

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 02.01.04 - Rules Governing the Idaho Preferred<sup>&#xae;</sup> Promotion Program (Docket No.  
02-0104-1101);

IDAPA 02.04.18 - Rules Governing the CAFO Site Advisory Team (Docket No. 02-0418-1101);

IDAPA 02.04.30 - Rules Governing Nutrient Management (Docket No. 02-0430-1101);

IDAPA 02.06.02 - Rules Pertaining To The Idaho Commercial Feed Law (Docket No. 02-0602-1101);

IDAPA 02.06.12 - Rules Pertaining To The Idaho Fertilizer Law (Docket No. 02-0612-1101);

IDAPA 02.06.20 - Rules Governing Grape Planting Stock (Docket No. 02-0620-1101);

IDAPA 02.06.30 - Rules Under the Idaho Bee Inspection Law (Docket No. 02-0630-1101);

IDAPA 02.06.41 - Rules Pertaining To The Idaho Soil and Plant Amendment Act of 2001 (Docket  
No. 02-0641-1101).

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 10/19/2011. 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 11/17/2011.

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.



# Legislative Services Office Idaho State Legislature

Jeff Youtz  
Director

*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:** September 29, 2011  
**SUBJECT:** Department of Agriculture

- IDAPA 02.01.04 - Rules Governing the Idaho Preferred® Promotion Program (Docket No. 02-0104-1101)
- IDAPA 02.04.18 - Rules Governing the CAFO Site Advisory Team (Docket No. 02-0418-1101)
- IDAPA 02.04.30 - Rules Governing Nutrient Management (Docket No. 02-0430-1101)
- IDAPA 02.06.02 - Rules Pertaining To The Idaho Commercial Feed Law (Docket No. 02-0602-1101)
- IDAPA 02.06.12 - Rules Pertaining To The Idaho Fertilizer Law (Docket No. 02-0612-1101)
- IDAPA 02.06.20 - Rules Governing Grape Planting Stock (Docket No. 02-0620-1101)
- IDAPA 02.06.30 - Rules Under the Idaho Bee Inspection Law (Docket No. 02-0630-1101)
- IDAPA 02.06.41 - Rules Pertaining To The Idaho Soil and Plant Amendment Act of 2001 (Docket No. 02-0641-1101)

### **1. IDAPA 02.01.04 - Rules Governing the Idaho Preferred® Promotion Program**

The Idaho Department of Agriculture submits notice of proposed rule at IDAPA 02.01.04 - Rules Governing the Idaho Preferred® Promotion Program. According to the Department, the rule provides a product definition and qualification criteria for lumber and processed forest products at the request of the industry. The Department states that informal negotiated rulemaking was conducted with input solicited from the forest products industry through the Idaho Forest Products Commission. The rule appears to be authorized pursuant to Section 22-112, Idaho Code.

### **2. IDAPA 02.04.18 - Rules Governing the CAFO Site Advisory Team**

The Idaho Department of Agriculture submits notice of proposed rule at IDAPA 02.04.18 - Rules Governing the CAFO Site Advisory Team. According to the Department, the purpose of the rule is to carry out the intent of statutory changes made during the 2011 legislative session by HB150aa. The Department states that the rule changes center on incorporating new county CAFO definitions, establishing the application fees for

Mike Nugent Manager  
Research & Legislation

Cathy Holland-Smith, Manager  
Budget & Policy Analysis

Don H. Berg, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

site advisory teams, eliminating the references to animal units and providing consistency in definition among rules.

We contacted the Department to inquire about references to application fees as provided in the notice. The rule changes do not appear to address application fees. The Department confirmed that the notice reference to application fees is not accurate in that the rule changes do not address fees. However, the Committees should be aware that the statutory changes from the 2011 session clearly address application fees and govern in regard to such fees.

The Department notes that the rule does regulate an activity not regulated by the federal government but is consistent with provisions of the Idaho Code. The Department estimates costs associated with implementing and enforcing the rule will be less than \$10,000 annually. Negotiated rulemaking was conducted. The rule appears to be authorized pursuant to Section 67-6529F, Idaho Code.

### **3. IDAPA 02.04.30 - Rules Governing Nutrient Management**

The Idaho Department of Agriculture submits notice of proposed rule at IDAPA 02.04.30 - Rules Governing Nutrient Management. According to the Department, during the 2011 legislative session HB206 was passed and enacted, establishing the Poultry Environmental Act. The Department states that nutrient management rules were amended by rule negotiation to coincide with the act. The Department indicates that specific changes include the addition of a definition for poultry concentrated animal feeding operations and the revision of the rule to incorporate the most current publication (June 2007) by the USDA Idaho Natural Resources Conservation Service Conservation Practice Standard, Nutrient Management Code 590.

The Department notes that the rule does regulate an activity not regulated by the federal government because the federal government does not regulate nutrient management outside of the NPDES permit program. The Department states that the rule is, however, consistent with provisions of the Idaho Code. Negotiated rulemaking was conducted. The rule appears to be authorized pursuant to Section 25-4012, Idaho Code.

