

Dear Senators CORDER, Winder & Malepeai, 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 02.06.03 - Rules Pertaining To The Idaho Nursery and Florists Law -
Docket No. 02-0603-0901

IDAPA 02.06.04 – Idaho Department of Agriculture Phytosanitary and Post-Entry Certification
Rules - Docket No. 02-0604-0901

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

IDAPA 02.06.22 – Noxious Weed Rules - Docket No. 02-0622-0901.

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
10-23-09. 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 11-23-09.

_____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: Katharine Gerrity, Principal Legislative Research Analyst - LSO

DATE: October 5, 2009

SUBJECT: Idaho State Department of Agriculture

IDAPA 02.06.03 - Rules Pertaining To The Idaho Nursery and Florists Law - Docket No. 02-0603-0901

IDAPA 02.06.04 – Idaho Department of Agriculture Phytosanitary and Post-Entry Certification Rules - Docket No. 02-0604-0901

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

IDAPA 02.06.22 – Noxious Weed Rules - Docket No. 02-0622-0901

1. IDAPA 02.06.03 - Rules Pertaining To The Idaho Nursery and Florists Law

The Idaho State Department of Agriculture submits notice of a temporary and proposed rule at IDAPA 02.06.03 - Rules Pertaining To The Idaho Nursery and Florists Law. This is a fee rule. According to the Department, in July, APHIS published their intent to charge states that issue federal phytosanitary certificates for the export of agricultural commodities a \$12 administrative fee for each certificate issued. The law is to become effective on October 1, 2009. The Department notes that it currently charges an hourly rate of \$20 for the service. The Department proposes to drop the hourly rate and initiate a fee of \$60 per certificate issued to cover the federal administrative fee and increased costs to the program. The Department also notes that the fees were last adjusted in 1986. The Department is also revising IDAPA 02.06.04 relating to “phytosanitary and Post-Entry Certification Rules” (see below) to synchronize the fees and services.

The Department states, based on 2008 figures, that the change will generate \$9,000. Of that amount, \$1,800 will be remitted to APHIS with the remainder to stay with the program to cover the cost of the program. Negotiated rulemaking was not conducted. The Department did, however, hold an informal meeting at the annual Idaho Nursery and Landscape Association Board of Directors meeting where all of the major exporting nurseries were informed of the proposed change.

We have no specific comments relating to this rule. The action appears to be authorized pursuant to Section 22-2314, Idaho Code.

2. IDAPA 02.06.04 – Idaho Department of Agriculture Phytosanitary and Post-Entry Certification Rules

The Idaho State Department of Agriculture submits notice of a temporary and proposed rule at IDAPA 02.06.04 – Idaho Department of Agriculture Phytosanitary and Post-Entry Certification Rules. This is a fee rule. According to the Department, in July, APHIS published their intent to charge states that issue federal phytosanitary certificates for the export of agricultural commodities a \$12 administrative fee for each certificate issued. The law is to become effective on October 1, 2009. The Department notes that it currently charges a fee of \$40 for each certificate. The Department now proposes to drop the hourly rate and initiate a fee of \$60 per certificate issued to cover the federal administrative fee and increased costs to the program. The Department also notes that the fees were last adjusted in 2004.

The Department states, based on 2008 figures, that the change will generate an additional \$74,140. Of that amount, \$44,484 will be remitted to APHIS and the remainder will stay with the program to cover the increased cost of the program. Negotiated rulemaking was not conducted but the Department did hold informal meetings over the past several years.

We have no specific comments relating to this rule. The action appears to be authorized pursuant to Sections 22-103, 22-107, 22-702 and 22-2006, Idaho Code.

3. IDAPA 02.06.08 – Quarantine Rules Pertaining to Apples and Cherries

The Idaho State Department of Agriculture submits notice of a proposed rule at IDAPA 02.06.08 – Quarantine Rules Pertaining to Apples and Cherries. According to the Department, the purpose of the rule is to strike the words “peach, nectarine and apricot” from the paragraph relating to apple maggots. The Department notes that, following some review of scientific literature, it has been determined that these fruits have never been found to be a host of the apple maggot. The revision will also bring the Idaho rule in line with rules in Washington and Oregon.

