

Dear Senators GANNON, Heinrich & Stennett, and
Representatives TRAIL, Andrus & Pence:

The Legislative Services Office, Research and Legislation, has received the enclosed
rules of the Idaho State Dept. of Agriculture:

IDAPA 02.02.14 - Rules For Weights and Measures (Docket #02-0214-0801).

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
6-30-08. 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 7-29-08.

_____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 334-2475, or send a written request to the
address or FAX number indicated on the memorandum enclosed.

MEMORANDUM

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

FROM: Research & Legislation Staff - Katharine Gerrity

DATE: June 10, 2008

SUBJECT: Idaho State Department of Agriculture

IDAPA 02.02.14 - Rules For Weights and Measures

The Idaho State Department of Agriculture submits notice of a temporary and proposed rule at IDAPA 02.02.14 - Rules For Weights and Measures. According to the Department, the purpose of the rule is to adopt by reference the date specific standard ASTM D 4814-07a, "Standard Specification for Automotive Spark-Ignition Engine Fuel," to provide that the specifications for gasoline blended with ethanol be no more restrictive than those adopted under the rules, regulations, and Clean Air Act waivers of the EPA, and to adopt by reference the 2008 edition of NIST Handbook 44, Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices. The Department notes that negotiated rulemaking was not conducted because the rule replaces a temporary rule that was approved by the 2008 Legislature. We have no specific comments relating to this rule.

The action appears to be authorized pursuant to Section 71-111, Idaho Code.

cc: Idaho State Department of Agriculture
Tom Schafer

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.02.14 - RULES FOR WEIGHTS AND MEASURES

DOCKET NO. 02-0214-0801

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 2, 2008.

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 71-111, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 16, 2008.

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:

1. To adopt by reference the date specific standard ASTM D 4814-07a, "Standard Specification for Automotive Spark-Ignition Engine Fuel";
2. To state in rule that the specifications for gasoline blended with ethanol be no more restrictive than those adopted under the rules, regulations, and Clean Air Act waivers of the U.S. Environmental Protection Agency; and
3. To adopt by reference the 2008 edition of NIST Handbook 44, Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices.

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:

To confer a benefit to have gasoline and gasoline-oxygenate blend specifications and exceptions to those specifications adopted under the rules, regulations and Clean Air Act waivers of the EPA in IDAPA to facilitate refiners, distributors and retailers in the use of ethanol in the state of Idaho.

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

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

There is no fiscal impact associated with this rule change.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rule replaces a temporary rule docket number 02-0214-0702 that was approved by the 2008 Legislature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Tom Schafer, at 332-8690.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 23, 2008.

DATED this 15th day of May, 2008.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701-0790
Phone 332-8500, Fax 334-4062

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0214-0801

004. INCORPORATION BY REFERENCE.

01. Required Reference Materials. The 2007~~8~~ edition of Handbook No. 44 of the National Institute of Standards and Technology, United States Department of Commerce, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," hereby incorporated by reference, shall be the specifications, tolerances and other technical requirements for commercial weighing and measuring devices, unless otherwise stated in these rules. ~~(4-2-08)~~(7-2-08)T

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

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

04. Specifications for Gasoline. American Society of Testing and Materials (ASTM) D 4814-07a, "Standard Specification for Automotive Spark-Ignition Engine Fuel", dated October 17, 2007, is hereby incorporated by reference and is the specification for gasoline. (7-2-08)T

04~~5~~. Local Availability. Copies of ~~Handbook No. 44 and Handbook No. 133~~ the incorporated documents are on file with the ~~State Law Library and the~~ Idaho State Department of Agriculture, 2216 Kellogg Lane, Boise, Idaho 83712, or may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Copies are available for downloading on the internet by going to <http://nist.gov>. Copies of ~~ASTM D975 and ASTM D6751~~ specifications are on file with the ~~State Law Library and the~~ Idaho State Department of Agriculture or may be purchased from ASTM. ~~(4-2-08)~~(7-2-08)T

(BREAK IN CONTINUITY OF SECTIONS)