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

The Idaho Department of Agriculture submits notice of proposed rule at IDAPA 02.06.02 - Rules Pertaining To The Idaho Commercial Feed Law. According to the Department, the purpose of the rule is to update a date specific document adopted by reference. The Department adds that the Association of American Feed Control Officials (AAFCO) Official Publication is the recognized and primary reference book of approved feed terms and ingredient definitions and policies used by the feed industry and all state and federal feed control officials and regulators.

The Department states that the rule does regulate an activity not already regulated by the federal government because the federal government does not regulate commercial feeds. The Department notes that the rule is, however, consistent with national standards by the Association of American Feed Control Officials.

Negotiated rulemaking was not conducted. The rule appears to be authorized by Section 25-2710, Idaho Code.

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

The Idaho Department of Agriculture submits notice of proposed rule at IDAPA 02.06.12 - Rules Pertaining To The Idaho Fertilizer Law. According to the Department, the purpose of the rule is to update the incorporation by reference section to reflect the 2012 Official Publication of the Association of American Plant Food Control Officials, to add an incorporation by reference of the 2005 Official Methods of Analysis (OMA) of the AOAC, 18th edition, published by the Association of Official Agricultural Chemists (AOAC) International and to change the enforcement guidelines to civil penalties to be more consistent with the Rules Pertaining to the Idaho Feed Law. The Department notes that the publications are recognized and primary reference books of approved fertilizer terms, ingredient definitions and policies used by the fertilizer industry and all state and federal fertilizer control officials and regulators.

The Department states that the rule does regulate an area not regulated by the federal government because the federal government does not regulate commercial fertilizers. The rule, however, is consistent with national standards by the Association of American Plant Food Control Officials.

Negotiated rulemaking was not conducted. The rule appears to be authorized by Section 22-604, Idaho Code.

## **6. IDAPA 02.06.20 - Rules Governing Grape Planting Stock**

The Idaho Department of Agriculture submits notice of proposed rule at IDAPA 02.06.20 - Rules Governing Grape Planting Stock. According to the Department, the purpose of the rule is to update and clarify the requirements for shipping grapevines into Idaho for planting and outlines regulated pests, certifications needed, treatment requirements and penalties. The Department states that the rule does regulate an activity not regulated by the federal government because the federal government does not regulate the interstate movement of grapevines for any of the regulated pests listed in the rule.

Informal negotiated rulemaking was conducted through a committee consisting of stakeholders, including the Idaho Grape Growers and Wine Producers Commission, Idaho Nursery and Landscape Association and the Snake River Table Grape Association. The rule appears to be authorized pursuant to Section 22-2013, Idaho Code.

## **7. IDAPA 02.06.30 - Rules Under the Idaho Bee Inspection Law**

The Idaho Department of Agriculture submits notice of proposed rule at IDAPA 02.06.30 - Rules Under the Idaho Bee Inspection Law. According to the Department, the rule changes are essentially "housekeeping" in nature and include updates to Idaho Code references and updates relating to bee diseases. The Department states that the rule also removes a subsection for which there is no longer statutory authority and adds provisions that are now standard in Idaho's administrative rules, such as office information, legal authority, etc. Negotiated rulemaking was not conducted. The rule appears to be authorized pursuant to Section 22-2511, Idaho Code.

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

The Idaho Department of Agriculture submits notice of proposed rule at IDAPA 02.06.41 - Rules Pertaining To The Idaho Soil and Plant Amendment Act of 2001. According to the Department, the changes update the

incorporation by reference section to reflect the 2012 Official Publication of the Association of American Plant Food Control Officials, adds an incorporation by reference of the 2005 Official Methods of Analysis (OMA) of the AOAC, 18th edition, published by the Association of Official Agricultural Chemists (AOAC) International, removes the subsection regarding PAM (Polyacrylamide) products and amends the labeling requirements to include guaranteed analysis and directions for use. The Department also notes that the publications are recognized and primary reference books of approved fertilizer terms, ingredient definitions and policies used by the fertilizer and soil and plant amendment industry and all state and federal fertilizer and soil and plant amendment control officials and regulators.

Negotiated rulemaking was not conducted. The rule appears to be authorized by Section 22-2204, Idaho Code.

cc: Department of Agriculture

Brian Oakey  
Leah Clark  
John Bilderback  
Lloyd Knight  
Michael Cooper

## IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

### 02.01.04 - RULES GOVERNING THE IDAHO PREFERRED® PROMOTION PROGRAM

DOCKET NO. 02-0104-1101

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-112, 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:

There are currently no product qualifications in the Rules Governing the Idaho Preferred® program specific to forest products. This rule will create product definition and qualification criteria for lumber and further processed forest products at the request of industry.

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

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

**NEGOTIATED RULEMAKING:** Informal negotiated rulemaking was conducted. Input was solicited from the forest products industry through the Idaho Forest Products Commission.