The action appears to be authorized pursuant to Sections 22-2006 and 22-2013, Idaho Code.

4. IDAPA 02.06.22 – Noxious Weed Rules

The Idaho State Department of Agriculture submits notice of a proposed rule at IDAPA

02.06.22 – Noxious Weed Rules. According to the Department, the change is simply an update to Idaho’s noxious weed list. The Department notes that updates are necessary to keep the list up-to-date, addressing current and future threats to agriculture and the environment in Idaho. The Department also states that informal negotiated rulemaking was conducted where suggestions were taken from various commodity, weed, nursery, plant, seed, lake and water quality associations and groups. Results were given to the Noxious Weed Advisory Committee who voted and gave a recommendation to the Director.

We have no specific comments relating to this rule. The action appears to be authorized pursuant to Section 22-2403, Idaho Code.

cc: Idaho State Department of Agriculture
Brian Oakey
Michael Cooper
Matt Voile

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.03 - RULES PERTAINING TO THE IDAHO NURSERY AND FLORISTS LAW

DOCKET NO. 02-0603-0901

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

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

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 22-2314, Idaho Code.

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

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

DESCRIPTIVE SUMMARY: The following is 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:

USDA APHIS PPQ published on July 8, 2009, in the Federal Register (Docket No. APHIS-2006-0137), effective October 1, 2009, their intent to charge to the states that issue federal phytosanitary certificates for the export of agricultural commodities a \$12 administrative fee for each certificate issued by the state. The Department currently charges an hourly rate of \$20 for this service. The Department proposes to drop the hourly rate and initiate a fee of \$60 per certificate issued to cover the federal administrative fee and increased costs to the program. The fees under this rule have not been adjusted since 1986.

Section 02.06.03.050 of this rule will be revised to reference IDAPA 02.06.04, "Phytosanitary and Post-Entry Certification Rules," Section 500, "Fees and Charges," to synchronize the fees and services between the two rules and thus ensuring that all exporters will be subject to the same fee schedule. Technical changes will also be made to include proper formatting and sections required by the Office of the Administrative Rules Coordinator.

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:

Compliance with changes to federal regulations.

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

Based on 2008 figures this change would generate \$9,000 of which \$1,800 would be remitted to USDA APHIS and the remaining \$7,200 would remain with the program to cover the cost of the program.

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because an informal meeting was held with the Idaho Nursery and Landscape Association Board of Directors at their annual meeting on July 28, 2009, in Stanley, Idaho. In addition, all of the major exporting nurseries were informed of the proposed fee changes in person.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2009.

DATED this 20th day of August, 2009.

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

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 02-0603-0901

~~000.—009.~~ **(RESERVED).**

010. PURPOSE.

The purpose of these rules is to establish a fee schedule for special services and to set forth conditions under which a shipping permit will be issued under the authority of Nurseries and Florists, Title 22, Chapter 23, Idaho Code.
(4-13-86)

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 22, Chapter 23, Idaho Code. (10-1-09)T

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.06.03, "Rules Pertaining to the Idaho Nurseries and Florists Law." (10-1-09)T

02. Scope. These rules establish a fee schedule for special services and to set forth conditions under which a shipping permit will be issued under the authority of Nurseries and Florists, Title 22, Chapter 23, Idaho Code. (10-1-09)T

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (10-1-09)T

003. ADMINISTRATIVE APPEAL.

There is no provision for administrative appeal before the Department of Agriculture under this chapter. Hearing and appeal rights are pursuant to Title 67, Chapter 52, Idaho Code. (10-1-09)T

004. INCORPORATION BY REFERENCE.

IDAPA 02.06.03 does not incorporate any material by reference. (10-1-09)T

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

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (10-1-09)T

02. Mailing Address. The mailing address for the central office is Idaho State Department of Agriculture, P.O. Box 790, Boise, Idaho 83701. (10-1-09)T

03. Street Address. The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712. (10-1-09)T

006. PUBLIC RECORDS ACT COMPLIANCE.
These rules are public records available for inspection and copying at the department. (10-1-09)T

~~047.~~ -- 049. (RESERVED).

