANIMALS - MAMMALS: MARSUPIALS.**
- 01. Brush Tailed Possum (*Trichsurus vulpecula*). (4-11-06)
- 407. DELETERIOUS EXOTIC ANIMALS - MAMMALS: NON-HUMAN PRIMATES.**
All non-human primates. (4-11-06)
- 408. DELETERIOUS EXOTIC ANIMALS - MAMMALS: OVIDAE.**
- 01. Barbary Sheep (*Ammotragus lervia*). (4-11-06)
 - 02. Mouflon Sheep (*Ovis musimon*). (4-11-06)
- 409. DELETERIOUS EXOTIC ANIMALS - MAMMALS: PROCYONIDAE.**
- 01. Coatiundi. (4-11-06)
 - 02. Kinkajou. (4-11-06)
- 410. DELETERIOUS EXOTIC ANIMALS - MAMMALS: RODENTIA.**
- 01. African Dormice (*Graphiurus*). (4-11-06)
 - 02. African Rope Squirrels (*Funisciurus*). (4-11-06)
 - 03. African Striped Mice (*Hybomys*). (4-11-06)
 - 04. African Tree Squirrels (*Heliosciurus*). (4-11-06)
 - 05. Brush-Tailed Porcupines (*Atherurus*). (4-11-06)

- 06. Capybara (*Hydrochoerus hydrochaeris*). (4-11-06)
- 07. Gambian Giant Pouched Rats (*Cricetomys*). (4-11-06)
- 08. Prairie Dogs (*Cynomys*). (4-11-06)
- 09. South American Rodents. All South American rodents except guinea pigs and chinchillas. (4-11-06)

- 411. DELETERIOUS EXOTIC ANIMALS - MAMMALS: SUIDAE.
 - 01. European or Russian Wild Boar (*Sus scrofa*). (4-11-06)

- 412. DELETERIOUS EXOTIC ANIMALS - MAMMALS: TAYASSUIDAE.
 - 01. Peccary (*Dicotyles tajacu*). (4-11-06)

- 413. -- 999. (RESERVED)

02.04.29 – RULES GOVERNING TRICHOMONIASIS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 25-203, Idaho Code. (3-30-07)

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is “Rules Governing Trichomoniasis.” (3-30-07)

02. **Scope.** These rules govern procedures for the prevention, control and eradication of Trichomoniasis, a venereal disease of cattle caused by the organism *Tritrichomonas foetus*. ()

002. -- 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

IDAPA 02.04.29 incorporates by reference the official 2018 Edition of Idaho “Protocol for *Trichomonas foetus* Diagnosis in Cattle” which can be viewed online at <https://agri.idaho.gov/main/laboratories/animal-health-laboratories/protocol-for-trichomonas-diagnosis-in-cattle/>. (4-11-19)

005. -- 009. (RESERVED)

010. DEFINITIONS.

The following definitions apply to the interpretations and enforcement of this chapter: ()

01. **Cattle.** All bovidae. (3-30-07)

02. **Exposed Cattle.** Any cattle that have been in contact with cattle infected with or affected by Trichomoniasis. (3-30-07)

03. **Federal Animal Health Official.** An employee of the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services who is authorized to perform animal health activities. (3-30-07)

04. **Herd.** A herd is any group of cattle maintained on common ground for any purpose, or two (2) or more groups of cattle under common ownership or supervision, geographically separated, but which have an interchange or movement of cattle without regard to whether they are infected with or exposed to Trichomoniasis. (3-30-07)

05. **Hold Order.** A hold order is a form of quarantine that may be used to restrict the movement of cattle while the Trichomoniasis status is being investigated. (3-30-07)

06. **Infected Cattle.** Any cattle determined by an official test or diagnostic procedure to be infected with Trichomoniasis or diagnosed by a veterinarian as infected. (3-30-07)

07. **Infected Herd.** Any herd in which any cattle have been determined by an official test or diagnostic procedure to be infected with Trichomoniasis or diagnosed by a veterinarian as being infected. (3-30-07)

08. **Negative.** Cattle that have been tested with official test procedures and found to be free from infection with Trichomoniasis. (3-30-07)

09. **PCR.** Polymerase Chain Reaction. (3-25-16)

10. **Positive.** Cattle that have been tested with official test procedures and found to be infected with Trichomoniasis. (3-30-07)

11. **Quarantine.** A written order, or a verbal order followed by a written order, executed by the Administrator, to confine or hold cattle on a premises or any other location, and to prevent movement of cattle from a premises or any other location when the Administrator has determined that the cattle have been found or are suspected to be exposed to or infected with Trichomoniasis or the owner is not in compliance with the provisions of this chapter. (3-30-07)

12. Quarantined. Isolation of all cattle diseased or exposed thereto, from contact with healthy cattle and exclusion of such healthy cattle from enclosures or grounds where said diseased or exposed cattle are, or have been kept. (3-30-07)

13. Registered Veterinarians. Veterinarians registered with, and approved by the Division of Animal Industries to collect Trichomoniasis samples for official Trichomoniasis culture testing. (3-30-07)

14. Restrain. The confinement of cattle in a chute, or other device, for the purpose of efficient, effective, and safe testing approved by the Administrator. (3-30-07)

15. State Animal Health Official. The Administrator, or Administrator's designee, responsible for disease control and eradication activities. ()

16. T Brand. A two inch by three inch (2" x 3") single-character hot iron T brand, applied to the left of the tail-head of a bull, signifying that the bull is infected with trichomoniasis. (4-7-11)

17. Trichomoniasis. A venereal disease caused by the organism *Tritrichomonas foetus*. (4-2-08)

011. – 099. (RESERVED)

100. TRICHOMONIASIS CONTROL AND ERADICATION PROGRAM.

The Trichomoniasis testing season begins on September 1 of each year and continues until August 31 of the succeeding year. All bulls within the state of Idaho shall be tested negative for Trichomoniasis before being allowed to come into contact with female cattle or by April 15 of each Trichomoniasis testing season, whichever occurs first, except: (3-30-07)

01. Bulls in Public Grazing Allotments. Bulls that are to be turned out on public grazing allotments shall be tested for Trichomoniasis by April 15 of each Trichomoniasis testing season or forty-five (45) days prior to turnout on a public grazing allotment, which ever occurs first. (3-30-07)

02. Virgin Bulls. All bulls native to Idaho that are less than twenty-four (24) months of age and have never serviced a cow are exempt from the Trichomoniasis testing requirements. (4-7-11)

a. Such bulls shall be identified by a registered veterinarian with an official Trichomoniasis bangle tag of the correct color for the current testing season and the identification recorded on a Trichomoniasis Test and Report Form. (3-30-07)

b. If sold, such bulls shall accompanied by a certificate signed by the owner or his representative attesting that they are virgin bulls. (3-30-07)

03. Dairy Bulls. All dairy bulls in dry lot operations are exempt from the Trichomoniasis testing requirements. Dairy bulls that are pastured or grazed must meet the Trichomoniasis testing requirements. (3-30-07)

04. Bulls Consigned to Slaughter or to an Approved Feedlot. Bulls consigned directly to slaughter at an approved slaughter establishment or to an approved feedlot for finish feeding for slaughter are exempt from testing requirements. (3-30-07)

05. Extension of Testing Deadline. The Administrator may grant an extension of time beyond April 15 to accomplish Trichomoniasis testing after the owner submits a written request for extension of time to the Division of Animal Industries. (3-30-07)

a. The written request shall outline the reasons for the extension request and the length of extended time being requested. (3-30-07)

b. The herd of bulls shall be put under Hold Order until the owner furnishes documentation that the bulls have been tested. (3-30-07)

101. – 109. (RESERVED)

110. TRICHOMONIASIS TESTING IDENTIFICATION.

The Division of Animal Industries will determine the color of the official Trichomoniasis bangle tags to be used for each Trichomoniasis testing season. All bulls tested for Trichomoniasis shall be identified by an official Trichomoniasis bangle tag of the correct color for the current testing season and the identification recorded on a Trichomoniasis Test and Report Form. (3-30-07)

111. -- 199. (RESERVED)

200. BULLS FOR SALE.

Bulls presented for sale at specifically approved livestock markets, shows, special sales, or by private contract in Idaho shall be accompanied by a certificate of negative test and a statement signed by the owner certifying "Trichomoniasis has not been diagnosed in the herd of origin;" or (3-30-07)

01. Returned to Home Premises. Such bulls shall be returned to home premises for official testing; or (4-2-08)

02. Sold Directly to Slaughter. Such bulls shall be sold directly to slaughter at an approved slaughter establishment, an Idaho approved feedlot, as defined in IDAPA 02.04.20, "Rules Governing Brucellosis"; or (4-7-11)

03. Placed Under a Hold Order. Such bulls will be placed under Hold Order by the livestock market veterinarian or a private veterinarian and have three (3) consecutive negative Trichomoniasis or PCR culture tests. The samples for each test shall be collected at least seven (7) days apart and tested for Trichomoniasis to be eligible to receive a certificate of negative test; or (3-25-16)

04. Virgin Bulls. Virgin bulls native to Idaho that are less than twenty-four (24) months of age and have never serviced a cow shall be identified with an official Trichomoniasis bangle tag of the correct color for the current testing season. (4-7-11)

05. Period of Validity. For resident breeding bulls sold in Idaho, the negative test is valid for up to ninety (90) days provided the bull(s) has had no contact with female cattle from the time of test to the time of sale. (3-30-07)

06. Contact with Female Cattle. Bulls that have had contact with female cattle subsequent to testing must be retested prior to sale. (3-30-07)

201. -- 209. (RESERVED)

210. IMPORTED BULLS.

01. Non-Virgin Bulls. Non-virgin breeding bulls may be imported into the state of Idaho provided they meet the following requirements: (3-30-07)

a. If the bull originates from a herd of bulls wherein all bulls have tested negative for Trichomoniasis since being removed from cows, the bull shall have been tested negative to a Trichomoniasis culture test within sixty (60) days prior to import and have had no contact with female cattle from the time of test to the time of import; or (3-25-16)

b. If the bull originates from a herd where one (1) or more bulls or cows have been found infected with Trichomoniasis, the bull shall have three (3) consecutive negative Trichomoniasis culture or PCR tests. The samples for each test shall be collected at least seven (7) days apart and tested for Trichomoniasis, the last test being within sixty (60) days prior to import into Idaho; or (3-25-16)

c. If the bull is a single bull with no prior herd test history or originates from a herd of bulls that is still with cows or that has not been tested for Trichomoniasis since being removed from cows, the bull shall have three (3) consecutive negative Trichomoniasis culture or PCR tests. The samples for each test are to be collected at least seven

(7) days apart and tested for Trichomoniasis, the last test being within sixty (60) days prior to import into Idaho. (3-25-16)

d. Upon arrival at their destination in Idaho, all imported bulls shall be identified with an official Trichomoniasis bangle tag of the correct color for the current testing season, except imported dairy bulls that will be in a dry lot operation are not required to be identified with an official Trichomoniasis tag upon arrival at their destination. (3-30-07)

02. Virgin Bulls. Bulls imported into Idaho that are less than eighteen (18) months of age and have never serviced a cow are not required to be Trichomoniasis tested prior to import into Idaho, provided that: (3-25-16)

a. Such bulls are accompanied by a certificate signed by the owner or the owner's representative attesting that the animals are virgin bulls and have never serviced a cow; and (3-30-07)

b. Upon arrival at their destination in Idaho, such bulls are identified by an Idaho accredited veterinarian with an official Trichomoniasis bangle tag of the correct color for the current testing season. (3-30-07)

03. Bulls for Grazing. Bulls that are entering Idaho for grazing purposes shall meet the Trichomoniasis test requirements of Section 100 of this rule. A copy of the certificate of negative Trichomoniasis test shall accompany the grazing permit application. (4-2-08)

211. - 299. (RESERVED)

300. PUBLIC GRAZING.

All bulls that are turned out on public grazing allotments shall be certified and identified as virgin bulls, or tested negative for Trichomoniasis at least forty-five (45) days prior to the turnout date, or before April 15 of each testing season, which ever occurs first. (4-2-08)

01. Grazing Associations. All bulls that are in a public grazing association or run in common on an allotment will be considered part of one (1) herd. (3-30-07)

02. Positive Tests. If any bull owned by any of the producers in a grazing association or allotment tests positive on a Trichomoniasis test, the rest of the producers in the association or allotment are considered part of an infected bull herd and handled in accordance with Section 310 of this rule. (4-2-08)

301. -- 309. (RESERVED)

310. INFECTED BULLS AND HERDS.

Any bull or cow that is positive to a Trichomoniasis culture or PCR test is considered infected. A herd in which one (1) or more bulls or cows are found infected with Trichomoniasis is considered infected. (3-25-16)

01. Confirmatory Testing of Culture Positive Bulls. Any culture positive bull must be confirmed positive for *Trichomonas foetus* by Polymerase Chain Reaction (PCR) test unless the animal is destined directly to slaughter. The positive culture specimen must be submitted to a qualified laboratory, approved by the Administrator, in accordance with the qualified laboratories submission requirements. (3-25-16)

a. If polymerase chain reaction (PCR) determines the bull is positive or inconclusive for *Trichomonas foetus*, the bull will be considered positive for trichomoniasis. (4-7-11)

b. If polymerase chain reaction (PCR) determines the bull is negative for *Trichomonas foetus*, the bull will be considered negative for trichomoniasis. (4-7-11)

02. Quarantine of Infected Herds. Any veterinarian that discovers an infected herd shall immediately place the herd under a Hold Order, and notify the Division of Animal Industries within forty-eight (48) hours that the test was positive. Upon notification of an infected Trichomoniasis herd, a state or federal animal health official will conduct an epidemiological investigation of the infected herd and issue a quarantine. The quarantine may include a provision requiring all breeding age female cattle in the infected herd to be held in isolation from all bulls for a period

of up to one hundred twenty (120) days as determined by the Administrator. (3-30-07)

03. Exposed Herds. Herds identified as exposed through an epidemiological investigation will be placed under a Hold Order. (3-30-07)

a. Bulls in exposed herds will be tested as determined by the Trichomoniasis epidemiologist. (3-30-07)

b. All bulls tested in exposed herds and all purchased and home raised additions to the bull herd, including virgin bulls, shall be individually identified with an official Trichomoniasis bangle tag of the correct color for the current testing season and the tag number and status of the bull recorded on an official Trichomoniasis test and report form. (3-30-07)

04. Testing of Infected Herds. Bulls in infected herds shall be tested negative for Trichomoniasis three (3) consecutive times before the quarantine can be released. Each of the tests shall be at least seven (7) days apart with samples for each test collected at least seven (7) days apart and tested for Trichomoniasis to be eligible to receive a certificate of negative test. ()

a. All bulls tested in the infected herd and all purchased and home raised additions to the bull herd, including virgin bulls, shall be individually identified with an official Trichomoniasis bangle tag of the correct color for the current testing season and the tag number and status of the bull recorded on an official Trichomoniasis test and report form. (3-30-07)

b. Bulls that have three (3) consecutive negative Trichomoniasis culture or PCR tests conducted at least seven (7) days apart shall be considered negative to Trichomoniasis and can be so certified. (3-25-16)

05. Identifying Infected Bulls. All bulls testing positive for trichomoniasis shall, within seven (7) days of diagnosis, be identified with a hot iron T brand applied to the left of the tail-head indicating that the bull is positive for trichomoniasis. (4-7-11)

311. -- 319. (RESERVED)

320. MOVEMENT OF INFECTED CATTLE.

All infected cattle shall be consigned to slaughter at an approved slaughter establishment or consigned to a specifically approved livestock market for sale to an approved slaughter establishment and shall remain under quarantine until moved to slaughter. All infected cattle being moved from the premise of origin to a specifically approved livestock market for sale to slaughter, or directly to an approved slaughter establishment for slaughter, shall move on a VS 1-27 form issued by an accredited veterinarian or a state or federal animal health official. (4-2-08)

01. Slaughter Within Thirty Days. All infected cattle shall be moved to slaughter within thirty (30) days of the issuance of the quarantine. All infected cattle are to be kept separate and apart from cattle or domestic bison of the opposite sex. The infected cattle will remain under quarantine until moved to slaughter. (4-2-08)

02. Exceptions. The Division of Animal Industries may grant an extension of time after the owner submits a written request for extension of time for movement to slaughter to the Division of Animal Industries. (3-30-07)

03. Contents of Request for Extension of Time. The written request shall outline the reasons for the extension request and the length of extended time being requested. The total length of time an individual infected bull may remain under quarantine before being required to move to slaughter, including any and all requested extensions, shall not exceed ninety (90) days. (3-30-07)

321. TREATMENT OF INFECTED BULLS.

There are no treatments for Trichomoniasis approved for use in Idaho. (3-30-07)

322. -- 329. (RESERVED)

330. OFFICIAL LABORATORIES.

Only laboratories approved by the Division of Animal Industries as official laboratories may test official Trichomoniasis samples. (3-30-07)

01. Protocols. Official laboratories will operate in accordance with the official Idaho “Protocol for *Trichomonas foetus* Diagnosis in Cattle.” (4-7-11)

02. Check Test. Official laboratories personnel responsible for conducting trichomoniasis testing must be trained and certified by ISDA in the detection of trichomonad organisms and must pass a certifying check test administered by the Division of Animal Industries. (4-7-11)

331. OFFICIAL TRICHOMONIASIS TESTS.

01. Official Culture Tests. An official test is one in which the sample is received in the official laboratory, in good condition, and such sample is tested according to the official Idaho “Protocol for *Trichomonas foetus* Diagnosis in Cattle.” Samples which have been frozen or exposed to high temperatures shall be discarded. (3-25-16)

02. Polymerase Chain Reaction. Polymerase Chain Reaction is accepted as an official test when completed by a qualified laboratory, approved by the Administrator. (3-25-16)

03. Other Official Tests. Other tests for Trichomoniasis may be approved by the Division of Animal Industries, as official tests, after the tests have been proven effective by research, have been evaluated sufficiently to determine efficacy, and a protocol for use of the test has been established. (3-30-07)

332. REGISTERED VETERINARIANS.

Only veterinarians registered with the Division of Animal Industries may collect samples for official tests for Trichomoniasis within the state of Idaho. (3-30-07)

01. Use of Official Laboratories. Registered veterinarians are to utilize only official laboratories for testing of Trichomoniasis samples. (3-25-16)

02. Education Requirements. All veterinarians shall attend an educational seminar on Trichomoniasis and proper sample collection techniques, conducted by the Division of animal Industries, prior to being granted registered status. (3-30-07)

333. REPORTING OF TEST RESULTS AND OFFICIAL IDENTIFICATION.

Registered veterinarians must submit results of all Trichomoniasis tests and all official identification on official Trichomoniasis test and report forms to the Division of Animal Industries within five (5) business days of: (3-30-07)

01. Receiving Results. Receiving Trichomoniasis results from an official laboratory; or (3-30-07)

02. Identifying Virgin Bulls. Identifying virgin bulls with official Trichomoniasis bangle tags. (3-30-07)

334. -- 399. (RESERVED)

400. RODEO BULLS.

Bulls currently in a rodeo string, bulls purchased under the feedlot exemption at a specifically approved livestock market, bulls purchased by private treaty, and bulls purchased in other states and imported into Idaho for rodeo purposes are exempt from Trichomoniasis testing under the following conditions: (3-30-07)

01. Division Approval. The owner of the rodeo bulls has completed and submitted an application to the Division of Animal Industries, which the Division has approved; and (3-30-07)

02. Not Mixed with Cows. The rodeo bulls are confined to a dry lot and not mixed with cows or used for breeding purposes; and (3-30-07)

03. Permanently Identified. All bulls in the rodeo string are permanently identified with official ear tags or unique numbers hot iron branded on the animal; and (3-30-07)

04. Records Maintained. The identification numbers are maintained in a permanent record file at the owner's premises and a copy of the record will be provided to the Division of Animal Industries upon request; and (3-30-07)

05. Bulls Purchased. Bulls purchased for addition to the rodeo string shall meet all other health requirements. Purchased bulls shall be immediately identified as specified in Subsection 400.03 of this rule. Official back tag and ear tag numbers on the bull at time of purchase shall be correlated to the permanent identification in the permanent record; and (4-2-08)

06. Bulls Removed for Slaughter. Removal of bulls to slaughter is documented in the permanent record file; and (3-30-07)

07. Bulls Removed for Breeding Purposes. Bulls that are removed from the rodeo string for breeding purposes shall undergo three (3) consecutive negative PCR tests or cultures for Trichomoniasis. The samples for each test are to be collected at least seven (7) days apart and tested for Trichomoniasis to be eligible to receive a certificate of negative test. (3-25-16)

401. -- 409. (RESERVED)

410. FEEDING BULLS OF UNKNOWN TRICHOMONIASIS STATUS.

Bulls of unknown Trichomoniasis status may be fed for slaughter in an Idaho approved feedlot where the bulls are isolated from all female cattle. (3-30-07)

01. Removal of Untested Bulls. Untested bulls shall be sold directly to slaughter at an approved slaughter establishment. (3-30-07)

02. Removal of Bulls for Breeding Purposes. Bulls that are removed for breeding purposes shall undergo three (3) consecutive negative PCR tests or cultures for Trichomoniasis. The samples for each test are to be collected at least seven (7) days apart and tested for Trichomoniasis to be eligible to receive a certificate of negative test. (3-25-16)

411. -- 499. (RESERVED)

500. INFECTIONS WITH OTHER TYPES OF TRICHOMONADS.

Bulls that have had a positive culture result for Trichomoniasis testing may be further evaluated to determine if the organism is *Tritrichomonas foetus* or another species of Trichomonad. Bulls having positive Trichomoniasis culture results on the initial test will not be considered positive for Trichomoniasis under the provisions of this rule if they meet the following criteria: (3-30-07)

01. Trichomonad Organisms Identified. The culture media containing the organisms that have been collected from the bull is forwarded to a laboratory, approved by the Administrator, that has the ability to identify Trichomonad organisms through Polymerase Chain Reaction; and (4-2-08)

02. Tritrichomonas foetus Not Present. None of the Trichomonad organisms in the submitted culture are identified as *Tritrichomonas foetus*. (3-30-07)

03. Inconclusive Test Results. The Administrator may approve retesting of bulls with inconclusive Trichomoniasis test results. If the bulls are found to be Trichomoniasis negative on three (3) consecutive tests that are separated by at least seven (7) days, the bulls may be considered Trichomoniasis negative and released from quarantine. (4-2-08)

501. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.01.04 – RULES GOVERNING THE IDAHO PREFERRED® PROMOTION PROGRAM
DOCKET NO. 02-0104-1901
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

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

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

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

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

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

Dated this 3rd day of October, 2019.

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

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 22-112, 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 August 21, 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:

The rulemaking was conducted to revise product qualifications for the voluntary Idaho Preferred program. Existing product qualifications for “processed food and beverage” products were not appropriate for some products. New categories were created for beer and for water. Changes were also made to beef and game meat. The beef qualifications were revised to be more in line with other meat products and game meat was revised to include all Cervidae and not just elk. In addition to the proposed changes, IDAPA 02.01.04 was reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act resulting in the elimination of some portions of the rule.

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

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

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:

ISDA 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 May 1, 2019 Idaho Administrative Bulletin, [Vol. 19-5, page 41](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on May 21, 2019. There were 15 in attendance at the meeting. There were some written comments submitted and entered into the record that were taken into consideration when drafting this proposed rule.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Laura Johnson, Bureau Chief, Market Development at (208) 332-8533. 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 August 28, 2019.

Dated this 3rd day of July, 2019.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0104-1901

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 has 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: (4-2-08)
- i. Contain a minimum of twenty percent (20%) agricultural content by weight that has been grown or raised in Idaho; and (4-2-08)
- ii. 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 honey, wax, pollen, and propolis shall be one hundred percent (100%) Idaho origin. Processed honey shall be eighty percent (80%) Idaho origin. ()

14. Forest Products. Forest products shall: (3-29-12)

a. Contain a minimum of eighty percent (80%) of their wood fiber content from trees grown in Idaho; and (3-29-12)

b. 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)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.02.02 – RULES GOVERNING GRADING AND CONTROLLED ATMOSPHERE STORAGE OF APPLES

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

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 22-702, 22-802, and 22-803, 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:

There are two rules administered by the ISDA related to the grading standards and storage of apples in Idaho. These rules were promulgated to carry out requirements described in Title 22, Chapters 7 and 8, Idaho Code. In order to streamline and simplify rules related to apples, the ISDA has decided to combine the two rules into a single rule. The new rule will be titled “02.02.02, Rules Governing Grading and Controlled Atmosphere Storage of Apples.” No substantive changes are being made to IDAPA 02.02.02 (Department of Agriculture Controlled Atmosphere Storage Rules) and 02.02.04 (Idaho Standards for Grades of Apples) as they are consolidated into 02.02.02 –Rules Governing Grading and Controlled Atmosphere Storage of Apples. 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 6th, 2019, Idaho Administrative Bulletin, [Vol. 19-11, pages 32-46](#).

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. Subchapter B-Controlled Atmosphere Storage, in its entirety, regulates an activity not already regulated by the federal government.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: 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
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 22-702, 22-802, and 22-803, Idaho Code.