**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 Leah Clark, Trade Specialist, at (208) 332-8684.

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 Oakey, Deputy Director  
Idaho State Dept 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 OF DOCKET NO. 02-0104-1101

**010. DEFINITIONS.**

The following definitions shall apply in the interpretation and enforcement of this chapter. (3-16-04)

**01. Agricultural Product.** Any fresh or processed apicultural, aquacultural, avicultural, beverage, cervidae, dairy, horticultural, livestock, forestry, viticultural, or other farm or garden product. (3-16-04)

**02. Apicultural Product.** Products produced from or related to honey bees or honey. (3-16-04)

**03. Aquacultural Product.** Products produced from or related to fish, reptiles, or other aquatic animals. (3-16-04)

**04. Avicultural Product.** Products produced from or related to birds, including but not limited to, ratites or poultry. (3-16-04)

**05. Beverage.** Drinks including but not limited to wine, beer, distilled spirits, bottled water, or flavored drinks. (3-16-04)

**06. Broker.** A sales and marketing agent employed to make bargains and contracts for compensation. (3-16-04)

**07. Cervidae Product.** Products produced from or related to fallow deer, elk, or reindeer owned by a person. (3-16-04)

**08. Dairy Product.** Products produced from or related to milk from cattle, goats, or sheep. (3-16-04)

**09. Department.** The Idaho State Department of Agriculture. (3-16-04)

**10. Director.** The Director of the Idaho State Department of Agriculture or his designated agent. (3-16-04)

**11. Florist Stock.** All cut flowers, foliage and ferns, all potted plants or cuttings or bedding plants, and all flowering bulbs and rooted herbaceous plants used for ornamental or decorative purposes and all corms, whether grown in boxes, benches, pots, under glass or other artificial covering, or in the field or open ground or cuttings therefrom. (3-16-04)

**12. Foodservice.** A person engaged in or related to the practice of commercial food preparation and service. (3-16-04)

**13. Forest Products.** All products made of wood fiber such as timber, wood chips, sawdust or shavings, including but not limited to lumber, paper, particleboard, fence or corral posts or rails, shingles, shakes, firewood or pellets, logs used in the construction of log homes or any other product sold commercially. ( )

**134. Fresh Produce, Commodities, and Fresh Meat.** Bulk or packaged agricultural products that have been cleaned, sorted, or otherwise prepared and are sold or distributed in an unprocessed or minimally processed condition. (3-16-04)

**145. Horticultural Products.** Plants, including but not limited to, fruits, vegetables, flowers, seeds, or ornamental plants. (3-16-04)

**156. Livestock.** Domestic animals including but not limited to cattle, sheep, pigs, goats, domestic cervidae, domestic bison, camelids, or horses. (3-16-04)

**167. Livestock Product.** Products produced from or related to livestock. (3-16-04)

**178. Non-Food Agricultural Products.** Products not intended for human consumption, including but not limited to, animal feed, compost, hides, or skins. (3-16-04)

**189. Supporting Organization.** Any commission, association, or incorporated group supporting the efforts of the Idaho Preferred® program. (3-30-07)

**190. Nursery Stock.** All botanically classified plants or any part thereof, such as aquatic or herbaceous plants, bulbs, sod, buds, corms, culms, roots, scions, grafts, cuttings, fruit pits, seeds of fruits, forest and ornamental trees, and shrubs, berry plants, and all trees, shrubs, vines, and plants collected in the wild that are grown or kept for propagation or sale. Nursery stock does not include field and forage crops, seeds of grasses, cereal grains, vegetable crops and flowers, bulbs and tubers of vegetable crops, vegetables or fruit used for food or feed, cut trees or cut flowers unless stems or other portions thereof are intended for propagation. (3-16-04)

**201. Packer/Shipper.** A person who packages and ships food or agricultural products to wholesalers, retailers, and other outlets. (3-16-04)

**212. Participant.** A person who has applied to the Department and been approved for participation in the Idaho Preferred® program. (3-30-07)

**223. Person.** An individual, firm, partnership, corporation, commission, association, cooperative, business, governmental subdivision or agency, or other business entity. (3-16-04)

**234. Processed Food.** Any food product which has been transformed from its natural state by methods including but not limited to freezing, cutting, heating, drying, treating, or adding ingredients. (3-16-04)

**245. Processor.** A person engaged in the manufacturing of processed food. (3-16-04)

**256. Producer.** A person engaged in the business of growing or raising food, fiber, feed, or other agricultural products. (3-16-04)

**267. Retailer.** A person engaged in making sales directly to consumers. (3-16-04)

**278. Viticultural Products.** Products produced from or related to grapes and wine. (3-16-04)

**289. Wholesaler.** A person who buys in comparatively large quantities and then resells, usually in smaller quantities, but never directly to the consumer. (3-16-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. PRODUCT QUALIFICATION.**

**01. Authority of Determination.** The Director shall have the sole authority in determining the eligibility of a product for participation in the program. (3-16-04)

**02. General Product Qualifications.** Except as specified in this chapter, or by written order of the Director, products must meet or exceed the following criteria: (3-16-04)