050. SPECIAL SERVICE.
When nurseries or florists require additional inspections and special services, a special service fee will be charged. Refer to IDAPA 02.06.04, "Phytosanitary and Post-Entry Certification Rules," Section 500, "Fees and Charges," for a complete schedule of services and fees. (4-13-86)(10-1-09)T

~~01. Description of Additional Inspections and Special Services. Additional inspections and special services are those services and functions performed by the Department in addition to services routinely performed as part of the nursery inspection activities, including but not limited to the following: (4-13-86)~~

~~a. Inspections for and issuance of phytosanitary certificates and other certificates required for entrance of nursery stock into other states and foreign countries; (4-13-86)~~

~~b. Services performed to determine compliance with import regulations of other states and foreign countries; and (4-13-86)~~

~~c. Supervising or monitoring application of pesticide, including fumigants, on nursery stock for phytosanitary purposes. (4-13-86)~~

~~02. Special Service Fee Schedule. A nursery grower, dealer, or individual who requires additional inspections and special services as outlined in Chapter 23, Title 22, Idaho Code, shall pay a fee in accordance with the following schedule: (4-13-86)~~

~~a. A minimum fee of twenty dollars (\$20) per service call and a charge of twenty dollars (\$20) per hour after the first hour will be made. (4-13-86)~~

~~b. If less than three (3) working days' notice is given for a special service call, a fee of forty dollars (\$40) will be assessed in addition to the minimum twenty dollar (\$20) fee and subsequent hourly charge. (4-13-86)~~

~~c. If the entire shipment is brought to a designated location at a time specified by an agent of the Department of Agriculture, the minimum charge for inspection will be ten dollars (\$10), and a charge of twenty dollars (\$20) per hour after the first hour will be made. (4-13-86)~~

~~d. The inspection charges shall include fees for issuance of any appropriate certificates. (4-13-86)~~

(BREAK IN CONTINUITY OF SECTIONS)

101. -- ~~14999.~~ (RESERVED).

150. EFFECTIVE DATE.
These rules shall be in effect on and after April 13, 1986. (4-13-86)

~~151. — 999.~~ (RESERVED).

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.04 - IDAHO DEPARTMENT OF AGRICULTURE, PHYTOSANITARY AND POST-ENTRY CERTIFICATION RULES

DOCKET NO. 02-0604-0901 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

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

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 22-103(22), 22-107, 22-702, 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 21, 2009.

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

DESCRIPTIVE SUMMARY: The following is 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:

USDA APHIS PPQ published on July 8, 2009, in the Federal Register (Docket No. APHIS-2006-0137), starting October 1, 2009, their intent to charge to the states that issue federal phytosanitary certificates for the export of agricultural commodities a \$12 federal administrative fee for each certificate issued by the state. The Department currently charges \$40 for each certificate it issues. The Department proposes to increase the fee to \$60 to cover the federal administrative fee and increased costs to the program. This fee has not been adjusted since 2004.

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

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

Based on 2008 figures, this change would generate an additional \$74,140 of which, \$44,484 would be remitted to USDA APHIS to cover the administrative fees and the remaining \$29,656 would remain with the program to cover the increased cost of the program.

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because informal meetings were held with the Idaho Eastern Oregon Seed Association at their annual membership and board of directors meetings over the past two years. The most recent membership meeting was held June 23-24, 2009. The Idaho Nursery and Landscape Association Board of Directors were informed of the proposed change July 28, 2009 at their annual meeting in Stanley, Idaho. In addition, all of the major exporting nurseries were informed of the proposed fee changes in person.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2009.

DATED this 20th day of August, 2009.

