

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 02.06.06 - Rules Governing the Planting of Beans, (*Phaseolus* SPP.), in

Idaho (Docket #02-0606-0501)

02.06.06 - Rules Governing the Planting of Beans, (*Phaseolus* SPP.), in

Idaho (Docket #02-0606-0901)

02.06.17 - Rules Governing the Disposal of Cull Onions & Potatoes

(Docket #02-0617-0901).

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 8-5-09. 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 9-2-09.

\_\_\_\_\_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: Principal Legislative Research Analyst - Katharine Gerrity

DATE: July 17, 2009

SUBJECT: Idaho State Department of Agriculture

IDAPA 02.06.06 - Rules Governing the Planting of Beans –  
Docket No. 02-0606-0501

IDAPA 02.06.06 - Rules Governing the Planting of Beans –  
Docket No. 02-0606-0901

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

### **1. IDAPA 02.06.06 - Rules Governing the Planting of Beans**

The Idaho State Department of Agriculture submits notice of a proposed rule at IDAPA 02.06.06 - Rules Governing the Planting of Beans. According to the Department, the proposed rule is identical to a temporary rule that was first published in 2005 and subsequently approved and extended every year thereafter.

The Department notes that the industry states there is less farm ground being irrigated under rill irrigation as more is being converted to sprinkler irrigation. The current rules for planting kidney and garden beans, according to the Department, require a two-year history of rill irrigation planting in Idaho prior to a planting under sprinkler irrigation. The Department states that the change would provide that kidney and garden beans could be planted under the same rules as cranberry-type beans which require a one-year history. The Department states that the seed can then be serology tested and planted again under either sprinkler or rill irrigation in Idaho. Following a second consecutive planting under sprinkler irrigation in Idaho, the seed must be serology tested prior to planting under rill irrigation. The Department notes that the industry is concerned about losing much of its bean seed business unless the change is made.

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

## **2. IDAPA 02.06.06 - Rules Governing the Planting of Beans**

The Idaho State Department of Agriculture submits notice of a temporary and proposed rule at IDAPA 02.06.06 - Rules Governing the Planting of Beans. According to the Department, this is a technical correction to allow for the acceptance of bean seed crops grown in Malheur Co., Oregon and inspected by the Idaho Crop Improvement Association for planting in Idaho. The current rule applies only to Idaho grown crops. The Department states that several years ago, the Idaho Crop Improvement Association began inspecting bean seed crops in Malheur Co. under an agreement with Oregon State University and that change needs to be reflected in rule. The Department also states that Oregon enforces a bean disease rule for Malheur Co. that is similar to Idaho's rule.

We have no specific comments relating to this rule. The action appears to be authorized pursuant to Sections 22-2006 and 22-2013, Idaho Code.

## **3. IDAPA 02.06.17 - Rules Governing the Disposal of Cull Onions and Potatoes**

The Idaho State Department of Agriculture submits notice of a proposed rule at IDAPA 02.06.17 - Rules Governing the Disposal of Cull Onions and Potatoes. According to the Department, the current rule requires that the enforcement of the cull onion disposal begin March 15<sup>th</sup> of each year but does not specify an ending date. The Department states that Idaho growers have requested that the ending date be set for July 1<sup>st</sup>, similar to a rule change setting those dates that was made in Oregon for Malheur Co.

We have no specific comments relating to this rule. The action appears to be authorized pursuant to Sections 22-2006 and 22-2013, Idaho Code.

cc: Idaho State Department of Agriculture  
Brian Oakey & Michael Cooper

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.06.06 - RULES GOVERNING THE PLANTING OF BEANS, (*PHASEOLUS SPP.*), IN IDAHO

DOCKET NO. 02-0606-0501

#### 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 22-2012, Idaho Code.

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

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

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

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

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

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

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

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 26, 2009.

DATED this 9th day of June, 2009.

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. 02-0606-0501**

**200. REQUIREMENTS FOR PLANTING BEAN SEED IN IDAHO.**

In order to be eligible for planting bean seed in Idaho: (4-2-03)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**c.** ICIA tag, provided the lot was field and windrow inspected by ICIA in accordance to these rules; or

- (4-2-03)
- d. Oregon Department of Agriculture inspection tag. (4-2-03)
09. Irrigation. (4-2-03)
- beans: a. Pintos, Red Mexicans, Pinks, Great Northerns, Small Whites, Navy Beans, Black Turtles, and Lima (4-2-03)
- i. First generation of seed grown in Idaho must be grown and inspected under rill irrigation. (4-2-03)
- ii. Thereafter, the seed may be grown and inspected for two (2) consecutive generations in Idaho under sprinkler irrigation. (4-2-03)
- iii. Seed grown under sprinkler irrigation for two (2) consecutive generations shall then be grown and inspected for one (1) generation in Idaho under rill irrigation. (4-2-03)
- b. ~~Cranberry types, Taylor Horticultural types, and Borlotto types~~ All other beans: (4-2-03)( )
- i. First generation of seed grown in Idaho must be grown and inspected under rill irrigation. (4-2-03)
- ii. Thereafter, the seed may be grown and inspected for one (1) generation in Idaho under sprinkler irrigation. (4-2-03)
- iii. ~~To be eligible for a second consecutive planting of seed under sprinkler~~ Any time seed has been grown and inspected for one (1) generation in Idaho under sprinkler irrigation and prior to planting the seed under sprinkler irrigation or rill irrigation in Idaho, the seed must be sampled and laboratory tested by the Department in Idaho and found negative for the regulated pests. (4-2-03)( )
- iv. Following ~~the~~ a second consecutive planting of ~~the~~ seed under sprinkler irrigation in Idaho, the seed must be sampled and laboratory tested by the Department in Idaho and found negative for the regulated pests. (4-2-03)( )
- v. After meeting the requirements of Subsections 200.09.b.i. through 200.09.b.iv., the seed must be grown and inspected for one (1) generation in Idaho under rill irrigation. (4-2-03)
- ~~e. All other beans: (4-2-03)~~
- ~~i. First two (2) generations of seed grown in Idaho must be grown and inspected under rill irrigation. (4-2-03)~~
- ~~ii. Thereafter, the seed may be grown and inspected for one (1) generation in Idaho under sprinkler irrigation. (4-2-03)~~
- ~~iii. Following any generation of seed grown under sprinkler irrigation in Idaho, the seed must be grown and inspected for two (2) consecutive generations in Idaho under rill irrigation. (4-2-03)~~