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

PUBLIC HEARING

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated this 3rd day of October, 2019.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0202-1901

**02.02.02 – RULES GOVERNING GRADING AND CONTROLLED
ATMOSPHERE STORAGE OF APPLES**

000. LEGAL AUTHORITY.

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

001. TITLE AND SCOPE.

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

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

002. -- 009. (RESERVED)

010. DEFINITIONS.

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

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

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

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

04. Lot. Any group of containers of apples from one (1) grower or orchard and of one (1) variety and

that is set apart or is separate from any other group or groups by some evidence such as a lot number or similar mark of identification. ()

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

a. “Hard” means apples with a tenacious flesh and starchy flavor. ()

b. “Firm” means apples with a tenacious flesh, but that are becoming crisp with a slightly starchy flavor, except the Delicious variety. ()

c. “Firm ripe” means apples with crisp flesh except that the flesh of the Gano, Ben Davis, and Rome Beauty varieties may be slightly mealy. ()

d. “Ripe” means apples with mealy flesh and soon to become soft for the variety. ()

06. Overripe. Apples that are dead ripe, with flesh very mealy or soft, and past commercial utility. ()

07. Packer or Repacker. A person other than an owner or operator of a controlled atmosphere storage plant who removes apples from the containers in which they were treated and places them into other containers or replaces them into the original containers. ()

08. Seriously Deformed. Apple is so badly misshapen that its appearance is seriously affected. ()

011. -- 119. (RESERVED)

SUBCHAPTER A – APPLE GRADES

120. GRADES.

01. Idaho Extra Fancy. “Idaho Extra Fancy” consists of apples of one (1) variety that are mature but not overripe except that Red Delicious and Delicious are not further advanced in maturity than “Firm ripe” as defined in Subsection 010.05.c. All “Idaho Extra Fancy” apples are to be carefully hand-picked, clean, fairly well formed; free from decay, internal browning, internal breakdown, scald, bitter pit, scab, Jonathan spot, freezing injury, visible water core, and broken skins and bruises except those that are slight and incident to proper handling and packing. The apple is also free from injury caused by smooth net-like russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, disease, insects, or other means; and free from damage by smooth solid, slightly rough or rough russeting, or stem or calyx cracks, and free from damage by invisible water core after January 31st of the year following the year of production. Each apple of this grade has the amount of color specified in Section 121 for the variety. ()

02. Idaho Fancy. “Idaho Fancy” consists of apples of one (1) variety that are mature but not overripe except that Red Delicious and Delicious are not further advanced in maturity than “Firm ripe” as defined in Subsection 010.05.c. All “Idaho Fancy” apples shall be carefully hand-picked, clean, fairly well formed; free from decay, internal browning, internal breakdown, bitter pit, Jonathan spot, scald, freezing injury, visible water core, and broken skins and bruises except those that are incident to proper handling and packing. The apples are also free from damage caused by russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, stem or calyx cracks, disease, insects, invisible water core after January 31st of the year following the year of production, or damage by other means. Each apple of this grade has the amount of color specified in Section 121 for the variety. ()

03. Idaho No. 1. The requirements of this grade are the same as for “Idaho Fancy” except for color, russeting, and invisible water core. In this grade less color is required for all varieties with the exception of the yellow and green varieties other than Golden Delicious. Apples of this grade are free from excessive damage caused by

russetting, which means that apples meet the russetting requirements for “Idaho Fancy” as defined under the definitions of “damage by russetting,” except the aggregate area of an apple that may be covered by smooth net-like russetting does not exceed twenty-five percent (25%); and the aggregate area of an apple that may be covered by smooth solid russetting does not exceed ten percent (10%): Provided, that in the case of the Yellow Newtown or similar varieties the aggregate area of an apple that may be covered with smooth solid this grade has the amount of color specified in Subsection 010.05.c. for the variety. There is no requirement in this grade pertaining to invisible water core. ()

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

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

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

05. Combination Grades. ()

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

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

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

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

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

121. COLOR REQUIREMENTS.

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

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

VARIETY	IDAHO EXTRA FANCY PERCENT	IDAHO FANCY PERCENT	IDAHO NO. 1 PERCENT
ALL SOLID RED VARIETIES:	66	40	25
Other Similar Varieties - (1)	66	40	25
Red Sport Varieties - (2)	66	40	25
STRIPED OR PARTIALLY RED:			
Jonathan	66	33	25
McIntosh	50	33	25
Cortland	50	33	25
Other Similar Varieties - (3)	50	33	25
Rome Beauty	50	33	15
Stayman	50	33	15
York Imperial	50	33	15
Baldwin	50	25	15
Ben Davis	50	25	15
Delicious	50	25	15
Mammoth Black Twig	50	25	15
Turley	50	25	15
Wagener	50	25	15
Wealthy	50	25	15
Willow Twig	50	25	15
Northern Spy	50	25	15
Other Similar Varieties - (4)	50	25	15
Hubbardston	50	15	10
Stark	50	15	10
Other Similar Varieties	50	15	10
Red June	50	15	(5)
Red Gravenstein	50	15	(5)
Williams	50	15	(5)
Other Similar Varieties	50	15	(5)
Gravenstein	25	10	(8)
Duchess	25	10	(5)

VARIETY	IDAHO EXTRA FANCY PERCENT	IDAHO FANCY PERCENT	IDAHO NO. 1 PERCENT
Other Similar Varieties - (6)	25	10	(5)
RED CHEEKED OR BLUSHED:			
Maiden Blush	(7)	(5)	(8)
Twenty Ounce	(7)	(5)	(8)
Winter Banana	(7)	(5)	(8)
Other Similar Varieties	(7)	(5)	(8)
Green Varieties	(9)	(9)	(9)
Yellow Varieties	(9)	(9)	(9)
Golden Delicious	(10)	(10)	(9)
(1) Arkansas Black, Beacon, Detroit Red, Esopus Spitzenburg, King David, Lowry, Minjon. (2) When Red Sport varieties are specified as such, they shall meet the color requirements specified for Red Sport varieties. (3) Haralson, Kendall, Macoun, Snow (Fameuse). (4) Bonum, Early McIntosh, Limbertwig, Milton, Nero, Paragon, Melba. (5) Tinge of color. (6) Red Astrachan, Smokehouse, Summer Rambo, Dudley. (7) Blush Cheek. (8) None. (9) Characteristic ground color. (10) Seventy-five (75%) percent or more of the surface of the apple shall show white or light green predominating over the green color.			

()

122. UNCLASSIFIED DESIGNATION.

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

123. TOLERANCES.

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

01. Defects. ()

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

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

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

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

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

124. APPLICATION OF TOLERANCES.

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

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

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

125. CALCULATION OF PERCENTAGES.

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

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

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

126. CONDITION AFTER STORAGE OR TRANSIT.

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

127. -- 129. (RESERVED)

130. PACKING REQUIREMENTS.

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

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

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

less than forty (40) pounds for all other varieties. ()

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

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

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

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

131. MARKING REQUIREMENTS.

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

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

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

132. SCORABLE DEFECTS.

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

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

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

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

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

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

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

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

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

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

e. Disease. ()

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

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

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

f. Insects. ()

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

ii. Worm holes. ()

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

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

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

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

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

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

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

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

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

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

 - i. When any unhealed mark is present; ()
 - ii. When any surface indentation exceeds one-eighth (1/8) inch in depth; ()
 - iii. When the skin has not been broken and the aggregate affected area exceeds one-half (1/2) inch in diameter. The area refers to that of a circle of the specified diameter; or ()
 - iv. When the skin has been broken and well healed, and the aggregate affected area exceeds one-fourth (1/4) inch in diameter. ()
- e.** Stem or calyx cracks that are not well healed, or well healed stem or calyx cracks that exceed an aggregate length of one-fourth (1/4) inch. ()
- f.** Invisible water core existing around the core and extending to water core in the vascular bundles; or surrounding the vascular bundles when the affected area surrounding three (3) or more vascular bundles meet or coalesce; or existing in more than slight degree outside the circular area formed by the vascular bundles. ()
- g.** Disease. ()

 - i. Scab spots that affects a total area of more than one-fourth (1/4) inch in diameter. The area refers to that of a circle of the specified diameter. ()
 - ii. Cedar rust infection that affects a total area of more than one-fourth (1/4) inch in diameter. The area refers to that of a circle of the specified diameter. ()
 - iii. Sooty blotch or fly speck that is thinly scattered over more than one-tenth (1/10) of the surface, or dark, heavily concentrated spots that affect an area of more than one-half (1/2) inch in diameter. The area refers to that of a circle of the specified diameter. ()
 - iv. Red skin spots that are thinly scattered over more than one-tenth (1/10) of the surface, or dark, heavily concentrated spots that affect an area of more than one-half (1/2) inch in diameter. The area refers to that of a circle of the specified diameter. ()
- h.** Insects. ()

 - i. Any healed sting or healed stings that affect a total area of more than three-sixteenths (3/16) inch in diameter including any encircling discolored rings. The area refers to that of a circle of the specified diameter. ()
 - ii. Worm holes. ()
- 03. Serious Damage.** Any specific defect defined in this subsection or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects that seriously detracts from the appearance, or the edible or shipping quality of the apple. The following specific defects are considered as serious damage: ()

 - a.** The following types and amounts of russetting are considered as serious damage: Smooth solid russetting, when more than one-half (1/2) of the surface in the aggregate is covered, including any russetting in the stem cavity or calyx basin, or slightly rough, or excessively rough or bark-like russetting, that detracts from the appearance of the fruit to a greater extent than the amount of smooth solid russetting permitted: Provided, that any amount of russetting is permitted on Roxbury Russet and other similar varieties. ()
 - b.** Sunburn or sprayburn that seriously detracts from the appearance of the fruit. ()
 - c.** Limb rubs that affect more than one-tenth (1/10) of the surface in the aggregate. ()

- d.** Hail marks, drought spots, or scars, if they materially deform or disfigure the fruit, or if such defects affect more than one-tenth (1/10) of the surface in the aggregate: Provided, that no hail marks that are unhealed are permitted and not more than an aggregate area of one-half (1/2) inch is allowed for well healed hail marks where the skin has been broken. The area refers to that of a circle of the specified diameter. ()
- e.** Stem or calyx cracks that are not well healed, or well healed stem or calyx cracks that exceed an aggregate length of one-half (1/2) inch. ()
- f.** Visible water core that affects an area of more than one-half (1/2) inch in diameter. ()
- g.** Disease. ()
- i.** Scab spots that affect a total area of more than three-fourths (3/4) inch in a circle of the specified diameter. ()
- ii.** Cedar rust infection that affects a total area of more than three-fourths (3/4) inch in diameter. The area refers to that of a circle of the specified diameter. ()
- iii.** Sooty blotch or fly speck that affects more than one-third (1/3) of the surface. ()
- iv.** Red skin spots that affect more than one-third (1/3) of the surface. ()
- v.** Bitter pit or Jonathan spot that is thinly scattered over more than one-tenth (1/10) of the surface and does not materially deform or disfigure the fruit. ()
- h.** Insects. ()
- i.** Healed stings that affect a total area of more than one-fourth (1/4) inch in diameter including any encircling discolored rings. The area refers to that of a circle of the specified diameter. ()
- ii.** Worm holes. ()

133. DIAMETER.

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

134. IDAHO CONDITION STANDARDS.

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

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

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

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

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

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

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

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

05. Tolerances. Any lot of apples is considered as meeting the Idaho Condition Standards if the entire lot averages within the requirements specified: Provided, that no package in any lot has more than double the percentages specified, except that for packages that contain ten (10) pounds or less, individual packages in any lot may have not more than three (3) times the tolerance or one (1) apple (whichever is the greater amount). ()

135. -- 149. (RESERVED)

150. SUMMER APPLES.

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

151. SUMMER APPLE GRADES.

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

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

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

c. The following are not considered damage. ()

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

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

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

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

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

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

- vii. Scab spots affecting an aggregate area not to exceed three-eighths (3/8) inch in diameter. ()
- viii. Any healed stings affecting an aggregate area not to exceed three-sixteenths (3/16) inch in diameter. ()
- ix. Slight aphid sign on thrip marks that do not roughen or pebble the surface of the apple. ()
- x. Any defect or defects not listed above that affect the appearance or quality of the apple not more than the defects listed above. ()

02. Quality of Idaho Summer Fancy Apples. Idaho Summer Fancy Apples consist of apples of one (1) variety that are mature, hand-picked, sound, not badly misshapen and free from visible watercore, serious damage caused by insects, disease, mechanical injuries or other causes, and free from soft bruises or broken skin (except that apples may have skin punctures not exceeding one-fourth (1/4) inch diameter). ()

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

152. SCORABLE DEFECTS OF SUMMER APPLES.

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

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

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

- a. Sunburn or sprayburn that does not seriously detract from the appearance of the apple. ()
- b. Limb rubs affecting an aggregate area not to exceed three-fourths (3/4) inch. ()
- c. Smooth solid russeting affecting an area of not more than one-half (1/2) the surface in the aggregate, including russeting of the stem basin, or bark-like russeting that does not seriously detract from the appearance of the apple. ()
- d. Growth cracks when no crack exceeds one-half (1/2) inch in length. ()
- e. Hail marks, drought spots or other similar depressions that do not exceed an aggregate area of ten percent (10%) of the surface. Slight injury means that no individual area may exceed three-fourths (3/4) inch in diameter of discolored area. The discolored area may be a light brown or black or may be a russeted area, and the skin may or may not be broken; if broken, the area must be well healed. ()
- f. Scab spots affecting an aggregate area not to exceed three-fourths (3/4) inch. ()
- g. Not to exceed two (2) stings, each having an encircling hard ring or slight depression, providing no sting exceeds one-eighth (1/8) inch in diameter, exclusive of any encircling ring. ()
- h. Aphid pebbling or thrip marks not seriously affecting the appearance of the apple. ()
- i. Any defect or defects not listed above that does not affect the appearance of the apple more than the defects listed above. ()

153. COLOR REQUIREMENTS FOR SUMMER APPLES.

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

Characteristic Table

Extra Fancy	Fancy
33 1/3%	15%

()

154. -- 219. (RESERVED)

SUBCHAPTER B – CONTROLLED ATMOSPHERE STORAGE

220. APPLES, CONTROLLED ATMOSPHERE REGISTRATION.

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

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

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

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

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

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

test, percentage of carbon dioxide, percentage of oxygen and the temperature. ()

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

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

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

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

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

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

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

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

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

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

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

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

222. -- 999. (RESERVED)

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

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 22-702, 22-703, and 22-803, 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:

Three rules administered by the ISDA are related to the state inspection and grading standards for prunes, sweet cherries and apricots, commonly known as stone fruits. These rules are IDAPA 02.02.05, “Prune Standards,” IDAPA 02.02.06, “Idaho Standards for Grades of Sweet Cherries,” and IDAPA 02.02.10, “Idaho Standards for Apricots.” These rules were promulgated to carry out requirements described in Title 22, Chapters 7 and 8, Idaho Code. Inspection and grading standards for stone fruits are similar in defect descriptions and grading tolerances. ISDA has decided to combine all three rules into a single rule to streamline and simplify them. The rule will be titled “02.02.05, Rules Governing Stone Fruit Grades.” No substantive changes are being made to the three rules cited above as they are being consolidated into 02.02.05, Rules Governing Stone Fruit. 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 47-54](#).

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. IDAPA 02.02.05 provides voluntary standards, not regulations, for Idaho stone fruits. Therefore, this Rule is not subject to the requirements of Section 22-101A, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: 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
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 22-702, 22-703, and 22-803, Idaho Code.

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

PUBLIC HEARING

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated this 3rd day of October, 2019.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0205-1902

02.02.05 – RULES GOVERNING STONE FRUIT GRADES

000. LEGAL AUTHORITY.

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

001. TITLE AND SCOPE.

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

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

002. – 119. (RESERVED)

SUBCHAPTER A – PRUNES AND PLUMS

120. IDAHO HAIL GRADE, PRUNES OR PLUMS.

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

121. -- 129. (RESERVED)

130. PROCESSING GRADE, PRUNES OR PLUMS.

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

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

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

03. Fruit Sugar Content. As related to maturity the fruit sugar (soluble solids) content of eighteen

(18) degrees F brix as a minimum based on samples of random sample of five (5) pounds, pits removed, using at least ten (10) whole fruit. ()

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

131. -- 139. (RESERVED)

140. ITALIAN PRUNES.

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

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

141. -- 209. (RESERVED)

SUBCHAPTER B – SWEET CHERRIES

210. DEFINITIONS.

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

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

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

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

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

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

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

211. – 219. (RESERVED)

220. IDAHO NO. 1 GRADE.

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

any other cause. ()

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

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

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

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

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

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

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

221. -- 229. (RESERVED)

230. APPLICATION OF TOLERANCES.

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

231. -- 239. (RESERVED)

240. SCORABLE DEFECTS.

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

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

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

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

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

- e.** Limb rubs - when affecting the appearance of the cherry to a greater extent than the amount of scarring permitted. ()
 - f.** Pulled stems - when the skin or flesh is torn, or when the cherry is leaking. ()
 - g.** Russeting - when affecting the appearance of the cherry to a greater extent than the amount of scarring permitted. ()
 - h.** Scars - when excessively deep or rough or dark colored and the aggregate area exceeds the area of a circle three-sixteenths (3/16) inch in diameter, or when smooth or fairly smooth, light colored and superficial and the aggregate area exceeds the area of a circle one-fourth (1/4) inch in diameter. ()
 - i.** Skin breaks - when not well healed or when the appearance of the cherry is materially affected. ()
 - j.** Sutures - when excessively deep or when effecting the shape of the cherry to the extent that it is not well formed. ()
- 02. Serious Damage.** Any specific defect or an equally objectionable variation of any one (1) of these defects, any other defect, or any combination of defects that seriously detracts from the appearance or the edible or marketing quality of the fruit. The following specific defects are considered as serious damage: ()
- a.** Decay. ()
 - b.** Insect larvae or holes caused by them. ()
 - c.** Skin breaks that are not well healed. ()
 - d.** Cracks that are not well healed. ()
 - e.** Pulled stems with skin or flesh of cherry torn or that causes the cherry to leak. ()

241. -- 249. (RESERVED)

250. PERMANENT DEFECTS.

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

251. -- 259. (RESERVED)

260. CONDITION DEFECTS.

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

261. -- 319. (RESERVED)

SUBCHAPTER C – APRICOTS

320. DEFINITIONS.

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

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

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

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

321. GRADES.

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

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

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

322. -- 329. (RESERVED)

330. TOLERANCES.

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

01. Defects. ()

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

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

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

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

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

331. – 339. (RESERVED)

340. MARKING REQUIREMENTS.

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

02. Size. The minimum size may be specified in terms of diameter or numerical count. When a

minimum diameter is marked on the container, not more than ten percent (10%) by count is allowed for apricots below the marked size. ()

341. – 349. (RESERVED)

350. SCORABLE DEFECTS.

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

- a.** Hail Marks: Well healed and shallow - allow one-eighth (1/8) inch in diameter. ()
 - i.** When skin has not been broken: ()
 - ii.** Shallow - allow three-eighths (3/8) inch in diameter. ()
 - iii.** Not shallow - allow one-fourth (1/4) inch in diameter. ()
- b.** Growth Cracks: ()
 - i.** Well healed - allow three-eighth (3/8) inch in length. ()
 - ii.** Riland variety - allow one-half (1/2) inch in length. ()
- c.** Limb Rubs: Smooth and shallow - allow one-fourth (1/4) inch in diameter. ()
- d.** Russeting: Allow one-fourth (1/4) surface area in aggregate. ()
- e.** Skin Breaks: ()
 - i.** Punctures - allow three-sixteenths (3/16) inch in diameter. ()
 - ii.** Stem pulls - allow three-eighths (3/8) inch in diameter. ()
 - iii.** Riland variety - allow one-half (1/2) inch in diameter. ()
- f.** Bruises: Allow five percent (5%) of the surface area. ()
- g.** Scale: Allow two (2) scale marks. ()
- h.** Dirt: Allow when not readily apparent. ()

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

- a.** Bruises: Allow ten percent (10%) of the surface area. ()
- b.** Growth cracks: ()
 - i.** Well healed - allow one-half (1/2) inch in length. ()
 - ii.** Riland variety - allow five-eighths (5/8) inch in length. ()
- c.** Hail Marks: ()
 - i.** Well healed - allow three-eighths (3/8) inch in aggregate. ()

- ii. When skin has not been broken - allow one-half (1/2) inch in aggregate. ()
- d. Skin Breaks: ()
 - i. Stem pulls - allow one-half (1/2) inch in diameter. ()
 - ii. Other skin breaks - allow three-eighths (3/8) inch diameter. ()
- 351. – 999. (RESERVED)**

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.02.12 – BONDED WAREHOUSE RULES

DOCKET NO. 02-0212-1901

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

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

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

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

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

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

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

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

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

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

Dated this 3rd day of October, 2019.

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

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

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 69-231, 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:

The use of electronic warehouse receipts was added in Section 69-223(1)(f)(ii), Idaho Code. In addition to paper warehouse receipts issued by the department, electronic warehouse receipts are now allowed to be issued for commodities that are stored. The draft rule provides additional support and guidance regarding the use of electronic warehouse receipts. The rule will describe what type of electronic warehouse receipts are allowed and what necessary requirements need to be in place with the electronic warehouse receipt provider. IDAPA 02.02.12 was also reviewed for amendment or repeal of non-substantive sections in order 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 assessment of not more than two-tenths of one percent (.2%) of the total gross dollar amount due to the producer at the time of sale of the commodities.

IDAHO CODE SECTION 22-101A STATEMENT: This rule is broader in scope than an activity regulated by the federal government in the following sections:

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

For a more detailed analysis, please see Rulemaking Record for Docket No. 02-0212-1901.

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 pgs. 17-18](#).

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 Kyle Wilmot at (208) 332-8612.

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 DOCKET NO. 02-0212-1901

010. DEFINITIONS.

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

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: (5-3-03)

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 Cancelled. Receipts and tickets returned to and cancelled 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)

(BREAK IN CONTINUITY OF SECTIONS)

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: ()

- 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. ()

(BREAK IN CONTINUITY OF SECTIONS)

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** 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** 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**. ()

(BREAK IN CONTINUITY OF SECTIONS)

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)

(BREAK IN CONTINUITY OF SECTIONS)

483. 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. ()

(BREAK IN CONTINUITY OF SECTIONS)

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 **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)

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

DOCKET NO. 02-0301-1901

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

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

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

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

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

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

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

Dated this 3rd day of October, 2019.

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

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

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220, Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 22-3418, 22-3419, and 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 establishes a process for responding to pesticide detections in ground water. 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: N/A

IDAHO CODE SECTION 22-101A(1) STATEMENT: This rule is broader in scope than an activity regulated by the federal government as shown in the following table:

02.03.01.000-481	Broader in Scope
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For a more detailed analysis, please see Rulemaking Record for Docket No. 02-0301-1901.

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 02.03.01 governs pesticide management plans for ground water protection. The improper use of pesticides has the potential to impact Idaho's population and environment through contamination of Idaho's ground water. Human and animal populations may come into contact with pesticides when pesticides leach into groundwater. Pesticide contamination of groundwater may affect Idaho's groundwater users, wildlife and domestic animals by contaminating water sources used for drinking and other uses. Studies have shown that the upper bound risks for pesticide exposure include death.

ISDA uses the best available, peer reviewed studies to support and implement IDAPA 03.02.01, including studies done by U.S. Environmental Protection Agency, USDA, and other professional, medical, and scientific journals. However, even with such data, uncertainties remain. Uncertainties include unreported amounts of pesticides used, disposed 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 02.03.01 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/>.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year 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, 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 DOCKET NO. 02-0301-1901

**02.03.01 – RULES GOVERNING PESTICIDE MANAGEMENT PLANS
FOR GROUND WATER PROTECTION**

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 22-3418, 22-3419, and 22-3421, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.03.01, “Rules Governing Pesticide Management Plans for Ground Water Protection.” (4-6-05)

02. Scope. This chapter establishes a process for responding to pesticide detections in ground water. (4-6-05)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (4-6-05)

003. ADMINISTRATIVE APPEALS.

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. (4-6-05)

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into this chapter: (4-6-05)

01. Dimethyl Tetrachloroterephthalate (DCPA) Pesticide Management Plan. The June 2007 edition published by the Idaho State Department of Agriculture. Copies of this document may be obtained from the Idaho State Department of Agriculture. ()

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/>. (4-6-05)

006. PUBLIC RECORDS ACT COMPLIANCE.

These rules are public records available for inspection and copying at the Department. (4-6-05)

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: (4-6-05)

01. Aquifer. A geological unit of permeable saturated material capable of yielding economically significant quantities of water to wells and springs. (4-6-05)

02. Beneficial Uses. Current or future uses of ground water supplies including, but not limited to domestic, industrial, agricultural, aquacultural, and mining. (4-6-05)

03. Best Management Practice. A practice or combination of practices determined to be the most effective and practical means of preventing or reducing pesticide contamination to ground water and interconnected surface water from nonpoint and point sources to achieve water quality goals and protect the beneficial uses of the water. (4-6-05)

04. Constituent. Any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance occurring in ground water. (4-6-05)

05. Contaminant. Any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance which does not occur naturally in ground water or which naturally occurs at a lower concentration. (4-6-05)

06. Contamination. The direct or indirect introduction into ground water of any contaminant caused in whole or in part by human activities. (4-6-05)

07. Ground Water. Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. (4-6-05)

08. Health Advisory Level. Guidance for the maximum allowable or acceptable daily concentration of a pesticide in drinking water in the absence of or prior to a MCL being set. (4-6-05)

09. Maximum Contaminant Level. Maximum allowable or acceptable daily concentration of a pesticide in drinking water that may be consumed over a lifetime. (4-6-05)

10. Pesticide Management Standard. The United States Department of Agriculture Natural Resource Conservation Service Conservation Practice Standard, Idaho Pesticide Management Code 595, or the Idaho Agricultural Pollution Abatement Plan -- Pesticide Management Standard Component Practice. (4-6-05)

11. Pesticide Use. The mixing, application, handling, transport, storage, display, distribution, and

disposal of pesticides and their containers. (4-6-05)

12. Projected Future Beneficial Uses. Various uses of ground water, such as drinking water, aquaculture, industrial, mining or agriculture, that are practical and achievable in the future based on hydrogeologic conditions, water quality, future land use activities and social/economic considerations. (4-6-05)

13. Reference Dose. Allowable or acceptable dose of a pesticide in terms of mg pesticide/kg body weight that can be ingested in one day (acute reference dose) or on a daily basis over a lifetime (chronic reference dose). (4-6-05)

14. Reference Point. Numerical indicators of the toxicity of a substance based on test data and other reliable health effects information. (4-6-05)

15. Susceptibility. A method of describing the flow of water to, and through, the ground water resource based on physical factors such as hydraulic conductivity, porosity, hydraulic gradients, recharge, interactions with surface water, and transport through the unsaturated zone without considering specific natural or anthropogenic sources of contamination. (4-6-05)

16. Vulnerability. Ground water characterized by a potential for contaminants to enter and be transported within the flow system. Determinations of ground water vulnerability will include consideration of land use practices and aquifer characteristics. (4-6-05)

011. ABBREVIATIONS.

- 01. APAP.** Agricultural Pollution Abatement Plan. (4-6-05)
- 02. BMP.** Best Management Practice. (4-6-05)
- 03. DCPA.** Dimethyl Tetrachloroterephthalate. (3-5-08)
- 04. DEQ.** Department of Environmental Quality. (4-6-05)
- 05. EPA.** Environmental Protection Agency. (4-6-05)
- 06. HAL.** Health Advisory Level. (4-6-05)
- 07. MCL.** Maximum Contaminant Level. (4-6-05)
- 08. NRCS.** Natural Resources Conservation Service. (4-6-05)
- 09. PMP.** Pesticide Management Plan. (4-6-05)
- 10. QAPP.** Quality Assurance Project Plan. (4-6-05)
- 11. QMP.** Quality Management Plan. (4-6-05)
- 12. RfD.** Reference Dose. (4-6-05)
- 13. SCC.** Soil Conservation Commission. (4-6-05)
- 14. USDA.** United States Department of Agriculture. (4-6-05)

012. -- 049. (RESERVED)

050. CHEMICAL SPECIFIC PMPS.

- 01. Creating PMPs.** The Director shall develop and implement chemical specific PMPs (Section 200)

for certain pesticides in geographical areas as determined in Section 400 when: (4-6-05)

a. The level of a pesticide found in ground water is equal to or greater than fifty percent (50%) of the reference point and is scientifically validated; (4-6-05)

b. EPA restricts the sale or use of a pesticide in the state, or otherwise initiates action against a pesticide because of ground water concerns for a pesticide, unless such PMP is not deemed necessary by the Director; (4-6-05)

c. EPA's action, restriction, or prohibition will be implemented unless the state develops an adequate PMP; or (4-6-05)

d. A pesticide is conditionally registered by EPA because of ground water concerns. (4-6-05)

02. PMP Compliance. No person shall use a pesticide in a manner inconsistent with the chemical specific PMP within a designated geographical area. (4-6-05)

051. -- 099. (RESERVED)

100. CONTENTS OF A CHEMICAL SPECIFIC PMP.

01. Required Elements of a PMP. (4-6-05)

a. Actions to prevent pesticide contamination that are based on beneficial uses and vulnerability that address applicable aspects of the pesticide use; and (4-6-05)

b. Actions to prevent or minimize further presence of the pesticide in ground water and to provide protection for the present and projected future beneficial use of the ground water. (4-6-05)

02. Elements That May Be Included in a PMP. A PMP may include but is not limited to the following elements: (4-6-05)

a. Identification of geographical areas where a pesticide may be used; (4-6-05)

b. Pesticide, soil, hydrogeological, and meteorological characteristics; (4-6-05)

c. BMPs; (4-6-05)

d. Identification of ground water areas with pesticide detection(s); (4-6-05)

e. Certification, licensing, training, and education requirements for persons using the pesticide; (4-6-05)

f. Identification and establishment of an area of pesticide restriction requiring preventative measures; (4-6-05)

g. Pesticide application rates and timing and related use criteria; (4-6-05)

h. Integrated pest management information; (4-6-05)

i. Other requirements for pesticides, as set forth in the Idaho Pesticide and Chemigation Law (Title 22, Chapter 34, Idaho Code), and IDAPA 02.03.03, "Rules Governing Pesticide and Chemigation Use and Application"; or (4-6-05)

j. Other requirements as listed by the EPA in rule or guidance. (4-6-05)

101. MANAGEMENT PLANS ADOPTED BY RULEMAKING AND REVIEW.

01. Adoption Through Rulemaking. The Director shall adopt chemical specific PMPs through rulemaking. (4-6-05)

02. PMP Review. The Director shall review chemical specific PMPs every two (2) years to determine if the requirements contained in the plans need to be modified based on new scientific data and information. (4-6-05)