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

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 02-0604-0901

500. FEES AND CHARGES.

- 01. Phytosanitary Certificates.** (3-16-04)
- a.** Federal Phytosanitary Inspection Certificates or like documents: ~~forty~~ sixty dollars (\$~~40~~60) per certificate. (~~3-16-04~~)(10-1-09)T
- b.** State Phytosanitary Inspection Certificates or like documents: twenty-five dollars (\$25) per certificate. (3-16-04)
- 02. Phytosanitary Certification and Like Inspections and Official Treatment Observations.** (2-1-95)
- a.** Officially Drawn Samples: (i.e., purity and germ samples, referee samples, lab analysis) - twenty dollars (\$20) per sample. (3-16-04)
- b.** Submitted Samples: twenty dollars (\$20) per item submitted. (3-16-04)
- c.** Treatment Observations: for official verification of seed and plant treatment, seed lot fumigation, cold storage treatments, and treatment of agricultural products brought into the state in violation of a state quarantine, fees are thirty dollars (\$30) per hour (including travel time), and any per diem incurred. Per diem will be at established state rates. (~~3-16-04~~)(10-1-09)T
- d.** Rush service fees will be one hundred dollars (\$100) per certification which will be in addition to the normal phytosanitary certification charges outlined in this Section 500. (2-1-95)
- e.** Request for phytosanitary or treatment observation services after normal working hours, on weekends, or holidays are subject to overtime and state per diem charges in addition to the normal charges outlined in this section. (2-1-95)
- 03. Area Inspections.** Area Inspection: fourteen cents (\$.14) per hundred-weight. (3-16-04)
- 04. Field or Lot Inspections.** (2-1-95)
- a.** Application for Field Inspection: five dollars (\$5) per application. (3-16-04)
- b.** Acreage Inspection Fee: three dollars and fifty cents (\$3.50) per acre per inspection. A minimum of fifty dollars (\$50) per inspection will be charged when the total acreage submitted by any one (1) applicant is fifteen (15) acres or less. (3-16-04)

05. Post-Entry Quarantine Inspections. The inspection fee is two hundred dollars (\$200) for the required two (2) year quarantine and an additional one hundred dollars (\$100) per year for each year beyond the initial two (2) years, if required. For rejected applications, twenty-five dollars (\$25) of the two hundred dollar (\$200) inspection fee is non-refundable, and will be retained to cover administrative costs. (2-1-95)

06. Plant Pathological Laboratory Services. Fees available upon request. (2-1-95)

07. Special Project Fee. (10-1-09)T

a. Special projects not covered by the existing fee schedule may be billed at twenty-five dollars (\$25) per hour with a minimum twenty-five dollar (\$25) fee. Special projects include, but are not limited to, the following: (10-1-09)T

i. Research; (10-1-09)T

ii. Lot history verification; (10-1-09)T

iii. Data entry; (10-1-09)T

iv. Sales and purchases; (10-1-09)T

v. Transfer of lots into ISDA database; (10-1-09)T

vi. ISDA training of private company personnel; (10-1-09)T

vii. Special plant pest detection surveys; or (10-1-09)T

viii. Any other circumstance approved by the Director. (~~3-16-04~~)(10-1-09)T

b. This fee does not include any laboratory analysis fees that might be required as part of a special plant pest detection survey. (10-1-09)T

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.08 - QUARANTINE RULES PERTAINING TO APPLES AND CHERRIES

DOCKET NO. 02-0608-0901

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 Sections 22-2006 and 22-2013, Idaho Code.

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

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

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

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

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

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

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2009.

DATED this 20th day of August, 2009.

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

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0608-0901

101. REGULATED ARTICLES.

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

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

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.22 - NOXIOUS WEED RULES

DOCKET NO. 02-0622-0901

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 Sections 22-2403(b) and (c), Idaho Code.

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

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

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

Amendments to the noxious weed list will be part of an ongoing process to ensure that the rule is up to date, addressing current and future threats to agriculture and the environment in Idaho. This process could result in the removal of current species, addition of new species, and/or reclassification of currently listed species.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because informal negotiated rulemaking was conducted using a new process to broaden input from agricultural and non-agricultural interests throughout the state. Various commodity, weed, nursery, plant, seed, lake and water quality associations and groups gave input as to which species should be added or deleted from the current noxious weeds list. The results were tallied and recommendations were given to the Noxious Weed Advisory Committee who voted and made the final recommendations to the Director.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Matt Voile, Section Manager, at (208) 332-8667.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2009.

DATED this 25th day of August, 2009.

