

Dear Senators CORDER, Smyser, Bock, and
Representatives ANDRUS, Boyle, Pence:

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

IDAPA 02.04.09 - Rules Governing Milk and Cream Procurement and Testing (New Chapter -
Fee Rule) (Docket No. 02-0409-1101);

IDAPA 02.04.26 - Rules Governing Livestock Marketing (Fee Rule) (Docket No. 02-0426-1101);

IDAPA 02.04.32 - Rules Governing Poultry Operations (New Chapter - Fee Rule) (Docket No.
02-0432-1101).

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 11/03/2011. 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 12/05/2011.

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 334-4845, or send a written request to the address or FAX
number indicated on the memorandum enclosed.



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: October 17, 2011
SUBJECT: Department of Agriculture

IDAPA 02.04.09 - Rules Governing Milk and Cream Procurement and Testing (New Chapter - Fee Rule) (Docket No. 02-0409-1101)

IDAPA 02.04.26 - Rules Governing Livestock Marketing (Fee Rule) (Docket No. 02-0426-1101)

IDAPA 02.04.32 - Rules Governing Poultry Operations (New Chapter - Fee Rule) (Docket No. 02-0432-1101)

1. IDAPA 02.04.09 - Rules Governing Milk and Cream Procurement and Testing

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.04.09 - Rules Governing Milk and Cream Procurement and Testing. This rulemaking is a new chapter and a fee rule. According to the Department, the rule is being proposed based on the passage of HB 152 from the 2011 Legislative Session. The Department states that the rule establishes specific parameters and protocols for milk component testing. The Department notes that all laboratories that test milk or cream components and quality parameters for a basis of payment must be licensed by the Department as an official laboratory with the license fee set at \$25.00 for a term of three years.

The Department states that this rule does regulate an activity not regulated by the federal government because the federal government does not regulate milk or cream component testing in determining the value for milk constituents in Idaho, but that the rule is consistent with the provisions of HB 152 from the 2011 Legislative Session. The Department also indicates that it anticipates the costs to implement and enforce the rule will be greater than \$10,000 per year but that funding will be provided through dedicated fees from the butterfat assessment paid by the dairy industry as provided in Section 37-407, Idaho Code.

Negotiated rulemaking was conducted. The rule appears to be authorized pursuant to Section 37-516, Idaho Code.

Mike Nugent Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

Don H. Berg, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

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Boise, Idaho 83720-0054

Tel: 208-334-2475
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2. IDAPA 02.04.26 - Rules Governing Livestock Marketing

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.04.26 - Rules Governing Livestock Marketing. This rule is a fee rule. According to the Department, it has been assessing a fee, as authorized by statute, of \$100. The Department is authorized to assess a fee of up to \$200. The rule change simply reflects the fee that is currently being assessed.

Negotiated rulemaking was not conducted. The Department, however, states that changes to the rule were discussed with members of the Idaho Livestock Market Association. The rule is authorized pursuant to Section 25-1728, Idaho Code. (There is a misprint in the notice of rulemaking citing Section 25-3704, Idaho Code.)

3. IDAPA 02.04.32 - Rules Governing Poultry Operations

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.04.32 - Rules Governing Poultry Operations. This rulemaking is a new chapter and a fee rule. According to the Department, the rule coincides with and is being proposed following passage of HB 206 during the 2011 Legislative Session. The Department states that Section 25-4010, Idaho Code, authorizes it to collect a fee up to three cents per square foot of confinement area to financially support the regulatory oversight program.

The Department notes that parts of the rule regulate an activity not regulated by the federal government. Specifically, the rules governing poultry operations include facility and design standards which are intended to protect human health and the environment. The Department states that the standards, however, are for the design and construction of wastewater systems. The Department indicates that the rules are not based upon any express estimate or analysis of risk to public health or the environment, but that facility and design standards are based upon guidelines set forth in documents, such as the Natural Resources Conservation Service publications on Nutrient Management Standards and Design and Construction of Agricultural and Biological Engineers. The Department states that those documents are generally accepted and used throughout the United States by engineers and state regulators. The Department adds that production wells on each permitted poultry facility will be monitored annually and analyzed for nitrogen concentration to help the Department identify any negative environmental impacts as soon as possible.

The Department states that there is no fiscal impact expected and that there would only be a fiscal impact if the dedicated dollars from the fees collected would not be great enough to cover the program costs. Negotiated rulemaking was conducted. The rule appears to be authorized pursuant to Section 25-4012, Idaho Code.

cc: Department of Agriculture
Brian Oakey
Marv Patten
Dr. Bill Barton
John Bilderback

PROPOSED RULE COST/BENEFIT ANALYSIS

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

Department or Agency: Idaho State Department of Agriculture (ISDA)

Agency Contact: Marv Patten Phone: 208-332-8550

Date: September 29, 2011

IDAPA, Chapter and Title Number and Chapter Name:

IDAPA 02.04.09 – Rules Governing Milk and Cream Procurement and Testing

Fee Rule Status: Proposed Temporary

Rulemaking Docket Number: 02-0409-1101

STATEMENT OF ECONOMIC IMPACT:

The 2011 Legislature amended Chapter 5 Title 37. ISDA negotiated the Rules Governing Milk and Cream Procurement and Testing, IDAPA 02.04.09 to implement the legislative amendments.

Pursuant to Chapter 4 Title 37, ISDA may levy a fee up to .004 cents per pound of milk fat produced or processed in Idaho for implementation of sanitation, inspection and compliance programs related to the Idaho Dairy Industry. Cost associated with the implementation of this rule will be from dedicated dairy fees. The benefit is to milk processors and dairy farmers by ensuring a monetary level playing field in the procurement of milk and by providing a viable means to ensure laboratory analysis of milk components are reflective of what is actually produced.

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.09 - RULES GOVERNING MILK AND CREAM PROCUREMENT AND TESTING

DOCKET NO. 02-0409-1101 (NEW CHAPTER - FEE RULE)

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 October 19, 2011.

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:

House Bill 152, which amended Chapter 5, Title 37, Idaho Code, Inspection and Licensing of Dairy Product Dealers and Establishments Milk Components and Quality Testing, became effective July 1, 2011. The Idaho State Department of Agriculture is implementing a new rule under IDAPA 02.04.09, "Rules Governing Milk and Cream Procurement and Testing." This proposed rule establishes specific parameters and protocols for milk component testing.

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

All laboratories that test milk or cream components and quality parameters for a basis of payment must be licensed by the department as an official laboratory. The license fee is \$25 and is valid for a term of 3 years.

IDAHO CODE SECTION 22-101A STATEMENT: This proposed rule does regulate an activity not regulated by the federal government because the federal government does not regulate milk or cream component testing in determining the value for milk constituents in Idaho. However, the proposed rule is consistent with the legislative directive in House Bill No. 152 (codified at Sections 37-503 through -507, 37-509 through -510, 37-513 and 37-515, Idaho Code).

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:

There is no fiscal impact involved with this proposed rule. ISDA estimates that the costs will be greater than ten thousand dollars (\$10,000) annually to implement and enforce this rule. This funding will be provided through dedicated fees from the butterfat assessment paid by the dairy industry as provided in Section 37-407, Idaho Code.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the [July 6, 2011 Idaho Administrative Bulletin, Volume 11-7, page 19](#). However, the Negotiated rulemaking was published under docket number 02-0433-1101. The chapter number of this rule has been changed to keep this rule numerically aligned with the Department's other milk rules. The new docket number, 02-0409-1101, reflects this chapter number change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Marv Patten, Bureau Chief, Dairy and CAFO Programs, 208-332-8550 or marv.patten@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 October 26, 2011.

Signed this 31st Day of August, 2011.