350. SALE AND LABELING OF GASOLINE WHICH CONTAINS OXYGENATES.

01. Definitions. For purposes of this rule, the following definitions shall apply: (7-1-93)

a. Spark-Ignition Motor Fuel. The terms "spark-ignition motor fuel" or "spark-ignition engine fuel" mean gasoline and its blends with oxygenates such as co-solvent and ethers. (10-26-94)

b. Gasoline-Oxygenate Blend. For labeling purposes, the term “gasoline-oxygenate blend” means any spark-ignition motor fuel containing one percent (1%) or more by volume of oxygenates or combination of oxygenates, such as but not restricted to ethanol, methanol, or methyl-tertiary-butyl ether. (10-26-94)

c. Alcohol. A volatile flammable liquid having the general formula $C_nH_{(2n+1)}OH$ used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles, and commonly or commercially known or sold as an alcohol, including ethanol and methanol. (7-1-93)

d. Co-solvent. An alcohol or any other chemical with higher molecular weight than methanol or ethanol which is blended with either or both to prevent phase separation in gasoline. (7-1-93)

e. Ethanol. Ethyl alcohol, a flammable liquid having the formula C_2H_5OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles, and commonly or commercially known or sold as ethanol or ethyl alcohol. (7-1-93)

f. Gasoline. Any fuel sold for use in motor vehicles and commonly or commercially known or sold as gasoline whether leaded or unleaded. (7-1-93)

g. Methanol. Methyl alcohol, a flammable liquid having the formula CH_3OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles, and commonly or commercially known or sold as methanol or methyl alcohol. (7-1-93)

h. Motor vehicles. Include all vehicles, vessels, watercraft, engines, machines, or mechanical contrivances that are propelled by internal combustion engines or motors. (7-1-93)

i. Person. The word “person” shall be construed to import both the plural and singular, as the case demands, and shall include corporations, companies, societies and associations. When construing and enforcing the provisions of this rule, the act, omission, or failure of any officer, agent, or other person acting for or employed by any corporation, company, society, or association, within the scope of his employment or office shall in every case be also deemed to be the act, omission, or failure of such corporation, company, society or association as well as that of the person. (7-1-93)

j. Retail dealer. Any person who owns, operates, controls, or supervises an establishment at which gasoline is sold or offered for sale to the public. (7-1-93)

k. Wholesale dealer. Any person engaged in the sale of gasoline to others who the seller knows or has reasonable cause to believe intends to resell the gasoline in the same or an altered form to another. (7-1-93)

02. Pump Labeling Requirements. (7-1-93)

a. All spark ignition engine fuel kept, offered, or exposed for sale, or sold, at retail containing at least one percent (1%) by volume of any oxygenate or combination of oxygenates shall be identified as “with” or “containing” (or similar wording) the specific type of oxygenate(s) in the engine fuel. For example, the label may read “contains ethanol” or “with MTBE/ETBE.” This information shall be posted on the upper fifty percent (50%) of the dispenser front panel in a position clear and conspicuous from the driver’s position, in a type at least one half (1/2) inch in height, one-sixteenth (1/16) inch stroke (width of type). (10-26-94)

b. The labels shall be furnished by the retail owner or operator. (7-1-93)

03. Oxygenates Content Labels. (10-26-94)

a. The label shall have letters in bold face, block not less than one-half (1/2) inch high. The lettering shall be in black on a contrasting background. Both colors shall be non-fade. (10-26-94)

b. The label shall be displayed on both faces of the dispenser on the upper one-half (1/2) of the dispenser as near the unit price display as practical. (10-26-94)

04. Documentation for Dispenser Labeling Purposes. The retailer must be provided, at the time of delivery of the fuel, on an invoice, bill of lading, shipping paper, or other documentation, a declaration of any oxygenate or combination of oxygenates present in concentrations of at least one percent (1%) by volume of the fuel. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending. (10-26-94)

05. Fuel Specifications for Gasoline and Gasoline-Oxygenate Blends. (7-2-08)T

a. The version of ASTM D 4814 "Standard Specification for Automotive Spark-Ignition Engine Fuel" incorporated by reference in this rule is the standard for gasoline and gasoline oxygenate blends, except the volatility standards for unleaded gasoline blended with ethanol shall not be more restrictive than those adopted under the rules, regulations, and Clean Air Act waivers of the U.S. Environmental Protection Agency. Gasoline blended with ethanol shall be blended under any of the following three (3) options. (7-2-08)T

i. The base gasoline used in such blends shall meet the requirements of ASTM D 4814, or (7-2-08)T

ii. The blend shall meet the requirements of ASTM D 4814, or (7-2-08)T

iii. The base gasoline used in such blends shall meet all the requirements for gasoline of ASTM D 4814 except distillation, and the blend shall meet the distillation requirements of the ASTM specification. (7-2-08)T

b. Blends of gasoline and ethanol shall not exceed the ASTM D 4814 vapor pressure standard by more than one point zero (1.0) psi. (7-2-08)T

056. Penalties. Any person who shall violate any provisions of these rules shall be punished as provided for in Section 37-2501 and Section 37-2520, Idaho Code. (7-1-93)