

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  
Idaho State Department of Agriculture:

IDAPA 02.04.06 - Requirements for Licensed Dairy Plants (Docket No. 02-0406-1401);

IDAPA 02.04.14 - Rules Governing Dairy Waste (Docket No. 02-0414-1401);

IDAPA 02.04.29 - Rules Governing Trichomoniasis (Docket No. 02-0429-1401);

IDAPA 02.06.02 - Rules Pertaining To The Idaho Commercial Feed Law (Docket No. 02-0602-1401);

IDAPA 02.06.12 - Rules Pertaining To The Idaho Fertilizer Law (Docket No. 02-0612-1401);

IDAPA 02.06.33 - Organic Food Products Rules (Docket No. 02-0633-1401);

IDAPA 02.06.41 - Rules Pertaining To The Idaho Soil and Plant Amendment Act of 2001 (Docket  
No. 02-0641-1401).

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 06/23/2014. 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 07/22/2014.

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.



Jeff Youtz  
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:** June 04, 2014

**SUBJECT:** Idaho State Department of Agriculture

IDAPA 02.04.06 - Requirements for Licensed Dairy Plants (Docket No. 02-0406-1401)

IDAPA 02.04.14 - Rules Governing Dairy Waste (Docket No. 02-0414-1401)

IDAPA 02.04.29 - Rules Governing Trichomoniasis (Docket No. 02-0429-1401)

IDAPA 02.06.02 - Rules Pertaining To The Idaho Commercial Feed Law (Docket No. 02-0602-1401)

IDAPA 02.06.12 - Rules Pertaining To The Idaho Fertilizer Law (Docket No. 02-0612-1401)

IDAPA 02.06.33 - Organic Food Products Rules (Docket No. 02-0633-1401)

IDAPA 02.06.41 - Rules Pertaining To The Idaho Soil and Plant Amendment Act of 2001 (Docket No. 02-0641-1401)

### **1. IDAPA 02.04.06 - Requirements for Licensed Dairy Plants**

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.04.06 - Requirements for Licensed Dairy Plants. According to the department, the purpose of the rulemaking is to make the rule consistent with statutory changes that were made during the 2014 Legislative Session via Senate Bill 1338. The department notes that the legal authority will change from Chapter 4 to Chapter 5, Title 37, Idaho Code, that the title of the rule has changed and that a USDA publication incorporated by reference is being updated from the 2002 version to the 2011 version. The specific differences between versions are noted in the department's notice. The department also indicates that the changes will not affect how it will license or inspect dairy plants.

The department states that negotiated rulemaking was not conducted because the rule is merely incorporating the statutory changes to ensure the rule coincides with the changes. The rule appears to be authorized pursuant to Section 37-516, Idaho Code.

### **2. IDAPA 02.04.14 - Rules Governing Dairy Waste**

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.04.14 - Rules Governing Dairy Waste. According to the department, the rule is being proposed to reflect and be consistent

Mike Nugent, Manager  
Research & Legislation

Cathy Holland-Smith, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

with the statutory changes that were made by Senate Bill 1376 during the 2014 Legislative Session. The department indicates that the specific changes add new definitions, remove obsolete definitions and revise the rule provisions regarding unauthorized discharges, compliance schedules and penalties for violations.

We contacted the department regarding the definition of "non-compliance." There was an inadvertent omission of a reference to nutrient management standards that is set forth in the statute. The department has corrected the definition with the change being reflected in the June Administrative Bulletin as published on the website of the Office of Administrative Rules.

The department states that negotiated rulemaking was not conducted because the rule is being proposed to comply with the requirements provided by statute. It appears that the rulemaking is authorized pursuant to Section 37-603, Idaho Code, which will be effective on July 1, 2014.

### **3. IDAPA 02.04.29 - Rules Governing Trichomoniasis**

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.04.29 - Rules Governing Trichomoniasis. According to the department, the rulemaking is being proposed to remove Subsection 100.05 to conform with Senate Bill 1268 as enacted during the 2014 Legislative Session. The statutory revision requires that all non-virgin breeding bulls be tested for Trichomoniasis annually, thereby removing the testing exemption for non-virgin breeding bulls located north of the Salmon River.

The department states that negotiated rulemaking was not conducted because the rule change is necessary to comply with the 2014 statutory changes. The rulemaking appears to be authorized pursuant to Section 25-203, Idaho Code.

### **4. IDAPA 02.06.02 - Rules Pertaining To The Idaho Commercial Feed Law**

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.06.02 - Rules Pertaining to the Idaho Commercial Feed Law. According to the department, the purpose of the rulemaking is to incorporate by reference information and updates contained in the 2015 Official Publication of the Association of American Feed Control Officials (AAFCO) as they pertain to the methodology and practice of conducting regulatory commercial feed registration and label review.

