AGRICULTURE COMMITTEE

ADMINISTRATIVE RULES REVIEW

Table of Contents

2010 Legislative Session

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.01.04 - Rules Governing the Idaho Preferred® Promotion Program
Docket No. 02-0104-0901 3

02.02.14 - Rules for Weights and Measures
Docket No. 02-0214-0901 7

02.03.03 - Idaho Department of Agriculture Rules Governing Pesticide and Chemigation Use and Application
Docket No. 02-0303-0901 10

02.04.13 - Rules of the Department of Agriculture Governing Retail Raw Milk
Docket No. 02-0413-0901 (Chapter Repeal) 14

02.04.13 - Rules Governing Raw Milk
Docket No. 02-0413-0902 (Chapter Rewrite) 17

02.04.14 - Rules of the Department of Agriculture Governing Dairy Waste
Docket No. 02-0414-0901 26

02.04.31 - Rules Governing the Stockpiling of Agricultural Waste
Docket No. 02-0431-0901 (New Chapter) 36

02.05.01 - Resource Conservation and Rangeland Development Program
Docket No. 02-0501-0901 42

02.06.02 - Rules Pertaining to the Idaho Commercial Feed Law
Docket No. 02-0602-0901 56

02.06.06 - Rules Governing the Planting of Beans, (Phaseolus Species), in Idaho
Docket No. 02-0606-0501 59

Docket No. 02-0606-0901 64

02.06.08 - Quarantine Rules Pertaining to Apples and Cherries
Docket No. 02-0608-0901 69

02.06.09 - Rules Governing Invasive Species
Docket No. 02-0609-0901 (New Chapter) 72

02.06.12 - Rules Pertaining to the Idaho Fertilizer Law
Docket No. 02-0612-0901 92

02.06.17 - Rules Governing the Disposal of Cull Onions and Potatoes
Docket No. 02-0617-0901 95

02.06.22 - Noxious Weed Rules
Docket No. 02-0622-0901 98

02.06.41 - Rules Pertaining to the Idaho Soil and Plant Amendment Act of 2001
Docket No. 02-0641-0901 105

IDAPA 46 - BOARD OF VETERINARY MEDICINE

46.01.01 - Rules of the State of Idaho Board of Veterinary Medicine
Docket No. 46-0101-0901 108

IDAPA 48 - IDAHO GRAPE GROWERS AND WINE PRODUCERS COMMISSION

48.01.01 - Rules of the Idaho Grape Growers and Wine Producers Commission
Docket No. 48-0101-0901 132

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.01.04 - RULES GOVERNING THE IDAHO PREFERRED® PROMOTION PROGRAM

DOCKET NO. 02-0104-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 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:

The proposed rule changes will simplify fee payment for new participants who join midway through the year. Promotion opportunities will be updated to reflect current program options and annual renewal process will be clarified.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in Book 1 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 26 and 27.

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 2nd day of November, 2009.

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 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 21, 2009.

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

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

The proposed rule changes will simplify fee payment for new participants who join midway through the year. Promotion opportunities will be updated to reflect current program options and annual renewal process will be clarified.

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

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

NEGOTIATED RULEMAKING: Informal negotiated rulemaking was conducted. Input was solicited from all Idaho Preferred® participants.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Laura Johnson, Section Manager at (208) 332-8533 or 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 28, 2009.

DATED this 27th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

101. PARTICIPATION DURATION AND RENEWAL.

01. Duration. Participation is on an annual basis, coinciding with the fiscal year beginning July 1 and ending June 30, unless otherwise provided for in this chapter. (3-16-04)

02. Renewing Participation. Renewals shall be submitted on forms established by the Director and will be due ~~*June 30*~~ August 1. ~~*(3-16-04)*~~( )

03. Reporting on Use of Logo. Participants renewing with the Department will report their use of the Idaho Preferred® logo from the concluding program year. The report will include, but may not be limited to, ~~*data*~~ information regarding ~~*the number of times*~~ how the Idaho Preferred® logo was used. ~~*(3-30-07)*~~( )

102. -- 109. (RESERVED).

110. PARTICIPATION FEES.

01. Annual Fee. The Director shall annually establish participation fees for each participation category by April first for the following program year. Participation fees will be listed in the participation application and will not exceed one thousand dollars ($1,000). Fees for the first program year will be set by July 1, 2003. (3-16-04)

02. Participation Categories: (3-16-04)

a. Producer. (3-16-04)

b. Packer/Shipper/Processor. (3-16-04)

c. Supporting Organization. (3-16-04)

d. Retail/Foodservice. (3-16-04)

e. Broker/Distributor. (3-16-04)

03. Pro-Rated Fees. New participation agreements issued during the program year will be assessed ~~*a fee pro-rated on a monthly basis for the duration of the program year*~~ one hundred percent (100%) of the annual fee if applying between July 1 and December 31 and fifty percent (50%) of the fee if applying between January 1 and June 30. ~~*(3-16-04)*~~( )

04. Participation in Multiple Categories. Persons qualifying in multiple participation categories shall be assessed the greater of participation fees. (3-16-04)

111. PARTICIPATION PRIVILEGES.
Participants will benefit from privileges including: (3-16-04)

01. Use of the Idaho Preferred® Logo. Use of the Idaho Preferred® Logo on product

labels, advertising, signage, or other promotional materials as allowed by the department. (3-30-07)

02. **Listing**. Listing In Idaho Preferred® Product Directories. (3-30-07)

03. **Promotion**. Promotion through advertising, retail and foodservice promotions, consumer and education events, and the Idaho Preferred® website. ~~(3-30-07)~~( )

04. **Visibility**. Visibility from the department's promotion activities. (3-16-04)

05. **Other Privileges**. Other privileges as established by the Director. (3-16-04)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.02.14 - RULES FOR WEIGHTS AND MEASURES

DOCKET NO. 02-0214-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 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:

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 5, 2009 Idaho Administrative Bulletin, Vol. 09-8, pages 20 and 21. No comments concerning the proposed rule were received during the comment period.

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

No fiscal impact is associated with this rule change.

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

DATED this 13th day of October, 2009.

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

THE FOLLOWING NOTICE 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 19, 2009.

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 adopt by reference the 2010 edition of the National Institute of Standards and Technology Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices.

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

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

NEGOTIATED RULEMAKING: Informal negotiated rulemaking was not conducted because of the simple nature of the proposed amendment.

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, 2009.

DATED this 9th day of June, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

004. INCORPORATION BY REFERENCE.

01. Required Reference Materials. The 20~~08~~10 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. ~~*(5-8-09)*~~(____)

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, or may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Copies are available for downloading on the internet by going to http://nist.gov. Copies of ASTM specifications are on file with the Idaho State Department of Agriculture or may be purchased from ASTM. (5-8-09)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

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

DOCKET NO. 02-0303-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2009 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 pending rule is being adopted as proposed. The complete text of the proposed rule was published in the September 2, 2009 Idaho Administrative Bulletin, Vol. 09-9, pages 17 and 18.

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 George Robinson, Bureau Chief at (208) 332-8593.

DATED this 4th day of November, 2009.

Brian J. Oakey
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
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Boise, Idaho 83701
Phone: (208) 332-8500
Fax: (208) 334-2170

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-3421, 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 September 16, 2009.

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:

Representatives of the Idaho seed industry have requested the addition of seven (7) seed crops to the section of the rules that exempt crops from the need for a pesticide tolerance. This will allow the added crops to have additional pesticide products registered for use to control pests, but will also have additional restrictions on the disposal of seed screenings and the feeding of treated plant parts.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, formal negotiated rulemaking was not conducted because informal meetings were held with the Idaho Seed Advisory Council on April 10, 2009 and June 5, 2009 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) 332-8593.

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 23, 2009.

DATED this 17th day of July, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

800. PESTICIDE USE ON ~~*ALFALFA SEED, CARROT SEED, ONION SEED, RADISH SEED, AND CLOVER*~~ SEED CROP FIELDS.

01. Nonfood and Nonfeed Site Conditions. For purposes of pesticide registration, all alfalfa seed, carrot seed, chicory seed, clover seed, coriander/cilantro seed, kale seed, leek seed, onion seed, pollinator rows of hybrid canola seed, radish seed, rutabaga seed, and ~~*clover*~~ turnip seed crop fields are considered nonfood and nonfeed sites for pesticide use and the following conditions shall be met: ~~*(4-5-00)*~~(____)

a. No portion of the seed alfalfa, carrot seed, chicory seed, clover seed, coriander/cilantro seed, kale seed, leek seed, onion seed, pollinator rows of hybrid canola seed, radish seed, rutabaga seed, or turnip seed ~~*clover*~~ plant, including but not limited to seed screenings, green chop, hay, chaff, combine tailings, pellets, meal, whole seed and cracked seed, may be grazed, used, or distributed for food or feed purposes. ~~*(4-5-00)*~~(____)

b. The seed conditioner shall keep records of individual growers' alfalfa seed, carrot seed, chicory seed, clover seed, coriander/cilantro seed, onion seed, pollinator rows of hybrid canola seed, radish seed, rutabaga seed, and ~~*clover*~~ turnip seed dirt weight and clean weight for three (3) years and shall furnish the records to the Director forthwith upon request.~~*(4-5-00)*~~(____)

c. All seed screenings shall be disposed of at a sanitary landfill, incinerator, or other equivalent disposal site or by a procedure approved by the Director. (3-23-98)

d. The seed conditioner shall keep seed screening disposal records for three (3) years from the date of disposal and shall furnish the records to the Director forthwith, upon request. Disposal records shall consist of documentation from the disposal site and shall show the total weight of disposed screenings and the date of disposal. (3-20-97)

e. All alfalfa seed, carrot seed, chicory seed, clover seed, coriander/cilantro seed, kale seed, leek seed, onion seed, pollinator rows of hybrid canola seed, radish seed, rutabaga seed, or ~~*clover*~~ turnip seed grown or conditioned in this state shall bear a tag or container label which forbids the use of the seed for human consumption or animal feed. ~~*(4-5-00)*~~(____)

f. No alfalfa seed, carrot seed, chicory seed, clover seed, coriander/cilantro seed, onion seed, pollinator rows of hybrid canola seed, radish seed, rutabaga seed, or ~~*clover*~~ turnip seed grown or conditioned in this state shall be distributed for human consumption or animal feed. ~~*(4-5-00)*~~(____)

g. All portions of the seed alfalfa, seed carrot, seed chicory, seed clover, seed coriander/cilantro, seed onion, pollinator rows of hybrid canola seed, seed radish, seed rutabaga, or seed ~~*clover*~~ turnip plant, including but not limited to seed screenings, pellets, meal, whole seed and cracked seed may be composted. All composted material may be applied to agricultural crop land as approved by the Director. ~~*(4-5-00)*~~(____)

02. Exemption. Alfalfa seed, kale seed and radish seed crops grown for human consumption shall be exempt from the requirements of Subsection 800.01 provided: ~~*(3-20-97)*~~( )

a. All pesticides used are labeled for use on alfalfa seed, kale seed, and radish seed crops and have established residue tolerances which allow food or feed use; and ~~*(3-20-97)*~~( )

b. All producers maintain for three (3) years complete records of all pesticides applied as specified in Pesticide Use and Application Rules Subsection 150.02. These records shall be ready to be inspected, duplicated, or submitted when requested by the Director. (3-20-97)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.13 - RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING RETAIL RAW MILK

DOCKET NO. 02-0413-0901 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been repealed by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the pending 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 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 37-308, -314, -401, -708, and -803, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for repealing the pending rule and a statement of any change between the text of the proposed rule and the text of the pending repeal with an explanation of the reasons for the change. ISDA has proposed to repeal the existing "Rules of the Department of Agriculture Governing Retail Raw Milk." Under a separate rulemaking docket (#02-0413-0902), ISDA has promulgated a new rule, "Rules Governing Raw Milk." The purpose of the new rule is to modify the raw milk quality standards and sanitary requirements for raw milk for human consumption, to provide clarity for raw milk produced under a "cow share" program and provide a small herd exemption for facility construction requirements. The new pending rule will be more concise by eliminating approximately twenty-five (25) pages from the rules to be repealed. Due to the significant amount of changes made to the existing rule, ISDA determined that there would be less confusion if ISDA repealed the existing "Rules of the Department of Agriculture Governing Retail Raw Milk," and adopted the new "Rules Governing Raw Milk," rather than make amendments to the existing rule. The pending rule is being adopted as proposed. The complete text of the repeal was published in the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, page 34.

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

There is no negative fiscal impact on the general fund as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Marv Patten, Bureau Chief, Dairy and CAFO Programs at 208-332-8550 or marv.patten@agri.idaho.gov.

DATED this 4th Day of November, 2009.

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 PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 37-308, -314, -401, -708, and -803, 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 21, 2009.

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:

ISDA proposes to repeal the existing "Rules of the Department of Agriculture Governing Retail Raw Milk." Under a separate rulemaking docket, ISDA has promulgated a new rule, "Rules Governing Raw Milk." The purpose of the new rule is to modify the raw milk quality standards and sanitary requirements for raw milk for human consumption, to provide clarity for raw milk produced under a "cow share" program and provide a small herd exemption for facility construction requirements. The new rule will be more concise by eliminating approximately twenty-five (25) pages from the rules to be repealed. Due to the significant amount of changes made to the existing rule, ISDA determined that there would be less confusion if ISDA repealed the existing "Rules of the Department of Agriculture Governing Retail Raw Milk," and adopted the new "Rules Governing Raw Milk," rather than make amendments to the existing rules.

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

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

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

rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking, which resulted in the new "Rules Governing Raw Milk" was published in the August 5, 2009 Idaho Administrative Bulletin, Volume 09-8, page 22.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Marv Patten, Chief Dairy and CAFO Programs, 208-332-8550 or marv.patten@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 28, 2009.

Signed this 26th Day of August, 2009.

IDAPA 02.04.13 IS BEING REPEALED IN IT'S ENTIRETY.

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.13 - RULES GOVERNING RAW MILK

DOCKET NO. 02-0413-0902 (CHAPTER REWRITE)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 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 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 37-308, -314, -401, -708, and -803, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change. This pending rule will replace the repealed "Rules of the Department of Agriculture Governing Retail Raw Milk" to modify the raw milk quality standards and sanitary requirements for raw milk for human consumption, to provide clarity for raw milk produced under a "cow share" program and provide a small herd exemption for facility construction requirements. This pending rule also eliminates approximately twenty-five (25) pages of outdated rules. This pending rule incorporates by reference the sanitary milk production and milk processing provisions of the 2009 Pasteurized Milk Ordinance, and will also establish sanitary criteria, milk quality, and permitting protocols for "cow share" programs. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 35 through 40.

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 Marv Patten, Bureau Chief, Dairy and CAFO Programs at 208-332-8550 or marv.patten@agri.idaho.gov.

DATED this 4th Day of November, 2009.

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 PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 37-308, -314, -401, -708, and -803, 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 21, 2009.

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 will replace the proposed repeal of IDAPA 02.04.13, "Rules of the Department of Agriculture Governing Retail Raw Milk," to modify the raw milk quality standards and sanitary requirements for raw milk for human consumption, to provide clarity for raw milk produced under a "cow share" program and provide a small herd exemption for facility construction requirements. This rule will also eliminate approximately twenty-five (25) pages of outdated rules.

This rule will incorporate by reference the sanitary milk production and milk processing provisions of the 2009 Pasteurized Milk Ordinance, and will also establish sanitary criteria, milk quality, and permitting protocols for "cow share" programs.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 5, 2009 Idaho Administrative Bulletin, Volume 09-8, page 22.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Marv Patten, Chief Dairy and CAFO Programs, 208-332-8550 or marv.patten@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 28,

2009.

Signed this 26th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

IDAPA 02
TITLE 04
CHAPTER 13

02.04.13 - RULES GOVERNING RAW MILK

000. LEGAL AUTHORITY.
This chapter is adopted under the legal authority of Title 37, Chapters 3, 4, 7, and 8, Idaho Code. ( )

001. TITLE AND SCOPE.

01. Title. The title of this chapter is "Rules Governing Raw Milk." ( )

02. Scope. These rules will govern the production, processing and sale of Raw Milk for human consumption, but not intended for pasteurization. The official citation of this chapter is IDAPA 02.04.13.000 et seq. For example, this section's citation is IDAPA 02.04.13.001. ( )

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. There is no provision for administrative appeal before the Department of Agriculture under this chapter. ( )

004. INCORPORATION BY REFERENCE.
The following document is incorporated by reference, and copies of the document may be obtained from the Idaho State Department of Agriculture central office at 2270 Old Penitentiary Road, Boise, Idaho, 83712: The Grade A Pasteurized Milk Ordinance 2009 Revision, U.S. Department of Health and Human Services Public Health Service Food and Drug Administration ("2009 Pasteurized Milk Ordinance"), except those provisions establishing raw milk standards for raw milk for pasteurization. ( )

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

01. Physical Address. The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712-0790. ( )

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

04. Telephone Number. The telephone number of the Division of Animal Industries, Dairy Bureau at the central office is (208) 332-8550. ( )

05. Fax Number. The fax number of the Division of Animal Industries, Dairy Bureau at the central office is (208) 334-4062. ( )

006. IDAHO PUBLIC RECORDS ACT.
These rules are public records and are available for inspection and copying at the Idaho State Department of Agriculture central office. ( )

007. DEFINITIONS.
The following definitions shall apply in the interpretation and the enforcement of this chapter: ( )

01. Adulterated. The addition or inclusion of unclean, unwholesome, inferior, impure or foreign material into a food product, or the production and sale of raw milk or raw milk products from a facility that does not possess a valid permit from the Department. ( )

02. Cow Share. The investment of monetary value into the ownership or care of cows, goats, or sheep in exchange for raw milk or raw milk products. ( )

03. Dairy Farm. Any place or premises where one (1) or more cows, goats or sheep are milked, and from which a part or all of the raw milk or raw milk products are produced and are not intended for pasteurization, but are sold or offered for sale for human consumption without pasteurization. ( )

04. Denatured. To change the usual or normal nature of a material or substance by either chemical or physical means. ( )

05. Department. The Idaho State Department of Agriculture. ( )

06. Director. The Director of the Idaho State Department of Agriculture or his designee. ( )

07. Milk Plant. Any place, premises, or establishment where raw milk is collected, handled, stored, bottled, or processed into raw milk or raw milk products for sale or offered for sale for human consumption. ( )

08. Official Laboratory. A biological, chemical, or physical laboratory that is under the direct supervision of the State or the Department. ( )

09. Person. An individual, plant operator, partnership, corporation, company, firm,

trustee, association or institution. ( )

10. Raw Milk. The lacteal secretion, practically free from colostrum, obtained by the complete milking of one (1) or more healthy cows, goats, or sheep, and that has not been pasteurized and is sold or offered for sale for human consumption. ( )

11. Raw Milk Products. Raw milk products include any milk product processed from raw milk that has not been pasteurized. Cheese made from raw milk that has been processed and aged for a minimum of sixty (60) days at a temperature greater than thirty-five degrees (35º) Fahrenheit (F) in a licensed dairy processing plant is exempt from these rules. ( )

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

13. Small Herd. The production of raw milk or raw milk products for human consumption, for use by people other than members of their immediate household or non-paying guests, in a facility with no more than three (3) lactating cows or seven (7) lactating goats or sheep. ( )

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

008. -- 010. (RESERVED).

011. ADULTERATED OR MISBRANDED RAW MILK OR RAW MILK PRODUCTS. No person shall produce, provide, sell, offer, or expose for sale, or possess with intent to sell, within the State or its jurisdiction, any adulterated or misbranded raw milk or raw milk products for human consumption. Any adulterated or misbranded raw milk or raw milk product may be impounded and disposed of as directed by the Department. ( )

012. -- 019. (RESERVED).

020. PERMITS.

01. Requirements. It shall be unlawful for any person who does not possess a permit from the Department to produce, process, sell or offer for sale raw milk or raw milk products for human consumption. Raw milk shall not be sold or offered for sale through restaurant type establishments or establishments where the consumer may not know that raw milk or raw milk products are from a raw milk source. Grocery stores and similar establishments where raw milk or raw milk products are sold at retail, but not processed, are exempt from the requirements of these rules, provided those stores and establishments receive raw milk or raw milk products from Department-approved facilities. ( )

02. Obtaining a Permit. Only a person who complies with these rules may receive and retain a permit. Permits shall not be transferable with respect to persons or locations. ( )

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

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

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

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

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

04. Permit Revocation. Upon repeated violations, the Department may revoke a permit following reasonable notice to the permit holder and an opportunity for a hearing. This Section is not intended to preclude the institution of court action. ( )

05. Permit Reinstatement. Any raw milk producer whose permit has been suspended or revoked may make written application for the reinstatement of his permit. ( )

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

b. When the permit has been suspended due to a violation of the somatic cell count standard, the Department may issue a temporary permit if resampling of the herd milk supply indicates that the milk supply is within the somatic cell count standard. ( )

c. Whenever the permit has been suspended due to a violation of a requirement other than bacteriological, coliform, somatic cell count or cooling-temperature standards, the application for reinstatement must show that the violation has been corrected. Within one (1) week of the receipt of such application, the Department will make an inspection of the applicant's

establishment, and may make additional subsequent inspections as deemed necessary. If the inspection shows that the raw milk or raw milk products meet the applicable standards and are in compliance with these rules, the permit will be reinstated. ( )

021. -- 029. (RESERVED).

030. LABELING.

01. Requirements. all bottles, containers, and packages enclosing raw milk or raw milk products shall be conspicuously marked with the word "raw," the quantity of contents and the identity of the packaging facility. The word "goat" or "sheep," if applicable, shall precede the name of the raw milk or raw milk products. ( )

02. Misleading Labels. It is a violation of these rules to use any misleading marks, words, or endorsements upon the label. Registered trade designs or similar terms on the bottle cap or label may be used if the Department determines that the designs or terms are not misleading and do not obscure the labeling required by these rules. Any misleading labeling on the final container will cause the product to be considered misbranded. ( )

031. -- 039. (RESERVED).

040. INSPECTION OF RAW MILK PRODUCERS.
Each dairy farm whose raw milk or raw milk products are intended for human consumption within the state of Idaho shall be inspected and approved by the Department prior to the issuance of a permit. ( )

01. Inspection Frequency. Following the issuance of a permit, the Department will inspect each raw milk producer and raw milk processor at least once every three (3) months. ( )

02. Sanitation Requirements. All raw milk dairy farms and milk plants that process raw milk or raw milk products for human consumption into final containers, for use other than for members or their immediate household or non-paying guests, shall meet the requirements of the 2009 Pasteurized Milk Ordinance, in addition to Section 060 of these rules. ( )

03. Processing Location. All raw milk and raw milk products must be produced and processed on the same premises. ( )

04. Cow Share Programs. Cow Share programs are allowed, provided that the raw milk and raw milk products are produced and processed in facilities with raw milk dairy farm and raw milk plant permits issued by the Department. ( )

05. Applicability. Persons or a person with more than three (3) lactating cows or seven (7) lactating goats or sheep may sell raw milk and raw milk products for human consumption, provided that the raw milk and raw milk products are produced and processed in facilities with raw milk dairy farm and raw milk plant permits issued by the Department. ( )

041. -- 049. (RESERVED).

