

AGRICULTURE COMMITTEE
ADMINISTRATIVE RULES REVIEW
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2012 Legislative Session

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IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.01.04 - RULES GOVERNING THE IDAHO PREFERRED® PROMOTION PROGRAM

DOCKET NO. 02-0104-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified 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 22-122, 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 currently no product qualifications in the Rules Governing the Idaho Preferred® program specific to forest products. This rule will create product definition and qualification criteria for lumber and further processed forest products at the request of industry.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2011 Idaho Administrative Bulletin, Vol. 11-10, pages 23 through 27.

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

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Laura Johnson, Section Manager at (208) 332-8533 or Leah Clark, Trade Specialist at (208) 332-8684.

DATED this 27th day of October, 2011.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd
P.O. Box 790
Boise, ID 83701
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING NOTICE WAS 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 October 19, 2011.

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:

There are currently no product qualifications in the Rules Governing the Idaho Preferred® program specific to forest products. This rule will create product definition and qualification criteria for lumber and further processed forest products at the request of industry.

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: NA

NEGOTIATED RULEMAKING: Informal negotiated rulemaking was conducted. Input was solicited from the forest products industry through the Idaho Forest Products Commission.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Leah Clark, Trade Specialist, at (208) 332-8684.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 16th day of August, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0104-1101

010. DEFINITIONS.

The following definitions shall apply in the interpretation and enforcement of this chapter.

(3-16-04)

01. Agricultural Product. Any fresh or processed apicultural, aquacultural, avicultural, beverage, cervidae, dairy, horticultural, livestock, forestry, viticultural, or other farm or garden product.

(3-16-04)

02. Apicultural Product. Products produced from or related to honey bees or honey.

(3-16-04)

03. Aquacultural Product. Products produced from or related to fish, reptiles, or other aquatic animals.

(3-16-04)

04. Avicultural Product. Products produced from or related to birds, including but not limited to, ratites or poultry.

(3-16-04)

05. Beverage. Drinks including but not limited to wine, beer, distilled spirits, bottled water, or flavored drinks.

(3-16-04)

06. Broker. A sales and marketing agent employed to make bargains and contracts for compensation.

(3-16-04)

07. Cervidae Product. Products produced from or related to fallow deer, elk, or reindeer owned by a person.

(3-16-04)

08. Dairy Product. Products produced from or related to milk from cattle, goats, or sheep.

(3-16-04)

09. Department. The Idaho State Department of Agriculture.

(3-16-04)

10. Director. The Director of the Idaho State Department of Agriculture or his designated agent. (3-16-04)

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

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

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

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

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

156. Livestock. Domestic animals including but not limited to cattle, sheep, pigs, goats, domestic cervidae, domestic bison, camelids, or horses. (3-16-04)

167. Livestock Product. Products produced from or related to livestock. (3-16-04)

178. Non-Food Agricultural Products. Products not intended for human consumption, including but not limited to, animal feed, compost, hides, or skins. (3-16-04)

189. Supporting Organization. Any commission, association, or incorporated group supporting the efforts of the Idaho Preferred® program. (3-30-07)

1920. Nursery Stock. All botanically classified plants or any part thereof, such as aquatic or herbaceous plants, bulbs, sod, buds, corms, culms, roots, scions, grafts, cuttings, fruit pits, seeds of fruits, forest and ornamental trees, and shrubs, berry plants, and all trees, shrubs, vines, and plants collected in the wild that are grown or kept for propagation or sale. Nursery stock does not include field and forage crops, seeds of grasses, cereal grains, vegetable crops and flowers, bulbs and tubers of vegetable crops, vegetables or fruit used for food or feed, cut trees or cut flowers unless stems or other portions thereof are intended for propagation. (3-16-04)

201. Packer/Shipper. A person who packages and ships food or agricultural products to wholesalers, retailers, and other outlets. (3-16-04)

212. Participant. A person who has applied to the Department and been approved for participation in the Idaho Preferred® program. (3-30-07)

223. Person. An individual, firm, partnership, corporation, commission, association, cooperative, business, governmental subdivision or agency, or other business entity. (3-16-04)

234. Processed Food. Any food product which has been transformed from its natural state by methods including but not limited to freezing, cutting, heating, drying, treating, or adding ingredients. (3-16-04)

245. Processor. A person engaged in the manufacturing of processed food. (3-16-04)

256. Producer. A person engaged in the business of growing or raising food, fiber, feed, or other agricultural products. (3-16-04)

267. Retailer. A person engaged in making sales directly to consumers. (3-16-04)

278. Viticultural Products. Products produced from or related to grapes and wine. (3-16-04)

289. Wholesaler. A person who buys in comparatively large quantities and then resells, usually in smaller quantities, but never directly to the consumer. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

200. PRODUCT QUALIFICATION.

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

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

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

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

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

03. Potatoes. Only certification marks owned or administered by the Idaho Potato Commission may be branded on potatoes grown in Idaho unless prior Idaho Potato Commission approval in writing is secured and granted for the use of additional words or designs. Any person or participant applying to the Idaho Preferred® program, with the intention to promote Idaho-

grown potatoes or products made from Idaho-grown potatoes, shall provide proof of such permission prior to making application with the Department. (3-30-07)

- 04. Wine.** Wines shall contain a minimum of ninety-five percent (95%) Idaho grapes. (4-6-05)
- 05. Nursery Stock.** Nursery stock shall have been grown in Idaho a minimum of one (1) growing season or growing cycle. (4-6-05)
- 06. 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.** Reside in Idaho at least twelve (12) months prior to harvest. The twelve (12) months need not be contiguous, but must be verifiable. (4-6-05)
 - c.** Reside their entire lives in Idaho if harvested prior to twelve (12) months of age. (4-6-05)
 - d.** Are processed in federally inspected plants and meet marbling and age requirements for USDA grade Select or better. (4-6-05)
- 07. 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)
- 08. 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)

09. 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)

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

a. Come from domestic elk that are born, raised and processed in Idaho and originate from a facility licensed by the Idaho State Department of Agriculture. (5-8-09)

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)

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

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

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

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.02.14 - RULES FOR WEIGHTS AND MEASURES

DOCKET NO. 02-0214-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified 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 71-111, 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:

To adopt by reference the 2012 edition of the National Institute of Standard and Technology Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices. NIST documents are available online at <http://www.nist.gov/pml/wmd/index.cfm>.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 3, 2011 Idaho Administrative Bulletin, Vol. 11-8, pages 17 and 18.

IDAHO CODE SECTION 22-101A STATEMENT: This rule does regulate an activity not already regulated by the federal government, because the federal government does not regulate specifications, tolerances and other technical requirements for weighing and measuring devices. The rule is, however consistent with national standards by the National Institute of Standards and Technology.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Kevin Merritt, Section Manager at (208) 332-8692.

DATED this 27th day of October, 2011.

Brian Oakey, Deputy Director
Idaho State Dept. of Agriculture
2270 Old Penitentiary Road
P.O. Box 790

Boise, Idaho 83701
Phone: (208) 334-8500
Fax: (208) 334-2170

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(2), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 71-111, 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 17, 2011.

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:

To incorporate by reference the 2012 edition of the National Institute of Standard and Technology Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices. NIST documents are available online at <http://www.nist.gov/pml/wmd/index.cfm>.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed amendment.

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

The reason to update this reference document is to maintain uniformity throughout western state jurisdictions.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN

COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kevin Merritt, Section Manager at (208)332-8692.

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 26, 2011.

DATED this 25th day of June, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0214-1101

004. INCORPORATION BY REFERENCE.

01. Required Reference Materials. The 201~~7~~² edition of Handbook No. 44 of the National Institute of Standards and Technology, United States Department of Commerce, “Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices,” hereby incorporated by reference, shall be the specifications, tolerances and other technical requirements for commercial weighing and measuring devices, unless otherwise stated in these rules. (~~4-7-11~~)()

02. Required Reference Materials for Checking Prepackaged Commodities. The 4th Edition of Handbook No. 133 of the National Institute of Standards and Technology, United States Department of Commerce, “Checking the Net Contents of Packaged Goods,” hereby incorporated by reference, shall be the authority in checking packaged commodities, unless otherwise stated in these rules. (2-13-04)

03. Specifications for Diesel Fuel and Biodiesel Fuel. American Society of Testing and Materials (ASTM) D975-07a, “Standard Specification for Diesel Fuel Oils,” and ASTM D6751-07a, “Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels,” intended for blending with diesel fuel are hereby incorporated by reference and are the specifications for diesel fuel and biodiesel fuel blend stock (B100 biodiesel). (4-2-08)

04. Specifications for Gasoline. American Society of Testing and Materials (ASTM) D 4814-07a, “Standard Specification for Automotive Spark-Ignition Engine Fuel”, dated October 17, 2007, is hereby incorporated by reference and is the specification for gasoline. (5-8-09)

05. Local Availability. Copies of the incorporated documents are on file with the Idaho State Department of Agriculture, 2216 Kellogg Lane, Boise, Idaho 83712. Copies of NIST documents may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. [Copies are available for downloading on the internet.](#) Copies of ASTM specifications are on file with the Idaho State Department of Agriculture or may be purchased from [ASTM International](#), 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA, 19428. (4-7-11)

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.03.03 - RULES GOVERNING PESTICIDE AND CHEMIGATION
USE AND APPLICATION

DOCKET NO. 02-0303-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified 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 22-3421, 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:

The current rule requires professional applicators to be physically on site during the entire pesticide application. Many chemigation applications take more than two (2) days to complete. This change will allow professional applicators to begin the chemigation application and then return at least once every four (4) hours to check on the application. This rule change was recommended by the Pesticide Licensing Advisory Committee.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 3, 2011 Idaho Administrative Bulletin, Vol. 11-8, pages 19 through 24.

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

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Ben Miller, Bureau Chief (208) 332-8593.

DATED this October 27, 2011.

Brian Oakey, Deputy Director
Idaho State Dept. of Agriculture
2270 Old Penitentiary Road
P.O. Box 790

Boise, Idaho 83701
Phone: (208) 334-8500
Fax: (208) 334-2170

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-3421, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 17, 2011.

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 current rule requires professional applicators to be physically on site during the entire pesticide application. Many chemigation applications take more than two days to complete. This change will allow professional applicators to begin the chemigation application and then return at least once every four hours to check on the application. This rule change was recommended by the Pesticide Licensing Advisory Committee.

IDAHO CODE SECTION 22-101A STATEMENT: This rule does not regulate an activity not already regulated by the federal government. The Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) governs the registration and use of pesticides. Under FIFRA, states also have enforcement authority for pesticides: “A State may regulate the sale or use of a federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by” FIFRA. 7 U.S.C. Section 136v. Under FIFRA, it is unlawful for any person “to use any registered pesticide in a manner inconsistent with its labeling.” 7 U.S.C. Section 136j(a)(2)(G). Under Idaho law, no person shall “[u]se a pesticide in a manner inconsistent with its labeling except as provided by rule.” Idaho Code Section 22-3420(1). Therefore, pursuant to federal and state law, applicators must follow the requirements on a pesticide label. The majority of pesticide labels allow a certified applicator to leave a chemigation site while the application is in progress. The proposed rule will allow a certified professional applicator to leave the chemigation site while the application is in progress, but they must return at least once every four hours to check on the application. This requirement is more stringent than some label requirements.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, formal negotiated rulemaking was not conducted, because an informal meeting was held with the Idaho Pesticide Licensing Advisory Committee on March 11, 2011 to discuss and revise the rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact George Robinson at (208) 332-8531.

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 24, 2011.

DATED this 29th day of June, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0303-1101

100. LICENSING PROFESSIONAL APPLICATORS AND PESTICIDE DEALERS.

01. Demonstration of Competence. (3-20-97)

a. Professional applicators shall not recommend the application or make an application of any pesticide for any purpose, unless they have demonstrated competence for that purpose, which competence must be demonstrated by passing Department examinations and becoming licensed in the appropriate categories listed in Subsection 100.02. (3-20-97)

b. An applicant shall demonstrate competency in the following areas: (3-20-97)

i. Labels and labeling, including terminology, instructions, format, warnings and symbols. (3-20-97)

ii. Safety factors and procedures, including protective clothing and equipment, first aid, toxicity, symptoms of poisoning, storage, handling, transportation and disposal. (3-20-97)

iii. Laws, rules, and regulations governing pesticides. (3-20-97)

iv. Environmental considerations, including the effect of climate and physical or geographical factors on pesticides, and the effects of pesticides on the environment, and the

animals and plants living in it. (3-20-97)

v. Mixing and loading, including interpretation of labels, safety precautions, compatibility of mixtures, and protection of the environment. (3-20-97)

vi. Methods of use or application, including types of equipment, calibration, application techniques, and prevention of drift and other types of pesticide migration. (3-20-97)

vii. Pests to be controlled, including identification, damage characteristics, biology and habitat. (3-20-97)

viii. Types of pesticides, including formulations, mode of action, toxicity, persistence, and hazards of use. (3-20-97)

ix. Chemigation practices involving the application of chemicals through irrigation systems, calibration, management, and equipment requirements. (4-5-00)

x. For use of the Livestock Protection Collar (LPC), in addition to the requirements of Subsection 100.01.b.i. through 100.01.b.viii., professional applicators shall have training in and knowledge of the following: (3-19-99)

(1) Characteristics and habits of predatory animals, and particularly, coyotes. (3-19-99)

(2) Properties of the collars and of Sodium Fluoroacetate (Compound 1080). (3-19-99)

(3) Recordkeeping requirements set forth in Subsection 150.01 that will additionally include a record of each animal found poisoned or suspected of having been poisoned as a result of the use of Compound 1080, including target and non-target species. (3-19-99)

(4) The requirement for immediate reporting of suspected poisonings of non-target species and suspected poisonings of humans or domestic animals by the use of Compound 1080 to the United States Environmental Protection Agency (US EPA) and the Idaho State Department of Agriculture (ISDA). (3-19-99)