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

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0622-0901

100. NOXIOUS WEEDS - DESIGNATIONS.

The weeds listed on the Statewide EDRR, Containment, and Control lists- are hereby officially designated and published as noxious. (3-30-07)

01. Statewide EDRR Noxious Weed List.

Common Name	Scientific Name
1. Brazilian Elodea	1. <i>Egeria densa</i>
2. Common/European Frogbit	2. <i>Hydrcharis morsus-ranae</i>
3. Fanwort	3. <i>Cobomba caroliniana</i>
4. Feathered Mosquito Fern	4. <i>Azolla pinnata</i>
25. Giant Hogweed	25. <i>Heracleum mantegazzianum</i>
6. Giant Salvinia	6. <i>Salvinia molesta</i>
37. Hydrilla	37. <i>Hydrilla verticillata</i>
48. Policeman's Helmet	48. <i>Impatiens glandulifera</i>
59. Squarrose Knapweed	59. <i>Centaurea triumfetti</i>
610. Syrian Beancaper	610. <i>Zygophyllum fabago</i>
711. Tall Hawkweed	711. <i>Hieracium piloselloides</i>
8. Water Hyacinth	8. <i>Eichhornia crassipes</i>
12. Variable-Leaf-Milfoil	12. <i>Myriophyllum heterophyllum</i>
13. Water Chestnut	13. <i>Trapa natans</i>
914. Yellow Devil Hawkweed	914. <i>Hieracium glomeratum</i>
15. Yellow Floating Heart	15. <i>Nymphoides pelata</i>

If any of the above listed plants (Subsection 100.01) are found to occur in Idaho, they shall be reported to the Department within ten (10) days following positive identification by the University of Idaho or other qualified authority as approved by the Director. These weeds shall be eradicated during the same growing season as identified. (3-30-07)()

02. Statewide Control Noxious Weed List

Common Name	Scientific Name
1. Black Henbane	1. <i>Hyoscyamus niger</i>
2. Bohemian Knotweed	2. <i>Polygonum X bohemicum</i>
3. Buffalobur	3. <i>Solanum rostratum</i>
4. Common Crupina	4. <i>Crupina vulgaris</i>
5. Common Reed (Phragmites)	5. <i>Phragmites australis</i>
56. Dyer's Woad	56. <i>Isatis tinctoria</i>
67. Eurasian Watermilfoil	67. <i>Myriophyllum spicatum</i>
78. Giant Knotweed	78. <i>Polygonum sachalinense</i>

Common Name	Scientific Name
89. Japanese Knotweed	89. <i>Polygonum cuspidatum</i>
910. Johnsongrass	910. <i>Sorghum halepense</i>
101. Matgrass	101. <i>Nardus stricta</i>
142. Meadow Knapweed	142. <i>Centaurea debeauxii</i>
123. Mediterranean Sage	123. <i>Salvia aethiopsis</i>
134. Musk Thistle	134. <i>Carduus nutans</i>
145. Orange Hawkweed	145. <i>Hieracium aurantiacum</i>
156. Parrotfeather Milfoil	156. <i>Myriophyllum aquaticum</i>
167. Perennial Sowthistle	167. <i>Sonchus arvensis</i>
178. Russian Knapweed	178. <i>Acroptilon repens</i>
189. Scotch Broom	189. <i>Cytisus scoparius</i>
19. <i>Silverleaf Nightshade</i>	19. <i>Solanum elaeagnifolium</i>
20. <i>Skeletonleaf Bursage</i>	20. <i>Ambrosia tomentosa</i>
240. Small Bugloss	240. <i>Anchusa arvensis</i>
22. <i>Toothed Spurge (David's Spurge)</i>	22. <i>Euphorbia davidii</i>
231. Vipers Bugloss	231. <i>Echium vulgare</i>
242. Yellow Hawkweed	242. <i>Hieracium caespitosum</i>

Weeds listed in the control list are known to exist in varying populations throughout the state. The concentration of these weeds is at a level where control and/or eradication may be possible. A written plan for weeds on the Statewide Control Noxious Weed List shall be developed by the control authority that specifies active control methods to reduce known populations in not more than five (5) years. The plan shall be available to the Department upon request.