050. SMALL HERD EXEMPTION.
The production of raw milk and raw milk products for human consumption by a person or by individuals participating in a Cow Share program is exempt from the sanitary construction and operation standards of the 2009 Pasteurized Milk Ordinance, provided the following conditions are met: ( )

01. Testing Frequency. The raw milk and raw milk products comply with the testing frequency set forth in the 2009 Pasteurized Milk Ordinance and quality standards set forth in Section 060 of these rules. ( )

02. Applicability. The number of animals in lactation does not exceed three (3) cows or seven (7) goats or sheep. ( )

03. Permit. The person or the Cow Share owners obtain a small herd exemption permit from the Department. The permit will indicate the physical location of the facility; the mailing address of the owner or operator in charge of the herd's care and milk quality. ( )

04. Test Results Made Available. Milk quality test results shall be available from the permit holder to all individuals who purchase raw milk or raw milk products. ( )

05. Restriction for Sale. The raw milk or raw milk products may not be sold or offered for sale through restaurant-type establishments or other establishments where the consumer may not know that raw milk or raw milk products are from a raw milk source. ( )

06. Labeling. All raw milk and raw milk products must have approved labeling by the Department if sales take place at locations other than the point of production. ( )

051. -- 059. (RESERVED).

060. STANDARDS FOR RAW MILK AND RAW MILK PRODUCTS.

01. Requirements. All raw milk and raw milk products shall be produced and processed to conform with the standards listed in Table 1 below. Raw milk and raw milk products shall meet the sanitation requirements of the 2009 Pasteurized Milk Ordinance, unless the facility has a small herd exemption. ( )

02. Chemical, Bacteriological, and Temperature Standards.

RAW MILK	
Temperature	Cooled to forty degrees Fahrenheit (40F or 5C) or less within two (2) hour after milking provided that the blend temperature after the first and subsequent milking does not exceed forty-five degrees Fahrenheit (45F or 7C).
Bacterial Limits	Raw milk shall not exceed fifteen thousand (15,000) per ml.
Coliform Limits	Raw milk shall not exceed twenty-five (25) per ml.
Drugs	Milk must test negative by a test method approved by the Department.

RAW MILK	
Somatic Cell Counts	Raw milk shall not exceed five hundred thousand (500,000) per ml. Goat, or Sheep Raw Milk shall not exceed seven hundred and fifty thousand (750,000) per ml.
Tuberculosis Test	All Raw Milk shall be from animals which have been accredited as tuberculosis free or shall have passed an annual tuberculosis test.

( )

061. -- 069. (RESERVED).

070. PENALTY.
Any person who violates any of the provisions of these rules shall be subject to the penalties provided in Section 37-408, Idaho Code, or may have their permit to sell raw milk or raw milk products for human consumption revoked or suspended. ( )

071. -- 999. (RESERVED).

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.14 - RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING DAIRY WASTE

DOCKET NO. 02-0414-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 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 Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and is also adopting this rule as a temporary rule. The action is authorized pursuant to Section(s) 37-405, Idaho Code.

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

ISDA received a letter from EPA on March 3, 2009 notifying ISDA that EPA is not going to renew the Memorandum of Understanding (MOU) between EPA, IDEQ, ISDA, and Idaho Dairymen's Association that was the basis for this rule. This proposed rule eliminates the requirement that the MOU between EPA, IDEQ, ISDA, and Idaho Dairymen's Association be in place in order for the rule to be effective. This rulemaking is necessary to ensure that the rule remains in effect as promulgated prior to the expiration of the MOU. Additional language is being added that clarifies the existing requirements associated with dairy waste containment and nutrient management that were previously incorporated by reference. These rules also set forth soil sampling and testing requirements of dairy owned and operated land exceeding phosphorus thresholds. The incorporation by reference section has been updated to remove obsolete documents and adds documents that were previously included in the "definitions" section of the rule.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the May 6, 2009 Idaho Administrative Bulletin, Vol. 09-5, pages 13 - 19.

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 Marv Patten, Bureau Chief, Dairy and CAFO Programs at 208-332-8550 or marv.patten@agri.idaho.gov.

DATED this 4th Day of November, 2009.

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 PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 1, 2009.

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 37-405, 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 May 20, 2009.

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:

ISDA received a letter from EPA on March 3, 2009 notifying ISDA that EPA is not going to renew the Memorandum of Understanding (MOU) between EPA, IDEQ, ISDA and Idaho Dairymen's Association that was the basis for this rule. This proposed rule eliminates the requirement that the MOU between EPA, IDEQ, ISDA and Idaho Dairymen's Association be in place in order for the rule to be effective. This rulemaking is necessary to ensure that the rule remains in effect as promulgated prior to the expiration of the MOU. There are no substantive changes to the rule, rather, additional language is being added that clarifies the existing requirements associated with dairy waste containment and nutrient management that were previously incorporated by reference. These rules also set forth soil sampling and testing requirements of dairy owned and operated land exceeding phosphorus thresholds. The incorporation by reference section has been updated to remove obsolete documents and adds documents that were previously included in the "definitions" section of the rule.

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

As stated above, the MOU between EPA, IDEQ, ISDA and Idaho Dairymen's Association that was the basis for this rule is set to expire on May 1, 2009. The expiration of the MOU renders this rule ineffective and creates a public health and safety issue. As a result, ISDA has adopted a temporary rule to provide the necessary protection of the public's health and safety. The Idaho Dairymen's Association endorses the need for the temporary and proposed rule.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

No fee is being imposed or charged through the adoption of this temporary rule.

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

There is no fiscal impact to the general fund as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Marv Patten, Chief Dairy and CAFO Programs, 208-332-8550 or marv.patten@agri.idaho.gov.

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 May 27, 2009.

Signed this 20th Day of April, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

IDAPA 02
TITLE 04
CHAPTER 14

02.04.14 - RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING DAIRY WASTE

000. LEGAL AUTHORITY.
This chapter is adopted under the legal authority of Title 37, Chapter 4, Idaho Code. (3-20-97)

001. TITLE AND SCOPE.

01. Title. The title of this chapter of the Idaho State Department of Agriculture is IDAPA 02.04.14, "Rules ~~*of the Department of Agriculture*~~ Governing Dairy Waste."
~~*(3-20-97)*~~( )

02. Scope. This chapter has the following scope: These rules shall govern the design, function and management practices of dairy waste systems. The official citation of this chapter is IDAPA 02.04.14.000 et seq. For example, this section's citation is IDAPA 02.04.14.001.
(3-20-97)

(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. ( )

01. Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (1997 Edition) (USDA, NRCS). ( )

02. Nutrient Management Standard (NMS). The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. ( )

03. Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004. ( )

04. American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004. ( )

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

01. Office. The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712. ( )

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

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

04. Telephone Number. The telephone number of the central office is (208) 332-8500. ( )

05. **Fax Number**. The fax number of the central office is (208) 334-2170. ( )

006. PUBLIC RECORDS ACT COMPLIANCE.
These rules are public records and are available for inspection and copying at the Idaho State Department of Agriculture. ( )

00~~5~~7. FINDINGS.
The Department finds that pursuant to Section 67-5226(1), Idaho Code, these rules are necessary to protect the public health, safety, and welfare of Idaho, enhance Idaho water quality and preserve the integrity of the Idaho dairy industry. These rules establish design, construction, operation, location, and inspection criteria for dairy waste systems on Idaho dairy farms and enable the department to implement the 1999 NRCS nutrient management standards on dairy farms to appropriately manage livestock waste. These rules also provide penalty provisions.
(4-5-00)

008. -- 009. (RESERVED).

0~~04~~10. DEFINITIONS.
The following definitions shall apply in the interpretation and enforcement of this chapter:
(3-20-97)

01. **Certified Planner**. A person who has completed nutrient management certification in accordance with the Nutrient Management Standard and is approved by the ~~d~~Department. ~~(4-5-00)~~( )

02. **Certified Soil Sampler**. An individual qualified and approved by the Department to collect soil samples according to the 1997 University of Idaho Soil Sampling protocols or other method as approved by the Department. ( )

0~~2~~3. **Dairy Farm**. A place or premise where one (1) or more milking cows, sheep, or goats are kept, and from which all or a portion of the milk produced thereon is delivered, sold or offered for sale for human consumption. ~~(3-20-97)~~( )

0~~3~~4. **Department**. The Idaho State Department of Agriculture. ~~(3-20-97)~~( )

0~~4~~5. **Director**. The Director of the Idaho State Department of Agriculture or his designee. ~~(3-20-97)~~( )

0~~5~~6. **Discharge Violation**. A practice or facility condition which has caused an unauthorized release of ~~l~~Livestock ~~w~~Waste into surface, ground water, or beyond the ~~d~~Dairy ~~f~~Farm's property boundaries or beyond the property boundary of any facility operated by the ~~p~~Producer. Contract manure haulers, producers and other persons who haul ~~l~~Livestock ~~w~~Waste beyond the ~~p~~Producer's property boundaries are responsible for releases of ~~l~~Livestock ~~w~~Waste between the property boundaries of the ~~p~~Producer and the property boundaries at the point of application. ~~(3-19-99)~~( )

0~~6~~7. **Farm Certification**. A permit issued by the Department allowing the sale of

manufacture grade milk. (3-20-97)

0~~7~~8. **Fieldman**. An individual qualified and approved by the Department to perform dairy farm inspections. (3-20-97)

~~***08.*** ***Idaho Waste Management Guidelines for Confined Feeding Operations****. A 1993 publication as amended in 1997 by the Idaho Department of Health and Welfare, Division of Environmental Quality which is hereby incorporated by reference. Copies of the guidelines are available at the Idaho Department of Agriculture, 2270 Old Penitentiary Road, Boise, Idaho 83712.* *(4-5-00)*~~

09. **Inspector**. A qualified, trained person employed by the Department to perform dairy farm inspections. (3-20-97)

10. **Livestock**. For the purposes of these rules the term livestock shall include bovidae, suidae, equidae and other animals that are kept on or contiguous to a dairy farm and are owned or controlled by a dairy farm. (3-19-99)

11. **Livestock Waste**. Manure that may also contain bedding, spilled feed, compost, water or soil. It also includes wastes not particularly associated with manure, such as milking center or washing wastes, ~~*or*~~ milk, feed leachate, or livestock carcasses or parts thereof. ~~*(4-5-00)*~~(____)

12. **Manufacture Grade Milk**. Milk produced for processing into dairy products for human consumption but not subject to Grade A requirements. (3-20-97)

~~***13.*** ***Memorandum of Understanding****. The October 1995 Idaho Dairy Pollution Prevention Initiative Memorandum of Understanding between the Environmental Protection Agency, Division of Environmental Quality, Idaho Department of Agriculture and the Idaho Dairymen's Association. The memorandum is hereby incorporated by reference and copies of the memorandum are available at the Idaho Department of Agriculture, 2270 Old Penitentiary Road, Boise, Idaho 83712 and through the Department of Administration, Office of Administrative Rules, located at 650 West State Street, Room 100, Boise, Idaho 83720.* *(4-5-00)*~~

1~~4~~3. **Non-Compliance**. A practice or facility condition which will cause a ~~*d*~~Discharge ~~*v*~~Violation if left uncorrected or a condition on a ~~*d*~~Dairy ~~*f*~~Farm that does not meet the requirements of the ~~*Idaho Waste Management Guidelines for Confined Feeding Operations, the*~~ Nutrient Management Plan, Nutrient Management Standard, and Appendix 10D. ~~*(4-5-00)*~~(____)

~~***15.*** ***Natural Resource Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D)****. A 1997 publication by USDA, NRCS which is hereby incorporated by reference. Copies of this publication are available at the Idaho Department of Agriculture, 2270 Old Penitentiary Road, Boise, Idaho 83712 and through the Idaho State Law Library, Supreme Court Building, 451 West State Street, Boise, Idaho 83720.* *(4-5-00)*~~

1~~6~~4. **Nutrient Management Plan (NMP)**. A plan prepared in conformance with the ~~*n*~~Nutrient ~~*m*~~Management ~~*s*~~Standard or other equally protective standard approved by the ~~*d*~~Department for managing the amount, source, placement, form, and timing of the land

application of nutrients and soil amendments for plant production, and for minimizing the potential for environmental degradation, particularly impairment of water quality. ~~*(4-5-00)*~~(____)

~~***17. Nutrient Management Standard (NMS)**. The 1999 publication by the United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS) Conservation Practice Standard, Nutrient Management Code 590, or the 1999 Idaho Agricultural Pollution Abatement Plan – Nutrient Management Standard Component Practice, which are hereby incorporated by reference. Copies of these publications are available at the Idaho Department of Agriculture, 2270 Old Penitentiary Road, Boise, Idaho 83712 and through the Idaho State Law Library, Supreme Court Building, 451 West State Street, Boise, Idaho 83720.*~~
~~*(4-5-00)*~~

1~~8~~5. Permit. A permit issued by the Department allowing the sale of Grade A milk. (3-20-97)

1~~9~~6. Person. Any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not. (3-20-97)

~~20~~17. Producer. The person who exercises control over the production of milk delivered to a plant, and who receives payment for this product. (3-20-97)

011. ABBREVIATIONS.
There are no abbreviations in this chapter. (____)

0~~06~~12. -- 0~~0~~19.(RESERVED).

0~~1~~20. PERMITS AND CERTIFICATION.
No producer shall offer for sale or sell milk unless the producing dairy farm has been issued a Grade A permit or a Farm Certification from the Department. (3-20-97)

01. Grade A Permit. A permit issued by the Department if the ~~d~~Dairy ~~f~~Farm complies with the requirements of the "Grade 'A' Pasteurized Milk Ordinance", as incorporated by reference in IDAPA 02.04.08, "Rules Governing Grade A Milk and Milk Products", and has in place and operates a dairy waste system consistent with the ~~*Idaho Waste Management Guidelines for Confined Feeding Operations,*~~ NMP, NMS and Appendix 10D. ~~*(4-5-00)*~~(____)

02. Farm Certification. A certification issued by the Department if the ~~d~~Dairy ~~f~~Farm complies with the requirements of IDAPA 02.04.05, "Rules Governing Manufacture Grade Milk," and has in place and operates a dairy waste system consistent with the ~~*Idaho Waste Management Guidelines for Confined Feeding Operations,*~~ NMP, NMS, and Appendix 10D.
~~*(4-5-00)*~~(____)

021. -- 029. (RESERVED).

0~~11~~30. WASTE SYSTEM APPROVAL.
The Department is authorized to approve the design, construction, operation, and location of dairy waste systems. These systems must conform to the ~~*Idaho Waste Management Guidelines for Confined Feeding Operations,*~~ NMP, NMS, and Appendix 10D. ~~*(4-5-00)*~~(____)

01. Waste Containment and Storage. ( )

a. Waste containment structures shall be constructed to meet a minimum of one hundred eighty (180) days of holding capacity. Wastewater containment structures that are utilized as the secondary or final storage for effluent shall have a minimum two (2) vertical feet of freeboard. ( )

b. Earthen waste containment structures less than ten (10) vertical feet high with a maximum high water line of eight (8) vertical feet shall be required to have a top embankment width of at least eight (8) feet and a minimum of one (1) vertical foot of freeboard shall be maintained. The combined inside and outside embankment slopes must be at least five (5) horizontal to one (1) vertical, and neither slope shall be steeper than two (2) horizontal to one (1) vertical. Earthen waste containment structures with outside embankments higher than ten (10) vertical feet from the naturally occurring ground level shall meet the NRCS Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004 embankment requirements as incorporated by reference in Subsection 004.03 of these rules. ( )

c. The inside bottom of the waste containment structure shall be a minimum of two (2) feet above the high water table, bed rock, gravel, or permeable soils. For an earthen waste containment structure, a soil liner shall be installed such that the specific discharge rate of the containment structure meet 1×10^{-6} $cm^3/cm^2/sec$ or less as described in Appendix 10D. Concrete or synthetic liners must be constructed to the American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004 and Appendix 10D as incorporated by reference in Section 004 of these rules. ( )

d. Storage areas for Livestock Waste including compost and solid manure storage areas shall be located on approved soils and appropriately protected to prevent run on and run off. ( )

e. Waste storage systems shall be maintained in a condition that allows the Producer to regularly inspect the integrity of the systems. ( )

02. Nutrient Management. All Dairy Farms shall implement an approved Nutrient Management Plan (NMP) that accurately reflects the operation of the facility. The NMP shall include an accurate description of the one hundred eighty (180) days of holding capacity of the waste containment system. It shall be the Dairy Farm's responsibility to update the NMP. ( )

a. Producer annual soil tests shall be conducted as set forth in the NMS. ( )

b. Regulatory soil tests will be conducted at frequencies sufficient to provide assurance of compliance with the NMS. ( )

i. If the regulatory or Producer soil tests reveal that phosphorus thresholds have exceeded the levels established in the NMS, the Producer shall only apply nutrients at the appropriate phosphorus crop uptake rate. ( )

ii. Subsequent regulatory soil test(s) on fields that were identified as exceeding the

phosphorus threshold will be conducted. If two (2) out of three (3) tests reveal the phosphorus index continues to trend upward, the Producer will be penalized as provided in these rules. These tests shall be taken in the top one (1) foot of soil. ( )

c. Accurate NMP records shall be maintained. These records shall include at a minimum: ( )

i. Regulatory soil samples shall be taken by a Certified Soil Sampler and tested by a laboratory that meets the requirements and performance standards of the North American Proficiency Testing Program under the auspices of the Soil Science Society of America outlined in the NMS, as incorporated by reference in Subsection 004.02, as part of NMS 590 or other methods as approved by the Department; ( )

ii. Annual soil analysis; ( )

iii. Date and amount of Livestock Waste and commercial fertilizer applied to individual dairy owned or operated fields; ( )

iv. Date(s) of exported Livestock Waste, number of acres applied, amount of Livestock Waste exported and to whom Livestock Waste was exported; and ( )

v. Actual crop yields on dairy owned or operated fields. ( )

031. -- 039. (RESERVED).

0~~12~~40. INSPECTIONS.
Each ~~d~~Dairy ~~f~~Farm shall be inspected by an ~~i~~Inspector or ~~f~~Fieldman at least annually or at intervals sufficient to determine that ~~dairy~~ Livestock ~~w~~Waste has been managed to prevent an unauthorized discharge or contamination of surface and ground water. An official inspection report form as described in Section 0~~13~~41 will be completed at the time of inspection.
~~(4-5-00)~~( )

0~~13~~41. INSPECTION REPORT FORMS.
An inspection report form shall be established by the Department based on parameters established in the ~~Idaho Waste Management Guidelines for Confined Feeding Operations,~~ NMP, NMS, and Appendix 10D. Each inspection item on the form shall indicate compliance and ~~n~~Non-~~c~~Compliance. ~~(4-5-00)~~( )

042. -- 049. (RESERVED).

0~~14~~50. COMPLIANCE SCHEDULES.

01. Non-Compliance or Discharge Violations Identified. When the Director identifies items of ~~n~~Non-~~c~~Compliance or ~~d~~Discharge ~~v~~Violations, the deficiencies will be noted and discussed with the ~~p~~Producer. Appropriate corrective actions will be identified and scheduled informally. The Director may develop a formal compliance schedule in the following cases:
~~(4-5-00)~~( )

a. When corrective actions cannot be completed within thirty (30) days; (4-5-00)

b. When corrective actions require significant capital investment; (4-5-00)

c. When informal schedules have not been complied with. (4-5-00)

02. Re-Inspection. Re-inspection of the dairy farm will be conducted as appropriate, to ensure compliance. A discharge violation shall be corrected immediately, when at all possible. (4-5-00)

051. -- 059. (RESERVED).

0~~15~~60. PENALTIES.

01. Suspend Producer's Permit. The Director may suspend the ~~p~~Producer's ~~p~~Permit or ~~f~~Farm ~~c~~Certification authorizing the ~~p~~Producer to sell milk until such time that the ~~d~~Dairy ~~f~~Farm is in compliance. Repeat non-compliance violations on significant items, ~~d~~Discharge ~~v~~Violations, or violation of formal compliance schedule also may cause a ~~d~~Dairy ~~f~~Farm to lose authorization to sell milk. ~~(3-20-97)~~(____)

02. Suspend Planners or Soil Samplers Certification. The Director may suspend certification of Certified Planners or Certified Soil Samplers in the event such Certified Planners or Soil Samplers fail to develop NMPs or collect soil samples as required by these rules. (____)

0~~1~~61. REINSTATEMENT.
Whenever a ~~p~~Producer has lost authorization to sell milk for human consumption under the provisions of Section 0~~15~~60, the ~~p~~Producer may ~~apply~~ request for reinspection. Subsequent to the request, ~~A~~a Departmental reinspection~~,~~ may be conducted. ~~by an inspector or fieldman, will be made;~~ ~~i~~If corrections have been made, the producer will be reinstated. ~~(3-20-97)~~(____)

~~***017. DURATION.***~~
~~*These rules will no longer be in effect if or when the Memorandum of Understanding defined in Subsection 004.13 is revoked or expires.* (4-5-00)~~

0~~18~~62. -- 999. (RESERVED).

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.31 - RULES GOVERNING THE STOCKPILING OF AGRICULTURAL WASTE

DOCKET NO. 02-0431-0901 (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 2010 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 22-110, Idaho Code.

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

These rules will establish specific setback distances for agricultural waste storage to minimize adverse quality of life issues. These rules are intended to apply to stockpiled agricultural waste from livestock on property other than agricultural waste storage governed by IDAPA 02.04.14, "Rules Governing Dairy Waste," and IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations."

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. The penalty provision in the pending rule clarifies that any penalty will be assessed according to the provisions set forth in Section 22-110(3), Idaho Code.

Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the Oct. 7, 2009, Idaho Administrative Bulletin, Vol. 09-10, pages 58 through 61.

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 John Bilderback, Section Manager, Dairy and CAFO Programs at 208-332-8550 or john.bilderback@agri.idaho.gov.

DATED this 4th day of November, 2009.

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 PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-110, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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 will establish specific setback distances for agricultural waste storage to minimize adverse quality of life issues. These rules are intended to apply to stockpiled agricultural waste from livestock on property other than agricultural waste storage governed by IDAPA 02.04.14, "Rules Governing Dairy Waste," and IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations."

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

No fee is associated with this proposed rule.

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

There is no 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 August 5, 2009 Idaho Administrative Bulletin, Volume 09-8, page 23.

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 28, 2009.

