

Dear Senators BAIR, Guthrie, Buckner-Webb, and  
Representatives ANDRUS, Boyle, Pence:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the  
Department of Agriculture:

IDAPA 02.06.05 - Rules Governing Diseases of Hops (*Humulus Lupulus*) - Temporary and Proposed  
Rule (Fee Rule) (Docket No. 02-0605-1401);

IDAPA 02.06.27 - Rules Governing Bacterial Ring Rot Caused by (*Clavibacter Michiganensis*  
Subsp. *Sepedonicus*) of Potato (Fee Rule - New Chapter) - Proposed Rule (Docket No.  
02-0627-1402).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the  
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research  
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative  
Services. The final date to call a meeting on the enclosed rules is no later than 10/24/2014. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 11/24/2014.

The germane joint subcommittee may request a statement of economic impact with respect to a  
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,  
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has  
been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the  
memorandum attached below.



Eric Milstead  
Director

# Legislative Services Office

## Idaho State Legislature

*Serving Idaho's Citizen Legislature*

### MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Agricultural Affairs Committee and the House Agricultural Affairs Committee

**FROM:** Principal Legislative Research Analyst - Katharine Gerrity

**DATE:** October 06, 2014

**SUBJECT:** Department of Agriculture

IDAPA 02.06.05 - Rules Governing Diseases of Hops (*Humulus Lupulus*) - Temporary and Proposed Rule (Fee Rule) (Docket No. 02-0605-1401)

IDAPA 02.06.27 - Rules Governing Bacterial Ring Rot Caused by (*Clavibacter Michiganensis* Subsp. *Sepedonicus*) of Potato (Fee Rule - New Chapter) - Proposed Rule (Docket No. 02-0627-1402)

#### **1. IDAPA 02.06.05 - Rules Governing Diseases of Hops (*Humulus Lupulus*)**

The Idaho Department of Agriculture submits notice of a temporary and proposed fee rule at IDAPA 02.06.05 - Rules Governing Diseases of Hops (*Humulus Lupulus*). According to the department, the purpose of the rulemaking is to change the hops quarantine area to allow free movement of hops green matter among Idaho, Oregon and Washington. The department notes that the rule requires a negative disease test and a Clean Plant Health Network certification prior to shipment to Idaho if the hops green matter is imported from outside of the three-state area. The department states that fees and charges associated with the inspection of hops for certificates and permits allowing shipment will be assessed according to IDAPA 02.06.04, "Idaho Department of Agriculture, Phytosanitary and Post-Entry Certification Rules," Section 500.

The department indicates that negotiated rulemaking was conducted. The rulemaking appears to be authorized pursuant to Section 22-2006, Idaho Code.

#### **2. IDAPA 02.06.27 - Rules Governing Bacterial Ring Rot Caused by (*Clavibacter Michiganensis* Subsp. *Sepedonicus*) of Potato**

The Idaho Department of Agriculture submits notice of a proposed fee rule at IDAPA 02.06.27 - Rules Governing Bacterial Ring Rot Caused by (*Clavibacter Michiganensis* Subsp. *Sepedonicus*) of Potato. According to the department, it adopted a temporary rule relating to this matter in February 2014. Negotiated rulemaking was commenced and as a result of that process, the department made certain changes to the existing temporary rule. The department notes that the proposed rule represents the final negotiated rulemaking and will supplant the temporary rule now in place at the end of the 2015 legislative session. The department states that the rule is in place to help prevent the introduction and/or spread of Bacterial Ring Rot into and

through Idaho and the United States. The department indicates that the laboratory that performs the testing for the disease will set the fee and that any other fees associated with seed potato certification or phytosanitary certification for export are detailed in the rules for those respective certifications.

As noted, negotiated rulemaking was conducted. The rulemaking appears to be authorized pursuant to Sections 22-101a, 22-505, 22-1907 and 22-2006, Idaho Code.

cc: Department of Agriculture  
Brian J. Oakey

## PROPOSED RULE COST/BENEFIT ANALYSIS

Section 67-5223(3), Idaho Code, requires the preparation of an economic impact statement for all proposed rules imposing or increasing fees or charges. This cost/benefit analysis, which must be filed with the proposed rule, must include the reasonably estimated costs to the agency to implement the rule and the reasonably estimated costs to be borne by citizens, or the private sector, or both.