102. -- 149. (RESERVED)

150. GROUND WATER QUALITY REFERENCE POINTS.

01. Reference Points. The Director will use reference points for pesticides in ground water, based on the following order of availability: (4-6-05)

a. Idaho rules of DEQ, IDAPA 58.01.11, "Ground Water Quality," Subsection 200.01.a. specific to pesticide primary constituent standards which were adopted from EPA MCLs; or (4-6-05)

b. EPA Health Advisory Levels (HALs) identified in the 2006 Edition of the EPA Drinking Water Standards and Health Advisories, EPA 822-R-06-013; or (3-5-08)

c. EPA Reference Dose (RfD) identified in the 2006 Edition of the EPA Drinking Water Standards and Health Advisories, EPA 822-R-06-013; or (3-5-08)

d. A reference point based on: (4-6-05)

i. Best scientific information currently available on adverse effects of the contaminant(s); and (4-6-05)

ii. Protection of a beneficial use(s); and (4-6-05)

iii. Practical quantitation levels for the pesticides, if they exceed the levels identified in IDAPA 58.01.11, "Ground Water Quality Rule," Subsection 200.01.a. (4-6-05)

02. HAL and RfD Guide. The Director shall use the EPA's HAL and RfD number associated with the effects on a person weighing seventy (70) kilograms and drinking two (2) liters of water per day over a lifetime. (4-6-05)

151. -- 199. (RESERVED)

200. RESPONSE TO A PESTICIDE DETECTION.

This section describes the four (4) response levels for responding to pesticide detections in ground water. (4-6-05)

01. Level One Response. When a pesticide or its metabolite(s) is detected at or above the detection limit yet below twenty percent (20%) of the reference point; ()

a. The Director shall: ()

i. Notify well users or well owners of pesticide(s) detection; ()

ii. Continue ground water monitoring; ()

b. The Director may: ()

i. Provide additional information to pesticide applicators within vulnerable areas; ()

ii. Review use practices, soils, hydrogeology, and vulnerability within the area of pesticide detection(s); ()

- iii. Review state records for previous point source or potential violations in accordance with the Idaho Pesticide and Chemigation Law (Title 22, Chapter 34, Idaho Code); ()
 - iv. Review existing monitoring data within area to check for previous detections; ()
 - v. Conduct outreach in local area applicable to relevant data and information; and ()
 - vi. Encourage voluntary BMPs consistent with the APAP. ()
- 02. Level Two Response.** When a pesticide or its metabolite(s) is detected at twenty percent (20%) to less than fifty percent (50%) of the reference point; ()
- a. The Director shall: ()
 - i. Implement actions in Subsection 200.01 in the area of pesticide detection; ()
 - ii. Establish area of pesticide concern, in accordance with Section 400, within area of pesticide detection; ()
 - iii. Develop a monitoring plan and monitor to determine trends and fluctuations in pesticide concentrations; ()
 - iv. Determine likely source(s) while notifying and working with the appropriate parties including but not limited to: pesticide registrant(s), dealer(s), applicator(s) and producer(s) to determine likely source(s); ()
 - v. Determine if pesticide detection(s) is from point or nonpoint source; ()
 - vi. Promote voluntary BMPs or other measures; evaluate BMP effectiveness, and change BMPs if needed; ()
 - vii. Require the utilization of the Idaho NRCS Conservation Practice Standard, Pesticide Management Code 595. ()
 - b. The Director may: ()
 - i. Develop a chemical specific PMP per pesticide, unless already mandated through EPA Rule to do so; ()
 - ii. Monitor additional domestic wells in the hydrogeological up gradient and down gradient area; and ()
 - iii. Conduct site specific pesticide use inspections within the area of detection(s). ()
- 03. Level Three Response.** When a pesticide or its metabolite(s) is detected at fifty percent (50%) to less than one hundred percent (100%) of the reference point, the Director shall: (4-6-05)
- a. Implement actions in Subsections 200.02.a. through 200.02.e., and 200.02.g. through 200.02.j. in the area of pesticide detection; (4-6-05)
 - b. Establish an area of pesticide restriction, in accordance with Section 400 and Section 22-3419, Idaho Code, when the Director determines ground water contamination resulted from the application of a pesticide in accordance with the label; (4-6-05)
 - c. Restrict the use of the pesticide according to Section 22-3418, Idaho Code; (4-6-05)
 - d. Install monitoring wells as soon as possible, if the Director determines installation to be necessary

based on severity of risk, to evaluate ground water quality, flow direction, and the effectiveness of preventative measures; (4-6-05)

e. Assist well users or well owners within the area of pesticide restriction with health information and alternative water source information; and (4-6-05)

f. Inspect the pesticide applicator records within the restricted area. (4-6-05)

04. Level Four Response. When a pesticide or its metabolite(s) is detected at or above one hundred percent (100%) of the reference point, the Director shall: (4-6-05)

a. Implement actions in Subsection 200.03 in the area of pesticide detection; (4-6-05)

b. Establish an area of pesticide prohibition, in accordance with Section 400 of this rule and Section 22-3418, Idaho Code, when the Director has determined ground water contamination resulted from the application of a pesticide in accordance with the label; (4-6-05)

c. Implement use prohibition area(s); (4-6-05)

d. Assist persons within the use prohibition area with health and alternative water source information; (4-6-05)

e. Determine effectiveness of regulatory actions. (4-6-05)

05. Mixing and Loading Prohibited. No person shall mix or load the prohibited pesticide product in an identified pesticide prohibition area unless the mixing and loading is conducted over a spill containment surface which complies with the Idaho NRCS Conservation Practice Standard, Agrichemical Mixing Facility Code 702. (4-6-05)

06. Prohibition Areas. No person shall apply a prohibited pesticide within the corresponding pesticide area boundaries of the area of pesticide prohibition as identified in Section 400. (4-6-05)

201. -- 299. (RESERVED)

300. GROUND WATER MONITORING PROGRAMS.

01. Monitoring Programs. The Director shall conduct monitoring programs to: (4-6-05)

a. Determine whether residues of pesticides are present in ground water; (4-6-05)

b. Refine vulnerability mapping products or other assessment tools; (4-6-05)

c. Determine the effectiveness of BMPs; and (4-6-05)

d. Determine the effectiveness of regulatory approaches. (4-6-05)

02. Conduct Monitoring Programs. The Director shall conduct monitoring programs in compliance with the Department's EPA approved QMP and applicable QAPPs. (4-6-05)

03. Evaluation. The Director shall evaluate ground water pesticide(s) data from sources other than the Department for use in implementing this rule. (4-6-05)

301. -- 399. (RESERVED)

400. DETERMINING PESTICIDE AREA BOUNDARIES.

Section 400 describes the methods for determining the pesticide area boundaries for the response levels in Section 200. (4-6-05)

01. Pesticide Area Boundary Factors. In determining the area of pesticide concern, restricted area, or prohibition area the Director shall implement Section 200 and may consider but not be limited to the following factors: (4-6-05)

- a. Pesticide detections from reliable ground water test samples; (4-6-05)
- b. Number and frequency of detections; (4-6-05)
- c. Statistical trends of detections; (4-6-05)
- d. Location of detections; (4-6-05)
- e. Hydrogeology of the aquifer; (4-6-05)
- f. Well depth and construction; (4-6-05)
- g. Aquifer vulnerability and susceptibility; (4-6-05)
- h. Pesticide physical and chemical characteristics; (4-6-05)
- i. Pesticide use; or (4-6-05)
- j. Other scientifically defensible information. (4-6-05)

02. Determining Boundaries. An area of pesticide concern, restricted area, or a prohibition area may encompass land areas which, in the Director's judgment, are susceptible to pesticide contamination of ground water based on the factors identified in Subsection 400.01. The boundaries of an area of pesticide concern, restricted area, or a prohibition area shall be sufficient to meet Section 200 requirements. The boundaries may include any of the following: (4-6-05)

- a. Mapped boundaries between soil types or other hydrogeologic features; (4-6-05)
- b. Ground water or surface water divides such as watershed boundaries; (4-6-05)
- c. Legal land description boundaries; (4-6-05)
- d. Public roads; or (4-6-05)
- e. Other recognizable boundaries. (4-6-05)

401. -- 409. (RESERVED)

410. REPEALING SPECIFIC PESTICIDE AREAS.

01. Repealing an Area of Pesticide Concern. The Director may repeal or reduce the size of an area of pesticide concern in response to pesticide contamination in ground water if all the conditions in Subsection 410.01 are met: (4-6-05)

- a. Tests on at least three (3) consecutive ground water samples, drawn from each well site in the area of pesticide concern at which the concentration of a pesticide and its metabolites previously were found at twenty percent (20%) to fifty percent (50%) of the reference point, show that the concentration at the well sites has fallen to and remains less than twenty percent (20%) of the reference point. The three (3) consecutive samples shall be collected at each well site at intervals of at least six (6) months, with the first sample being collected at least six (6) months after the effective date of the area of pesticide concern designation. A monitoring well approved by the Director may be substituted for any well site which is no longer available for testing. (4-6-05)

b. Tests conducted at other well sites in the area of pesticide concern during the same retesting period, if any, reveal no other concentrations of the pesticide or its metabolites that exceed twenty percent (20%) of the reference point; and (4-6-05)

c. The Director determines, based on credible scientific evidence, that use of a pesticide product in the area of pesticide concern is not likely to cause a renewed detection between twenty percent (20%) to fifty percent (50%) of the reference point. (4-6-05)

02. Repealing an Area of Pesticide Restriction. The Director may repeal or reduce the size of an area of pesticide restriction in response to ground water pesticide contamination if all the conditions in Subsection 410.02 are met: (4-6-05)

a. Tests on at least three (3) consecutive ground water samples, drawn from each well site in the area of pesticide restriction at which the concentration of a pesticide and its metabolites previously were found at fifty percent (50%) to less than one hundred percent (100%) of the reference point, show that the concentration at the well sites has fallen to and remains less than fifty percent (50%) of the reference point. The three (3) consecutive samples shall be collected at each well site at intervals of at least six (6) months, with the first sample being collected at least six (6) months after the effective date of the area of the pesticide restriction designation. A monitoring well approved by the Director may be substituted for any well site which is no longer available for testing. As areas of pesticide restriction are repealed, the area automatically becomes an area of pesticide concern; (4-6-05)

b. Tests conducted at other well sites in the area of pesticide restriction during the same retesting period, if any, reveal no other concentrations of the pesticide or its metabolites that exceed fifty percent (50%) of the reference point; and (4-6-05)

c. The Director determines, based on credible scientific evidence, that use of a pesticide product in the area of pesticide restriction is not likely to cause a renewed exceedance of fifty percent (50%) of the reference point. (4-6-05)

03. Repealing an Area of Pesticide Use Prohibition. The Director may repeal or reduce the size of an area of pesticide use prohibition in response to ground water pesticide contamination if all the conditions in Subsection 410.03 are met: (4-6-05)

a. Tests on at least three (3) consecutive ground water samples, drawn from each well site in the prohibition area at which the concentration of a pesticide and its metabolites previously attained or exceeded the reference point, show that the concentration at that well site has fallen to and remains less than fifty percent (50%) of the reference point. The three (3) consecutive samples shall be collected at each well site at intervals of at least six (6) months, with the first sample being collected at least six (6) months after the effective date of the pesticide use prohibition designation. A monitoring well approved by the Director may be substituted for any well site which is no longer available for testing. As areas of pesticide prohibition are repealed, the area automatically becomes an area of pesticide concern; (4-6-05)

b. Tests conducted at other well sites in the area of pesticide prohibition during the same retesting period, if any, reveal no other concentrations of the pesticide and its metabolites that exceed fifty percent (50%) of the reference point; and (4-6-05)

c. The Director determines, based on credible scientific evidence, that renewed use of a pesticide product in the area of pesticide prohibition is not likely to cause a renewed violation of the reference point. (4-6-05)

411. -- 419. (RESERVED)

420. ADVISORY COMMITTEE.

When pesticide management practices are needed under Section 200, the Director's advisory committee, as established pursuant to Section 22-103, Idaho Code, shall provide appropriate guidance on this rule. This advisory committee shall include but is not limited to: applicators from the area of pesticide detection; pesticide, water user, and commodity groups; University of Idaho Extension staff and specialists; and staff from the USDA, NRCS, SCC, DEQ, and the Department. The duties of the advisory committee include but are not limited to the following:

(4-6-05)

01. Review Existing Information. Review the existing information related to the area of pesticide detection and develop pesticide management practices options; (4-6-05)

02. Recommendations. Make recommendations to the Director for approval of pesticide management practices prior to implementation at the voluntary and regulatory levels; (4-6-05)

03. Research. Evaluate the potential for gaining government or private research or cost share funding; and (4-6-05)

04. Evaluate Effectiveness. Review information related to pesticide management practices effectiveness and make recommendations for changing and improving pesticide management practices. (4-6-05)

421. PESTICIDE USE AND RECORD KEEPING REQUIREMENTS.

Pursuant to Title 22, Chapter 34, Idaho Code, and IDAPA 02.03.03, "Rules Governing Pesticide and Chemigation Use and Application," the Director shall inspect pesticide records to meet the need as described in Section 200.

(4-6-05)

422. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.15 – RULES GOVERNING BEEF CATTLE ANIMAL FEEDING OPERATIONS

DOCKET NO. 02-0415-1901

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 22-110 and 22-4903, Idaho Code.

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

This pending rule adopts a previously approved and codified chapter under IDAPA 02, rules of the Idaho State Department of Agriculture. This rule establishes standards for the storage, management and application of manure on Beef Cattle Animal Feeding Operations. This rule was reviewed for amendment or repeal of non-substantive sections to comply with the Red Tape Reduction Act.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, pages 73-81](#).

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

02.04.15.013	Broader in scope
02.04.15.030	More stringent
02.04.15.031	Broader in scope
02.04.15.032	Broader in scope
02.04.15.040	Broader in scope
02.04.15.050	Broader in scope
02.04.15.051	Broader in scope
02.04.15.080	Broader in scope
02.04.15.090	Broader in scope

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

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

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

Dated this 3rd day of October, 2019.

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

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 220-110 and 22-4903, 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. This rule establishes standards for the storage, management and application of manure on Beef Cattle Animal Feeding Operations that manage over one thousand (1,000) cattle 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: N/A

IDAHO CODE SECTION 22-101A(1) STATEMENT: This rule is broader in scope or more stringent than federal regulation in the following sections:

02.04.15.013	Broader in scope
02.04.15.030	More stringent
02.04.15.031	Broader in scope
02.04.15.032	Broader in scope
02.04.15.040	Broader in scope
02.04.15.050	Broader in scope
02.04.15.051	Broader in scope
02.04.15.080	Broader in scope
02.04.15.090	Broader in scope

For a more detailed analysis, please see Rulemaking Record for IDAPA 02-0415-1901.

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 02.04.15 regulates the environmental and public health effects associated with beef cattle animal feeding operations. The upper bound risks associated with phosphorus storage and application by Idaho beef cattle animal feeding operations of one thousand head or more are elevated phosphorus concentrations in phosphorus sensitive waterbodies. Elevated phosphorus 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 02.04.15, 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 02.04.15 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 DOCKET NO. 02-0415-1901

02.04.15 – RULES GOVERNING BEEF CATTLE ANIMAL FEEDING OPERATIONS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of **Sections 22-110 and 22-4903**, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is “Rules Governing Beef Cattle Animal Feeding Operations.” (4-6-05)

02. Scope. These rules govern the design, function, and management practices of waste systems on beef cattle animal feeding operations. Nothing in this rule affects the authority of the Department of Environmental Quality to enforce an IPDES permit for dairy farms that discharge pollutants to waters of the United States, including without limitation, the authority to issue permits, access records, conduct inspections and take enforcement actions. The provisions of this rule do not alter the requirements, liabilities, and authorities with respect to or established by the IPDES program. ()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (3-16-01)

003. ADMINISTRATIVE APPEAL.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (3-15-02)

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into this chapter: (3-16-01)

01. The 1997 United States Department of Agriculture Natural Resources Conservation Service Agricultural Waste Management Field Handbook, Appendix 10 D. This document can be viewed online at <http://directives.sc.gov.usda.gov/OpenNonWebContent.aspx?content=17767.wba>. (3-16-01)

02. Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004. This document is part of a copyrighted publication and is available for viewing at the ISDA offices or a copy may be purchased online at <http://www.asabe.org/>. (3-29-17)

03. The 1999 Publication by the United States Department of Agriculture, Natural Resource Conservation Service, Conservation Practice Standard, Nutrient Management Code 590. This can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient_Management_code_590.pdf. (3-16-01)

005. IDAHO PUBLIC RECORDS ACT.

These rules are public records and are available for inspection and copying at the Department. (3-16-01)

006. 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/>. (4-6-05)

010. DEFINITIONS.

The following definitions apply in the interpretation and enforcement of this chapter. (3-16-01)

01. Animal. Bovidae, ovidae, suidae, equidae, captive cervidae, captive antilocapridae, camelidae, and ratitidae. (3-16-01)

- 02. Animal Feeding Operation.** A lot or facility where slaughter and feeder cattle or dairy heifers are confined and fed for a total of forty-five (45) days or more during any twelve-month (12) period and crops, vegetation forage growth, or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility. (4-6-05)
- 03. Compost.** A biologically stable material derived from the biological decomposition of organic matter. (3-16-01)
- 04. Concentrated Animal Feeding Operation.** An AFO that is defined as a large CAFO or as a medium CAFO by the terms of this section and designated by the Director. Two (2) or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other, or if they use a common area or system for the disposal of wastes. (3-29-17)
- 05. Discharge.** Release of process wastewater or manure from a beef cattle animal feeding operation to waters of the state. (3-16-01)
- 06. 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)
- 07. Land Application.** The spreading on, or incorporation of manure or process wastewater into the soil. (3-16-01)
- 08. Large Concentrated Animal Feeding Operation.** An AFO is defined as a large CAFO if it stables or confines as many as or more than the numbers of cattle specified in any of the following categories: (3-29-17)
- a.** Seven hundred (700) mature dairy cows, whether milked or dry; (3-29-17)
 - b.** One thousand (1,000) veal calves; (3-29-17)
 - c.** One thousand (1,000) cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs; (3-29-17)
- 09. Medium Concentrated Animal Feeding Operation.** A medium CAFO includes any AFO that has been defined or designated as CAFO and stables or confines the number of cattle that fall within any of the following ranges: (3-29-17)
- a.** Two hundred (200) to six hundred ninety-nine (699) mature dairy cows, whether milked or dry; (3-29-17)
 - b.** Three hundred (300) to nine hundred ninety-nine (999) veal calves; (3-29-17)
 - c.** Three hundred (300) to nine hundred ninety-nine (999) cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs; (3-29-17)
- 10. Operate.** Confining and feeding slaughter and feeder cattle in the state of Idaho. (4-6-05)
- 11. Operator.** The person who has power or authority to manage, or direct, or has financial control of a beef cattle animal feeding operation. (3-16-01)
- 12. Runoff.** Any precipitation that comes into contact with manure, compost, bedding, or feed on a beef cattle animal feeding operation. (3-15-02)
- 13. Slaughter and Feeder Cattle.** All cattle except those cattle located on a dairy farm permitted by the Idaho State Department of Agriculture pursuant to IDAPA 02.04.14, "Rules Governing Dairy Byproduct." (4-6-05)

14. Small Concentrated Animal Feeding Operation. An AFO that is designated as a CAFO and is not a medium or large CAFO. (3-29-17)

011. ABBREVIATIONS.

- 01. AFO.** Animal Feeding Operation. (3-29-17)
- 02. CAFO.** Concentrated Animal Feeding Operation. (3-29-17)
- 03. IPDES.** Idaho Pollutant Discharge Elimination System. (3-29-17)
- 04. NMP.** Nutrient Management Plan. (4-6-05)
- 05. NRCS.** United States Department of Agriculture, Natural Resources Conservation Service. (4-6-05)

012. PROHIBITED DISCHARGES.

Unauthorized discharges of manure or process wastewater from beef cattle AFOs or land application sites owned or controlled by a beef cattle AFO are prohibited. ()

013. NOTIFICATION OF DISCHARGE.

01. Notification Within Twenty-Four Hours of Discharge. Within twenty-four (24) hours of learning of a discharge, the operator of a beef cattle AFO shall verbally notify the Director of such a discharge. ()

02. Written Notification Within Five Days. If the Idaho Department of Agriculture has not begun a discharge investigation within five (5) days of the verbal notification to the Director, the operator shall submit a written report to the Director which includes: (3-16-01)

- a.** A description of the discharge, a description of the flow path to the receiving water body; (3-16-01)
- b.** An estimation of the flow rate and volume discharged; (3-16-01)
- c.** The period of discharge, including dates and times, and if not already corrected, the anticipated time the discharge is expected to continue; and (3-16-01)
- d.** Steps taken to reduce, eliminate and prevent recurrence of the discharge. (3-16-01)

014. -- 019. (RESERVED)

020. WASTEWATER STORAGE AND CONTAINMENT FACILITIES.

01. Wastewater Storage and Containment Facilities. All beef cattle AFOs where process wastewater leaves the confinement area and has the potential to impact surface water or be in violation of state water quality standards shall have wastewater storage and containment facilities designed, constructed, operated, and maintained sufficient to contain: ()

- a.** All process wastewater generated on the facility during the non-land application season; and (3-16-01)
- b.** The runoff from a twenty-five (25) year, twenty-four (24) hour rainfall event; and (3-16-01)
- 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. (3-16-01)

02. All Substances Entering Wastewater Storage and Containment Facilities. All substances

entering wastewater storage and containment facilities shall be composed of manure and process wastewater from the operation of the beef cattle **AFO**. The disposal of any other materials into a wastewater storage and containment facility, including, but not limited to, human waste, is prohibited. ()

021. NEW OR MODIFIED BEEF CATTLE ANIMAL FEEDING OPERATIONS.

Each new or modified beef cattle **AFO** shall design and construct wastewater storage and containment facilities completed after July 1, 2000, in accordance with the engineering standards and specifications contained in the Natural Resources Conservation Service Agricultural Waste Management Field Handbook, Appendix 10D or the American Society of Agricultural Engineers Standard EP393.3, or other equally protective standards approved by the Director. ()

022. -- 029. (RESERVED)

030. NUTRIENT MANAGEMENT.

Each beef cattle **AFO** shall submit a **NMP** for land owned or controlled by the operator, which conforms to the nutrient management standard and addresses odors generated in excess of odors normally associated with raising beef cattle in Idaho, to the Director for approval. Following department review and approval, the plan, and all copies of the plan, shall be returned to the operation and maintained on site. ()

01. New Beef Cattle Animal Feeding Operations. Any new beef cattle **AFO** shall not operate prior to the Director's approval of a **NMP**. The Director shall respond to or approve such plan within forty-five (45) days of submission. ()

02. Implementation of a Nutrient Management Plan. Failure to implement an approved **NMP** is a violation of these rules. (4-6-05)

031. NUTRIENT MANAGEMENT PLAN RETENTION.

All approved **NMPs** shall be maintained on site at the beef cattle **AFO** and available to the Administrator upon request. ()

032. NUTRIENT MANAGEMENT RECORDS.

The operators of beef cattle **AFOs** shall keep complete and accurate records of: ()

01. Land Application. The dates and amounts of any manure or process wastewater applied on land owned or controlled by the operator. (4-6-05)

02. Manure Transferred to Another Person. The name and address of any third party that receives manure or process wastewater from the operation, including the dates of the transfer and the amount of manure or process wastewater transferred. (4-6-05)

03. Records Retention. All records shall be maintained for a period of five (5) years and presented to the Administrator upon request. (4-6-05)

033. -- 039. (RESERVED)

040. DESIGNATION OF BEEF CATTLE ANIMAL FEEDING OPERATIONS.

01. Designation of Animal Feeding Operations. The Director, on a case by case basis, may designate any **AFO** that confines slaughter and feeder cattle as a beef cattle **AFO** if, after an inspection, the Director determines that the **AFO** is a significant contributor of pollution to waters of the state. The designation is provided to the operator of the **AFO** in writing setting forth the basis for the Director's decision. When designated, these operations shall be considered existing beef cattle **AFOs**. The Director considers the following factors when making such designation: ()

a. Size of the **AFO** and the amount of manure, process wastewater, and runoff reaching waters of the state; ()

- b. Location of the **AFO** relative to waters of the state; ()
- c. Means of conveyance of manure, process wastewater, and runoff into waters of the state; and (3-15-02)
- d. Slope, vegetation, precipitation, and other factors affecting the likelihood or frequency of discharge of manure, process wastewater, or runoff into waters of the state. (3-15-02)

02. Redesignation of a Beef Cattle Animal Feeding Operation. Upon request by the operator, the Director **will** redesignate a facility previously designated under Section 040, if the facility is no longer a significant contributor of pollution to waters of the state. Such redesignation **is** provided to the operator in writing. ()

041. -- 049. (RESERVED)

050. AUTHORITY TO INSPECT.

The Director is authorized to inspect any **AFO** that confines slaughter or feeder cattle in accordance with Title 22, Chapter 49, Idaho Code, to ensure compliance with these rules. The Director **may** comply with the operation's biosecurity protocol so long as the protocol does not inhibit reasonable access to: ()

AFO. 01. Entry. Enter and inspect at reasonable times the premises or land application site(s) of a beef cattle ()

02. Access to Records. Review or copy any records that must be kept in accordance with these rules. (4-6-05)

03. Sample or Monitor. Sample or monitor at reasonable times, substances or parameters directly related to compliance with these rules or an IPDES permit. (3-29-17)

051. INSPECTIONS.

Each beef cattle **AFO** shall be inspected annually or at intervals sufficient to determine that the facility is being operated and managed to prevent an unauthorized discharge. Inspections may include evaluating effectiveness of best management practices, collecting samples, taking photographs/videos of facilities or collecting other information as necessary. An official inspection report form **is** completed and a copy provided to the operator. ()

052. ADMINISTRATION OF IPDES PROGRAM.

The Director of the Department of Agriculture and the Director of the Department of Environmental Quality shall, as appropriate, establish an agreement relating to the administration of an IPDES program that recognizes the expertise of the Department of Agriculture. (3-29-17)

053. COMPLIANCE WITH IDAHO POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES.

The Department of Environmental Quality shall be solely responsible and authorized to determine whether the discharge of pollutants from a beef cattle feeding operation is required to be authorized by an IPDES permit. The provisions of this rule do not define when a beef cattle feeding operations is required to obtain a permit for a discharge, do not exempt a beef cattle feeding operation from permitting requirements for such discharges or alter the authority of DEQ with respect to such discharges. (3-29-17)

054. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.04.17 – RULES GOVERNING DEAD ANIMAL MOVEMENT AND DISPOSAL
DOCKET NO. 02-0417-1901
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 25-203 and 25-237, Idaho Code.

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

This pending rule adopts a previously approved and codified chapter under IDAPA 02, rules of the Idaho State Department of Agriculture. The Rules Governing Dead Animal Movement and Disposal establish standards for the management and disposal of livestock carcasses to best protect the environment and human health. This rule was reviewed for amendment or repeal of select sections to comply with the Red Tape Reduction Act.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 4, 2019 Idaho Administrative Bulletin, **Vol. 19-9, pages 82-88**.

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

This rule in its entirety regulates an activity not regulated by the federal government.

To view ISDA's complete Idaho Code § 22-101A analysis and a comprehensive list of studies supporting and directly relevant to this Rule, please see the IDAPA 02.04.17 Rulemaking Record located at: <https://agri.idaho.gov/main/i-need-to-see-lawsrules/rulemaking/isda-rulemaking-2019-2020/animal-industries-temporary-rulemaking-2019-2020/>.

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

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

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

Dated this 3rd day of October, 2019.