Signed this 26th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

IDAPA 02
TITLE 04
CHAPTER 31

02.04.31 - RULES GOVERNING THE STOCKPILING OF AGRICULTURAL WASTE

000. LEGAL AUTHORITY.
This chapter is adopted under the legal authority of Section 22-110, Idaho Code. ( )

001. TITLE AND SCOPE.

01. Title. The title of this chapter is "Rules Governing the Stockpiling of Agricultural Waste." ( )

02. Scope. These Rules govern the Stockpiling of Agricultural Waste at Agricultural Operations to safeguard and protect animals, man, and the environment. The official citation of this chapter is IDAPA 02.04.31.000 et seq. For example, this section's citation is IDAPA 02.04.31.001. ( )

002. WRITTEN INTERPRETATIONS.
The Idaho State Department of Agriculture may have written statements that pertain to the interpretation of the rules in this chapter. Any such written statement shall be available for review at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, Boise, Idaho 83712. ( )

003. ADMINISTRATIVE APPEALS.

Persons may be entitled to administrative appeal as set forth in Title 67, Chapter 52, Idaho Code. ( )

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

01. Office. The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, ID 83712. ( )

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

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

04. Telephone Number. The telephone number of the central office is (208) 332-8500. ( )

05. Fax Number. The fax number of the central office is (208) 334-2170. ( )

005. PUBLIC RECORDS ACT COMPLIANCE.
These rules are public records and are available for inspection and copying at the Idaho State Department of Agriculture. ( )

006. -- 009. (RESERVED).

010. DEFINITIONS.
The following definitions shall apply in the interpretation and enforcement of this chapter: ( )

01. Agricultural Operation. Facilities that generate or receive and stockpile agricultural waste and that are not regulated under IDAPA 02.04.14, "Rules Governing Dairy Waste," or IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations." ( )

02. Agricultural Waste. Agricultural waste means livestock waste. ( )

03. Department. The Idaho State Department of Agriculture. ( )

04. Director. The Director of the Idaho State Department of Agriculture or his designee. ( )

05. Duration. The length of time agricultural waste is stockpiled. ( )

06. Dwelling. The house, residence, abode, or other structure where a person lives. ( )

07. Livestock. Bovidae, suidae, equidae, captive cervidae, camelidae, ratitidae, gallinaceous birds, and captive waterfowl. ( )

08. Livestock Waste. Manure that may also contain bedding, spilled feed, feathers,

water, or soil. It also includes wastes not particularly associated with manure, such as milking center or washing wastes, milk, feed leachate, or livestock carcasses or parts thereof. ( )

09. Non-Compliance. A practice or facility condition that does not comply with Section 22-110, Idaho Code, or the provisions of these rules. ( )

10. Person. Any individual, partnership, association, firm, joint stock company, trust, political subdivision, public or private corporation, or any other legal entity which is recognized by law as the subject of rights and duties. ( )

11. Public Highway. All highways open to public use in the state, whether maintained by the state or by any county, highway district, city, or other political subdivision. ( )

12. Responsible Party. A person who generates or receives and stockpiles agricultural waste on property the person owns, leases, or otherwise has permission to use as a stockpile site. ( )

13. Setbacks for a Stockpile Site. The distance from a stockpile site to a location identified in Section 020 of this rule. ( )

14. Stockpile Staging Site. A physical area where stockpiling occurs for a duration of no longer than thirty (30) days. ( )

15. Stockpile Site. A physical location where agricultural waste is stockpiled for a duration of more than thirty (30) days and that stockpiles more than fifty (50) cubic yards of agricultural waste. ( )

16. Stockpiling. The accumulation of agricultural waste on an agricultural operation. ( )

17. Surface Waters of the State. All accumulations of surface water, natural and artificial, public and private, or parts thereof that are wholly or partially within, that flow through or border upon the state. ( )

011. ABBREVIATIONS.
There are no abbreviations in this chapter. ( )

012. -- 019. (RESERVED).

020. SETBACKS FOR STOCKPILE SITES.
Stockpile sites at agricultural operations must meet the following setback requirements. ( )

01. Setback Distances. Stockpile sites shall maintain the following setbacks: ( )

a. Three hundred (300) feet from a non-responsible party's dwelling. ( )

b. Five hundred (500) feet from a hospital, church, or school. ( )

c. One hundred (100) feet from a domestic or irrigation well. ( )

d. One hundred (100) feet from surface waters of the State. ( )

e. Fifty (50) feet from a public highway. ( )

02. Responsible Party's Dwellings. Stockpile sites shall not have setbacks from a responsible party's dwelling or dwellings owned by the responsible party. ( )

03. Stockpile Staging Sites. Stockpile staging sites shall not be subject to the setbacks set forth in these rules. ( )

021. -- 039. (RESERVED).

040. RESPONSE TO COMPLAINTS.
Complaints regarding a stockpile site or a stockpile staging site will be investigated by the Department to determine compliance with these rules. ( )

041. -- 059. (RESERVED).

060. PENALTIES.
Penalties for violations of this chapter will be assessed in accordance with Section 22-110(3), Idaho Code. *( )*

061. -- 999. (RESERVED).

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.05.01 - RESOURCE CONSERVATION AND RANGELAND DEVELOPMENT PROGRAM

DOCKET NO. 02-0501-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 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 22-2718, 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:

These rule changes will address needed security changes, complete an update of the RCRDP loan program, and remove the RCRDP grant program that is now being covered by the WQPA rules. New application requirements, loan servicing improvements, and updates pertaining to the loan amounts granted to RCRDP program borrowers are addressed.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in Book 1 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 62 through 71.

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 David Saxey, AG Program Specialist at (208) 332-8650.

DATED this 2nd day of November, 2009.

Sara Schmidt, Administrator
Idaho Soil Conservation Commission
2270 Old Penitentiary Road
PO Box 790, Boise, ID 83701
Phone: (208) 332-8650 / Fax: (208) 334-2386

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-2718, 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 21st, 2009.

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:

These rule changes will address needed security changes, complete an update of the RCRDP loan program, and remove the RCRDP grant program that is now being covered by the WQPA rules. New application requirements, loan servicing improvements, and updates pertaining to the loan amounts granted to RCRDP program borrowers are addressed.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact David Saxey, AG Program Specialist at (208) 332-8650.

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 28th, 2009.

DATED this 28th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

000. LEGAL AUTHORITY.
The Idaho Soil Conservation Commission, pursuant to the authority granted in Section 22-27~~29~~18, Idaho Code, has been granted the authority to adopt the following rules for the administration of a Resource Conservation and Rangeland Development Program (RCRDP) in Idaho. ~~*(4-1-94)*~~(____)

001. TITLE AND SCOPE.

01. Title. These rules shall be known and cited as Rules of the Idaho Soil Conservation Commission, IDAPA 02.05.01, "Resource Conservation and Rangeland Development Program." (4-1-94)

02. Scope. The provisions of these rules set forth procedures and requirements for establishing, implementing, and administering a state loan ~~*and grant program*~~ for resource conservation and rangeland development. ~~*(4-1-94)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.
For the purpose of these rules, unless the context indicates otherwise, the term: (9-9-86)

01. Account. The account established pursuant to Section 22-2730, Idaho Code, as amended, which contains the receipts allocated in Section 14-413(3)(a), Idaho Code, and all monies appropriated to it by the legislature or made available from federal, private, or other sources. (4-1-94)

02. Applicant. Any individual, partnership, association, trust, estate, private corporation, or any other private legal entity that is recognized by law as the subject of rights and duties who files an application with the appropriate ~~*Soil Conservation*~~ local District for a loan ~~*or a grant*~~ under the provisions of the act. ~~*(4-1-94)*~~(____)

03. Application. The loan ~~*or grant*~~ request document submitted to a ~~*Soil Conservation*~~ local District. ~~*(4-1-94)*~~(____)

~~***04. Board, SCD Board, or District Board****. The elected supervisors of a Soil Conservation District.* *(9-9-86)*~~

0~~5~~4. Commission. The Idaho Soil Conservation Commission as defined in Section 22-2718, Idaho Code. (9-9-86)

0~~6~~5. Contractee. The applicant when the loan has been closed and recorded. (9-9-86)

0~~7~~6. **Coordinated Resource Planning Process**. A process that considers all the resources and resource users within a geographical area and encourages active involvement and input from all interested parties. (9-9-86)

0~~8~~7. **District**. A Soil Conservation District (SCD) as defined in Section 22-2717, Idaho Code. (9-9-86)

0~~9~~8. **Eligible Land**. Private, state, county, or federal lands. (9-9-86)

~~1~~09. **Field Office**. The principal headquarters of the District; it is usually co-located with the local ~~*Soil Conservation Service (SCS)*~~ United States Department of Agriculture Natural Resource Conservation Service (NRCS) office. ~~*(9-9-86)*~~(____)

1~~1~~0. **Field Office Technical Guide**. The primary technical reference used by ~~*Soil Conservation*~~ NRCS and the Districts. ~~*(4-1-94)*~~(____)

~~***12.*** ***Practice or Eligible Practice for Grants****. A practice that is proven or shows potential, when properly installed and maintained, for improving rangeland and riparian areas.* *(4-1-94)*~~

11. **Other Funds**. Federal, state, or private funds to be dedicated to conservation practice implementation costs. (____)

1~~3~~2. **Practice or Eligible Practice for Loans**. A practice listed in the ~~*local*~~ field office technical guide ~~*that has been adopted by the local SCD*~~. ~~*(4-1-94)*~~(____)

1~~4~~3. **Practice Life**. The number of years, with proper maintenance and operation, that a practice is expected to last, as shown in the field office technical guide ~~*adopted by the local SCD*~~. ~~*(4-1-94)*~~(____)

1~~5~~4. **Program Year**. The state fiscal year. (9-9-86)

1~~6~~5. **Project**. One (1) or more practices to be installed with a RCRDP loan ~~*or grant funds*~~. ~~*(4-1-94)*~~(____)

1~~7~~6. **Rangeland**. Land used primarily for the grazing of domestic livestock and wildlife. (9-9-86)

~~***18.*** ***Rangeland and Riparian Area Improvement Plan for Grants****. A plan developed by the applicant and approved by the SCD board, designed to examine the adequacy, or adaptability of practices and systems for improving rangeland and riparian areas and to introduce potential practices and systems into areas where they are not now being accepted as a solution for improving rangeland and riparian areas.* *(4-1-94)*~~

1~~9~~7. **RCRDP**. The Idaho Resource Conservation and Rangeland Development Program. (9-9-86)

~~20~~18. Resource Conservation Plan for Loans. A plan for loans, developed by the applicant and approved by the ~~*SCD*~~ local District, that identifies the resource problems and needed conservation improvements, together with engineering and economic feasibility data and estimated costs. ~~*(4-1-94)*~~(____)

~~2~~19. Riparian Areas. Riparian areas are sites directly influenced by free water. They have visible vegetation or physical characteristics that reflect free water influence. Lake shores and stream banks are typical riparian areas. Excluded are sites such as ephemeral streams or washes that do not exhibit the presence of vegetation dependent upon free water in the soil. (4-1-94)

20. Security. Collateral provided by an approved applicant to secure requested RCRDP funds. This may include mortgage note, promissory note, security agreement, water rights, or other asset. (____)

2~~2~~1. Special Practice. A practice (not listed in the ~~*local*~~ field office technical guide) that includes a proven, modern technique that is necessary to solve a resource problem and meet program objectives as determined by the local ~~*SCD*~~ District. ~~*(9-9-86)*~~(____)

011. PROGRAM POLICY.

01. Administration. It is the policy of the Idaho Soil Conservation Commission to administer the Resource Conservation and Rangeland Development Program to provide the greatest benefits to all concerned from the agricultural lands and rangelands within the state. (4-1-94)

02. Equal Opportunity. Each applicant regardless of handicap, race, age, sex, creed, color or national origin, shall be given the opportunity to apply for a loan ~~*or grant*~~.~~*(4-1-94)*~~(____)

03. Filing Applications. An application may be filed at anytime during the program year. (4-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

056. RESPONSIBILITIES.

01. District. The ~~*Soil Conservation*~~ local District shall: ~~*(9-9-86)*~~(____)

a. Receive applications for program participation. (9-9-86)

b. Within sixty (60) days of receipt, review and evaluate the application for loans ~~*and grants*~~ to determine if the project is consistent with the District's program goals and objectives. ~~*(4-1-94)*~~(____)

c. Assign a priority of high, medium, or low to the applications. (4-1-94)

d. Forward applications to the Commission with a recommendation for funding. (4-1-94)

e. Prepare and forward to the Commission special practice requests. (9-9-86)

02. **Commission**. The Idaho Soil Conservation Commission shall: (9-9-86)

a. Review and evaluate applications. (4-1-94)

b. Approve loans, if: (9-9-86)

i. The applicant has adequate assets for security to protect the state from risk and loss. (9-9-86)

ii. There is reasonable assurance that the borrower can repay the loan. (9-9-86)

iii. Money is available in the loan account. (9-9-86)

~~*iv. The loan shall not result in a condition whereby the applicant has a program loan liability in excess of fifty thousand dollars ($50,000).* *(4-1-94)*~~

c. Disapprove loans for reasons including but not limited to: (4-1-94)

i. The purpose of the loan is to pay for resource conservation plan practices that have been applied prior to Commission approval. (4-1-94)

ii. If all the requirements in Rule Subsection 056.02.b. are not met. (4-1-94)

d. Reconsider loan disapproval if the applicant, within fifteen (15) business days after notice of disapproval, requests the Soil Conservation Commission, in writing, to reconsider its determination in any matter affecting the loan or the amount of loan funds. Reconsideration of the determination shall take place within ninety (90) business days from the date the written request is received. The time, place, and date shall be determined by the Commission. The applicant shall be notified of the time, place, and date and shall have the right to appear. ~~*(4-1-94)*~~(____)

e. Upon loan approval, execute a promissory note and other security documents with the applicant for loan repayment. (4-1-94)

f. Not less than once per year, determine the loan interest rate not to exceed six percent (6%) annually. (9-9-86)

g. Prepare an annual report showing RCRDP accomplishments and benefits resulting from use of loan and grant funds. (4-1-94)

h. Administer and monitor loan proceeds to assure that the intent of the law is met. (9-9-86)

i. Approve or disapprove special practice requests. (9-9-86)

~~***j.*** *Approve grants, if:* *(4-1-94)*~~

~~*i.* *The applicant is eligible.* *(4-1-94)*~~

~~*ii.* *The project demonstrates public benefit.* *(4-1-94)*~~

~~*iii.* *Money is available in the account.* *(4-1-94)*~~

~~***k.*** *Disapprove grants for reasons including but not limited to:* *(4-1-94)*~~

~~*i.* *The purpose of the grant is to pay for practices that have been applied prior to Commission approval.* *(4-1-94)*~~

~~*ii.* *If all requirements in Subsection 056.02.j. are not met.* *(4-1-94)*~~

~~*iii.* *The primary purpose is to finance research.* *(4-1-94)*~~

~~*iv.* *The purpose is to purchase or aid in the purchase of equipment to apply practices.* *(4-1-94)*~~

~~***l.*** *Upon grant approval prepare a grant agreement specifying the conditions of the grant.* *(4-1-94)*~~

057. APPLICATION FOR LOAN.

01. How to Apply. Any applicant desiring a loan from the RCRDP account must apply through the local ~~*Soil Conservation*~~ District. ~~*(4-1-94)*~~(____)

02. Two or More Applicants. Two (2) or more applicants may install a practice(s) as a group providing the loan can be adequately collateralized and all parties agree to joint and several liability. (4-1-94)

03. Application Form. The application shall be on a form prescribed by the Commission and must include: (4-1-94)

a. Name of applicant, and the location, size, and type of agricultural enterprise. (9-9-86)

b. Applicant's status (full-time farmer/rancher, part-time farmer/rancher or owner of agricultural lands leased to another operator). (9-9-86)

c. Identification and extent of the resource problem (erosion, plant community deterioration, water loss, water quality, low production, etc.). (9-9-86)

d. Statement of applicant's objectives and expected benefits. (9-9-86)

e. Proposed practices, implementation schedule, and estimated costs. (9-9-86)

f. Estimate of total loan funds needed. (9-9-86)

i. Applicant shall be required to supply at least five percent (5%) of the total project costs through personal funds or in-kind services. (____)

ii. Total RCRDP loan funds combined with other funds cannot exceed ninety-five percent (95%) of total project costs. (____)

g. Applicant's statement of security offered. (4-1-94)

h. Applicant's statement of willingness to allow continued monitoring and evaluation of impacts resulting from applied land treatment and management practices. (9-9-86)

i. A copy of the applicant's resource conservation plan which becomes a part of the application for assistance. The resource conservation plan shall include: (4-1-94)

i. A map showing project location and extent of the resource problem. (4-1-94)

ii. The eligible practices to be installed. (4-1-94)

iii. Estimated costs of applying the practices. (4-1-94)

iv. An implementation schedule. (4-1-94)

v. A statement whereby the applicant agrees to properly maintain and operate installed practices. (4-1-94)

vi. Needed clearances, easements and rights of way. (4-1-94)

vii. Any other appropriate documentation needed to complete the implementation of the resource conservation plan as requested by the ~~*SCD*~~ local District or Commission. ~~*(4-1-94)*~~(____)

04. Presenting the Application. The completed application must be presented by the applicant (or representative) to the local ~~*SCD*~~ District Board at a scheduled meeting. ~~*(9-9-86)*~~(____)

058. SPECIAL PRACTICE(S) APPROVAL FOR LOANS.

01. Special Practice Approval. A special practice must be approved by the Commission before it becomes an eligible practice. (9-9-86)

02. Special Practice Requests. Special practice requests shall be prepared by the local ~~*SCD*~~ District for the Commission and shall include: ~~*(4-1-94)*~~(____)

a. A description of the proposed practice. (9-9-86)

b. A justification of need for the special practice. (9-9-86)

c. Standards and specifications for the proposed practice. (9-9-86)

d. A statement from the appropriate agency as to the technical adequacy of the special practice in solving the resource problem. (9-9-86)

(BREAK IN CONTINUITY OF SECTIONS)

101. CREDIT GUIDELINES FOR LOANS.
These credit guidelines are established to reduce the risk of the state. Even though these loans are made at a low interest rate for the purpose of encouraging conservation and resource development, they must be repaid. This rule sets forth the requirements for determining the eligibility of an operator for a loan. (4-1-94)

01. Standards for Acceptable Loans. There shall be adequate assets and collateral for security to protect the state from risk and loss. (9-9-86)

02. Credit Information. Documentation shall be sufficient and verified to support the loan offered. It must include financial and operating statements and other supporting documents as deemed necessary relative to the size, complexity, and financial responsibility of the individual or entity being financed. A credit report will be ordered from at least three (3) credit repositories for each applicant. ~~*(9-9-86)*~~( )

03. Information Needed Prior to Loan Commitment. Documents and forms required for all loans: (9-9-86)

a. Loan application. (9-9-86)

b. Financial statements. (9-9-86)

i. A current balance sheet will be required from all parties who will be responsible for repayment of the loan and may be required from other relevant parties. (4-1-94)

ii. Applicant may be questioned about any major changes that may have occurred on the financial statements submitted. (9-9-86)

iii. Income and expense statements. The most recent three (3) year series of accountant prepared statements, if available, or federal tax returns are desired. ~~*(9-9-86)*~~( )

c. Copy of drivers license or other photo identification. ( )

d. Documentation of water rights. ( )

e. Current tax assessments for all parcels referenced in the conservation plan. (____)

f. Copy of land lease agreement, if the applicant is not the owner of the parcel(s) referenced in the conservation plan. (____)

04. Field Inspections. Field inspections may be used to: (4-1-94)

a. Determine loan and security positions, provide repayment estimates and verify agricultural assets. (4-1-94)

b. Indicate the applicant's management ability. (4-1-94)

c. Secure a complete and accurate description of collateral for the security agreement. (4-1-94)

05. Other Information Needed Prior to Loan Commitment. Real estate secured loans. (9-9-86)

a. A legal description of the offered collateral. (4-1-94)

b. Real estate appraisal, if necessary, should consist of one (1) of the following: (9-9-86)

i. Copy of appraisal made by a professional appraiser deemed acceptable to the state. (9-9-86)

ii. Evaluation made by Commission or the local ~~*SCD*~~ District Board according to their knowledge of the estimated average value of the property in the area in which the project is to be implemented. ~~*(4-1-94)*~~(____)

c. Other Collateral. Any item having tangible value may be accepted as security for these loans. Condition of the collateral shall be updated periodically and additions to the security agreement may be required over time. (4-1-94)

d. If the state is not a primary lien holder, a request for notice of default shall be recorded and a letter written to primary lien holders notifying them of the security interests of the state. (9-9-86)

e. Must include a map designating location of subject property. (9-9-86)

(BREAK IN CONTINUITY OF SECTIONS)

103. IMPLEMENTATION OF AGREED TO PRACTICES.
Once the loan has been approved and the conditions of approval have been met, the contractee may install practices as identified and scheduled in the resource conservation plan. The contractee

has the responsibility to obtain the appropriate technical assistance. Technical personnel shall assist the contractee in implementation activities to ensure that practices are properly designed, constructed, and managed. The contractee may install practices or subcontract work out to a subcontractor. Whatever method is used, the contractee shall be responsible to ensure that the quality of materials and workmanship in the installation of practices meets the approved standards and specifications for each practice. (4-1-94)

01. Practice Completion. Upon completion of the scheduled practice the contractee shall notify the ~~*SCD*~~ local District and the provider of technical assistance. And the provider of technical assistance shall inspect and document the amount and extent of the installed practice and certify its completion if it meets the quality standards and construction specifications of the practice and notify the ~~*SCD*~~ local District and contractee. If the practice does not meet practice standards and specifications the contractee and the ~~*SCD*~~ local District shall be notified by the provider of technical assistance, in writing, of the deficiencies and what needs to be done so the practice shall meet standards and specifications. ~~*(4-1-94)*~~(____)

02. Submitting Vouchers and Bills. (____)

a. When practices are certified complete by the provider of technical assistance, the contractee must submit to the Commission signed vouchers and bills along with the certification of completion report. ~~(9-9-86)~~(____)

b. Up to ninety-five percent (95%) of loan funds can be disbursed toward submitted bills during the loan installment period. The remaining loan funds will be disbursed upon receipt of written certification of project completion from the provider of technical assistance. (____)

03. Warrant Requests. The Commission staff shall prepare warrant request(s) made out to the contractee(s) and the vendor and mail it to the contractee. (4-1-94)

04. Drawing Loan Funds. The contractee shall implement the practices as scheduled and upon certification may draw on the loan funds throughout the ~~*life*~~ installment term of the loan contract. ~~*(9-9-86)*~~(____)

104. -- 125. (RESERVED).

126. REPAYMENT OF LOAN.

01. Repayment of the Loan. Repayment of the loan, together with interest, shall commence no later than two (2) full years from the date the note is signed. (4-1-94)

02. Repayment Schedule. The repayment schedule shall be identified in the loan documents with a fifteen (15) year maximum loan period. One (1) month before payment is due, the commission will mail the contractee a notice of payment due. (4-1-94)

03. First Payment. The first payment shall be due as required on the signed loan documents as prepared by the ISCC. Any additional interest incurred during the installment period of the loan will be added to the first payment notice. (____)

127. FORECLOSURE.
In the event of a contractee not adhering to the payment terms and conditions of the mortgage, promissory note, or security agreement, the Commission may seek foreclosure procedures according to the laws of the state of Idaho. ( )

12~~7~~8. -- 150. (RESERVED).