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) 332-4062

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0409-1101

IDAPA 02, TITLE 04, CHAPTER 09

02.04.09 - RULES GOVERNING MILK AND CREAM PROCUREMENT AND TESTING

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 37, Chapter 5, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.04.09, "Rules Governing Milk and Cream Procurement and Testing." ()

02. Scope. These rules shall govern the standards, procedures, and equipment for the analysis of milk components when analysis of milk components and quality parameters is used as a basis of payment. The official citation of this Chapter is IDAPA 02.04.09.000 et seq. For example, this section's citation is IDAPA 02.04.09.001. ()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of this rule. ()

003. ADMINISTRATIVE APPEALS.

Hearing and appeal rights are set forth in Title 67, Chapter 52, Idaho Code. There is no provision for administrative appeal before the Department of Agriculture under these rules. ()

004. INCORPORATION BY REFERENCE.

These rules do not incorporate any material by reference. ()

005. ADDRESS, OFFICE HOURS, TELEPHONE, AND FAX NUMBERS.

01. Physical Address. The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712-0790. ()

02. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. ()

03. Mailing Address. The mailing address for the central office is Idaho State Department of

Agriculture, P.O. Box 790, Boise, Idaho 83701. ()

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

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

006. IDAHO PUBLIC RECORDS ACT.

These rules are public records and are available for inspection and copying at the Idaho State Department of Agriculture central office. ()

007. ABBREVIATIONS.

There are no abbreviations in this chapter. ()

008. DEFINITIONS.

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

01. Abnormal Test. A test result from a producer sample that is dissimilar from recent producer milk component or quality parameter testing results; an anomaly. ()

02. Accuracy Check. A test made at the beginning of each testing session and once per hour thereafter to determine the continued accuracy of the testing device. ()

03. Approved Testing Methods. Methods approved by the director for testing milk or cream components and quality parameters when those components and parameters are used as a basis of payment. ()

04. Calibration. The settings established on a testing device that will result in an average number of results that are within tolerance. ()

05. Control Samples. Milk samples used to determine or set the calibration of the testing device. ()

06. Component Testing. An analysis of milk or cream constituents including milkfat, protein, lactose or solids-nonfat, which is used as a basis of payment. ()

07. Department. The Idaho State Department of Agriculture. ()

08. Director. The Director of the Idaho State Department of Agriculture or his designee. ()

09. Detailed Pricing Description. The method used by the purchaser of milk or cream as the criteria for determining the price paid. ()

10. Milk Component or Component. A unique compound within milk whose relative mass within the milk may be used to determine the payment to producers. Component parts of milk include milkfat, protein, lactose, solids-nonfat, other solids, and total solids. ()

11. Official Laboratory. A facility, licensed by the department, that tests milk or cream components or quality parameters for the purpose of determining the value of the product when sold or purchased by producers or processors. ()

12. Outlier. A regulatory sample result that appears to deviate markedly from other members of the sample set in which it occurs. ()

13. Pay Records. Signed written or printed records, which itemize milk volume, milk component and quality parameters used as payment to a producer or other processor. ()

14. Performance Error. The difference between the known percentage content of each milk component in the control sample, as determined by the sample provider, and the percentage content as measured by

the testing device. ()

15. Person. An individual, association, partnership, firm, joint stock company, private company, or legal entity, which is recognized by law as the subject of rights and duties. ()

16. Producer. A dairy farm permitted by the department to sell milk for human consumption. ()

17. Processor. A creamery, milk plant, shipping or cream buying station, milk condensing plant, cheese factory, mix making plant, ice cream factory, reprocessing plant, casein plant, powdered milk plant, or factory of milk products, or other person receiving or purchasing milk or cream in bulk other than a retail vendor of milk on the basis of volume, milk components, or milk quality. ()

18. Quality Parameter. The quality of milk or cream as determined by the bacteria/plate count method, somatic cell count, temperature, drug residues or other parameters as approved by the department. ()

19. Testing Device. The equipment used to determine the percentage of milk or cream components. ()

20. Tolerance. The allowable plus and allowable minus variances from zero (0) when conducting component testing. For purposes of this rule, the variances shall be within plus or minus forty-four one-thousandths percent (.044%) for milkfat or protein and within plus or minus eighty-four one-thousandths percent (.084%) for total solids or solids-nonfat, except that regulatory sample tolerances are those set forth in Section 302 of this rule. ()

009. -- 049. (RESERVED)

050. REGULATORY COMPLIANCE.

All milk and cream produced, purchased or sold in the state of Idaho at a price based upon or determined by the milkfat, protein, lactose, solids-nonfat, somatic cell counts, or other quality parameters, shall comply with the requirements in these rules. ()

051. LABORATORY LICENSING REQUIREMENTS.

01. License Required. All laboratories that test milk or cream components and quality parameters for a basis of payment must be licensed by the department as an official laboratory. ()

02. License Application. A laboratory must apply for a license on a form prescribed by the department. The laboratory must identify (on the application form) the names of all persons who will test milk or cream components and quality parameters. ()

03. License Fee. The license fee is twenty-five dollars (\$25). ()

04. License Term. The official laboratory license is valid for three (3) calendar years after issuance by the department, unless otherwise suspended or revoked in accordance with these rules. The license expires on December 31 of the third year. ()

052. -- 099. (RESERVED)

100. OFFICIAL LABORATORIES - RESPONSIBILITIES AND OPERATING PROCEDURES.

01. Competency in Testing. Official laboratories are responsible for ensuring that employees who operate testing devices are competent to operate the devices, and for conducting testing according to these rules. ()

02. Facility Requirements. The areas in official laboratories where component or quality parameter testing is conducted shall be well lighted, kept clean, appropriately ventilated and sufficient in size to provide for accurate testing. Laboratories that are certified under the Grade A program set forth in IDAPA 02.04.08.000 et seq., "Rules Governing Grade A Milk and Milk Products," are deemed to satisfy the facility requirements for an official

laboratory. ()

03. Operating Procedures. An official laboratory shall establish and follow written standard operating procedures consistent with the recommended procedures for operation and maintenance set forth by the manufacturer of the testing device. ()

101. THIRD PARTY LABORATORIES.

Procurers of milk who use official laboratories other than one owned or operated by the procurer are not responsible for that laboratory's failure to comply with these rules. ()

102. - 109. (RESERVED)

110. MILK COMPONENT TESTING DEVICES.

If an automated testing device is used to perform a milk component test for any milk component, that device must be calibrated and regularly checked to ensure that it accurately tests for that milk component. ()

01. Calibration and Checks. Calibration and checks must include the utilization of calibration samples, performance checks and accuracy checks. ()

02. Calibration Standards. Calibration may be done either in accordance with the standards set forth by the manufacturer of the testing device, or as set forth in Sections 110, 111 and 130 of this rule. ()

03. Calibration Record Keeping. In either case, the official laboratory must be able to demonstrate, through records kept in accordance with Section 350, that calibration and checks have been performed in accordance with these rules, and that the testing device produces test results within the tolerances established in these rules. ()

111. CALIBRATION OF MILK COMPONENT TESTING DEVICES.

All testing devices shall be calibrated according to the protocols set by the testing device manufacturer, or as set forth in this Section. ()

01. Calibration Frequency. A milk component testing device shall be calibrated whenever the mean difference on a daily performance check under Section 121 herein exceeds plus or minus forty-four thousandths percent (.044%) for milkfat or protein, or eighty-four thousandths percent (.084%) for total solids or solids-nonfat. ()

02. Calibration Samples. A set of calibration samples may consist of commercially available samples or samples made by the official laboratory. A set of calibration samples must consist of at least nine (9) individual samples, each of which: ()

a. Cannot be more than twenty-one (21) days old; ()

b. Must be a fresh milk sample preserved with bronopol (2-bromo-2-nitro-1, 3-propanediol) or another approved preservative. Preservative methods, formulations and concentrations must be approved by the department. ()

c. Must have a known percentage content of each relevant milk component, determined by the sample provider. ()

d. Must meet the requirements of Section 120 of this rule. ()

03. Calibration Procedure. To calibrate a testing device, the official laboratory must use the device to test a set of calibration samples. The testing device shall be adjusted, as necessary, to satisfy each of the following requirements: ()

a. The performance error on each calibration sample shall be as near as practicable to zero (0). ()

b. The mean difference for the entire set of calibration samples shall be as near as practicable to zero (0), and shall not exceed plus or minus forty-four thousandths percent (.044%) for milkfat or protein, or eighty-four thousandths percent (.084%) for total solids or solids-nonfat. The mean difference is the sum of the performance errors for the individual calibration samples, divided by the number of samples in the set. ()

c. The standard deviation of test results, calculated for the set of calibration samples shall not exceed forty-four thousandths percent (.044%) for milkfat or protein, or eighty-four thousandths percent (.084%) for total solids or solids-nonfat. ()