(5) How to properly dispose of animal remains, vegetation, or soil contaminated by a punctured LPC. (3-19-99)

(6) Practical treatment of Compound 1080 poisonings in humans and domestic animals. (3-19-99)

(7) Safe handling, attachment, and storage of LPC collars. (3-19-99)

(8) The requirement to post and maintain bilingual (English/Spanish or other second language appropriate for the region) signs at logical points of access to areas where LPCs are in use. (3-19-99)

(9) The requirement to perform inspections once every week to ensure that collars in use are accounted for, properly positioned, and intact. (3-19-99)

(10) Knowledge of alternative controls of predation. (4-5-00)

xi. For use of the LPC, in addition to the requirements of Subsections 100.01.b.i. through 100.01.b.x., professional applicators shall have training in and the ability to: (3-19-99)

(1) Recognize potential hazards to humans, domestic animals, and non-target wildlife from the use of the LPC. (3-19-99)

(2) Read and understand the labeling specific to the LPC. (3-19-99)

(3) Recognize general symptoms of poisoning by Compound 1080 in humans and domestic animals and take appropriate action. (3-19-99)

(4) Recognize where the LPC can be used safely and effectively and, conversely, where alternative methods of control would be more appropriate. (3-19-99)

(5) Assess damaged LPCs to determine which can be repaired and which must be disposed of properly. (3-19-99)

(6) Properly dispose of the LPCs. (3-19-99)

02. Certification. A person shall be certified by passing Department examinations with a minimum of seventy percent (70%) in the applicable pesticide categories. (5-8-09)

a. Professional applicators shall be certified and licensed in one (1) or more of the following categories: (3-20-97)

i. Law and Safety (LS). This shall include general knowledge of pesticides including proper use and disposal, product characteristics, first aid, labeling, and laws. Certification in this category is required when certifying in Subsections 100.02.a.ii. through 100.02.a.ix. (3-20-97)

ii. Agriculture. For persons conducting field crop applications. Agriculture Herbicide (AH). Certification in this category shall also certify a person to make herbicide applications in rights-of-way, forests, and rangelands. Agriculture Insecticide/Fungicide (AI). Certification in this category shall also certify a person to make insecticide/fungicide applications in rights-of-way, forests, and rangelands. Soil Fumigation (SF). (4-5-00)

iii. Forest Environment (FE). For U.S. Forest Service and Bureau of Land Management personnel, contractors, and private industry personnel who control pests in forests and on rangelands. (3-20-97)

iv. Right-of-Way Herbicide (RW). For railroads, highway departments and others, for roadside weed control, soil sterilant herbicides, and weed control on public lands (non-crop). Certification in the Agricultural Herbicide category shall exempt the applicant from the need to certify in this category. (3-20-97)

- v. Public Health Pest (PH). For abatement districts and others controlling mosquitoes and other public health pests. (3-20-97)
- vi. Livestock Pest Control (LP). For persons treating livestock pests. (3-20-97)
- vii. Ornamental Herbicide (OH). For persons conducting outside urban or residential herbicide applications, with the exception of soil sterilant applications (see Subsection 100.02.a.iv.). Ornamental Insecticide/Fungicide (OI). For persons doing outside urban or residential insecticide and fungicide applications, including exterior applications to residential, urban or commercial buildings, excluding structural destroying pests (see Subsection 100.02.a.ix.). (4-5-00)
- viii. General Pest Control Operations (GP). For persons controlling pests in and around residential, commercial, or other buildings, excluding structural destroying pests. (3-20-97)
- ix. Structural Destroying Pest (SP). For persons involved in the control of pests which destroy wooden structures, such as bridges, houses, offices, and warehouses. (3-20-97)
- x. General Vertebrate Control (GV). For Wildlife Services (WS) personnel of the United States Department of Agriculture-Animal and Plant Health Inspection Service, for controlling vertebrates such as rodents, predators, and birds. (4-5-00)
- xi. Rodent Control (RC). For rodent districts and others, for the control of field rodents. Certification in the General Pest Control category shall exempt the applicant from the need to certify in this category. (3-20-97)
- xii. Aquatic Weed and Pest Control (AW). For irrigation districts, canal companies and others, for weed and pest control on aquatic sites. (4-5-00)
- xiii. Seed Treatment (ST). For persons doing treatments to protect seeds used for plant reproduction. (3-20-97)
- xiv. Commodity Pest Control (CP). For persons controlling pests in stored commodities. (3-20-97)
- xv. Potato Cellar Pest Control (PC). For persons who apply sprout inhibitors in potato cellars. (3-20-97)
- xvi. Wood Preservative (WP). For persons who apply wood preservatives. (3-20-97)
- xvii. Pest Control Consultant-Statewide (SW). For persons who make recommendations or supply technical advice concerning the use of any pesticide for agricultural purposes. (3-20-97)
- xviii. Demonstration and Research (DR). For persons who apply or supervise the use of restricted use pesticides at no charge to demonstrate the action of the pesticide or conduct research with restricted use pesticides. A person shall be eligible to license in this category by passing the Pest Control Consultant examination. (3-20-97)

xix. Chemigation (CH). For persons who apply chemicals through an irrigation system, excluding Aquatic Weed and Pest Control applicators (see Subsection 100.02.xii.). (4-5-00)

xx. Livestock Protection Collars (LPC). For use of Livestock Protection Collars (LPC) containing the restricted use pesticide Compound 1080 to control predatory coyotes. (3-19-99)

b. Pesticide Dealers shall be certified and licensed in any category listed in Subsection 100.02 that pertains to the types of restricted use pesticides sold or distributed. (3-23-98)

c. Persons with an active license category on June 30, 1996, shall retain said category under the rules which became effective on July 1, 1996, until the expiration of the certification period or suspension of the license by the Department. (3-23-98)

d. Mixer-Loaders. Effective December 31, 1998, mixer-loader licenses issued by the Department shall expire. No person shall act as a mixer-loader for a professional applicator without first obtaining annual training. (3-23-98)

i. Training shall be conducted and certified by the professional applicator who employs the mixer-loader. Certification of training shall be on a form prescribed by the Department and must include the signatures of both the mixer-loader and the professional applicator providing the training. (3-23-98)

ii. Training shall include areas relevant to the pesticide mixing and loading operation and instruction on the interpretation of pesticide labels, safety precautions, first aid, compatibility of mixtures, and protection of the environment. (3-23-98)

iii. Employers of mixer-loaders shall comply with federal and state laws related to hazardous occupations and shall provide and ensure the use of personal protective equipment required in the label directions. (3-23-98)

03. Department Examination Procedures. (3-20-97)

a. Examinations shall be administered by a designated agent. (3-20-97)

b. To pass a Department examination, professional applicators and pesticide dealers shall obtain a score of seventy percent (70%) or higher. (3-23-98)

c. Payment of examination fees shall be received by the Idaho Department of Agriculture before examination results may be released. (3-20-97)

d. A minimum waiting period of one (1) week shall be required before an applicant may retake an examination. (4-6-05)

04. Licensing Periods and Recertification. Beginning August 31, 2000, Pesticide Dealer licenses shall expire on August 31, of even numbered years and have a twenty-four (24) month duration. A Pesticide Dealer License application form shall accompany each new license

or license renewal request. Professional applicator licenses shall be renewed by satisfying the recertification provisions of this section. Licenses belonging to professional applicators with last names beginning with A through L, inclusive, shall expire on the last day of the year in every odd-numbered year, and licenses belonging to professional applicators with last names beginning with M through Z, inclusive, shall expire on the last day of the year in every even-numbered year. Any professional applicator with less than thirteen (13) months in the licensing period shall not be required to obtain recertification credits during the initial licensing period. The recertification period for professional applicators shall be concurrent with their two (2) year licensing period. Recertification requirements may be accomplished by complying with either Subsection 100.04.a. or 100.04.b. (4-5-00)

a. A person shall accumulate recertification credits by attending Department-accredited pesticide instruction seminars. (3-20-97)

i. A minimum of fifteen (15) credits shall be earned by a professional applicator during each recertification period. (3-23-98)

ii. A completed request for accreditation of a seminar shall be received by the Department not less than thirty (30) days prior to the scheduled seminar. Such a request shall be submitted on a form prescribed by the Department. Under exceptional circumstances, as described in writing by the person requesting accreditation, the thirty (30) day requirement may be waived. (3-20-97)

iii. Credit will be given only for those parts of seminars that deal with pesticide subjects as listed in Subsection 100.01.b. No credit will be given for training given to persons to prepare them for initial certification. (3-20-97)

iv. The number of credits assigned in advance for a seminar, or a part of a seminar, shall be tentative, and may be revised by the Department if it is later found that the training does not comply with Subsection 100.04.a.iii. (3-20-97)

v. Effective July 1, 1998, a recertification credit shall be based upon one (1) credit for each one (1) hour of instruction, as described in Subsection 100.04.a.iii. Should an applicator's recertification period include credits earned prior to July 1, 1998, those credits based on one hundred fifty (150) minutes of instruction shall be converted to three (3) credits for recertification purposes. (3-23-98)

vi. Verification of attendance at a seminar shall be accomplished by validating the attendee's pesticide license, using a stamp, sticker, or other method approved by the Department. A designated agent shall ensure that such attendance records are properly completed. Verification of attendance must be submitted with the license renewal application. (3-20-97)

vii. If a person has accumulated more than fifteen (15) credits during the recertification period, the excess credits may not be carried over to the next recertification period. (3-23-98)

viii. Upon earning the recertification credits as described above, a person shall be considered by the Department to be recertified for the next recertification period corresponding

with the next issuance of a license. (3-20-97)

b. A person shall pass the Department's recertification examinations for all categories in which a person intends to license. (3-20-97)

i. Recertification examinations may be taken by a professional applicator beginning the thirteenth month of the recertification period. (3-23-98)

ii. The examination procedures as outlined in Subsection 100.03 shall be followed. (3-23-98)

iii. In addition to examinations for categories listed under Subsections 100.02.a.ii. through 100.02.a.ix., a person must also pass a Law and Safety recertification examination. (3-23-98)

iv. Recertification shall not be achieved by passing an entry-level examination. (3-20-97)

v. Upon passing the recertification examination(s), a person shall be considered by the Department to be recertified for the next recertification period. (3-20-97)

c. Any person who fails to accumulate the required recertification credits prior to the expiration date of their license shall be required to pass the appropriate recertification examination(s) before being licensed. (3-20-97)

05. Licensed Professional Applicator. Only a licensed professional applicator shall operate or supervise the operation of commercial application equipment by being present during the time of operation. Licensed professional applicators that start the application of chemicals through chemigation equipment do not have to be present during the entire application, but must return to monitor the proper application at least once every four (4) hours for the duration of the application. (~~3-20-97~~)()

06. Interim Exemption from Pesticide Dealer Licensing and Recordkeeping. Until such time as the director promulgates specific rules pertaining to distribution of general use pesticides (GUPs), persons selling only GUPs shall not be required to obtain a pesticide dealer license or maintain distribution records of these products. (3-30-01)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.18 - RULES GOVERNING THE CAFO SITE ADVISORY TEAM

DOCKET NO. 02-0418-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified 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 67-6529(F), 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:

House Bill No. 150 aa was passed and effective April 5, 2011 amending Chapter 65, Title 67, Idaho Code. The current Rules Governing CAFO Site Advisory Team (IDAPA 02.04.18) were amended through negotiated rulemaking to carry out the intent of the legislation. The amendments were centered on incorporating new county CAFO definitions and establishing the application fees for the CAFO Site Advisory Team.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2011 Idaho Administrative Bulletin, Vol. 11-10, pages 38 through 42.

IDAHO CODE SECTION 22-101A STATEMENT: This proposed rule does regulate an activity not regulated by the federal government, because the federal government does not regulate CAFO siting. However, the proposed rule changes are consistent with the legislative directive in House Bill No. 150aa (codified at Sections 67-6529C and 67-6529E, 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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact John Bilderback, Dairy and CAFO Programs, 208-332-8550 or john.bilderback@agri.idaho.gov.

Signed this 27th Day of October, 2011.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd., Boise, ID 83712

P.O. Box 790, Boise, ID 83701-0790
Phone: (208) 332-8500
Fax: (208) 332-4062

THE FOLLOWING NOTICE WAS 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 67-6529F(4), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

House Bill No. 150aa was passed and effective April 5, 2011, upon Governor Otter's signature amending Title 67, Chapter 65, Idaho Code. The ISDA has undertaken negotiated rulemaking to carry out the intent of the statutory amendments. The rule amendments center on incorporating new county CAFO definitions, establishing the application fees for the CAFO Site Advisory Team, eliminating the references to animal units, and providing consistency in definition among rules.

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

No fee is associated with this proposed rule.

IDAHO CODE SECTION 22-101A STATEMENT: This proposed rule does regulate an activity not regulated by the federal government, because the federal government does not regulate CAFO siting. However, the proposed rule is consistent with the legislative directive in House Bill No. 150aa (codified at Sections 67-6529C and 67-6529E, 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:

There is no fiscal impact involved with this proposed rule. ISDA estimates that the costs will

be less than \$10,000 annually to implement and enforce this rule.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. **The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2011 Idaho Administrative Bulletin, Volume 11-7, page 16.**

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact John Bilderback, Section Manager, Dairy and CAFO Programs, 208-332-8550 or john.bilderback@agri.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

Signed this 16th Day of August, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0418-1101

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference, and copies of the documents may be obtained from the Idaho State Department of Agriculture central office at 2270 Old Penitentiary Road, Boise, Idaho, 83712 or accessed online. ()

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, ~~is incorporated by reference and a copy may be obtained from the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701 or accessed~~ This document can be viewed online at http://www.agri.idaho.gov/Categories/Animals/Documents/nutrient_Management_code_590.PDF. (3-15-02)()

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 <http://www.agri.idaho.gov/Categories/Environment/nmp/nmpPDF/june 2007 NRCS 590.pdf>. ()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

The following definitions shall apply in the interpretation and enforcement of this chapter.