The department states that negotiated rulemaking was not conducted due to the simple nature of the proposed amendment. The rule appears to be authorized pursuant to Section 25-2710, Idaho Code.

### **5. IDAPA 02.06.12 - Rules Pertaining To the Idaho Fertilizer Law**

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.06.12 - Rules Pertaining To the Idaho Fertilizer Law. According to the department, the purpose of the rulemaking is to incorporate by reference information and updates contained in the 2015 Official Publication of the Association of American Plant Food Control Officials (AAPFCO) as they pertain to the methodology and practice of conducting regulatory fertilizer registration and label review.

The department states that negotiated rulemaking was not conducted due to the simple nature of the proposed amendment. The rule appears to be authorized pursuant to Section 22-604, Idaho Code.

#### **6. IDAPA 02.06.33 - Organic Food Products Rules**

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.06.33 - Organic Food Products Rules. According to the department, the current rule requires annual registration and payment of fees of \$50.00 each for organic producers and handlers with \$5,000 or less in annual gross sales and other certifying agents operating in Idaho. The department notes that the registration and fee is prohibited by the National Organic Program (NOP) administered by the U.S. Department of Agriculture under 7 CFR Part 205. In accordance with that prohibition, the department is proposing to repeal IDAPA 02.06.33.300.

The department indicates that there will be no impact to the General Fund but that there will be a \$1,250 reduction in annual revenue to the Organic Food Program dedicated fund. The department states that negotiated rulemaking was not conducted because the federal NOP rules take precedence over IDAPA 02.06.33.300, thus requiring the repeal. The rulemaking appears to be authorized pursuant to Section 22-1103, Idaho Code.

#### **7. IDAPA 02.06.41 - Rules Pertaining To The Idaho Soil and Plant Amendment Act of 2001**

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.06.41 - Rules Pertaining To the Idaho Soil and Plant Amendment Act of 2001. According to the department, the purpose of the rulemaking is to incorporate by reference information and updates contained in the 2015 Official Publication of the Association of American Plant Food Control Officials (AAPFCO) as they pertain to the methodology and practice of conducting regulatory soil and plant amendment registration and label review.

The department states that negotiated rulemaking was not conducted due to the simple nature of the proposed amendment. The rule appears to be authorized pursuant to Section 22-2204, Idaho Code.

cc: Department of Agriculture  
Brian J. Oakey

**IDAPA 02 - DEPARTMENT OF AGRICULTURE**  
**02.04.06 - REQUIREMENTS FOR LICENSED DAIRY PLANTS**

**DOCKET NO. 02-0406-1401**

**NOTICE OF RULEMAKING - 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 37-516, 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 18, 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:

The rule is being proposed to reflect and be consistent with the statute change (Senate Bill No. 1338) which was passed during the 2014 Legislature and signed by Governor C. L. "Butch" Otter on April 3, 2014 effective July 1, 2014. Specifically the legal authority will change from Chapter 4 to Chapter 5, Title 37, Idaho Code, the title of the rule has changed, and the incorporation by reference is being updated from the 2002 version to 2011.

**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:

ISDA does not anticipate any fiscal impact from the changes to be made to the rule during this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed rule is merely incorporating the statute changes to ensure the rule coincides with these changes.

**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 materials incorporated by reference will be updated to the current version of Subpart E Requirements for Licensed Dairy Plants of the Milk for Manufacturing Purposes and its Production and Processing, Recommended Requirements published on July 21, 2011 by United States Department of Agriculture, Agricultural Marketing Service, Dairy Programs. The current rule references the 2002 version. Since 2002, the document was revised in 2005 and 2011. The document is published nationally and receives industry comments prior to final publication. Comparing the 2002 and the 2011 versions the following have been changed:

1. If the last three (3) out of five (5) consecutive commingled milk bacterial estimates exceed 1 million per milliliter, the plant license shall be suspended, whereas in the 2002 version reads a penalty sanctioned by the state regulatory agency shall be imposed on the plant until an additional sample of commingled milk is tested and found satisfactory. Note: Since 2002, there has not been a dairy plant in Idaho that has had a three (3) out of five (5) exceedances;
2. The definition of heat treated cream (section E 1.9) has been simplified in the 2011 version; and
3. Rooms and Compartments for Cottage Cheese (section E 5.1 and corresponding subsections) was removed because it was in conflict with the Pasteurized Milk Ordinance and cottage cheese is a Grade A product which is subject to the requirements of the Pasteurized Milk Ordinance.

These three changes will not affect how ISDA will license or inspect dairy plants.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact John Bilderback at 208-332-8541 or [john.bilderback@agri.idaho.gov](mailto: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 June 25, 2014.

DATED this 9th day of May, 2014.