151. LOAN POLICIES.

01. Maximum Amount of Any One Loan. The maximum amount of any one (1) loan shall be ~~*fifty*~~ two hundred thousand dollars ($~~5~~200,000)~~ *or an amount whereby the applicant does not have a program loan liability in excess of fifty thousand dollars ($50,000)*~~. ~~*(4-1-94)*~~( )

02. Total Maximum Program Obligation. The total maximum program liability of any individual borrower is three hundred thousand dollars ($300,000). ( )

0~~2~~3. Use of Loan Money in Conjunction with State or Federal Programs. Requests for state or federal cost-share assistance and for loan approval are handled by different governmental agencies and approval for one does not guarantee approval for the other. (4-1-94)

~~***152. APPLICATION FOR GRANT.***~~

~~***01. How to Apply****. Any applicant desiring a grant from the account for the purpose of financing project costs for improving rangeland and riparian areas must apply through the local Soil Conservation District.* *(4-1-94)***

~~***02. Application Form****. The application shall be on a form prescribed by the Commission and must include:* *(4-1-94)***

~~***a.*** *Name and address of the applicant.* *(4-1-94)***

~~***b.*** *A description of the rangeland and riparian area problem that the project shall address.* *(4-1-94)***

~~***c.*** *The practices to be installed.* *(4-1-94)***

~~***d.*** *Statement of the applicants objectives and expected benefits.* *(4-1-94)***

~~***e.*** *Statement on the kind and amount of match that will be provided.* *(4-1-94)***

~~***f.*** *A statement whereby the applicant agrees to properly maintain the installed practice(s).* *(4-1-94)***

~~***g.*** *Applicant's statement of willingness to allow continued monitoring and evaluation of the impacts resulting from applied practice(s).* *(4-1-94)***

~~***h.*** *A copy of the rangeland and riparian area improvement plan which shall include:* *(4-1-94)***

~~*i. A map showing the project location.* *(4-1-94)*~~

~~*ii. The practice(s) to be installed.* *(4-1-94)*~~

~~*iii. Estimated costs for installing the practice(s).* *(4-1-94)*~~

~~*iv. An implementation schedule.* *(4-1-94)*~~

~~***03. Presenting the Application****. The completed application must be presented by the applicant (or representative) to the local SCD Board at a scheduled meeting.* *(4-1-94)*~~

~~***153. GRANT AGREEMENT.***~~

~~***01. Grant Conditions****. If the grant is approved a grant agreement shall be prepared specifying conditions of the grant.* *(4-1-94)*~~

~~***02. Fund Obligation****. Funds shall be obligated when the grant agreement is signed by the applicant. The applicant now becomes the grantee and may proceed with implementation of the rangeland and riparian area improvement plan.* *(4-1-94)*~~

~~***154. IMPLEMENTATION OF THE RANGELAND AND RIPARIAN AREA IMPROVEMENT PLAN WITH GRANT FUNDS.***~~

~~***01. Grantee Responsibility****. The grantee has the responsibility to obtain the appropriate technical assistance to ensure that the practice(s) are properly designed, installed and managed. The grantee may install practice(s) or obtain the services of a contractor. Whatever method is used, the grantee shall be responsible to ensure that the quality of materials and workmanship in the installation of practice(s) meets approved standards and specifications for each practice.* *(4-1-94)*~~

~~***02. Practice Completion****. After the installed practice(s) are certified complete by the provider of technical assistance, the grantee must submit a billing to the commission with the completion certification and signed vouchers and bills.* *(4-1-94)*~~

~~***a.*** *The billing shall identify the matching share and the grant share of the cost of installing the practice(s). The commission shall then prepare warrant request(s) made out to the grantee and the vendor and mail it to the grantees.* *(4-1-94)*~~

~~***b.*** *The warrant request(s) will be only for the grant share of installing the practice(s).* *(4-1-94)*~~

~~***03. Drawing Grant Funds****. The grantee shall implement the practice(s) as scheduled and upon certification of completion may draw on the grant funds as specified in the grant agreement.* *(4-1-94)*~~

~~***155. GRANT POLICIES.***~~

~~***01. Maximum Amount per Grant****. The maximum amount of any one grant shall be established by the Commission.* *(4-1-94)*~~

~~***02. Geographic Location****. The Commission shall consider project geographic location when considering grant applications in order to distribute grants throughout the State.* *(4-1-94)*~~

~~***03. Public Benefit****. The Commission shall select the project(s) that, in their best judgment, have the greatest public benefit and impact for improving rangeland and riparian areas.* *(4-1-94)*~~

~~***04. Match Requirements****. Match equal to or in excess of the grant amount is required. The match may be provided by sources other than the applicant and may include:* *(4-1-94)*~~

~~***a.*** *Dollars.* *(4-1-94)*~~

~~***b.*** *Cost of materials.* *(4-1-94)*~~

~~***c.*** *Cost of labor for installing the practice(s).* *(4-1-94)*~~

~~***d.*** *Cost of equipment and machinery used for installing the practice(s).* *(4-1-94)*~~

~~***05. Match Supporting Documentation****. Match for dollars and materials must be supported by signed vouchers, bills, and receipts. Match for the cost of labor and equipment and machinery must show hours and hourly rate. Hourly rates must be reasonable and consistent with local wage and custom rental rates.* *(4-1-94)*~~

~~***06. Match not Approved****. Match shall not be approved for the cost of practice(s) operation and maintenance.* *(4-1-94)*~~

~~***07. Maximum Amount per Fiscal Year****. The maximum amount of funds the Commission can approve for grants per fiscal year shall be established by the Commission.* *(4-1-94)*~~

15~~6~~2. -- 999. (RESERVED).

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.02 - RULES PERTAINING TO THE IDAHO COMMERCIAL FEED LAW

DOCKET NO. 02-0602-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 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 25-2724, 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 change updates the incorporation by reference section to reflect the 2010 edition of the Official Publication of the Association of American Feed Control Officials (AAFCO) usually published in January or February of each year. This is a standard reference manual for feed control officials for the registration of animal feeds. It provides for consistency in the definition of feed ingredients and registration policies concerning feeds between states and the U.S. Food and Drug Administration when feeds are being registered.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the July 1, 2009 Idaho Administrative Bulletin, Vol. 09-7, pages 16 and 17.

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

There is no fiscal impact to the rule because of this change. This is a dedicated fund program.

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

DATED this 2nd day of November, 2009.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701
Phone: (208) 332-8500 / Fax: (208) 334-2170

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 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 July 15, 2009.

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 change will update the incorporation by reference section to reflect the 2010 edition of the Official Publication of the Association of American Feed Control Officials (AAFCO) usually published in January or February of each year. This is a standard reference manual for feed control officials for the registration of animal feeds. It provides for consistency in the definition of feed ingredients and registration policies concerning feeds between states and the U.S. Food and Drug Administration when feeds are being registered.

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:

There is no fiscal impact with the adoption of this rule change. This is a dedicated fund program.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Michael E. Cooper, Bureau Chief 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 July 22, 2009.

DATED this 14th day of May, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

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 "20~~09~~10 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. ~~(5-8-09)~~(____)

02. The Merck Index. The "2006 Merck Index," 14th Edition, as published by Merck Research Laboratories Division of Merck & Co., Incorporated. (3-30-07)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.06 - RULES GOVERNING THE PLANTING OF BEANS, (*PHASEOLUS* SPECIES), IN IDAHO

DOCKET NO. 02-0606-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 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 Sections 22-2006 and 22-2012, 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 proposed rule was published as a temporary rule under docket 02-0606-0501 April 1, 2005 and subsequently approved as a temporary rule by the 2006, 2007, 2008, and 2009 legislatures. Through this action, the Department seeks to adopt that temporary rule as proposed with no changes. The following is the text of the original PARF "Need for Proposed Rule Change:" The industry states that there is less farm ground being irrigated under rill irrigation as more is being converted to sprinkler irrigation. The current rules for the planting of kidney and garden beans require a two year history of rill irrigation planting in Idaho prior to a planting under sprinkler irrigation. The proposed change would be that kidney beans and garden beans could be planted under the same rules as cranberry type beans. The cranberry type bean rule allows a one year history under rill irrigation in Idaho prior to planting under sprinkler irrigation in Idaho. The seed can then be serology tested and planted again under either sprinkler or rill irrigation in Idaho. Following a second consecutive planting under sprinkler irrigation in Idaho the seed must be serology tested prior to planting under rill irrigation. The industry states that unless the rule is changed, Idaho could begin to lose much of its bean seed business as they would be forced to move out of state due to the conversion of farm ground from gravity to sprinkler irrigation.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 5, 2009 Idaho Administrative Bulletin, Vol. 09-8, pages 24 through 26.

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 at (208) 332-8620.

DATED this 2nd day of November, 2009.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701
Phone: (208) 332-8500 / Fax: (208) 334-2170

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 22-2006 and 22-2012, 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 19, 2009.

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 rulemaking was published as a temporary rule under Docket No. 02-0606-0501 in the April 1, 2005, Idaho Administrative Bulletin, Volume No. 05-4, and has been subsequently approved and extended as a temporary rule by the 2006, 2007, 2008, and 2009 legislatures and is currently in effect. Through this rulemaking action, the Department seeks to make the changes currently in the temporary rule permanent with no additional changes being made to the proposed rule.

The following is the text of the original Proposed Administrative Rules Form (PARF) "Need for Proposed Rule Change": The industry states that there is less farm ground being irrigated under rill irrigation as more is being converted to sprinkler irrigation. The current rules for the planting of kidney and garden beans require a two-year history of rill irrigation planting in Idaho prior to a planting under sprinkler irrigation. The proposed change would be that kidney beans and garden beans could be planted under the same rules as cranberry type beans. The cranberry type bean rule allows a one-year history under rill irrigation in Idaho prior to planting under sprinkler irrigation in Idaho. The seed can then be serology tested and planted again under either sprinkler or rill irrigation in Idaho. Following a second consecutive planting under sprinkler irrigation in Idaho the seed must

be serology tested prior to planting under rill irrigation. The industry states that unless the rule is changed, Idaho could begin to lose much of its bean seed business as they would be forced to move out of state due to the conversion of farm ground from gravity to sprinkler irrigation.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because informal negotiations were held with the bean seed industry in 2005 to initiate the temporary rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Michael E. Cooper 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 August 26, 2009.

DATED this 9th day of June, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

200. REQUIREMENTS FOR PLANTING BEAN SEED IN IDAHO.
In order to be eligible for planting bean seed in Idaho: (4-2-03)

01. Idaho Grown Seed. Seeds planted must be from a lot that has an in-state planting tag number (state number) assigned by the Department based on growing season and windrow inspections and be tagged by the Department with a Department In-State Planting Tag (Green tag) or be tagged by the ICIA in accordance with these rules. (4-2-03)

02. Malheur County, Oregon Grown Seed. Bean seed produced in Malheur County, Oregon must be from a lot inspected in the growing season and in the windrow for the regulated pests as defined in Section 012 of these rules and tagged by the Oregon Department of Agriculture. (4-2-03)

03. Imported Seed Grown West of the Continental Divide in the Contiguous United States. Imported bean seed grown west of the Continental Divide in the contiguous United States must: (4-2-03)

a. Be accompanied by a phytosanitary certificate issued by the regulatory agency of the state of origin, listing the diseases for which the crop was inspected, that must include the regulated pests as defined in Section 012 of these rules, and stating that the crop was field and windrow inspected; (4-2-03)

b. Seed lot shall successfully pass laboratory tests conducted by the Department from samples officially drawn in the state of Idaho by the Department; (4-2-03)

c. Must bear a Department approved tag (yellow); (4-2-03)

d. Shall not be planted under sprinkler irrigation; and (4-2-03)

e. Each field planted in Idaho must be submitted for field and windrow inspections. (4-2-03)

04. Imported Seed Grown East of the Continental Divide in the Contiguous United States or of Foreign Origin. Imported bean seed grown east of the Continental Divide in the Contiguous United States or of foreign origin to be planted in Idaho shall be planted only on an approved trial ground as outlined in Section 250. (4-2-03)

05. Idaho Grown Seeds Shipped East of the Continental Divide in the Contiguous United States or to a Foreign Country and Returned. Bean seeds shipped east of the Continental Divide in the contiguous United States or to a foreign country may be returned to Idaho but upon return shall be planted on an approved trial ground as outlined in Section 250. (4-2-03)

06. Contaminated Seeds. The seeds from any bean field found or known to be contaminated with a regulated pest, as defined in Section 012 of these rules, shall not be planted in Idaho. (4-2-03)

07. True Identity of Seed Lots. Failure to maintain the true identity of any seed lot intended for seed purposes will automatically disqualify that lot for future planting in Idaho. (4-2-03)

08. Tags. Bean seeds planted in Idaho shall be from an approved lot bearing an approved tag on each bag or container, stating the kind, variety, and lot number. The following is a list of approved planting tags in Idaho: (4-2-03)

a. Department in-state planting tag (green tag); (4-2-03)

b. Department approved tag (yellow tag); (4-2-03)

c. ICIA tag, provided the lot was field and windrow inspected by ICIA in accordance to these rules; or (4-2-03)

d. Oregon Department of Agriculture inspection tag. (4-2-03)

09. Irrigation. (4-2-03)

a. Pintos, Red Mexicans, Pinks, Great Northerns, Small Whites, Navy Beans, Black Turtles, and Lima beans: (4-2-03)

i. First generation of seed grown in Idaho must be grown and inspected under rill irrigation. (4-2-03)

ii. Thereafter, the seed may be grown and inspected for two (2) consecutive generations in Idaho under sprinkler irrigation. (4-2-03)

iii. Seed grown under sprinkler irrigation for two (2) consecutive generations shall then be grown and inspected for one (1) generation in Idaho under rill irrigation. (4-2-03)

b. ~~*Cranberry types, Taylor Horticultural types, and Borlotto types*~~ All other beans: ~~*(4-2-03)*~~( )

i. First generation of seed grown in Idaho must be grown and inspected under rill irrigation. (4-2-03)

ii. Thereafter, the seed may be grown and inspected for one (1) generation in Idaho under sprinkler irrigation. (4-2-03)

iii. ~~*To be eligible for a second consecutive planting of seed under sprinkler*~~ Any time seed has been grown and inspected for one (1) generation in Idaho under sprinkler irrigation and prior to planting the seed under sprinkler irrigation or rill irrigation in Idaho, the seed must be sampled and laboratory tested by the Department in Idaho and found negative for the regulated pests. ~~*(4-2-03)*~~( )

iv. Following ~~*the*~~ a second consecutive planting of the seed under sprinkler irrigation in Idaho, the seed must be sampled and laboratory tested by the Department in Idaho and found negative for the regulated pests. ~~*(4-2-03)*~~( )

v. After meeting the requirements of Subsections 200.09.b.i. through 200.09.b.iv., the seed must be grown and inspected for one (1) generation in Idaho under rill irrigation. (4-2-03)

~~***c.***~~ ~~*All other beans:*~~ ~~*(4-2-03)*~~

~~*i. First two (2) generations of seed grown in Idaho must be grown and inspected under rill irrigation.*~~ ~~*(4-2-03)*~~

~~*ii. Thereafter, the seed may be grown and inspected for one (1) generation in Idaho under sprinkler irrigation.*~~ ~~*(4-2-03)*~~

~~*iii. Following any generation of seed grown under sprinkler irrigation in Idaho, the seed must be grown and inspected for two (2) consecutive generations in Idaho under rill irrigation.*~~ ~~*(4-2-03)*~~

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.06 - RULES GOVERNING THE PLANTING OF BEANS, (*PHASEOLUS* SPECIES) IN IDAHO

DOCKET NO. 02-0606-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 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 Sections 22-2006 and 22-2013, Idaho Code.

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

This is a technical correction to the rule to allow for the acceptance of bean seed crops grown in Malheur Co., Oregon and inspected by the Idaho Crop Improvement Association (ICIA) for planting in Idaho. The current rule allows for bean seed inspected by ICIA to be accepted in Idaho for Idaho grown crops. A few years ago, ICIA, under an agreement with Oregon State University, began inspecting bean seed crops in Malheur Co., Oregon and that change had not been reflected in the current Idaho rules. Oregon enforces a bean disease rule for Malheur Co. that is similar to that of Idaho.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 5, 2009 Idaho Administrative Bulletin, Vol. 09-8, pages 27 through 29.

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

There is no fiscal impact to the general fund as a result of this rulemaking.

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

DATED this 2nd day of November, 2009.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701
Phone: (208) 332-8500
Fax: (208) 334-2170

THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 1, 2009.

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 22-2006 and 22-2013, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 2009.

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:

This is a technical correction to the rule to allow for the acceptance of bean seed crops grown in Malheur Co., Oregon and inspected by the Idaho Crop Improvement Association (ICIA) for planting in Idaho. The current rule allows for bean seed inspected by ICIA to be accepted in Idaho for Idaho grown crops. A few years ago, ICIA, under an agreement with Oregon State University, began inspecting bean seed crops in Malheur Co., Oregon and that change had not been reflected in the current Idaho rules. Oregon enforces a bean disease rule for Malheur Co. that is similar to that of Idaho.

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

To confer a benefit. The bean seed industry has asked for this change to be in place for the 2009 growing season because ICIA inspected seed from Oregon has already been planted.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the

fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: 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. However, a meeting with the bean seed industry was held on November 12, 2008 at Seminis Vegetable Seed Research Center, 21120 Highway 30, Filer, Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Michael E. Cooper at (208) 332-8620.

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 26, 2009.

DATED this 9th day of June, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

200. REQUIREMENTS FOR PLANTING BEAN SEED IN IDAHO.
In order to be eligible for planting bean seed in Idaho: (4-2-03)

01. Idaho Grown Seed. Seeds planted must be from a lot that has an in-state planting tag number (state number) assigned by the Department based on growing season and windrow inspections and be tagged by the Department with a Department In-State Planting Tag (Green tag) or be tagged by the ICIA in accordance with these rules. (4-2-03)

02. Malheur County, Oregon Grown Seed. Bean seed produced in Malheur County, Oregon must be from a lot inspected in the growing season and in the windrow for the regulated pests as defined in Section 012 of these rules and tagged by the Oregon Department of Agriculture. The ICIA may inspect and issue tags for bean seed grown in Malheur County, Oregon provided that each field is inspected according to these rules and the Malheur County Bean Disease Control Area order. ~~*(4-2-03)*~~( )

03. Imported Seed Grown West of the Continental Divide in the Contiguous United States. Imported bean seed grown west of the Continental Divide in the contiguous United States must: (4-2-03)

a. Be accompanied by a phytosanitary certificate issued by the regulatory agency of the state of origin, listing the diseases for which the crop was inspected, that must include the

regulated pests as defined in Section 012 of these rules, and stating that the crop was field and windrow inspected; (4-2-03)

b. Seed lot shall successfully pass laboratory tests conducted by the Department from samples officially drawn in the state of Idaho by the Department; (4-2-03)

c. Must bear a Department approved tag (yellow); (4-2-03)

d. Shall not be planted under sprinkler irrigation; and (4-2-03)

e. Each field planted in Idaho must be submitted for field and windrow inspections. (4-2-03)

04. Imported Seed Grown East of the Continental Divide in the Contiguous United States or of Foreign Origin. Imported bean seed grown east of the Continental Divide in the Contiguous United States or of foreign origin to be planted in Idaho shall be planted only on an approved trial ground as outlined in Section 250. (4-2-03)

05. Idaho Grown Seeds Shipped East of the Continental Divide in the Contiguous United States or to a Foreign Country and Returned. Bean seeds shipped east of the Continental Divide in the contiguous United States or to a foreign country may be returned to Idaho but upon return shall be planted on an approved trial ground as outlined in Section 250. (4-2-03)

06. Contaminated Seeds. The seeds from any bean field found or known to be contaminated with a regulated pest, as defined in Section 012 of these rules, shall not be planted in Idaho. (4-2-03)

07. True Identity of Seed Lots. Failure to maintain the true identity of any seed lot intended for seed purposes will automatically disqualify that lot for future planting in Idaho. (4-2-03)

08. Tags. Bean seeds planted in Idaho shall be from an approved lot bearing an approved tag on each bag or container, stating the kind, variety, and lot number. The following is a list of approved planting tags in Idaho: (4-2-03)

a. Department in-state planting tag (green tag); (4-2-03)

b. Department approved tag (yellow tag); (4-2-03)

c. ICIA tag, provided the lot was field and windrow inspected by ICIA in accordance to these rules; or (4-2-03)

d. Oregon Department of Agriculture inspection tag. (4-2-03)

09. Irrigation. (4-2-03)

a. Pintos, Red Mexicans, Pinks, Great Northerns, Small Whites, Navy Beans, Black

Turtles, and Lima beans: (4-2-03)

i. First generation of seed grown in Idaho must be grown and inspected under rill irrigation. (4-2-03)

ii. Thereafter, the seed may be grown and inspected for two (2) consecutive generations in Idaho under sprinkler irrigation. (4-2-03)

iii. Seed grown under sprinkler irrigation for two (2) consecutive generations shall then be grown and inspected for one (1) generation in Idaho under rill irrigation. (4-2-03)

b. All other beans: (4-1-05)T

i. First generation of seed grown in Idaho must be grown and inspected under rill irrigation. (4-2-03)

ii. Thereafter, the seed may be grown and inspected for one (1) generation in Idaho under sprinkler irrigation. (4-2-03)

iii. Any time seed has been grown and inspected for one (1) generation in Idaho under sprinkler irrigation and prior to planting the seed under sprinkler irrigation or rill irrigation in Idaho, the seed must be sampled and laboratory tested by the Department in Idaho and found negative for the regulated pests. (4-1-05)T

iv. Following a second consecutive planting of the seed under sprinkler irrigation in Idaho, the seed must be sampled and laboratory tested by the Department in Idaho and found negative for the regulated pests. (4-1-05)T

v. After meeting the requirements of Subsections 200.09.b.i. through 200.09.b.iv., the seed must be grown and inspected for one (1) generation in Idaho under rill irrigation. (4-2-03)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.08 - QUARANTINE RULES PERTAINING TO APPLES AND CHERRIES

DOCKET NO. 02-0608-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 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 Sections 22-2006 and 22-2013, Idaho Code.

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

After a review of the scientific literature, it has been determined that peaches, apricots and nectarines have never been found to be a host of the apple maggot and were erroneously listed in the current rule. The Department proposes to revise IDAPA 02.06.08.101.01 strike the words "peach, nectarine, and apricot" and make the wording consistent with that of Oregon and Washington, who have similar rules.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in Book 1 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 78 and 79.

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 at (208) 332-8620.