112 - 119. (RESERVED)

120. SAMPLE INTEGRITY.

Milk or cream samples must be handled, stored, and shipped in a manner that maintains the integrity of the samples. Samples must be maintained in a temperature range of thirty-three degrees (33°) to forty-five degrees (45°) Fahrenheit. ()

121. DAILY PERFORMANCE CHECKS.

All testing devices must be subjected to a daily performance check before each day's testing, in accordance with the standards set by the testing device manufacturer, or as set forth in this Section. ()

01. Daily Performance Check Samples. ()

a. Source. A set of daily performance check samples must be obtained from a sample provider approved by the department, or may be made by the official laboratory. ()

b. Number. Unless otherwise specified by the manufacturer of the testing device, a minimum of two (2) control milk samples must be analyzed before daily component testing begins. ()

c. Requirements. The control samples must comply with the requirements set forth in Sections 103 and 104 of this rule and fall within the component ranges typically found in the samples to be tested. ()

02. Procedure. To conduct a daily performance check, the official laboratory must test a set of daily performance check samples. Based on the daily performance check, the official laboratory must do the following: ()

a. Determine the performance error of the testing device with respect to each daily performance check sample. The performance error is the difference between the known percentage content of each milk component in that sample, as determined by the sample provider, and the percentage content as measured by the testing device; and ()

b. Calculate the mean difference for the set of daily performance check samples. The mean difference is the sum of the performance errors for the individual samples, divided by the number of samples in the set. ()

03. Calibration Based On Daily Performance Check. If the mean difference calculated on a daily performance check exceeds plus or minus forty-four thousandths percent (.044%) for milkfat or protein, or eighty-four thousandths percent (.084%) for total solids or solids-nonfat, the testing device shall not be used until it is recalibrated in accordance with Section 111. ()

122. -- 129. RESERVED

130. ACCURACY CHECKS.

All testing devices shall be subjected to daily and hourly accuracy checks in accordance with the protocols set by the testing device manufacturer, or as set forth in this Section. ()

01. Daily Accuracy Check. A daily accuracy check must be conducted for each relevant milk component before each day's testing at the same time that the daily performance check is conducted. The official laboratory must perform ten (10) tests on a reference sample. The reference sample may be a homogenized milk

sample prepared by the official laboratory, or it may be a daily performance check sample obtained from an approved sample provider. The ten (10) test results must be averaged, and the average result will be used as a comparison value for the hourly accuracy checks required in Subsection 130.02. ()

02. Hourly Accuracy Check. An hourly accuracy check must be conducted for each milk component before each hour's testing for that component. ()

a. To conduct an hourly accuracy check, the official laboratory must test the same reference sample used for the daily accuracy check. ()

b. For each relevant milk component, the hourly accuracy check result must be compared to the average result obtained on the daily reference check under Subsection 130.01. If an hourly accuracy check result differs from the average result on the daily accuracy check by more than thirty-four thousandths percent (.034%) for milkfat or protein, or sixty-four thousandths percent (.064%) for total solids or solids-nonfat, the testing device shall not be used until the condition causing the difference is found and corrected. ()

c. Test results obtained before the device is corrected, and subsequent to the last previous conforming accuracy check, must not be used in determining the amount paid to milk producers. ()

131. -- 139. (RESERVED)

140. ABNORMAL TESTS.

Whenever an abnormal test occurs on a producer's sample, that result may not be used as a basis of payment. ()

01. Alternate Tests. In the case of an abnormal test, the official laboratory will use an average of the previous three (3) tests from that producer or another department approved method. ()

02. Accidents and Sampling Errors. Laboratory accidents or sampling errors on milk or cream to be tested will not be used as official results and the criteria in Subsection 140.01 will be instituted. ()

03. Documentation. All abnormal tests must be documented by the person conducting the test. ()

141. -- 199. (RESERVED)

200. DETAILED PRICING DESCRIPTION.

On each pay record to the seller, purchasers or procurers of milk or cream must provide the seller with all pricing detail needed to determine the net payment for the product sold. At a minimum, the detail must include the following: ()

01. Pricing Method and Pounds Purchased. If more than one (1) pricing method is used, the detail must include the pounds purchased at each method. The pricing method may include: ()

a. The value of each component per pound; ()

b. The total value of total component pounds; ()

c. The yield formula type and value of the end product(s); or ()

d. Fixed pricing type. ()

02. Total Weight or Volume. If weight is used, it must be expressed by pounds. If volume is used, it must be expressed in U.S. gallons. ()

03. Component Information. All relevant component testing averages or pounds of solids for each component. ()

04. Bonuses and Deductions. All quality bonuses or deductions and the applicable quality parameters

used to calculate the bonuses or deductions. ()

05. Hauling Charges. All hauling charges and any applicable surcharges. ()

06. Other Deductions. All other payment deductions including check-offs, administrative fees, and laboratory fees. ()

07. Other Factors. All other factors affecting net payment. ()

08. Availability. Pay records must be made available to the department upon request, and be maintained by the procurer or processor for at least one (1) year. ()

201. -- 299. (RESERVED)

301. REGULATORY COMPLIANCE - INSPECTIONS AND RECORDS REVIEW.

The department shall have access at any time to official laboratories to review testing procedures, records, or to conduct other inspections or tests to determine compliance with these rules and Title 37, Chapter 5, Idaho Code. Any time a testing device is being operated to test for milk components or other quality parameters, the department may provide samples to an official laboratory, and require the official laboratory to immediately process those samples in order to ensure compliance with these rules. ()

302. REGULATORY SAMPLES.

01. Samples. ()

a. The department will provide a minimum of nine (9) samples to an official laboratory, on a bi-weekly basis or at a frequency determined by the department to be necessary to ensure accurate component testing results. ()

b. The samples will be obtained from the company or entity that provides calibration samples to the official laboratory, if available. The department may provide regulatory samples from other sources if necessary. ()

c. The official laboratory must immediately process the samples, while being observed by a department employee or agent, for those components used by the processor or procurer as a basis of payment. ()

d. If the official laboratory is unable to process the samples due to maintenance or mechanical issues, the department employee or agent who is delivering the samples may wait for the testing device to become operable. If the integrity of the regulatory samples is compromised due to the delay, the department may obtain and deliver an additional set of regulatory samples. ()

02. Regulatory Sample Results. The regulatory sample results will be compiled by the department and evaluated by the department in rolling groups of thirteen (13) test results. ()

03. Outliers. Sample results that have been identified as outliers will not be used in the calculation of tolerance for regulatory test results. ()

04. Regulatory Sample Tolerances. Each group of thirteen (13) test results shall be within the following tolerances for those components used as a basis of payment by the processor or procurer: ()

a. Plus or minus thirty-three thousandths percent (.033%) for milkfat. ()

b. Plus or minus thirty-one thousandths percent (.031%) for protein. ()

c. Plus or minus sixty-five thousandths percent (.065%) for solids, other than milkfat or protein. ()

303. LICENSE SUSPENSION AND REVOCATION BASED ON REGULATORY SAMPLES.

01. Regulatory Sample Test Result Averages. Whenever two (2) of the last four (4) regulatory sample results exceed the tolerance for milkfat, protein or solids as set forth in Subsection 302.04 of this rule, the department may suspend the official laboratory's license. ()

02. Cumulative Regulatory Sample Results. When the department has accumulated a minimum of one thousand (1,000) regulatory sample results from an official laboratory, and the average of those regulatory sample results exceeds zero (0) by more than plus or minus two hundredths percent (.02%) for milkfat or protein, the department may suspend the official laboratory's license. ()