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) 334-2170

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0406-1401**  
**(Only those Sections being amended are shown.)**

**IDAPA 02, TITLE 04, CHAPTER 06**

**02.04.06 - ~~REQUIREMENTS FOR~~ RULES GOVERNING LICENSED DAIRY PLANTS**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Title 37, Chapter ~~45~~, Idaho Code. ~~(4-6-05)~~( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is rules of the Department of Agriculture governing IDAPA 02.04.06, "~~Requirements for~~ Rules Governing Licensed Dairy Plants." ~~(4-6-05)~~( )

**02. Scope.** This chapter has the following scope: These rules shall govern the requirements for the design, construction, and operation of dairy plants licensed to process milk for manufacturing purposes. The official citation of this chapter is IDAPA 02.04.06.000 et seq. For example, this section's citation is IDAPA 02.04.06.001. (4-6-05)

**(BREAK IN CONTINUITY OF SECTIONS)**

**004. INCORPORATION BY REFERENCE.**

This rule incorporates by reference ~~the Federal Register Volume 37, Number 68, Part II,~~ "Subpart E -- Requirements for Licensed Dairy Plants," ~~June 17, 2002~~ of the 'Milk for Manufacturing Purposes and Its Production and Processing. Recommended Requirements' published by USDA, AMS, Dairy Programs and made effective July 21, 2011. Copies of this document may be obtained from the Idaho State Department of Agriculture central office or accessed online at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELDEV3004791>. ~~(4-6-05)~~( )

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.04.14 - RULES GOVERNING DAIRY WASTE

DOCKET NO. 02-0414-1401

### NOTICE OF RULEMAKING - 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 37-603, 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 18, 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:

The rule is being proposed to reflect and be consistent with the statute change (Senate Bill No. 1376) which was passed during the 2014 Legislature and signed by Governor C. L. "Butch" Otter on March 26, 2014 effective July 1, 2014. The specific changes add new definitions and removes obsolete definitions and revises the rule provisions regarding unauthorized discharges, compliance schedules, and penalties for violations.

**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:

ISDA does not anticipate any 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 the rule is being done to comply with the requirements provided for in statute.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact John Bilderback at 208-332-8541 or [john.bilderback@agri.idaho.gov](mailto: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 June 25, 2014.

DATED this 9th day of May, 2014.

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) 334-7120

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0414-1401  
(Only those Sections being amended are shown.)

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Title 37, Chapter 46, Idaho Code.

~~(3-20-97)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**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. (3-29-10)

**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. ~~(3-29-10)~~( )

**03. Mailing Address.** The mailing address for the central office is Idaho State Department of Agriculture, PO Box 790, Boise, Idaho 83701. (3-29-10)

**04. Telephone Number.** The telephone number of the central office is (208) 332-8500. (3-29-10)

**05. Fax Number.** The fax number of the central office is (208) 334-2170. (3-29-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**007. 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 farms and dairy waste systems on Idaho dairy farms and enable the Department to implement the 1999 NRCS Nutrient Management Standards (NMS) on dairy farms to appropriately manage livestock dairy waste. These rules also provide penalty provisions. ~~(4-5-00)~~( )

**008. -- 009. (RESERVED)**

**010. DEFINITIONS.**

The following definitions shall apply in the interpretation and enforcement of this chapter: (3-20-97)

**01. Best Management Practice.** A practice, technique, or measure that is determined to be a reasonable precaution, a cost-effective and practicable means of preventing or reducing the discharge of pollutants from a point source or a nonpoint source to a level compatible with environmental goals, including water quality goals and standards. ( )

~~02.~~ **Certified Planner.** A person who has completed nutrient management certification in accordance with the Nutrient Management Standard (NMS) and is approved by the Department. (3-29-10)

~~03.~~ **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. (3-29-10)



**034.** **Dairy Farm.** A Land owned or operated by a dairy farm and is a place or premises 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. (3-29-10)( )

**05.** **Dairy Waste.** Manure and process wastewater 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, milk, feed leachate, or livestock carcasses or parts thereof. ( )

**06.** **Dairy Waste System or Waste System.** The portion of a dairy farm where dairy waste is stored, collected, or treated. This may include corrals, feeding areas, waste collection systems, waste conveyance systems, waste storage ponds, waste treatment lagoons, and evaporative ponds. ( )

**047.** **Department.** The Idaho State Department of Agriculture. (3-29-10)

**058.** **Director.** The Director of the Idaho State Department of Agriculture or his designee. (3-29-10)

~~**06.** **Discharge Violation.** *A practice or facility condition which has caused an unauthorized release of Livestock Waste into surface, ground water, or beyond the Dairy Farm's property boundaries or beyond the property boundary of any facility operated by the Producer. Contract manure haulers, producers and other persons who haul Livestock Waste beyond the Producer's property boundaries are responsible for releases of Livestock Waste between the property boundaries of the Producer and the property boundaries at the point of application.* (3-29-10)~~