(3-15-02)

~~**01. Animal Unit.** A unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by one (1), plus the number of young slaughter or feeder cattle, less than twelve (12) months of age multiplied by six tenths (0.6), plus the number of mature dairy cattle multiplied by one and four tenths (1.4), plus the number of young dairy cattle less than one (1) year of age, multiplied by six tenths (0.6), plus the number of swine weighing over twenty five (25) kilograms, approximately fifty five (55) pounds, multiplied by four tenths (0.4), plus the number of weaned swine weighing less than twenty five (25) kilograms multiplied by one tenth (0.1), plus the number of sheep multiplied by one tenth (0.1), plus the number of horses multiplied by two (2), plus the number of chickens multiplied by one hundredth (0.01).~~

~~(3-15-02)~~

021. 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.

~~(3-15-02)~~()

032. CAFO Site Advisory Team. Representatives of the Idaho State Department of Agriculture, Idaho Department of Environmental Quality, and Idaho Department of Water Resources, with the Idaho State Department of Agriculture as the team lead, who review a site proposed for a CAFO, determine environmental risks, and submit a site suitability determination to the county that has requested the determination.

(3-15-02)

043. Concentrated Animal Feeding Operation (CAFO). For those counties that have requested a site suitability determination, a CAFO is as defined in the applicable ordinance of the county where the CAFO is located. If the requesting county has not defined CAFO in its ordinances, CAFO means A lot or facility where the following conditions are met:

~~(3-15-02)~~()

a. Animals have been, are, or will be stabled or confined and fed or maintained for a total of ninety (90) consecutive days or more in any twelve (12) month period;

(3-15-02)

b. Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility;

(3-15-02)

c. The lot or facility is designed to confine or actually does confine ~~an equivalent of one thousand (1,000) animal units or more; and~~ as many as or more than the numbers of animals specified in any of the following categories:

~~(3-15-02)~~()

i. Seven hundred (700) mature dairy cows, whether milked or dry; ()

ii. One thousand (1,000) veal calves; ()

iii. One thousand (1,000) cattle other than mature dairy cows or veal calves; ()

iv. Two thousand five hundred (2,500) swine each weighing fifty-five (55) pounds or more; ()

v. Ten thousand (10,000) swine each weighing less than fifty-five (55) pounds; ()

vi. Five hundred (500) horses; ()

vii. Ten thousand (10,000) sheep or lambs; or ()

viii. Eighty-two thousand (82,000) chickens; and ()

d. Two (2) or more concentrated animal feeding operations under common ownership are considered, for the purposes of this definition, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes. (3-15-02)

054. **Department.** The Idaho State Department of Agriculture. (3-15-02)

065. **Director.** The Director of the Idaho State Department of Agriculture or his designee. (~~3-15-02~~)()

076. **Environmental Risk.** That risk to the environment deemed posed by a proposed CAFO site, as determined and categorized by the CAFO site advisory team and set forth in the site advisory team's suitability determination report. (3-15-02)

087. **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. (~~3-15-02~~)()

098. **Nutrient Management Plan.** A plan prepared in conformance with the nutrient management standard. (3-15-02)

109. **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. (~~3-15-02~~)()

110. **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. (3-15-02)

121. **Person.** Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, private corporation, or any legal entity, which is recognized by law as the subject of rights and duties. (3-15-02)

132. Suitability Determination. The document created and submitted by the CAFO site advisory team, after review and analysis of a proposed CAFO site and information provided subsequent to Section 300 of these rules, that identifies the environmental risk categories related to a proposed CAFO site, describes the factors that contribute to the environmental risks, and sets forth any possible mitigation of risk. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

100. 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 these rules, submitted by a board of county commissioners pursuant to these rules. (3-15-02)

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 ~~unit~~ numbers in the definition of a CAFO provided that: (3-15-02)()

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 (3-15-02)

b. The state agencies have personnel and other resources available to conduct the site suitability determination. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

300. CONTENTS OF A REQUEST TO FORM A SITE ADVISORY TEAM.

The information contained in a request shall include, but not be limited to, the following: (3-15-02)

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. (3-15-02)

023. One-Time Unit Capacity. The one-time animal ~~unit~~ capacity of the proposed CAFO. (3-15-02)()

034. Type of Animals. The type of animals to be confined at the proposed CAFO. (3-15-02)

045. Water Right Information. All requests shall include one (1) of the following: (3-15-02)

a. Evidence that a valid water right exists to supply adequate water for the operation of the proposed CAFO; or (3-15-02)

b. A copy of an application for a permit to appropriate water that has been filed with IDWR, which if approved, will supply adequate water for operation of the proposed CAFO; or (3-15-02)

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, which if approved, will supply adequate water for the operation of the proposed CAFO. (3-15-02)

056. Vicinity Map with Site Location. A detailed sketch of the proposed CAFO site location, on an aerial photograph if available, which includes the following: (3-15-02)

a. Building locations; (3-15-02)

b. Waste storage facilities and general areas for any land application including a narrative description of the waste system; (3-15-02)

c. FEMA flood zones or other appropriate flood data for the proposed CAFO site and land application sites owned or leased by the applicant; (3-15-02)

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, which are within a one (1) mile radius of the proposed CAFO; ~~(3-15-02)~~()

e. Irrigation canals, irrigation laterals, rivers, streams, springs, lakes, reservoirs, and designated wetlands, which are within a one (1) mile radius of the proposed CAFO. (3-15-02)

067. Site Characterization. A characterization of the proposed CAFO site and any land application sites owned or leased by the applicant, which includes the following information, if available: (3-15-02)

a. Annual precipitation and prevailing wind direction as contained in the Idaho Waste Management Guidelines, 1997; (3-15-02)

b. Soil characteristics from NRCS; (3-15-02)

c. Hydrologic characteristics from IDWR and USGS including: (3-15-02)

i. Depth to first water yielding zone and first encountered water; (3-15-02)

ii. Direction of ground water movement and gradient; (3-15-02)

- iii. Sources and estimates of recharge; (3-15-02)
- iv. Seasonal variations in water level and recharge characteristics; (3-15-02)
- v. Susceptibility to contamination; and (3-15-02)
- vi. Relation of ground water to surface water. (3-15-02)
- d.** Water quality data from DEQ, the Department, ~~and~~ IDWR, or USGS, including:
(~~3-15-02~~)()
 - i. Microorganisms; (3-15-02)
 - ii. Nutrients; and (3-15-02)
 - iii. Pharmaceuticals and organic compounds. (3-15-02)

078. Required OMPs or NMPs. Any OMPs or NMPs that are required by the county to be submitted by the applicant at the time of application. (3-15-02)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.20 - RULES GOVERNING BRUCELLOSIS

DOCKET NO. 02-0420-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is **October 1, 2011**. This pending rule has been adopted by the agency and is now pending review by the 2012 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, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified 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 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section 25-601, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the temporary 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 is changing the proposed rule and amending the temporary rule in this docket concerning the dates within which cattle that have resided in the Designated Surveillance Area (DSA) must be officially tested for brucellosis. Specifically, the proposed and temporary rule provided that all test eligible cattle and domestic bison that are or have been located within the DSA between January 1 and July 1 of each year must be officially tested for brucellosis. The pending and temporary are being amended by changing the end date from July 1 to June 15 of any calendar year.

This change will eliminate the need to test cattle that have entered the DSA after June 15th, when the risk of exposure to brucellosis infected wildlife is extremely low. Outreach with the cattle industry and wildlife officials prompted this amendment to the temporary rule.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Idaho State Department of Agriculture amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the June 1, 2011 Idaho Administrative Bulletin, Vol. 11-6, pages 15 through 20.

IDAHO CODE SECTION 22-101A STATEMENT: The federal government regulates the interstate movement of cattle for disease control purposes including brucellosis. They do not regulate the intrastate movement of cattle. This pending rule will ensure that cattle leaving Idaho's

designated surveillance area do not pose a risk of transmission of brucellosis to other Idaho cattle.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Dr. Bill Barton, Administrator/State Veterinarian at (208) 332-8540.

DATED this 27th day of October, 2011.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd., Boise, ID 83712

P.O. Box 790, Boise, ID 83701-0790
Phone: (208) 332-8503
Fax: (208) 334-2170

***THE FOLLOWING NOTICE WAS PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE***

EFFECTIVE DATE: The effective date of the temporary rule is **May 1, 2011**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 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 June 15, 2011.

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 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:

Currently, cattle are not required to be brucellosis tested prior to leaving Idaho's Brucellosis Designated Surveillance Area (DSA). As a result, two (2) of our trading partner states have implemented brucellosis testing requirements on all Idaho cattle imported into their state. In addition, two (2) other states are requiring that cattle leaving the DSA be individually identified with official identification. It is expected that more states will follow

suit. These new import requirements pose a significant financial hardship to all Idaho cattle producers and limit their marketing options.

This rule will define Idaho's Designated Surveillance Area, outline brucellosis testing requirements for cattle leaving Idaho's Designated Surveillance Area and provide for official individual identification of all sexually intact cattle leaving Idaho's Designated Surveillance Area.

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

Requiring a brucellosis test for test eligible cattle within the DSA following a change of ownership and cattle leaving Idaho's DSA will likely address the concerns of Idaho's trading partner states thereby lifting testing requirements on cattle originating from outside of the Idaho DSA. Additionally, the rule will ensure that brucellosis affected cattle are not inadvertently introduced to other portions of Idaho or exported to our trading partner states. Producers outside the DSA will see decreased testing costs and maintain marketing options for their cattle. Requiring cattle within the DSA to be officially individually identified will help to maintain the marketability of cattle originating from Idaho's DSA.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the urgency of getting the temporary rule provisions in place. The temporary rule was discussed with cattle producers located in and around Idaho's DSA, the Idaho Cattlemen's Association, Idaho Farm Bureau and Idaho Dairymen's Association.

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 temporary and proposed rule, contact Dr. Bill Barton, Administrator/State Veterinarian at (208) 332-8540.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 22, 2011.

DATED this 5th day of May, 2011,

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0420-1101

010. DEFINITIONS.

The following definitions shall 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. Administrator. The administrator of the Division of Animal Industries, Idaho State Department of Agriculture or his designee. (5-3-03)

03. 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)

04. 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)

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

06. 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)

07. 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. ()

078. Cattle. All bovidae. (5-3-03)

089. 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)

0910. Department. The Idaho State Department of Agriculture. (5-3-03)

11. 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.()

- 102. Director.** The director of the Idaho State Department of Agriculture or his designee. (5-3-03)
- 113. Division of Animal Industries.** Idaho State Department of Agriculture, Division of Animal Industries. (5-3-03)
- 124. Domestic Bison.** All animals in the genus Bison that are owned by a person. (5-3-03)
- 135. Domestic Cervidae.** Elk, fallow deer and reindeer that are owned by a person. (5-3-03)
- 146. 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)
- 157. Federal Animal Health Official.** An employee of USDA, APHIS, VS who is authorized to perform animal health activities. (5-3-03)
- 168. 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)
- 179. 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)
- 1820. Official Identification.** The unique individual identification of cattle, domestic bison, swine, or domestic cervidae in accordance with these rules. (5-3-03)
- 1921. 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)
- 202. 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)
- 213. Owner.** The person who owns or has financial control of cattle, domestic bison, swine, domestic cervidae, or a cattle, domestic bison, swine, or domestic cervidae premises. (3-30-07)
- 224. Parturient.** Visibly prepared to give birth or within two (2) weeks before giving birth. (3-30-07)

235. 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. (5-3-03)

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

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

268. 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)

279. 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)

2830. 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)

2931. 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)

302. 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)

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

324. 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)

335. 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)

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

357. Test Eligible. Unless otherwise specifically provided in these rules, all sexually intact cattle and domestic bison eighteen (18) months of age and over, and all parturient, and postparturient cattle and domestic bison regardless of age. (3-30-07)

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

379. 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. ()

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

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

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

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

(BREAK IN CONTINUITY OF SECTIONS)

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 shall be 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. ~~(4-2-08)~~()

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

(BREAK IN CONTINUITY OF SECTIONS)

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*. ()

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

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. ()

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. ()

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. ()

1234. -- 129. (RESERVED).

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.04.30 - RULES GOVERNING NUTRIENT MANAGEMENT
DOCKET NO. 02-0430-1101
NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified 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 25-4012, Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2011 Idaho Administrative Bulletin, Vol. 11-10, pages 45 through 48.

IDAHO CODE SECTION 22-101A STATEMENT: The portions of this pending rule that specifically name or apply to poultry operations do regulate an activity not regulated by the federal government, because the federal government does not regulate nutrient management outside of the NPDES permit program. However, the proposed rule is consistent with the legislative directive in House Bill No. 206 (codified at Title 25, Chapter 40, 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:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact John Bilderback, Dairy and CAFO Programs, 208-332-8550 or john.bilderback@agri.idaho.gov.