**Department or Agency:** Idaho State Department of Agriculture

**Agency Contact:** Jared Stuart      **Phone:** (208) 332-8620

**Date:** 8/4/2014

**IDAPA, Chapter and Title Number and Chapter Name:**

IDAPA 02 TITLE 06 CHAPTER 05 - Rules Governing Diseases of Hops

**Fee Rule Status:**     **Proposed**       **Temporary**

**Rulemaking Docket Number:** **02-0605-1401**

### **STATEMENT OF ECONOMIC IMPACT:**

Fees associated with this rule are outlined in Section 500. General Fees and Charges for inspection, certificates, and permits are set forth in Section 500 of the "Phyosanitary and Post-Entry Certification Rules." IDAPA 02.06.04.500. These are standard fees that apply to a number of similar functions in the agency.

Special Permits for importation of hops from areas under quarantine will be assessed a fee of sixty dollar (\$60) per permit.

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.06.05 - RULES GOVERNING DISEASES OF HOPS (*HUMULUS LUPULUS*)

#### DOCKET NO. 02-0605-1401 (FEE RULE)

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is September 1, 2014.

**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(s) 22-2006, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

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 rule is being amended to change the hops quarantine area to allow free movement of hops green matter among Idaho, Oregon, and Washington. The rule requires a negative disease test and a Clean Plant Health Network certification prior to shipment to Idaho if the hops green matter is imported from outside of the three-state area.

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

This temporary rule would maintain the health of Idaho's commercial hops industry, while allowing access to safe propagation sources for the general public.

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

The fees and charges associated with the inspection of hops for certificates and permits allowing shipment will be assessed according to IDAPA 02.06.04, "Idaho Department of Agriculture, Phytosanitary and Post-Entry Certification Rules," Section 500.

**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:

ISDA does not anticipate any negative fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 4, 2014, Idaho Administrative Bulletin, **Vol. 14-6, page 33**. A negotiated rulemaking meeting was held at the University of Idaho Parma Research and Extension Center on June 16, 2014. A representative of the Idaho Hops Commission was present and provided comments to the draft rule. The final language of the temporary and proposed rule incorporates the comments from the industry representative.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Jared Stuart, Section Manager, Plant Industries Field Services, 208-332-8620 or email [Jared.Stuart@agri.idaho.gov](mailto:Jared.Stuart@agri.idaho.gov). Materials pertaining to this rulemaking can be found on the ISDA web site at the following web address: [http://www.agri.idaho.gov/Categories/LawsRules/sub\\_rules/Rulemaking.php](http://www.agri.idaho.gov/Categories/LawsRules/sub_rules/Rulemaking.php).

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 October 22, 2014.

DATED this 29th Day of August, 2014.

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

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF FEE DOCKET NO. 02-0605-1401  
(Only those Sections being amended are shown.)**

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is IDAPA 02.06.05, “Rules Governing Diseases of Hops (*Humulus lupulus*).” (5-3-03)

**02. Scope.** This chapter has the following scope: ~~This rule~~ ~~establishes~~ definitions, regulated pests, regulated products, control areas, ~~procedures for the certification of propagative material to be shipped into Idaho, and inspection procedures for propagative material produced in Idaho~~ ~~quarantine areas and special permits.~~ ~~This rule~~ ~~requires~~ farm machinery to be clean of plant debris and soil, ~~and fields to be posted.~~ ~~S~~sets forth consequences if a regulated pest is found ~~and including~~ penalties for violations, ~~and~~ ~~S~~sets a fee schedule ~~for inspections and makes allowances for exemptions from the rule.~~ The official citation of this chapter is IDAPA 02.06.05 et seq. For example, the citation for this Section is IDAPA 02.06.05.001. (~~3-19-99~~)(9-1-14)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**007. FINDINGS.**