DATED this 2nd day of November, 2009.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701
Phone: (208) 332-8500
Fax: (208) 334-2170

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 22-2006 and 22-2013, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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:

After a review of the scientific literature, it has been determined that peaches, apricots and nectarines have never been found to be a host of the apple maggot and were erroneously listed in the current rule. The Department proposes to revise IDAPA 02.06.08.101.01 strike the words "peach, nectarine, and apricot" and make the wording consistent with that of Oregon and Washington, who have similar 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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, formal negotiated rulemaking was not conducted because this is a technical change to the rules based on new information concerning an error in the scientific literature upon which the original rule was based. The Idaho Apple Commission was notified of this proposed rules change on August 11, 2009 by E-mail.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Michael E. Cooper 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 28, 2009.

DATED this 20th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

101. REGULATED ARTICLES.

01. Apple Maggot. All fresh fruit of apple (including crabapple), ~~*apricot,*~~ cherry (except cherries that are commercial fruit), ~~*crabapple,*~~ hawthorn (~~*native and ornamental*~~ haw), ~~*nectarine, peach,*~~ pear (except pears that are commercial fruit from California, Idaho, Oregon, Utah, and Washington), plum, prune, quince, and rose hips ~~*and any other commodity subsequently found to be a host of the*~~ are regulated under quarantine for ~~*A*~~apple maggot. ~~*(5-3-03)*~~(____)

02. Cherry Fruit Fly. All domestic and wild cherries and cherry trees. (5-3-03)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.09 - RULES GOVERNING INVASIVE SPECIES

DOCKET NO. 02-0609-0901 (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 2010 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 67-5220(1) and 67-5220(2), 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.

These rules govern the designation of invasive species, inspection, permitting, decontamination, recordkeeping and enforcement of regulated invasive species.

Changes have been made to the text of the proposed rule. The pending rule text reflects changes in certain definitions. The purpose of these changes is to clarify the intent of the definitions and the rule. The pending rule provides for possession permits of listed invasive species. The pending rule exempts certain species from possession permit requirements. The purpose of these changes is to provide for species that are known to be present in portions of the state. The pending rule provides for transport permits. The purpose of this change is to allow for the movement of exempt species outside of known established distribution boundaries of the species. The pending rule includes an "Early Detection and Rapid Response Aquatic Invertebrate Species" category. The purpose of this category of species is to provide regulation of transport of contaminated conveyances and equipment, establish reporting requirements, establish inspection procedures, allow for hold orders, and provide for a decontamination protocol for EDRR AIIS contaminated conveyances. The section that allows for declaration of an invasive species was deleted. The section related to general permits and research permits was deleted. The "EDRR AIIS Containment List" was deleted. The section related to the pet industry was deleted. These sections were deleted due to redundancies that resulted from the above mentioned changes.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. There were significant changes to the proposed rule. Therefore, the entire rule is being published in this bulletin. The complete text of the proposed rule was published in the June 3, 2009 Idaho Administrative Bulletin, Vol. 09-6, pages 15 through 28.

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 Lloyd Knight, Plant Industries Administrator, at (208) 332-8620.

DATED this 13th day of November, 2009.

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) 322-8500 / Fax: (208) 332-4062

THIS NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 1, 2009.

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 and informal negotiated rulemaking procedures have been continued from 2008. The action is authorized pursuant to Section 22-1907, 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 17, 2009.

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.

METHOD OF PARTICIPATION: Persons wishing to participate in the proposed and informal negotiated rulemaking process must do the following:

Persons who participated during the informal negotiated rulemaking during 2008 should notify the Idaho State Department of Agriculture whether they wish to continue to participate in the rulemaking process. Those who have not previously participated should notify the Idaho State Department of Agriculture, in writing, of the desire to participate in the rulemaking. Written notification should include all contact information and an electronic mail or mailing address. Those providing written notification will be contacted regarding any additional scheduled meetings or hearings.

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:

These rules include the determination of which species are invasive and the establishment of procedures for testing, sampling, inspection, certification, permitting, compliance verification and recordkeeping. The rules also establish a classification system for aquatic invasive species to assist in determining priorities for eradication or control.

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

In 2008, ISDA initiated a negotiated rulemaking, which culminated in the adoption of a proposed rule. However, following additional input via comments and hearings, ISDA determined that additional changes needed to be made to the Rules Governing Invasive Species. Therefore, ISDA pulled the proposed rule, and it was not considered by the 2009 Idaho Legislature.

ISDA has considered the comments, as well as its authorities under Idaho law, and the needs of the state of Idaho. ISDA made significant changes to the Rules Governing Invasive Species, as proposed, and has adopted the Rules as temporary. Adoption of the temporary rule is necessary to protect the public health, safety and welfare. If aquatic invasive species, and in particular zebra and quagga mussels, are introduced into and allowed to spread in Idaho, the impacts to Idaho's waterways, including rivers, lakes, public water supply systems, and irrigation systems, could be devastating.

Although ISDA has adopted the temporary rule, it remains open to comment and suggestions from the public, stakeholders, and any other interested parties. ISDA will consider all information provided, and reserves the right to incorporate authorized and necessary changes into the rule. ISDA has provided written notification to those members of the public, stakeholders, irrigation entities, conservation and environmental organizations and governmental entities that were involved in the 2008 informal negotiated rulemaking process.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: 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:

The Idaho State Department of Agriculture has received $1,515,000 in spending authority from the Invasive Species Fund, reflecting the expected proceeds from the sales of Invasive Species stickers for watercraft, in accordance with Section 22-1911, Idaho Code. Further, the Department may request spending authority from the Invasive Species Deficiency Warrant, in accordance with Section 22-1912, Idaho Code. These funding mechanisms may be used to implement the proposed rule.

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

rulemaking commenced in 2008, and will continue at an informal level during 2009. However, due to the high risk of the introduction and spread of zebra and quagga mussels, it is necessary that ISDA have a temporary rule in place immediately in order to accomplish the goals of the Invasive Species Act of 2008. In particular, ISDA must take immediate steps to prevent the introduction and spread of zebra mussels and quagga mussels in Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Brian Oakey, Deputy Director, at (208) 332-8500 or Brian.Oakey@agri.idaho.gov.

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 July 22, 2009.

Signed this 30th Day of April, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

IDAPA 02
TITLE 06
CHAPTER 09

02.06.09 - RULES GOVERNING INVASIVE SPECIES

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 22, Chapter 19, Idaho Code, the "Idaho Invasive Species Act of 2008" and Title 22, Chapter 20, Idaho Code, the "Idaho Plant Pest Control Act of 2002." ( )

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.06.09, "Rules Governing Invasive Species." ( )

02. Scope. These rules govern the designation of invasive species, inspection, permitting, decontamination, recordkeeping and enforcement of regulated Invasive Species. It is anticipated that this rule will be promulgated in phases with the first phase addressing *aquatic invertebrate invasive species*. Subsequent phases of this rule will establish inspection, permitting, decontamination, recordkeeping and enforcement for all invasive species listed below. These rules are in addition to other existing laws and rules regulating non-native organisms harmful to Idaho agriculture or the environment. These rules do not supersede, replace, or otherwise diminish other existing federal, state or local laws and rules. The official citation of this chapter is IDAPA 02.06.09, et seq. For example, this citation for this section is IDAPA 02.06.09.001.*( )*

002. WRITTEN INTERPRETATIONS.
There are no written interpretations of these rules. ( )

003. ADMINISTRATIVE APPEAL.
There is no provision for administrative appeal before the Idaho State Department of Agriculture under this chapter. Persons may be entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. ( )

004. INCORPORATION BY REFERENCE.
There are no documents incorporated by reference in this chapter. ( )

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

01. Physical Address. The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712. ( )

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

04. Telephone Number. The telephone number for the Division of Plant Industries at the central office is (208) 332-8620. ( )

05. Fax Number. The fax number for the Division of Plant Industries at the central office is (208) 334-2283. ( )

006. IDAHO PUBLIC RECORDS ACT.
These rules are public records available for inspection and copying at the Department. ( )

007. -- 009. (RESERVED).

010. DEFINITIONS.
The following definitions shall apply in the interpretation and enforcement of this rule. ( )

01. Acts. Title 22, Chapter 19, Idaho Code, the "Idaho Invasive Species Act of 2008" and Title 22, Chapter 20, the "Idaho Plant Pest Act of 2002." ( )

02. Aquatic Invertebrate Invasive Species. Those species listed in Section 800. ( )

03. Control. The abatement, suppression, or containment of an invasive species or pest population. ( )

04. Conveyance. A terrestrial or aquatic vehicle or a vehicle part that may carry or contain an invasive species or plant pest. A *conveyance* includes a motor vehicle, a vessel, a motorboat, a sailboat, a personal watercraft, a container, a trailer, or any other means or method of

transportation. "Conveyance" also includes a live well or a bilge area. *( )*

05. Department. The Idaho State Department of Agriculture. ( )

06. Director. The director of the Idaho State Department of Agriculture or his designee. ( )

07. Dreissenia Infested Waterbody*. Body of water designated by the United States Geological Survey (http://nas3.er.usgs.gov/taxgroup/mollusks/zebramussel/) or the Director as having a population of any life stage of Dreissenia mussels.* *( )*

08. **Early Detection/Rapid Response**. Finding invasive species during the initial stages of colonization and then responding within ten (10) days. ( )

09. **Equipment**. An article, tool, implement, or device capable of carrying or containing: ( )

a. Water; or ( )

b. An invasive species. ( )

10. Invasive Species*. Species not native to Idaho, including their seeds, eggs, spores, larvae or other biological material capable of propagation, that cause economic or environmental harm and are capable of spreading in the state. "Invasive species" does not include crops, improved forage grasses, domestic livestock, or other beneficial nonnative organisms.* *( )*

11. **Invasive Species Act**. The Idaho Invasive Species Act of 2008. ( )

12. **Plant Pest Act**. The Idaho Plant Pest Act of 2002. ( )

13. Possession*. The act of cultivating, importing, exporting, shipping or transporting a listed invasive species in Idaho. Possession does not include the act of having, releasing or transporting a listed invasive species through circumstances beyond individual control, including but not limited to infestations in a water supply system, infestations resulting from natural spread of the species or some other acts of nature.* *( )*

14. **State**. The state of Idaho. ( )

15. **Transportation**. Any and all modes of personal and commercial Conveyance, including but not limited to automobiles, trucks, buses, boats, airplanes, helicopters, and trains. ( )

16. **Water Body**. Natural or impounded surface water, including a stream, river, spring, lake, reservoir, pond, wetland, tank and fountain. ( )

17. **Water Supply System**. A system used to treat, *store,* convey, or *distribute* water for irrigation, industrial, waste water *treatment, residential,* or culinary use. A Water Supply

System includes a pump, canal, ditch, *regulating impoundment, in-canal forebay,* pipeline, *or associated wetland and water quality improvement project*, but does not include a Water Body as defined in Subsection 010.*16*. *( )*

011. APPLICABILITY.
These rules apply to the possession, importation, shipping, Transportation, eradication, and Control of invasive species in Idaho. ( )

012. ABBREVIATIONS.

01. AIIS. Aquatic Invertebrate Invasive Species. ( )

02. EDRR. Early Detection/Rapid Response. ( )

03. HACCP*. Hazard Analysis and Critical Control Points.* *( )*

013. – *100*. (RESERVED).

101. PROHIBITION ON POSSESSION, IMPORTATION, SHIPPING OR TRANSPORTATION OF INVASIVE SPECIES.
No person may possess, cultivate, import, ship, or transport any invasive species, into or through the state of Idaho following the effective date of this rule, unless the person possessing, importing, shipping or transporting has obtained a permit under Section 103, or unless otherwise exempt by this rule, as set forth in Section 104. Prohibited acts include but are not limited to: ( )

01. Possession or Transportation*. Possessing, cultivating, importing, exporting, shipping, or transporting an invasive species into or through the state of Idaho.* *( )*

02. Releasing*. Releasing, placing, planting, or causing to be released, an invasive species in a water body, facility, water supply system, field, garden, planted area, ecosystem, or otherwise into the environment within the state of Idaho.* *( )*

03. Transporting From an Infested Environment*. Transporting a conveyance or equipment into or through the state of Idaho that has been in an infested environment without obtaining a Department-approved decontamination of the conveyance or equipment.* *( )*

04. Transporting an Infested Article*. Transporting, importing or shipping any plant, animal, mode of transportation, conveyance, or article that is infested with an invasive species into or through the state of Idaho without obtaining a Department-approved decontamination of the object.* *( )*

102. INTRODUCTION OF NEW SPECIES TO THE STATE.
Following the effective date of this rule, no person may introduce or import a species not previously present in Idaho without first receiving a determination from the Department that the species is not an invasive species. *( )*

103. POSSESSION PERMITS.
Possession of invasive species is authorized only if the person possessing the species obtains a

possession permit. Persons who legally possess and transport bullfrogs pursuant to IDAPA 13.01.06 Classification and Protection of Wildlife and IDAPA 13.01.11 Rules Governing Fish and Idaho Code, Title 36 are exempted from obtaining a possession permit. ( )

01. Application for Possession Permits*. Persons seeking a possession permit must make application on a form prescribed by the Director. A separate application must be submitted for each facility where invasive species will be possessed. The application must include: ( )*

a. *The applicant's name, address (residence and mailing), and Employer or Tax Identification Number. ( )*

b. *Description of the proposed facility, including: ( )*

i. A map identifying the location of the proposed facility; ( )

ii. The legal description of the real property for the proposed facility; ( )

iii. The approximate total area of the proposed facility; ( )

iv. A detailed diagram of proposed facility, ( )

v. A detailed confinement or HACCP Plan if applicable. ( )

c. *Name and address of the owner(s) and/or operator(s) of the proposed facility, if different than the applicant. If the proposed facility will be leased, a written and notarized authorization by the property owner must be included. ( )*

d. *A copy of local zoning authority approval, if approval is required by the local zoning authority. ( )*

e. *Description of the invasive species to be possessed at the facility, including, to the extent possible, the genus, species, sex, life state, age, identification, and purpose for possessing each species. ( )*

f. *The date upon which the proposed facility will be available for inspection by the Department, which must be not less than seven (7) days prior to the time the invasive species are possessed at the proposed facility. ( )*

02. Application Process*. The Director will consider all information in the application and issue a written decision granting or denying the application. In reviewing the application, the Director will consider factors including but not limited to: ( )*

a. *Proximity of the facility to agricultural operations, and environmentally sensitive lands and waters. ( )*

b. *Potential for access to the facility by unauthorized persons. ( )*

c. *Potential for vandalism, adverse weather, or other events that compromise the*

security of the facility. *( )*

d. *Potential for the invasive species to escape or be released from the facility.* *( )*

e. *Whether, based on the applicant's certification and any other evidence received by the Director in connection with the application or proposed facility, all federal, state, county and city laws applicable to the facility have been met.* *( )*

f. *Whether the applicant has adequate knowledge, experience and training to ensure that the invasive species will not harm agriculture, the natural resources and environment of the state of Idaho. Such experience may be documented by a log book, employment records, education records or other means by which experience may be authenticated.* *( )*

g. *Whether the facility is or will be adequately designed, constructed, and managed to protect agriculture, the natural resources and environment of the state of Idaho from escape of the invasive species.* *( )*

h. *Prior to issuing a possession permit, the Director or his designee may perform an inspection of the facility to determine if its design, construction and proposed operation is consistent with the applicable provisions of Idaho law.* *( )*

03. ***Grant or Denial of the Permit****. Following review of the application and any other relevant information, the Director will either issue the possession permit or deny the application and notify the applicant. If the Director issues the permit, he may include any necessary conditions to prevent release or escape of the invasive species, and to prevent harm to Idaho's agriculture, natural resources, and the environment.* *( )*

04. ***Duration of Possession Permit****. A possession permit is valid until the permitted person no longer possesses the invasive species, or until the invasive species leaves the state.* *( )*

05. **Permit Revocation**. Permits issued pursuant to this chapter may be revoked at any time if the *director* or his designee finds that the permit holder has violated any of *the* provisions of this chapter, the Invasive Species Act, the Plant Pest Act, or any of the conditions included in the permit. *( )*

06. **Disposition of Non-Permitted Invasive Species**. The *director* may order non-permitted or illegally imported invasive species to be removed from the *state* or destroyed.*( )*

07. **Annual Report**. All permit holders shall submit a report no later than January 1 of each calendar year, on forms provided by the Department. ( )

104. EXEMPT SPECIES.

The following species were present in portions of the state of Idaho prior to adoption of these Rules. However, they are not present throughout the state, and in accordance with the policy of the state of Idaho, as expressed in Idaho Code, Section 22-1902, the spread of these species should be prevented to the greatest extent possible. Therefore, the species listed below are exempt from the permit requirements of Sections 102 and 103, above. However, those seeking to transport

the species listed in Section 104.01 outside the known established distribution area must obtain a transport permit in accordance with Section 104.03. ( )

01. Exempt Species List: ( )

a. *New Zealand Mud Snail, Potamopyrgus antipodarum;* ( )

b. *Asian Clam, Corbicula fluminea,* ( )

02. Location of Known Established Populations*. Known established distributions of the New Zealand Mud Snail and Asian Clam are identified and mapped at http://nas.er.usgs.gov/queries.* ( )

03. Transport Permits*. Any person seeking to transport one of the species listed in Subsection 104.01 above outside of the known established distribution boundaries delineated in Subsection 104.02, above, must obtain a transport permit that will be valid for one year. For the purposes of this rule, transport of these exempt species is assumed when biological organisms and associated water from aquaculture facilities and hatcheries is moved from known infested areas in the state.* ( )

04. Application for Transport Permits*. Persons seeking a transport permit must make application on a form prescribed by the Director. A separate application must be submitted for each facility from which invasive species will be transported. The application must include:* ( )

a. *The applicant's name, address (residence and mailing), and Employer or Tax Identification Number.* ( )

b. *Description of the facility of origin, including:* ( )

i. *A map identifying the location of the facility;* ( )

ii. *The legal description of the real property for the facility;* ( )

iii. *The approximate total area of the facility;* ( )

iv. *A detailed diagram of facility,* ( )

v. *A detailed HACCP Plan if applicable.* ( )

c. *Name and address of the owner(s) and/or operator(s) of the facility, if different than the applicant. If the proposed facility will be leased, a written and notarized authorization by the property owner must be included.* ( )

d. *Description of the invasive species to be transported from the facility, including the genus, species, sex, life state, age, and purpose for transporting the species.* ( )

e. *Description of self-contained areas needing draining or discharges of water*

during or after the transport of invasive species. *( )*

f. *Description of procedures to drain self contained areas after transport is complete, including:* *( )*

i. Into a municipal water treatment facility; or *( )*

ii. Into an on-site waste treatment facility incorporating sand filtration and chlorination; or *( )*

iii. As approved by the Department. *( )*

105. -- 199. (RESERVED).

200. *EARLY DETECTION AND RAPID RESPONSE* AQUATIC INVERTEBRATE INVASIVE SPECIES.

01. Statewide EDRR AIIS List. If any of the species *listed in the following table* are found to occur in Idaho, they shall be reported to the Department *immediately.* Positive identification shall be made by the *Department* or other qualified authority as approved by the Director. Subsections 200.02 through 200.05 are applicable to EDRR *AIIS only and not to other invasive species listed in Sections 800 through 808.*

Early Detection Rapid Response Aquatic Invertebrate Invasive Species (EDRR AIIS) List	
Common Name	**Scientific Name**
Quagga Mussel	Dreissenia bugensis
Zebra Mussel	Dreissenia polymorpha

( )

02. Transporting EDRR AIIS Over Public Roads. No person may transport Equipment or any Conveyance containing EDRR AIIS over public roads within the state of Idaho without first being decontaminated. *( )*

03. Contaminated Conveyances in Idaho Waters. A person shall not place any *EDRR AIIS* contaminated Equipment or Conveyance into any Water Body or Water Supply System in the state of Idaho. *( )*

04. Firefighting Equipment*. Precautions should be taken to prevent the introduction and spread of EDRR AIIS through firefighting activities. All firefighting agencies moving equipment into the state of Idaho shall follow protocols similar to the United States Forest Service decontamination protocols set forth in "Preventing Spread of Aquatic Invasive Organisms Common to the Intermountain Region." Those protocols can be found at http://www.fs.fed.us/r4/aquatic/guidelines/index.shtml.* *( )*

05. Construction and Road Building and Maintenance Equipment*. Construction*

and equipment used for road building and maintenance must be free of EDRR AIIS. If equipment that is being transported into the state of Idaho has been in an infested water body or water supply system within the preceding thirty (30) days, the equipment must be inspected in accordance with Section 201. The Department may require decontamination. ( )

201. REPORTING REQUIREMENTS.

01. Discovery*. Any person who discovers an EDRR AIIS within the state or who has reason to believe that an invasive species may exist at a specific location shall immediately report the discovery to the Department. ( )*

02. Contents*. The report shall, to the best of the reporter's ability, contain the following information: ( )*

a. *Location of the invasive species; ( )*

b. *Date of discovery; and ( )*

c. *Identification of any conveyance, equipment, water body, or host in or upon which the invasive species may be found. ( )*

03. Methods of Reporting*. The report shall be made in person or in writing (which may include electronic mail) as follows: ( )*

a. *At any Department office or headquarters; ( )*

b. *To the Department's toll free hotline at 1-877-336-8687;or ( )*

c. *Via the Department's website at www.agri.idaho.gov. ( )*

04. Hold Harmless*. Reporting parties will be held harmless from violations pursuant to this chapter regarding possession of EDRR AIS. ( )*

202. INSPECTIONS.

01. Qualified Inspectors*. Inspections to detect the presence of EDRR AIIS may be conducted by any authorized agent, private inspector or peace officer qualified and trained in accordance with the Department's requirements. ( )*

02. Conveyances That Have Been in Infested Waters*. All persons transporting a conveyance must receive documentation of an inspection prior to launching in any water of the state if the vessel has been in infested water within the last thirty (30) days. ( )*

03. All Other Conveyances*. All conveyances are subject to inspection. All compartments, equipment and containers that may hold water, including, but not limited to live wells and ballast and bilge areas shall be drained as part of all inspections. ( )*

04. Inspection Methods*. Inspectors will determine if EDRR AIIS are present by*

interviewing the person transporting the conveyance and using visual and/or tactile inspection methods, or such other methods as may be appropriate and using forms supplied by the Department. ( )

05. Inspection Results*. Any authorized agent or private inspector or private decontaminator who, through the course of an inspection, determines that AIIS are present shall advise the operator that the conveyance is suspected of possessing EDRR AIIS and that it must be decontaminated according to Departmental procedures.* ( )

06. Decontamination*. Any conveyance found or reasonably believed to contain EDRR AIIS shall be decontaminated in accordance with Section 204.* ( )

203. HOLD ORDERS.

01. Hold Order*. If any person refuses to permit inspection or decontamination of his or her conveyance, that conveyance is subject to a hold order until the inspection and/or decontamination is complete.* ( )

02. Notification to Owner*. If the person in charge of the conveyance is not the registered owner, the registered owner shall be notified by mail, return receipt requested, within five (5) days of the Hold Order. Such notification must also include Department contact information. If the registered owner is present when the Hold Order is issued, then the same information shall be provided to the registered owner at the time the order is issued.* ( )

03. Release of Hold Order*. Decontamination and proof of decontamination, in accordance with Section 204, is necessary in order for the Hold Order to be released. The Hold Order must be released in writing, and may be released only by the Director or his designee.* ( )

204. EDRR AIIS DECONTAMINATION.

01. Decontamination Protocol*. All decontamination must be accomplished by Department-approved service providers, using Department protocol. All decontamination methods must be in accordance with all applicable laws, disposal methods, recommended safety precautions, and safety equipment and procedures.* ( )

02. Reinspection*. After decontamination, the Department or its authorized agent must re-inspect the conveyance to ensure complete decontamination prior to releasing the conveyance and any associated Hold Order.* ( )

03. Proof of Decontamination*. Proof of decontamination will consist of a completed post-decontamination inspection form and application of a tamper-proof seal to the conveyance.* ( )

205. -- 799. (RESERVED).