Signed this 27th Day of October, 2011.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road, Boise, ID 83712
P.O. Box 790, Boise, ID 83701-0790
Phone: (208) 332-8500
Fax: (208) 332-4062

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 25-4012, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

House Bill No. 206 was passed and effective April 6, 2011, upon Governor Otter's signature establishing the Poultry Environmental Act, Title 25, Chapter 40, Idaho Code. IDAPA 02.04.30, Rules Governing Nutrient Management, were amended by rule negotiation to coincide with the Poultry Environmental Act. Specific changes include adding the definition of poultry concentrated animal feeding operations and revising the rule to incorporate the most current publication (June 2007) by the United States Department of Agriculture Idaho Natural Resources Conservation Service Conservation Practice Standard, Nutrient Management Code 590.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

IDAHO CODE SECTION 22-101A STATEMENT: This proposed rule does regulate an activity not regulated by the federal government, because the federal government does not regulate nutrient management outside of the NPDES permit program. However, the proposed rule is consistent with the legislative directive in House Bill No. 206 (codified at Title 25, Chapter 40, 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:

There is no fiscal impact involved with this proposed rule. ISDA estimates that the costs will be less than \$10,000 annually to implement and enforce this rule.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated

rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the [July 6, 2011 Idaho Administrative Bulletin, Volume 11-7, page 17.](#)

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact John Bilderback, Section Manager, Dairy and CAFO Programs, 208-332-8550 or john.bilderback@agri.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

Signed this 16th Day of August, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0430-1101

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 37, Chapter 4, *and* Title 22, Chapters 1 and 49, *and Title 25, Chapter 40*, Idaho Code. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference, and copies of the documents may be obtained from the Idaho State Department of Agriculture central office at 2270 Old Penitentiary Road, Boise, Idaho, 83712 or accessed online. ()

01. ~~The~~ August 1997 University of Idaho, Soil Sampling Bulletin 704 (revised), ~~is hereby incorporated by reference and~~ This document can be viewed online at <http://www.cals.uidaho.edu/edComm/pdf/EXT/EXT0704.pdf>. (4-2-08)()

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 [http://www.agri.idaho.gov/Categories/Animals/Documents/nutrient Management code 590.PDF](http://www.agri.idaho.gov/Categories/Animals/Documents/nutrient%20Management%20code%20590.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 <http://www.agri.idaho.gov/>

[Categories/Environment/nmp/nmpPDF/june_2007_NRCS_590.pdf.](#)

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(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

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

(4-2-08)

01. Certified Soil Sampler. A person who has completed a Department approved soil sampler certification program and has received written certification from the Department.

(4-2-08)

02. Department. The Idaho State Department of Agriculture.

(4-2-08)

03. Director. The Director of the Idaho State Department of Agriculture or his designee.

(4-2-08)()

04. 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.

(4-2-08)

05. 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 available online at http://www.idahoag.us/Categories/Environment/nmp/nmpPDF/NRCS%20Standards%206_99.pdf or other standard approved by the Department 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.

(4-2-08)()

06. Person. Any individual, partnership, association, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, ~~or any organized group of persons whether incorporated or not~~ state or federal governmental department, agency, or instrumentality, or any legal entity, that is recognized by law as the subject of rights and duties.

(4-2-08)()

07. Operation(s). Animal feeding operation(s).

()

078. 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.

(4-2-08)

089. 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, course 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. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

020. APPLICABILITY.

These rules apply to nutrient management on the following *cattle* operations: (4-2-08)()

01. Dairies. All Manufactured Grade and Grade A dairies located in Idaho licensed to sell milk for human consumption. (4-2-08)()

02. Beef Cattle Animal Feeding Operations. All beef cattle animal feeding operations in Idaho required to implement a NMP pursuant to IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations." (4-2-08)

03. Poultry Concentrated Animal Feeding Operations. All poultry operations required to implement an NMP pursuant to Title 25, Chapter 40, Idaho Code. ()

021. -- 099. (RESERVED)

100. NUTRIENT MANAGEMENT PLANS.

All NMPs required by IDAPA 02.04.14, "Rules of the Department of Agriculture Governing Dairy Waste," *and* 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. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

200. SOIL SAMPLES.

The owners or operators of all dairies, *and* beef cattle operations, and poultry operations required to implement nutrient management plans pursuant to IDAPA 02.04.14, "Rules of the Department of Agriculture Governing Dairy Waste," *and* 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, ~~or~~ 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. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

300. 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. (4-2-08)()

301. -- 399. (RESERVED)

400. RECORDS OF NUTRIENT ANALYSIS.

Owners or operators of facilities who are required to implement NMPs pursuant to IDAPA 02.04.14, "Rules ~~of the Department of Agriculture~~ Governing Dairy Waste," ~~and~~ 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. (4-2-08)()

01. Complete Records. Records must be complete, readily available, and identified to the fields listed in the facility's NMP. (4-2-08)

02. Available to the Director. Records must be made available to the director for inspection and copying upon request. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

990. PENALTIES.

Any person violating any of the provisions of this Chapter may be subject to the penalty provisions of Title 22, Chapter 1 and 49, ~~and~~ Title 37, Chapter 4, and Title 25, Chapter 40, Idaho Code. (4-2-08)()

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.(4-2-08)

02. Minor Violations. The Director may issue suitable warnings or other administrative actions for minor violations. (4-2-08)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.02 - RULES PERTAINING TO THE IDAHO COMMERCIAL FEED LAW

DOCKET NO. 02-0602-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified 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 25-2710, Idaho Code.

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

To update a date specific document adopted by reference. The Association of American Feed Control Officials (AAFCO) Official Publication is the recognized and primary reference book of approved feed terms and ingredient definitions and policies used by the feed industry and all state and federal feed control officials and regulators.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 5, 2011 Idaho Administrative Bulletin, Vol. 11-10, pages 64 and 65.](#)

IDAHO CODE SECTION 22-101A STATEMENT: This rule does regulate an activity not already regulated by the federal government, because the federal government does not regulate commercial feeds. The rule is, however, consistent with national standards by the Association of American Feed Control Officials.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lloyd B. Knight, Administrator at (208) 332-8620.

DATED this 27th day of October, 2011.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd., Boise, ID 83712

P.O. Box 790, Boise, ID 83701-0790
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(2), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 25-2710, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

To update a date specific document adopted by reference.

IDAHO CODE SECTION 22-101A STATEMENT: This rule does regulate an activity not already regulated by the federal government, because the federal government does not regulate commercial feeds. The rule is, however, consistent with national standards by the Association of American Feed Control Officials.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed amendments.

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

The Association of American Feed Control Officials (AAFCO) Official Publication is the recognized and primary reference book of approved feed terms and ingredient definitions

and policies used by the feed industry and all state and Federal feed control officials and regulators.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Administrator at (208) 332-8620.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 16th day of August, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0602-1101

004. INCORPORATION BY REFERENCE.

Copies of these documents may be viewed at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.02 incorporates by reference: (3-30-07)

01. The Association of American Feed Control Officials (AAFCO) Official Publication. The Terms, Ingredient Definitions and Policies as published in the “201~~7~~₂ Official Publication” of AAFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 25, Chapter 27, Idaho Code, and any rule promulgated thereunder. The AAFCO Official Publication is a copyrighted publication and not available in electronic format. A copy may be purchased online from the AAFCO website at: www.aafco.org. (~~4-7-11~~)()

02. The Merck Index. The “2006 Merck Index,” 14th Edition, as published by Merck Research Laboratories Division of Merck & Co., Incorporated. The Merck Index is a copyrighted publication and not available in an electronic format. A copy may be purchased online from Merck & Co., Inc at: <http://www.merckbooks.com/mindex/index.html>.. (4-7-11)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.12 - RULES PERTAINING TO THE IDAHO FERTILIZER LAW

DOCKET NO. 02-0612-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified 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 22-604, 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:

Update the incorporation by reference section to reflect the 2012 Official Publication of the Association of American Plant Food Control Officials; add an incorporation by reference of the "2005 Official Methods of Analysis (OMA) of the AOAC," 18th Edition, published by the Association of Official Agricultural Chemists (AOAC) International; and Change the Enforcement Guidelines to Civil Penalties to be more consistent with IDAPA 02.06.02 - Rules Pertaining to the Idaho Feed Law.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2011 Idaho Administrative Bulletin, Vol. 11-10, pages 66 through 68.

IDAHO CODE SECTION 22-101A STATEMENT: This rule does regulate an activity not already regulated by the federal government, because the federal government does not regulate commercial fertilizers. The rule is, however, consistent with national standards by the Association of American Plant Food Control Officials.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lloyd B. Knight, Administrator at (208) 332-8620.

DATED this 27th day of October, 2011.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd., Boise, ID 83712

P.O. Box 790, Boise, ID 83701-0790
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(2), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-604, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

Update the incorporation by reference section to reflect the 2012 Official Publication of the Association of American Plant Food Control Officials; add an incorporation by reference of the “2005 Official Methods of Analysis (OMA) of the AOAC,” 18th Edition, published by the Association of Official Agricultural Chemists (AOAC) International; and Change the Enforcement Guidelines to Civil Penalties to be more consistent with IDAPA 02.06.02, “Rules Pertaining to the Idaho Feed Law.”

IDAHO CODE SECTION 22-101A STATEMENT: This rule does regulate an activity not already regulated by the federal government, because the federal government does not regulate commercial fertilizers. The rule is, however, consistent with national standards by the Association of American Plant Food Control Officials.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed amendments.

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

The Association of American Plant Food Control Officials (AAPFCO) Official Publication and the Official Methods of Analysis (OMA) published by the Association of Official Agricultural Chemists (AOAC) International are the recognized and primary reference books of approved fertilizer terms, ingredient definitions and policies used by the fertilizer industry and all state and Federal fertilizer control officials and regulators.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Administrator at (208) 332-8620.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 16th day of August, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0612-1101

004. INCORPORATION BY REFERENCE.

Copies of these documents may be viewed at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.12 incorporates by reference: (4-7-11)

01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication. The Terms, Ingredient Definitions, and Policies, as published in the “~~2017~~ Official Publication” of AAPFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 22, Chapter 6, Idaho Code, and any rule promulgated thereunder. The AAPFCO Official Publication is a copyrighted publication and not available in electronic format. A copy may be purchased online from the AAPFCO website at: http://www.aapfco.org/publication_order_form.pdf. (~~4-7-11~~)()

02. The Merck Index. The “2006 Merck Index,” 14th Edition as published by Merck Research Laboratories Division of Merck & Co., Incorporated. The Merck Index is a copyrighted publication and not available in an electronic format. A copy may be purchased online from Merck & Co., Inc. at: <http://www.merckbooks.com/mindex/index.html>. (4-7-11)

03. The Association of Official Agricultural Chemists (AOAC) International. The “2005 Official Methods of Analysis (OMA) of the AOAC,” 18th Edition, a copyrighted

publication, is maintained and published by the AOAC International. The AOAC OMA is available in electronic format at: www.EOMA.AOAC.org. A copy may be purchased online from AOAC International. ()

(BREAK IN CONTINUITY OF SECTIONS)

090. ~~ENFORCEMENT GUIDELINES~~ **CIVIL PENALTIES.**

~~01. **Civil Penalties.** In addition to any other penalty provided by law, the Director may assess civil penalties for violations of Title 22, Chapter 6, Idaho Code. Civil penalties will be issued in accordance to the magnitude of the violation with a penalty matrix established by a department guidance document. The department is not precluded from utilizing other enforcement alternatives. Enforcement alternatives may include, but are not limited to, letter of advisement, notice of violation, stop sale, use or removal order, and registration revocation, suspension or denial. Prohibited acts are categorized as to the magnitude of violation as follows:~~ (4-6-05)()

~~a. **Category I (Major).** The Director may issue a civil penalty for initial Category I violations in addition to any alternative enforcement action deemed necessary to protect the public interests. Category I violations include but are not limited to the following:~~ (4-6-05)

~~i. Register or attempt to register any fertilizer using fraudulent or deceptive practices to evade or attempt to evade the requirements set forth under Title 22, Chapter 6, Idaho Code, or rules adopted thereunder;~~ (4-6-05)

~~ii. Submit false or fraudulent registration applications, records, invoices or reports;~~ (4-6-05)

~~iii. Sell, use or remove any fertilizer subject to a Stop Sale, Use or Removal Order until the fertilizer has been released in accordance with the provisions of Title 22, Chapter 6, Idaho Code.~~ (4-6-05)

~~iv. Impede, obstruct, hinder or otherwise prevent or attempt to prevent the department from the performance of its duties under Title 22, Chapter 6, Idaho Code.~~ (4-6-05)

~~b. **Category II (Moderate).** The Director may take initial alternative enforcement action and may allow a specified amount of time to take corrective action prior to issuance of a civil penalty for a Category II violation. Failure to complete the required corrective action within the specified time period, or repeat violations, will result in the issuance of a civil penalty. Category II violations include but are not limited to the following:~~ (4-6-05)

~~i. Sell, offer for sale, or distribute adulterated fertilizers;~~ (4-6-05)

~~ii. Fail, refuse, or neglect to keep or maintain records as required under Title 22, Chapter 6, Idaho Code, or refuse to make available such records upon request by the department;~~

(4-6-05)

~~iii. Knowingly or intentionally make any false or misleading representations in connection with the sale, offer for sale, or distribution of fertilizer. (4-6-05)~~

~~e. Category III (Minor). The Director may take initial alternative enforcement action in writing and may allow a specified amount of time to take corrective action prior to the issuance of a civil penalty for a Category III violation, except in the case of a deficiency as listed in Subsection 090.01.c.i.(1), in which case a civil penalty will be issued. Failure to complete the corrective action within the specified time period, or repeat violations, may result in the issuance of a civil penalty. Category III violations include but are not limited to the following: (4-6-05)~~

~~i. Sell, offer for sale, or distribute mislabeled fertilizers, including, but not limited to, when the fertilizer is: (4-6-05)~~

~~(1) A specialty fertilizer deemed deficient as defined in Section 22-603 (7), Idaho Code; (4-6-05)~~

~~(2) Labeled in violation of Section 22-607, Idaho Code. (4-6-05)~~

~~ii. Fail, refuse, or neglect to deliver to a purchaser of a bulk fertilizer a printed label that complies with Section 22-603 (2) and (3), Idaho Code; (4-6-05)~~

~~iii. Sell, offer for sale, or distribute a fertilizer that is not registered pursuant to Section 22-605, Idaho Code; (4-6-05)~~

~~iv. Fail, refuse, or neglect to file a semi-annual tonnage report pursuant to Sections 22-608 and 22-609, Idaho Code; (4-6-05)~~

~~v. Fail, refuse, or neglect to pay inspection fees required under Section 22-608, Idaho Code. (4-6-05)~~

~~**02. Maximum Civil Penalties.** Penalties for Category II and III violations will accrue during one (1) calendar year; Violations for Category I will accrue during periods of three (3) calendar years beginning these intervals with the year 2004.~~

Category	1st Violation	2nd Violation	3rd+ Violation
Category I (Major)	\$500	\$1500	\$10,000
Category II (Moderate)	\$250	\$750	\$5000
Category III (Minor)	\$125	\$250	\$500

(4-6-05)

~~**03. Payment of Penalties.** As authorized under Section 22-619, Idaho Code, a civil penalty imposed may be remitted or reduced upon such terms and conditions as the Director considers proper and consistent with the public health and safety. (4-6-05)~~

~~04. **Substantial Harm.** Any violation that results in substantial harm to human health or the environment, may be subject to a civil penalty of not more than ten thousand dollars (\$10,000) for the initial violation or any subsequent violation. (4-6-05)~~

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.06.20 - RULES GOVERNING GRAPE PLANTING STOCK
DOCKET NO. 02-0620-1101
NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified 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 22-2013, Idaho Code.