**079.** **Farm Certification.** A permit issued by the Department allowing the sale of manufacture grade milk. (3-20-97)

~~**0810.** **Fieldman.** An individual qualified and approved by the Department to perform dairy farm inspections.~~ (3-20-97)

~~**0911.** **Inspector.** A qualified, trained person employed by the Department to perform dairy farm inspections.~~ (3-20-97)

**102.** **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, milk, feed leachate, or livestock carcasses or parts thereof.* (3-29-10)~~

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

**14.** **Modification or Modified.** Structural changes and alterations to the dairy waste system that would require increased storage or containment capacity or such changes that would alter the function of the waste system. ( )

**15.** **National Pollutant Discharge Elimination System (NPDES).** The point source permitting program established pursuant to section 402 of the federal clean water act. ( )

**136.** **Non-Compliance.** A practice or facility condition which will that causes an Discharge Violation unauthorized discharge; or, if left uncorrected, or a condition on a Dairy Farm that does not meet the requirements of the Nutrient Management Plan, will cause an unauthorized discharge, or does not meet the Nutrient Management Standard, and Appendix 10D comply with a NMP. (3-29-10)( )

**147.** **Nutrient Management Plan (NMP).** A plan prepared in conformance with the Nutrient Management Standard (NMS) or other equally protective standard approved by the 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.~~ (3-29-10)( )

**158. Permit.** A permit issued by the Department allowing the sale of Grade A milk. (3-20-97)

**169. Person.** Any individual, partnership, association, ~~firm, joint stock company, joint venture, trust, estate, political subdivision, public or private~~ corporation, ~~state or federal governmental department, agency, or instrumentality~~; or any ~~organized group of persons whether incorporated or not~~ legal entity that is recognized by law as the subject of rights and duties. (3-20-97)( )

**20. Process Wastewater.** Liquid containing dairy manure. ( )

**1721. 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)

**22. Unauthorized Discharge.** A discharge of dairy waste to state surface waters or ground waters, or beyond a dairy farm's property boundaries, that does not meet the requirements of these rules or ground water or surface water quality standards. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**030. 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 NMP, NMS, and Appendix 10D. (3-29-10)

**01. Waste Containment and Storage.** (3-29-10)

**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. (3-29-10)

**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. (3-29-10)

**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  $1 \times 10^{-6} \text{ cm}^3/\text{cm}^2/\text{sec}$  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. (3-29-10)

**d.** Storage areas for ~~Livestock~~ dairy ~~W~~waste including compost and solid manure storage areas shall be located on approved soils and appropriately protected to prevent run on and run off. (3-29-10)( )

**e.** Waste storage systems shall be maintained in a condition that allows the Producer to regularly inspect the integrity of the systems. (3-29-10)

**02. Nutrient Management.** All dairy farms shall implement a ~~an approved~~ Nutrient Management Plan (NMP) approved by the Department 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. ~~(3-29-10)~~( )

a. Producer annual soil tests shall be conducted as set forth in the NMS. (3-29-10)

b. Regulatory soil tests will be conducted at frequencies sufficient to provide assurance of compliance with the NMS. (3-29-10)

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. (3-29-10)

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. (3-29-10)

c. Accurate NMP records shall be maintained. These records shall include at a minimum: (3-29-10)

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; (3-29-10)

ii. Annual soil analysis; (3-29-10)

iii. Date and amount of Livestock dairy Wwaste and commercial fertilizer applied to individual dairy owned or operated fields; ~~(3-29-10)~~( )

iv. Date(s) of exported Livestock dairy Wwaste, number of acres applied, amount of Livestock dairy Wwaste exported and to whom Livestock dairy Wwaste was exported; and ~~(3-29-10)~~( )

v. Actual crop yields on dairy owned or operated fields. (3-29-10)

**031. -- 039. (RESERVED)**

**040. INSPECTIONS.**

Each dairy farm shall be inspected by an Inspector or Fieldman at least annually or at intervals sufficient to determine that Livestock dairy Wwaste has been managed to prevent an unauthorized discharge or contamination of surface and ground water. An official inspection report form as described in Section 041 will be completed at the time of inspection. ~~(3-29-10)~~( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**050. COMPLIANCE SCHEDULES.**

**01. Non-Compliance or Unauthorized Discharge Violations Identified.** When the Director identifies items of non-compliance or unauthorized discharge violations, the deficiencies will be noted and discussed with the Producer. Appropriate corrective actions will be identified and scheduled informally. The Director may develop a formal compliance schedule in the following cases: ~~(3-29-10)~~( )

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. An unauthorized discharge violation shall be corrected immediately, when at all possible. ~~(4-5-00)~~ ( )