The revision of IDAPA 02.06.05, “Rules Governing Diseases of Hops (*Humulus lupulus*),” will confer benefits to the Idaho hop industry ~~and members of the public.~~ ~~Powdery mildew of hops is not known to be in Idaho. The addition of powdery mildew to the list of regulated pests is necessary to prevent the introduction of powdery mildew contaminated hop propagating materials into Idaho. The revision of~~ ~~t~~This rule will ~~comply with~~ ~~provide for~~ ~~consistency among~~ the quarantine rules of Oregon, ~~Washington, and Idaho~~ for the shipment of hop propagating materials ~~from among Idaho, to Oregon, and Washington.~~ ~~In order to prevent the introduction of powdery mildew contaminated hop propagating materials into Idaho, the Department finds it necessary to make this revision effective immediately.~~ (~~5-3-03~~)(9-1-14)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**012. REGULATED PESTS.**

**01. Verticillium Wilt.** ~~Plant Material infected with the disease caused by the fungus~~ ~~Verticillium~~ ~~wilt~~ ~~nonalfalfae~~ (formerly known as ~~Verticillium albo-atrum~~ Reinke and Berth-) ~~a persistent soil borne fungus disease of hops~~ and any species or strains of the genus ~~Verticillium~~ ~~virulently~~ pathogenic to hops. (~~3-19-99~~)(9-1-14)T

**02. Powdery Mildew.** ~~Powdery mildew~~ Plant Material infected with the disease caused by ~~all developmental stages and biotypes of~~ the fungus *Podosphaera macularis* (Wallr. Fr.), synonyms *Sphaerotheca macularis* (*S. humuli* Wallr. Fr.) Lind and *Sphaerotheca humuli* (Burril) Lind. ~~(3-19-99)~~(9-1-14)T

**03. Hop Stunt Viroid.** Plant Material infected with the disease caused by the viroid *Hostuviroid hop stunt viroid* and all strains and genetic variants associated with the genus. (9-1-14)T

**04. Ilarvirus Species.** Plant Material infected with the disease caused by virus species within the Genus Ilarvis, including but not limited to Apple Mosaic Virus and Prunus Necrotic Ringspot Virus. (9-1-14)T

013. -- 049. (RESERVED)

**050. REGULATED ~~PRODUCTS~~ ARTICLES.**

**01. ~~Rootstocks~~ Plant Material.** ~~For example, rhizomes, strap cuttings, or greenwood cuttings of all species of the genus *Humulus*~~ Plants and all plant parts of hops, except kiln dried cones. ~~(8-1-80)~~(9-1-14)T

**02. Machinery.** Machinery, vehicles, tools, equipment, trellis poles, wire, anchor irons, and any other appurtenances used in the culture and/or production of hops. (8-1-80)

051. -- 099. (RESERVED)

**100. ~~CONTROL~~ QUARANTINE AREA.**

~~Except as stated in Subsection 350.03 of this rule, the control area is Bonner and Kootenai Counties, state of Idaho~~ All areas outside of the territorial borders of Idaho, Oregon, and Washington. ~~(4-6-05)~~(9-1-14)T

101. -- 149. (RESERVED)

**150. ~~ELIGIBLE ROOTSTOCKS~~ RESTRICTIONS ON IMPORT.**

No person may import restricted articles from the quarantined area into Idaho unless the person importing the regulated articles first obtains a special permit from the department as set forth in Section 200. (9-1-14)T

~~**01. Eligibility.** Only rootstocks eligible for phytosanitary certification may be imported into the control area or transported as planting stock within the area. Eligibility will be established by meeting the following requirements:~~ ~~(8-1-80)~~

~~**a. Imported rootstocks:** (8-1-80)~~

~~**i.** A desired clone must be grown under observation at a state or federal hop research facility in Idaho, Washington, Colorado, or Oregon for two (2) consecutive years or growing seasons with no evidence of *Verticillium* wilt or powdery mildew. (3-19-99)~~