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

This rule updates and clarifies the requirements for shipping grape planting stock into Idaho. It outlines regulated pests, certifications needed, treatment requirements and penalties.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2011 Idaho Administrative Bulletin, Vol. 11-10, pages 69 through 72.

IDAHO CODE SECTION 22-101A STATEMENT: This proposed rule does regulate an activity not regulated by the federal government, because the federal government does not regulate the interstate movement of grape planting stock for any of the regulated pests listed in the rule.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael E. Cooper, Bureau Chief, (208) 332-8620.

DATED this 27th day of October, 2011.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd., Boise, ID 83712

P.O. Box 790, Boise, ID 83701-0790
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING NOTICE WAS 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 22-2013, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 updates and clarifies the requirements for shipping grapevines into Idaho for planting. It outlines regulated pests, certifications needed, treatment requirements and penalties.

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: N/A

IDAHO CODE SECTION 22-101A STATEMENT: This proposed rule does regulate an activity not regulated by the federal government, because the federal government does not regulate the interstate movement of grapevines for any of the regulated pests listed in the rule.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, informal negotiated rulemaking was conducted. **A committee consisting of stakeholders, including the Idaho Grape Growers and Wine Producers Commission, Idaho Nursery and Landscape Association, and the Snake River Table Grape Association, met on May 27th, 2010 and December 13, 2010.**

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 Michael E. Cooper, Bureau Chief, (208) 332-8620.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 24th day of August, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0620-1101

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0620-1101

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.06.20, "Rules Governing Grape Planting Stock." (5-3-03)

02. Scope. This chapter has the following scope: These rules are to prevent the introduction of *certain* grape plant pests and plant diseases into the state of Idaho. To declare that a quarantine be established at the boundaries of the state of Idaho. To define the area **regulated** under **the** quarantine, regulated commodities, regulations governing shipments, disposition of commodities in violation of quarantine **rules**, authority to enter, inspect, and control and penalties. The official citation for this chapter is IDAPA 02.06.20.000 et seq. For example, this section's citation is IDAPA 02.06.20.001. (5-3-03)()

(BREAK IN CONTINUITY OF SECTIONS)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

01. Office Hours. Office hours are 8 a.m. to 5 p.m. Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. (5-3-03)

02. Mailing Address. The mailing address for the central office is Idaho State Department of Agriculture, P.O. Box 790, Boise, Idaho 83701. (5-3-03)

03. Street Address. The central office is located at 2270 Old Penitentiary Road, Boise,

Idaho 83712.

(5-3-03)

04. Shipment Notifications. Shipment notifications may be faxed to (208) 334-2283 or emailed to Nsy.Idaho@agri.idaho.gov. ()

(BREAK IN CONTINUITY OF SECTIONS)

050. REGULATED AREAS ~~UNDER QUARANTINE.~~

All areas outside of the territorial borders of the state of Idaho.

(2-21-72)

051. -- 099. (RESERVED)

100. REGULATED COMMODITIES.

~~Plants and all parts thereof (except fruits)~~ Planting stock of grape (Vitis species) including live plants, hardwood cuttings, softwood cuttings, rootstocks, and any other parts of the grape plant, except fruit, capable of propagation (except fruit). (2-21-72)()

101. REGULATED PESTS.

Regulated pests include, but are not limited to:

()

01. Grapevine Fanleaf Virus;

()

02. Grapevine Leaf Roll - Associated Viruses;

()

03. Grapevine Corky Bark Disease. Which include but may not be limited to: ()

a. Grapevine virus A; and

()

b. Grapevine virus B and synonym rugose wood complex;

()

04. Grape Phylloxera. (*Daktulosphaira vitifoliae*);

()

05. Pierce's Disease. As caused by the bacterium *Xylella fastidiosa*;

()

06. Vine Mealybug. (*Planococcus ficus*); and

()

07. Glassy-Winged Sharpshooter. (*Homalodisca vitripennis*, formerly known as *H. coagulata*). ()

1012. -- 149. (RESERVED)

150. RULES GOVERNING SHIPMENTS.

01. Admittance into Idaho. ~~Plants and parts thereof of grapes will be admitted into the state of Idaho provided the following provisions are complied with.~~ Each shipment of a

regulated article from a regulated area must be accompanied by a certificate issued by the state or country of origin's plant protection organization, stating that the grape planting stock to be imported has been certified in accordance with the regulations of an official grapevine certification program of the state or country of origin's plant protection organization, that includes annual inspections at all certification levels and testing at the foundation level for regulated pests and: (2-21-72)()

~~a. European or wine grape (*Vitis vinifera*) plants or parts thereof will be admitted when accompanied by phytosanitary certificate, issued by a legal certifying agency of the state of origin, certifying the regulated commodities to be free from known virus diseases and plant pests detrimental to grapes. Phytosanitary certificates are to reach the office of the Division of Plant Industries, Boise, Idaho, ten (10) days prior to shipment. (2-21-72)~~

~~b. All other grape (*Vitis* species) and all hybrid grape plants or parts thereof will be admitted when evidence is given that the regulated commodities were treated, heat or fumigation, for plant pests detrimental to grapes. Type of treatment must meet with the approval of the Director of the Idaho Department of Agriculture. (2-21-72)~~

~~c. All rooted grape plants (not rooted in sterile media) of (*Vitis vinifera* and/or *Vitis* species) will be admitted when evidence is given that the regulated commodities were treated, heat or fumigation, for plant pests detrimental to grapes, and which type of treatment must meet with the approval of the Director of the Idaho Department of Agriculture. (2-21-72)~~

a. The grapevines, rootstock and/or softwood cuttings were grown in and shipped from an area known to be free from regulated pests; or ()

b. For small shipments (five hundred (500) or less) of un-rooted softwood cuttings, were individually inspected by an authorized inspector and were found to be free from regulated pests; or ()

c. The grapevines, rootstock or softwood cuttings were grown under a sterile soil-less media and treated with a soil or systemic insecticide and a hot water dip treatment, as outlined in Section 155 of this rule, proven to be effective against vine mealybug and any other pests that may be present on the roots; or ()

d. The grapevines, rootstock, and/or softwood cuttings were subject to one (1) of the two (2) treatments outlined in Section 155 of this rule, or such additional methods as may be determined to be effective and are approved by the director and were stored in a manner after treatment that would prevent re-infestation. ()

02. Marking Contents ~~and Treatment~~. All shipments of grape ~~plants or parts thereof shall be~~ planting stock must be plainly marked with the contents ~~and treatment applied~~ on the outside of the package or container. (2-21-72)()

03. ~~Shipment Inspection Provisions~~. ~~Any and all shipments of commodities under the foregoing provisions must be held by the person who ordered such grape plants or parts thereof. Such person shall immediately notify the Department at the time the grape plants or parts thereof are received. The person shipping or moving the grape plants or parts thereof into Idaho shall~~

~~immediately notify the Department at the time of shipment. The grape plants or parts thereof shall be held as required by this Subsection until they have been inspected and passed by the Director of the Idaho Department of Agriculture, his deputy, or by a state plant quarantine officer.~~
Shipment Notification. Persons shipping or transporting grape planting stock into this state from areas under regulation shall notify the department by electronic mail, regular mail or fax prior to shipment at the address, electronic mail address or fax number set forth in Section 005 for specific notification information. The notification must include the nature of the grape planting stock (such as live plants, hardwood cuttings, softwood cuttings, rootstocks, or other similar categories), the quantity in each shipment, the expected date of arrival, the name of the intended receiver and the destination. Notification shall also include an official certificate issued by the plant protection organization of the state of origin certifying that the grapevines meet the requirements of this chapter must accompany the grape planting stock into the state. All treatments and inspections must have been witnessed or performed by an official of the state of origin's plant protection organization. (2-21-72)()

151. -- ~~199~~54. (RESERVED)

155. ACCEPTABLE TREATMENTS.

01. Hot Water Treatment. Dormant, rooted grapevines or rootstock shall be washed to remove all soil or other propagative media. Dormant rooted plants or rootstock shall be immersed in a hot water bath for a period of not less than three (3) minutes, nor more than five (5) minutes, at a temperature of not less than one hundred twenty-five degrees Fahrenheit (125° F.) or fifty-two degrees Celsius (52° C.), nor more than one hundred thirty degrees Fahrenheit (130° F.) or fifty-five degrees Celsius (55° C.) at any time during immersion; or ()

02. Methyl Bromide Fumigation. Grapevines, rootstock or softwood cuttings may be treated by methyl bromide fumigation. Fumigation shall be in an approved gastight fumigation chamber, equipped with a heating unit, a fan for dispersal of gas and clearing the chamber of gas after fumigation, and an interior thermometer readable from the outside. Fumigation shall be with a dosage of two (2) pounds (nine-hundred eight thousandths of a kilogram (0.908 kg.)) of methyl bromide per one thousand (1,000) cubic feet (twenty-eight (28) cubic meters) for a period of three (3) hours at a temperature of between sixty-five degrees Fahrenheit (65° F.) or eighteen point three degrees Celsius (18.3° C.) and seventy degrees Fahrenheit (70° F.) or twenty-one point one degrees Celsius (21.1° C.). The fan shall be operated for a period of ten (10) minutes after the injection of the gas. ()

03. Other Methods. Upon written application to the Director, variations to the above mentioned acceptable treatments or additional treatment methods may be considered. ()

156. -- 199. (RESERVED)

200. DISPOSITION OF COMMODITIES IN VIOLATION OF QUARANTINE RULES.
Any commodity set forth in Section 150 of ~~this quarantine~~ these rules, or any grape plants or parts thereof, not meeting the requirements of ~~this quarantine~~ these rules shall immediately be sent out of the state of Idaho or destroyed at the option and expense of the owner or owners, his or their responsible agents and under the direction of the Director ~~of the Idaho Department of Agriculture or his deputies.~~ (2-21-72)()

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.30 - RULES UNDER THE IDAHO BEE INSPECTION LAW

DOCKET NO. 02-0630-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified 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 22-2511, 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:

Updates to the rule reflect the re-numbering of the Bee Inspection Law Title 22, Chapter 25, Idaho Code. In addition, sections required by the Office of the Administrative Rules Coordinator have been added to the rule. The emphasis on which diseases will be inspected for has shifted and will be reflected in the rules.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2011 Idaho Administrative Bulletin, Vol. 11-10, pages 73 through 75.

IDAHO CODE SECTION 22-101A STATEMENT: This proposed rule does regulate an activity not regulated by the federal government, because the federal government does not regulate the interstate movement of honeybees or the keeping of honeybees. However, the existing rule has been in effect since 1991. The proposed rule updates references to Idaho Code sections, updates information regarding bee diseases, removes a rule for which there is no longer statutory authority, and adds rule provisions that are now standard in Idaho's administrative rules.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael E. Cooper, Bureau Chief, (208) 332-8620.

DATED this 27th day of October, 2011.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd., Boise, ID 83712

P.O. Box 790, Boise, ID 83701-0790
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING NOTICE WAS 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 22-2511, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

Updates to the rule reflect the re-numbering of the Bee Inspection Law Title 22, Chapter 25, Idaho Code. In addition, sections required by the Office of the Administrative Rules Coordinator have been added to the rule. The emphasis on which diseases will be inspected for has shifted and will be reflected in the rules.

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: N/A

IDAHO CODE SECTION 22-101A STATEMENT: This proposed rule does regulate an activity not regulated by the federal government, because the federal government does not regulate the interstate movement of honeybees or the keeping of honeybees. However, the existing rule has been in effect since 1991. The proposed rule updates references to Idaho Code sections, updates information regarding bee diseases, removes a rule for which there is no longer statutory authority, and adds rule provisions that are now standard in Idaho's administrative rules.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes are housekeeping changes to the rule and do not require anything of the affected public.

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 Michael E. Cooper, Bureau Chief, (208) 332-8620.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 16th day of August, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0630-1101

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 22, Chapter 25, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.06.30, "Rules Under the Idaho Bee Inspection Law." ()

02. Scope. This chapter has the following scope: These rules are to prevent the introduction or further dissemination of certain bee diseases into the state of Idaho. To provide authority to enter, inspect, and control bee pests and levy penalties. The official citation for this chapter is IDAPA 02.06.20.000 et seq. For example, this section's citation is IDAPA 02.06.20.001. ()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. ()

003. ADMINISTRATIVE APPEAL.

Hearing and appeal rights are set forth in Title 67, Chapter 52, Idaho Code. ()

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

01. Office Hours. Office hours are 8 a.m. to 5 p.m. Mountain Time, Monday through

Friday, except holidays designated by the State of Idaho. ()

02. Mailing Address. The mailing address for the central office is Idaho State Department of Agriculture, P.O. Box 790, Boise, Idaho 83701. ()

03. Street Address. The central office is located at 2270 Old Penitentiary Road, Boise, Idaho 83712. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

These rules are public records available for inspection and copying at the Department and the State Law Library. ()

007. -- 009. (RESERVED)

Codified Section 010 has been moved and renumbered to proposed Section 015.

010. DEFINITIONS.

The Department adopts the definitions set forth in Section 22-2502, Idaho Code. ()

011. -- 014. (RESERVED)

015. REGULATED BEE DISEASES.

~~Certain diseases of bees,~~ Specifically, American foulbrood, European foulbrood, sac brood and bee paralysis, Varroa mite, tracheal mite, or any other disease or abnormal condition of egg, larval, pupal, or adult stages of honey bees, hereinafter is referred to as bee diseases.