(3-30-07)()

03. Statewide Containment Noxious Weed List.

Common Name	Scientific Name
1. Canada Thistle	1. <i>Cirsium arvense</i>
2. <u>Curlyleaf Pondweed</u>	2. <i>Potamogeton crispus</i>
23. Dalmatian Toadflax	23. <i>Linaria dalmatica ssp. dalmatica</i>
34. Diffuse Knapweed	34. <i>Centaurea diffusa</i>
45. Field Bindweed	45. <i>Convolvulus arvensis</i>
6. Flowering Rush	6. <i>Butomus umbellatus</i>
57. Hoary Alyssum	57. <i>Berteroa incana</i>
68. Houndstongue	68. <i>Cynoglossum officinale</i>
79. Jointed Goatgrass	79. <i>Aegilops cylindrica</i>
810. Leafy Spurge	810. <i>Euphorbia esula</i>
911. Milium	911. <i>Milium vernale</i>

Common Name	Scientific Name
102. Oxeye Daisy	102. <i>Leucanthemum vulgare</i>
143. Perennial Pepperweed	143. <i>Lepidium latifolium</i>
124. Plumeless Thistle	124. <i>Carduus acanthoides</i>
135. Poison Hemlock	135. <i>Conium maculatum</i>
146. Puncturevine	146. <i>Tribulus terrestris</i>
157. Purple Loosestrife	157. <i>Lythrum salicaria</i>
168. Rush Skeletonweed	168. <i>Chondrilla juncea</i>
179. Saltcedar	179. <i>Tamarix sp.</i>
4820. Scotch Thistle	4820. <i>Onopordum acanthium</i>
4921. Spotted Knapweed	4921. <i>Centaurea stoebe</i>
202. Tansy Ragwort	202. <i>Senecio jacobaea</i>
243. White Bryony	243. <i>Bryonia alba</i>
224. Whitetop (Hoary Cress)	224. <i>Cardaria draba</i>
25. Yellow Flag Iris	25. <i>Iris pseudocorus</i>
236. Yellow Starthistle	236. <i>Centaurea solstitialis</i>
247. Yellow Toadflax	247. <i>Linaria vulgaris</i>

Weeds listed in the containment noxious weeds list are known to exist in various populations throughout the state. Weed control efforts may be directed at reducing or eliminating new or expanding weed populations while known and established weed populations, as determined by the weed control authority, may be managed by any approved weed control methodology, as determined by the weed control authority. (3-30-07)()

04. Statewide Monitor List.

Common Name	Scientific Name
<u>1.</u> Water Hyacinth	<u>1.</u> <i>Echhorinia crassipes</i>

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a. Plants listed on the statewide monitor list are not designated as noxious weeds. The Department will investigate plants listed on the statewide monitor list to determine if the plant should be designated as a noxious weed. Plants may be placed on the statewide monitor list for any of the following criteria: ()

i. There is reason to believe this species is invasive or poses a potential threat to Idaho due to damage caused by the species in other states or biological conditions which may allow the escape and survival of this species in Idaho. ()

ii. The species exists in an adjacent state or province. ()

iii. The species is on an adjacent state or province's noxious weed list. ()

iv. Additional information about the species is needed on distribution, abundance or biology. ()

v. There is a need to verify the presence of escaped species in Idaho, verify identification and/or obtain voucher specimen. ()

vi. The species is currently available in the state through the nursery, pet, or ornamental seed/plant industry but may be closely related to current noxious/invasive species or suspected of being able to spread outside of intended sites and become escaped species. ()

b. Native species of the state or region will not be included on the monitor list. ()

045. Designation of Articles Capable of Disseminating Noxious Weeds. The following articles are designated by the Director as capable of disseminating noxious weeds: (7-1-93)

- a. Construction equipment, road building and maintenance equipment, and implements of husbandry. (3-30-07)
- b. Motorized vehicles such as, all-terrain vehicles, motorcycles, and other off-road vehicles and non-motorized vehicles such as bicycles and trailers. (3-30-07)
- c. Grain and seed. (7-1-93)
- d. Hay, straw and other material of similar nature. (7-1-93)
- e. Nursery stock including plant material propagated for the support of aquarium, pet, or horticultural activities. (3-30-07)
- f. Feed and seed screenings. (7-1-93)
- g. Fence posts, fencing and railroad ties. (7-1-93)
- h. Sod. (7-1-93)
- i. Manure, fertilizers and material of similar nature. (7-1-93)
- j. Soil, sand, mulch, and gravel. (3-30-07)
- k. Boats, personal watercraft, watercraft trailers, and items of a similar nature. (3-30-07)