~~**ii.** Only rooted aerial stem cuttings or apical meristems derived from clones having undergone the two (2) year observation period may be imported into the control area. (8-1-80)~~

~~**iii.** Colonies derived from eligible clones may serve as sources of eligible rootstocks but only after two (2) consecutive growing seasons in a commercial yard or nursery within the control area. (8-1-80)~~

~~**iv.** Eligible clonal stocks must be accompanied by a phytosanitary certificate when imported into the control area. A copy of the certificate must be filed with the Idaho State Department of Agriculture, Division of Plant Industries, at least ten (10) days prior to shipment. The certificate must affirm freedom from *Verticillium* wilt and powdery mildew and compliance with Subsections 150.01.a.i. through 150.01.a.iii. (3-19-99)~~

~~**b. Eligible rootstocks from within the control area.** (8-1-80)~~

~~**i.** The owner of rootstocks may move existing eligible stocks from field to field within the control area.~~

~~(3-19-99)~~

~~ii. Rootstocks sold, moved, or transferred within the control area to other than the owners land must be accompanied by a valid transfer permit issued by the Department. Rootstocks moved without a transfer permit will not be eligible for future sale or transfer. (8-1-80)~~

~~02. Inspection Procedures to Retain Eligibility. (8-1-80)~~

~~a. Existing plants within the control area will be inspected at least once every other year except those plantings intended for sale or transfer in which case they must have been inspected during the twelve (12) month period immediately prior to transfer. (8-1-80)~~

~~b. All new plantings of imported rootstocks will be inspected annually for the first two (2) consecutive years following initial planting and at least every twenty four (24) months thereafter. (8-1-80)~~

~~e. It shall be the responsibility of the individual grower to notify the Department of movement of eligible stock into new fields, sales and/or purchase of rootstocks. The grower shall also initiate annual requests on or before July 1 for inspections to maintain eligibility. (3-19-99)~~

**200** ~~151~~. MOVEMENT OF **USED** FARMING EQUIPMENT.

**01. Clean and Free.** Used farm equipment, including but not limited to, tillage equipment, vehicles, and hop yard appurtenances moving in to Idaho from the control quarantine area, must be clean and free of soil and plant material, including but not limited to hop debris. ~~(8-1-80)~~(9-1-14)T

**02. Requirements.** Freedom from plant material and soil may be accomplished by washing, steam cleaning, and/or use of a disinfectant appropriately labeled for the purpose. (8-1-80)

~~151~~2. -- 199. (RESERVED)

**200. SPECIAL PERMITS.**

Any person(s) or agencies wishing to import covered commodities from the area under quarantine must apply in writing for a special permit as authorized by the director of the department. (9-1-14)T

**01. Application.** Application for special permits must list the prospective buyer and seller; the number, and origin of stock; location of proposed planting site; and any other relevant information. (9-1-14)T

**02. Conditions.** Special permits, when granted, may include such conditions as may be necessary to prevent disease establishment. All permitted material must be found free from regulated pests by the Clean Plant Center at Washington State University, Prosser, Washington or an equivalent lab approved by the department. (9-1-14)T

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

~~250. POSTING OF FIELDS.~~

~~01. Purpose. All hop yards and nurseries within the control area shall be posted to prevent entry of unauthorized personnel and vehicles. (8-1-80)~~

~~02. Visibility. Signs shall be visible from adjacent public roadways or points of access to hop yards. (8-1-80)~~

~~251. — 299. (RESERVED)~~

**300. PEST DETECTION.**

**01. Inspection.** If ~~there is~~ evidence of a regulated pest ~~which~~ is detected by visual inspection, the



Department, in cooperation with the University of Idaho, Department of Plant, Soil and Entomological Sciences, will perform laboratory procedures sufficient to determine the causal organism. (3-19-99)(9-1-14)T

02. **Consequences.** Positive identification of the presence of Verticillium wilt, hop stunt viroid, ilar viruses, or powdery mildew virulently pathogenic to hops will result in loss of eligibility for sale or transfer for those rootstocks within the infected field. The director may also order and in addition a directive may be issued that the infested area be removed from hop production and the soil be disinfested. (3-19-99)(9-1-14)T