~~(11-21-91)~~()

016. -- 049. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

150. INSPECTION PROCEDURES.

01. Request for Inspection. All beekeepers requiring an apiary inspection shall complete the "Request for Inspection" form provided by the Department of Agriculture. Information shall include name, address, telephone number of the applicant, number of colonies to be inspected and the state(s) to which entry is desired. The applicant agrees to pay the costs of the inspection according to the fee schedule in Section 300. The request for inspection must be returned to the Department of Agriculture no later than August 15 of each year. Late requests will be accepted through August 31, after which no requests for inspection will be accepted. No inspections will be conducted after ~~October~~ November 15 of each year. Apiaries found free of disease will be entitled to receive a health certificate valid for one (1) year from date of issuance permitting access to those states which require and recognize Idaho certification.

~~(11-21-91)~~()

02. Disease Inspection. The apiary inspector shall inspect for all diseases and pests cited in Section 01~~05~~, specifically for American foulbrood and Varroa mite or other bee diseases as specified by the importing state regulatory agency. ~~(11-21-91)()~~

03. Posting of Registration. All apiaries located within the state of Idaho shall be conspicuously posted with the name, address and telephone number and state registration number of the owner. (11-21-91)

04. Necessary Precautions. The apiary inspector shall take all necessary precautions to properly disinfect all tools and any other thing which may have come into contact with diseased bees or equipment to prevent spread of the disease. (11-21-91)

(BREAK IN CONTINUITY OF SECTIONS)

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

~~**250. HEALTH CERTIFICATE FOR IMPORT PERMIT.**~~

~~The certificate of health from the state of origin required for an importation permit as provided by Idaho Code, Section 22-2526 shall specifically state that the apiary was inspected and found free of American foulbrood and Varroa mite.~~ ~~(11-21-91)~~

~~251.—299. (RESERVED)~~

(BREAK IN CONTINUITY OF SECTIONS)

350. VIOLATION.

Violation of any of the provisions of the Idaho Bee Inspection Law, Title 22, Chapter 25, Idaho Code, or rules promulgated thereunder is a misdemeanor. A civil penalty may also be assessed pursuant to Idaho Code, Section 22-25~~39(2)~~12. ~~(11-21-91)()~~

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.33 - ORGANIC FOOD PRODUCT RULES

DOCKET NO. 02-0633-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified 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 22-1103, Idaho Code.

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

The Idaho State Department of Agriculture is an accredited certifying agent under the National Organic Program (NOP) of the United States Department of Agriculture, and ISDA must comply with the federal NOP Regulations, 7 C.F.R. Part 205. ISDA may not require compliance with provisions not in the NOP Regulations. In order to comply with the NOP Regulations, ISDA must eliminate certain provisions of IDAPA 02.06.33, Organic Food Product Rules that are more stringent than NOP Regulations. Therefore, this rulemaking will eliminate the following provisions: the educational activity requirements for certification, the July 1st deadline for certification, and the fees for chemical residue analysis.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the September 7, 2011 Idaho Administrative Bulletin, Vol. 11-9, pages 34 through 36.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Brandon Lamb, Agricultural Program Manager, 208-332-8675.

DATED this 27th day of October, 2011.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd., Boise, ID 83712

P.O. Box 790, Boise, ID 83701-0790
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-1103, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2011.

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

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

The Idaho State Department of Agriculture is an accredited certifying agent under the National Organic Program (NOP) of the United States Department of Agriculture, and ISDA must comply the federal NOP Regulations, 7 C.F.R. Part 205. ISDA may not require compliance with provisions not in the NOP Regulations. In order to comply with the NOP Regulations, ISDA must eliminate certain provisions of IDAPA 02.06.33, Organic Food Product Rules that are more stringent than NOP Regulations. Therefore, this rulemaking will eliminate the following provisions: the educational activity requirements for certification, the July 1st deadline for certification, and the fees for chemical residue analysis.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule changes are required to comply with the NOP Regulations. The elimination of the education activity requirements is also required to comply with House Bill 38 passed by the Idaho Legislature in 2011.

INCORPORATION BY REFERENCE: No documents are being incorporated by reference as

a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Brandon Lamb, Agricultural Program Manager, 208-332-8675.

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 28, 2011.

DATED this 3rd day of August, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0633-1101

012. -- ~~099.~~ ~~(RESERVED)~~

~~100. EDUCATIONAL ACTIVITY REQUIREMENTS.~~

~~01. Eligibility. In addition to the requirements outlined in this rule, all producers and handlers shall participate in at least one (1) approved educational activity annually to be eligible for continued certification. (3-19-07)~~

~~02. Request for Approval. A producer or handler who intends to attend an educational activity, that is either in or out of state, or the organizer of an educational activity, shall submit to the department a request for approval of the educational activity not less than thirty (30) days prior to the scheduled educational activity. Such a request shall be submitted on a form prescribed by the department. Under exceptional circumstances, as described in writing by the producer or handler requesting approval, the thirty (30) day requirement may be waived. (3-19-07)~~

~~03. List of Attendees. The organizer of an approved educational activity shall submit to the department a list of attendees within thirty (30) days of the conclusion of the educational activity. (3-19-07)~~

~~04. Official Approval. Official approval shall be given only for those educational activities that deal with: (3-19-07)~~

~~a. Organic production; (4-2-03)~~

~~b. Integrated pest management; (4-2-03)~~

~~c. Sustainable agriculture practices; (4-2-03)~~

~~d.~~ *Organic handling; or* (4-2-03)

~~e.~~ *Processing practices.* (4-2-03)

~~101.~~—199. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

301. CERTIFICATION REQUIREMENTS, ~~DEADLINES~~ AND FEES.

01. Certification Requirements ~~and Deadlines.~~ All applicants applying for certification with the Department, shall submit the application to the Department on forms prescribed or approved by the Department ~~by July 1st of each year.~~ (3-29-10)()

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

b. Producers/handlers with annual gross organic sales of five thousand dollars (\$5,000) or less may select certification in place of registration. (4-7-11)

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

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

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

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

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

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

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

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

b. Travel time from an inspector's normal duty station to the inspection site and

return to normal duty station will be compensable time charged to the applicant. (3-19-07)

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

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

~~**e.** *The costs for chemical residue analysis of soil or organically grown food products may be assessed against the producer or handler.* (3-19-07)~~

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

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

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.41 - RULES PERTAINING TO THE IDAHO SOIL AND PLANT AMENDMENT ACT OF 2001

DOCKET NO. 02-0641-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified 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 22-2204, 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:

Update the incorporation by reference section to reflect the 2012 Official Publication of the Association of American Plant Food Control Officials; add an incorporation by reference of the "2005 Official Methods of Analysis (OMA) of the AOAC," 18th Edition, published by the Association of Official Agricultural Chemists (AOAC) International; Remove the sub-section regarding PAM products, and amend the labeling requirements to include Guaranteed Analysis and directions for use.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2011 Idaho Administrative Bulletin, Vol. 11-10, pages 76 through 80.

IDAHO CODE SECTION 22-101A STATEMENT: This rule does regulate an activity not already regulated by the federal government, because the federal government does not regulate Soil and Plant Amendments. The rule is, however, consistent with national standards by the Association of American Plant Food Control Officials.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lloyd B. Knight, Administrator (208) 332-8620.

DATED this 27th day of October, 2011.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd., Boise, ID 83712

P.O. Box 790, Boise, ID 83701-0790
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(2), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-2204, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

Update the incorporation by reference section to reflect the 2012 Official Publication of the Association of American Plant Food Control Officials; add an incorporation by reference of the "2005 Official Methods of Analysis (OMA) of the AOAC," 18th Edition, published by the Association of Official Agricultural Chemists (AOAC) International; Remove the sub-section regarding PAM products, and amend the labeling requirements to include Guaranteed Analysis and directions for use.

IDAHO CODE SECTION 22-101A STATEMENT: This rule does regulate an activity not already regulated by the federal government, because the federal government does not regulate Soil and Plant Amendments. The rule is, however, consistent with national standards by the Association of American Plant Food Control Officials.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed amendments.

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

The Association of American Plant Food Control Officials (AAPFCO) Official Publication and the Official Methods of Analysis (OMA) published by the Association of Official Agricultural Chemists (AOAC) International are the recognized and primary reference books of approved fertilizer terms, ingredient definitions and policies used by the fertilizer and soil and plant amendment industry and all state and Federal fertilizer and soil and plant amendment control officials and regulators.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Administrator at (208) 332-8620.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 16th day of August, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0641-1101

004. INCORPORATION BY REFERENCE.

Copies of these documents may be viewed at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.41 incorporates by reference: (4-7-11)

01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication. The terms, ingredient definitions and policies as published in the “~~2017~~2 Official Publication” of AAPFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 22, Chapter 22, Idaho Code, and any rule promulgated thereunder. The AAPFCO Official Publication is a copyrighted publication and not available in electronic format. A copy may be purchased online from the AAPFCO website at: http://www.aapfco.org/publication_order_form.pdf. (~~4-7-11~~)()

02. The Merck Index. The “2006 Merck Index,” 14th Edition, as published by Merck Research Laboratories Division of Merck & Co., Incorporated. The Merck Index is a copyrighted publication and not available in an electronic format. A copy may be purchased online from Merck & Co., Inc. at: <http://www.merckbooks.com/mindex/index.html>. (4-7-11)

03. The Association of Official Agricultural Chemists (AOAC) International.
The “2005 Official Methods of Analysis (OMA) of the AOAC,” 18th Edition, a copyrighted publication, is maintained and published by the AOAC International. The AOAC OMA is available in electronic format at: www.EOMA.AOAC.org. A copy may be purchased online from AOAC International. ()

(BREAK IN CONTINUITY OF SECTIONS)

008. ABBREVIATIONS.

- 01. AAPFCO. Association of American Plant Food Control Officials. (3-15-02)
- 02. AOAC. Association of Official Analytical Chemists, International. (3-15-02)
- 03. ISDA. Idaho State Department of Agriculture. (3-15-02)
- ~~04. PAM. Polyacrylamide. (3-15-02)~~

(BREAK IN CONTINUITY OF SECTIONS)

010. SOIL AMENDMENT AND PLANT AMENDMENT REGISTRATION.

Each separately identifiable soil amendment or plant amendment product shall be registered pursuant to Section 22-2205, Idaho Code. (3-15-02)

01. Product Registration. All soil amendment and plant amendment companies, including companies engaged in custom-formula mixing of dry or liquid soil amendments or plant amendments, shall comply with the product registration requirements of the Idaho Soil and Plant Amendment Act of 2001, Section 22-2205, Idaho Code, subject to the provisions of this chapter. (3-15-02)

02. Exemptions from Registration. (3-15-02)

- a. Dried animal manure without nutrient claims and not commercially packaged or labeled. (3-15-02)

- b. Horticultural growing media containing live plant material. (3-15-02)

03. Alteration from Original State. When a soil amendment or plant amendment that has been registered is mixed, added to, or in any way changed from its original content, it is a different product, and must be registered as provided under Section 22-2205, Idaho Code. (3-15-02)

04. Sale of Soil Amendment or Plant Amendment. When a commercial soil amendment or plant amendment is removed from the package or container in which it was placed by the original registrant and then offered for sale by a person other than the original registrant, it is a different product and shall be registered in accordance with Section 22-2205, Idaho Code, except that it shall not be subject to an additional inspection fee as provided under Section 22-2208, Idaho Code, provided that said fee was paid on the product by the original or prior registrant. (3-15-02)

~~**05. PAM Products.** PAM polymers must have residual acrylamide monomer limits of no greater than five hundredths percent (0.05%). The following information must be submitted to register PAM products:~~ (3-15-02)

- ~~**a.** Percent of residual acrylamide monomer;~~ (3-15-02)
- ~~**b.** Charge of polymer (cationic, anionic, nonionic);~~ (3-15-02)
- ~~**c.** Branching characteristic of polymer (linear, cross-linked); and~~ (3-15-02)
- ~~**d.** Molecular weight of polymer.~~ (3-15-02)

011. -- 029. (RESERVED)

030. SOIL AMENDMENT AND PLANT AMENDMENT LABELS.

~~**01. Ingredient List.** The label shall state the name of each ingredient in decreasing amounts present.~~ (3-15-02)

~~**021. Declaration of Ingredient Percentage**~~ **Content or Guaranteed Analysis**
Exemptions. ()

a. The labeling requirements of the Idaho Soil and Plant Amendments Act of 2001, Section 22-2207(1)(c), Idaho Code, requiring that soil and plant amending ingredients and other ingredients shall be stated in terms of percentage is required except ~~in~~ the following ~~cases~~ **single ingredient soil amendments, when clearly and conspicuously identified as such on the label, are exempt from the content or guaranteed analysis:** (3-15-02)()

- ~~**a.** Horticultural growing media.~~ (3-15-02)
- i. Mulch;** ()
- ii. Peat;** ()
- iii. Perlite;** ()
- iv. Vermiculite; and** ()
- v. Vermicompost.** ()

b. In lieu of a content or guaranteed analysis as required in Section 22-2207(1)(c), Idaho Code, the label of the following soil amendments when clearly and conspicuously identified as such on the label may include an ingredient statement: ()

- bi. Compost; (3-15-02)()
- ii. Garden Soil; ()
- iii. Landscape Soil; ()
- iv. Mulch; ()
- v. Planting Mix; and ()
- vi. Potting Mix. ()

c. In lieu of a content or guaranteed analysis as required in Section 22-2207(1)(c), Idaho Code, a product that claims the presence of a microbe(s), other than naturally occurring microbes, shall guarantee the microbe(s) as follows: ()

- i. Minimum number of each claimed viable organism at the genus and species level in colony forming units (CFU), spores or propagules per gram or milliliter (cm3); ()
- ii. Expiration date; and ()
- iii. Storage & handling instructions. ()