03. Review of Records Prior to License Suspension. If an official laboratory's regulatory sample results are out of tolerance pursuant to Section 302.04 of this rule, the department may review the records kept by the official laboratory pursuant to Section 350 of this rule. If the official laboratory is able to demonstrate through those records that it has performed all calibration and checks required under these rules, and that the results of those calibrations and checks show that the testing device is operating within the tolerances set forth in Sections 110, 111 and 130, the official laboratory may, at the department's discretion, be placed on probation for a period of two (2) weeks. The department will review the most recent thirteen (13) week average following the next regulatory samples, and if that average remains out of tolerance pursuant to Subsection 302.04 of this rule, the department may suspend the official laboratory's license. ()

04. License Reinstatement. An official laboratory may seek reinstatement of a suspended license when the official laboratory provides the department written documentation detailing the procedural corrections that have been made to the testing device. The documentation must include a minimum of two (2) weeks of component testing results demonstrating that the testing device has been and will remain in tolerance. Upon receipt of that information, the department may reinstate the official laboratory's license. ()

05. License Revocation for Repeated Out of Tolerance Test Results. If the regulatory sample results are repeatedly out of tolerance, the department may initiate steps to revoke the official laboratory's license to conduct component testing for three (3) months or more. ()

304. – 349. RESERVED

350. RECORD KEEPING.

Records must be maintained by the official laboratory in accordance with this section, and must be made available for examination by the department, upon the department's request. ()

01. General Provisions. ()

a. No record may be altered except that errors may be corrected by striking through the original entry and inserting the correct entry immediately adjacent to the original. A corrected entry shall be initialed by the person who made the corrected entry. ()

b. Records may be maintained in paper or electronic format. In either case, the records must: ()

i. Be effectively secured against loss or tampering. ()

ii. Be readily retrievable for inspection by the dairy plant operator and the department. ()

iii. If corrected, have the correction identified so that the reader may easily compare the corrected version to the original. ()

02. Calibration Check Equipment Records. All calibration check and equipment maintenance records must be documented and provided during an inspection by the department. The documentation must include the following: ()

a. Instrument identification. ()

b. Name of the laboratory technician or maintenance person who performed the calibration or maintenance. ()

c. Time and date of the calibration check or maintenance. ()

d. Type of analytical test or maintenance performed. ()

e. Results of the analytical test or maintenance. ()

f. Details of action taken to correct calibration tolerances or mechanical problems. ()

03. Records Retention - Time Limit. The dairy plant operator or the official laboratory must maintain the records required under this section for at least one (1) year. ()

351. -- 399. (RESERVED)

400. ENFORCEMENT.

01. Penalties. Penalties for violations of this rule are provided in Title 37, Chapter 5, Idaho Code. ()

02. License Suspension. The director may suspend official laboratory component testing from any laboratory not meeting these rules until the official laboratory has satisfactorily demonstrated compliance with these rules. ()

03. Effect of License Suspension. If an official laboratory's license is suspended, the official laboratory cannot conduct component testing for use as a basis of payment and must use a licensed third-party laboratory. Procurers of milk who must use a licensed third-party laboratory must pay any associated component testing fees. ()

401. -- 999. (RESERVED)

PROPOSED RULE COST/BENEFIT ANALYSIS

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

Department or Agency: Department of Agriculture

Agency Contact: Bill Barton, DVM

Phone: 208-332-8540

Date: September 28, 2011

IDAPA, Chapter and Title Number and Chapter Name:

IDAPA 02.04.24 Rules Governing Livestock Marketing

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

Rulemaking Docket Number: 02-0426-1101

STATEMENT OF ECONOMIC IMPACT:

The Idaho Public Livestock Market Development Act Title 25, Chapter 17, Idaho Code, requires an annual market charter fee “established by rules.” Idaho Code § 25-1728(1). Although all Livestock Markets in Idaho are currently paying the annual market charter fee, IDAPA 02.04.26 Rules Governing Livestock Marketing do not provide for an annual market charter fee. This proposed rule change will ensure that the rule is consistent with the statutory requirement.

Idaho Code Section 25-1728(1) requires the collection of an annual market charter fee not to exceed two hundred dollars (\$200.00) from all livestock markets. The Department currently collects one hundred dollars (\$100.00). The fee will remain \$100.00. Any fees collected will be utilized to conduct inspections and investigations of Idaho chartered livestock markets as prescribed in statute and rule.

Because the annual fee amount is not changed by this rulemaking, we do not foresee any fiscal impact to the livestock markets, Department of Agriculture or the state’s general fund.

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.04.26 - RULES GOVERNING LIVESTOCK MARKETING
DOCKET NO. 02-0426-1101 (FEE RULE)
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 25-3704, 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 19, 2011.

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 Idaho Public Livestock Market Development Act Title 25, Chapter 17, Idaho Code, requires an annual charter fee "established by rules," Section 25-1728(1), Idaho Code. Although all Livestock Markets in Idaho are currently paying the annual renewal fee, IDAPA 02.04.26, "Rules Governing Livestock Marketing," does not provide for an annual charter fee. This proposed rule change will update the rule consistent with the statutory requirement. Section 100 of the Rules will be changed to provide that an annual market charter fee of one hundred dollars (\$100) with a renewal form prescribed by the department be submitted on or before May 1 of each year.

IDAHO CODE SECTION 22-101A STATEMENT: This rule does regulate an activity not already regulated by the federal government, because the federal government does not regulate livestock market charters. However, this change to the Rules Governing Livestock Marketing is being proposed to ensure that the Rules are consistent with Title 25, Chapter 17, Idaho Code.

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

Section 25-1728(1), Idaho Code, requires the collection of an annual market charter fee not to exceed two hundred dollars (\$200) from all livestock markets. The Department currently collects one hundred dollars (\$100). The fee will remain one hundred dollars (\$100).

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(1), Idaho Code, negotiated rulemaking was not conducted because proposed changes to the Rule were discussed with members of the Idaho Livestock Market Association and individual market owners.

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 Dr. Bill Barton, Administrator at (208) 332-8540.

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 26, 2011.

DATED this 16th day of August, 2011.

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) 332-4062

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NUMBER 02-0426-1101

100. PUBLIC LIVESTOCK MARKET CHARTER.

No person shall conduct or operate a public livestock market without first securing a charter from the Department. Charters shall expire on April 30 of each year. It shall be the responsibility of the public livestock market operator to apply each year for charter renewal on a form prescribed by the Department. The charter renewal form must be accompanied by an annual market charter fee of one hundred dollars (\$100). The charter renewal form and annual market charter fee must be received by the Department on or before May 1 of each year. ~~(4-6-05)~~()

PROPOSED RULE COST/BENEFIT ANALYSIS

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

Department or Agency: Idaho State Department of Agriculture (ISDA)

Agency Contact: John P. Bilderback Phone: 208-332-8550

Date: September 28, 2011

IDAPA, Chapter and Title Number and Chapter Name:

IDAPA 02.04.32 – Rules Governing Poultry Operations

Fee Rule Status: Proposed Temporary

Rulemaking Docket Number: 02-0432-1101

STATEMENT OF ECONOMIC IMPACT:

The 2011 Legislature enacted the Poultry Environmental Control Act, Chapter 40, Title 25, Idaho Code. ISDA negotiated the Rules Governing Poultry Operations, IDAPA 02.04.32 to implement the Poultry Environmental Control Act.

Pursuant to Idaho Code Section 25-4010, ISDA may levy a fee of up to \$0.03 per square foot of animal confinement area on each permittee to help fund the poultry inspection and compliance program. At this time, there are two (2) existing poultry facilities. However, pursuant to Idaho Code Section 25-4005, those existing facilities that are exempt from the permit requirement, and therefore, from fees and assessments. These facilities will be required to be permitted if they expand their operations or if they voluntarily apply for a permit. ISDA is still required to inspect these two (2) facilities to ensure compliance with the other regulatory aspects of the Poultry Environmental Act. Therefore, the costs of those inspections will be charged to _____ fund.