301. -- ~~349.~~ (RESERVED)

**350. EXEMPTIONS.**

~~01. Agencies. This order does not apply to any governmental agency growing hops in experimental plots approved by the Director, Idaho State Department of Agriculture and under the supervision of qualified plant scientists. (3-19-99)~~

~~02. Quarantine Area. Such experimental plots shall serve as quarantine areas during the period that a clone is meeting the eligibility requirements for phytosanitary certification and be subject to Subsection 150.01.a. of this rule. (3-19-99)~~

~~03. Powdery Mildew Certification. All hop propagating materials to be shipped to all counties in Idaho shall be accompanied by a phytosanitary certificate issued by the state of origin's plant regulatory agency stating that the propagating material has been inspected and found apparently free from powdery mildew. The plant regulatory agency of the state of origin shall send a copy of the phytosanitary certificate to the Idaho State Department of Agriculture, Division of Plant Industries, 2270 Old Penitentiary Road, P.O. Box 790, Boise, Idaho 83701-0790, FAX (208) 334-2283. (3-19-99)~~

~~351. -- 399.~~ (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

**500. FEES AND CHARGES.**

01. ~~Transfer Permits~~ **Special Permits.** ~~For in-state sale of rootstocks: seven dollars and fifty cents (\$7.50) per certificate~~ For special permits for importation of hops from areas under quarantine, the fee will be sixty dollars (\$60) per permit. (8-1-80)(9-1-14)T

02. ~~Phytosanitary Certificates~~ **General Fees and Charges.** ~~For exporting purposes: ten dollars (\$10) per certificate~~ The fees and charges for inspection, certificates, and permits shall be as set forth in IDAPA 02.06.04, "Idaho Department of Agriculture, Phytosanitary and Post-Entry Certification Rules," Section 500. (8-1-80)(9-1-14)T

~~03. Field Inspection. (8-1-80)~~

~~a. Application for field inspection: three dollars (\$3) per field. (8-1-80)~~

~~b. Late penalty fees: twenty dollars (\$20) per application on all applications received after July 1 of each year and prior to July 15. (8-1-80)~~

~~c. Acreage inspection fee: three dollars (\$3) per acre or fraction thereof per field. (8-1-80)~~

~~04. Laboratory Fees. Fifty dollars (\$50) per sample. (8-1-80)~~

501. -- 999. (RESERVED)

## PROPOSED RULE COST/BENEFIT ANALYSIS

Section 67-5223(3), Idaho Code, requires the preparation of an economic impact statement for all proposed rules imposing or increasing fees or charges. This cost/benefit analysis, which must be filed with the proposed rule, must include the reasonably estimated costs to the agency to implement the rule and the reasonably estimated costs to be borne by citizens, or the private sector, or both.

**Department or Agency:** Idaho State Department of Agriculture

**Agency Contact:** Lloyd Knight **Phone:** (208) 332-8620

**Date:** 8/13/2014

**IDAPA, Chapter and Title Number and Chapter Name:**

IDAPA 02 TITLE 06 CHAPTER 27 - Rules Governing Bacterial Ring Rot of Potato

**Fee Rule Status:**  **Proposed**  **Temporary**

**Rulemaking Docket Number:** 02-0627-1402

### **STATEMENT OF ECONOMIC IMPACT:**

Traceback investigation, sampling, and testing related to reported BRR positive potatoes will be conducted as needed based on the reports received. Costs associated with the traceback investigation and sampling will be paid from existing agency funds. The circumstances under which reporting is mandatory are narrow, which in turn means that the number of traceback investigations, sampling and testing performed as a result of reports will be limited.

As reflected in the rule, any costs associated with lab analysis of samples will be charged based on those fees normally charged for those tests by ISDA's Plant Pathology Lab. Fees for that lab are based on the cost of supplies and staff time necessary to perform the analysis. The Plant Pathology Lab's fee schedule is published on ISDA's website.