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

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

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220, Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 25-203 and 25-237, 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 Dead Animal Movement and Disposal establish standards for the management and disposal of dead animal bodies, carcasses and body parts to best protect the environment and human health. 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: N/A

IDAHO CODE SECTION 22-101A(1) STATEMENT: This rule in its entirety regulates an activity not regulated by the federal government.

For a more detailed analysis, please see Rulemaking Record for IDAPA 02-0417-1901.

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 02.04.17 governs the movement, management and disposal of dead animals to protect human health and the environment. The decomposition of animal carcasses can create an influx of nutrients, including phosphorus into soils and water sources. The upper bound risks associated with a decomposing carcass may include elevated phosphorus concentrations in phosphorus sensitive water bodies leading 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. Carcass decomposition intervals in outdoor settings beyond 30 days, cadaver depth and its effect on soil and vegetation, and insect impact on decomposition are poorly understood. In order to understand the complex associations between a decomposing carcass and the soil system, additional research must be conducted in both controlled laboratory environments and outdoor field environments. Such data would assist in establishing the lower bound risks associated with dead animal decomposition as well.

ISDA uses the best available, peer reviewed studies to support and implement IDAPA 02.04.17, including studies done by U.S. Environmental Protection Agency, USDA Natural Resources Conservation Service, USDA Agricultural Resource Service, and other professional and scientific journals. However, even with such data, uncertainties remain.

To view ISDA’s complete Idaho Code § 22-101A analysis and a comprehensive list of studies supporting and directly relevant to this Rule, please see the IDAPA 02.04.17 Rulemaking Record located at <https://agri.idaho.gov/main/i-need-to-see-lawsrules/rulemaking/isda-rulemaking-2019-2020/animal-industries-temporary-rulemaking-2019-2020/>.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year 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 DOCKET NO. 02-0417-1901

02.04.17 – RULES GOVERNING DEAD ANIMAL MOVEMENT AND DISPOSAL

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 25-203 and 25-237, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is “Rules Governing Dead Animal Movement and Disposal.” (3-15-02)

02. Scope. These rules govern the management, movement and disposal of dead animals. (3-15-02)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (3-15-02)

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 State Department of Agriculture under these rules. (3-15-02)

004. INCORPORATION BY REFERENCE.

IDAPA 02.04.17 does not incorporate any materials by reference. (3-15-02)

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/>. (3-15-02)

006. PUBLIC RECORDS ACT COMPLIANCE.

These rules are public records and are available for inspection at the State Department of Agriculture and on the internet. Official copies may be obtained from the Department of Administration, Office of Administrative Rules. (3-15-02)

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. Abandon. To desert or intentionally leave a dead animal without proper disposal as provided in these rules. (3-15-02)

02. Air Curtain Incineration. A mechanical process of incineration by which super-heated air is continuously circulated to enhance combustion. (3-15-02)

03. Burial. Interment of a dead animal below the natural surface of the ground. (3-15-02)

04. Burning. The act of consuming or destroying by fire with or without the use of an accelerant. (3-15-02)

05. Composting. The biological decomposition of organic matter under controlled conditions. (3-15-02)

06. Dead Animals. Carcasses and parts of carcasses from dead animals including domesticated livestock, sheep, goats, poultry, pets, and commercial fish. (3-15-02)

07. Dead Animal Emergencies. Those situations involving dead animals that may require extenuating disposal measures as determined by the Administrator. (3-15-02)

08. Decomposition. The decay of dead animals under natural conditions. (3-15-02)

09. Digestion. A process by which organic matter is hydrolyzed. (3-15-02)

10. Disposal. The management of a dead animal. (3-15-02)

11. Domesticated Livestock. Bovidae, suidae, equidae, captive cervidae, camelidae, ratitidae, gallinaceous birds and captive waterfowl. (4-2-08)

12. Harvested. Domesticated livestock killed by a person if any portion of the carcass is salvaged. (4-2-08)

13. Incineration. The controlled and monitored combustion of dead animals for the purposes of volume reduction and pathogen control. (3-15-02)

14. Pets. Cats, dogs, and other non-human species of animals that are kept as household companions. (3-15-02)

15. Rendering. The process or business of recycling dead animals and animal by-products. (3-15-02)

16. Sanitary Landfill. A solid waste disposal site permitted or approved by the Idaho Department of Environmental Quality. (3-15-02)

011. EXCLUSIONS.

The following establishments and animals shall be excluded from the provisions of these rules. (3-15-02)

01. Slaughter Establishments. Establishments that slaughter livestock for human consumption. (3-15-02)

02. Free-Ranging Wildlife. Non-captive wildlife or wild fish. (3-15-02)

03. House Pets. House pets less than one hundred (100) pounds in weight. (3-15-02)

04. Pets Buried in a Licensed Pet Cemetery. Pets of any weight buried in a licensed pet cemetery. (3-15-02)

012. -- 019. (RESERVED)

020. ABANDONMENT OF DEAD ANIMALS.

No person who owns or is caring for an animal that has died shall abandon the dead animal. Animals that are being disposed of by decomposition in accordance with these rules shall not be considered abandoned. (3-15-02)

021. -- 029. (RESERVED)

030. DISPOSAL OF DEAD ANIMALS.

Dead animals shall be disposed of within seventy-two (72) hours after knowledge of the death of the animal or as provided by the Administrator. No person shall dispose of a dead animal on the land of another without the permission of the property owner. Disposal shall be by one (1) of the following methods: (3-15-02)

01. Dead Animals on Federally Managed Land. Animals that die on federally managed rangeland from causes other than significant infectious or contagious diseases or agents shall be disposed of as provided by the rules and regulations of the responsible land management agency. (3-15-02)

02. Disposal Methods Determined by the Administrator. The Administrator may determine the appropriate method of disposal for animals that die of significant infectious or contagious diseases or agents. (3-15-02)

03. Rendering. If a licensed and approved rendering facility accepts the dead animal, rendering is an approved method of disposal. (3-15-02)

a. When carcasses are held for pickup, the site shall be screened from public view, in a dry area and not in a water runoff or drainage area. (3-15-02)

b. Run-off from the holding area must be contained. (3-15-02)

04. Burial. Dead animals shall be buried to such a depth that no part of the dead animal shall be nearer than three (3) feet to the natural surface of the ground. Every part of the dead animal shall be covered with at least three (3) feet of earth. The location of a burial site shall be: (3-15-02)

a. At least three hundred (300) feet from any wells, surface water intake structures, and public or private drinking water supply lakes or springs. (3-15-02)

b. At least three hundred (300) feet from any existing residences. (3-15-02)

c. At least fifty (50) feet from property lines. (3-15-02)

- d. At least one hundred (100) feet from public roadways. (3-15-02)
- e. At least two hundred (200) feet from any body of surface water such as a river, stream, lake, pond, intermittent stream, or sinkhole. (3-15-02)
- f. Burial sites shall not be located in low-lying areas subject to flooding, or in areas with a high water table where the seasonal high water level may contact the burial pit. (3-15-02)
- 05. Disposal in an Approved Sanitary Landfill.** Arrangements shall be made with a city, county, regional, or private landfill official in order to dispose of a dead animal in a city, county, regional, or private landfill. (3-15-02)
- 06. Composting.** (3-15-02)
- a. Composting of dead animals shall be accomplished in a manner approved by the Administrator. (3-15-02)
- b. No composters that have been approved by other agencies shall begin composting dead animals without the approval of the Administrator. (3-15-02)
- 07. Digestion.** Digestion of dead animals shall be accomplished in a properly designed and sized dead animal digester approved by the Administrator. (3-15-02)
- 08. Incineration.** (3-15-02)
- a. Incineration of dead animals shall be accomplished in an approved incineration facility, or by a mobile air curtain incinerator at a site approved by the Administrator. (3-15-02)
- b. The incineration shall be thorough and complete, reducing the carcass to mineral residue. (3-15-02)
- 09. Burning.** Open burning of dead animals is not allowed, except as authorized by the Administrator, in coordination with the Department of Environmental Quality. (3-15-02)
- 10. Decomposition.** Animals that die on private or state rangeland, except domesticated livestock that are harvested, from causes other than significant infectious or contagious diseases or agents may be left to decompose naturally provided that: (4-2-08)
- a. They are at least one thousand three hundred twenty (1,320) feet from any wells, lakes, ponds, streams, surface water intake structures, public or private drinking water supply lakes, springs or sinkholes. (3-15-02)
- b. They are at least one thousand three hundred twenty (1,320) feet from any public roadways. (3-15-02)
- c. They are at least one thousand three hundred twenty (1,320) feet from any residence not owned by the owner of the dead animal. (3-15-02)
- 11. Allowance for Variances by the Administrator.** The Administrator may grant written variances to the requirements of Section 030 on a case-by-case basis. (4-2-08)
- 031. -- 039. (RESERVED)**
- 040. MOVEMENT OF DEAD ANIMALS.**
No dead animals shall be loaded into the same vehicle with live animals. (3-15-02)
- 01. Vehicles Used for Transporting Dead Animals.** Vehicles used for transporting dead animals shall be constructed and maintained, or be prepared prior to receiving dead animals into the vehicle, so that no liquid or fluid from the dead animals is allowed to drip or seep from the vehicle during transport. (3-15-02)

02. Dead Animals Concealed from View. Dead animals shall be concealed from public view during transportation. (3-15-02)

03. Direct to Destination. Vehicles hauling dead animals shall travel to their destination directly. (3-15-02)

04. Disinfection. Vehicles that have hauled dead animals off an owner's property shall not be used to haul live animals, feeds or similar commodities to the property of another person until they have been thoroughly cleaned and disinfected. (3-15-02)

05. Transport of Dead Animals. No person shall transport a dead animal across or through the property of another person without the landowner's permission. (3-15-02)

041. -- 049. (RESERVED)

050. DEAD ANIMAL EMERGENCIES.

Dead animal emergencies are those situations involving dead animals that have been determined by the Administrator to require extraordinary disposal measures. (3-15-02)

01. Situations Requiring Extraordinary Disposal Measures. These situations include, but are not limited to, the following: (3-15-02)

a. Situations where one (1) or more animals die of an infectious or contagious disease or agent that may pose a significant threat to humans or animals; (3-15-02)

b. Situations wherein the number of dead animals is large enough to require extraordinary disposal measures. (3-15-02)

02. Administrator to Determine Disposal Methods. The Administrator may employ exceptional or extraordinary methods of dead animal disposal as necessary to protect the health and welfare of the human and animal populations of the state of Idaho. Such methods may include, but not be limited to: ()

a. Open burning; (3-15-02)

b. Pit burning; (3-15-02)

c. Burning with accelerants; (3-15-02)

d. Pyre burning; (3-15-02)

e. Air curtain incineration; (3-15-02)

f. Mass burial; or (3-15-02)

g. Natural decomposition. (3-15-02)

051. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.20 – RULES GOVERNING BRUCELLOSIS

DOCKET NO. 02-0420-1901

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 25-203 and 25-601, Idaho Code.

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

This rule change will reduce the Brucellosis test eligible age of cattle/bison from 18 months to 12 months. This recommendation was made following the 2018 USDA audit of Idaho’s brucellosis program. The age reduction is necessary to minimize restrictions on interstate market access for Idaho cattle producers and maintain eligibility for federal cooperative funding to operate the program. The second rule change will remove “Idaho origin” as a prerequisite for adult brucellosis vaccination of cattle/bison. This “Idaho origin” designation is an unnecessary regulation that no longer poses a risk to the cattle industry. All rules were reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, pages 89-93](#).

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

02.04.20.027	Not regulated
02.04.20.028.03-04	Not regulated
02.04.20.029	Broader in scope
02.04.100-102	Not regulated
02.04.20.105	Broader in scope
02.04.20.120-123	Broader in scope
02.04.20.200-204	Not regulated
02.04.20.250-256	Not regulated
02.04.20.321	Broader in scope
02.04.20.421	Broader in scope

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

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

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

Dated this 3rd day of October, 2019.

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

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 Sections 25-203 and 25-601, 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 rule change will reduce the Brucellosis test eligible age of cattle/bison from 18 months to 12 months. This recommendation was made following the 2018 USDA audit of Idaho’s brucellosis program and is necessary to minimize restrictions on interstate market access for Idaho cattle producers and maintain eligibility for federal cooperative funding to operate the program. The second rule change will remove “Idaho origin” as a prerequisite for adult brucellosis vaccination of cattle/bison. This is an unnecessary regulation that no longer poses a risk to the cattle industry. IDAPA 02.04.20 was also reviewed for amendment or repeal of non-substantive sections in order to comply with the Red Tape Reduction Act.

IDAHO CODE SECTION 22-101A STATEMENT: This rule is broader in scope or regulates an activity not regulated by the federal government in the following sections:

02.04.20.027	Not regulated
02.04.20.028.03-04	Not regulated
02.04.20.029	Broader in scope

02.04.100-102	Not regulated
02.04.20.105	Broader in scope
02.04.20.120-123	Broader in scope
02.04.20.200-204	Not regulated
02.04.20.250-256	Not regulated
02.04.20.321	Broader in scope
02.04.20.421	Broader in scope

For a more detailed analysis, please see Rulemaking Record for IDAPA 02-0420-1901.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year 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 June 5, 2019 Idaho Administrative Bulletin, **Vol. 19-6 pgs. 24-25**. Negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on June 27, 2019. There were several comments received from the meeting attendees entered into the record that were taken into consideration when drafting this proposed rule. Meeting attendees also participated in amending or repealing sections of this rule to comply with the Red Tape Reduction Act.

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. Bill Barton, 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 DOCKET NO. 02-0420-1901

010. DEFINITIONS.

The following definitions apply in the interpretation and enforcement of this chapter. (5-3-03)

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. (5-3-03)

02. Approved Brucella Vaccine. A vaccine product that is approved by and produced under license of the USDA for administration to cattle, domestic bison, swine or domestic cervidae for the purpose of enhancing the resistance to *brucellosis*. (5-3-03)

03. Approved Feedlot. A feedlot approved by the Administrator to feed female cattle and domestic

- bison, which have not been officially vaccinated against *brucellosis*. (5-3-03)
- 04. Brucellosis.** An infectious disease of animals and humans caused by bacteria of the genus *Brucella*. (5-3-03)
- 05. Brucellosis Emergency.** The declaration of an animal health emergency by the director as the result of the diagnosis of *brucellosis* in cattle, domestic bison, swine or domestic cervidae in the state of Idaho or in areas outside the state that could result in transmission of *brucellosis* to Idaho cattle, domestic bison, swine, or domestic cervidae. (5-3-03)
- 06. Brucellosis Herd Management Plan.** A written document outlining management practices a livestock producer will take to minimize the exposure of cattle or domestic bison to brucellosis. The herd management plan shall be valid when signed by the owner and the State Veterinarian or his designee. (3-29-12)
- 07. Cattle.** All bovidae. (5-3-03)
- 08. Commuter Herd.** A herd of cattle or domestic bison that moves from Idaho to another state pursuant to the provisions of IDAPA 02.04.21, "Rules Governing the Importation of Animals," Section 220. (3-30-07)
- 09. Designated Surveillance Area.** An area of Idaho, as ordered by the director or his designee, where brucellosis positive wildlife are known or believed to exist and where commingling of wildlife and livestock may lead to transmission of brucellosis from wildlife to livestock. (3-29-12)
- 10. Domestic Bison.** All animals in the genus *Bison* that are owned by a person. (5-3-03)
- 11. Domestic Cervidae.** Elk, fallow deer and reindeer that are owned by a person. (5-3-03)
- 12. Exposed.** Animals that have had contact with other animals, herds, or materials that have been determined to be infected with or affected by *Brucella*. (5-3-03)
- 13. Federal Animal Health Official.** An employee of USDA, APHIS, VS who is authorized to perform animal health activities. (5-3-03)
- 14. Infected Animals or Herds.** Animals that are classified as reactors by the designated *brucellosis* epidemiologist or herds that contain one or more reactor animals. (5-3-03)
- 15. Negative.** Cattle, domestic bison, swine or domestic cervidae are classified negative: (5-3-03)
- a.** When their blood serum has been subjected to official serological tests and the test results fail to disclose evidence of *Brucella* infection; and (5-3-03)
- b.** If blood, milk or tissues are subjected to bacteriological methods for cultivating field-strain *Brucella* and none are recovered. An animal is classified as negative when all tests that are performed fail to disclose evidence of *brucellosis*. (5-3-03)
- 16. Official Identification.** The unique individual identification of cattle, domestic bison, swine, or domestic cervidae in accordance with these rules. (5-3-03)
- 17. Official Vaccinate.** A bovine or domestic bison female that was inoculated, in accordance with these rules and the *brucellosis* Eradication UM&R, with an approved *Brucella* vaccine. (5-3-03)
- 18. Operator.** The person who has authority to manage or direct a cattle, domestic bison, swine, or domestic cervidae premises, or conveyance and the animals thereon. (3-30-07)
- 19. Parturient.** Visibly prepared to give birth or within two (2) weeks before giving birth. (3-30-07)

20. **Postparturient.** Having already given birth. (3-30-07)
21. **Premises.** The ground, area, buildings, corrals, and equipment utilized to keep, hold, or maintain animals. (3-30-07)
22. **Quarantine.** 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 to be or are suspected to be exposed to or infected with *Brucella*, or the animals are not in compliance with the provisions of this chapter. (3-30-07)
23. **Reactor.** Cattle, domestic bison, swine or domestic cervidae are classified as reactors when their blood serum has been subjected to official serological tests and the test results indicate that the animal has been exposed to and infected with *Brucella*. Cattle, domestic bison, swine or domestic cervidae are also classified as reactors in the absence of significant serologic test results when other diagnostic methods, such as bacteriologic methods, result in the recovery of field-strain *Brucella* organisms, or a significant rise in the serologic titer occurs, or when other epidemiologic evidence of *Brucella* infection is demonstrated. (5-3-03)
24. **Re-Identification of Official Vaccinates.** The identification of female cattle or other animals which have been officially vaccinated and identified, as provided in this chapter, and which have lost the official identification device or the tattoo has faded to the extent that it cannot be discerned. (5-3-03)
25. **Restrain.** The confinement of cattle, domestic bison, swine, or domestic cervidae in a chute, or other device, for the purpose of efficiently, effectively, and safely inspecting, treating, vaccinating, or testing. (5-3-03)
26. **Restricted Movement Permit.** A VS Form 1-27, or other document approved by the Administrator for movement of reactor or exposed animals in commerce. (5-3-03)
27. **State Animal Health Official.** The Administrator, or his designee, responsible for disease control and eradication programs. (5-3-03)
28. **State/Federal Animal Health Laboratory.** The official laboratory in Idaho that is approved by the Administrator and USDA/APHIS/VS, to conduct serologic and bacteriologic tests to detect *Brucella*. (5-3-03)
29. **Suspect.** Cattle, domestic bison, swine, or domestic cervidae are classified as suspects when their blood serum has been subjected to official serologic tests and the results suggest infection but are inconclusive. If bacteriologic methods to culture *Brucella* from blood, milk or tissues were used, they did not yield field-strain *Brucella*. (5-3-03)
30. **Swine.** All animals in the family suidae. (5-3-03)
31. **Test Eligible.** Unless otherwise specifically provided in these rules, all sexually intact cattle and domestic bison **twelve (12)** months of age and over, and all parturient, and postparturient cattle and domestic bison regardless of age. ()
32. **Wild Bison.** All animals in the genus *Bison* that are not owned by a person. (5-3-03)
33. **Wild Elk.** All elk that are not owned by a person. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

101. OFFICIAL VACCINATION.

Female cattle and domestic bison may be officially vaccinated through one (1) of the following methods: (5-3-03)

01. **Calfhood Vaccination.** Female cattle and domestic bison native to the state of Idaho or imported

into the state of Idaho shall be calfhood vaccinated while not less than one hundred twenty (120) days of age or more than three-hundred sixty-five (365) days of age or be consigned to an approved feedlot, for finish feeding for slaughter only, prior to becoming three hundred sixty-five (365) days of age. (5-3-03)

02. Adult Vaccination. Female cattle or domestic bison may be vaccinated as adults with the approval of the Administrator. ()

a. Female cattle or bison which are three hundred sixty-five (365) days of age or older shall be negative to an official brucellosis test within ten (10) days prior to being vaccinated. ()

b. The Administrator may make exceptions to the provisions of Section 101 of this rule on a case-by-case basis. (4-11-06)

03. Approval for Adult Vaccination. Accredited veterinarians representing owners, or accredited veterinarians authorized to perform services for specifically approved livestock markets who desire to have female cattle or domestic bison, which are over three hundred sixty-five (365) days of age vaccinated shall request approval from the Administrator. The Administrator may grant or deny the request to adult vaccinate the cattle based upon origin, history, age, pregnancy status and the potential of the cattle or domestic bison to spread other diseases of concern, such as tuberculosis or trichomoniasis. Approval or denial of the request to adult vaccinate the cattle shall be made within seven (7) working days of the date of the request. (4-11-06)

04. Adult Vaccinations Required. The Administrator may require animals at risk of becoming infected with brucellosis to be adult vaccinated. The animals shall be vaccinated at intervals and with the vaccinal dose determined by the designated brucellosis epidemiologist. Such vaccination shall be accomplished whether or not the animals have been previously vaccinated. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

121. TEST ELIGIBLE CATTLE AND DOMESTIC BISON IN AN ERADICATION AREA. Test eligible cattle and domestic bison in an eradication area are: (3-30-07)

01. Unvaccinated or Vaccinated with Brucella Abortus Strain RB 51 Vaccine. Intact male and female cattle and domestic bison that are six (6) months of age or older. ()

(BREAK IN CONTINUITY OF SECTIONS)

200. IDAHO APPROVED FEEDLOT. Female cattle and domestic bison that have not been officially vaccinated for brucellosis shall not be fed for slaughter except in Idaho approved feedlots, with no provisions for pasturing or grazing. ()

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.04.21 – RULES GOVERNING THE IMPORTATION OF ANIMALS
DOCKET NO. 02-0421-1901
NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 25-203, 25-305, 25-401, and 25-601, Idaho Code.

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

The first rule change will amend the Extended Validity Equine Certificate to allow participation in an electronic equine program and modify the requirements of the certificate. The second rule change will amend entry permit language to allow for the use of Idaho’s online livestock entry permit database. The third rule change will remove the brucellosis testing requirement for import of domestic cervidae that originate from a state/region that is declared free of brucellosis. This is an unnecessary entry requirement for domestic cervidae producers, as the only remaining reservoir of brucellosis left in the United States is located in Yellowstone Park. IDAPA 02.04.21 was also reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, pages 94-106](#).

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

02.04.21.100.03	More stringent
02.04.21.104-105	Not regulated
02.04.21.108	More stringent
02.04.21.109	Not regulated
02.04.21.111	More stringent
02.04.21.201	More stringent
02.04.21.202	More stringent
02.04.21.210	More stringent
02.04.21.260	Not regulated
02.04.21.300	More stringent

02.04.21.301	More stringent
02.04.21.302	More stringent
02.04.21.500	Not regulated
02.04.21.600	More stringent
02.04.21.601	More stringent
02.04.21.603	More stringent
02.04.21.604	More stringent
02.04.21.605	More stringent
02.04.21.650	More stringent
02.04.21.660-670	More stringent
02.04.21.705-707	More stringent
02.04.21.710	More stringent
02.04.21.720	More stringent

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

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Dr. Scott Leibslle, 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 Sections 25-203, 25-305, 25-401, 25-601, 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 rule change will amend the Extended Validity Equine Certificate to allow participation in an electronic certificate program and modify the requirements of the certificate. The second rule change will amend entry permit language to allow for the use of Idaho's online livestock entry permit database. The third rule change will remove the brucellosis testing requirement for import of domestic cervidae that originate from a state/region that is declared free of brucellosis. This is an unnecessary entry requirement for domestic cervidae producers, as the only remaining reservoir of brucellosis left in the United States is located in Yellowstone Park. IDAPA 02.04.21 was also reviewed for amendment or repeal of non-substantive sections in order to comply with the Red Tape Reduction Act.

IDAHO CODE SECTION 22-101A STATEMENT: This rule is more stringent than federal regulation or regulates an activity not regulated by the federal government in the following sections:

02.04.21.100.03	More stringent
02.04.21.104-105	Not regulated
02.04.21.108	More stringent
02.04.21.108-109	Not regulated
02.04.21.111	More stringent
02.04.21.201	More stringent
02.04.21.202	More stringent
02.04.21.210	More stringent
02.04.21.260	Not regulated
02.04.21.300	More stringent
02.04.21.301	More stringent
02.04.21.302	More stringent
02.04.21.500	Not regulated
02.04.21.600	More stringent
02.04.21.601	More stringent
02.04.21.603	More stringent
02.04.21.604	More stringent
02.04.21.605	More stringent
02.04.21.650	More stringent
02.04.21.660-670	More stringent
02.04.21.705-707	More stringent
02.04.21.710	More stringent
02.04.21.720	More stringent

For a more detailed analysis, please see Rulemaking Record for IDAPA 02-0421-1901.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year 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 June 5, 2019 Idaho Administrative Bulletin, [Vol. 19-6 pgs. 26-27](#). Negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on June 27, 2019. There were several comments received from the meeting attendees entered into the record that were taken into consideration when drafting this proposed rule. Meeting attendees also participated in amending or repealing sections of this rule to comply with the Red Tape Reduction Act.

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 DOCKET NO. 02-0421-1901

004. INCORPORATION BY REFERENCE.

Copies of these documents may be obtained from the Idaho State Department of Agriculture Central Office. IDAPA 02.04.21 incorporates by reference: (4-11-06)

01. The October 1, 2003 Edition of the Brucellosis Eradication Uniform Methods and Rules. This document can be viewed online at https://www.aphis.usda.gov/animal_health/animal_diseases/brucellosis/downloads/umr_bovine_bruc.pdf. (3-29-17)

02. The September 30, 2003 Edition of the Brucellosis in Cervidae: Uniform Methods and Rules. This document can be viewed online at https://www.aphis.usda.gov/animal_health/animal_diseases/brucellosis/downloads/bcervumr.pdf. (3-29-17)

03. The April 1998 Edition of the Swine Brucellosis Control/Eradication: State-Federal-Industry Uniform Methods and Rules. This document can be viewed online at https://www.aphis.usda.gov/animal_health/animal_dis_spec/swine/downloads/sbruumr.pdf. (3-29-17)

04. The Code of Federal Regulations Title 9, Parts 71, 75, 77, 78, 85, 145, 147, and 161, January 1, 2016. This document can be viewed online at http://www.ecfr.gov/cgi-bin/text-idx?SID=9e3e2eff1a42367841dc92eee8d5324d&mc=true&tpl=/ecfrbrowse/Title09/9cfrv1_02.tpl#0. (3-29-17)

05. The January 1, 2005 Edition of the Bovine Tuberculosis Eradication Uniform Methods and Rules. This document can be viewed online at https://www.aphis.usda.gov/animal_health/animal_diseases/tuberculosis/downloads/tb-umr.pdf. (3-29-17)

06. The November 1, 2003 Edition of the Pseudorabies Eradication, State-Federal-Industry Program Standards. This document can be viewed online at http://www.aphis.usda.gov/animal_health/animal_diseases/pseudorabies/downloads/program_stds.pdf. (4-11-06)

07. The January 10, 2007 Edition of the Equine Infectious Anemia: Uniform Methods and Rules. This document can be viewed online at https://www.aphis.usda.gov/vs/nahss/equine/eia/eia_umr_jan_10_2007.pdf.