800. INVASIVE SPECIES - AQUATIC - INVERTEBRATES.

01. **Zebra Mussel,** *Dreissenia polymorpha*. ( )

02. **Quagga Mussel** *Dreissenia bugensis*. ( )

03. **New Zealand Mud Snail,** ***Potamopyrgus*** *antipodarum*. *( )*

04. **Red Claw Crayfish,** *Cherax quadricarinatus*. ( )

05. **Yabby Crayfish,** ***Cherax*** *albidus/C. destructor.* *( )*

06. **Marone Crayfish,** *Cherax tenuimanus*. ( )

07. ***Marbled crayfish, (Procambarus marmorkrebs)***. *( )*

08. ***Rusty Crayfish, Orconectes rusticus***. *( )*

09. ***Asian Clam, Corbicula fluminea***. *( )*

10. ***Spiny Waterflea, Bythotrephes cederstroemi***. *( )*

11. ***Fishhook Waterflea, Cercopagis pengoi***. *( )*

12. ***Marmorkrebs, Procambarus sp***. *( )*

801. INVASIVE SPECIES - FISH.

01. **Green Sturgeon,** *Acipenser medirostris*. ( )

02. **Walking Catfish,** *Claridae*. ( )

03. **Bowfin,** *Ania Calva*. ( )

04. **Gar,** *Lepiostidae*. ( )

05. **Piranhas,** *Serrasalmus* **spp.,** *Rosseveltiella* **spp.,** *Pygocentrus* **spp.** ( )

06. **Rudd,** *Scardinus erythropthalmus*. ( )

07. **Ide,** *Leuciscus idus*. ( )

08. **Diploid Grass Carp,** *Ctenopharyngoden idella*. ( )

09. **Bighead Carp,** *Hypopthalmichthys nobilis*. ( )

10. **Silver Carp,** *Hypopthalmichthys molitrix*. ( )

11. **Black Carp,** *Mylopharyngodeon piceus*. ( )

12. Snakeheads, *Channa* **spp.,** *Parachanna* **spp.** ( )

13. Round Goby, *Neogobius melanostomas*. ( )

14. Ruffe, *Gymnocephalus cernuus*. ( )

802. INVASIVE SPECIES - AMPHIBIANS.

01. Rough-skinned Newt, *Taricha granulose*. ( )

02. Bullfrog, *Lithobates catesbeianus*. ( )

803. INVASIVE SPECIES - REPTILES.

01. Red-eared Slider, *Trachemys scripta elegans*. ( )

02. Mediterranean Gecko, *Hemidactylus turcicus*. ( )

03. Common Wall Lizard, *Podarcis muralis*. ( )

04. Italian Wall Lizard, *Podarcis sicula*. ( )

05. Brahminy blindsnake, *Ramphotyphlops braminus*. ( )

***06. Snapping Turtle, Chelydra serpentina*.** *( )*

804. INVASIVE SPECIES - BIRDS.

01. Monk Parakeet, *Myiopsitta monachus*. ( )

805. INVASIVE SPECIES - MAMMALS.

01. Nutria, *Myocastor coypus*. ( )

806. INVASIVE SPECIES - INSECTS.

01. Asian Longhorned Beetle, *Anoplophora glabripennis*. ( )

02. Citrus Longhorned Beetle, *Anoplophora chinensis*. ( )

03. Emerald Ash Borer, *Agrilus planipennis*. ( )

04. Marmorated Stink Bug, *Halyomorpha halys.* ( )

05. European Woodwasp, *Sirex noctilio*. ( )

06. European Gypsy Moth, *Lymantria dispar.* ( )

07. **Asian Gypsy Moth,** *Lymantria dispar.* ( )

08. **Soybean Aphid,** *Aphis glycines.* ( )

09. **Potato Tuber Moth,** *Tecia solanivora*. ( )

10. **Japanese Beetle,** *Popilla japonica*. ( )

11. **Mexican Bean Beetle,** *Epilachna varivestis*. ( )

12. **Kaphra beetle,** *Trogoderma granarium*. ( )

13. **Red Imported Fire Ant,** *Solenopsis invicta*. ( )

14. **Glassy-winged Sharpshooter,** *Homalodisca coagulate*. ( )

15. **Grape Phylloxera,** *Daktulosphaira vitifoliae*. ( )

16. **Vine Mealybug,** *Planococcus ficus*. ( )

17. **Summer Fruit Tortix,** *Adoxophyes orana*. ( )

18. **Silver Y Moth,** *Autoographa gamma*. ( )

19. **False Codling Moth,** *Cyrptophlebia leucotreta*. ( )

20. **Light Brown Apple Moth,** *Epiphyas postvittana*. ( )

21. **Apple Tortrix,** *Archips fuscocupreanus.* ( )

22. **Pine Shoot Beetle,** *Tomicus piniperda*. ( )

23. **Cherry Bark Tortrix,** *Enarmonia formosana*. ( )

24. **Apple Ermine Moth,** *Ypomoneuta malinellus*. ( )

25. **Cherry Ermine Moth,** *Enarmonia formosana*. ( )

26. **European Grape Vine Moth,** *Lobesia botrana.* ( )

27. **European Grape Berry Moth,** *Eupoecilia ambiguella*. ( )

28. **Plum Fruit Moth,** *Cydia funebrana*. ( )

29. **Plum Curculio,** *Conotrachelus nenuphar.* ( )

30. **Leek Moth,** *Acrolepiopsis assectella*. ( )

31. **Bee Mite,** *Tropilaelaps cleareae*. ( )

32. **Small Hive Beetle,** *Aethina tumida*. ( )

33. **Africanized Honey Bee,** *Apis mellifera*. ( )

34. **Black Currant Gall Mite,** *Cecidophyopsis ribis*. ( )

35. **Exotic Bark Beetles, (Scolytidae)**: ( )

a. *Scolytus mali*. ( )

b. *Xylosandrus crassiusculus*. ( )

c. *Xylosandrus germanus*. ( )

d. *Xyleborus californicus*. ( )

36. **Sunni Bug,** *Eurygaster intergriceps*. ( )

37. **German Yellowjacket,** *Vespula germanica*. ( )

38. **European Paper Wasp,** *Polistes dominulus*. ( )

39. **European Elm Bark Beetle,** *Scolytus multistriatus*. ( )

40. **Banded Elm Bark Beetle,** *Scolytus schevyrewi*. ( )

41. **Wheat Blossom Midge,** *Sitodiplosis mosellana*. ( )

42. **Potato Tuberworm,** *Phthorimeaea operculella*. ( )

43. ***Pink Hibiscus Mealybug, Maconellicoccus hirstus***. *( )*

807. INVASIVE SPECIES - PLANT PATHOGENS AND PARASITIC NEMATODES.

01. **Sudden Oak Death (Ramorum blight),** *Phytophthora ramorum*. ( )

02. **Karnal Bunt,** *Tilletia indica*. ( )

03. **Bean Common Mosaic Virus, (strain US-6)**. ( )

04. **Bean Common Mosaic Necrosis Virus (strain NL-3 and NL-5)**. ( )

05. **Potato Wart,** *Synchytrium endobioticum*. ( )

06. **Golden Nematode,** *Globodera rostochiensis*. ( )

07. Soybean Cyst Nematode, *Heterodera glycines*. ( )

08. Bacterial Wilt of Alfalfa, *Clavibacter michiganensis* **spp.** *insidiosus*. ( )

09. Wheat Seed Gall Nematode, *Anguina tritici*. ( )

10. Pine Wilt Nematode, *Bursaphelenchus xylophilus*. ( )

11. Brown Rot of Potatoes, *Ralstonia solanacearum***, race 3, biovar 2 (alternate hosts include tomato, pepper, eggplant, and some greenhouse plants including geranium)**. ( )

12. Java Downy Mildew of Corn, *Peronosclerospora maydis*. ( )

13. Philippine Downy Mildew of Corn, *Peronosclerospora philipeninsis*. ( )

14. Asian Soybean Rust, *Phakospsora pachyrhizi*. ( )

15. Plum Pox Potyvirus. ( )

16. Cherry Leaf Roll Virus. ( )

17. Stewart's Wilt of Corn, *Pantoea stewartii*. ( )

18. Brown Stripe Downy Mildew of Corn, *Sclerophthora rayssiae* **var.** *zeae*. ( )

19. Potato Spindle Tuber Viroid. ( )

20. Pierce's Disease of Grapes, *Xylella fastidiosa*. ( )

21. Black Currant Reversion Disease. ( )

22. Powdery Mildew of Hops, *Sphaerotheca macularis (s. humuli)*. ( )

23. Bacterial Brown Spot of Beans, *Pseudomonas syringae pv syringae*. ( )

24. Wheat Smut, *Tilletia tritici*. ( )

25. Wheat Scab, *Fusarium graninearum*. ( )

26. Potato Ring Rot, *Corynebacterium sepedonicum*. ( )

27. Potato Late Blight, *Phytophthora infestans*. ( )

28. Onion White Tot, *Sclerotium cepivorum*. ( )

29. Sugar Beet Rhizomania (beet necrotic yellow vein virus (BNYVV) and transmitted by the soil fungus *Polymyxa betae*). ( )

30. **White Pine Blister Rust,** *Cronartium ribicola*. ( )

31. **Cereal Cyst Nematode,** *Heterodera avenae*. ( )

32. **Columbia Root Knot Nematode,** *Meloidogyne chitwoodi*. ( )

33. **Onion Stem and Bulb Nematode,** *Ditylenchus dipsaci* **(onion race)**. ( )

34. **Iris Yellow Spot Virus - IYSV of onions**. ( )

35. **Potato Mop Top Virus, PMTV**. ( )

36. ***Black Stem Rust, Puccinia graminis***. *( )*

808. INVASIVE SPECIES - INVASIVE MOLLUSKS (TERRESTRIAL SNAILS AND SLUGS).

01. **Green or Burrowing Snail,** *Cantareus apertus*. ( )

02. **Pulmonate Snail,** *Helix pomatia*. ( )

03. **White Garden Snail,** *Theba pisana*. ( )

04. **Giant African Snail,** *Achatha fulica*. ( )

05. **Lactea Snail,** *Otala lacteal*. ( )

06. **Maritime Garden Snail,** *Cernuella virgata*. ( )

07. **Brown Garden Snail,** *Cryptomphalus aspersa*. ( )

08. **Wrinkled Snail,** *Candidula intersecta*. ( )

09. **Chinese Mysterysnail,** *Bellamya chinensis*. ( )

10. **Japanese Mysterysnail,** *Bellamya japonica*. ( )

11. **Applesnail,** *Pomacea* **spp.** ( )

12. **Marisa,** *Marisa cornuarietis*. ( )

13. **Red-lipped Melania,** *Melanoides tuberculata*. ( )

14. **Quilted Melania,** *Tarebia granifera*. ( )

15. **Decollate Snail,** *Rumina decollate*. ( )

16. Faucet Snail, Bithynia tentaculata. *( )*

***809.* -- 999. (RESERVED).**

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.12 - RULES PERTAINING TO THE IDAHO FERTILIZER LAW

DOCKET NO. 02-0612-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 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:

This change updates the incorporation by reference section to reflect the 2010 edition of the Official Publication of the Association of American Plant Food Control Officials (AAPFCO) usually published in January or February of each year. These are standard reference manuals for fertilizer control officials for the registration of fertilizers. They provide for consistency in the definitions of chemicals, fertilizer ingredients, terms, and policies concerning fertilizer registration between states.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the July 1, 2009 Idaho Administrative Bulletin, Vol. 09-7, pages 18 and 19.

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 at (208) 332-8620.

DATED this 2nd day of November, 2009.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701
Phone: (208) 332-8500 / Fax: (208) 334-2170

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-604, 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 July 15, 2009.

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 change will update the incorporation by reference section to reflect the 2010 edition of the Official Publication of the Association of American Plant Food Control Officials (AAPFCO) usually published in January or February of each year. These are standard reference manuals for fertilizer control officials for the registration of fertilizers. They provide for consistency in the definitions of chemicals, fertilizer ingredients, terms, and policies concerning fertilizer registration between states.

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

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

There is no fiscal impact with the adoption of this rule change.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Michael E. Cooper, Bureau Chief at (208) 332-8620.

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 July 22, 2009.

DATED this 14th day of May, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

004. INCORPORATION BY REFERENCE.
Copies of these documents may be obtained from the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.12 incorporates by reference: (3-30-01)

01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication. The Terms, Ingredient Definitions, and Policies, as published in the "20~~09~~10 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; or ~~(5-8-09)~~(____)

02. The Merck Index. The "2006 Merck Index," 14th Edition as published by Merck Research Laboratories Division of Merck & Co., Incorporated. (4-2-08)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.17 - RULES GOVERNING THE DISPOSAL OF CULL ONIONS AND POTATOES

DOCKET NO. 02-0617-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 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 Sections 22-2006 and 22-2013, Idaho Code.

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

The current rule requires that the enforcement of the cull onion disposal begin March 15th of each year, but the rule never set an ending date. The Department had enforced the rule through the onion harvest of each year. Malheur County, Oregon has cull onion disposal rules similar to that of Idaho and has recently made a rule change setting a March 15th through July 1st enforcement period. Idaho onion growers have requested that the Department make the same change in the Idaho rule.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 5, 2009 Idaho Administrative Bulletin, Vol. 09-8, page 30.

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 at (208) 332-8620.

DATED this 4th day of November, 2009.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701
Phone: (208) 332-8500 / Fax: (208) 334-2170

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 22-2006 and 22-2013, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 2009.

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 that the enforcement of the cull onion disposal begin March 15th of each year, but the rule never set an ending date. The Department had enforced the rule through the onion harvest of each year. Malheur County, Oregon has cull onion disposal rules similar to that of Idaho and has recently made a rule change setting a March 15th through July 1st enforcement period. Idaho onion growers have requested that the Department make the same change in the Idaho rule.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year resulting from this rulemaking: 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 Onion Growers' Association on March 20, 2009, who requested the rule change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Michael E. Cooper 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 August 26, 2009.

DATED this 17th day of June, 2009.

THE FOLLOWING IS THE PENDING TEXT FOR DOCKET NO. 02-0617-0901

070. DISPOSITION OF CULL ONIONS.
All cull onions existing in the control area shall be disposed of by a method approved of in Section 071 of this rule, to prevent sprouting. Disposal of all existing cull onions and debris must be completed prior to March 15th, of each year; provided; however, that in the case of onions sorted on or after March 15th of each year, the cull onions resulting therefrom shall be disposed of within one (1) week after such sorting regardless of the disposal method. The Department shall only enforce the cull onion disposal portions of this rule from March 15th through July 1st of each year. ~~*(4-11-06)*~~( )

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.22 - NOXIOUS WEED RULES

DOCKET NO. 02-0622-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 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 Sections 22-2403(b) and (c), 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:

Amendments to the noxious weed list will be part of an ongoing process to ensure that the rule is up to date, addressing current and future threats to agriculture and the environment in Idaho. This process could result in the removal of current species, addition of new species, and/or reclassification of currently listed species.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in Book 1 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 80 through 84.

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 Matt Voile, Section Manager, at (208) 332-8667.

DATED this 2nd day of November, 2009.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701
Phone: (208) 332-8500 / Fax: (208) 334-2170

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 22-2403(b) and (c), 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 21, 2009.

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:

Amendments to the noxious weed list will be part of an ongoing process to ensure that the rule is up to date, addressing current and future threats to agriculture and the environment in Idaho. This process could result in the removal of current species, addition of new species, and/or reclassification of currently listed species.

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, Idaho Code, negotiated rulemaking was not conducted because informal negotiated rulemaking was conducted using a new process to broaden input from agricultural and non-agricultural interests throughout the state. Various commodity, weed, nursery, plant, seed, lake and water quality associations and groups gave input as to which species should be added or deleted from the current noxious weeds list. The results were tallied and recommendations were given to the Noxious Weed Advisory Committee who voted and made the final recommendations to the Director.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Matt Voile, Section Manager, at (208) 332-8667.

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 28, 2009.

DATED this 25th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

100. NOXIOUS WEEDS - DESIGNATIONS.
The weeds listed on the Statewide EDRR, Containment, and Control lists- are hereby officially designated and published as noxious. (3-30-07)

01. Statewide EDRR Noxious Weed List.

Common Name		Scientific Name	
1.	Brazilian Elodea	**1.**	Egeria densa
2.	Common/European Frogbit	**2.**	Hydrcharis morsus-ranae
3.	Fanwort	**3.**	Cobomba caroliniana
4.	Feathered Mosquito Fern	**4.**	Azolla pinnata
~~2~~5.	Giant Hogweed	**~~2~~5.**	Heracleum mantegazzianum
6.	Giant Salvinia	**6.**	Salvinia molesta
~~3~~7.	Hydrilla	**~~3~~7.**	Hydrilla verticillata
~~4~~8.	Policeman's Helmet	**~~4~~8.**	Impatiens glandulifera
~~5~~9.	Squarrose Knapweed	**~~5~~9.**	Centaurea triumfetti
~~6~~10.	Syrian Beancaper	**~~6~~10.**	Zygophyllum fabago
~~7~~11.	Tall Hawkweed	**~~7~~11.**	Hieracium piloselloides
~~8.~~	~~*Water Hyacinth*~~	**~~8.~~**	~~*Eichhornia crassipes*~~
12.	Variable-Leaf-Milfoil	**12.**	Myriophyllum heterophyllum
13.	Water Chestnut	**13.**	Trapa natans
~~9~~14.	Yellow Devil Hawkweed	**~~9~~14.**	Hieracium glomeratum
15.	Yellow Floating Heart	**15.**	Nymphoides pelata

If any of the above listed plants (Subsection 100.01) are found to occur in Idaho, they shall be reported to the Department within ten (10) days following positive identification by the University of Idaho or other qualified authority as approved by the Director. These weeds shall be eradicated during the same growing season as identified. ~~*(3-30-07)*~~(____)

02. Statewide Control Noxious Weed List

Common Name		Scientific Name	
1.	Black Henbane	**1.**	Hyoscyamus niger

Common Name		Scientific Name	
2.	Bohemian Knotweed	**2.**	Polygonum X bohemicum
3.	Buffalobur	**3.**	Solanum rostratum
4.	Common Crupina	**4.**	Crupina vulgaris
5.	Common Reed (Phragmites)	**5.**	Phragmites australis
~~5~~6.	Dyer's Woad	~~5~~6.	Isatis tinctoria
~~6~~7.	Eurasian Watermilfoil	~~6~~7.	Myriophyllum spicatum
~~7~~8.	Giant Knotweed	~~7~~8.	Polygonum sachalinense
~~8~~9.	Japanese Knotweed	~~8~~9.	Polygonum cuspidatum
~~9~~10.	Johnsongrass	~~9~~10.	Sorghum halepense
1~~0~~1.	Matgrass	1~~0~~1.	Nardus stricta
1~~1~~2.	Meadow Knapweed	1~~1~~2.	Centaurea debeauxii
1~~2~~3.	Mediterranean Sage	1~~2~~3.	Salvia aethiopis
1~~3~~4.	Musk Thistle	1~~3~~4.	Carduus nutans
1~~4~~5.	Orange Hawkweed	1~~4~~5.	Hieracium aurantiacum
1~~5~~6.	Parrotfeather Milfoil	1~~5~~6.	Myriophyllum aquaticum
1~~6~~7.	Perennial Sowthistle	1~~6~~7.	Sonchus arvensis
1~~7~~8.	Russian Knapweed	1~~7~~8.	Acroptilon repens
1~~8~~9.	Scotch Broom	1~~8~~9.	Cytisus scoparius
~~19.~~	~~Silverleaf Nightshade~~	~~19.~~	~~Solanum elaeagnifolium~~
~~20.~~	~~Skeletonleaf Bursage~~	~~20.~~	~~Ambrosia tomentosa~~
2~~1~~0.	Small Bugloss	2~~1~~0.	Anchusa arvensis
~~22.~~	~~Toothed Spurge (David's Spurge)~~	~~22.~~	~~Euphorbia davidii~~
2~~3~~1.	Vipers Bugloss	2~~3~~1.	Echium vulgare
2~~4~~2.	Yellow Hawkweed	2~~4~~2.	Hieracium caespitosum

Weeds listed in the control list are known to exist in varying populations throughout the state. The concentration of these weeds is at a level where control and/or eradication may be possible. A written plan for weeds on the Statewide Control Noxious Weed List shall be developed by the control authority that specifies active control methods to reduce known populations in not more than five (5) years. The plan shall be available to the Department upon request.