032. Nutrient Claims and the Use of the Term “Fertilizer.” (3-15-02)

a. The term “fertilizer” and like terms shall not be used in labeling or literature to describe a soil amendment or plant amendment. (3-15-02)

b. Nutrient claims do not change the primary intended use of a soil or plant amendment product. Any nutrient claim shall be provided on the labeling and literature as an estimated range and shall be stated as a percentage. Nutrient claims and estimates must be supported by lab analysis or documentation acceptable by the ISDA. (3-15-02)

c. Labeling or literature that makes nutrient claims or estimates is required to contain the following statement: “This product is recognized for its soil amendment characteristics. It is recognized that it has nutrient value. Any nutrient claims, verbal or written, are estimates and not guaranteed.” (3-15-02)

d. At the discretion of the registrant, labeling or literature that does not make nutrient claims or estimates may contain the following statement: “This product is recognized for its soil amendment characteristics. It is recognized that it has nutrient value. Any nutrient claims, verbal or written, are estimates and not guaranteed.” (3-15-02)

e. A guaranteed analysis of plant nutrients will be permitted on potting soils,

landscape and garden soils, and related amendment products containing only levels of fertilizer sufficient to initiate growth. (4-7-11)

043. Microbiological Product. If the soil amendment or plant amendment is a microbiological product intended as an inoculum, the product label shall include an expiration date and state the number and kind of viable organisms per milliliter or, if the product is other than liquid, state the number and kind of viable organisms per gram. However, if the soil amendment or plant amendment is derived from a microbiological process or culture but is not intended as an inoculum, then the product label shall state that the product is not a viable culture. (3-15-02)

054. Ninety-Five Percent Rule. When a soil amendment or plant amendment is labeled as a specific material, such as peat moss or leaf mold, the product shall consist of not less than ninety-five percent (95%) of that specific material. (3-15-02)

065. Other Ingredients. When the name of an ingredient(s) appears on the label of a soil amendment or plant amendment and is not one of the ingredients required to be listed, the percentage of that ingredient(s) shall appear prominently in print of the same size and color. (3-15-02)

076. Warning or Caution Statements. The ISDA may require a registrant to include a warning or caution statement to ensure safety to handlers, crops, and the environment. (3-15-02)

07. Precautionary Statements. ISDA may require precautionary statements when needed for safe and effective use of the soil amendment or plant amendment. ()

IDAPA 46 - BOARD OF VETERINARY MEDICINE

46.01.01 - RULES OF THE STATE OF IDAHO BOARD OF VETERINARY MEDICINE

DOCKET NO. 46-0101-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified 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 54-2105, Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 5, 2011 Idaho Administrative Bulletin, Vol. 11-10, pages 734 through 740.](#)

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Karen Ewing, Executive Director, (208) 332-8588.

DATED this 27th day of October, 2011.

Karen Ewing, Executive Director
Board of Veterinary Medicine
2270 Old Penitentiary Rd.
P. O. Box 7249
Boise, ID 83707
Phone: (208) 332-8588
Fax: (208) 334-2170

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-2105, Idaho Code.

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

Monday, October 24, 2011
12:00 p.m. (noon) MDT

Idaho State Department of Agriculture
Conference Rooms A and B
2270 Old Penitentiary Road
Boise, ID

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 entire section regarding Board eligibility evaluations of candidates for the national veterinary examination will be removed to concur with a 2011 statute change. The statute change removed the requirement for the Board to determine candidate eligibility to take the national exam.

Fee refunds will be removed for certified veterinary technician applicants who withdraw their applications; this will reimburse the Board for staff time spent on application review.

Numerous questions and concerns from licensees will be addressed by clarifying the requirements when revisions to both paper and electronic patient records are made. In addition, based on negative comments from licensees, the requirement for a written release from the owner prior to transfers of patient medical information will be removed.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated

rulemaking was not conducted because of the simple nature of the rulemaking.

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 Karen Ewing, Executive Director, (208) 332-8588.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 18th day of August, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 46-0101-1101

~~**016: ELIGIBILITY EVALUATION – NATIONAL EXAMINATION.**~~

~~**01: Eligibility Requirements.** Effective July 1, 2000, all applicants applying to the Board for eligibility evaluation for the national examination shall: (3-30-01)~~

~~**a:** If not previously graduated from an accredited school of veterinary medicine at the time of application, be within eight (8) months of expected graduation date. (4-2-08)~~

~~**b:** Have qualified for licensure in this state as outlined in Section 54-2107, Idaho Code, and Subsection 010.01 of these rules; (3-30-01)~~

~~**c:** Have fulfilled the licensing requirements, as outlined in Section 54-2107, Idaho Code, and Subsections 010.02, 010.03, and 010.04 of these rules with the exception of a passing score on the national examination; (3-30-01)~~

~~**d:** Have completed the national examination application prepared by the National Board Examination Committee (NBEC) or its designee and supplied by the Board, NBEC or its designee; (3-30-01)~~

~~**e:** And have paid to the Board the state application and license fee as outlined in Paragraph 014.01.a. of these rules and the national examination processing fee, as outlined in Paragraph 014.01.g of these rules. (3-30-01)~~

~~**02: Application and Fee Deadlines.** For applicants applying to the Board for eligibility evaluation for the national examination, application and fee deadlines for both the~~

~~national examination and for the state licensure examination shall be ninety (90) days prior to the first date of each national testing window established by the National Board Examination Committee or its designee. No candidate will be permitted to take the national examination until their completed national and state applications have been received and approved, and the established fees paid. (3-30-01)~~

~~**03. Determination of Eligibility.** Upon the Board's determination of an applicant's eligibility for the national examination, the Board shall notify the applicant of his eligibility to take the national examination and shall transmit the applicant's eligibility information and examination fee to the National Board Examination Committee or its designee. Any candidate not included on the Board's eligibility list for the current test window will be ineligible to take the national examination during that test window. (3-30-01)~~

~~**04. Authorization to Test and Scheduling.** The National Board Examination Committee or its designee will supply authorization to test, letters, and scheduling permits to eligible candidates. Scheduling permits will contain instructions pertaining to establishing, changing or canceling a test appointment through a centralized registration center (Customer Service Call Center or CSCC). (3-30-01)~~

~~**a.** Candidates will be responsible for scheduling their own testing date, time and location through the Customer Service Call Center. Candidates who desire to change the date, time or location of the testing appointment may do so without financial penalty until noon on the fifth business day prior to the scheduled appointment. All times are based upon the local time of the center where the candidate is scheduled to test. (3-30-01)~~

~~**b.** Candidates must take the national examination within the established test window or their authorization to test will expire and their national examination and processing fees forfeited. (3-30-01)~~

~~**c.** Candidates desiring to retake the national examination during a subsequent test window must have their eligibility reconfirmed by the Board to the National Board Examination Committee or its designee and pay the established national examination and processing fees. (3-30-01)~~

~~**05. National Examination Scoring and Reporting.** (3-30-01)~~

~~**a.** The passing score for the national examination shall be the criterion referenced passing score established by the National Board Examination Committee or its designee, or by the American Association of Veterinary State Boards or its designated test vendor. (3-30-01)~~

~~**b.** The Board will report scores on the national examination to the individual candidates. (3-30-01)~~

~~**i.** No candidate shall be permitted to review the national examination or receive copies of his answers to the examination. (3-30-01)~~

~~**ii.** For candidates failing the national examination, upon request, a diagnostic breakdown according to the examination's overall content areas will be supplied. (3-30-01)~~

~~iii. Any appeals by candidates regarding examination scores will be managed by and between the candidate and the Board. (3-30-01)~~

~~iv. Any rationales and analyses provided by the National Board Examination Committee beyond the diagnostic information will be at the Board's written request and at the candidate's expense. (3-30-01)~~

~~e. A copy of the candidate's initial score report will be supplied to the Board by the National Board Examination Committee. Subsequent score reports to other boards must be requested by the candidate through the American Association of Veterinary State Boards, or its designee at the candidate's expense. (3-30-01)~~

0176. -- 099. (RESERVED)

100. CERTIFICATION OF VETERINARY TECHNICIANS.

Any person representing himself as a veterinary technician, licensed veterinary technician, registered veterinary technician, or certified veterinary technician, shall hold a valid, unexpired certificate to practice veterinary technology in the state of Idaho. (3-30-07)

01. Application for Certification -- Contents -- Examinations. An individual desiring to be certified as a veterinary technician shall make written application to the Board upon a form furnished by the Board. A complete application shall be valid and maintained at the Board office for a period of one (1) year, contain the applicant's notarized signature, and include: (3-30-01)

a. A copy of a birth certificate or current passport proving that the applicant is eighteen (18) years of age or older. (4-2-08)

b. Notarized affidavits issued during the year preceding certification from two (2) individuals, personally acquainted with the applicant, attesting to the fact that the applicant is of good moral character. (3-30-01)

c. Documentation of education/training/experience as follows: (3-30-01)

i. A certified copy of a diploma or transcript, or a letter verifying graduation from a veterinary technology program, accredited by the American Veterinary Medical Association; (3-29-10)

ii. A certified copy of a diploma or transcript, or a letter verifying graduation from a veterinary technology program equivalent to a program accredited by the American Veterinary Medical Association, or from another college or institution approved by the Board; (3-29-10)

iii. A certified copy of a diploma or transcript, or a letter verifying the award of a D.V.M. or V.M.D. degree or equivalent, from an accredited school of veterinary medicine; or (3-29-10)

iv. If a foreign veterinary graduate, notarized verification of having been awarded a

D.V.M. or V.M.D. degree or equivalent in a program of veterinary medicine from a foreign school of veterinary medicine or the veterinary department of a foreign university or another college or institution that is approved by the Board. (3-30-07)

d. Verification of a criterion-referenced passing score reported by the Professional Examination Service or its designee, or by other designated test vendors or their designees approved by the American Association of Veterinary State Boards on the Veterinary Technician National Examination (VTNE) or other national examination approved by the American Association of Veterinary State Boards or its designated test vendor or by the Board. If such a score is not available, the passing score shall be as reported by the Professional Examination Service or its designee, or by other designated test vendors or their designees approved by the American Association of Veterinary State Boards or by the Board and shall be considered equal to or greater than one and five-tenths (1.5) standard deviation below the mean score of the examination. (3-30-01)

i. The VTNE or other national examination approved by the American Association of Veterinary State Boards or its designated test vendor or by the Board may have been taken at any time. (3-30-01)

ii. Scores for the VTNE or other national examination approved by the American Association of Veterinary State Boards or its designated test vendor or by the Board are to be provided to the Board by the Professional Examination Service or its designee or by other designated test vendors or their designees approved by the American Association of Veterinary State Boards. (3-30-01)

e. A passing score for the jurisprudence examination, which should be ninety percent (90%) or such score as deemed appropriate by the Board. The jurisprudence examination, as prepared by the Board or its designee, may be taken more than once, at three-month intervals. (3-29-10)

02. Application for Certification -- Fee -- Deadline -- Validity. (3-30-01)

a. A completed application, other required documents, and first year's certification fee in the amount established by the Board shall be received at the Board office by the first day of January or June. (3-30-01)

b. The Board will review applications and issue certifications in January and June of each year. Veterinary Technician Certifications shall be consecutively numbered beginning with the number one (1) and all numbers shall be prefixed with the letters CVT. If an applicant is found not qualified, the Board shall notify the applicant in writing of such finding and grounds therefor. An applicant denied certification may request a hearing pursuant to the procedures set forth in Title 67, Chapter 52, Idaho Code. Any applicant who is denied certification shall be allowed the return of the certification fee portion of the application fee. (3-30-01)

~~**e.** Any applicant taking and passing the Idaho Veterinary Technician Jurisprudence Examination and not wanting to be certified at the next review by the Board shall be allowed the return of the certification fee portion of the application fee only. (3-30-01)~~

(BREAK IN CONTINUITY OF SECTIONS)

154. RECORD KEEPING STANDARDS.

Every veterinarian shall maintain daily medical records of the animals treated. These records may be computerized and shall be readily retrievable to be inspected, duplicated, or submitted when requested by the Board. All records, including electronic records, shall be safeguarded against loss, defacement, tampering, and use by unauthorized personnel. If changes are made to any records (either hard-copy or electronic), the records must clearly reflect what the change is, who made the change, when the change was made, and why. In the case of electronic records, the veterinarian shall keep either a duplicate hard-copy record or a back-up unalterable electronic record. Records shall be maintained for a period of three (3) years following the last treatment or examination. Patient medical records shall be maintained for every animal accepted and treated as an individual patient by a veterinarian, or for every animal group (for example, herd, litter, and flock) treated by a veterinarian. ~~(3-30-07)~~()

- 01. Medical Records.** Medical records shall include, but not be limited to: (7-1-97)
 - a.** Name, address and phone number of the animal's owner or other caretaker. (7-1-97)
 - b.** Name and description, sex (if readily determinable), breed and age of animal; or description of group. (7-1-97)
 - c.** Dates (beginning and ending) of custody of the animal. (7-1-97)
 - d.** A short history of the animal's condition as it pertains to the animal's medical status. (7-1-97)
 - e.** Results and notation of examination, condition, and diagnosis suspected. (4-2-08)
 - f.** All medications, treatments, prescriptions or prophylaxis given, including amount, frequency, and route of administration for both inpatient and outpatient care. (3-29-10)
 - g.** Diagnostic and laboratory tests or techniques utilized, and results of each. (7-1-97)
 - h.** Written anesthesia records. (3-30-07)
- 02. Consent Forms.** Consent forms, signed by the patient's owner or other legal caretaker for each surgical or anesthesia procedure requiring hospitalization or euthanasia, shall be obtained, except in emergency situations, for each animal and shall be maintained on file with the practitioner. (3-30-07)
- 03. Postoperative Instructions.** Postoperative home-care instructions shall be provided in writing and be noted in the medical record. (3-30-07)