(3-29-17)

(BREAK IN CONTINUITY OF SECTIONS)

101. CONTENTS OF CERTIFICATES.

All certificates shall provide a written, legible record attesting the animal(s) meet the importation requirements of the state of Idaho. The certificate shall be on an official form of the state of origin, if applicable, be approved by its livestock sanitary official and be issued by an accredited veterinarian. All certificates shall contain the following information: ()

- 01. Name and Address.** Name and address of the consignor and consignee; and (5-3-03)
- 02. Origin of Shipment.** Including city and state; and (5-3-03)
- 03. Final Destination of Shipment.** Including city and state; and (5-3-03)
- 04. Description of Animals.** An accurate description and identification of each animal if required; and (5-3-03)
- 05. Purpose of Shipment.** The purposes for which the animals were shipped, and method of transportation; and (5-3-03)
- 06. Health Status.** The certificate shall indicate the health status of the animals involved including dates and results of inspection and of tests and vaccinations, if any, required by the state of Idaho; and (5-3-03)
- 07. Signature.** The signature of the accredited veterinarian, or state or federal animal health official, conducting the veterinary inspection. (5-3-03)
- 08. Mailing Certificate to Idaho.** The required copies of certificates of veterinary inspection or other approved certificates shall be mailed, within **seven (7)** days of inspection, to the Division of Animal Industries, P.O. Box 7249, Boise, ID 83707. ()
- 09. Period of Certificate Validity.** Certificates of veterinary inspection shall be valid for no longer than thirty (30) days after the date **issued**. ()

102. EXTENDED VALIDITY EQUINE CERTIFICATES.

Equidae from other states may enter the state of Idaho for shows, rides or other equine events and return to the state of origin on an extended validity equine certificate provided there is a written agreement between the Administrator and the chief livestock official of the state of origin **or the provider of an approved electronic extended validity equine certificate system**. ()

- 01. Valid for One Animal.** An extended validity equine certificate shall be valid for only one (1) animal. Each animal shall have a separate certificate. (5-3-03)
- 02. Contents.** Extended validity equine certificates shall contain the following information: name and address of the owner, location at which the animal is stabled, housed, pastured or kept, if different from that of the owner, an accurate description and identification of the animal, date of veterinary inspection, dates and results of EIA or other required tests or vaccinations, if applicable, and signature of inspecting veterinarian. ()
- 03. Period of Validity.** Extended validity equine certificates are valid for no longer than six (6) months from date of veterinary inspection for the certificate. (3-30-07)
- 04. Travel Itinerary.** Recipients of extended validity equine certificates shall submit travel itinerary **information** to the Division of Animal Industries **or electronic certificate provider prior to movement into Idaho or to a new destination within Idaho**. The travel itinerary shall provide a listing of all travel into the state of Idaho,

including travel dates, purpose for travel, and destinations, during the period of validity of the certificate. ()

05. Cancellation. Extended validity equine certificates may be canceled at any time by the Administrator in the event of serious or emergency disease situations or for non-compliance with the provisions of these rules. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

104. IMPORT PERMITS.

Request for permits to import animals, **when applicable**, into the state of Idaho shall be directed to the Division of Animal Industries **online Import Permit System at <https://www.isda.idaho.gov/AnimalImport/> or by telephone (208) 332-8540.** ()

01. Telephone Requests. Import permits may be requested by telephone during office hours as stated in Section 005. ()

02. Contents of a Permit Request. The request for an import permit shall include the following information: (5-3-03)

a. Name, **physical address, and phone number** of the consignor and consignee; ()

b. Number and kind of animals; (5-3-03)

c. Origin of shipments; (5-3-03)

d. Final destination; (5-3-03)

e. Purpose of shipment; (5-3-03)

f. **Date** of shipment; ()

g. Results of any required tests, inspections, or vaccinations; **and** ()

h. **Issuing veterinarian contact information.** ()

03. Timeframe for Requesting a Permit. Permits may be requested no more than seventy-two (72) hours in advance of the shipment of the animals. (5-3-03)

04. Period of Validity. Permits are valid for no longer than fifteen (15) days from the date of issuance unless otherwise specified. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

109. VESICULAR STOMATITIS.

No livestock may enter Idaho from another state if Vesicular Stomatitis has been diagnosed on the premises of origin of the shipment within the last thirty (30) days. (4-11-15)

01. Certificate of Inspection. Any livestock entering Idaho from a state where Vesicular Stomatitis has been diagnosed within the last thirty (30) days shall be accompanied by a certificate of veterinary inspection with the following statement written by the accredited veterinarian on the certificate: "All animals identified on this certificate of veterinary inspection have neither been exposed to Vesicular Stomatitis nor located within an area where Vesicular Stomatitis has been diagnosed." ()

02. Permit for Entry. Livestock from states in which Vesicular Stomatitis has been diagnosed within the last thirty (30) days shall be accompanied by a permit for entry into Idaho. The permit number shall be written on the certificate of veterinary inspection. (5-3-03)

110. GENERAL DUTIES OF CARRIER.

All owners and operators of railroads, trucks, airplanes, or other conveyances shall conform to all rules and statutes of the state of Idaho in transporting or moving any animals into, within or through the state of Idaho. (5-3-03)

01. Duties of Carrier Regarding Certificates of Veterinary Inspection or Permits. All owners and operators of conveyances used in the transportation of animals into or within the state of Idaho shall assure each consignment or shipment is in conformity with the applicable statutes and rules of the state of Idaho, and is accompanied by an official certificate of veterinary inspection, or permit, or by both, where so required. Such certificate of veterinary inspection or permit shall be in the possession of the attendant in charge of the animals. ()

02. Sanitary Condition of Cars, Trucks and Airplanes. All railroad cars, trucks, airplanes, or other conveyances used in the transportation of animals shall be maintained in a clean and sanitary condition. (5-3-03)

03. Disinfection of Conveyances. All owners and operators of conveyances which have been used for movement of animals infected with or exposed to any infectious disease shall have such conveyances thoroughly cleaned and disinfected under official supervision by any accredited veterinarian or state or federal animal health official, at the point of destination or by permit from the sanitary officials, may be moved to some other point for cleaning and disinfecting. ()

(BREAK IN CONTINUITY OF SECTIONS)

200. IMPORTATION OF CATTLE INTO IDAHO.

All cattle that enter the state of Idaho shall possess appropriate official individual identification, if required, and be accompanied by a certificate of veterinary inspection attesting they are free from evidence of any infectious disease, or exposure thereto, and by a permit if required, except: ()

01. Approved Slaughter Establishments. Cattle consigned directly to approved slaughter establishments shall be accompanied by a statement of ownership such as a brand certificate or waybill, and a permit, if required; or (5-3-03)

02. Specifically Approved Livestock Market. Cattle consigned directly to specifically approved livestock markets shall be accompanied by a statement of ownership such as a brand certificate or waybill, and a permit, if required; or (5-3-03)

03. Feedlots Approved by the Administrator. Cattle consigned directly to feedlots approved by the Administrator for conducting veterinary inspections upon the arrival of the cattle. (5-3-03)

04. Post-Entry Inspection. All cattle entering Idaho may be subject to a post-entry inspection by state or federal animal health officials. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

202. WHEN PERMITS ARE REQUIRED FOR CATTLE.

01. Dairy. For all intact male and female cattle of dairy breeds not consigned directly to an approved slaughter establishment, or to a specifically approved livestock market. All dairy cattle shall be officially identified as provided in Section 203 of these rules. (3-29-17)

- 02. Beef Bulls.** All bulls of beef breeds not consigned directly to an approved slaughter establishment, or to a specifically approved livestock market, except intact male calves accompanying their dams. (5-3-03)
- 03. Female Beef Cattle.** All intact female cattle of beef breeds not consigned directly to an approved slaughter establishment or to a specifically approved livestock market that are: (5-3-03)
- a.** From states or areas that are not Brucellosis Class Free; or (5-3-03)
 - b.** Not officially vaccinated pursuant to IDAPA 02.04.20, "Rules Governing Brucellosis," except calves over one hundred twenty (120) days of age accompanying their dam; or (4-11-06)
 - c.** Under one hundred twenty (120) days of age, except calves accompanying their dam. (5-3-03)
- 04. Restricted Areas.** All cattle from areas or states on which Idaho or USDA has imposed restrictions. (5-3-03)
- 05. Domestic Bison.** Domestic bison imported into Idaho shall be in compliance with the same requirements as cattle. ()
- 06. Canadian Cattle and Canadian Domestic Bison.** All cattle and Canadian domestic bison imported into Idaho from Canada, except those imported directly to slaughter, must have an import permit prior to importation. (4-4-13)
- 07. Other.** Cattle of any classification that do not meet other entry requirements. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

210. BRUCELLOSIS VACCINATION REQUIREMENTS.

All intact female cattle entering Idaho shall have been officially vaccinated for brucellosis except: (5-3-03)

- 01. Cattle Consigned to Slaughter.** Female cattle consigned directly to an approved slaughter establishment; or (5-3-03)
- 02. Cattle Consigned to Specifically Approved Livestock Markets.** Female cattle consigned directly to a specifically approved livestock market; or (5-3-03)
- 03. Approved Feedlot.** Female cattle consigned directly to an Idaho approved feedlot, by permit; or (5-3-03)
- 04. Calves.** Female calves less than one hundred twenty (120) days of age by permit; or (5-3-03)
- 05. Vaccination on Arrival.** Non-vaccinated females may, by permit, be consigned to a qualified destination approved by the Administrator to be officially vaccinated on arrival pursuant to IDAPA 02.04.20, "Rules Governing Brucellosis"; or ()
- 06. Show Cattle.** Female cattle may enter Idaho for the purpose of participating in shows or exhibitions, by permit. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

212. TEST ELIGIBLE CATTLE.

Test eligible cattle are: (5-3-03)

01. Unvaccinated or Vaccinated with Brucella Abortus Strain RB 51 Vaccine. All intact male and female cattle, **twelve (12)** months of age or older. ()

02. All Test Eligible Cattle Entering Idaho. All test eligible cattle entering Idaho shall be officially identified on the certificate of veterinary inspection. (5-3-03)

213. -- 219. (RESERVED)

220. GRAZING CATTLE.

Cattle herds moved into Idaho or from Idaho to other states for seasonal grazing periods shall be moved only under special grazing permits issued jointly by the Division of Animal Industries and the chief livestock sanitary official in a state which reciprocates with Idaho in honoring grazing permits. (3-30-07)

01. Grazing Permits. Grazing permits shall be for one (1) specified season only and be issued **prior to movement** on a case-by-case basis. ()

02. Tests. The Administrator, in cooperation with the appropriate agency of the reciprocating state, shall have the authority to impose tuberculosis, brucellosis, trichomoniasis, or other tests on cattle entering for grazing purposes. This test requirement shall be evaluated on an annual basis by the Administrator and the chief livestock sanitary official of the reciprocating state. (4-2-08)

03. Herd Ownership. Cattle herds permitted to move under the provisions of Section 220 shall be established herds. Change of ownership of the herd shall not be allowed while the herd is under the requirements of the grazing permit, and the cattle shall be moved interstate with such certification, identification and testing requirements as the Administrator may require. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

240. TUBERCULOSIS TEST REQUIREMENTS.

Cattle and domestic bison may enter the state of Idaho provided: (5-3-03)

01. Tuberculosis Accredited Free State or Zone. Cattle and bison that originate from a bovine tuberculosis accredited free state or zone, as defined by USDA in Title 9, Part 77, CFR, in which there are no animals or herds infected with or exposed to tuberculosis may be imported upon meeting the following requirements: (4-11-06)

a. Cattle of beef breeds may enter the state without a tuberculosis test. (4-11-06)

b. All sexually intact male and female cattle, six (6) months of age and older, of dairy breeds, shall be officially identified and tested negative for tuberculosis, within sixty (60) days prior to entry into the state of Idaho except intact male and female cattle of dairy breeds consigned directly to a feedlot approved for finish feeding of cattle for slaughter may enter by permit without a tuberculosis test provided the cattle have been individually identified on a certificate of veterinary inspection. ()

c. All sexually intact male and female cattle, six (6) months of age and older, of dairy breeds, may enter Idaho for the purpose of participating in shows or exhibitions, by permit, without a tuberculosis test. (4-11-06)

02. Tuberculosis Accredited Free Herd. Cattle and bison that originate in an accredited tuberculosis free herd in either an accredited free state or zone, a modified accredited advanced state or zone, or a modified accredited state or zone, as defined by USDA in Title 9, Part 77, CFR, and for which both an accredited herd number and date of last tuberculosis test are shown on the certificate of veterinary inspection, may enter the state without a tuberculosis test. (5-3-03)

03. Tuberculosis Modified Accredited Advanced State or Zone. Cattle and bison that originate from a modified accredited advanced state or zone, as defined by USDA in Title 9, Part 77, CFR, and are not known to be

infected with or exposed to tuberculosis, may be imported upon meeting the following requirements: (5-3-03)

a. Steers, spayed heifers, and intact heifers of beef and dairy breeds that are less than fifteen (15) months of age, which are consigned for grazing, or steers, spayed heifers, and intact heifers of beef and dairy breeds that are consigned directly to a feedlot approved for finish feeding of cattle or bison, may enter without individual identification or testing for tuberculosis; and ()

b. All other cattle and bison, except those moving on grazing permits issued by the Administrator under the provisions of Section 220 and those consigned directly to slaughter at an approved slaughter establishment, shall be tested for tuberculosis with negative results within sixty (60) days prior to entry into Idaho. (3-29-17)

c. Tuberculosis testing requirements in Subsection 240.03 may be waived, with administrator-approval, for feeder animals of beef breeds and bison originating from a modified accredited advanced state or zone previously classified as accredited free if the state of origin has had no laboratory confirmed case or other epidemiological evidence of tuberculosis in the previous twelve (12) months and the herd of origin is not under hold order, quarantine, or epidemiological investigation for tuberculosis. (4-7-11)

04. Tuberculosis Modified Accredited State or Zone. Cattle and bison that originate in a modified accredited state or zone, as defined by USDA in Title 9, Part 77, CFR, and which are not known to be infected with or exposed to tuberculosis, may enter Idaho under one (1) of the following conditions: (5-3-03)

a. The cattle and bison are steers, spayed heifers or intact heifers which are consigned directly to a feedlot approved for finish feeding of cattle and bison and that have been individually identified and classified negative on an official tuberculosis test within sixty (60) days prior to entry into Idaho; or ()

b. The cattle and bison are consigned directly to slaughter at an approved slaughter establishment; or (3-29-17)

c. The cattle and bison have been subjected to two (2) official tuberculosis tests, the results of which are negative, the first test shall be a whole herd test, the second test shall be at least sixty (60) days, and no more than six (6) months, after the whole herd test and shall be not more than sixty (60) days prior to entry into Idaho. (5-3-03)

05. Tuberculosis Accredited Preparatory State or Zone. Cattle and bison that originate in an accredited preparatory state or zone, as defined by USDA in Title 9, Part 77, CFR, and which are not known to be infected with or exposed to tuberculosis, may enter Idaho under one (1) of the following conditions: (5-3-03)

a. The cattle and bison are steers, spayed heifers or intact heifers which are consigned directly to a feedlot approved for finish feeding of cattle and bison and that are individually identified and have been classified negative on two (2) official tuberculosis tests conducted at least sixty (60) days, but not more than six (6) months apart, with the second test being conducted not more than sixty (60) days prior to entry into Idaho; or ()

b. The cattle and bison originate in a tuberculosis accredited free herd, are individually identified, and have been tested negative on an official tuberculosis test within sixty (60) days prior to entry into Idaho; or (5-3-03)

c. The cattle and bison are individually identified, are from a herd that has been subjected to a complete tuberculosis herd test with negative results within the past twelve (12) months and the animals being imported have been subjected to two (2) additional official tuberculosis tests with negative results, conducted not less than sixty (60) days apart with the second test being conducted not more than sixty (60) days prior to the date of importation. (5-3-03)

06. Tuberculosis Non-Accredited State or Zone. Cattle and bison that originate in a non-accredited state or zone, as defined by USDA in Title 9, Part 77, CFR, may not enter Idaho except by special permit issued by the administrator and under the conditions specified by the administrator at the time the permit is issued. (5-3-03)

07. Rodeo Stock. All cattle six (6) months of age or older imported into Idaho for rodeo or timed events must have been tested negative for bovine tuberculosis within twelve (12) months prior to importation into Idaho. (4-7-11)

241. -- 259. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

300. EQUIDAE.

All horses, mules, asses and other equidae that are to be transported or moved into the state of Idaho shall be accompanied by an official certificate of veterinary inspection or extended validity equine certificate, from the state of origin, stating that the equidae are free from evidence of any communicable disease and have completed EIA test requirements, except as provided in this section. (4-4-13)

01. EIA Test Requirements. An official EIA test is a blood test conducted by a USDA approved laboratory, within twelve (12) months prior of entry of the equidae into Idaho. (3-30-07)

a. Entry of equidae into Idaho shall not be allowed until the EIA test has been completed and reported negative. Equidae which test positive to the EIA test shall not be permitted entry into Idaho, except by special written permission from the Administrator. (5-3-03)

b. A nursing foal less than six (6) months of age accompanied by its EIA negative dam is exempt from the test requirements. (5-3-03)

02. Working Horses Included on Grazing Permits. "Working horses" used for seasonal ranching purposes may be exempt from the requirements of this section if the horses have been included on a current grazing permit which has received prior approval from the Administrator and the chief livestock official in a state which reciprocates with Idaho in honoring grazing permits. ()

03. Approved Equine Feedlot. Equids imported to be fed for slaughter in an equine feedlot approved by the Administrator may be exempt from EIA test requirements provided: (3-29-17)

a. Horses qualified into the approved facility must be sent directly to slaughter within sixty (60) days; (3-29-17)

b. A distance of no less than two hundred (200) yards is maintained at all times between designated slaughter horses and all other equids; (3-29-17)

c. Feedlot owners maintain complete and accurate records of the disposition of all equids qualified into the approved equine feedlot; and (3-29-17)

d. Feedlot owners annually apply for renewal of approved feedlot status prior to expiration on December 31st of each calendar year. (3-29-17)

04. Reciprocal Agreements. The Administrator may enter into cooperative reciprocal agreements with neighboring states which exempt EIA testing requirements for movement of equidae between the cooperating states. (5-3-03)

301. -- 399. (RESERVED)

400. IMPORTATION OF SWINE.

Swine may enter the state of Idaho provided, they are individually identified by official ear tags or other approved techniques indicating the state and herd of origin, a permit has been issued for their entry by the Division of Animal Industries, and they are accompanied by a certificate of veterinary inspection attesting to the following: (3-30-07)

01. Animals Inspected. All swine have been inspected within thirty (30) days prior to the date of shipment, and that they are free from evidence of all infectious diseases, or known exposure thereto during the preceding sixty (60) days; and ()

- 02. Vaccination.** The swine have not been vaccinated with any pseudorabies vaccine; and (5-3-03)
- 03. Garbage.** The swine have not been fed raw garbage. (5-3-03)
- 04. Slaughter Swine Exceptions.** Swine directly to slaughter that are apparently healthy may enter the state of Idaho without a certificate of veterinary inspection, provided the applicable permit requirements are met and the swine are consigned directly to an approved slaughter establishment, or to a specifically approved livestock market for sale to an approved slaughter establishment. (3-29-17)

(BREAK IN CONTINUITY OF SECTIONS)

500. DOGS AND CATS.

- 01. Dogs.** All dogs imported into the state of Idaho shall be accompanied by an official certificate of veterinary inspection attesting that such dogs are apparently free from any infectious disease. **Dogs three (3) months of age or older shall have been vaccinated for rabies.** Dogs three (3) months of age or older originating from a rabies quarantined area must have a permit from the Division of Animal Industries prior to importation. ()
- 02. Cats.** All cats imported into the state of Idaho shall be accompanied by an official certificate of veterinary inspection attesting that such cats are apparently free from any infectious disease. Cats three (3) months of age or older shall have been vaccinated for rabies. ()
- 03. Permits Required.** The Administrator may require any dog or cat, from an area that has been determined to pose a significant threat of disease, to have an import permit prior to movement into Idaho. (5-3-03)

501. -- 599. (RESERVED)

600. IMPORTATION OF DOMESTIC CERVIDAE.

Domestic cervidae may enter the state of Idaho, by permit, provided: (5-3-03)

- 01. Certificate of Veterinary Inspection.** The cervidae are accompanied by a certificate of veterinary inspection certifying that they have been inspected within thirty (30) days prior to the date of shipment, that they are free from evidence of infectious diseases, or known exposure thereto during the preceding sixty (60) days; and ()
- 02. Meet Testing Requirements.** The cervidae shall meet the testing requirements of Section 601. (5-3-03)
- 03. National CWD Herd Certification Program Participation.** All cervidae must originate from a herd that is in good standing and actively participating in the National CWD Herd Certification Program. (3-20-14)
- 04. Deworming Requirement.** All cervidae, except those consigned directly to slaughter at an approved slaughter establishment, are required to receive anthelmintic, approved for treatment of *P. tenuis*, within thirty (30) days prior to import into Idaho. Treatment must be documented on the certificate of veterinary inspection. (3-29-17)
- 05. *P. tenuis* Statement.** The certificate of veterinary inspection accompanying the cervidae shipment must contain the following written statement from the accredited veterinarian on the certificate: "No cervids identified on this certificate of veterinary inspection have displayed symptoms consistent with *P. tenuis* infection. These cervids have neither been exposed to *P. tenuis* or originated from a premises where *P. tenuis* has been identified." (4-11-15)

601. TESTING REQUIREMENTS.

All cervidae imported into Idaho shall meet the following test requirements: (3-29-17)

01. Brucellosis. Animals six (6) months of age and older **originating from a brucellosis surveillance area or brucellosis high risk area** shall be negative to at least two (2) different official brucellosis tests from a single blood sample, one (1) of which shall be the BAPA/BPAT and the other shall be the FPA, within **sixty (60)** days prior to entry, or the animals shall originate directly from a Brucellosis certified free herd or a brucellosis class free state for cervidae. ()

02. Red Deer Genetic Factor. Elk shall have either tested negative for red deer genetic factor (RDGF) by a laboratory approved by the Division of Animal Industries, or shall have been registered with NAEBA or the Canadian Food Inspection Agency, or a state with an ISDA approved RDGF prevention program. (4-4-13)

03. Tuberculosis. Cervid imports shall comply with all provisions of the “Uniform Methods and Rules – Bovine Tuberculosis Eradication” and Title 9, Part 77 CFR, which is incorporated by reference in Subsection 004.05 of this Chapter. (3-29-17)

04. Exceptions. Domestic cervids consigned directly to slaughter at an approved slaughter establishment. (3-29-17)

(BREAK IN CONTINUITY OF SECTIONS)

702. POULTRY HATCHING EGGS.
All poultry hatching eggs being imported into Idaho shall: (5-3-03)

01. NPIP Flock. Originate from a certified NPIP flock and have a valid VS Form 9-3 accompanying the shipment; or (5-3-03)

02. Negative Birds. Come from birds that have been tested negative to *Salmonella pullorum-typhoid*, *Salmonella enteritidis*, *Mycoplasma synoviae*, and *Mycoplasma gallisepticum* within the past thirty (30) days prior to shipment and the test results for the parent birds shall be recorded on a valid certificate of veterinary inspection issued within the last thirty (30) days, which shall accompany the egg shipment. ()

(BREAK IN CONTINUITY OF SECTIONS)

705. PSITTACINE BIRDS.
Parakeets and other psittacine birds that will not be commercially exchanged in any manner may enter the state of Idaho with a certificate of veterinary inspection. Parakeets and other psittacine birds that are being imported for the purposes of commercial sale or exchange shall have both a permit and a certificate of veterinary inspection. (5-3-03)

706. -- 709. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.23 – RULES GOVERNING COMMERCIAL LIVESTOCK TRUCK WASHING FACILITIES

DOCKET NO. 02-0423-1901

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[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. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 22-103(15) and 22-110, Idaho Code.

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

This pending rule adopts a previously approved and codified chapter under IDAPA 02, rules of the Idaho State Department of Agriculture. This rule establishes standards for the permitting and management of commercial livestock truck washing facilities in Idaho. This rule was reviewed for amendment or repeal of select sections to comply with the Red Tape Reduction Act.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 4, 2019 Idaho Administrative Bulletin, [Vol. 19-9, pages 107-114](#).

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

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

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

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

Dated this 3rd day of October, 2019.

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

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 22-103(15) and 22-110, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than 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. This rule establishes standards for the permitting and management of commercial livestock truck washing facilities in Idaho. This rule was reviewed for amendment or repeal of 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: N/A

IDAHO CODE SECTION 22-101A(1) STATEMENT: This rule in its entirety regulates an activity not regulated by the federal government.

For a more detailed analysis, please see Rulemaking Record for IDAPA 02-0423-1901.