~~(3-30-07)~~(____)

03. Statewide Containment Noxious Weed List.

Common Name		Scientific Name	
1.	Canada Thistle	**1.**	Cirsium arvense
2.	Curlyleaf Pondweed	**2.**	Potamogeton crispus

Common Name		Scientific Name	
~~2~~3.	Dalmatian Toadflax	~~2~~3.	Linaria dalmatica ssp. dalmatica
~~3~~4.	Diffuse Knapweed	~~3~~4.	Centaurea diffusa
~~4~~5.	Field Bindweed	~~4~~5.	Convolvulus arvensis
6.	Flowering Rush	6.	Butomus umbelltus
~~5~~7.	Hoary Alyssum	~~5~~7.	Berteroa incana
~~6~~8.	Houndstongue	~~6~~8.	Cynoglossum officinale
~~7~~9.	Jointed Goatgrass	~~7~~9.	Aegilops cylindrica
~~8~~10.	Leafy Spurge	~~8~~10.	Euphorbia esula
~~9~~11.	Milium	~~9~~11.	Milium vernale
1~~0~~2.	Oxeye Daisy	1~~0~~2.	Leucanthemum vulgare
1~~1~~3.	Perennial Pepperweed	1~~1~~3.	Lepidium latifolium
1~~2~~4.	Plumeless Thistle	1~~2~~4.	Carduus acanthoides
1~~3~~5.	Poison Hemlock	1~~3~~5.	Conium maculatum
1~~4~~6.	Puncturevine	1~~4~~6.	Tribulus terrestris
1~~5~~7.	Purple Loosestrife	1~~5~~7.	Lythrum salicaria
1~~6~~8.	Rush Skeletonweed	1~~6~~8.	Chondrilla juncea
1~~7~~9.	Saltcedar	1~~7~~9.	Tamarix sp.
~~18~~20.	Scotch Thistle	~~18~~20.	Onopordum acanthium
~~19~~21.	Spotted Knapweed	~~19~~21.	Centaurea stoebe
2~~0~~2.	Tansy Ragwort	2~~0~~2.	Senecio jacobaea
2~~1~~3.	White Bryony	2~~1~~3.	Bryonia alba
2~~2~~4.	Whitetop (Hoary Cress)	2~~2~~4.	Cardaria draba
25.	Yellow Flag Iris	25.	Iris psudocorus
2~~3~~6.	Yellow Starthistle	2~~3~~6.	Centaurea solstitialis
2~~4~~7.	Yellow Toadflax	2~~4~~7.	Linaria vulgaris

Weeds listed in the containment noxious weeds list are known to exist in various populations throughout the state. Weed control efforts may be directed at reducing or eliminating new or expanding weed populations while known and established weed populations, as determined by the weed control authority, may be managed by any approved weed control methodology, as determined by the weed control authority. ~~(3-30-07)~~(____)

04. Statewide Monitor List.

Common Name		*Scientific Name*	
1.	Water Hyacinth	1.	Echhorinia crassipes

(____)

a. Plants listed on the statewide monitor list are not designated as noxious weeds. The Department will investigate plants listed on the statewide monitor list to determine if the plant should be designated as a noxious weed. Plants may be placed on the statewide monitor list for any of the following criteria: (____)

i. There is reason to believe this species is invasive or poses a potential threat to Idaho due to damage caused by the species in other states or biological conditions which may allow the escape and survival of this species in Idaho. (____)

ii. The species exists in an adjacent state or province. (____)

iii. The species is on an adjacent state or province's noxious weed list. (____)

iv. Additional information about the species is needed on distribution, abundance or biology. (____)

v. There is a need to verify the presence of escaped species in Idaho, verify identification and/or obtain voucher specimen. (____)

vi. The species is currently available in the state through the nursery, pet, or ornamental seed/plant industry but may be closely related to current noxious/invasive species or suspected of being able to spread outside of intended sites and become escaped species. (____)

b. Native species of the state or region will not be included on the monitor list. (____)

04~~4~~5. Designation of Articles Capable of Disseminating Noxious Weeds. The following articles are designated by the Director as capable of disseminating noxious weeds: (7-1-93)

a. Construction equipment, road building and maintenance equipment, and implements of husbandry. (3-30-07)

b. Motorized vehicles such as, all-terrain vehicles, motorcycles, and other off-road vehicles and non-motorized vehicles such as bicycles and trailers. (3-30-07)

c. Grain and seed. (7-1-93)

d. Hay, straw and other material of similar nature. (7-1-93)

e. Nursery stock including plant material propagated for the support of aquarium, pet, or horticultural activities. (3-30-07)

f. Feed and seed screenings. (7-1-93)

g. Fence posts, fencing and railroad ties. (7-1-93)

h. Sod. (7-1-93)

i. Manure, fertilizers and material of similar nature. (7-1-93)

j. Soil, sand, mulch, and gravel. (3-30-07)

k. Boats, personal watercraft, watercraft trailers, and items of a similar nature. (3-30-07)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

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

DOCKET NO. 02-0641-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 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:

This change updates the incorporation by reference section to reflect the 2010 edition of the Official Publication of the Association of American Plant Food Control Officials (AAPFCO) usually published in January or February of each year. These are standard reference manuals for fertilizer control officials for the registration of soil and plant amendments. They provide for consistency in the definitions of chemicals, soil and plant amendment ingredients, terms and policies concerning soil and plant amendment registration between states.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the July 1, 2009 Idaho Administrative Bulletin, Vol. 09-7, pages 20 and 21.

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

There is no fiscal impact as a result of this rule change. This is a dedicated fund program.

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

DATED this 2nd day of November, 2009.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8500
Fax: (208) 334-2170

THE FOLLOWNG NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-2204, 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 July 15, 2009.

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 change will update the incorporation by reference section to reflect the 2010 edition of the Official Publication of the Association of American Plant Food Control Officials (AAPFCO) usually published in January or February of each year. These are standard reference manuals for fertilizer control officials for the registration of soil and plant amendments. They provide for consistency in the definitions of chemicals, soil and plant amendment ingredients, terms and policies concerning soil and plant amendment registration between states.

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

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

There is no fiscal impact with the adoption of this rule change. This is a dedicated fund program.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Michael E. Cooper, Bureau Chief 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 July 22, 2009.

DATED this 21st day of May, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

004. INCORPORATION BY REFERENCE.
Copies of these documents may be obtained from the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.41 incorporates by reference: (4-6-05)

01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication. The terms, ingredient definitions and policies as published in the "20~~*09*~~10 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. ~~*(5-8-09)*~~(____)

02. The Merck Index. The "2006 Merck Index," 14th Edition, as published by Merck Research Laboratories Division of Merck & Co., Incorporated. (4-2-08)

IDAPA 46 - BOARD OF VETERINARY MEDICINE

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

DOCKET NO. 46-0101-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 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.

Pursuant to comments received on the proposed rules, changes have been made to the language of Subsection 154.09 to clarify requirements concerning the return or disposal of expired pharmaceuticals and biologicals.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 472 through 488.

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

DATED this 29th day of October, 2009.

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

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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 rules need to be revised to address the following issues/problems identified with the current rules:

1. **The current rules do not identify where the public can find documents incorporated into the rules by reference;**
2. **The Board wishes to adopt a later version of an already adopted code of professional ethics;**
3. **The Board wishes to make select licensure requirements regarding documentation and examination of veterinarians and veterinary technicians consistent where appropriate;**
4. **Eliminate an existing requirement that technicians, assistants and others delegated functions by a supervising veterinarian actually be employees of the veterinarian;**
5. **Remove verbal abuse or harassment of a patient or owner as an independent ground for discipline for a veterinary technician, making it consistent with disciplinary provisions for veterinarians;**
6. **The current rule does not require a notation in the medical records of how a prescription is administered;**
7. **Provisions addressing how long a veterinarian has to release medical records are too vague;**
8. **A requested change in the Board of Pharmacy statutes regarding prescription drug order will necessitate a corresponding change with Board of Veterinary Medicine rules on the same subject;**
9. **Existing provisions regarding the storage and disposal of drugs, stock, and material are inadequate;**
10. **A provision regarding law enforcement officers and restraint drugs is unnecessary given the Board's modification of the definition of a certified euthanasia technician;**
11. **Existing provision requiring specific injection needle sizes are too restrictive;**
12. **Language to address transportation of drugs in a secure fashion needs to be added;**

13. Supplies and other requirements for euthanasia rooms need to be updated;
14. References to law enforcement certified euthanasia technicians providing verification of supervision by a veterinarian is unnecessary and needs to be removed since law enforcement CETs will no longer be allowed; and
15. Provisions relating to reinstatement of a certified euthanasia technician are confusing and need revision.

The proposed rules will make the following amendments:

1. Insert a provision that documents incorporated by reference can be accessed via the Board's website;
2. Adopt the April 2008 version of the Principles of Veterinary Medical Ethics of the AVMA;
3. Provide that applicants for veterinarian technician licensure provide certified copies of school records or letters verifying completion of education requirements and clarifying that technician applicants may take the state jurisprudence examination more than once, but at three month intervals;
4. Eliminate multiple references in various parts of the rules requiring technicians and assistants to be employed by a supervising veterinarian, thereby allowing for volunteers and others;
5. Striking verbal abuse or harassment of patient as grounds for discipline of a veterinary technician to be consistent with grounds for discipline of a veterinarian;
6. Inserting a requirement that the route of administration of drugs be noted in the patient's medical records;
7. Requiring that veterinarians provide a copy of a patient's records within a specified period of time;
8. Change the period of time given a veterinarian to provide a written order as a follow-up to an oral order given a veterinary drug outlet to mirror a similar change requested by the Board of Pharmacy in its statutes;
9. Clarify the disposal of controlled substances and outdated stock and material;
10. Eliminate a reference to law enforcement agencies and personnel as certified euthanasia technicians;
11. Modifying the requirements on needle sizes for euthanasia agencies to reflect realities and give more flexibility;
12. Adding a requirement that drugs approved for use by certified euthanasia technicians be transported only in a storage cabinet securely bolted to the transporting vehicle;
13. Modifying the supplies and items required to be in a euthanasia room, including current certifications;
14. Striking a reference to law enforcement CETs working under the supervision of a veterinarian, since this is incorrect under the Board's redefinition of a CET; and
15. Clarifying confusing provisions regarding reinstatement of a CET.

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

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

resulting from this rulemaking: None.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the Board specifically surveyed Idaho veterinarians, the Idaho Veterinary Medical Association, and humane society officials regarding proposed changes that would affect their facilities. Input from these groups was then implemented in the rule changes. Additionally, several of the rule changes are simple "housekeeping" changes that update the rules as needed based on statute changes and documents incorporated by reference, and provide consistency between requirements that are common to both veterinarians and certified veterinary technicians.

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 28, 2009.

DATED this 6th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

005. INCORPORATION BY REFERENCE.

01. Documents Incorporated. The following documents are incorporated herein by reference in accordance with the provision of Section 67-5229, Idaho Code. A copy of each of these documents may be obtained or electronically accessed via the Board of Veterinary Medicine's website at www.bovm.state.id.us. ~~*(3-30-01)*~~( )

a. The Principles of Veterinary Medical Ethics of the American Veterinary Medical Association (AVMA), as adopted and revised ~~*January 1, 2005*~~ April 2008. ~~*(3-30-07)*~~( )

b. The Educational Commission for Foreign Veterinary Graduates Information for Graduates of Colleges of Veterinary Medicine Outside the United States and Canada (ECFVG), adopted May 1, 2000. (3-30-01)

c. The American Association of Veterinary State Boards' (AAVSB) Program for the Assessment of Veterinary Education (PAVE), adopted August 15, 2002. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

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 ~~*notarized*~~ <u>certified</u> copy of a diploma or ~~*certificate*~~ <u>transcript, or a letter</u> verifying graduation from a veterinary technology program, accredited by the American Veterinary Medical Association; ~~*or*~~ ~~*(3-30-01)*~~<u>( )</u>

ii. A ~~*notarized*~~ <u>certified</u> copy of a diploma or ~~*certificate*~~ <u>transcript, or a letter</u> 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; ~~*or*~~ ~~*(3-30-01)*~~<u>( )</u>

iii. ~~*Notarized verification of having been awarded*~~ <u>A certified copy of a diploma or transcript, or a letter verifying the award of</u> a D.V.M. or V.M.D. degree or equivalent, from an accredited school of veterinary medicine; or ~~*(3-30-01)*~~<u>( )</u>

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 ~~*of at least*~~ for the jurisprudence examination, which should be ninety percent (90%) ~~*correct on the Idaho Veterinary Technician Jurisprudence Examination*~~ 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.~~*(3-30-01)*~~( )

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)

c. 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)

101. TEMPORARY CERTIFICATION.

The Board may, at its discretion, issue a temporary certification. The temporary certification shall be valid for one (1) year or until the next certification review by the Board, whichever comes first, and under no circumstances shall a second temporary certification be issued to the same person. A temporary certification shall not be issued to any applicant whose certification, license or registration has been revoked in any state for a reason other than nonpayment of fees or failure to fulfill the renewal requirements. An applicant granted a temporary certification shall provide notarized verification of twelve (12) months of active practice during the past year as a veterinary technician in another state or shall perform all veterinary technology procedures under the direct supervision of ~~*the employing*~~ an Idaho licensed veterinarian. Temporary certifications shall be consecutively numbered beginning with the number one (1) and all numbers shall be prefixed

with the letters TC. ~~*(3-30-01)*~~(____)

01. Certification Requirements. Requirements for a temporary certification shall be the same as for the original certification. (3-30-01)

02. Responsibility. Nothing herein shall be construed to relieve the temporary certificate holder of any responsibility or liability for any of their own acts and omissions. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

103. SUPERVISING VETERINARIANS.

01. Statement of Purpose. Veterinarians licensed under the provisions of Title 54, Chapter 21, Idaho Code, shall be responsible for all temporary licensees and temporary certification holders, certified euthanasia technicians, certified veterinary technicians, veterinary assistants, or any others ~~*in their employ*~~ to whom they delegate the performance of acts pertaining to the practice of veterinary medicine. ~~*(3-30-01)*~~(____)

02. A Supervising Veterinarian Shall: (3-30-01)

a. Provide direct supervision for all procedures pertaining to the practice of veterinary medicine that are delegated to a certified veterinary technician, a veterinary technician working under a temporary certification, an assistant or any others ~~*in his employ*~~ with the exception of: ~~*(3-30-01)*~~(____)

i. Routine procedures in the practice of veterinary technology that include, but are not limited to, taking radiographs, weight and temperature, or as determined by the standard of practice for the area. These routine procedures may be performed under the indirect supervision of the veterinarian. (3-30-01)

ii. Previously prescribed antibiotics and medications, which may be administered under the indirect supervision of the veterinarian. Previously prescribed antibiotics and medications shall not include injectable controlled substances, injectable tranquilizers, injectable sedatives, and injectable or inhalant anesthetics, which may only be administered under the direct supervision of the veterinarian. (3-30-01)

iii. Emergency situations where the animal has been placed in a life-threatening condition and immediate treatment is necessary to sustain life. In these situations, in order to stabilize the animal, the veterinarian, while en route to the location of the distressed animal, may prescribe treatment and delegate appropriate procedures pertaining to the practice of veterinary medicine under indirect supervision. Such emergency treatment and procedures may only be continued under indirect supervision until the veterinarian arrives at the animal's location. (3-30-01)

b. Be available to supervise and direct all procedures pertaining to the practice of veterinary medicine that are delegated to ~~*individuals in his employ*~~ others. ~~*(3-30-01)*~~( )

c. Bear legal responsibility for the health, safety and welfare of the animal patient that the temporary licensee, temporary certification holder, certified veterinary technician, assistant, or any others ~~*in his employ*~~ serves. ~~*(3-30-01)*~~( )

d. Not delegate an animal health care task to an unqualified individual. (3-30-01)

e. Make all decisions relating to the diagnosis, treatment, management, and future disposition of an animal patient. (3-30-01)

f. Have examined the animal patient prior to the delegation of any animal health care task to a certified veterinary technician, temporary certification holder, or assistant. The examination of the animal patient shall be conducted at such times as acceptable veterinary medical practice dictates, consistent with the particular delegated animal health care task. (3-30-01)

g. Diagnose and perform operative dentistry, oral surgery, and teeth extraction procedures. Operative dentistry and oral surgery are considered to be any dental procedure which invades the hard or soft oral tissue including, but not limited to, a procedure that alters the structure of one (1) or more teeth or repairs damaged and diseased teeth, or the deliberate extraction of one (1) or more teeth. Operative dentistry and oral surgery do not include, removal of calculus, soft deposits, plaque, stains, floating to shape the teeth, or smoothing, filing or polishing of tooth surfaces above the gum line. (3-30-01)

03. Limitations on Supervising Veterinarians. Unless otherwise provided by law or rule, a supervising veterinarian shall not authorize a certified veterinary technician, a veterinary technician working under a temporary certification, an assistant or ~~*any others in his employ*~~ anyone else, other than a licensed veterinarian or a veterinarian holding a valid temporary permit to perform the following functions: ~~*(3-30-01)*~~( )

a. Surgery; (7-1-93)

b. Diagnosis and prognosis of animal disease; (7-1-93)

c. Prescribing drugs, medicines and appliances; or (3-30-01)

d. Diagnosis and performance of procedures that constitute operative dentistry/oral surgery as defined by Section 54-2103(13)(b), Idaho Code. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

105. GROUNDS FOR DISCIPLINE OF VETERINARY TECHNICIANS.
In addition to the provisions of Section 54-2118, Idaho Code, the Board may refuse to issue,

renew, or reinstate the certification of a veterinary technician, or may deny, revoke, suspend, sanction, place on probation, or require voluntary surrender of the certification of a veterinary technician, or may impose other forms of discipline, and enter into consent agreements and negotiated settlements with certified veterinary technicians pursuant to the procedures set forth in Title 67, Chapter 52, Idaho Code, for any of the following reasons: (3-30-01)

01. Fraud, Misrepresentation, or Deception. The employment of fraud, misrepresentation or deception in obtaining certification. (3-30-01)

02. Unethical or Unprofessional Conduct. Unethical or unprofessional conduct is conduct that includes, but is not limited to, any of the following: (3-30-01)

a. False or misleading advertising or solicitation; (3-30-01)

b. Providing any procedure to an animal that constitutes the practice of veterinary medicine or veterinary technology and which has not been delegated by the ~~*employing*~~ supervising veterinarian, except in the case of an emergency as defined by Section 54-2103(16), Idaho Code; ~~*(3-30-01)*~~( )

c. Working in conjunction with any unlicensed or uncertified person who is practicing veterinary medicine or veterinary technology; (3-30-01)

d. Failing to apply sanitary methods or procedures in the treatment of any animal; (3-30-01)

e. Physically abusing a patient or failing to conform to the currently accepted standards of care in the field of veterinary technology for any animal under his care; (3-30-01)

~~***f.*** *Verbally abusing or harassing a patient or owner or caretaker of an animal;* *(3-30-01)*~~

~~***g***~~**f.** Practicing veterinary technology in a manner that endangers the health and welfare of the patient or the public. A certified veterinary technician shall not practice veterinary technology if his ability to practice with reasonable skill and safety is adversely affected by reason of illness, excessive use of alcohol, drugs, narcotics, chemicals, or any other substance, or as a result of any mental or physical disability; (3-30-01)

~~***h***~~**g.** Gross ignorance, incompetence or inefficiency in the practice of veterinary technology as determined by, but not limited to, the practices generally and currently followed and accepted by persons certified to practice veterinary technology in this state and the current teaching at accredited programs in veterinary technology; (3-30-01)

~~***i***~~**h.** Intentionally performing a duty, task or procedure in the field of veterinary technology for which the individual is not qualified; (3-30-01)

~~***j***~~**i.** Swearing falsely in any testimony or affidavits relating to, or in the course of, the practice of veterinary technology. (3-30-01)

~~k~~j. Engaging in conduct of a character likely to deceive or defraud the public. (3-30-01)

03. Conviction of Violating Any Federal or State Statute, Rule or Regulation. Conviction of a charge of violating any federal or state statute or rule or regulation regulating narcotics, dangerous drugs or controlled substances. (3-30-01)

04. Conviction of a Charge or Crime. Being found guilty, convicted, placed on probation, having entered a guilty plea that is accepted by the court, forfeiture of bail, bond or collateral deposited to secure a defendant's appearance, or having received a withheld judgment or suspended sentence by a court of competent jurisdiction in this state or any other state of one (1) or more of the following: (3-30-01)

a. Any felony, as defined by Title 18, Chapter 1, Idaho Code; or (3-30-01)

b. Any other criminal act that in any way is related to the practice of veterinary technology as defined by Section 54-2103(47), Idaho Code. (3-30-01)

05. Medical Incompetence. Medical incompetence in the practice of veterinary technology, which means lacking in sufficient medical knowledge or skills or both to a degree likely to endanger the health of patients. (3-30-01)

06. Physical or Mental Incompetence. Physical or mental incompetence, which means the individual's ability to practice veterinary technology with reasonable skill and safety is impaired by reason of illness, excessive use of alcohol, drugs, narcotics, chemicals, or any other substance, or as a result of any physical or mental disability. (3-30-01)

07. Malpractice or Negligence. Malpractice or negligence, in the practice of veterinary technology, which includes, but is not limited to: (3-30-01)

a. Treatment in a manner contrary to accepted practices in veterinary technology and with injurious results; (3-30-01)

b. Any professional misconduct or unreasonable lack of professional skill or fidelity in the performance of an act that is part of the practice of veterinary technology; (3-30-01)

c. Performance of an act that is part of the practice of veterinary technology without adequate supervision; except in the case of an emergency as defined by Section 54-2103(16), Idaho Code; or (3-30-01)

d. The negligent practice of veterinary technology, as determined by the standard of practice for the area, that results in injury, unnecessary suffering or death. (3-30-01)

08. Cruelty to Animals. Cruelty to animals, including, but not limited to, the intentional and malicious infliction of pain, physical suffering, injury or death, performance of experimental treatments without the owner's consent, deprivation of necessary sustenance, withholding of appropriate pain medications or levels of pain medications, or the administration of unnecessary procedures and treatment. Infliction of pain on any animal in self-defense, or to

prevent physical harm to others, or in accordance with local custom and culture in moving, handling, treating, dehorning, castrating or performing other procedures on livestock, shall not be considered cruel or physically abusive unless done in an unnecessary or intentionally malicious manner. This provision does not alter Section 25-3514, Idaho Code. (3-30-01)

09. Revocation, Suspension, Limitation or Subjection. The revocation, suspension, limitation, or subjection of a license, certificate or registration or any other disciplinary action by another state or U.S. jurisdiction or voluntary surrender of a license, certificate or registration by virtue of which one is licensed, certified or registered to practice veterinary technology in that state or jurisdiction on grounds other than nonpayment of the renewal fee. (3-30-01)

10. Continuing Education. Failure to comply with the continuing education requirements outlined by the rules of the Board. (3-30-01)

11. Failure to Cooperate. (3-30-01)

a. Failure of any applicant or certificate holder to cooperate with the Board during any investigation, even if such investigation does not personally concern the applicant or certificate holder. (3-30-01)

b. Failure to comply with the terms of any order, negotiated settlement, or probationary agreement of the Board. (3-30-01)

c. Failure to comply with the terms for certification renewal or to timely pay certification renewal fees as specified by Section 104 of these rules. (3-30-01)

12. Aiding or Abetting. Knowingly aiding or abetting an unlicensed or uncertified person to practice veterinary medicine or veterinary technology. (3-30-01)

13. Current Certification. Practicing as a certified veterinary technician without a current certification. (3-30-01)

14. Acceptance of Fees. Accepting fees for veterinary technician services from a client. (3-30-01)

15. Unlawful Practice. Representing oneself as a doctor of veterinary medicine, which constitutes the unauthorized practice of veterinary medicine in violation of Title 54, Chapter 21, Idaho Code. (3-30-01)

16. Violation of Law, Rules or Order. Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation or conspiracy to violate any of the provisions of the veterinary law or rules or a written order of the Board issued pursuant to Title 54, Chapter 21, Idaho Code. (3-30-01)

(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. 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, ~~*and*~~ frequency, and route of administration for both inpatient and outpatient care. ~~*(7-1-97)*~~( )

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 ~~*in a timely manner*~~ 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. ~~*(3-30-07)*~~( )

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 ~~*within seventy-two (72) hours*~~ 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. ~~*(5-8-09)*~~(____)

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, ~~*and*~~ dispensed, and disposed of in accordance with the requirements of the Uniform Controlled Substances Law and Code of Federal Regulations. ~~*(3-30-01)*~~( )

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. ( )

(BREAK IN CONTINUITY OF SECTIONS)