Considering the poultry industry in Idaho is in its infancy, it is difficult to predict future costs to implement and run this program. Currently, there is one (1) poultry facility in Idaho that must obtain a permit. It is expected that each facility will require twenty (20) man-hours per year of ISDA employee time to ensure compliance with the law. Twenty man hours translates into an approximate total cost (salary and benefits) of \$750 annually per facility. The facility that must be permitted has approximately 35,000 square feet of confinement space, which means that ISDA may collect up to \$1,050 each year to fund the poultry program. At this time, it is reasonably expected the next three (3) facilities in Idaho will be of similar size. In addition to labor costs, there will be costs such as vehicle maintenance and fuel, office space, office supplies, etc.

If there are additional costs to run this program beyond what the \$0.03 per square foot fee or assessment can accommodate, general fund dollars will need to be used. . Ultimately, the costs to the average Idahoan will

be passed along to them in the marketing and distribution of poultry products and byproducts. The benefit is confidence ISDA is helping ensure the poultry industry is operating in a manner to minimize the environmental impacts to the state.

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.04.32 - RULES GOVERNING POULTRY OPERATIONS
DOCKET NO. 02-0432-1101 (NEW CHAPTER - FEE RULE)
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 25-4012, 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 19, 2011.

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:

House Bill No. 206 was passed and became effective April 6, 2011 upon Governor Otter's signature, establishing the Poultry Environmental Act, Title 25, Chapter 40, Idaho Code. IDAPA 02.04.32, "Rules Governing Poultry Operations," is being proposed after rule negotiation during July and August 2011 and to coincide with the Poultry Environmental Act.

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

A fee is being charged. Section 25-4010, Idaho Code, authorizes the Department to collect a fee up to three cents (\$0.03) per square foot of confinement area to financially support this regulatory oversight program.

IDAHO CODE SECTION 22-101A STATEMENT: The proposed rule is consistent with the legislative directive in House Bill No. 206 (codified at Title 25, Chapter 40, Idaho Code). However, parts of this proposed rule regulate an activity not regulated by the federal government and therefore, Section 22-101A applies.

Section 22-101A(3), Idaho Code, provides that any rule subject to Section 22-101A that proposes a standard necessary to protect human health and the environment must also include additional information in the rulemaking record and in the notice of rulemaking. This additional information includes any estimates of risk accomplished, identification of populations or receptors addressed by any estimates, and other information related to an estimation of risk. The Rules Governing Poultry Operations include facility and design standards which are intended to protect human health and the environment. The standards, however, are for the design and construction of wastewater systems. The rules are not based upon any express estimate or analysis of risk to public health or the environment. Instead, the facility and design standards are based upon guidelines set forth in documents, such as the Natural Resources Conservation Service publications on Nutrient Management Standards and Design and Construction Guidelines for Waste Impoundments (Appendix 10D), and Manure Storage specifications from the American Society of Agricultural and Biological Engineers (ASAE EP393.3). Those documents are generally accepted and used throughout the United States by engineers and state regulators. Additionally, production wells on each permitted poultry facility will be monitored annually and analyzed for nitrogen (e.g., nitrate and/or ammonia) concentration to help the Department identify any negative environmental impacts as soon as possible.

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:

There is no fiscal impact expected; a fiscal impact would only be incurred if the dedicated dollars from the fees collected would not be great enough to cover the program costs.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted during July 2011 and August 2011. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the [July 6, 2011 Idaho Administrative Bulletin, Volume 11-7, page 18](#).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact John Bilderback, Section Manager, Dairy and CAFO Programs, 208-332-8550 or 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 October 26, 2011.

Signed this 31st Day of August, 2011.

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) 332-4062

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0432-1101

IDAPA 02, TITLE 04, CHAPTER 32

02.04.32 - RULES GOVERNING POULTRY OPERATIONS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 25, Chapter 40, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.04.32, "Rules Governing Poultry Operations." ()

02. Scope. These rules govern the design, function and management practices of waste systems on poultry concentrated animal feeding operations. These rules also establish the procedures and requirements for issuance of a permit to construct, operate, or expand poultry concentrated animal feeding operations. The official citation of this Chapter is IDAPA 02.04.32.000 et seq. For example, this section's citation is IDAPA 02.04.32.001. ()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. ()

003. ADMINISTRATIVE APPEAL.

Hearing and appeal rights are set forth in Title 67, Chapter 52, Idaho Code. There is no provision for administrative appeal before the department of Agriculture under these rules. ()

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference and copies of these documents may be obtained from the Idaho State Department of Agriculture central office. ()

01. The 2004 Code of Federal Regulations (CFR) Title 40 Part 122 Section 122.23 (b). This document can be viewed online at http://www.access.gpo.gov/nara/cfr/waisidx_04/40cfrv20_04.html. ()

02. Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (March 2008 Edition) (USDA, NRCS). This document can be viewed online at http://www.idahoag.us/Categories/Environment/Documents/2008_Appendix_10D.PDF. ()

03. Nutrient Management Standard (NMS). The June 2007 publication by the United States Department of Agriculture (USDA) Idaho Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at http://www.idahoag.us/Categories/Environment/nmp/nmpPDF/june_2007_NRCS_590.pdf. ()

04. Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004. This document can be viewed online at http://www.idahoag.us/Categories/Environment/Documents/nrcs_313_Dec_2004.pdf. ()

05. American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004. This document can be viewed online at http://www.agri.idaho.gov/Categories/Environment/Documents/asae_EP393.3_Feb_04.pdf. ()

005. ADDRESS, OFFICE HOURS, TELEPHONE, AND FAX NUMBERS.

01. Physical Address. The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712-0790. ()

02. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. ()

03. Mailing Address. The mailing address for the central office is Idaho State Department of Agriculture, P.O. Box 790, Boise, Idaho 83701. ()

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

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

006. IDAHO PUBLIC RECORDS ACT.

These rules are public records and are available for inspection and copying at the Idaho State Department of Agriculture central office. ()

007. -- 009. (RESERVED)

010. DEFINITIONS.

The definitions set forth in Section 25-4002, Idaho Code, must apply in the interpretation and the enforcement of this chapter. ()

01. Administrator. The administrator, or his designee, for the animal industries division of the Idaho Department of Agriculture. ()

02. Animal Feeding Operation. A lot or facility where the following conditions are met: ()

a. Poultry have been, are, or will be confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period; and ()

b. Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing

season over any portion of the lot or facility. ()

03. Best Management Practices. Practices, techniques or measures which are determined to be reasonable precautions, are a cost-effective and practicable means of preventing or reducing pollutants from point sources or nonpoint sources to a level compatible with environmental goals, including water quality goals and standards for waters of the state. ()

04. Concentrated Animal Feeding Operation. An AFO that is defined as a large poultry CAFO under Subsection 010.10 or as a medium poultry CAFO under Subsection 010.12, or that is designated as a CAFO in accordance with Section 25-4011, Idaho Code. Two (2) or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes. ()

05. Department. The Idaho State Department of Agriculture. ()

06. Director. The Director of the Idaho State Department of Agriculture. ()

07. Discharge. Release of process wastewater or manure from a poultry animal feeding operation, including its land application area, to waters of the state or beyond the poultry facility's property boundaries or beyond the property boundary of any facility. Contract manure haulers, producers and other persons who haul manure beyond the operator's property boundaries are responsible for releases of manure between the property boundaries of the operator and the property boundaries at the point of application. A discharge does not include aerosolized matter, or manure that has been reasonably incorporated on the land application area. ()

08. Land Application. The spreading on, or incorporation of, animal waste into the soil mantle primarily for beneficial purposes. ()

09. Land Application Area. Land under the control of an AFO owner or operator, whether it is owned, rented or leased, to which manure, litter or process wastewater from the production area is or may be applied. ()

10. Large Poultry CAFO. A poultry AFO that confines as many or more than the number of poultry specified in the following categories: ()

a. Fifty-five thousand (55,000) turkeys; ()

b. Thirty thousand (30,000) laying hens or broilers, if the AFO uses a liquid manure handling system; ()

c. One hundred twenty-five thousand (125,000) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system; ()

d. Eighty-two thousand (82,000) laying hens, if the AFO uses other than a liquid manure handling system; ()

e. Thirty thousand (30,000) ducks, if the AFO uses other than a liquid manure handling system; or ()

f. Five thousand (5,000) ducks, if the AFO uses a liquid manure handling system. ()