**051. -- 059. (RESERVED)**

**060. UNAUTHORIZED DISCHARGES -- PENALTIES.**

~~**01. Suspend Producer's Permit.** The Director may suspend the Producer's Permit or Farm Certification authorizing the Producer to sell milk until such time that the Dairy Farm is in compliance. Repeat non-compliance violations on significant items, Discharge Violations, or violation of formal compliance schedule also may cause a Dairy Farm to lose authorization to sell milk. (3-29-10)~~

**01. Unauthorized Discharge.** No dairy farm shall cause an unauthorized discharge. ( )

**02. Non-compliance.** Non-compliance with requirements for dairy waste systems, the NMS, and NMP shall be addressed through corrective actions and compliance schedules pursuant to these rules. ( )

**03. Penalties.** For unauthorized discharges and non-compliance conditions, the Director shall have the authority to assess a fine of up to ten thousand dollars (\$10,000) per occurrence. Civil penalties collected under this subsection shall be remitted to the county where the violation occurred for deposit in the county current expense fund. ( )

**024. 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. (3-29-10)

~~**061. REINSTATEMENT.**~~

~~Whenever a Producer has lost authorization to sell milk for human consumption under the provisions of Section 060, the Producer may request for reinspection. Subsequent to the request, a Departmental reinspection may be conducted. If corrections have been made, the producer will be reinstated. (3-29-10)~~

**0621. -- 999. (RESERVED)**

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.04.29 - RULES GOVERNING TRICHOMONIASIS

DOCKET NO. 02-0429-1401

#### NOTICE OF RULEMAKING - 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 25-203, 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 18, 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 statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principle issues involved:

Removes Subsection 100.05 to conform to the 2014 statutory amendment which requires all non-virgin breeding bulls to test for Trichomoniasis (Trich) annually, thereby removing the Trich testing exemption for non-virgin breeding bulls located north of the Salmon River.

**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:

ISDA does not anticipate any fiscal impact as a result of this proposed rule change.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule change is being made to coincide with the 2014 statutory amendment, which was already passed by the Idaho Legislature.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dr. Scott Leibsle, Deputy Administrator - Division of Animal Industries at (208) 332-8540.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be delivered on or before June 25, 2014.

DATED this 9th day of May, 2014.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0429-1401  
(Only those Sections being amended are shown.)

**100. TRICHOMONIASIS CONTROL AND ERADICATION PROGRAM.**

The Trichomoniasis testing season shall begin on September 1 of each year and continue until August 31 of the succeeding year. All bulls within the state of Idaho shall be tested negative for Trichomoniasis before being allowed to come into contact with female cattle or by April 15 of each Trichomoniasis testing season, whichever occurs first, except: (3-30-07)

**01. Bulls in Public Grazing Allotments.** Bulls that are to be turned out on public grazing allotments shall be tested for Trichomoniasis by April 15 of each Trichomoniasis testing season or forty-five (45) days prior to turnout on a public grazing allotment, which ever occurs first. (3-30-07)

**02. Virgin Bulls.** All bulls native to Idaho that are less than twenty-four (24) months of age, which have never serviced a cow shall be exempt from the Trichomoniasis testing requirements. (4-7-11)

**a.** Such bulls shall be identified by a registered veterinarian with an official Trichomoniasis bangle tag of the correct color for the current testing season and the identification recorded on a Trichomoniasis Test and Report Form. (3-30-07)

**b.** If sold, such bulls shall be accompanied by a certificate signed by the owner or his representative attesting that they are virgin bulls. (3-30-07)

**03. Dairy Bulls.** All dairy bulls in dry lot operations shall be exempt from the Trichomoniasis testing requirements. Dairy bulls that are pastured or grazed must meet the Trichomoniasis testing requirements. (3-30-07)

**04. Bulls Consigned to Slaughter or to an Approved Feedlot.** Bulls consigned directly to slaughter at an approved slaughter establishment or to an approved feedlot for finish feeding for slaughter are exempt from testing requirements. (3-30-07)

~~**05. Bulls in Northern Idaho.** Bulls located in the area of Idaho north of the Salmon River are exempt from the annual testing requirement, except:~~ (3-30-07)

~~**a.** Non virgin breeding bulls that are purchased or sold shall be Trichomoniasis tested.~~ (3-30-07)

~~**b.** Non virgin breeding bulls that are imported into Northern Idaho shall meet the importation requirements of Section 210 of this rule.~~ (3-30-07)

~~**c.** Bulls in Northern Idaho that cross into the area of Idaho south of the Salmon River shall be tested negative to a Trichomoniasis culture test within thirty (30) days prior to entering Southern Idaho and shall have had no contact with female cattle from the time of test to the time that they enter Southern Idaho, unless consigned directly to slaughter at an approved slaughter establishment or to an approved feedlot for finish feeding for slaughter.~~ (3-30-07)