201. METHODS OF EUTHANASIA.
Methods of euthanasia approved by the CETF and used for the purpose of humanely euthanizing injured, sick, homeless or unwanted pets and animals: (7-1-97)

01. Approved Drugs. (7-1-97)

a. Euthanasia drugs are any Schedule II non-narcotic or Schedule III non-narcotic euthanasia drug covered by the Controlled Substances Act that has first been approved in writing by the Idaho Board of Pharmacy, the CETF and the Board. A list of approved euthanasia drugs is on file at the Board office. (3-30-01)

b. Restraint drugs are any Schedule III or Schedule IV narcotic or non-narcotic controlled substance as defined by the Controlled Substances Act, or other legend drugs that have been approved for use by certified CEAs or CETs ~~*who are classified as law enforcement agencies or law enforcement personnel*~~. Such restraint drugs shall be limited to those approved in writing by the Idaho Board of Pharmacy, the CETF and the Board. A list of approved restraint drugs is on file at the Board office. ~~*(3-30-01)*~~( )

02. Carbon Monoxide-Induced Euthanasia Chambers. Carbon monoxide-induced euthanasia chambers are acceptable only when the equipment is properly designed and operated. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

204. CERTIFIED EUTHANASIA AGENCY.
A certified euthanasia agency is a law enforcement agency, an animal control agency or a society for the prevention of cruelty to animals that has been inspected and certified by the euthanasia task force or the Board, Section 54-2103(8), Idaho Code. In order to be certified to purchase and store approved drugs, certified euthanasia agencies shall be inspected by the CETF or the Board and shall meet the following criteria: (3-30-01)

01. Approved Drugs. Approved drugs shall be kept in a locked cabinet securely attached to the building in which it is housed. (3-30-01)

a. Each agency shall maintain a current written list of CET. (3-30-01)

b. Access to the drug storage cabinet shall be limited to licensed veterinary supervisors and assigned CET. Such persons shall be responsible for the security of the approved drugs and shall allow withdrawal of the approved drugs only to a person certified by the Board and registered with the Idaho Board of Pharmacy to administer such drugs. (3-30-01)

c. All approved drugs shall be prepared according to the manufacturer's instructions. (7-1-97)

d. ~~*Two (2) different n*~~Needles in a range of sizes that are ~~*required: eighteen (18) and twenty (20)*~~ the appropriate gauge for the intended use. ~~*An agency may have other needle sizes according to its needs.*~~ Needles shall be of medical quality, and shall not be used if they are dirty, clogged, barbed, or might otherwise cause unnecessary discomfort for the animal. Needles shall not be used more than five (5) times. ~~*(3-30-01)*~~( )

e. Three (3) different syringe sizes are required: three (3), six (6), and twelve (12) cc. An agency may have other syringe sizes according to its needs. Syringes shall be of medical quality. They may be reused if they are properly cleaned. (3-30-01)

f. Used needles and syringes that are to be reused shall be kept in the same secure or temporary storage as the approved drugs. (7-1-97)

g. Spent needles and syringes shall be disposed of in a manner that makes their re-use impossible. (7-1-93)

02. Proper Storage. When no CET is on duty, proper storage for approved drugs is in a locked storage cabinet. (3-30-01)

a. The cabinet shall be of such material and construction that it will withstand strong attempts to break into it. A metal safe is preferred. (7-1-93)

b. The cabinet shall be securely attached to the building in which it is housed. (7-1-93)

c. The temperature and environment in the storage cabinet shall be adequate to assure the proper keeping of the drug. (7-1-93)

03. Proper Labeling. Proper labeling of approved drugs shall include: (7-1-97)

a. Shipment records showing receipt of the approved drugs shall be maintained and include all information required by federal law, the date the shipment was received, the amount, the source, and the invoice number. Upon removal from the shipment carton, each individual container of an approved drug shall be labeled with the drug name and strength, the date the drug was prepared, a drug hazard warning label and the name and address of the agency owning the drug. (7-1-97)

b. Administration records showing the date an approved drug was administered, weight, species of animal and dosage of each drug administered for euthanasia and restraint, identification of the person who dispensed the approved drugs and if applicable identification of the veterinarian or CET who supervised the dispensing shall be maintained. (3-30-01)

c. Records of wastage shall be maintained and signed by the person administering the approved drug and the CET responsible for security. (3-30-01)

d. A weekly record of the approved drugs on hand, minus the amounts withdrawn for administration, signed by the CET or person responsible for security. (3-30-01)

e. Disposal records of any expired or unwanted approved drugs shall be maintained. Disposal of unwanted drugs and the containers, instruments and equipment used in the administration of the approved drugs shall be in conformance with the Idaho Board of Pharmacy law and rules and the Code of Federal Regulations. (3-30-01)

04. Temporary Storage. When a CET is on duty and when animals are being euthanized throughout the workday, approved drugs may be kept in a temporary storage cabinet. When approved drugs are transported in a vehicle, the temporary storage cabinet shall be securely bolted to the vehicle. The cabinet shall be constructed of any strong material and shall be securely locked when not in use. The key to this cabinet shall be available only to the licensed veterinary supervisor and designated CET. ~~(7-1-97)~~( )

05. Record Keeping. Proper record keeping; (7-1-97)

a. All records shall be filed in chronological order in a binder that is labeled with the name of the agency. (7-1-93)

b. All records shall be kept for a period of three (3) years from the calendar date on the record. (7-1-93)

06. Proper Sanitation. The euthanasia area shall be clean and regularly disinfected. (3-30-01)

07. Other Site Conditions. Other site conditions relevant to the proper euthanasia environment. (7-1-93)

a. Each agency shall have a specific area designated for euthanasia. The area shall be: (7-1-93)

i. A separate room; or (7-1-93)

ii. An area that is physically separated from the rest of the agency by a wall, barrier or other divider; or (7-1-93)

iii. An area that is not used for any other purpose while animals are being euthanized. (7-1-93)

b. The euthanasia area shall meet the following minimum standards: (7-1-93)

i. Lighting shall be bright and even; (7-1-93)

ii. The air temperature shall be within a reasonable comfort range for both the personnel and animals. A minimum sixty (60) degrees F and maximum ninety (90) degrees F is recommended; (7-1-93)

iii. The area shall have adequate ventilation that prevents the accumulation of odors. At least one (1) exhaust fan vented directly to the outside is recommended; and (7-1-93)

iv. The floor of the area shall provide dry, non-slip footing to prevent accidents. (7-1-93)

c. The euthanasia area shall have the following equipment: (7-1-93)

i. A table or other work area where animals can be handled while being euthanized. (7-1-93)

ii. A cabinet, table or work bench where the drugs, needles, syringes and clippers can be placed. (7-1-93)

d. The following items and materials shall either be kept in the euthanasia area or ~~*shall be*~~ brought to the area each time an animal is euthanized: ~~*(7-1-93)*~~(____)

i. A first aid kit that meets minimum first aid supply standards; (7-1-93)

ii. One (1) or more tourniquets; (7-1-93)

iii. Standard electric clippers with No. 40 blade; (7-1-93)

iv. Animal control stick for dogs and animal net for cats (if the agency handles cats); (7-1-93)

v. Stethoscope; (7-1-93)

vi. ~~*Towels, sponges, d*~~Disinfectant. ~~*(7-1-93)*~~(____)

vii. The current certification cards for the CEA and all CETs working at the CEA, which shall be kept together. The CEA is strongly encouraged to keep all DEA and Idaho Board of Pharmacy registration cards together with the certification cards. (____)

e. All equipment shall be in good working order. (7-1-93)

08. Equipment Stored. All equipment shall be stored so that it does not create a safety hazard for the personnel. All drugs and other chemical agents used in the euthanasia area shall be clearly labeled as specified by Subsection 204.03 of these rules. (3-30-01)

09. Certification Renewal. Certifications may be renewed upon successful completion of a facility inspection by a CETF member, a member of the Board or other individual appointed by the CETF and payment of the annual renewal fee. (3-30-01)

205. CERTIFIED EUTHANASIA TECHNICIAN.

01. Training and Examinations. The CETF or the Board shall develop training sessions and materials that shall include, but not be limited to, the following topics: (3-30-01)

a. Euthanasia: (3-30-01)

i. The theory and history of euthanasia methods; (3-30-01)

ii. Animal anatomy; (3-30-01)

iii. Proper animal handling to ease trauma and stress; (3-30-01)

iv. Dosages of chemical agents, record keeping and documentation of usage, storage, handling, and disposal of out-dated drugs and their containers, instruments and equipment used in their administration in accordance with the Idaho Board of Pharmacy law and rules and the Code of Federal Regulations; (3-30-01)

v. Proper injection techniques; and (3-30-01)

vi. Proper use and handling of approved euthanasia drugs and equipment; (3-30-01)

vii. Examination. Following the euthanasia training, a written examination shall be given. Those passing the written examination will be eligible for the practical examination. (3-30-01)

b. Remote Chemical Capture: (3-30-01)

i. An overview of remote chemical capture; (3-30-01)

ii. Description and basic mechanism of action of approved drugs; (3-30-01)

iii. Laws, regulations and rules governing remote chemical capture; (3-30-01)

iv. Post-injection care; (3-30-01)

v. Proper use and handling of approved restraint drugs and equipment; (3-30-01)

vi. Human safety; (3-30-01)

vii. Tactics and strategy; and (3-30-01)

viii. Delivery systems and equipment. (3-30-01)

02. Certification Standards. Applicants for certification as a CET shall be eighteen (18) years of age or older and demonstrate proficiency in compliance with the following standards. (3-30-01)

a. Demonstrate efficiency in venous access in the presence of a CETF or Board member, or a person approved by the Board: (5-8-09)

i. CETs are fully responsible for all actions that take place in the euthanasia area when an animal is brought to the area including, but not limited to, animal handling, use of the proper restraint technique, the proper drug dosage, and drug handling; (3-30-01)

ii. Each animal shall be handled with the least amount of restraint necessary, but human safety shall always be the primary concern; (3-30-01)

iii. CETs shall be able to properly perform intravenous injections on dogs and intraperitoneal injections on both dogs and cats. Intravenous injections on cats shall not be required as part of the certification process, but when performed, shall meet the standards listed in Subparagraph 205.02.a.iii.(1) of these rules. Intracardiac injections on dogs and cats shall not be required as part of the certification process, but when performed, are restricted to the limitations listed in Subparagraph 205.02.a.iii.(3) of these rules. (3-30-01)

(1) Intravenous Injections: The CET shall be able to properly and efficiently insert the needle into an animal's vein in no more than two (2) attempts on ninety percent (90%) of the animals injected by this method. IV injections in the cephalic vein shall be used on all dogs over the age of three (3) months unless the animal's physical condition or size makes this type of injection impossible, or the animal's behavior would make this type of injection a serious danger to the CET or handler. A minimum of two (2) people shall be required for any IV injection. One (1) person shall be a CET and one (1) or more people shall be the handler. The handler does not need to be a CET, but the handler should be trained in human safety and animal handling techniques; (3-30-01)

(2) Intraperitoneal Injections: The CET shall be able to efficiently insert the needle into the proper injection site in no more than two (2) attempts on ninety-five percent (95%) of the animals injected by this method. It is recommended that animals injected by this method be held or otherwise restrained by the handler until the animal is unconscious. If an animal cannot be held, it shall be placed into a cage with no other animals. The front of the cage shall be covered

with cloth or other material that can keep the cage isolated from the normal activities in the euthanasia area. The animal shall be checked every five (5) minutes until death occurs. Intraperitoneal injections may be administered by a CET without a handler. (3-30-01)

(3) Intracardiac Injections: Intracardiac injection shall be performed only on an anesthetized animal. CETs shall be able to efficiently insert the needle into the heart of an animal in no more than two (2) attempts on ninety percent (90%) of the animals injected by this method. Intracardiac injections may be administered by a CET without a handler. (3-30-01)

iv. No other injection procedures are permitted in any type of animal; (3-30-01)

v. Injections: (3-30-01)

(1) On all injections, the CET shall aspirate the syringe to determine if the needle is in the correct site; (3-30-01)

(2) For human safety, the cap shall be kept on the needle until such time as the injection is ready to be made; (3-30-01)

(3) The needle shall be of the size and length appropriate for the specific animal involved; and (3-30-01)

(4) The dosage of any approved drug used shall be no less than the minimum dosage recommended by the drug's manufacturer. (7-1-97)

vi. Oral administration of approved drugs is permitted for any animal that cannot be captured or restrained without serious danger to human safety; (3-30-01)

vii. Demonstrate an understanding of carbon monoxide-induced euthanasia chambers. (3-18-99)

b. Demonstrate proper record keeping. A record of all approved drugs received and used by the agency shall be kept. The record shall contain the following information: (3-30-01)

i. A weekly verification of the drug stock on hand, signed by the CET; (3-30-01)

ii. An entry of the date that a new bottle of any approved drug is opened and the volume of the bottle, signed by the CET; (3-30-01)

iii. The species and approximate weight of each animal administered a drug; (3-30-01)

iv. The amount of the drug that was administered; (3-30-01)

v. The signature of the CET who administered the drug; (3-30-01)

vi. A record of the amount of the drug wasted, if any, signed by the CET administering the drug; and (3-30-01)

vii. A record of any disposal of expired or unwanted approved drugs, other chemical agent or the containers, instruments and equipment used in their administration, signed by the CET and disposed of in accordance with the Idaho Board of Pharmacy law and rules and the Code of Federal Regulations. (3-30-01)

c. Demonstrate understanding and concern for the needs of individual animals: (3-18-99)

i. Once they have collapsed, injected animals shall be lowered to the surface on which they were being held at the time of injection. Injected animals shall not be permitted to drop or otherwise collapse without human support; (3-30-01)

ii. All animals shall be handled in a manner that minimizes stress to the animal and maximizes the personal safety of the CET and the handler. Handling includes all aspects of moving an animal from one (1) area to another; (3-30-01)

iii. The use of control sticks and other similar devices shall be limited to fractious or potentially dangerous animals; and (3-30-01)

iv. Animals shall not be placed in cages or kennels with other breeds or species that are incompatible with the animal in question. Animals shall not be overcrowded in a cage or kennel. (7-1-93)

d. Demonstrate ability to verify death. The animal should become unconscious and show terminal signs within thirty (30) seconds after an IV or IC injection, within fifteen (15) minutes after an IP injection, or within sixty (60) minutes after an oral administration. If any animal does not show any of these signs within the designated time periods, the CET shall re-administer the drug. An animal that has received an approved drug orally may be injected with the same or another approved drug after it has become unconscious. Verification is the responsibility of the CET and shall be made by physical examination of the individual animal. One (1) of the following two (2) standards for death shall be met: (4-2-08)

i. Rigor mortis; or (7-1-93)

ii. Complete lack of heartbeat (as checked with a stethoscope), complete lack of respiration, and complete lack of corneal and palpebral reflexes. (4-2-08)

e. Demonstrate ability to communicate with handlers during the euthanasia process. (3-18-99)

03. Certification. An individual shall not be certified as a CET until such time as he has demonstrated proficiency in the practical examination that shall be conducted following the successful passing of the written exam. Training courses and written and practical examinations will be given as needed. Certification and renewal training sessions and examinations will be conducted prior to July 1 of each year at a place selected by the CETF or the Board. ~~*A law enforcement CET working under the indirect supervision of a licensed veterinarian must provide verification of supervision by the supervising veterinarian on a form provided by the Board office.*~~

~~*(4-2-08)*~~(____)

a. An individual who has passed the written exam, but has not attended a training session and has not passed the practical examination, may serve as a probationary euthanasia technician under the direct supervision of a currently certified CET until such time as the next training course, practical exam and certification are conducted by a CETF or Board member. (3-30-07)

b. An individual who has not passed the written exam may not serve as a euthanasia technician or assistant. (3-30-01)

c. An individual who attends a training session and passes the written exam but fails the practical exam may serve on probation until the CETF member re-examines the individual. If the individual fails to pass the practical exam a second time and wishes to apply again, the individual shall attend the next regular training session and written exam. (3-30-01)

d. Upon termination from an agency as defined in Section 204 of these rules, a CET shall not perform animal euthanasia until employed by another certified euthanasia agency as defined by Section 54-2103(8), Idaho Code. (3-30-01)

e. The agency shall notify the Board office ~~*or a CETF member, or both*~~, in writing within thirty (30) days from the date the CET's employment at that agency is terminated. ~~*(3-30-01)*~~(____)

f. If a CET is employed again ~~*within eighteen (18) months*~~ by a CEA prior to the expiration of his ~~*last*~~ certification, the CET or employer, or both, may request reinstatement ~~*and renewal*~~ of the CET's certification. ~~*If the certification has expired past the eighteen (18) months maximum, the CET may euthanize animals under the direct supervision of a currently certified euthanasia technician until such time as a CETF or Board member can administer a written examination and authorize recertification.*~~ If a CET has not attended a euthanasia training in the three (3)-year period preceding recertification, the CET may not be recertified and will need to reapply for certification, at CETF discretion. ~~*(3-30-07)*~~(____)

g. All certifications expire on July 1 of each year and are effective for no longer than twelve (12) months from the date of certification. (3-30-01)

04. Certification Renewal. Certifications may be renewed each year by payment of the annual renewal fee, provided that, every third year following the date of certification, the CET will need to attend a euthanasia training and pay the current training and certification fee prescribed by Section 014 of these rules. (3-30-01)

05. Duties. The duties of a CET shall include, but are not limited to: (7-1-97)

a. Preparing animals for euthanasia; (7-1-97)

b. Accurately recording the dosages for drugs that are administered and amounts for drugs wasted; (3-30-01)

c. Ordering supplies; (7-1-93)

d. Maintaining the security of all controlled substances and other approved drugs; (3-30-01)

e. Directly supervising probationary CET; (7-1-97)

f. Reporting to the Board violations or suspicions of a violation of these rules or any abuse of drugs; (3-30-01)

g. Humanely euthanizing animals; and (3-30-01)

h. Proper and lawful disposal of euthanized animals and expired or unwanted drugs, other chemical agent or the containers, instruments and equipment used in the administration of approved drugs. (3-30-01)

IDAPA 48 - IDAHO GRAPE GROWERS AND WINE PRODUCERS COMMISSION

48.01.01 - RULES OF THE IDAHO GRAPE GROWERS AND WINE PRODUCERS COMMISSION

DOCKET NO. 48-0101-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 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 54-3605(15), 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 September 2, 2009 Idaho Administrative Bulletin, Vol. 09-9, pages 327 through 329.

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

The Commission has been accepting gifts and donations to fund grants and may supplement such funds as its budget permits.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proposed rule, contact Moya Shatz, Executive Director, (208) 455-8354.

DATED this 2nd day of November, 2009.

Moya Shatz
Executive Director
Idaho Grape Growers and Wine Producers Commission
117 9th Ave., Ste. 2
P. O. Box 1218
Caldwell, ID 83606
Telephone: (208) 455-8354
Facsimile: (208) 455-8364

THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2009.

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 54-3605(15), 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 16, 2009.

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 Commission will offer grants in furtherance of its mission to protect the public and promote the Idaho grape and wine industry. The rules will establish the framework of the grant program.

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:

The proposed rules will confer a benefit by immediately implementing the grant program.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: 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:

The Commission has been accepting gifts and donations to fund grants and may supplement such funds as its budget permits.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Moya

Shatz, Executive Director, (208) 455-8354.

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 September 23, 2009.

DATED this 30th day of July, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

010. DEFINITIONS.
The definitions set forth in Title 54, Chapter 36, Idaho Code, shall apply to this chapter. In addition, the following terms shall have the meanings set forth below: ~~*(3-19-07)*~~( )

01. **Applicant**. An individual or organization who has submitted a written request for grant funds. ( )

02. **Program**. The Grape and Wine Promotion, Education and Research Grant Program established by Section 021 of these rules. ( )

03. **Recipient**. An individual or organization who has been awarded a grant under the Program. ( )

(BREAK IN CONTINUITY OF SECTIONS)

021. GRAPE AND WINE PROMOTION, EDUCATION, AND RESEARCH GRANT PROGRAM.

01. **Program Objective**. The objective of the Program is to promote the development of markets for Idaho grapes and grape by-products, provide research concerning grapes and grape by-products, and encourage the education of individuals, organizations, and the community concerning the production of grapes and grape by-products in Idaho. ( )

02. **Eligible Applicants**. Individuals, organizations, and educational entities may submit applications for funding from the Program. No official, officer, or employee of the Commission, or any child, parent, sibling, or household member of an official, officer, or employee of the Commission is eligible to submit an application for funding from the Program. A grower or producer not otherwise ineligible may apply for funding from the Program if such funding satisfies the Program objectives and does not primarily promote the interests of the Applicant. ( )

03. Eligible Activities and Costs. Eligible costs for the use of Program funds are limited to: ( )

a. Tuition and fees for education or training; ( )

b. Acquisition of supplies, materials, and equipment for promotion, research, education, or training activities; ( )

c. Speaking fees or honoraria for promotion, education, or training activities; ( )

d. Fees for use of a facility or equipment necessary to conduct research, promotion, education, or training activities; ( )

e. Advertising and printing costs directly related to promotion, research, education, or training activities; and ( )

f. Matching funds for other state, federal, or foundation grants satisfying the objectives of the Program. ( )

04. Ineligible Activities and Costs. Grant funds shall not be used for: ( )

a. Political, lobbying, religious, or illegal activities; or ( )

b. Payroll and administrative costs routinely incurred by a Recipient. ( )

05. Application, Review, and Award. ( )

a. Applications for Program grants may be submitted at any time. Applicants shall submit a grant proposal in the format required by the Commission. Copies of the application format requirements and the list of supporting information may be obtained by contacting the Commission at the address set forth in Section 005 of these rules. ( )

b. Commission staff review proposals for completeness and compliance with these rules and make recommendations for funding to the Commission. The Commission may establish review committees consisting of Commission staff, Commission members, growers and producers, or other individuals. ( )

c. The Commission, in its sole discretion, makes all Program grant awards. The Commission may establish conditions or requirements for the expenditure of grant funds in a written agreement between the Commission and the Recipient. Conditions and requirements may include the submission of reports and receipts, acknowledgement of the grant in written materials, the provision of matching funds from the Recipient, or the repayment of grant funds upon specified events. ( )

06. Compliance with Law. All Recipients shall comply with applicable law in the conduct of activities funded by the Program. Public entities and employees receiving or administering Program funds shall comply with the ethics, personnel, bidding, and accounting requirements generally applicable to the entity or individual. ( )

07. **Termination of Funding**. The Commission may terminate Program grants at any time for: ( )

a. Use of funds in violation of these rules; ( )

b. Violation of the terms of the grant; or ( )

c. Violation of any applicable law. ( )

08. **Receipt of Written Notice of Termination.** Upon receipt of a written notice of termination, the Recipient shall immediately cease all expenditures of Program funds and return all unspent Program funds. The Commission may require a written accounting of the use of Program funds upon the termination of funding and may deny payment of costs yet to be paid and not substantiated by written documentation. ( )

02~~1~~2. -- 999. (RESERVED).