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 02.04.23 regulates commercial livestock truck washing facilities in order to protect human health and the environment. The upper bound risks associated with phosphorus storage and application by Idaho commercial livestock truck washing facilities 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 02.04.23, 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 02.04.23 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 DOCKET NO. 02-0423-1901

02.04.23 – RULES GOVERNING COMMERCIAL LIVESTOCK TRUCK WASHING FACILITIES

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 22-103(15) and 22-110, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.04.23, “Rules Governing Commercial Livestock Truck Washing Facilities.” (5-3-03)

02. Scope. These rules govern the permitting, construction, and management of commercial livestock truck washing facilities. (5-3-03)

002. WRITTEN INTERPRETATIONS.

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

003. ADMINISTRATIVE APPEAL.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (5-3-03)

004. INCORPORATION BY REFERENCE.

Copies of these documents may be obtained from the Idaho State Department of Agriculture central office and the State Law Library. (5-3-03)

01. The 1997 United States Department of Agriculture Natural Resources Conservation Service Agricultural Waste Management Field Handbook, Appendix 10 D. (5-3-03)

- 02. The 2000 American Society of Agricultural Engineers Standard EP393.3.** (5-3-03)
- 03. The 1999 Publication by the United States Department Of Agriculture, Natural Resource Conservation Service, Conservation Practice Standard, Nutrient Management Code 590.** (5-3-03)
- 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/>. (5-3-03)
- 006. IDAHO PUBLIC RECORDS ACT.**
These rules are public records available for inspection and copying at the central office of ISDA and the State Law Library. (5-3-03)
- 007. -- 009. (RESERVED)**
- 010. DEFINITIONS.**
The following definitions apply in the interpretation and enforcement of this chapter. (5-3-03)
- 01. Commercial Livestock Truck Washing Facilities.** Livestock truck washing facilities that charge a fee to wash livestock trucks and trailers, or those facilities where the process wastewater is not regulated pursuant IDAPA 02.04.14 "Rules Governing Dairy Waste," or 02.04.15 "Rules of the Department of Agriculture Governing Beef Cattle Animal Feeding Operations." (5-3-03)
- 02. Compost.** A biologically stable material derived from the biological decomposition of organic matter. (5-3-03)
- 03. Discharge.** Release of process wastewater or manure from a commercial livestock truck washing facility to waters of the state. (5-3-03)
- 04. Land Application.** The spreading on, or incorporation of manure or process wastewater into the soil. (5-3-03)
- 05. Livestock.** Bovidae, ovidae, suidae, and equidae. (5-3-03)
- 06. Livestock Truck Washing Facilities.** Those facilities utilized primarily for washing and cleaning trucks and trailers that haul livestock. (5-3-03)
- 07. Modified.** Structural or management changes, or alterations to the livestock truck washing facility which would require increased storage or containment capacity or such changes, which would alter the function of the wastewater storage or containment facility. (5-3-03)
- 08. Non-Compliance.** A practice or condition that causes an unauthorized discharge or a practice or condition that if left uncorrected will cause an unauthorized discharge. (5-3-03)
- 09. Non-Land Application Season.** The portion of the year during which land application is not allowed pursuant to an approved NMP. (5-3-03)
- 10. Nutrient Management Plan.** A plan prepared in conformance with the nutrient management standard or other equally protective standard for managing the amount, source, placement, form, and timing of the land application of nutrients or soil amendments. (5-3-03)
- 11. Operate.** Washing or cleaning livestock trucks. (5-3-03)
- 12. Operator.** The person who has power or authority to manage, or direct, or has financial control of a

commercial livestock truck washing facility. (5-3-03)

13. Process Wastewater. Any water generated on a commercial livestock truck washing facility that comes into contact with manure, compost, bedding, or feed. (5-3-03)

14. Runoff. Any precipitation that comes into contact with manure, compost, bedding, or feed on a commercial livestock truck washing facility. (5-3-03)

15. Unauthorized Discharge. A discharge of process wastewater or manure from a commercial livestock truck washing facility to surface waters of the state that is not authorized by a National Pollutant Discharge Elimination System permit issued by the United States Environmental Protection Agency. (5-3-03)

16. Wastewater Storage and Containment Facility. That portion of a CLTWF where manure or process wastewater is stored or collected. This includes, but is not limited to, waste collection systems, waste conveyance systems, waste storage ponds, waste treatment lagoons and evaporative ponds. (5-3-03)

17. Waters of the State. All surface and ground water located within the boundaries of the state or boundary streams, rivers and lakes except for private waters as defined in Title 42, Chapter 2, Idaho Code. (5-3-03)

011. ABBREVIATIONS.

01. CLTWF. Commercial Livestock Truck Washing Facility. (5-3-03)

02. FEMA. Federal Emergency Management Agency. (5-3-03)

03. ISDA. Idaho State Department of Agriculture. (5-3-03)

04. NMP. Nutrient Management Plan. (5-3-03)

05. NPDES. National Pollutant Discharge Elimination System. (5-3-03)

06. NRCS. Natural Resources Conservation Service. (5-3-03)

07. USDA. United States Department of Agriculture. (5-3-03)

012. APPLICABILITY.

These rules apply to all CLTWF. (5-3-03)

013. -- 049. (RESERVED)

050. INSPECTIONS.

In order to ascertain compliance with this chapter, the Director shall have reasonable access to: (5-3-03)

01. Inspect Facilities. Inspect any facility or land application site listed in the CLTWF's NMP. (5-3-03)

02. Inspect Records. Inspect, review, or copy any CLTWF's records deemed necessary, during normal business hours. (5-3-03)

051. -- 099. (RESERVED)

100. PERMIT REQUIRED.

No person shall construct or operate a CLTWF without first obtaining a permit to do so from the Director. (5-3-03)

101. APPLICATION FOR PERMIT.

Applications for permits submitted to the Director shall contain the following: (5-3-03)

01. Name, Telephone Number, and Address. The name, telephone number, and address of the owner and operator of the CLTWF. (5-3-03)

02. Physical Address. The physical address of the CLTWF. (5-3-03)

03. Scaled Vicinity Map With Site Location. A detailed sketch of the proposed or existing CLTWF site location, on an aerial photograph if available, which includes the following: (5-3-03)

a. The location of all homes, schools, churches, etc. within a one (1) mile radius of the proposed CLTWF; and (5-3-03)

b. Private and community domestic water wells, irrigation wells, existing monitoring wells, and existing injection wells as documented by Idaho Department of Water Resources or other sources, which are within a one (1) mile radius of the proposed or existing CLTWF; and (5-3-03)

c. Irrigation canals, irrigation laterals, rivers, streams, springs, lakes, reservoirs, and designated wetlands, which are within a one (1) mile radius of the proposed CLTWF; and (5-3-03)

d. Location of all land application sites; and (5-3-03)

e. FEMA flood zones or other appropriate flood data for the CLTWF site and all land application sites. (5-3-03)

04. Scaled Site Plan. A site plan showing all buildings, process wastewater and manure storage areas, piping, and roadways. (5-3-03)

05. Land Application System. A detailed description of the current or proposed management practices and methods used to make land application including: (5-3-03)

a. Timing, frequency, and duration of practices. (5-3-03)

b. Proximity of land application sites to residential and public use areas. (5-3-03)

06. Nutrient Management Plan. A NMP for all land where manure or process wastewater from the CLTWF is land applied. (5-3-03)

102. -- 109. (RESERVED)

110. DURATION OF PERMIT.

Permits issued pursuant to this chapter are valid for a period of two (2) years. ()

111. RENEWAL OF PERMIT.

The operator of a CLTWF shall submit an application to renew the permit to the Director for approval ninety (90) days prior to the expiration of the existing permit. (5-3-03)

112. -- 119. (RESERVED)

120. REVOCATION OF PERMIT.

The Director may revoke the permit of any CLTWF that violates any of the provisions of this Chapter. (5-3-03)

121. -- 199. (RESERVED)

200. UNAUTHORIZED DISCHARGES.

Unauthorized discharges of manure or process wastewater from CLTWF or land application sites owned or controlled by a CLTWF are prohibited. (5-3-03)

201. -- 209. (RESERVED)

210. NOTIFICATION OF DISCHARGE.

Within twenty-four (24) hours of learning of a discharge, the operator of a CLTWF shall verbally notify the Director of such a discharge. (5-3-03)

211. WRITTEN NOTIFICATION.

If the ISDA has not begun a discharge investigation within five (5) days of the verbal notification to the director, the operator shall submit a written report to the Director which includes: (5-3-03)

- 01. A Description of the Discharge.** A description of the flow path to the receiving water body; and (5-3-03)
- 02. Flow Rate.** An estimation of the flow rate and volume discharged; and (5-3-03)
- 03. Dates and Time.** The period of discharge, including dates and times, and if not already corrected, the anticipated time the discharge is expected to continue; and (5-3-03)
- 04. Steps Taken.** Steps taken to reduce, eliminate, and prevent recurrence of the discharge. (5-3-03)

212. -- 299. (RESERVED)

300. WASTEWATER STORAGE AND CONTAINMENT FACILITIES.

All CLTWF shall have wastewater storage and containment facilities designed, constructed, operated, and maintained sufficient to contain: (5-3-03)

- 01. Process Wastewater.** All process wastewater generated on the CLTWF during the non-land application season; and (5-3-03)
- 02. Rainfall.** The runoff from a twenty-five (25) year, twenty-four (24) hour rainfall event; and (5-3-03)
- 03. Winter Precipitation.** Either three (3) inches of runoff from the accumulation of winter precipitation or the amount of runoff from the accumulation of precipitation from a one-in-five (1 in 5) year winter. (5-3-03)

301. -- 309. (RESERVED)

310. CONSTRUCTION REQUIREMENTS.

All CLTWF shall have wastewater storage and containment facilities designed and constructed in accordance with the engineering standards and specifications contained in the Natural Resources Conservation Service Agricultural Waste Management Field Handbook, Appendix 10D or the American Society of Agricultural Engineers Standard EP393.3, or other equally protective standards approved by the Director. (5-3-03)

311. -- 319. (RESERVED)

320. SUBSTANCES ENTERING WASTEWATER STORAGE AND CONTAINMENT FACILITIES.

Only manure and process wastewater from the operation of the CLTWF shall be allowed to enter wastewater storage and containment facilities. The disposal of any other materials into a wastewater storage and containment facility, including, but not limited to oil, grease, heavy metals, chlorinated solvents, and human waste is prohibited. (5-3-03)

321. -- 329. (RESERVED)

330. NUTRIENT MANAGEMENT.

Each CLTWF shall submit, to the Director for approval, a NMP that conforms to the nutrient management standard. (5-3-03)

- 01. Odor.** Each NMP shall address odors generated on the CLTWF, and land application sites. Odors

shall not be generated in excess of odors normally associated with livestock production in Idaho. (5-3-03)

02. Land Application. Each NMP shall include all land to which manure or process wastewater from the CLTWF is land applied. (5-3-03)

03. Duty of Operator. It shall be the duty of the operator of a CLTWF to ensure that the NMP, for any land included in the NMP, is implemented. (5-3-03)

04. Implementation of NMP. Failure to implement and abide by an approved NMP is a violation of this chapter. (5-3-03)

331. -- 359. (RESERVED)

360. NEW CLTWF.

Any new CLTWF shall submit a NMP to the Director for approval with its application for a permit to operate a CLTWF. The Director responds to or approves such NMP within sixty (60) days of submission. ()

361. -- 999. (RESERVED)

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.04.30 – RULES GOVERNING ENVIRONMENTAL AND NUTRIENT MANAGEMENT

DOCKET NO. 02-0430-1903 (NEW CHAPTER)

NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 67-6529F, 37-401, 37-405, 22-4903, 25-4012(2), 37-603(1), 25-3802, and 22-110, Idaho Code.

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

Four rules administered by the ISDA are related to general environmental issues associated with agricultural and livestock facilities. These rules are IDAPA 02.04.16, “Rules Governing Agriculture Odor Management,” IDAPA 02.04.18, “Rules Governing CAFO Site Advisory Team,” IDAPA 02.04.30, “Rules Governing Nutrient Management,” and IDAPA 02.04.31, “Rules Governing Stockpiling of Agricultural Waste.” These rules address the inspection of regulated facilities, regulation of odor, waste stockpiling, nutrient management, and CAFO site approval for regulated facilities and the various environmental factors associated with each. In order to streamline and simplify all rules related to general environmental regulations on agriculture and livestock facilities, the ISDA is proposing to combine all four rules into a single rule titled “02.04.30, Rules Governing Environmental and Nutrient Management.” No substantive changes are being made to the four rules cited above. 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 137-154](#).

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

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

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

Dated this 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 67-6529F, 37-401, 37-405, 22-4903, 25-4012(2), 37-603(1), 25-3802, and 22-110, Idaho Code.

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

PUBLIC HEARING

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

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

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

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

Four rules administered by the ISDA are related to general environmental issues associated with agricultural and livestock facilities. These rules are IDAPA 02.04.16, "Rules Governing Agriculture Odor Management," IDAPA 02.04.18, "Rules Governing CAFO Site Advisory Team," IDAPA 02.04.30, "Rules Governing Nutrient Management," and IDAPA 02.04.31, "Rules Governing Stockpiling of Agricultural Waste." These rules address the inspection of regulated facilities, regulation of odor, waste stockpiling, nutrient management, and CAFO site approval for regulated facilities and the various environmental factors associated with each. In order to streamline and simplify all rules related to general environmental regulations on agriculture and livestock facilities, the ISDA is proposing to combine all four rules into a single rule titled "*02.04.30, Rules Governing Environmental and Nutrient Management.*" No substantive changes are being made to the four rules cited above. All rules were reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act.

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

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

02.04.30.000-999	The entirety of this rule regulates an activity not regulated by the federal government
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FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

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

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

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

1. The 1999 publication by United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590 outlines standards for managing the amount, source, placement, form and timing of the application of nutrients and soil amendments to agricultural fields.
2. The 2001 Best Management Practices listed in the “Idaho Agricultural Pollution Abatement Plan” are recommendations for the control of nonpoint sources of pollution from agriculture that may benefit facilities generating significant odor.
3. The November 1997 publication of the “ASAE Standard EP379.2”, Sections 5 and 6 in their entirety, are construction guidelines for structures built to contain and store nutrients and byproduct.
4. The 2001 NRCS Conservation Practice Standard 317 are guidelines to facilitate an aerobic microbial ecosystem for the decomposition of manure and/or other organic material into a final product that is stable for storage, on farm use and application to land as a soil amendment.
5. The August 1997 University of Idaho, Soil Sampling Bulletin 704 (revised) are requirements and practices for certified soil samplers to accurately collect, process and submit soil for nutrient testing from fields that have receive land applied nutrients.
6. The 2007 publication by United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590 outlines standards for managing the amount, source, placement, form and timing of the application of nutrients and soil amendments to agricultural fields.

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

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

Dated this 3rd day of October, 2019.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0430-1903

02.04.30 – RULES GOVERNING ENVIRONMENTAL AND NUTRIENT MANAGEMENT

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 22-110, 22-4903, 25-3802, 25-4012(2), 37-401(1), 37-405, 37-603(1), 67-6529F(4), Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.04.16, “Rules Governing Environmental and Nutrient Management.” ()

02. Scope. This rule governs the certification process for soil samplers and nutrient management planners, the process for collecting and handling soil samples, the contents of a request to form a CAFO Site Advisory Team, formation of a CAFO Site Advisory Team, development of a site suitability determination, submission of the suitability determination to the appropriate county officials, the management of odor generated on agricultural operations, except beef cattle animal feeding operations and large swine and poultry operations and the stockpiling of agricultural waste at agricultural operations to safeguard and protect animals, man, and the environment. ()

002. -- 103. (RESERVED)

SUBCHAPTER A – NUTRIENT MANAGEMENT

104. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into Subchapter A, Sections 104-203 only: ()

01. August 1997 University of Idaho, Soil Sampling Bulletin 704 (revised). This document can be viewed online at <http://www.extension.uidaho.edu/publishing/pdf/EXT/EXT0704.pdf>. ()

02. Nutrient Management Standard (NMS). ()

a. The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient_management_code_590.pdf. ()

b. The 2007 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/10/june_2007_NRCS_590.pdf. ()

105. -- 109. (RESERVED)

110. DEFINITIONS.

In addition to the definitions found in Sections 22-4904, 25-4002, and 37-604, Idaho Code, the following definitions apply in the interpretation and enforcement of Subchapter A, Sections 104-203 only: ()

01. Certified Soil Sampler. A person who has completed a Department approved soil sampler certification program and has received written certification from the Department. ()

02. Nutrient Management Plan. A plan prepared in conformance with the Nutrient Management Standard for managing the amount, source, placement, form, and timing of the land application of nutrients and soil amendments for plant production. ()

03. Nutrient Management Standard. For dairies and beef cattle animal feeding operations, the Nutrient Management Standard is the 1999 publication by the United States Department of Agriculture Natural Resources Conservation Service Conservation Practice Standard, Nutrient Management Code 590 or other standard approved by the Director. For poultry concentrated animal feeding operations, the Nutrient Management Standard is the 2007 publication by the United States Department of Agriculture Natural Resources Conservation Service Conservation Practice Standard, Nutrient Management Code 590 or other standard approved by the director. ()

04. Operation(s). Animal feeding operation(s). ()

05. Representative Soil Sample. A representative soil sample is a soil sample obtained as outlined by the August 1997 University of Idaho, Soil Sampling Bulletin 704 (revised) or other equivalent method as approved by the Department. ()

06. Resource Concerns. Surface water runoff that leaves the operation from normal storm events, rain or snow, frozen ground or irrigation; and ground water concerns on the operation from a high water table, fractured bedrock, cobbles, gravel, coarse textured soils or other environmental considerations such as tile drains or shallow soils that are conducive for the downward movement of water and associated nutrients. ()

111. ABBREVIATIONS.

The following abbreviations apply in the interpretation and enforcement of Subchapter A, Sections 104-203 only:

01. CNMP. Certified Nutrient Management Planner. ()

02. CSS. Certified Soil Sampler. ()

03. NMP. Nutrient Management Plan. ()

04. NMS. Nutrient Management Standard. ()

05. NRCS. United States Department of Agriculture, Natural Resources Conservation Service. ()

06. SSB. August 1997 University of Idaho Soil Sampling Bulletin 704 (revised). ()

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

112. -- 119. (RESERVED)

120. APPLICABILITY.

These rules apply to nutrient management on the following operations: ()

01. Dairies. All Manufactured Grade and Grade A dairies located in Idaho licensed to sell milk for human consumption, pursuant to Title 37, Chapter 6, Idaho Code. ()

02. Beef Cattle Animal Feeding Operations. All beef cattle animal feeding operations in Idaho required to implement a NMP pursuant to Title 22, Chapter 49 Idaho Code. ()

03. Poultry Concentrated Animal Feeding Operations. All poultry operations required to implement an NMP pursuant to Title 25, Chapter 40, Idaho Code. ()

121. -- 129. (RESERVED)

130. NUTRIENT MANAGEMENT PLANS.

All NMPs required by IDAPA 02.04.14, "Rules Governing Dairy Byproduct," IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," and IDAPA 02.04.32, "Rules Governing Poultry Operations," must be written by nutrient management planners who have been certified by the Department. ()

131. -- 139. (RESERVED)

140. NUTRIENT MANAGEMENT PLANNER CERTIFICATION.

All persons who develop NMPs must be certified through the Department Certification Program. ()

01. Certification. The Nutrient Management Planner Certification will be valid unless revoked by the Department. ()

02. Development. Any person may develop an NMP for his own operation provided the person possesses a valid Nutrient Management Planner Certification issued by the Department. ()

03. Continuing Education. The Department may require a CNMP to complete periodic continuing education training to retain certification. ()

141. REVOCATION OF NUTRIENT MANAGEMENT PLANNER CERTIFICATION.

CNMP Certification may be revoked by the Department if the CNMP: ()

01. Submits Inaccurate Information. Submits NMPs that contain falsified or materially inaccurate information. ()

02. Fails to Submit Plans. Fails to submit an NMP to the ISDA within thirty (30) days after being paid by a producer. ()

03. Fails to Follow Provisions. Fails to meet any requirement in Subchapter A of this rule. ()

142. -- 149. (RESERVED)

150. SOIL SAMPLES.

Dairies, beef cattle operations, and poultry operations implementing nutrient management plans pursuant to IDAPA 02.04.14, "Rules Governing Dairy Byproduct," IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," and IDAPA 02.04.32, "Rules Governing Poultry Operations," must have soil samples collected each year from all fields owned or operated by the dairy, beef, or poultry operation to which livestock waste, manure, or process wastewater from the operation was land applied. In addition, a poultry operation must have soil samples collected each year from all fields owned or operated by the poultry operation to which soil amendments from the operation were land applied. ()

151. SOIL SAMPLE COLLECTION.

01. CSS. All soil samples collected pursuant to this chapter must be collected by a CSS. ()

02. Representative Samples. All soil samples collected by a CSS must be representative samples pursuant to the provisions of the SSB. ()

03. Sampling Depth. The soil samples shall be obtained from depths outlined in each operation's NMP unless soil survey data or site specific situations warrant alternative sampling depths. ()

04. Alternative Sampling Depths. If the CSS determines that an alternative sampling depth is necessary due to resource concerns, the CSS must indicate such deviation in sampling depths on soil samples and laboratory soil sample submission forms. ()

152. SOIL SAMPLE SUBMISSION.

All soil samples collected pursuant to this chapter must be appropriately handled to protect the integrity of the sample and submitted to an approved laboratory by the CSS who collected the soil sample. ()

153. -- 159. (RESERVED)

160. APPROVED LABORATORIES.

Only laboratories that hold a current valid certification from the North American Laboratory Proficiency Testing Program or equivalent method approved by the Department are approved laboratories for the purposes of this chapter.

()

161. RECORDS OF NUTRIENT ANALYSIS.

Owners or operators of facilities who are required to implement NMPs pursuant to IDAPA 02.04.14, "Rules Governing Dairy Byproduct," IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," and IDAPA 02.04.32, "Rules Governing Poultry Operations," must retain records of nutrient analysis for a minimum of five (5) years.

()

01. Complete Records. Records must be complete, readily available, and identified to the fields listed in the facility's NMP.

()

02. Available to the Director. Records must be made available to the director for inspection and copying upon request.

()

162. -- 169. (RESERVED)

170. SOIL SAMPLER CERTIFICATION.

All persons who collect soil samples pursuant to Subchapter A must be certified through the Department Certification Program.

()

01. Certification. The Soil Sampler Certification will be valid unless revoked by the Department.

()

02. Sampling. Any person may sample their own operation as outlined in Subchapter A of these rules provided the person possesses a valid Soil Sampler Certification issued by the Department.

()

03. Continuing Education. The Department may require CSS to complete continuing education training to ensure compliance within the provisions of this chapter.

()

171. REVOCATION OF SOIL SAMPLER CERTIFICATION.

Soil Sampler Certification is subject to revocation by the Department if the Certified Soil Sampler fails to meet the soil sampling criteria set forth in Subchapter A.

()

172. -- 179. (RESERVED)

180. PENALTIES.

Any person violating any of the provisions of Subchapter A may be subject to the penalty provisions of Title 22, Chapter 1 and 49, Title 37, Chapter 4 and 6, and Title 25, Chapter 40, Idaho Code.

()

01. Monetary Penalties. The imposition or computation of monetary penalties shall take into account the seriousness of the violation, good faith efforts to comply with the law, the economic impact of the penalty on the violator and such other matters as justice requires.

()

02. Minor Violations. The Director may issue suitable warnings or other administrative actions for minor violations.

()

181. -- 203. (RESERVED)

SUBCHAPTER B – CAFO SITE ADVISORY TEAM

204. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into Subchapter B, Sections 204-303:

()

01. Nutrient Management Standard (NMS). ()

a. The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/08/nutrient_management_code_590.pdf. ()

b. The 2007 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at https://agri.idaho.gov/main/wp-content/uploads/2017/10/june_2007_NRCS_590.pdf. ()

205. -- 209. (RESERVED)

210. DEFINITIONS.

In addition to the definitions found in Section 67-6529C, Idaho Code, the following definitions apply in the interpretation and enforcement of Subchapter B, Sections 204-303: ()

01. Best Management Practices. Practices, techniques, or measures that are determined by the Department to be a cost-effective and practicable means of preventing or reducing pollutants from point or non-point sources from entering waters of the state and managing odor generated on an agriculture operation to a level associated with accepted agriculture practices. ()

02. Land Application. The spreading on, or incorporation into the soil of agricultural by-products such as manure, process wastewater, compost, cull potatoes, cull onions, or crop residues into the soil primarily for beneficial purposes. ()

03. Nutrient Management Plan. A plan prepared in conformance with the nutrient management standard. ()

04. Nutrient Management Standard. For dairies and beef cattle animal feeding operations, the 1999 publication by the United States Department of Agriculture Natural Resources Conservation Service, Conservation Practice Standard, Nutrient Management Code 590, or other equally protective standard approved by the Director. For poultry concentrated animal feeding operations, the 2007 publication by the United States Department of Agriculture Natural Resources Conservation Practice Standard, Nutrient Management Code 590, or other equally protective standard approved by the Director. ()

05. Odor Management Plan. A site-specific plan approved by the Director to manage odor from a CAFO to a level associated with accepted agricultural practices by utilizing best management practices. ()

211. ABBREVIATIONS.

The following abbreviations apply in the interpretation and enforcement of Subchapter B, Sections 204-303: ()

01. BMP. Best Management Practices. ()

02. CAFO. Concentrated Animal Feeding Operation. ()

03. DEQ. Idaho Department of Environmental Quality. ()

04. FEMA. Federal Emergency Management Agency ()

05. IDWR. Idaho Department of Water Resources. ()

06. NRCS. The United States Department of Agriculture, Natural Resources Conservation Service. ()

07. NMP. Nutrient Management Plan. ()

08. OMP. Odor Management Plan. ()

09. USGS. United States Geological Survey. ()

212. -- 219. (RESERVED)

220. APPLICABILITY.

01. Site for a Proposed CAFO. A CAFO site advisory team shall review and make a site suitability determination for all proposed CAFO sites, as defined in Subchapter B of these rules, submitted by a board of county commissioners pursuant to Subchapter B. ()

02. Sites That Do not Meet the Definition of a CAFO. The Director may form a CAFO site advisory team, as requested by a board of county commissioners, for a site that does not meet the animal numbers in the definition of a CAFO provided that: ()

a. The county demonstrates that the site is in an environmentally sensitive area or is in close proximity to streams, lakes, or other bodies of surface water; or ()

b. The state agencies have personnel and other resources available to conduct the site suitability determination. ()

221. -- 229. (RESERVED)

230. FORMATION OF A SITE ADVISORY TEAM.

A board of county commissioners may request the formation of a CAFO site advisory team to provide a site suitability determination by submitting to the Director a written request supported by the adoption of a resolution by the county. ()

01. Designation of the Team Leader. Upon receipt of a request to form a site advisory team, the Director shall designate a team leader. ()

02. Notification of Team Members. The team leader shall provide a copy of the request to form a site advisory team to DEQ and IDWR. After receiving notification, DEQ and IDWR shall notify the Team Leader of their respective representatives to the team. ()

231. -- 239. (RESERVED)

240. CAFO SITE ADVISORY TEAMS

01. Site for a Proposed CAFO. A CAFO site advisory team shall review and make a site suitability determination for all proposed CAFO sites, as defined in Subchapter B, submitted by a board of county commissioners pursuant to this Subchapter. ()

02. Sites That Do not Meet the Definition of a CAFO. The Director may form a CAFO site advisory team, as requested by a board of county commissioners, for a site that does not meet the animal numbers in the definition of a CAFO provided that: ()

a. The county demonstrates that the site is in an environmentally sensitive area or is in close proximity to streams, lakes, or other bodies of surface water; or ()

b. The state agencies have personnel and other resources available to conduct the site suitability determination. ()

241. FORMATION OF A SITE ADVISORY TEAM.

A board of county commissioners may request the formation of a CAFO site advisory team to provide a site

suitability determination by submitting to the Director a written request supported by the adoption of a resolution by the county. ()

01. Designation of the Team Leader. Upon receipt of a request to form a site advisory team, the Director will designate a team leader. ()

02. Notification of Team Members. The team leader will provide a copy of the request to form a site advisory team to DEQ and IDWR. After receiving notification, DEQ and IDWR will notify the Team Leader of their respective representatives to the team. ()

242. CONTENTS OF A REQUEST TO FORM A SITE ADVISORY TEAM.
The information contained in a request includes, but is not limited to, the following: ()

01. County Definition of CAFO. The county's definition of "CAFO" as set forth in any applicable county ordinance. ()

02. Legal Description and Address. Legal description and address of the proposed CAFO. ()

03. One-Time Unit Capacity. The one-time animal capacity of the proposed CAFO. ()

04. Type of Animals. The type of animals to be confined at the proposed CAFO. ()

05. Water Right Information. All requests shall include one (1) of the following: ()

a. Evidence that a valid water right exists to supply adequate water for the operation of the proposed CAFO; or ()

b. A copy of an application for a permit to appropriate water that has been filed with IDWR, that if approved, will supply adequate water for operation of the proposed CAFO; or ()

c. A copy of an application to change the point of diversion, place, period, and nature of use of an existing water right that has been filed with IDWR, that if approved, will supply adequate water for the operation of the proposed CAFO. ()

06. Vicinity Map with Site Location. A detailed sketch of the proposed CAFO site location, on an aerial photograph if available, that includes the following: ()

a. Building locations; ()

b. Waste storage facilities and general areas for any land application including a narrative description of the waste system; ()

c. FEMA flood zones or other appropriate flood data for the proposed CAFO site and land application sites owned or leased by the applicant; ()

d. Private and community domestic water wells, irrigation wells, existing monitoring wells, and existing injection wells as documented by IDWR or other sources, including the associated well logs if available, that are within a one (1) mile radius of the proposed CAFO; ()

e. Irrigation canals, irrigation laterals, rivers, streams, springs, lakes, reservoirs, and designated wetlands, that are within a one (1) mile radius of the proposed CAFO. ()

07. Site Characterization. A characterization of the proposed CAFO site and any land application sites owned or leased by the applicant, that includes the following information, if available: ()

a. Annual precipitation and prevailing wind direction as contained in the Idaho Waste Management Guidelines, 1997; ()

- b.** Soil characteristics from NRCS; ()
- c.** Hydrologic characteristics from IDWR and USGS including: ()
 - i.** Depth to first water yielding zone and first encountered water; ()
 - ii.** Direction of ground water movement and gradient; ()
 - iii.** Sources and estimates of recharge; ()
 - iv.** Seasonal variations in water level and recharge characteristics; ()
 - v.** Susceptibility to contamination; and ()
 - vi.** Relation of ground water to surface water. ()
- d.** Water quality data from DEQ, the Department, IDWR, or USGS, including: ()
 - i.** Microorganisms; ()
 - ii.** Nutrients; and ()
 - iii.** Pharmaceuticals and organic compounds. ()

08. Required OMPs or NMPs. Any OMPs or NMPs that are required by the county to be submitted by the applicant at the time of application. ()

243. -- 249. (RESERVED)

250. REVIEW OF REQUEST.

Team members review the information provided in the request for the formation of a site advisory team to determine if it includes the required elements of Section 242. ()

01. Insufficient Information. If the team determines that the information provided by the county does not include the required elements of Section 242, the team leader will contact the county and request additional information. ()

02. Sufficient Information. When the team has determined that the information submitted by the county contains the required elements of Section 242, the team leader schedules an onsite review of the information with the team members. The team leader informs the county requesting the formation of the site advisory team of the date and time of the onsite review and the county may have a representative present. ()