**a.** Fresh produce and commodities bearing the Idaho Preferred® logo shall be one hundred percent (100%) Idaho grown or raised. (4-2-08)

**b.** Processed foods and beverages shall contain a minimum of twenty percent (20%) agricultural content by weight that has been grown or raised in Idaho and shall be processed in the state of Idaho. (4-2-08)

**c.** Non-food agricultural products must be at least twenty percent (20%) agricultural content by weight that has been grown or raised in Idaho and processing must occur in Idaho. (4-7-11)



**03. Potatoes.** Only certification marks owned or administered by the Idaho Potato Commission may be branded on potatoes grown in Idaho unless prior Idaho Potato Commission approval in writing is secured and granted for the use of additional words or designs. Any person or participant applying to the Idaho Preferred® program, with the intention to promote Idaho-grown potatoes or products made from Idaho-grown potatoes, shall provide proof of such permission prior to making application with the Department. (3-30-07)

**04. Wine.** Wines shall contain a minimum of ninety-five percent (95%) Idaho grapes. (4-6-05)

**05. Nursery Stock.** Nursery stock shall have been grown in Idaho a minimum of one (1) growing season or growing cycle. (4-6-05)

**06. Beef and Beef Products.** Beef and beef products shall come from cattle that: (4-6-05)

**a.** Were born, raised and harvested in the United States. No cattle that originate from outside the United States may qualify for the Idaho Preferred® logo. (3-30-07)

**b.** Reside in Idaho at least twelve (12) months prior to harvest. The twelve (12) months need not be contiguous, but must be verifiable. (4-6-05)

**c.** Reside their entire lives in Idaho if harvested prior to twelve (12) months of age. (4-6-05)

**d.** Are processed in federally inspected plants and meet marbling and age requirements for USDA grade Select or better. (4-6-05)

**07. Lamb and Lamb Products.** Lamb and lamb products shall come from sheep that: (5-8-09)

**a.** Are born, raised and harvested in the United States. No lambs that originate from, or reside for any portion of their life outside the United States may qualify for the Idaho Preferred® logo. (5-8-09)

**b.** Have grazed or been fed in Idaho at least three (3) months prior to harvest. The three (3) months need not be contiguous, but must be verifiable. (5-8-09)

**c.** Are processed at approximately one (1) year of age or less and qualify as lamb or carcasses from older animals, identified as mutton by USDA inspectors, may qualify if they have met requirements in Subsection 200.07.b. (5-8-09)

**08. Pork and Pork Products.** Pork and pork products shall come from hogs that: (5-8-09)

**a.** Are born, raised and harvested in the United States. No hogs that originate from, or reside for any portion of their life outside the United States may qualify for the Idaho Preferred® logo. (5-8-09)

**b.** Are raised in or processed in Idaho. (5-8-09)

**c.** Are processed at less than one (1) year of age unless used exclusively for ground pork or sausage products, and are processed in a federally inspected plant. (4-7-11)

**09. Poultry and Poultry Products.** Poultry and poultry products shall come from fowl that: (5-8-09)

**a.** Are hatched, raised and harvested in the United States. No fowl that originate from, or reside for any portion of their life outside the United States may qualify for the Idaho Preferred® logo. (5-8-09)

**b.** Are raised and processed in Idaho. Fertile eggs, also known as hatching eggs, or chicks less than three (3) days of age that originate outside of Idaho, but are raised and processed in Idaho, may qualify for Idaho Preferred®. (5-8-09)

**c.** Are processed in a facility that is approved through a District Health Department for retail sales, or in a federally inspected plant. (5-8-09)

- 10. Game Meat.** Game meat shall: (5-8-09)
- a.** Come from domestic elk that are born, raised and processed in Idaho and originate from a facility licensed by the Idaho State Department of Agriculture. (5-8-09)
  - b.** Come from domestic buffalo that are born, raised and processed in Idaho. (5-8-09)
  - c.** Be processed in a federally inspected plant. (5-8-09)
- 11. Apicultural Products.** Products produced by honey bees including raw honey, wax, pollen, and propolis shall be one hundred percent (100%) Idaho origin. Processed honey shall be eighty percent (80%) Idaho origin. (4-6-05)
- 12. Forest Products.** Forest products shall contain a minimum of eighty percent (80%) of their wood fiber content from trees grown in Idaho and shall be manufactured in Idaho. ( )
- 123. Exceptions.** The Director shall have the authority to establish product qualification requirements specific to individual products and commodities by written order. (3-16-04)

**IDAPA 02 - DEPARTMENT OF AGRICULTURE**  
**02.04.18 - RULES GOVERNING THE CAFO SITE ADVISORY TEAM**  
**DOCKET NO. 02-0418-1101**  
**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 67-6529F(4), 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. 150aa was passed and effective April 5, 2011, upon Governor Otter's signature amending Title 67, Chapter 65, Idaho Code. The ISDA has undertaken negotiated rulemaking to carry out the intent of the statutory amendments. The rule amendments center on incorporating new county CAFO definitions, establishing the application fees for the CAFO Site Advisory Team, eliminating the references to animal units, and providing consistency in definition among rules.