The rule no longer requires additional testing for BRR in seed potatoes for export, and as a result no costs are associated with that section.

All costs associated with inspection and sampling as part of the seed certification process governed by the Idaho Crop Improvement Association (ICIA) are administered by that agency. Fees associated with inspection, certificates, and permits for export are set forth in Section 500 of the "Phytosanitary and Post-Entry Certification Rules." IDAPA 02.06.04.500. These are standard fees that apply to a number of similar functions in the agency.

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.06.27 - RULES GOVERNING BACTERIAL RING ROT CAUSED BY (*CLAVIBACTER MICHIGANENSIS* SUBSP. *SEPEDONICUS*) OF POTATO

#### DOCKET NO. 02-0627-1402 (FEE RULE - NEW CHAPTER)

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 22-101a, 22-505, 22-1907, and 22-2006, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

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 adopted a temporary rule regarding Bacterial Ring Rot (BRR) caused by *Clavibacter michiganensis*, subsp. *sepedonicus* on February 26, 2014, and that rule was published in the March 5, 2014, Idaho Administrative Bulletin [Vol. 14-3, pages 13 through 18](#). ISDA continued the negotiated rulemaking process in order to present the rule to the Idaho Legislature in 2015 as a proposed rule. ISDA made certain changes to the existing temporary rule as a result of negotiated rulemaking. This proposed rule represents the final negotiated rulemaking and will supplant the temporary rule now in place at the end of the 2015 legislative session. This rule is in place to help prevent the introduction and/or spread of BRR into and through Idaho and the United States.

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

The laboratory that performs the testing for *Clavibacter michiganensis*, subsp. *sepedonicus* will set the fee. Any other fees associated with seed potato certification or phytosanitary certification for export are detailed in those respective rules. See IDAPA 08.05.01.000 et seq. and 02.06.04.000 et seq., respectively.

**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:

ISDA does not anticipate any negative fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 4, 2014, Idaho Administrative Bulletin, [Vol. 14-6, page 36](#). Negotiated rulemaking meetings were held in Pocatello, Idaho on June 17, July 9, and August 5, 2014. Representatives of the Idaho Crop Improvement Association, Idaho Potato Commission, Idaho Farm Bureau Federation, as well as multiple individual potato growers and producers, were present and provided comments to the draft rule. The final language of the proposed rule language incorporates the comments from the negotiated rulemaking meeting attendees and industry representatives.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: The "Rules Governing Seed and Plant Certification" IDAPA 08.05.01.000 are incorporated by reference because those rules include detailed requirements regarding inspection and sampling related to BRR.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Lloyd B. Knight, Plant Industries Division Administrator, (208) 332-8620 or email [Lloyd.Knight@agri.idaho.gov](mailto:Lloyd.Knight@agri.idaho.gov). Materials pertaining to this rulemaking can be found on the ISDA web site at the following web address: [http://www.agri.idaho.gov/Categories/LawsRules/sub\\_rules/Rulemaking.php](http://www.agri.idaho.gov/Categories/LawsRules/sub_rules/Rulemaking.php).

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 October 22, 2014.

DATED this 8th Day of September, 2014.

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

**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0627-1402**

**IDAPA 02**  
**TITLE 06**  
**CHAPTER 27**

**02.06.27 - RULES GOVERNING BACTERIAL RING ROT CAUSED BY**  
**(*CLAVIBACTER MICHIGANENSIS* SUBSP. *SEPEDONICUS*) OF POTATO**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Title 22, Chapters 1, 5, 19 and 20 Idaho Code. ( )

**001. TITLE, SCOPE, AND INVESTIGATIONS.**

**01. Title.** The title of this chapter is IDAPA 02.06.27, "Rules Governing Bacterial Ring Rot Caused By (*Clavibacter michiganensis* subsp. *sepedonicus*) of Potato." ( )