~~**06.** Extension of Testing Deadline.~~ The Administrator may grant an extension of time beyond April 15 to accomplish Trichomoniasis testing after the owner submits a written request for extension of time to the Division of Animal Industries. (3-30-07)

~~**a.** The written request shall outline the reasons for the extension request and the length of extended time being requested.~~ (3-30-07)

~~**b.** The herd of bulls shall be put under Hold Order until the owner furnishes documentation that the bulls have been tested.~~ (3-30-07)

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.06.02 - RULES PERTAINING TO THE IDAHO COMMERCIAL FEED LAW

DOCKET NO. 02-0602-1401

#### NOTICE OF RULEMAKING - 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 June 18, 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:

To incorporate by reference information and updates contained in the 2015 Official Publication of the Association of American Feed Control Officials (AAFCO) as they pertain to the methodology and practice of conducting regulatory commercial feed registration and label review.

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

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

ISDA does not anticipate any fiscal impact from the changes to be made to the Rule during this rulemaking.

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

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

ISDA has incorporated the Association of American Feed Control Officials (AAFCO) Official Publication into the Rules Pertaining to the Idaho Commercial Feed Law for a number of years. The only change to the incorporation by reference section is to the date of the Official Publication.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kathryn Mink, Agriculture Section Manager at (208) 332-8564.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be delivered on or before June 25, 2014.

DATED this 9th day of May, 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 DOCKET NO. 02-0602-1401  
(Only those Sections being amended are shown.)**

**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 “2014~~5~~ Official Publication” of AAFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 25, Chapter 27, Idaho Code, and any rule promulgated thereunder. The AAFCO Official Publication is a copyrighted publication and not available in electronic format. A copy may be purchased online from the AAFCO website at: [www.aafco.org](http://www.aafco.org). (~~3-20-14~~)(    )

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



**IDAPA 02 - DEPARTMENT OF AGRICULTURE**  
**02.06.12 - RULES PERTAINING TO THE IDAHO FERTILIZER LAW**  
**DOCKET NO. 02-0612-1401**  
**NOTICE OF RULEMAKING - 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 June 18, 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:

To incorporate by reference information and updates contained in the 2015 Official Publication of the Association of American Plant Food Control Officials (AAPFCO) as they pertain to the methodology and practice of conducting regulatory fertilizer registration and label review.

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

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

ISDA does not anticipate any fiscal impact to the general fund as a result of this rule change.

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

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

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kathryn Mink, Agriculture Section Manager at (208) 332-8564.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be delivered on or before June 25, 2014.

DATED this 9th day of May, 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 DOCKET NO. 02-0612-1401  
(Only those Sections being amended are shown.)**

**004. INCORPORATION BY REFERENCE.**

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

**01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication.**

The Terms, Ingredient Definitions, and Policies, as published in the “2014~~5~~ Official Publication” of AAPFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 22, Chapter 6, Idaho Code, and any rule promulgated thereunder. The AAPFCO Official Publication is a copyrighted publication and not available in electronic format. A copy may be purchased online from the AAPFCO website at: [http://www.aapfco.org/pdf/publication\\_order\\_form.pdf](http://www.aapfco.org/pdf/publication_order_form.pdf).

(3-20-14)( )

**02. The Merck Index.** The “2006 Merck Index,” 14th Edition as published by Merck Research

Laboratories Division of Merck & Co., Incorporated. The Merck Index is a copyrighted publication and not available in an electronic format. A copy may be purchased online from Merck & Co., Inc. at: <http://www.merckbooks.com/mindex/index.html>.

(4-7-11)

**03. The Association of Official Agricultural Chemists (AOAC) International.** The “2005 Official

Methods of Analysis (OMA) of the AOAC,” 18th Edition, a copyrighted publication, is maintained and published by the AOAC International. The AOAC OMA is available in electronic format at: [www.EOMA.AOAC.org](http://www.EOMA.AOAC.org). A copy may be purchased online from AOAC International.

(3-29-12)

## IDAPA 02 - IDAHO STATE DEPARTMENT OF AGRICULTURE

### 02.06.33 - ORGANIC FOOD PRODUCTS RULES

DOCKET NO. 02-0633-1401

### NOTICE OF RULEMAKING - PROPOSED RULE

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

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than June 18, 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:

IDAPA 02.06.33.300 requires annual registration and payment of fees of \$50 each for organic producers and handlers with \$5,000 or less of annual gross sales, and other certifying agents operating in Idaho. This registration and fee is prohibited by the National Organic Program (NOP) administered by the U.S. Department of Agriculture under 7 CFR Part 205. Idaho State Department of Agriculture desires to operate in compliance with NOP rules and moves to repeal IDAPA 02.06.33.300.

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

\$50 annual registration fee being repealed.