251. -- 259. (RESERVED)

260. SITE SUITABILITY DETERMINATION.

Within thirty (30) days of receiving a request for the formation of a CAFO site advisory team that includes the required elements of Section 242, the team develops and submits to the county a site suitability determination, based on the elements of Section 242 or other relevant information, that contains: ()

01. Risk Category. A determination of an environmental risk category: high, moderate; low; or insufficient information to make a determination; ()

02. Description of Factors. A description of the factors that contribute to the environmental risks; ()

03. Mitigation. Any possible mitigation of the environmental risks. ()

261. -- 303. (RESERVED)

SUBCHAPTER C – AGRICULTURE ODOR MANAGEMENT

304. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into Subchapter C, Sections 304-409 only: ()

- 01. Idaho NRCS Nutrient Management Standard 590, June 1999. ()**
- 02. Best Management Practices listed in the “Idaho Agricultural Pollution Abatement Plan,” August 2001. ()**
- 03. ASAE Standard EP379.2 Sections 5 and 6 in their entirety, November 1997. ()**
- 04. NRCS Conservation Practice Standard 317, March 2001. ()**

305. -- 309. (RESERVED)

310. DEFINITIONS.

In addition to the definitions found in Section 25-3803, Idaho Code, the following definitions apply in the interpretation and enforcement of Subchapter C, Sections 304-409: ()

- 01. Animal.** Livestock and agricultural animals. ()
- 02. BAT.** The best application of science that is accessible and obtainable to achieve a desired objective. ()
- 03. Beef Cattle.** All cattle except those located on a dairy farm that have been permitted by the Idaho State Department of Agriculture pursuant to IDAPA 02.04.14, “Rules Governing Dairy Byproduct.” ()
- 04. Beef Cattle Animal Feeding Operation.** Those operations regulated pursuant to IDAPA 02.04.15, “Rules Governing Beef Cattle Animal Feeding Operations.” ()
- 05. Compost.** A biologically stable material derived from the biological decomposition of organic matter. ()
- 06. Composting.** The aerobic degradation of manure and other organic material to a biologically stable form. ()
- 07. Land Application.** The spreading on, or incorporation into the soil of agricultural by-products including, but not limited to, manure, wastewater, compost, cull potatoes, cull onions, or crop residues. ()
- 08. Large Swine And Poultry Operations.** Those swine operations regulated pursuant to IDAPA 58.01.09, “Rules Regulating Swine Facilities,” and those poultry operations regulated pursuant to IDAPA 02.04.32, “Rules Governing Poultry Operations.” ()
- 09. Liquid-Solid Separation.** The removal of solid manure from water through mechanical or settling means. ()
- 10. Waste Collection and Conveyance Systems.** The areas and systems used in the collection and transfer of manure from the point of generation to the wastewater storage and containment facilities, prior to land application. ()
- 11. Wastewater Treatment.** A process by which wastewater is treated through aerobic or anaerobic degradation or other means. ()

311. ABBREVIATIONS.

The following abbreviations apply in the interpretation and enforcement of Subchapter C, Sections 304-409: ()

- 01. ASAE.** American Society of Agricultural Engineers. ()
- 02. BAT.** Best Available Technology. ()
- 03. BMP.** Best Management Practice. ()
- 04. DEQ.** Idaho Department of Environmental Quality. ()
- 05. NMP.** Nutrient Management Plan. ()
- 06. NOV.** Notice Of Violation. ()
- 07. NRCS.** The United States Department of Agriculture, Natural Resources Conservation Service. ()
- 08. OMP.** Odor Management Plan. ()

312. -- 319. (RESERVED)

320. ACCEPTED AGRICULTURAL PRACTICES.

Management practices conducted in accordance with applicable laws, rules and best management practices, as referenced in Subsections 320.01 and 320.02, or in the absence of referenced best management practices, management practices conducted in a manner that demonstrates reasonable efforts to minimize odors, are considered accepted agricultural practices for purposes of Subchapter C. ()

- 01. Applicable Rules.** The following are applicable rules for the purpose of Section 320: ()
 - a.** IDAPA 02.04.14, "Rules Governing Dairy Byproduct." ()
 - b.** IDAPA 02.03.03, "Rules Governing Pesticide and Chemigation Use and Application." ()
 - c.** IDAPA 02.06.17, "Rules Concerning Disposal of Cull Onion and Potatoes." ()
 - d.** IDAPA 02.04.17, "Rules Governing Dead Animal Movement and Disposal." ()
- 02. Applicable Best Management Practices.** The following practices, or other management practices approved by the Director that are conducted in a manner that demonstrates reasonable efforts to minimize odors are considered accepted agricultural practices for purposes of this rule. ()
 - a.** Idaho NRCS Nutrient Management Standard 590, June 1999. ()
 - b.** Best Management Practices listed in the "Idaho Agricultural Pollution Abatement Plan," August 2001. ()
 - c.** "Control of Manure Odors," ASAE Standard EP379.2 Sections 5 and 6 in their entirety, November 1997. ()
 - d.** "Composting Facility," NRCS Conservation Practice Standard 317, March 2001. ()
- 03. Excess Odors.** An agricultural operation using an accepted agricultural practice that generates odors in excess of levels normally associated with such practice, as determined by the Department on a site specific basis, shall develop and submit an odor management plan to the Director in accordance with Section 360. ()

321. -- 329. (RESERVED)

330. APPLICABILITY.

Subchapter C applies to all agricultural operations, except: ()

01. Beef Cattle. Beef cattle animal feeding operations regulated pursuant to IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations." ()

02. Swine and Poultry. Large swine operations regulated pursuant to IDAPA 58.01.09, "Rules Regulating Swine Facilities," and large poultry operations regulated pursuant to IDAPA 02.04.32, "Rules Governing Poultry Operations." ()

331. -- 339. (RESERVED)

340. LIQUID WASTE SYSTEMS.

No person shall begin construction of a new or modified liquid waste system prior to approval of such system by the Director. ()

01. Department Review. The Director may order the construction to cease if the construction of a new or modified liquid waste system has commenced prior to the Director's approval. In doing so, the Director will consider a review and assessment of such systems made by Department staff. ()

02. Design Requirements. All new or modified liquid waste systems shall be designed by licensed professional engineers, approved in writing by the Director, and constructed in accordance with standards and specifications approved by the Director for management of odors. ()

a. If construction is commenced prior to the Director's written approval, the Director may order construction activities to be ceased. ()

b. Material deviations from the approved plans and specifications are not allowed without the prior written approval of the director. ()

c. Within thirty (30) days of completion of construction, alteration or modification of any new or modified liquid waste system, complete and accurate plans and specifications depicting the actual construction, alteration, or modification performed must be submitted by the operator to the Director. ()

d. If construction does not materially deviate from the plans approved by the Director, a statement to that effect shall be filed by the agricultural operation with the Director. ()

341. STANDARDS AND SPECIFICATIONS FOR LIQUID WASTE SYSTEMS.

All new or modified liquid waste systems shall be designed and constructed in accordance with applicable laws and rules, and for the purpose of managing odors. The Director shall require techniques and management practices as standards and specifications of liquid waste systems for the management of odors. These techniques and management practices may include but are not be limited to the following: ()

01. Wastewater Storage and Containment Facilities: ()

a. Liquid-solid separation. ()

b. Wastewater treatment. ()

c. Use of chemical or biological additives. ()

d. Dilution of wastewater. ()

e. Impermeable or permeable storage covers. ()

- f. Biofilters. ()
- g. Enhancing dispersion. ()
- h. Location of wastewater discharge into storage and containment facilities. ()
- 02. Wastewater Collection and Conveyance Systems.** ()
- a. Wastewater Treatment. ()
- b. Use of chemical or biological additives. ()
- c. Dilution of wastewater. ()
- d. Impermeable or permeable covers of collection areas. ()
- e. Timing of collection and conveyance system operation. ()
- f. Frequency and duration of collection and conveyance system operation. ()
- g. Enhancing dispersion. ()

342. -- 349. (RESERVED)

350. INSPECTIONS.

The Director or Director's designee is authorized to enter and inspect any agricultural operation, and during normal business hours have access to or copy any facility records deemed necessary to ensure compliance with Subchapter C of these rules. ()

351. -- 359. (RESERVED)

360. ODOR MANAGEMENT PLANS.

OMPs shall be designed to work in conjunction with any required NMP and shall be submitted to the Director in writing, and upon approval by the Director, signed by owner or operator of the agricultural operation. ()

01. OMP Development. Within sixty (60) days of receiving a NOV for a first time violation, the owner or operator of the agriculture operation receiving the NOV shall submit to the Director an OMP for approval. ()

02. Interim Measures. The Department will work with the owner or operator of an agriculture operation that has received a NOV for a first time violation to identify interim measures that can be implemented in a timely manner to begin the process of reducing odors while the OMP is being developed. ()

03. Department Approval. The Director will approve, reject, or request additional information within thirty (30) days of receiving an OMP from the owner or operator of an agricultural operation deemed to have committed a first time violation and provide to the owner or operator of the agricultural operation the approval, rejection, or request for additional information in writing. ()

a. If the Director rejects an OMP or requests additional information, the owner or operator of the agricultural operation shall submit to the Director the additional information or a rewritten OMP that address the reasons for the rejection within thirty (30) days of receiving written notification from the Director. ()

b. Within fifteen (15) days of receiving the additional information or a rewritten OMP, the Director will approve or reject the OMP. If the OMP is rejected, the Director may issue a subsequent violation under Section 371 of these rules, and assess the penalty provisions specified in Subchapter C, Section 370 of these rules, and Section 25-3808, Idaho Code. ()

c. The Director may, on a case by case basis, grant extensions to the deadlines contained in *this* section. ()

04. Implementation. OMPs shall be implemented as approved by the Director. ()

05. Review of OMP. The Department will review OMPs no less than annually for three (3) years after the Director approves the OMP. If the Department determines an approved OMP has not reduced odors to a level associated with accepted agricultural practices after a reasonable period of time, as determined by the Department, the Department will review the OMP with the owner or operator of the agricultural operation and adjust the OMP to meet the goals of the Agriculture Odor Management Act. ()

361. CONTENTS OF AN ODOR MANAGEMENT PLAN.

Contents of an OMP for an agricultural operation may include, but are not limited to the following: ()

01. Owner's Name. Name and telephone number of the owner of the operation. ()

02. Address. Physical address of the operation. ()

03. Location. County in which the operation is located. ()

04. Operation Description. A description of the operation that includes, as applicable: ()

a. Type of operation. ()

b. General description of operation. ()

c. Number and type of any animals including age groups. ()

d. Any plans for expansion. ()

e. Type of housing used related to age groups of animals. ()

f. General description of nearby residential areas, public use areas, and pertinent agricultural operations. ()

g. Type of crop and number of acres grown. ()

05. Scaled Vicinity Map. A map that shall include all residences, public use areas, roads, general topography of the area, and other pertinent agricultural operations within a two (2) mile radius of the facility. ()

06. Manure Management System. A detailed description of the present manure handling systems including timing, frequency, duration, volumes, dimensions, and flow rates where applicable for the following: ()

a. Manure cleaning systems. ()

b. Manure transfer systems. ()

c. Manure separation systems. ()

07. Scaled Site Plan. A site plan showing all buildings, housing facilities, waste/manure storage areas, piping, feed storage areas, and roadways. ()

08. Land Application System. A detailed description of the present management practices and methods used to make land application including: ()

a. Timing, frequency, and duration of practices. ()

b. Proximity of land application sites to residential and public use areas. ()

09. Climatic Data. A description of the typical climatic conditions for a minimum period of two (2) years that exist in the geographical area of the operation or have been recorded on-site for the operation including:

()

a. Wind Speed and direction(s). ()

b. Temperature range. ()

c. Relative humidity range. ()

d. Precipitation data. ()

10. Facility Odor Sources. A list of all primary odor sources located on the operation with a general ranking of low, moderate, or high with respect to overall odor production along with an explanation of why it is listed as a source and the reasoning for the overall ranking. ()

11. Tiered Implementation. A three-tier process shall be used to reduce odor production from the facility with each tier containing a list of the primary BMPs and BATs that are going to be implemented by the facility. For each tier BMP and BAT listed, the plan shall include, but not be limited to: ()

a. Process of how the BMP or BAT will be designed or managed. ()

b. Implementation schedule that defines when the BMP or BAT will be implemented on the facility and justification for why this time frame was chosen. ()

c. Monitoring program that will be implemented to evaluate the effectiveness of the BMP or BAT, with quantitative or qualitative reduction goals. ()

12. Public Involvement. This section shall describe how the public in the area of the facility will be involved in the implementation or evaluation of the OMP. ()

13. Timeframe for Review of OMP. A designated period of time when each tier of the plan will be evaluated to determine if further implementation is necessary, how each tier will be evaluated, which Department staff will conduct the review, and a period of time in which the agricultural operation will attain full compliance with the plan. ()

362. -- 369. (RESERVED)

370. FIRST TIME VIOLATIONS.

If the Department determines that an agricultural operation is generating odors in excess of levels of odors normally associated with accepted agricultural practices, the agricultural operations shall be deemed to have committed a first time violation of Subchapter C. The Department shall require agricultural operations deemed to have committed a first time violation to cooperate with the Department to develop and submit to the Director for approval an OMP. ()

()

371. SUBSEQUENT VIOLATIONS.

Agricultural operations have committed a subsequent violation if the operation is determined to have committed a subsequent violation within three (3) years, has failed to comply with a required OMP, or the Department determines that the owner or operator of the agriculture operation has not cooperated with the Department by failing to submit an OMP that meets Department approval requirements. ()

()

372. EXCEPTIONS.

Events contemplated in Section 25-3805(7), Idaho Code, are not considered violations of this subchapter. Section 25-3805, Idaho Code, is applicable whether or not an agricultural operation is required to have an OMP. ()

()

373. -- 409. (RESERVED)

SUBCHAPTER D – STOCKPILING OF AGRICULTURAL WASTE

410. DEFINITIONS.

The following definitions apply in the interpretation and enforcement of Subchapter D, Sections 410-999: ()

01. Agricultural Operation. Facilities that generate or receive and stockpile agricultural waste and that are not regulated under IDAPA 02.04.14, “Rules Governing Dairy Byproduct,” or IDAPA 02.04.15, “Rules Governing Beef Cattle Animal Feeding Operations.” ()

02. Agricultural Waste. Agricultural waste means livestock waste. ()

03. Duration. The length of time agricultural waste is stockpiled. ()

04. Dwelling. The house, residence, abode, or other structure where a person lives. ()

05. Livestock. Bovidae, suidae, equidae, captive cervidae, camelidae, ratitidae, gallinaceous birds, and captive waterfowl. ()

06. Livestock Waste. Manure that may also contain bedding, spilled feed, feathers, water, or soil. It also includes wastes not particularly associated with manure, such as milking center or washing wastes, milk, feed leachate, or livestock carcasses or parts thereof. ()

07. Non-Compliance. A practice or facility condition that does not comply with Section 22-110, Idaho Code, or the provisions of these rules. ()

08. Public Highway. All highways open to public use in the state, whether maintained by the state or by any county, highway district, city, or other political subdivision. ()

09. Responsible Party. A person who generates or receives and stockpiles agricultural waste on property the person owns, leases, or otherwise has permission to use as a stockpile site. ()

10. Setbacks for a Stockpile Site. The distance from a stockpile site to a location identified in Section 420 of Subchapter D. ()

11. Stockpile Staging Site. A physical area where stockpiling occurs for a duration of no longer than thirty (30) days. ()

12. Stockpile Site. A physical location where agricultural waste is stockpiled for a duration of more than thirty (30) days and that stockpiles more than fifty (50) cubic yards of agricultural waste. ()

13. Stockpiling. The accumulation of agricultural waste on an agricultural operation. ()

14. Surface Waters of the State. All accumulations of surface water, natural and artificial, public and private, or parts thereof that are wholly or partially within, that flow through or border upon the state. ()

411. -- 419. (RESERVED)

420. SETBACKS FOR STOCKPILE SITES.

Stockpile sites at agricultural operations must meet the following setback requirements. ()

01. Setback Distances. Stockpile sites shall maintain the following setbacks: ()

a. Three hundred (300) feet from a non-responsible party’s dwelling. ()

b. Five hundred (500) feet from a hospital, church, or school. ()

- c.** One hundred (100) feet from a domestic or irrigation well. ()
- d.** One hundred (100) feet from surface waters of the State. ()
- e.** Fifty (50) feet from a public highway. ()
- 02. Responsible Party’s Dwellings.** Stockpile sites do not have setbacks from a responsible party’s dwelling or dwellings owned by the responsible party. ()
- 03. Stockpile Staging Sites.** Stockpile staging sites are not subject to the setbacks set forth in Subchapter D. ()
- 421. -- 999. (RESERVED)**

IDAPA 02.06 – IDAHO HONEY COMMISSION

DOCKET NO. 02-0616-1900

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 22-2808, Idaho Code.

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

This pending rule adopts and re-publishes the following existing and previously approved and codified chapter under IDAPA 02, rules of the Idaho Honey Commission:

IDAPA 02.06

- 02.06.16, *Rules Governing Honey Standards*

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 June 19, 2019 Idaho Administrative Bulletin, [Vol. 19-6SE, pages 525 to 528](#). The Commission considered the Red Tape Reduction Act and the continued efforts to clarify and streamline the rules. Minor housekeeping edits are intended simplify existing language, and reduce or eliminate unnecessary restrictions.

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 rule, contact Rick Waitley, (208) 888-0988.

Dated this 1st day of November, 2019.

Rick Waitley, Administrator
Idaho Honey 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 Section 22-2808, 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 Honey Commission

IDAPA 02

02.06.16, *Rules Governing Honey Standards*, modifies Section 010; eliminates Section 024

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 rules apply to all honey produced by honey bees from nectar and covers all styles of honey presentation that are processed and ultimately intended for direct consumption, and to all honey packed, processed or intended for sale in bulk containers as honey that may be repacked for retail sale or for sale or use as an ingredient in other foods. The expiration of these rules would hamper the ability of the state of Idaho from adequately controlling honey standards and would allow honey substitutes and/or imitations to flood the market without affirming that the product is not 100% honey.

FEE SUMMARY: This rulemaking does not impose a fee or charge.

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 Rick Waitley, Administrator, (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 22nd day of May, 2019.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0616-1900

02.06.16 – RULES GOVERNING HONEY STANDARDS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 22-2808, Idaho Code. (4-4-13)

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is IDAPA 02.06.16, “Rules Governing Honey Standards. (4-4-13)

02. **Scope.** These rules apply to all honey produced by honey bees from nectar and covers all styles of honey presentation that are processed and ultimately intended for direct consumption, and to all honey packed, processed or intended for sale in bulk containers as honey that may be repacked for retail sale or for sale or use as an ingredient in other foods. (4-4-13)

002. – 003. (RESERVED)

004. INCORPORATION BY REFERENCE.

01. **United States Standards for Grades of Extracted Honey, Effective Date May 23, 1985.** The United States Standards for Grades of Extracted Honey adopted by the Agriculture Marketing Service, United States Department of Agriculture effective May 23, 1985 are hereby adopted for the purposes of this rule for extracted honey grades. See Section 016 of this rule. A copy of such federal standards is available at the following USDA Website <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELDEV3011895>. (4-4-13)

005. -- 009. (RESERVED)

010. DEFINITIONS.

The Department adopts the definitions set forth in Section 22-2803, Idaho Code. In addition, as used in this chapter, the following definitions apply: (4-4-13)

01. **Air Bubble.** The small visible pockets of air in suspension that may be numerous in the honey and contribute to the lack of clarity in filtered style. (4-4-13)

02. **Bees.** Honey-producing insects of the genus *Apis* and includes the adults, eggs, larvae, pupae or other immature stages thereof. (4-4-13)

03. **Comb.** The wax-like cellular structure that bees use for retaining their brood or as storage for pollen and honey. (4-4-13)

04. **Crystallize.** The spontaneous solidification of the natural glucose content from solution as the monohydrate. (4-4-13)

05. **Floral Source.** The flower from which the bees gather nectar to make honey. (4-4-13)

06. **Food.** (4-4-13)

a. Articles used for food or drink, including ice, for human consumption or food for dogs and cats; (4-4-13)

b. Chewing gum; and (4-4-13)

c. Articles used for components of any such article. (4-4-13)

07. **Food Additive.** Any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component of or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food. It also includes any source of radiation intended for any such use, if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures or experience based on common use in food to be safe under the conditions of its intended use. 'Food additive' does not include: (4-4-13)

- a. A pesticide chemical in or on a raw agricultural commodity; (4-4-13)
- b. A pesticide chemical to the extent that it is intended for use, or is used in the production, storage or transportation of any raw agricultural commodity; or (4-4-13)
- c. A color additive. (4-4-13)
- 08. Granulate.** The initial formation of crystals in honey. (4-4-13)
- 09. Honey.** The natural sweet substance produced by bees resulting from the harvest of plant nectar or plant secretions that has been collected and transformed by the deposition, dehydration, and storage in comb to ripen and mature. (4-4-13)
- 10. Pollen Grain.** The granular, dust-like microspores that bees gather from flowers. Pollen grains in suspension contribute to the lack of clarity in filtered style. (4-4-13)
- 011. COMPLAINT PROCESS.**
 - 01. Complaint Contents.** Complaints shall be directed to the department, in writing, and contain the following information: (4-4-13)
 - a. The name, address and contact information of the complainants; and (4-4-13)
 - b. The location and brand name of the product which is the subject of complaint. (4-4-13)
 - 02. Initial Review.** The department will forward written complaints to the commission for initial review. (4-4-13)
 - 03. Sampling and Analysis.** Upon review, the commission may request the department to acquire an official sample of the product, in accordance with Title 22, Chapter 28, Idaho Code, and send it to an analytical laboratory that possesses the ability to analyze honey for adulteration, or other testing deemed appropriate in accordance with the nature of the complaint. The laboratory analysis will be reviewed by the commission and the department for compliance with Title 22, Chapter 28, Idaho Code, and these rules. (4-4-13)
 - 04. Violations.** If, after investigation, the commission and the department find that a violation of title 22, Chapter 28, Idaho Code and/or these rules has occurred the commission and the department shall confer and agree on an appropriate course of action as authorized by Section(s) 22-2811 or 22-2812, Idaho Code. (4-4-13)
- 012. -- 014. (RESERVED)**
- 015. STANDARDS OF IDENTITY - HONEY.**

Honey sold as such shall not have added to it any food additives, nor any other additions be made other than honey. It shall not have begun to ferment or effervesce and no pollen or constituent unique to honey may be removed except where unavoidable in the removal of foreign matter. (4-4-13)

 - 01. Treatments.** Chemical or biochemical treatments shall not be used to influence honey crystallization. (4-4-13)
 - 02. Moisture Content.** Honey shall not have a moisture content exceeding twenty-three percent (23%). (4-4-13)
 - 03. Sugars Content.** (4-4-13)
 - a. The ratio of fructose to glucose shall be greater than zero point nine (0.9). (4-4-13)
 - b. Fructose and glucose (Sum of Both) shall not be less than 60g/100g. (4-4-13)

- c. Sucrose content for honey not listed below shall not be more than 5g/100g. (4-4-13)
- i. Honey from Alfalfa (*Medicago sativa*), Citrus spp., False Acacia (*Robinia pseudoacacia*), French Honeysuckle (*Hedysarum*), Menzies Banksia (*Banksia menziesii*), Red Gum (*Eucalyptus camaldulensis*), Leatherwood (*Eucryphia lucida*), and Eucryphia milligani shall have sucrose levels not to exceed 10g/100g. (4-4-13)
- ii. Honey from Lavender (*Lavandula* spp.) and Borage (*Borago officinalis*) shall have sucrose levels not to exceed 15g/100g. (4-4-13)

04. Name of the Food. Products conforming to the standard of identity as adopted in this rule are designated “honey”. Foods containing honey and any flavoring, spice, or other added ingredient or honey that is processed in such a way that materially changes the flavor, color, viscosity or other material characteristics of pure honey, shall be distinguished from honey in the food name by declaration of the food additive or modification. (4-4-13)

a. Honey may be designated according to floral or plant source if it comes predominately from that particular source and has the organoleptic and physicochemical properties corresponding with that origin. (4-4-13)

b. Where honey has been designated according to floral or plant source, as stated in Paragraph 015.04.a., then the common name or the botanical name of the floral source is used in conjunction with or joined with the word “honey”. (4-4-13)

c. Honey may be designated according to the following styles, which style shall be declared on packaging: (4-4-13)

- i. “Honey” - this is honey in liquid or crystalline state or a mixture of the two (2); (4-4-13)
- ii. “Comb Honey” - this is honey stored by bees in the cells of freshly built brood-less combs and which is sold in sealed whole combs or sections of such combs. (4-4-13)
- iii. “Cut Comb in Honey,” “Honey with Comb,” or “Chunk Honey” - this is honey containing one (1) or more pieces of comb honey. (4-4-13)

016. TYPES AND STYLES OF HONEY.

01. Extracted Honey. Honey that has been separated from the comb by centrifugal force, gravity, straining, or other means. It is identified in the following types: (4-4-13)

- a. Liquid Honey. Honey that is free of visible crystals; (4-4-13)
- b. Crystallized Honey. Honey that is solidly granulated or crystallized, irrespective of whether candied, fondant, creamed or spread types of crystallized honey; and (4-4-13)
- c. Partially Crystallized Honey. Honey that is a mixture of liquid honey and crystallized honey. (4-4-13)

02. Styles. Extracted honey styles are: (4-4-13)

- a. Filtered Honey. Honey of any type defined in these standards that has been filtered to the extent that all or most of the fine particles, pollen grains, air bubbles, or other materials normally found in suspension, have been removed. Honey shall not be filtered to less than one point zero (1.0) micron. (4-4-13)
- b. Strained Honey. Honey of any type defined in these standards that has been strained to the extent that most of the particles, including comb, propolis, or other defects normally found in honey, have been removed. Pollen grains, small air bubbles, and very fine particles are not normally removed from strained honey. (4-4-13)
- c. Unfiltered/Unstrained - Unfiltered/Unstrained Honey. Honey that has not been filtered or strained

by United States Standards for Grades of Extracted honey and may include extracted or non-extracted honey.

(4-4-13)

d. Raw Honey. Honey that has not been pasteurized.

(4-4-13)

017. -- 022. (RESERVED)

023. MISBRANDING.

Food labeled as a honey product, but not meeting the provisions of this rule may be subject to a stop sale order as authorized under Section 22-2812, Idaho Code.

(4-4-13)

024. -- 999. (RESERVED)

IDAPA 29 – IDAHO POTATO COMMISSION

DOCKET NO. 29-0000-1900

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

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

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 22-1205 and 22-1207, Idaho Code.

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

This pending rule adopts and re-publishes the following existing and previously approved and codified chapter promulgated as a proposed rule under this docket number under IDAPA 29, rules of the Idaho Potato Commission:

IDAPA 29

- 29.01.01, *Rules of Procedure of the Idaho Potato Commission*

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 5128–5140**.

The pending rule adopts the updated and streamlined rules that were previously in 29.01.01 and 29.01.02, while deferring to the rules of procedure of the Attorney General when possible.

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 rule, contact Patrick Kole at (208) 514-4208 or Patrick.Kole@potato.idaho.gov.

Dated this 24th day of July, 2019.

Patrick Kole, VP Legal and Government Affairs
Idaho Potato Commission
661 S. Rivershore Ln., Ste. 230
P.O. Box 1670
Eagle, ID 83616
Phone: (208) 514-4208
Fax: (208) 334-2274

**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 22-1205 and 22-1207, 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 29, rules of the Idaho Potato Commission (IPC).

IDAPA 29

- 29.01.01, *Rules of Procedure of the Idaho Potato Commission - updated and streamlined to include rules that were previously in 29.01.01 and 29.01.02, while deferring to the rules of procedure of the Attorney General when possible.*

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. Without these rules in place, the IPC cannot bring administrative proceedings to protect the IPC's trademarks and certification marks and undertake necessary enforcement actions relating to the infringement of these marks; we will not have any requirements for packaging and container branding and not be able to offer the industry guidance or outline how to protect the Idaho brand; and we will not have a written explanation of the methodology by which IPC taxes are assessed and collected.