04. Treatment Records. Veterinarians who practice with other veterinarians shall indicate by recognizable means on each patient's or animal group's medical record any treatment the veterinarian personally performed and which treatments and procedures were delegated to a technician or assistant to perform. (3-30-01)

05. Ownership of Medical Records. Medical records are the personal property of the hospital or the proprietor of the practice that prepares them. Other veterinarians, including those providing subsequent health needs for a patient, and the patient's owner may receive within fourteen (14) calendar days, a copy or summary of the patient's medical record, upon the request of the patient's owner or other caretaker. Vaccination records shall be supplied within twenty-four (24) hours, unless the business is closed, in which case the records shall be provided within twenty-four (24) hours of resumption of business. ~~Veterinarians shall secure a written release to document that request.~~ (3-29-10)()

06. Diagnostic Image Identification and Ownership. All diagnostic images shall be labeled in the emulsion film or digitally imprinted to identify the veterinarian or premise, the patient, the owner, the date, and anatomical orientation. A diagnostic image is the physical property of the hospital or the proprietor of the practice that prepares it, and it shall be released upon the request of another veterinarian who has the authorization of the owner of the animal to whom it pertains or to the Board. Such diagnostic images shall be returned within a reasonable time to the veterinarian who originally ordered them to be prepared. (4-2-08)

07. Estimates. A veterinarian shall make available to each client a written estimate on request. (3-30-07)

08. Controlled Substances and Prescription or Legend Drugs. A controlled substance is any substance classified by the federal Food and Drug Administration or the Idaho Board of Pharmacy in Schedules I through V of the state or federal Controlled Substances Act, Title 37, Chapter 27, Idaho Code, or 21 CFR 1308. A prescription or legend drug is any drug that under federal law is required, prior to being dispensed or delivered, to be labeled with one (1) of the following statements: "Caution federal law prohibits dispensing without a prescription"; or "RX Only"; or "Caution: Federal law restricts this drug to used by or on the order of a licensed veterinarian"; or a drug which is required by any applicable federal or state law or regulation or rule to be dispensed on prescription only, or is restricted to use by practitioners only. A veterinarian shall only dispense or distribute a controlled substance or prescription or legend drug within the context of a valid veterinarian/client/patient relationship as defined by Section 150 of these rules. (3-30-01)

a. Records shall be kept that account for all dispensed and distributed controlled substances and prescription or legend drugs. The records shall comply with all federal and state laws. All information required by statute shall be recorded in the patient record along with the initials of the veterinarian who authorized the dispensing or distribution of the controlled substances or prescription or legend drugs. (3-30-01)

b. A separate inventory record shall be kept for each controlled substance by name and strength. The record shall include: (7-1-97)

i. Records of the receipt, which include all information required by federal law, the

date of the receipt, the amount received, the source of receipt, and the invoice number. (7-1-97)

ii. Records of dispensing, which include the date the controlled substance was dispensed, the amount dispensed, the animal's name, identification of the patient record, identification of the person who dispensed the drug, identification of the veterinarian who supervised the dispensing and any other information required by federal law. (7-1-97)

c. Records for all dispensed or distributed prescription or legend drugs shall be maintained in the individual patient or herd record and shall include the date the drug was dispensed or distribution was authorized, the amount dispensed or distributed, identification of the person who dispensed or authorized distribution of the drug, identification of the veterinarian who supervised the dispensing and any other information required by federal or state law, regulation or rule. (3-30-01)

d. Prescription drug order means a lawful written or verbal order of a veterinarian for a drug. (3-30-01)

i. When prescription drug orders are issued by a licensed veterinarian to be distributed to the animal's owner or legal caretaker by a retail veterinary drug outlet, all orders for prescription or legend drugs shall be written on an official numbered three (3) part order form available through the Idaho Department of Agriculture. The veterinarian shall retain the second copy in his medical record and the original and one (1) copy shall be sent to the retail veterinary drug outlet. The retail veterinary drug outlet shall retain the original and attach the copy of the original to the order for delivery to the animal's owner or legal caretaker. (5-8-09)

ii. Under no circumstances shall a prescription or legend drug be distributed by a retail veterinary drug outlet to an animal's owner or legal caretaker prior to the issuance of either a written or oral prescription drug order from the veterinarian: (3-30-01)

(1) When a written prescription drug order from the veterinarian has been issued to a retail veterinary drug outlet, a copy of the veterinarian's original numbered prescription drug order shall be attached to the prescription or legend drugs that are delivered to the animal's owner or legal caretaker. (5-8-09)

(2) When a retail veterinary drug outlet receives an oral prescription drug order from the veterinarian, the oral order shall be promptly reduced to writing on a Department of Agriculture unnumbered telephone drug order blank. A copy of this completed form shall be attached to the prescription or legend drugs that are delivered to the animal(s)'s owner or legal caretaker. (5-8-09)

(3) When a veterinarian issues an oral prescription drug order to a retail veterinary drug outlet, the oral order shall be followed by a written prescription drug order signed by the veterinarian using the official numbered three (3) part order form and procedures required under Subparagraph 154.08.d.i. of these rules. The written order shall be sent promptly by the veterinarian so that it is received by the retail veterinary drug outlet no later than seven (7) days after the retail veterinary drug outlet receives the oral order. The written confirmation order may be hand-delivered, mailed, faxed, attached to an e-mail, or otherwise properly delivered to the retail veterinary drug outlet. (3-29-10)

e. When prescription or legend drugs are dispensed, the labeling on all containers shall be in compliance with the requirements of Paragraph 153.01.d. of these rules. (3-30-01)

f. When controlled substances are dispensed, all containers shall be properly labeled with: (4-5-00)

i. The clinic's name, address, and phone number; (4-5-00)

ii. The name of the client and patient; (3-30-01)

iii. The drug name and quantity; and (3-30-01)

iv. The directions for use, including dosage and quantity. (3-30-01)

g. All controlled substances shall be stored, dispensed, and disposed of in accordance with the requirements of the Uniform Controlled Substances Law and Code of Federal Regulations. (3-29-10)

09. Return or Disposal of Expired Pharmaceuticals and Biologicals. Except for controlled substances, which shall be disposed of in accordance with Paragraph 154.08.g. of these rules, all pharmaceuticals and biologicals that have exceeded their expiration date shall be removed from inventory and disposed of appropriately. (3-29-10)

IDAPA 60 - IDAHO SOIL & WATER CONSERVATION COMMISSION

60.05.04 - RULES GOVERNING ALLOCATION OF FUNDS TO CONSERVATION DISTRICTS

DOCKET NO. 60-0504-1101 (NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified 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 22-2718 and 22-2727, 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 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 3, 2011 Idaho Administrative Bulletin, Vol. 11-8 pages 310 to 313.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Kristin Magruder, Program Specialist, 208-332-1790, Kristin.Magruder@swc.idaho.gov.

DATED this 31st day of August, 2011.

Kristin Magruder
Program Specialist
Idaho Soil & Water Conservation Commission
650 W. State St., Room 145
Boise, Idaho 83702
208-332-1790 / Fax 208-332-1799
Kristin.Magruder@swc.idaho.gov

**THE FOLLOWING NOTICE WAS PUBLISHED WITH
THE TEMPORARY AND PROPOSED RULE**

EFFECTIVE DATE: The effective date of the temporary rule is **July 1, 2011**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 22-2718 and 22-2727, 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 24, 2011.

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 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:

The Idaho Soil & Water Conservation Commission is directed by statute to promulgate rules for allocation of state funds to the local conservation districts. This temporary/proposed rule will allow the Commission to continue the adopted processes from last fiscal year for distributing funds this fiscal year prior to the legislature's review of the pending rule during the 2012 session.

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

This temporary rule (c) confers a benefit to the districts as early in the fiscal year as possible in order for them to continue operations and carry out responsibilities.

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

There is no fee being imposed or increased by this rulemaking.

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

There is not a negative fiscal impact as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the allocation process was negotiated with all interested and affected parties prior to engaging in the rulemaking process. Additionally, there was the need to adopt the temporary rule prior to the start of the fiscal year 2012.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Kristin Magruder, 208-332-1790.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2011.

DATED this 27th day of June, 2011.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 60-0504-1101

IDAPA 60
TITLE 05
CHAPTER 04

60.05.04 - RULES FOR ALLOCATION OF FUNDS TO CONSERVATION DISTRICTS

000. LEGAL AUTHORITY.

This chapter is adopted by the Idaho State Soil and Water Conservation Commission under the legal authority of Sections 22-2718 and 22-2727, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be known and cited as IDAPA 60.05.04, "Rules for Allocation of Funds to Conservation Districts." ()

02. Scope. These rules establish the procedures to be followed by the Commission and the conservation districts in the implementation of Section 22-2727, Idaho Code, providing for the allocation of state funds appropriated for distribution to conservation districts. ()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. ()

003. ADMINISTRATIVE APPEAL.

There is no provision for administrative appeals before the Commission under this chapter. Persons may be entitled to appeal final agency actions authorized under this chapter pursuant to Section 67-5270, Idaho Code. ()

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into this rule. ()

005. IDAHO PUBLIC RECORDS ACT.

These rules are public records available for inspection and copying at the department. ()

006. ADDRESS, OFFICE HOURS, TELEPHONE, AND FAX NUMBERS.

01. Physical Address. The central office of the Idaho State Soil and Water Conservation Commission, 650 W State Street, Room 145, Boise, Idaho, 83702. ()

02. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. ()

03. Telephone Number. The telephone number of the Idaho State Soil and Water Conservation Commission at the central office is (208) 332-1790. ()

04. Fax Number. The fax number of the Idaho State Soil and Water Conservation Commission at the central office is (208) 332-1799. ()

05. Website. The Commission's website address is <http://www.swc.idaho.gov/>. ()

007. -- 009. (RESERVED)

010. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: ()

01. Base Funding. Funds appropriated to the Commission to be allocated equally to the various soil conservation districts in a sum not to exceed eight thousand five hundred dollars (\$8,500) per district per year. ()

02. Board of Supervisors. Governing body of a district as provided in Section 22-2717(25), Idaho Code. ()

03. Certify. To confirm formally as true, accurate, or genuine. ()

04. Commission. The Idaho State Soil and Water Conservation Commission as defined in Section 22-2718, Idaho Code. ()

05. Conservation District or District. A soil (and water) conservation district as defined in Section 22-2717, Idaho Code. ()

06. Financial and Match Report. Documentation certified by the Board of Supervisors that: ()

a. Itemizes local funds and services received by a district during the previous fiscal year; and ()

b. Describes how state base and match funds were utilized during the previous fiscal year. ()

07. Fiscal Year. As set forth in Section 67-2201, Idaho Code, the fiscal year will begin on July 1 and close on June 30 of the following year. ()

08. Five (5) Year Plan. The plan prepared by each district as defined in Section 025 of IDAPA 60.05.02, "Rules of the Antidegradation Plan for Agriculture for the Idaho Soil Conservation Commission and Soil Conservation Districts." ()

09. Funding Criteria. Criteria considered by the Commission to determine the amount of base and match funding to be allocated to the conservation districts. Criteria may include district budgets, district budget requests, district programs and work plans, and district work load analysis. The following documents may be required on an annual basis in order to consistently apply the criteria to all districts: ()

a. Five (5) year plans; ()

b. Financial and match reports; and ()

c. Performance reports. ()

10. Local Funds. Monies received in the previous fiscal year from local units of government and organizations for the general purposes of a conservation district. Funds received for special projects, used as required match for specific grants or projects, or on a fee-for-service basis will not be used to calculate match funding. ()

11. Local Services. Non-cash contributions received in the previous fiscal year from local units of government and organizations for the general purposes of a conservation district. Services received for special projects, used as required match for specific grants or projects, or on a fee-for-service basis will not be used to calculate match funding. ()

12. Local Units of Government. Any general or special purpose political subdivision of the state which has the power to levy taxes and/or appropriate and spend funds. ()

13. Match Funding. Funds appropriated to the Commission for distribution to conservation districts in excess of base funding not to exceed twice the amount of local funds and services received by each district in the previous fiscal year. ()

14. Maximum Allocation. The total of base funding and match funding allocated to any one (1) conservation district shall not exceed fifty eight thousand and five hundred dollars (\$58,500) in a fiscal year. ()

15. Organizations. A group of two (2) or more persons structured and managed to

pursue a collective goal on a continuing basis. ()

16. Performance Report. Documentation summarizing conservation activities, projects, and programs implemented by a conservation district during the previous fiscal year. ()

011. ALLOCATION OF FUNDS TO DISTRICTS.

01. Base Funding. The Commission shall determine the dollar amount to allocate equally to conservation districts on an annual basis. As soon as practicable after the start of the fiscal year, the Commission shall immediately distribute base funding to the districts that submitted the required documents during the previous fiscal year. ()

02. Match Funding. Following determination of base funding, the Commission shall review and approve the additional amount of state appropriations available for proportional allocation to each district in match funding. The amount of match funding allocated will be based upon local funds and services received in the previous fiscal year by each conservation district for the general purposes of the district. Funds received for special projects, used as required match for specific grants or projects, or on a fee-for-service basis will not be used to calculate match funding. Once the required documents for match funding are submitted and determined to be complete, the Commission shall distribute match funding to each district as soon as practicable. ()

03. Required Documents. The Commission may require submission of certain documents prior to allocation of base and match funding to districts. These documents may include five (5) year plans, financial and match reports, and performance reports. ()

a. The Board of Supervisors shall certify in writing that the district has examined all documentation submitted and that the statements and representations in the documents are true and accurate. ()

b. The district shall submit any required documents by a date established by the Commission. ()

04. State Budget Requests. The Commission shall conduct a public hearing to consider the needs of the conservation districts on or before June 15th of each year, giving twenty (20) days' written notice of the hearing to each conservation district and to all other persons requesting notice of the hearing. The Commission shall hear and consider testimony at the hearing and all information submitted by the districts prior to submission of the annual budget request to the legislature and governor based upon the criteria of Subsection 010.09 of this rule. ()

012. -- 999. (RESERVED)