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

No impact to the General Fund. There will be a \$1,250 reduction in annual revenue to the Organic Food Program dedicated fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the federal NOP rules take precedence over IDAPA 02.06.33.300, which must be repealed.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dave Ogden, Section Manager at (208) 332-8612.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 25, 2014.

DATED this 9th of May, 2014.

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

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0633-1401**  
**(Only those Sections being amended are shown.)**

**010. DEFINITIONS.**

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

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

**03. Department.** The Idaho State Department of Agriculture. (4-2-03)

**04. Director.** The director of the department of agriculture or the director's designee. (4-2-03)

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

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

**07. Handler.** Any person engaged in the business of handling agricultural products, including producers who handle crops or livestock of their own production, except such term shall not include final retailers of agricultural products that do not process agricultural products. (4-2-08)

**08. Livestock.** Any cattle, sheep, goat, swine, poultry, or equine animals used for food or in the production of food, fiber, feed, or other agricultural- based consumer products; wild or domesticated game; or other non-plant life, except such term shall not include aquatic animals or bees for the production of food, fiber, feed, or other agricultural-based consumer products. (4-2-08)

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

**10. Organic Certification Seal.** The design approved by the director and which when imprinted or affixed on labels, packages or products, or used in advertising in any manner, shall signify that the standards and rules developed in accordance with the provisions of Chapter 11, Title 22, Idaho Code, and all other conditions of the provisions of that chapter have been met. (4-2-03)

**11. Organic Food Product.** Any food product that is marketed using the term organic, or any derivative of the term organic in its labeling or advertising. Organic foods are those processed, packaged, transported and stored to retain maximum nutritional value, without the use of artificial preservatives, coloring or other additives, irradiation, or synthetic pesticides. (4-2-03)

**12. Organically Grown Food Products.** Food products which are produced without the use of synthetically compounded fertilizers, pesticides, or growth regulators for a period not less than thirty-six (36) months prior to harvest. Organically grown food products are produced under the standards and rules established in accordance with the provisions of Chapter 11, Title 22, Idaho Code, and by other qualified agencies. (4-2-03)

**13. Person.** Any individual, partnership, association, corporation, cooperative, or other entity. (4-2-08)

**14. Producer.** A person who engages in the business of growing or producing food, fiber, feed, or other agricultural-based consumer products. (4-2-08)

~~**15. Registration.**~~ (3-19-07)

- ~~a.~~ *A document issued by the Department to an organic producer/handler who has five thousand dollars (\$5,000) or less annual gross organic sales; or* (3-19-07)
- ~~b.~~ *A document issued by the Department to an agent certifying organic producers/handlers in the state of Idaho; or* (3-19-07)
- ~~c.~~ *A document issued by the Department to a producer/handler certified by an agent other than the Department.* (3-19-07)
- 165.** **Vendor.** Any person who sells organic food products to the consumer or another vendor. (4-2-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**~~300. REGISTRATION REQUIREMENTS, DEADLINES AND FEES.~~**

- ~~01. **Registration Requirements and Deadlines.** All applicants applying for registration with the Department, shall submit the application to the Department on forms prescribed by the Department.~~ (3-19-07)
- ~~a.~~ *All organic producers/handlers in Idaho with five thousand dollars (\$5,000) or less annual gross organic sales shall register with the Department by July 1st of each year.* (3-29-10)
- ~~b.~~ *All organic producers/handlers in Idaho certified by agents other than the Department shall register with the Department within thirty (30) days of initial certification and by July 1st of each year thereafter.* (3-29-10)
- ~~c.~~ *All agents certifying producers/handlers in Idaho shall register with the Department within thirty (30) days of issuing their first Idaho producer/handler certificate.* (3-19-07)
- ~~d.~~ *Agents shall provide the Department, by January 2 of each year, a list of Idaho producers/handlers, addresses, and telephone numbers for each certificate issued during the prior calendar year.* (3-19-07)
- ~~02. **Registration Fees.**~~ (3-29-10)
- ~~a.~~ *The annual registration fee is fifty dollars (\$50).* (3-19-07)
- ~~b.~~ *A person who produces and handles their own organic food products shall pay only one (1) annual registration fee.* (3-19-07)

**~~301.0. CERTIFICATION REQUIREMENTS AND FEES.~~**

- 01. **Certification Requirements.**** All applicants applying for certification with the Department, shall submit the application to the Department on forms prescribed or approved by the Department. (3-29-12)
- a.** All organic food producers/handlers in Idaho with annual gross organic sales of more than five thousand dollars (\$5,000) shall be certified with the Department, unless certified by agents other than the Department accredited under the National Organic Program. (3-19-07)
- b.** Producers/handlers with annual gross organic sales of five thousand dollars (\$5,000) or less may select certification ~~in place of registration.~~ (4-7-11)(    )
- c.** All organic food producers and organic handlers certifying with the Department are subject to an annual on-site inspection. (3-19-07)