**02. Scope.** These rules are to prevent the introduction and/or spread of *Cms* and subsequently bacterial ring rot into and through Idaho and the United States. These rules govern mandatory and voluntary reporting, mandatory testing, trace back, inspection, investigation, sampling and laboratory analysis of samples. Further, these rules will help ensure that, along with all other Idaho agricultural commodities, commercial potatoes grown in and exported from Idaho and, in particular, that seed potatoes being grown for planting in, exported from or imported into Idaho are of the highest quality. The official citation of this Chapter is IDAPA 02.06.27.000 et seq. For example, this section's citation is IDAPA 02.06.27.001. ( )

**03. Trace Back Investigations.** The public disclosure of information obtained during an investigation conducted under this rule shall be subject to disclosure to the public only insofar as it is allowed by Title 9, Chapter 3, Idaho Code. ( )

**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.**

Copies of the following document may be viewed at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.27 incorporates by reference: ( )

**01. IDAPA 08.05.01.000 et seq., “Rules Governing Seed and Plant Certification” and materials incorporated therein by reference.** A copy of which may be accessed online at: <http://adminrules.idaho.gov/rules/current/08/index.html>. ( )

**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 83712-8266. ( )

**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 83701-0790. ( )

**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 central office. ( )

**007. -- 009. (RESERVED)**

**010. DEFINITIONS.**

In addition to the definitions in Sections 22-1904 and 22-2005, Idaho Code, the following definitions shall apply in the interpretation and the enforcement of this rule: ( )

**01. Bacterial Ring Rot.** Caused by a bacterium, *Clavibacter michiganensis* subsp. *sepedonicus* (Cms). ( )

**02. Contact Lot.** A seed lot produced on a farming operation using common production and handling equipment and/or storage facilities. ( )

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

**04. Director.** The Director of the Idaho State Department of Agriculture. ( )

**05. Idaho Crop Improvement Association, Inc.** A grower association of certified seed producers and conditioners. In 1959, the Regents of the University of Idaho appointed the Idaho Crop Improvement Association, Inc. as its duly authorized agent to administer and conduct seed certification in Idaho. ( )

**06. Person.** An individual, partnership, corporation, firm, association, agent, grower, processor, shipper or inspector. ( )

**07. Seed Lot.** A field or a group of fields producing seed potatoes or the potatoes (tubers) harvested from a seed potato field, identified with a certification number and a North American Plant Health Certificate, enabling identity preservation and tracking. ( )

**08. Seed Potato Certification Process.** The process, timing and requirements for the certification of ( )

seed potatoes in Idaho, as set forth in IDAPA 08.05.01, Rules Governing Seed and Plant Certification and the materials incorporated therein by reference. ( )

**09. Seed Stock.** Seed potatoes intended for use as a planting source for certification that are “Identity Preserved” with a certification number and a North American Plant Health Certificate. ( )

**10. Sister Lot.** Seed lots originating from the same lot of seed stock. ( )

**011. ABBREVIATIONS.**

**01. BRR.** Bacterial Ring Rot. ( )

**02. Cms.** *Clavibacter michiganensis* subsp. *sepedonicus*. ( )

**03. ISDA.** Idaho State Department of Agriculture. ( )

**04. ICIA.** Idaho Crop Improvement Association. ( )

**012. APPLICABILITY.**

These rules apply to the reporting, trace back, investigation, inspection, sampling, lab analysis and testing related to *Cms* and *Cms*-caused BRR in Idaho. ( )

**013. -- 019. (RESERVED)**

**020. REGULATED PEST - BACTERIAL RING ROT.**

Caused by a bacterium, *Clavibacter michiganensis* subsp. *sepedonicus* (*Cms*). ( )

**021. -- 100. (RESERVED)**

**101. REPORTING OF BRR.**

**01. Mandatory Reporting.** It is mandatory for any person, including but not limited to a grower, processor, shipper, laboratory staff member, field inspector, and/or shipping point inspector, to immediately report the presence of BRR to the Department when: ( )

**a.** The BRR is discovered or observed in seed potato plants or tubers prior to final seed potato certification by ICIA; and ( )