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

No fee is associated with this proposed rule.

**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 CAFO siting. However, the proposed rule is consistent with the legislative directive in House Bill No. 150aa (codified at Sections 67-6529C and 67-6529E, 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 less than \$10,000 annually to implement and enforce this rule.

**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 16](#).

**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](mailto:john.bilderback@agri.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

Signed 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 DOCKET NUMBER 02-0418-1101

**004. INCORPORATION BY REFERENCE.**

The following documents are incorporated by reference, and copies of the documents may be obtained from the Idaho State Department of Agriculture central office at 2270 Old Penitentiary Road, Boise, Idaho, 83712 or accessed online. ( )

**01. Nutrient Management Standard (NMS).** ( )

**a.** The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service, (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590, ~~is incorporated by reference and a copy may be obtained from the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701 or accessed~~ This document can be viewed online at [http://www.agri.idaho.gov/Categories/Animals/Documents/nutrient\\_Management\\_code\\_590.PDF](http://www.agri.idaho.gov/Categories/Animals/Documents/nutrient_Management_code_590.PDF). (3-15-02)( )

**b.** The 2007 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at [http://www.agri.idaho.gov/Categories/Environment/nmp/nmpPDF/june\\_2007\\_NRCS\\_590.pdf](http://www.agri.idaho.gov/Categories/Environment/nmp/nmpPDF/june_2007_NRCS_590.pdf). ( )

(BREAK IN CONTINUITY OF SECTIONS)

**010. DEFINITIONS.**

The following definitions shall apply in the interpretation and enforcement of this chapter. (3-15-02)

~~**01. Animal Unit.** A unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by one (1), plus the number of young slaughter or feeder cattle, less than twelve (12) months of age multiplied by six tenths (0.6), plus the number of mature dairy cattle multiplied by one and four tenths (1.4), plus the number of young dairy cattle less than one (1) year of age, multiplied by six tenths (0.6), plus the number of swine weighing over twenty five (25) kilograms, approximately fifty five (55) pounds, multiplied by four tenths (0.4), plus the number of weaned swine weighing less than twenty five (25) kilograms multiplied by one tenth (0.1), plus the number of sheep multiplied by one tenth (0.1), plus the number of horses multiplied by two (2), plus the number of chickens multiplied by one hundredth (0.01).~~ (3-15-02)

**021. Best Management Practices.** Practices, techniques, or measures that are determined by the Department to be a cost-effective and practicable means of preventing or reducing pollutants from point or non-point sources from entering waters of the state and managing odor generated on an agriculture operation to a level associated with accepted agriculture practices. (3-15-02)( )

**032. CAFO Site Advisory Team.** Representatives of the Idaho State Department of Agriculture, Idaho Department of Environmental Quality, and Idaho Department of Water Resources, with the Idaho State Department of Agriculture as the team lead, who review a site proposed for a CAFO, determine environmental risks, and submit a site suitability determination to the county that has requested the determination. (3-15-02)

**043. Concentrated Animal Feeding Operation (CAFO).** For those counties that have requested a site suitability determination, a CAFO is as defined in the applicable ordinance of the county where the CAFO is located. If the requesting county has not defined CAFO in its ordinances, CAFO means A lot or facility where the following conditions are met: (3-15-02)( )

**a.** Animals have been, are, or will be stabled or confined and fed or maintained for a total of ninety

(90) consecutive days or more in any twelve (12) month period; (3-15-02)

**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; (3-15-02)

**c.** The lot or facility is designed to confine or actually does confine ~~an equivalent of one thousand (1,000) animal units or more; and~~ as many as or more than the numbers of animals specified in any of the following categories: (3-15-02)(    )

**i.** Seven hundred (700) mature dairy cows, whether milked or dry; (    )

**ii.** One thousand (1,000) veal calves; (    )

**iii.** One thousand (1,000) cattle other than mature dairy cows or veal calves; (    )

**iv.** Two thousand five hundred (2,500) swine each weighing fifty-five (55) pounds or more; (    )

**v.** Ten thousand (10,000) swine each weighing less than fifty-five (55) pounds; (    )

**vi.** Five hundred (500) horses; (    )

**vii.** Ten thousand (10,000) sheep or lambs; or (    )

**viii.** Eighty-two thousand (82,000) chickens; and (    )

**d.** Two (2) or more concentrated animal feeding operations under common ownership are considered, for the purposes of this definition, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes. (3-15-02)

~~054.~~ **Department.** The Idaho State Department of Agriculture. (3-15-02)

~~065.~~ **Director.** The Director of the Idaho State Department of Agriculture or his designee. (3-15-02)(    )

~~076.~~ **Environmental Risk.** That risk to the environment deemed posed by a proposed CAFO site, as determined and categorized by the CAFO site advisory team and set forth in the site advisory team's suitability determination report. (3-15-02)