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.06.06 - RULES GOVERNING THE PLANTING OF BEANS, (*PHASEOLUS SPP.*) IN IDAHO

DOCKET NO. 02-0606-0901

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

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

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 22-2006 and 22-2013, Idaho Code.

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

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

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

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

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

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

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted. However, a meeting with the bean seed industry was held on November 12, 2008 at Seminis Vegetable Seed Research Center, 21120 Highway 30, Filer, Idaho.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 26, 2009.

DATED this 9th day of June, 2009.

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. 02-0606-0901

**200. REQUIREMENTS FOR PLANTING BEAN SEED IN IDAHO.**

In order to be eligible for planting bean seed in Idaho: (4-2-03)

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

**02. Malheur County, Oregon Grown Seed.** Bean seed produced in Malheur County, Oregon must be from a lot inspected in the growing season and in the windrow for the regulated pests as defined in Section 012 of these rules and tagged by the Oregon Department of Agriculture. The ICIA may inspect and issue tags for bean seed grown in Malheur County, Oregon provided that each field is inspected according to these rules and the Malheur County Bean Disease Control Area order. ~~(4-2-03)~~(5-1-09)T

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

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

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

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

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

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

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

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

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

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

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

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

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



- c. ICIA tag, provided the lot was field and windrow inspected by ICIA in accordance to these rules; or (4-2-03)
- d. Oregon Department of Agriculture inspection tag. (4-2-03)
- 09. Irrigation.** (4-2-03)
- a. Pintos, Red Mexicans, Pinks, Great Northerns, Small Whites, Navy Beans, Black Turtles, and Lima beans: (4-2-03)
  - i. First generation of seed grown in Idaho must be grown and inspected under rill irrigation. (4-2-03)
  - ii. Thereafter, the seed may be grown and inspected for two (2) consecutive generations in Idaho under sprinkler irrigation. (4-2-03)
  - iii. Seed grown under sprinkler irrigation for two (2) consecutive generations shall then be grown and inspected for one (1) generation in Idaho under rill irrigation. (4-2-03)
- b. All other beans: (4-1-05)T
  - i. First generation of seed grown in Idaho must be grown and inspected under rill irrigation. (4-2-03)
  - ii. Thereafter, the seed may be grown and inspected for one (1) generation in Idaho under sprinkler irrigation. (4-2-03)
  - iii. Any time seed has been grown and inspected for one (1) generation in Idaho under sprinkler irrigation and prior to planting the seed under sprinkler irrigation or rill irrigation in Idaho, the seed must be sampled and laboratory tested by the Department in Idaho and found negative for the regulated pests. (4-1-05)T
  - iv. Following a second consecutive planting of the seed under sprinkler irrigation in Idaho, the seed must be sampled and laboratory tested by the Department in Idaho and found negative for the regulated pests. (4-1-05)T
  - v. After meeting the requirements of Subsections 200.09.b.i. through 200.09.b.iv., the seed must be grown and inspected for one (1) generation in Idaho under rill irrigation. (4-2-03)

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.06.17 - RULES GOVERNING THE DISPOSAL OF CULL ONIONS AND POTATOES

DOCKET NO. 02-0617-0901

#### 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 August 19, 2009.

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

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

The current rule requires that the enforcement of the cull onion disposal begin March 15th of each year, but the rule never set an ending date. The Department had enforced the rule through the onion harvest of each year. Malheur County, Oregon has cull onion disposal rules similar to that of Idaho and has recently made a rule change setting a March 15th through July 1st enforcement period. Idaho onion growers have requested that the Department make the same change in the Idaho rule.

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, formal negotiated rulemaking was not conducted because an informal meeting was held with the Idaho Onion Growers' Association on March 20, 2009, who requested the rule change.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Michael E. Cooper at (208) 332-8620. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 26, 2009.

DATED this 17th day of June, 2009.

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

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#### THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0617-0901

##### **070. DISPOSITION OF CULL ONIONS.**

All cull onions existing in the control area shall be disposed of by a method approved of in Section 071 of this rule, to prevent sprouting. Disposal of all existing cull onions and debris must be completed prior to March 15th, of each year; provided; however, that in the case of onions sorted on or after March 15th of each year, the cull onions resulting therefrom shall be disposed of within one (1) week after such sorting regardless of the disposal method. The Department shall only enforce the cull onion disposal portions of this rule from March 15th through July 1st of each year. ~~(4-11-06)( )~~