11. Manure. Animal excrement generated on a poultry animal feeding operation that may also contain bedding, spilled feed, water, or soil. ()

12. Medium Poultry CAFO. A poultry AFO that confines as many or more than the number of poultry specified in the following categories: ()

a. Sixteen thousand five hundred (16,500) to fifty-four thousand nine hundred ninety-nine (54,999) turkeys; ()

b. Nine thousand (9,000) to twenty-nine thousand nine hundred ninety-nine (29,999) laying hens or broilers, if the AFO uses a liquid manure handling system; ()

c. Thirty-seven thousand five hundred (37,500) to one hundred twenty-four thousand nine hundred ninety-nine (124,999) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system. ()

d. Twenty-five thousand (25,000) to eighty-one thousand nine hundred ninety-nine (81,999) laying hens, if the AFO uses other than a liquid manure handling system; ()

e. Ten thousand (10,000) to twenty-nine thousand nine hundred ninety-nine (29,999) ducks, if the AFO uses other than a liquid manure handling system; ()

f. One thousand five hundred (1,500) to four thousand nine hundred ninety-nine (4,999) ducks, if the AFO uses a liquid manure handling system; ()

13. Modification or Modified. Structural changes and alterations to the wastewater storage containment facility, which would require increased storage or containment capacity or such changes which would alter the function of the wastewater storage containment facility. ()

14. Noncompliance. A practice or condition that causes an unauthorized discharge, or a practice or condition, that if left uncorrected will cause an unauthorized discharge, or a condition on the poultry CAFO that does not meet the requirements of the nutrient management standard, nutrient management plan, and 2004 American Society of Agricultural and Biological Engineers (ASABE) construction standard for waste containment systems. ()

15. Nutrient Management Plan. A plan prepared in conformance with the nutrient management standard, provisions required by 40 CFR 122.42(e)(1), or other equally protective standard for managing the amount, source, placement, form and timing of the land application of nutrients and soil amendments. ()

16. Operator. The person who has power or authority to manage, or direct, or has financial control of a poultry animal feeding operation. ()

17. Person. Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state, or federal governmental department, agency or instrumentality, or any legal entity, which is recognized by law as the subject of rights and duties. ()

18. Poultry. Chickens, turkeys, ducks, geese, and any other bird raised in captivity. ()

19. Process Wastewater. ()

a. Water directly or indirectly used in the operation of the AFO for any or all of the following: ()

i. Spillage or overflow from animal or poultry watering systems; ()

ii. Washing, cleaning or flushing pens, barns, manure pits or other AFO facilities; ()

iii. Direct contact swimming, washing, or spray cooling of animals; or ()

iv. Dust control. ()

b. Process wastewater also includes any water which comes into contact with any raw materials, products or byproducts including manure, litter, feed, milk, eggs or bedding. ()

20. Production Area. The part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment area. ()

a. The animal confinement area includes, but is not limited to, open lots, housed lots, feedlots, confinement houses, barnyards and animal walkways. ()

b. The manure storage area includes, but is not limited to, lagoons, runoff pond, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles and composting piles. ()

c. The raw materials storage area includes, but is not limited to, feed silos, silage bunkers and bedding materials. ()

d. The waste containment area includes, but is not limited to, settling basins and areas within berms and diversions which separate uncontaminated storm water. ()

e. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment or disposal of mortalities. ()

21. Runoff. Any precipitation that comes into contact with manure, compost, bedding, or feed on a poultry feeding operation and flows off the production area or flows off land application areas where the manure, compost, bedding, or feed has not been reasonably incorporated into the soil. ()

22. Unauthorized Discharge. A discharge of process wastewater or manure to state surface waters that is not authorized by an NPDES permit, or the release of process wastewater or manure to waters of the state that does not meet the requirements of the Title 25, Chapter 40, Idaho Code, or these rules. ()

23. Wastewater Storage and Containment Facility. That portion of an AFO where manure or process wastewater is stored or collected. This may include corrals, feeding areas, waste collection systems, waste conveyance systems, waste storage ponds, waste treatment lagoons and evaporative ponds. ()

24. Waters of the State. All accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state. ()

011. ABBREVIATIONS.

01. AFO. Animal Feeding Operation. ()

02. ASABE. American Society of Agricultural and Biological Engineers. ()

03. CAFO. Concentrated Animal Feeding Operation. ()

04. DEQ. Department of Environmental Quality. ()

05. FEMA. Federal Emergency Management Agency. ()

06. NMP. Nutrient Management Plan. ()

07. NMS. Nutrient Management Standard. ()

08. NPDES. National Pollutant Discharge Elimination System. ()

09. NRCS. United States Department of Agriculture, Natural Resources Conservation Service. ()

10. USGS. United States Geological Survey. ()

012. -- 099. (RESERVED)

100. PERMIT REQUIRED.

No person may construct, operate, or expand a poultry CAFO after April 6, 2011, without first obtaining a permit issued by the director as provided in these rules. ()

01. Common Control. Two (2) or more poultry CAFOs under common control of the same person may be considered, for purposes of permitting, to be a single facility, even though separately their capacity is less than a large or medium poultry CAFO, if they use a common animal waste system or land application site. ()

02. Existing Poultry Facilities. Poultry operations that existed on or before April 6, 2011, are not required to obtain a permit unless the facility is expanding to the extent that it will meet the definition of a poultry CAFO. Existing poultry facilities must register and submit an NMP in accordance with Section 170 of these rules, and must otherwise comply with these rules. ()

101. -- 109. (RESERVED)

110. PERMIT APPLICATION.

01. Permit Application. Every person required by these rules to obtain a permit must submit a permit application to the department. The permit application will be used to determine if the construction and operation of the poultry CAFO will be in conformance with these rules. ()

02. Contents of Application. Each application must include, in the format set forth by the director and when determined applicable by the director, the information set forth in Section 110 in sufficient detail to allow the director to make necessary application review decisions concerning design and environmental protection. ()

03. Relevant Information. ()

a. Name, mailing address and phone number of the facility owner. ()

b. Name, mailing address and phone number of the facility operator. ()

c. Name and mailing address of the facility. ()

d. Legal description of the facility location. ()

e. The one-time animal capacity, by head, of the facility. ()

f. The type of animals to be confined at the facility. ()

g. The facility's biosecurity and sanitary standards. ()

04. Construction Plans. Plans and specifications for the facility's animal waste management system that include the following information: ()

a. Vicinity map(s) prepared on one (1) or more seven and one-half minute (7.5') USGS topographic quadrangle maps or a high quality reproduction(s) that includes the following: ()

i. Layout of the facility, including buildings and animal waste management system; ()

ii. The one hundred (100) year FEMA flood zones or other appropriate flood data for the facility site and land application sites owned or leased by the applicant; and ()

iii. Private and community domestic water wells, irrigation wells, monitoring wells, and injection wells, irrigation conveyance and drainage structures, wetlands, streams, springs, and reservoirs that are within a one (1) mile radius of the facility. ()

b. A site plan showing: ()

- i. Building locations; ()
- ii. Waste facilities; ()
- iii. All waste conveyance systems; and ()
- iv. All irrigation systems used for land application, including details of approved water supply protection devices. ()
- c. Building plans showing: ()
 - i. All wastewater collection systems in housed units; ()
 - ii. All freshwater supply systems, including details of approved water supply protection devices; ()
 - iii. Detailed drawings of wastewater collection and conveyance systems and containment construction. ()
- d. If a CAFO Site Advisory Team suitability determination was not conducted for the facility, the following additional information must be provided: ()
 - i. Idaho DEQ delineated source water assessment areas within a one (1) mile radius of the facility and land application area; ()
 - ii. Idaho DEQ delineated nitrate priority areas that intersect the facility or land application area; ()
 - iii. Soil characteristics from NRCS; and ()
 - iv. Well logs associated with wells listed in Subsection 110.04.a.iii. ()
- e. All construction plans will specify how the facility will meet the engineering standards outlined in the Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (March 2008 Edition) (USDA, NRCS), Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004, or American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004. ()