~~087.~~ **Land Application.** The spreading on, or incorporation into the soil of agricultural by-products such as manure, process wastewater, compost, cull potatoes, cull onions, or crop residues into the soil primarily for beneficial purposes. (3-15-02)(    )

~~098.~~ **Nutrient Management Plan.** A plan prepared in conformance with the nutrient management standard. (3-15-02)

~~409.~~ **Nutrient Management Standard.** For dairies and beef cattle animal feeding operations, ~~the~~ 1999 publication by the United States Department of Agriculture Natural Resources Conservation Service, Conservation Practice Standard, Nutrient Management Code 590, or other equally protective standard approved by the Director. For poultry concentrated animal feeding operations, the 2007 publication by the United States Department of Agriculture Natural Resources Conservation Practice Standard, Nutrient Management Code 590, or other equally protective standard approved by the Director. (3-15-02)(    )

~~140.~~ **Odor Management Plan.** A site-specific plan approved by the Director to manage odor from a CAFO to a level associated with accepted agricultural practices by utilizing best management practices. (3-15-02)

~~121.~~ **Person.** Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, private corporation, or any legal entity, which is recognized by law as the subject of

rights and duties. (3-15-02)

**132. Suitability Determination.** The document created and submitted by the CAFO site advisory team, after review and analysis of a proposed CAFO site and information provided subsequent to Section 300 of these rules, that identifies the environmental risk categories related to a proposed CAFO site, describes the factors that contribute to the environmental risks, and sets forth any possible mitigation of risk. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. APPLICABILITY.**

**01. Site for a Proposed CAFO.** A CAFO site advisory team shall review and make a site suitability determination for all proposed CAFO sites, as defined in these rules, submitted by a board of county commissioners pursuant to these rules. (3-15-02)

**02. Sites That Do not Meet the Definition of a CAFO.** The Director may form a CAFO site advisory team, as requested by a board of county commissioners, for a site that does not meet the animal ~~###~~ numbers in the definition of a CAFO provided that: (3-15-02)( )

**a.** The county demonstrates that the site is in an environmentally sensitive area or is in close proximity to streams, lakes, or other bodies of surface water; or (3-15-02)

**b.** The state agencies have personnel and other resources available to conduct the site suitability determination. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. CONTENTS OF A REQUEST TO FORM A SITE ADVISORY TEAM.**

The information contained in a request shall include, but not be limited to, the following: (3-15-02)

**01. County Definition of CAFO.** The county's definition of "CAFO" as set forth in any applicable county ordinance. ( )

**042. Legal Description and Address.** Legal description and address of the proposed CAFO. (3-15-02)

**023. One-Time Unit Capacity.** The one-time animal ~~###~~ capacity of the proposed CAFO. (3-15-02)( )

**034. Type of Animals.** The type of animals to be confined at the proposed CAFO. (3-15-02)

**045. Water Right Information.** All requests shall include one (1) of the following: (3-15-02)

**a.** Evidence that a valid water right exists to supply adequate water for the operation of the proposed CAFO; or (3-15-02)

**b.** A copy of an application for a permit to appropriate water that has been filed with IDWR, which if approved, will supply adequate water for operation of the proposed CAFO; or (3-15-02)

**c.** A copy of an application to change the point of diversion, place, period, and nature of use of an existing water right that has been filed with IDWR, which if approved, will supply adequate water for the operation of the proposed CAFO. (3-15-02)

**056. Vicinity Map with Site Location.** A detailed sketch of the proposed CAFO site location, on an aerial photograph if available, which includes the following: (3-15-02)

- a. Building locations; (3-15-02)
- b. Waste storage facilities and general areas for any land application including a narrative description of the waste system; (3-15-02)
- c. FEMA flood zones or other appropriate flood data for the proposed CAFO site and land application sites owned or leased by the applicant; (3-15-02)
- d. Private and community domestic water wells, irrigation wells, existing monitoring wells, and existing injection wells as documented by IDWR or other sources, including the associated well logs if available, which are within a one (1) mile radius of the proposed CAFO; (~~3-15-02~~)( )
- e. Irrigation canals, irrigation laterals, rivers, streams, springs, lakes, reservoirs, and designated wetlands, which are within a one (1) mile radius of the proposed CAFO. (3-15-02)

**067. Site Characterization.** A characterization of the proposed CAFO site and any land application sites owned or leased by the applicant, which includes the following information, if available: (3-15-02)

- a. Annual precipitation and prevailing wind direction as contained in the Idaho Waste Management Guidelines, 1997; (3-15-02)
- b. Soil characteristics from NRCS; (3-15-02)
- c. Hydrologic characteristics from IDWR and USGS including: (3-15-02)
  - i. Depth to first water yielding zone and first encountered water; (3-15-02)
  - ii. Direction of ground water movement and gradient; (3-15-02)
  - iii. Sources and estimates of recharge; (3-15-02)
  - iv. Seasonal variations in water level and recharge characteristics; (3-15-02)
  - v. Susceptibility to contamination; and (3-15-02)
  - vi. Relation of ground water to surface water. (3-15-02)
- d. Water quality data from DEQ, the Department, ~~and~~ IDWR, or USGS, including: (~~3-15-02~~)( )
  - i. Microorganisms; (3-15-02)
  - ii. Nutrients; and (3-15-02)
  - iii. Pharmaceuticals and organic compounds. (3-15-02)