FEE SUMMARY: This rulemaking does not impose a fee or charge.

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 Patrick Kole at (208) 514-4208 or Patrick.Kole@potato.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 of June, 2019.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 29-0000-1900

IDAPA 29 – IDAHO POTATO COMMISSION

29.01.01 – RULES OF THE IDAHO POTATO COMMISSION

000. LEGAL AUTHORITY.

These rules are adopted under the general legal authority of the Idaho Potato Commission Law, Chapter 12, Title 22, Idaho Code. ()

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is IDAPA 29.01.01, “Rules of the Idaho Potato Commission.” ()

02. **Scope.** These rules govern payment of taxes to the Idaho Potato Commission (the Commission); records to be kept by growers, dealers, handlers, shippers, processors, container manufacturers, and out-of-state repackers of Idaho® potatoes; use of Certification Marks and Trademarks owned or administered by the Commission; branding of individual potatoes, state brand grade and packing requirements, reporting, labeling and revocation, and additional labeling requirements. These rules govern all procedure before the Idaho Potato Commission (the Commission). ()

002. (RESERVED)

003. ADMINISTRATIVE PROCEEDINGS AND APPEALS.

Administrative proceedings and appeals are administered by the Commission in accordance with the “Idaho Rules of Administrative Procedure of the Attorney General.” IDAPA 04.11.01, Subchapter B - Contested Cases, Sections 100 through 800, which for the purpose of Section 22-1201 et seq., Idaho Code, will be known as Rules of Practice and Procedure of the Idaho Potato Commission Governing Contested Cases. Whenever these rules address the same subject matter as IDAPA 04.11.01, the specific provisions of these rules govern. There are no provisions for administrative appeals within the Commission under these rules of procedure, except that under Sections 202 and 203 a presiding officer may in the presiding officer's discretion refer a ruling on evidence or a motion to the full Commission. ()

004. -- 010. (RESERVED)

010. DEFINITIONS.

The terms defined in Section 22-1204, Idaho Code, apply to this chapter. In addition, the following terms are defined as follows: ()

01. **Primary Channel of Trade.** Potatoes are deemed to be delivered for shipment into the primary channel of trade when any such potatoes are sold or delivered for shipment, or delivered for canning and/or processing into by-products. ()

011. -- 099. (RESERVED)

100. GENERAL.

01. **Potato Tax.** All potatoes grown in Idaho, no matter how grown (i.e. by conventional, organic, or other methods) and no matter what variety (i.e. russet, red, yellow, specialty, or other variety) are subject to the potato tax imposed by Section 22-1211, Idaho Code. ()

02. **Potato Tax Base Rate and Additional Tax.** A base tax of four cents (\$0.04) per hundredweight is imposed by statute on all potatoes grown in Idaho. In addition, an additional tax of eleven cents (\$0.11) per hundredweight may be imposed upon a determination by at least two-thirds (2/3) of commission members that the anticipated expenditures for the fiscal year following the year in which the determination is made will exceed the anticipated tax revenues to be collected from the four cents (\$0.04) base tax rate. ()

03. **Potato Tax Due Date and Responsible Party.** The potato tax is due when potatoes are first handled in the primary channels of trade and must be paid not later than the fifteenth day of the next month. The first person selling or otherwise delivering potatoes into primary channels of trade is responsible for and must pay the full

potato tax. However, if the first person is a dealer or shipper handling potatoes grown by another, he may charge back to the person he acquired the potatoes from sixty percent (60%) of the potato tax. The charge back does not reduce the first person's tax liability due to the commission. ()

04. Growers', Dealers', Handlers', Shippers', Processors', Container Manufacturers', and Out-of-State Repackers' Records. Idaho Potato Commission Tax Report Forms - Audits - Inspections. ()

a. Every dealer or handler including out-of-state repackers shall keep a complete and accurate record of all potatoes handled in the primary channels of trade in such form as the Commission or their designee prescribes. ()

b. In addition to such other information that the Executive Director, duly authorized agent, representative or employee requires, each grower, dealer, handler, shipper, processor, container manufacturer, and out-of-state repacker shall keep records that segregates purchases and sales of Idaho® potatoes by calendar month; records of inventories of Idaho® potatoes by calendar month; and records of inventories of containers bearing the registered Certification Marks of the Commission by calendar month. Such records shall be preserved for a minimum period of two (2) years and be open to inspection at any time upon written or oral request or demand by the Commission or its duly authorized agents, representatives, or employees. ()

c. The Commission's duly authorized agent, representative or employee may enter upon the premises of any grower, dealer, handler, out-of-state repacker, container manufacturer, processor or any other license agreement holder of Idaho® potatoes and examine or cause to be examined any books, papers, records, ledgers, purchase journals, sales journals, electronically and/or magnetically recorded data, computers and computer records or memoranda bearing upon the amount of taxes payable or the correct usage of any Idaho Trade or Certification Mark, and to secure any other information directly or indirectly concerned with the enforcement of Chapter 12, Title 22, Idaho Code, all rules adopted pursuant thereto and all licensing agreements entered into with the Commission. The Commission's duly authorized agents, representatives or employees may also inspect and take samples of any potatoes, potato products or containers from the premises used by a grower, dealer, handler, shipper, processor, container manufacturer, or out-of-state repacker. Regular audits shall be routinely performed by the Commission or its duly authorized agents, representatives, or employees to assure adherence with these rules. In addition, compliance audits may take place at any time. For further requirements see Section 22-1212, Idaho Code. ()

05. Calculation of Tax Due. All first handlers of Idaho® Grown potatoes shall pay the total tax due on all potatoes handled by them on a net weight basis. Net weight shall be determined by subtracting from the gross scale weight the dirt, rock, other foreign material only, and potatoes that are not used for human consumption. The amount of tax due is the tax rate currently imposed pursuant to Section 100.03 multiplied by the net hundredweight (cwt). The following diagram illustrates the manner in which the formula is to be applied:

Gross Scale Weight	Less	Dirt, rock, other foreign material, and potatoes not used for human consumption	=	Net CWT (Hundred-weight) upon which tax is due	X	Tax Rate	=	Tax Amount Due
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06. Tax Reports to Be Made by Growers, Dealers, Handlers, Shippers and Processors. A report on a form approved by the Commission, showing total weight handled for a given period of time and the Idaho Potato Commission tax due are to be sent to the Idaho Potato Commission office with the tax payment. These reports are to be made on forms furnished by the Commission and show such information as the Commission may require. ()

101. (RESERVED)

102. CERTIFICATION MARKS FOR IDAHO® POTATO CONTAINERS.

01. Containers. All potatoes grown in Idaho and packed or repacked in containers in or outside of the state of Idaho shall be in containers printed, labeled or stenciled in a plain and legible manner with one (1) of the

Commission's registered Certification Marks, and a "GROWN IN IDAHO®" Certification Mark. An exact reproduction of the Commission's Certification Marks appears in appendix A. Certification Marks may not be stamped on any Idaho® potato container without a temporary written variance. No container may use a "Check Off" box format for state of origin. All containers must use Idaho specific approved produce code identification numbers, where the same have been obtained and approved. No container of Idaho® potatoes or potato products may be manufactured or used without prior written approval of the Commission or its employee. No Seal, Trademark, Certification Mark, brand, or similar device used to promote potatoes not grown in Idaho can be placed on a container. ()

a. Upon written application, the Idaho Potato Commission may grant a variance from these rules for special purpose shipments for charity, certified seed, experimentation and processing. If a variance is granted, the applicant shall comply with all terms and conditions of such variance. If applicable, the application shall be accompanied by a valid Certificate of Privilege issued by the Idaho and Eastern Oregon Potato Committee, and the applicant shall furnish copies of all of the reports required by the Idaho and Eastern Oregon Potato Committee to the Idaho Potato Commission. ()

02. Marks. No person, firm or corporation packing or repacking potatoes or potato products outside of the state of Idaho shall use any of the Commission's Certification Marks on any containers of potatoes or potato products packed or repacked outside the state of Idaho unless they have first executed an agreement for the use of the Certification Marks with the Idaho Potato Commission, and unless they are actually packing or repacking in such containers of Idaho grown potatoes or potato products made from Idaho grown potatoes. ()

03. Agreement. No person, including without limitation manufacturers, container manufacturers, growers, shippers, processors and repackers, shall use or reproduce any of the Commission's Certification Marks on any container without first executing an agreement for the use of the marks with the Idaho Potato Commission. ()

04. Recognition. Whenever the "GROWN IN IDAHO®," "IDAHO®," or other Certification Marks are used, recognition must be given that the marks are registered under the appropriate Federal statute. This recognition must be: by printing a legible capital "R" inside a circle ®, immediately after the word "IDAHO" or where designated by a duly authorized employee of the Commission. ()

05. No Certification Mark. No Certification Mark may be incorporated into any private label, brand, or seal but shall be portrayed without embellishment as shown in appendix A. ()

06. Not Incorporated. The word "IDAHO®," cannot be incorporated into any private label, brand, or seal unless such label, brand, or seal was registered with the U.S. Patent Office prior to January 1, 1966. ()

07. Size. A Certification Mark shall be used on the front of a one hundred (100) pound sack type container, that is not less than five (5) inches in diameter or width and not placed closer than two (2) inches from the bottom of said container. Any Certification Mark used on the rear of a one hundred (100) pound sack type container, it shall not be less than twelve (12) inches in diameter or width. The marks may also be used on both the front and back of one hundred (100) pound sack type containers, if placed as indicated and in the sizes indicated. ()

08. Limitation of Use. On fifty (50) pound sack type containers, a Certification Mark shall be used as on the one hundred (100) pound containers, but in proportionate sizes. ()

09. Other Type Containers. On all sack type containers of less than fifty (50) pounds, a Certification Mark shall appear plainly visible on the front of the containers in relative proportion to brands, labels, or other printed matter thereon, but not less than two and one quarter (2 1/4) inches in diameter or width. ()

10. Box Type Containers. ()

a. On all box type containers in which U.S. No. 1 grade Idaho® Potatoes will be packed, a Certification Mark shall be located on the front and back panels of the container that is not less than a width measurement of three and one half (3 1/2) inches and a length measurement of five and one half (5 1/2) inches so placed as to be plainly visible. Unless an approved product traceability sticker is used, the top one and three quarters

(1 3/4) inches of the carton shall contain no preprinting on all four (4) sides of the container. The container shall be packed with an approved box bottom bearing Idaho® Potato Certification Marks as specified by the commission. ()

b. On all box type containers in which number two (2) grade Idaho® Potatoes will be packed, packing is permitted only when the following requirements are met: ()

i. The container must be manufactured in a kraft, or non-colored cardboard material and may either be of a single or double piece construction that uses a box bottom bearing Idaho® Potato Certification Marks as specified by the commission; ()

ii. The rectangular “Grown in Idaho®” certification mark shall be placed on each side and end panel of the container, with a width measurement of three and one-half (3 1/2) inches and length measurement of five and one-half (5 1/2) inches as shown in Appendix B; ()

iii. The certification mark “Idaho® Potatoes” shall be printed on all four (4) sides of the container in one (1) inch lettering in the locations shown in Appendix B; ()

iv. The words “U.S. NO. 2” shall be printed on all four (4) sides of the container in one (1) inch lettering in the locations shown in Appendix B and on one (1) of the top flaps of the container; ()

v. The top one and three quarters (1 3/4) inches of the carton shall contain no preprinting on all four (4) sides of the container; ()

vi. One (1) of the elongated top flaps shall contain the “Grown in Idaho®” certification mark with a width of three and one-half (3 1/2) inches and length of five and one-half (5 1/2) inches, together with the certification mark “Idaho® Potatoes” in one (1) inch height and the words “U.S. NO. 2” in one (1) inch height; ()

vii. Product code identification numbers on containers bearing the certification marks shall use Idaho specific codes where the same have been obtained and approved; and ()

viii. All other requirements regarding container packaging set forth in these rules and the license agreements of the Idaho Potato Commission apply to the use of this type of container. ()

11. Tote Bin Type. On all tote bin type containers, Certification Marks must be used on the front of said container but may be used elsewhere and shall not be less than twelve (12) inches in diameter or width. ()

12. Identity of Commodity. All containers bearing the marks shall specify the identity of the commodity contained therein and the name and place of business of the manufacturer, packer, licensee, or distributor of the commodity. Containers which do not comply with the rules of the Idaho Potato Commission cannot be used by any grower, dealer, handler, shipper, processor, or out-of-state repacker for any potatoes or potato products subject to these rules. ()

13. Words Printed. All potatoes grown in Idaho and packed or repacked in Idaho shall have the words “PACKED IN IDAHO” printed on the container. ()

14. Sack Type Containers -- Fifty Pounds or Over. On all sack type containers for fifty (50) pounds or over the words “PACKED IN IDAHO” shall be located on the front lower half of the container but not closer than six (6) inches to the bottom thereof. ()

15. Sack Type Containers -- Less Than Fifty Pounds. On all sack type containers containing less than fifty (50) pounds of potatoes the words “PACKED IN IDAHO” may be placed anywhere on the container so as to be plainly visible. ()

16. Location of Words. On all box type containers the words “PACKED IN IDAHO” may be located on the ends, sides or top of the container but shall be so placed as to be plainly visible. ()

17. Colors. All marks when used and the words “PACKED IN IDAHO” shall be in color or colors in contrast with the color of the container. ()

18. Use. Only in connection with potatoes and potato products grown within the state of Idaho may growers, handlers, shippers, processors, and packers use the name “IDAHO®” in any mark, label or stencil applied to containers for such produce and products. The growers, dealers, handlers, shippers, processors, and packers of potatoes within the state of Idaho are not precluded from processing, packing, and shipping potatoes grown outside the state of Idaho so long as such potatoes are not misrepresented or misbranded as Idaho® Potatoes. ()

19. Compulsory Printing. Printing of the mark “GROWN IN IDAHO®” and the words “PACKED IN IDAHO” is compulsory on all potato containers printed or contracted for after December 1, 1964. ()

20. Idahos. The word “IDAHOS” cannot be used on any container for potatoes, potato products, or on any other printing or advertising material or correspondence used to identify or promote Idaho potatoes. ()

21. Exemption. Only shipments of certified seed potatoes to destinations outside of the state of Idaho are exempt from this rule. ()

22. Other Rules. Other rules on containers, grade, and size are covered under Title 22, Chapter 9, Idaho Code, and applicable marketing orders. ()

103. BRANDING, AND GRADE AND PACKAGING REQUIREMENTS OF STATE BRAND.

01. Branding or Marking of Individual IDAHO® Potatoes. ()

a. Idaho® potatoes are considered to be branded when they are individually marked or identified as such. The methods of branding shall include: marking of individual potatoes by ink, heat, light, labeling, stickering, or puncturing and such other methods as may from time to time be authorized by the Idaho Potato Commission. ()

b. The certification mark “Idaho®” shall be one (1) inch in length and one-quarter (1/4) inch in height unless prior Idaho Potato Commission written approval is secured and granted for any variance. ()

c. The purchase or the leasing or use of branding machines shall be entirely voluntary. ()

d. There are no limitations on the size and type of containers in which branded potatoes may be packed as long as they meet the licensing requirements of Section 102. ()

e. Grade for branding shall be U.S. No. 1 or better (as defined in the U.S. Standards effective March 27, 1991) and not less than two (2) inches in diameter or four (4) ounces in weight. ()

f. Only Certification Marks owned or administered by the Idaho Potato Commission may be branded on potatoes grown in Idaho unless prior Idaho Potato Commission approval in writing is secured and granted for the use of additional words or designs. ()

g. The operation of branding the word “Idaho®” upon potatoes may be carried on only by licensees of the Idaho Potato Commission, and only upon such terms and conditions that will insure that only Idaho grown potatoes are branded as such. ()

h. All varieties of potatoes grown in Idaho may be so branded. ()

i. No person, firm, or corporation may brand the word “Idaho®” on potatoes or sell machinery for the purpose of branding potatoes with any of the Idaho certification marks unless granted the right to do so by written agreement with the Idaho Potato Commission. ()

j. Branded potatoes must use Idaho specific, approved produce code identification numbers, where

the same have been obtained and approved. ()

k. On all branded potatoes using a standard size sticker, the Certification Mark “Idaho® Potatoes” shall be printed in eight (8) point type and the Certification Mark “Grown in Idaho®” shall be printed with a minimum height of eight point one hundred twenty-nine (8.129) mm and minimum width of five point thirty-seven (5.37) mm. ()

02. State Brand Grade and Packaging Requirements. Idaho® potatoes shall meet all requirements of U.S. Extra No. 1 as defined in the U.S. Standards for Grades of Potatoes, March 27, 1991, with the following additions or exceptions: ()

a. Mature. ()

b. Fairly well shaped. Defined as excluding the lower limits of such classification. ()

c. Appearance as related to russetting where at least seventy five percent (75%) of the surface of the individual potato is moderately netted which means the netting will be solid net-like in appearance. ()

d. Size is two and one eighth (2-1/8) inches in diameter and four (4) ounces minimum, eleven (11) ounces maximum. Each lot shall meet the specifications of Size A as defined in 51.1545, Table I(2) of the Standards. ()

e. Tolerances for grade defects are defined in 51.1546(a)(2), for U.S. No. 1. ()

f. All other tolerances and definitions of the Standards apply. ()

03. Packaging. ()

a. Container Requirement: Maximum size not to exceed twenty (20) pounds. ()

b. Miscellaneous Requirements: Use of the state brand packaging is entirely voluntary. Potatoes grown and packed in Idaho may be packed in state branded containers. All varieties of potatoes grown in Idaho may be packed in state branded containers. The Commission shall require a written agreement between the Idaho Potato Commission and Idaho packers for the use of the state brand. All state branded containers shall be Federal-State inspected. ()

c. The grade used in state brand containers shall be as defined in Subsection 103.03 and “Idaho State Code 22-908” and “Federal-State Inspected” shall be printed in three-eighths (3/8) inch or larger letters, on front of each container. ()

d. If individually branded Idaho® potatoes are packaged in state brand packaging they must meet grade requirements as defined in Subsection 103.03. ()

104. REPORTING, LABELING, AND REVOCATION.

01. Reporting of Fresh Shipments of Potatoes. ()

a. Growers, dealers, handlers, and shippers of Idaho® potatoes are required to report shipments of all fresh Idaho grown potatoes giving information as to weight, packaging, and type of receiver. Reporting forms will be furnished for this information by the Idaho Potato Commission. All information received will be kept in strictest confidence as to individual shipments. ()

b. The purpose of this information is to provide the Idaho Potato Commission with information concerning fresh potato sales in geographical marketing areas receiving Idaho® grown potatoes to enable it to design and evaluate advertising and marketing programs. ()

02. Labeling Containers of Fresh Idaho® Potatoes to Indicate the Variety Packed Therein.

()

a. All potatoes grown in Idaho that are packed or repacked in containers in Idaho, or packed or repacked in containers outside of Idaho under an out-of-state packer license agreement, shall be packed or repacked in containers that are printed, marked, labeled or stenciled in a plain and legible manner that identifies the variety packed therein. ()

b. No container may contain more than one (1) variety of potato, except as provided by written variance for non-russet variety potatoes. ()

c. Any mark, label, or stencil necessitated by this rule shall be conspicuously placed on the container and printed in a color contrasting with the background and be of a size determined as follows: ()

i. For bags and other containers holding one hundred (100) pounds of potatoes or more, the letters of the label shall be at least one (1) inch high; ()

ii. For bags and other containers holding fifty (50) pounds or more of potatoes, but less than one hundred (100) pounds, the letters of the label shall be at least three-fourths (3/4) of an inch high; ()

iii. For bags or other containers holding less than fifty (50) pounds of potatoes, the letters on the label shall be five-eighths (5/8) of an inch high. ()

iv. For containers holding less than five (5) potatoes, the letter on the label shall be in a size that is plainly visible and approved in writing by a duly authorized Commission employee. ()

d. Any person seeking authorization to comply with this rule in a manner other than that specified herein shall submit a written request to the Commission for approval of an alternate method of compliance, which alternative method shall be in substantial compliance with these standards and which request describes in detail the proposed alternate method of compliance. The Executive Director of the Commission or a duly authorized employee shall have the authority and responsibility to review such requests and rule whether they should be allowed, said determination to be based upon a finding that such alternate method has nor has not been shown to comply with the purpose and meet the standards of this rule; provided, any interested person may request in writing that the Commission grant a de novo review of said request at a subsequent regular meeting deemed convenient and appropriate by the Commission, which request the Commission may in its discretion, either grant or deny. ()

e. No potatoes grown in Idaho and packed or repacked in containers in Idaho, or packed or repacked outside of Idaho under an out-of-state packer license agreement, shall carry or be printed, labeled, or identified with the GROWN IN IDAHO® or IDAHO® marks unless this rule is fully complied with as respects said potatoes. ()

f. All persons growing potatoes in Idaho or packing or repacking in containers in Idaho, or packing or repacking outside of Idaho under an out-of-state license agreement, shall have the affirmative duty to avoid and refrain from ambiguous or misleading practices, acts or representations and to eliminate the same in marketing or handling Idaho® potatoes if such practice does or is likely to mislead any purchaser or consumer regarding the quality and variety of Idaho® potatoes purchased by such buyer or consumer. ()

03. Revocation of Right to Use Marks. ()

a. The Commission has the power to revoke the right of any person, firm, or corporation to use any of the Commission's Certification Marks or Trademarks if such person, firm, or corporation fails to pay any advertising tax assessed against it, license fees, or royalties, or fails to comply with any of these rules or applicable law. ()

b. Revocation of the right to use the Certification Marks or Trademarks shall not occur without reasonable notice of at least twenty (20) days and an opportunity for a hearing pursuant to Section 67-5242, Idaho Code. However, where the Executive Director determines that expedited action is necessary, he may: ()

i. Issue an order immediately suspending the right to use any of the Commission's Certification

Marks or Trademarks pending a hearing, which hearing shall be held within twenty (20) days from the Executive Director's order; or ()

ii. Issue an order conditioning the right to use any of the Commission's Certification Marks or Trademarks pending a hearing, which hearing shall be held within twenty (20) days from the Executive Director's order; or ()

iii. Issue an order directing that the user of the Commission's Certification Marks or Trademarks show cause why the right to use the marks should not be suspended or conditioned further. ()

105. ADDITIONAL LABELING REQUIREMENTS, POTATOES.

01. Disclosure of Geographic Growing Area of Origin upon Potato Containers. All persons doing business in the state of Idaho are required to disclose the growing area of origin upon all potato containers in accordance with this rule and Section 22-1207, Idaho Code. For purposes of these rules, doing business in the state of Idaho means the doing of any of the acts which would subject a person to the jurisdiction of the courts of this state or defined in Section 5-514, Idaho Code. ()

02. Compliance for Idaho Grown Potatoes. For potatoes "Grown in Idaho®," this rule is complied with by meeting the requirements of Section 102. ()

03. Compliance for Private Brands or Labels That Reference Idaho Locations. Private brands or labels of containers that reference an Idaho location, geographical feature, or otherwise attempt to imply directly or indirectly that a container of potatoes contains potatoes grown in Idaho when in fact such is not the case are prohibited. ()

04. Compliance for Private Brands or Labels That Do Not Reference Idaho Locations. Private brands or labels that do not reference an Idaho location, geographical feature, or otherwise attempt to imply directly or indirectly that a container of potatoes contains potatoes grown in Idaho when in fact such is not the case, but only have an Idaho address on the container, are permitted when approved by the commission or its designee. This rule is complied with by private brands or labels that: ()

a. Meet the requirements of Subsection 104.02.c.; ()

b. State the geographical state of origin of the potatoes followed by the word "potatoes"; and ()

c. The lettering size of the Idaho address on the container does not exceed one-half (1/2) inch for containers fifty (50) pounds or greater and one-quarter (1/4) inch for containers less than fifty (50) pounds. For example, for potatoes grown in the state of Washington, the phrase "Washington potatoes" would comply with these rules. The use of the words "Grown in" preceding the state of origin is prohibited. ()

106. ADDITIONAL REQUIREMENTS FOR USE OF TRADEMARKS.

01. Marks. No person is permitted to use any trademark owned or administered by the Commission unless authorized to do so pursuant to a license agreement entered into with the Commission. ()

02. Agreement. Trademarks owned or administered by the Commission may be licensed for use as permitted under federal and state law and as authorized by the Commission. ()

03. Royalty Fees. In addition to license fees, the Commission may set royalty fees for the use of trademarks. ()

04. Reproductions. Exact reproductions of the trademarks owned or administered by the Commission are set forth in Appendix C of these rules. ()

107. -- 199. (RESERVED)

SUBCHAPTER A - RULES OF PROCEDURE
(Sections 200 through 204)

200. INFORMAL FILES MAY BE INVESTIGATIVE RECORDS.

Files created by the Commission and its staff in response to informal inquiries or complaints are investigatory records within the meaning of Sections 74-101(6) and 74-107(16), Idaho Code, are generally exempt from disclosure according to the standards of Sections 74-101 through 74-108, Idaho Code, but are available under Section 74-113, Idaho Code, to the customer, applicant, licensee, etc., that are the subjects of the investigation. ()

201. SUBPOENAS.

01. Issuance of Subpoenas. Upon a motion in writing, or upon a Commissioner's own initiative without motion, any Commissioner or the Commission's Secretary may issue subpoenas: ()

a. Requiring the attendance of a witness from any place in Idaho; ()

b. The production of documents from any place in Idaho; or ()

c. The production of any books, accounts, papers, or records of a licensee kept within or without Idaho to any designated place of deposition, hearing, or investigation for the purpose of taking testimony or examining documents before the Commission, a Commissioner or hearing examiner. ()

02. Witness or Travel Fees. A party's motion to issue a subpoena must be accompanied by a statement that the party will tender to the subpoenaed person all fees necessitated by statute and rules if the subpoena is issued. ()

03. Motions to Quash. The Commission upon motion to quash made promptly, and in any event, before the time to comply with the subpoena, may: ()

a. Quash the subpoena; or ()

b. Condition denial of the motion to quash upon reasonable terms. ()

202. RULINGS AT HEARINGS.

The presiding officer rules on motions presented at hearing. The presiding officer's rulings may be reviewed by the full Commission in determining the matter on its merits. In extraordinary circumstances, the presiding officer may refer or defer these matters to the full Commission for determination. ()

203. OBJECTIONS -- OFFERS OF PROOF.





Grounds for objection to the admission or exclusion of evidence must be stated briefly at the time the evidence is offered. Formal exceptions to rulings admitting or excluding evidence are unnecessary and need not be taken. An offer of proof for the record consists of a statement of the substance of the excluded evidence. When a party objects to the admission of evidence, the presiding officer will rule on the objection or the presiding officer may receive the evidence subject to the later ruling by the full Commission or refer to the matter to the full Commission. ()

204. -- 999. (RESERVED)

APPENDIX A



APPENDIX B

	
<p>Grown in Idaho® seal is a minimum of 3 1/2 inches wide and must be placed on one major flap in two locations, with the text "Idaho® Potatoes" and "U.S. No. 2" located between both seals. This area is also used for placement of Sprout Rip Clause (in box).</p>	
<p>Company or farm logo may be placed on this major flap. Size is not limited. Other items may also be placed on this flap.</p>	

Company or farm logo may be placed under "No. 2". Maximum logo size is 3 1/2 inches wide.

Grown in Idaho® seal must be 3 1/2 inches wide with placement at left on major panels and at right on minor panels. Reading left to right, seal must be 1 1/4 inch from bottom score and at least 1/2 inch from side score.

Picked 1st or address line to be placed at least 1/2 inch from bottom score and at least 1/2 inch from left score (reading left to right) on major panel. It is not limited to one line but can not exceed beyond the word "Potatoes".

APPENDIX C