**b.** The presence of BRR is confirmed via laboratory testing; and ( )

**c.** The positive tubers or plant parts are still in the possession of the original seed grower. ( )

**02. Contents.** All reports shall, to the best of the reporter’s ability, contain the following information: ( )

**a.** The field, facility or other location at which *Cms* was found; ( )

**b.** The date of discovery; ( )

**c.** The location at which the suspect potatoes were grown; ( )

**d.** The variety and generation of the suspect potatoes; ( )

**e.** The laboratory submission report and test results; ( )

- f. The certification tags and origin of the seed potatoes used to produce the suspect crop; ( )
- g. North American Plant Health Certificate. ( )

**03. Methods of Reporting.** The report shall be made by phone, in person or in writing (which may include electronic mail sent to [BRR@agri.idaho.gov](mailto:BRR@agri.idaho.gov)). Full Department headquarters contact information is listed in Section 005 of this rule. ( )

**102. HOLD HARMLESS.**

Reporting parties and those parties participating in and cooperating with the Department's trace back investigation of any alleged *Cms* contaminated potatoes will be held harmless from any civil penalties the Department has authority to issue under Section 500 of these Rules. ( )

**103. TRACE BACK INVESTIGATION, SAMPLING, AND TESTING.**

The Department shall, upon receiving a mandatory report of *Cms* infected potatoes, investigate the origin and destination of such potatoes. Trace back and investigation activities may include, but not be limited to: a review of all inspection, certification, shipping and production records held by any person for the potatoes in question; inspection and sampling at the reporting operation as well as points for origin, storage and destination related to that operation; and laboratory testing records of any samples. The Department and the Idaho Crop Improvement Association shall mutually cooperate with each other in trace back investigations where appropriate. ( )

**01. Testing Positive for *Cms*.** If certified seed potatoes in a lot test positive for *Cms* after they have left the control of the grower of that lot, ISDA's trace back investigation may include *Cms* testing any remaining seed from that lot that is still at the seed potato grower's facility. The testing level will be at a rate, depending on lot size, up to a maximum of four hundred (400) randomly selected tubers. ( )

**104. RESTRICTION ON THE USE OF INFECTED POTATOES.**

Those potatoes found to be infected with *Cms* may not be utilized for planting as seed. ( )

**105. -- 149. (RESERVED)**

**150. TESTING FOR BRR.**

**01. Compliance With Certification Standards.** Seed potato tubers for planting for commercial production or for seed certification in Idaho or being imported into Idaho as seed potatoes for commercial production or certification as seed for planting must comply with the ICIA Rules of Certification for Seed Potatoes in Idaho as they relate to *Cms*, as incorporated in Section 004 of this rule. ( )

**02. Seed Potatoes to Be Exported Tested.** Seed potato tubers being exported from Idaho to a foreign country as seed potatoes for planting must meet all ICIA requirements for certification and export tag placement, as well as all phytosanitary certification requirements of the importing country. All costs for sampling, transport and testing shall be borne by the exporter. ( )

**151. -- 399. (RESERVED)**

**400. HOLD ORDERS.**

The Director may authorize Hold Orders restricting the movement of infested or suspect potatoes until investigation, trace back, and sample analysis are complete. Hold Orders may require verification that said potatoes will not be utilized for any purposes not authorized in writing by the Department. When potatoes from a certified seed potato lot are sampled and test positive for BRR after the seed potatoes have left the seed potato grower's facility, the department will not issue a hold order on any seed potatoes from that lot that remain on the seed potato grower's facility unless and until potatoes from the affected lot are sampled at the seed potato grower's facility and test positive for BRR. ( )

**401. -- 449. (RESERVED)**

**450. FEES.**

Fees for samples for laboratory testing for *Cms* shall be those normally charged by the approved laboratory doing the testing. ( )

**451. -- 499. (RESERVED)**

**500. VIOLATIONS.**

Any person violating any provisions of these rules or not cooperating with investigations conducted under the authority of this rule shall be subject to the provisions of Section 22-504, 22-1913 and 22-2020, Idaho Code.

( )

**501. -- 999. (RESERVED)**