**078. Required OMPs or NMPs.** Any OMPs or NMPs that are required by the county to be submitted by the applicant at the time of application. (3-15-02)

**IDAPA 02 - DEPARTMENT OF AGRICULTURE**  
**02.04.30 - RULES GOVERNING NUTRIENT MANAGEMENT**

**DOCKET NO. 02-0430-1101**

**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 effective April 6, 2011, upon Governor Otter's signature establishing the Poultry Environmental Act, Title 25, Chapter 40, Idaho Code. IDAPA 02.04.30, Rules Governing Nutrient Management, were amended by rule negotiation to coincide with the Poultry Environmental Act. Specific changes include adding the definition of poultry concentrated animal feeding operations and revising the rule to incorporate the most current publication (June 2007) by the United States Department of Agriculture Idaho Natural Resources Conservation Service Conservation Practice Standard, Nutrient Management Code 590.

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

**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 nutrient management outside of the NPDES permit program. However, the proposed rule is consistent with the legislative directive in House Bill No. 206 (codified at Title 25, Chapter 40, 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 less than \$10,000 annually to implement and enforce this rule.

**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 17](#).

**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](mailto:john.bilderback@agri.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

Signed 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 DOCKET NUMBER 02-0430-1101

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Title 37, Chapter 4, ~~and~~ Title 22, Chapters 1 and 49, and Title 25, Chapter 40, Idaho Code. (4-2-08)( )

(BREAK IN CONTINUITY OF SECTIONS)

**004. INCORPORATION BY REFERENCE.**

The following documents are incorporated by reference, and copies of the documents may be obtained from the Idaho State Department of Agriculture central office at 2270 Old Penitentiary Road, Boise, Idaho, 83712 or accessed online. ( )

**01.** ~~The~~ August 1997 University of Idaho, Soil Sampling Bulletin 704 (revised), ~~is hereby incorporated by reference and~~ This document can be viewed online at <http://www.cals.uidaho.edu/edComm/pdf/EXT/EXT0704.pdf>. (4-2-08)( )

**02. Nutrient Management Standard (NMS).** ( )

**a.** The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at [http://www.agri.idaho.gov/Categories/Animals/Documents/nutrient Management code 590.PDF](http://www.agri.idaho.gov/Categories/Animals/Documents/nutrient%20Management%20code%20590.PDF). ( )

**b.** The 2007 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at [http://www.agri.idaho.gov/Categories/Environment/nmp/nmpPDF/june 2007 NRCS 590.pdf](http://www.agri.idaho.gov/Categories/Environment/nmp/nmpPDF/june%202007%20NRCS%20590.pdf). ( )

(BREAK IN CONTINUITY OF SECTIONS)

**010. DEFINITIONS.**

The following definitions shall apply in the interpretation and enforcement of this chapter: (4-2-08)

**01. Certified Soil Sampler.** A person who has completed a Department approved soil sampler certification program and has received written certification from the Department. (4-2-08)

**02. Department.** The Idaho State Department of Agriculture. (4-2-08)

**03. Director.** The Director of the Idaho State Department of Agriculture or his designee. (4-2-08)( )

**04. Nutrient Management Plan.** A plan prepared in conformance with the Nutrient Management Standard for managing the amount, source, placement, form, and timing of the land application of nutrients and soil amendments for plant production. (4-2-08)

**05. Nutrient Management Standard.** For dairies and beef cattle animal feeding operations, the Nutrient Management Standard is ~~the~~ the 1999 publication by the United States Department of Agriculture Natural Resources Conservation Service Conservation Practice Standard, Nutrient Management Code 590 ~~available online at~~

<http://www.idahoag.us/Categories/Environment/nmp/nmpPDF/NRCS%20Standards%206-99.pdf> or other standard approved by the Department director. For poultry concentrated animal feeding operations, the Nutrient Management Standard is the 2007 publication by the United States Department of Agriculture Natural Resources Conservation Service Conservation Practice Standard, Nutrient Management Code 590 or other standard approved by the director. (4-2-08)( )

**06. Person.** Any individual, partnership, association, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, ~~or any organized group of persons whether incorporated or not~~ state or federal governmental department, agency, or instrumentality, or any legal entity, that is recognized by law as the subject of rights and duties. (4-2-08)( )

**07. Operation(s).** Animal feeding operation(s). ( )

**078. Representative Soil Sample.** A representative soil sample is a soil sample obtained as outlined by the August 1997 University of Idaho, Soil Sampling Bulletin 704 (revised) or other equivalent method as approved by the Department. (4-2-08)