05. Nutrient Management Plan. NMPs must be prepared in conformance with the Nutrient Management Standard or other equally protective standard for managing the amount, source, placement, form and timing of the land application of nutrients or soil amendments. ()

06. Other Information. An applicant must provide any other information required by Section 110 as deemed necessary by the director to assess whether the facility poses or will pose a threat to the state's water resources. ()

111. -- 119. (RESERVED)

120. APPLICATION PROCESSING PROCEDURE.

01. Application Completeness. Within thirty (30) days of receipt of an application, the department will provide written notice to the applicant as to whether the application contains all of the information required in Section 110. If the application is incomplete, the department will provide a specific list of the missing information. The application will not be processed until it is deemed complete by the department. ()

02. Application Processing. Within sixty (60) days of receiving a complete application, the department will review the application materials and determine whether the design of the facility is in accordance

with the engineering standards and specifications provided by the NRCS or ASABE. The department will notify the applicant of the results of that review. ()

121. -- 129. (RESERVED)

130. PERMIT CONDITIONS.

The following conditions will apply to all permittees: ()

01. Compliance Required. The permittee must comply with all conditions of the permit. The permit must not relieve the permittee of the responsibility of complying with all applicable local, state, and federal laws. ()

02. Construction, Operation, and Maintenance of the Facility. The permittee must ensure that construction, operation, and maintenance of the facility proceed according to the construction plans and specifications and the approved nutrient management plans, and comply with the following: ()

a. Within thirty (30) days of construction completion, submit as-built construction plans. ()

b. Apply best management practices as approved by the director. ()

c. The facility or operations associated with the facility must not adversely affect waters of the state or create nuisance conditions including odor. ()

d. The removal of animal waste from an impoundment or storage structure must be performed in a manner not to damage the integrity of the liner. ()

e. Dead animals must be handled in accordance with IDAPA 02.04.17, "Rules Governing Dead Animal Movement and Disposal." ()

f. Nutrient management plans must be amended in accordance with IDAPA 02.04.30.000 et seq. "Rules Governing Nutrient Management." ()

g. Soil tests must be conducted annually on all land application sites owned or leased by the permittee to determine compliance with the NMP and NMS. The director may require more frequent soil tests if he deems it necessary. ()

03. Information to be Provided. The permittee must furnish to the director, within a reasonable time, any information which the director may reasonably require to determine whether causes exists to modify or revoke the permit, or to determine compliance with the permit or applicable rules. ()

04. Entry and Access. The permittee must allow the director entry and access in accordance with Section 25-4008, Idaho Code. ()

05. Reporting. Permittees must report discharges or noncompliance issues within the following time frames: ()

a. Within twenty-four (24) hours of the time the permittee knows or should have known of a discharge or unauthorized discharge, the permittee must verbally report the discharge. ()

b. Within five (5) working days from the time a permittee knows or reasonably should have known of any event which has resulted or which may result in noncompliance with these rules, the permittee must file a written report with the director. The report must contain: ()

i. A description of the event and its cause or if the cause is not known, steps taken to investigate and determine the cause; ()

ii. The period of the event including, to the extent possible, times and dates; ()

- iii. Measures taken to mitigate or eliminate the event; and ()
- iv. Steps taken to prevent recurrence of the event. ()
- c. Immediately, whenever the permittee knows or learns or should reasonably know of material relevant acts not submitted or incorrect information submitted in a permit application or any report or notice to the director. ()

06. Construction Commencement. If a permittee fails to begin construction or expansion of a facility within five (5) years of the effective date of the permit, the director may void the permit and require a new permit application. ()

07. Permit Renewal. If a permittee intends to continue operation of the permitted facility after expiration of an existing permit, the permittee must apply for a new permit at least one hundred eighty (180) days prior to the expiration of the permit. ()

08. Specific Permit Conditions. The director may establish specific permit conditions on a case by case basis. Specific conditions will be established in consideration of facility's specific characteristics and will be designed to protect the state's water resources. ()

131. -- 139. (RESERVED)

140. FEES AND ASSESSMENTS.

01. Annual Fees or Assessments. The director may establish annual fees or assessments for each permittee of no more than three cents (\$0.03) per square foot of containment area. ()

02. Payment of Annual Fees or Assessments. The director must notify each permittee with a fee or assessment invoice by December 20th of each calendar year. Annual fees or assessments are due annually by January 20th of the next calendar year. ()

03. Adjustment in Fees or Assessments. The director will provide at least thirty (30) days written notice to each permittee before fees or assessments are increased or decreased. ()

141. -- 149. (RESERVED)

150. PERMIT MODIFICATION.

01. Minor Modifications. Minor permit modifications are those which do not have a potential effect on the state's water resources. Such modifications will be made by the director, and are generally limited to: ()

- a. The correction of typographical or clerical errors; ()
- b. Transfer of ownership or operational control in accordance with Section 160; or ()
- c. Certain minor changes in monitoring or operational conditions. ()

02. Major Modifications. All permit modifications not considered minor will be deemed major. The procedure for making major modifications is the same as that used for a new permit under these rules. ()

151. -- 159. (RESERVED)

160. TRANSFER OF PERMITS.

01. Transfer Application. A new owner or operator of a facility must submit a transfer application to the director that includes at least the following: ()

a. The relevant information required by Subsection 110.03; and ()

b. Any change of conditions at the facility resulting from the ownership or operation transfer. ()

02. Transfer Application Review. The director will review the transfer application and either approve or deny the application within sixty (60) days of its receipt. ()

a. An approved transfer will be considered a minor modification pursuant to Subsection 150.01 as long as there are no major changes of conditions at the facility. Major changes of conditions at the facility are subject to Subsection 150.02. ()

b. If the director denies the transfer application, he will set forth the specific reasons for the denial, the steps necessary to meet the requirements for a permit transfer, and the opportunity to request a hearing. ()

161. -- 169. (RESERVED)

170. REGISTRATION OF EXISTING POULTRY CAFOS.

All large and medium poultry CAFOs in existence on or before April 6, 2011, must register with the department no later than January 1, 2012, upon forms furnished by the department. ()

01. Information Required. The following information must be provided to the department in order to register an existing medium or large poultry CAFO. ()

a. Name, mailing address, phone number and email address (if applicable) of the facility owner; ()

b. Name, mailing address, phone number and email address (if applicable) of the facility operator; ()

c. Physical address of the facility; ()

d. Facility site map; ()

e. Facility capacity; and ()

f. Average poultry population over the twelve (12) months preceding the date the registration information is provided by the operator. ()

02. Nutrient Management Plan. No later than April 6, 2012, existing medium and large poultry CAFOs must submit an NMP, prepared in conformance with the NMS or other equally protective standard for managing the amount, source, placement, form and timing of the land application of nutrients or soil amendments. The NMP must accurately reflect the operation of the facility. ()

03. Permit Allowed. An existing medium or large CAFO may, in the alternative, seek a permit pursuant to Section 110. ()

04. Permit Required. An existing facility must obtain a permit in accordance with Section 110, prior to increasing the one-time animal capacity of the facility by ten percent (10%) or more. ()

05. Ownership Transfer. If an existing poultry CAFO has registered with the department and ownership is subsequently transferred to a new owner, the new owners must apply for and obtain a new permit in accordance with Section 110. ()

171. -- 199. (RESERVED)

200. WASTE STORAGE AND CONTAINMENT FACILITIES.

01. Wastewater Storage and Containment Facilities. All poultry AFOs where process wastewater leaves the confinement area and has the potential to impact water of the state or be in violation of state water quality standards or ground water quality standards must have wastewater storage and containment facilities designed, constructed, operated, and maintained sufficient to contain: ()

a. All process wastewater generated on the facility during the non-land application season; ()

b. The runoff from a twenty-five (25) year, twenty-four (24) hour rainfall event; and ()

c. Either three (3) inches of runoff from the accumulation of winter precipitation or the amount of runoff from the accumulation of precipitation from a one-in-five (1 in 5) year winter. ()