- d.** Livestock producer and handler applications will be accepted throughout the year. (3-19-07)
- 02. Certification Fees.** (3-29-10)

  - a.** Organic producers/handlers with annual gross organic sales of more than five thousand dollars (\$5,000) up to fifteen thousand dollars (\$15,000) or producers with annual gross income of five thousand dollars (\$5,000) or less requesting certification - One hundred twenty-five dollars (\$125). (4-7-11)
  - b.** Organic producer/handler with annual gross organic sales of more than fifteen thousand dollars (\$15,000) –Two hundred dollars (\$200). (4-7-11)
  - c.** A person who produces and handles their own organic food products shall pay only one (1) annual certification fee based on gross annual organic sales. (3-19-07)
- 03. Certification Inspection Fees.** (3-19-07)

  - a.** The hourly rate is thirty-five dollars (\$35) including travel time. (3-19-07)
  - b.** Travel time from an inspector’s normal duty station to the inspection site and return to normal duty station will be compensable time charged to the applicant. (3-19-07)
  - c.** There will be a minimum charge of thirty-five dollars (\$35) plus mileage for any inspection. (3-19-07)
  - d.** A mileage rate as approved by the Board of Examiners will be included in the inspection fees. (3-19-07)
  - e.** Inspections conducted on weekends, holidays, or after normal office hours will be charged at an hourly rate of forty-seven dollars and fifty cents (\$47.50) including travel time with a minimum charge of one (1) hour plus mileage. (3-19-07)
  - f.** Upon approval by the Department, private inspectors may be utilized. The applicant shall bear the total cost of the private inspection. (3-29-10)

**3021. GRADUATED GROSS SALES FEE SCHEDULE.**

**01. Graduated Gross Sales Fee Table.** In addition to the fees prescribed above, all producers and handlers certified by the Department ~~and those registered by the Department with five thousand dollars (\$5,000) or less annual gross organic sales~~ shall remit with their ~~registration~~ certification application an amount based on their annual gross organic sales during the last calendar year, or in the case of a first-time applicant, a projected gross dollar amount for the upcoming calendar year, with a minimum fee of ten dollars (\$10). The graduated gross organic sales fee structure is as follows:

0 - 2,000	\$10
2,001 - 5,000	\$25
5,001 - 10,000	\$50
10,001 - 15,000	\$75
15,001 - 20,000	\$100
20,001 - 25,000	\$125
25,001 - 30,000	\$150
30,001 - 35,000	\$175

35,001 - 50,000	\$250
50,001 - 75,000	\$375
75,001 - 100,000	\$500
100,001 - 150,000	\$750
150,001 - 200,000	\$1,000
200,001 - 280,000	\$1,400
280,001 - 375,000	\$1,875
375,001 - 500,000	\$2,500
500,001 and up	0.5% of gross organic sales up to \$5,000

~~(3-19-07)~~( )

**02. Non-Refundable.** ~~Registration and e~~Certification application fees are non-refundable.

~~(3-19-07)~~( )

~~3032.~~ -- 399. (RESERVED)

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

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

DOCKET NO. 02-0641-1401

#### NOTICE OF RULEMAKING - 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 June 18, 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:

To incorporate by reference information and updates contained in the 2015 Official Publication of the Association of American Plant Food Control Officials (AAPFCO) as they pertain to the methodology and practice of conducting regulatory soil and plant amendment registration and label review.

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

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

ISDA does not anticipate any fiscal impact from the changes to be made to the Rule during this rulemaking.

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

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

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kathryn Mink, Agriculture Section Manager at (208) 332-8564.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be delivered on or before June 25, 2014.

DATED this 9th day of May, 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 DOCKET NO. 02-0641-1401  
(Only those Sections being amended are shown.)**

**004. INCORPORATION BY REFERENCE.**

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

**01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication.**

The terms, ingredient definitions and policies as published in the “2014<sup>5</sup> Official Publication” of AAPFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 22, Chapter 22, Idaho Code, and any rule promulgated thereunder. The AAPFCO Official Publication is a copyrighted publication and not available in electronic format. A copy may be purchased online from the AAPFCO website at: [http://www.aapfco.org/pdf/publication\\_order\\_form.pdf](http://www.aapfco.org/pdf/publication_order_form.pdf).

(3-20-14)( )

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

**03. The Association of Official Agricultural Chemists (AOAC) International.** The “2005 Official Methods of Analysis (OMA) of the AOAC,” 18th Edition, a copyrighted publication, is maintained and published by the AOAC International. The AOAC OMA is available in electronic format at: [www.EOMA.AOAC.org](http://www.EOMA.AOAC.org). A copy may be purchased online from AOAC International. (3-29-12)