02. All Substances Entering Wastewater Storage and Containment Facilities. All substances entering wastewater storage and containment facilities must be composed of manure and process wastewater from the operation of the poultry AFO. The disposal of any other materials into a wastewater storage and containment facility, including, but not limited to, human waste, is prohibited. ()

03. Waste Storage. Storage areas for poultry waste including compost and solid manure storage areas must be located on approved soils and appropriately protected to prevent run on and run off. ()

04. Waste and Wastewater System Maintenance. Waste and wastewater storage and containment systems must be maintained in a condition that allows the producer to regularly inspect the integrity of the systems. ()

05. Additional Ground Water Protection Requirements. The permittee must construct and maintain all waste containment structures within the parameters of this rule, including the Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (March 2008 Edition) (USDA, NRCS), Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004, or American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004 (see Section 004, Incorporation by Reference). After inspection, if the Department has information that the waste containment structure(s) has been compromised severely enough to no longer meet the requirements of this rule, the Department may require an evaluation to be conducted by a licensed professional engineer. The engineer will make recommendations on steps needed to bring the facility into compliance with this rule. The permittee is responsible for engineering and reconstruction costs. If the permittee has a repeat waste containment compromise, as determined by the department, the Director may require ground water monitoring by the permittee. ()

201. -- 249. (RESERVED)

250. NUTRIENT MANAGEMENT.

Each poultry CAFO must submit an NMP for land owned or controlled by the operator to the director for approval. The NMP must conform to the NMS and address odors generated in excess of odors normally associated with raising poultry in Idaho. ()

01. Existing Poultry CAFOs. Poultry CAFOs that are operating on or before April 6, 2011, must submit an NMP to the director for approval no later than April 6, 2012. ()

02. New Poultry CAFOs. Any poultry CAFO which commences operations after April 6, 2011, must not operate prior to the director's approval of the NMP. ()

03. Designated Poultry CAFOs. Any poultry AFO which is designated as a CAFO by the department in accordance with Section 400 must submit an NMP within forty-five (45) days of designation. ()

04. NMP Approval. The director will respond to or approve an NMP in writing within forty-five (45) days of submission. ()

05. NMP Updates or Amendments. Nutrient management plans must be updated as needed to accurately reflect the facility and its nutrient management system. ()

251. NUTRIENT MANAGEMENT PLAN RETENTION.

All NMPs which have been approved by the department and returned to the CAFO must be maintained on site at the CAFO and available to the department upon request. The department will retain a copy of the NMP. ()

252. NUTRIENT MANAGEMENT RECORDS.

01. Required Nutrient Management Records. The CAFO operator must keep complete and accurate records of: ()

a. Land application records, consisting of, at a minimum: ()

i. The dates, methods and approximate amounts of any manure or process wastewater applied on land owned or controlled by the operator. ()

ii. Weather conditions and soil moisture at the time of application. ()

iii. The lapsed time to manure incorporation, rainfall or irrigation event. ()

iv. Documentation of the actual rate at which nutrients were applied. When the actual rate used differs from the recommended and planned rates, nutrient management records must indicate the rationale for the difference. ()

b. The name and address of any third party receiving manure or process wastewater from the facility, including the dates of the transfer and the amount of manure or process wastewater transferred. ()

c. Nutrient Application. The quantities, analyses and sources of nutrients applied. ()

d. Soil Analysis. Complete soil analysis to create nutrient budget. ()

e. Crops. Crops planted, planting and harvest dates, yields and crop residues removed. ()

f. Record Review. Dates of annual review, person performing the review, and recommendations determined from the review. ()

02. Records Retention. All nutrient management records must be maintained for a period of five (5) years and provided to the department upon request. ()

253. NMP VIOLATIONS.

The failure to implement an approved NMP, failure to retain and maintain an NMP at the CAFO, or failure to retain nutrient management records is a violation of these rules. ()

254. -- 259. (RESERVED)

260. GROUND WATER QUALITY MONITORING.

At least annually, the department will sample and test the facility's production well water for nitrogen. ()

261. -- 299. (RESERVED)

300. PROHIBITED DISCHARGES.

Discharges or unauthorized discharges of manure or process wastewater from poultry CAFO or land application sites owned or controlled by a poultry CAFO are prohibited. ()

301. -- 309. (RESERVED)

310. NOTIFICATION OF DISCHARGE.

Within twenty-four (24) hours of learning of a discharge or unauthorized discharge, the operator of a poultry CAFO must verbally notify the department of the discharge or unauthorized discharge. ()

311. -- 399. (RESERVED)

400. DESIGNATION OF POULTRY CONCENTRATED ANIMAL FEEDING OPERATIONS.

01. Designation of Animal Feeding Operations. The director may designate any poultry AFO as a CAFO if, after inspection, the director determines that the AFO is a significant contributor of pollution to waters of the state. The director will consider the following factors when making a designation: ()

a. The size of the AFO and the amount of manure, process wastewater and runoff reaching waters of the state; ()

b. Location of the AFO relative to waters of the state; ()

c. Means of conveyance of manure, process wastewater, and runoff into waters of the state; ()

d. Slope, vegetation, precipitation and other factors that affect the likelihood or frequency of discharge of manure, process wastewater and runoff into waters of the state; ()

e. Unauthorized discharges into waters of the state through a man-made ditch, flushing system, or other similar man-made device; ()

f. Unauthorized discharges directly into waters of the state that originate outside of and pass over, across or through the facility or otherwise come into contact with the animals confined in the AFO; and ()

g. Repeated instances of noncompliance. ()

02. Effect of Designation. Upon designation, a poultry facility will be required to follow all permit requirements for a medium poultry CAFO. ()

03. Redesignation of a Poultry CAFO. The operator may request that the director redesignate a facility previously designated under Subsection 400.01. The director will redesignate the CAFO only if the facility is no longer a significant contributor of pollution to waters of the state. If granted, the redesignation will be provided to the operator in writing. No fees or assessments paid by the facility after designation will be refunded. ()

401. -- 499. (RESERVED)

500. INSPECTIONS.

Pursuant to Title 25, Chapter 40, Idaho Code, the director or his designee is authorized to inspect any poultry AFO, and to have access to and copy any facility records deemed necessary to ensure compliance with Title 25, Chapter 40, Idaho Code, and these rules. ()

01. Frequency. All poultry CAFOs will be inspected at least annually, or at intervals sufficient to determine that waste has been managed to prevent an unauthorized discharge or contamination of waters of the state. ()

02. Inspection Methods. Inspections may include, but are not limited to, evaluating effectiveness of best management practices, collecting samples, taking photographs, video recording or collecting other information as necessary. ()

03. Inspection Report Forms. An official inspection report form will be completed at the time of the inspection and provided to the operator. ()

501. -- 549. (RESERVED)

550. VIOLATIONS.

01. Failure to Comply. Failure by a permittee to comply with the provisions of these rules or with any permit condition is a violation of these rules. ()

02. Falsification of Statements and Records. It is a violation of these rules for any person to knowingly make a false statement, representation, or certification in any application, report, document, or record developed, maintained, or submitted pursuant to these rules or the conditions of a permit. ()

03. Discharge. Any discharge or unauthorized discharge from a facility is a violation of these rules. ()

551. PENALTIES.

Any person violating any provision of these rules or any permit or order issued thereunder must be liable for a civil penalty in accordance with Section 25-4014, Idaho Code, or a permit revocation in accordance with Section 25-4013, Idaho Code, and Section 552 of these rules. ()

552. PERMIT REVOCATION.

Prior to revoking a permit, the director will issue a notice of intent to revoke, which will become final unless the permittee timely requests, in writing, an administrative hearing. The administrative hearing will be conducted in accordance with Title 67, Chapter 52, Idaho Code. ()

01. Material Violation. The director may revoke a permit for a material violation of any condition of a permit. ()

02. Misrepresentation of Failure to Disclose. If the permit was obtained by misrepresentation or a knowing failure to disclose all relevant facts, the director may revoke a permit. ()

553. -- 999. (RESERVED)