**089. Resource Concerns.** Surface water runoff that leaves the operation from normal storm events, rain or snow, frozen ground or irrigation; and ground water concerns on the operation from a high water table, fractured bedrock, cobbles, gravel, coarse textured soils or other environmental considerations such as tile drains or shallow soils that are conducive for the downward movement of water and associated nutrients. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

**020. APPLICABILITY.**

These rules apply to nutrient management on the following cattle operations: (4-2-08)( )

**01. Dairies.** All Manufactured Grade and Grade A dairies located in Idaho licensed to sell milk for human consumption. (4-2-08)( )

**02. Beef Cattle Animal Feeding Operations.** All beef cattle animal feeding operations in Idaho required to implement a NMP pursuant to IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations." (4-2-08)

**03. Poultry Concentrated Animal Feeding Operations.** All poultry operations required to implement an NMP pursuant to Title 25, Chapter 40, Idaho Code. ( )

**021. -- 099. (RESERVED)**

**100. NUTRIENT MANAGEMENT PLANS.**

All NMPs required by IDAPA 02.04.14, "Rules of the Department of Agriculture Governing Dairy Waste," ~~and~~ IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," and IDAPA 02.04.32, "Rules Governing Poultry Operations." must be written by nutrient management planners who have been certified by the Department. (4-2-08)( )

(BREAK IN CONTINUITY OF SECTIONS)

**200. SOIL SAMPLES.**

The owners or operators of all dairies, ~~and~~ beef cattle operations, and poultry operations required to implement nutrient management plans pursuant to IDAPA 02.04.14, "Rules of the Department of Agriculture Governing Dairy Waste," ~~and~~ IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," and IDAPA 02.04.32, "Rules Governing Poultry Operations." must have soil samples collected each year from all fields owned or operated

by the dairy, ~~or~~ beef, or poultry operation to which livestock waste, manure, or process wastewater from the operation was land applied. In addition, a poultry operation must have soil samples collected each year from all fields owned or operated by the poultry operation to which soil amendments from the operation were land applied. (4-2-08)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**300. APPROVED LABORATORIES.**

Only laboratories that hold a current valid certification from the North American Laboratory Proficiency Testing Program or equivalent method approved by the Department are approved laboratories for the purposes of this chapter. (4-2-08)(    )

**301. -- 399. (RESERVED)**

**400. RECORDS OF NUTRIENT ANALYSIS.**

Owners or operators of facilities who are required to implement NMPs pursuant to IDAPA 02.04.14, "Rules *of the Department of Agriculture* Governing Dairy Waste," *and* IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," and IDAPA 02.04.32, "Rules Governing Poultry Operations." must retain records of nutrient analysis for a minimum of five (5) years. (4-2-08)(    )

**01. Complete Records.** Records must be complete, readily available, and identified to the fields listed in the facility's NMP. (4-2-08)

**02. Available to the Director.** Records must be made available to the director for inspection and copying upon request. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**990. PENALTIES.**

Any person violating any of the provisions of this Chapter may be subject to the penalty provisions of Title 22, Chapter 1 and 49, ~~and~~ Title 37, Chapter 4, and Title 25, Chapter 40, Idaho Code. (4-2-08)(    )

**01. Monetary Penalties.** The imposition or computation of monetary penalties shall take into account the seriousness of the violation, good faith efforts to comply with the law, the economic impact of the penalty on the violator and such other matters as justice requires. (4-2-08)

**02. Minor Violations.** The Director may issue suitable warnings or other administrative actions for minor violations. (4-2-08)

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

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

DOCKET NO. 02-0602-1101

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5220(2), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 25-2710, Idaho Code.

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

To update a date specific document adopted by reference.

**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 commercial feeds. The rule is, however, consistent with national standards by the Association of American Feed Control Officials.

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

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

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

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

The Association of American Feed Control Officials (AAFCO) Official Publication is the recognized and primary reference book of approved feed terms and ingredient definitions and policies used by the feed industry and all state and Federal feed control officials and regulators.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 16th day of August, 2011.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Rd  
P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8503  
Fax: (208) 334-2170

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0602-1101**

**004. INCORPORATION BY REFERENCE.**

Copies of these documents may be viewed at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.02 incorporates by reference: (3-30-07)

**01. The Association of American Feed Control Officials (AAFCO) Official Publication.** The Terms, Ingredient Definitions and Policies as published in the “201~~7~~<sup>2</sup> Official Publication” of AAFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 25, Chapter 27, Idaho Code, and any rule promulgated thereunder. The AAFCO Official Publication is a copyrighted publication and not available in electronic format. A copy may be purchased online from the AAFCO website at: [www.aafco.org](http://www.aafco.org). (~~4-7-11~~) ( )

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

**IDAPA 02 - DEPARTMENT OF AGRICULTURE**  
**02.06.12 - RULES PERTAINING TO THE IDAHO FERTILIZER LAW**  
**DOCKET NO. 02-0612-1101**  
**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5220(2), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-604, Idaho Code.

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

Update the incorporation by reference section to reflect the 2012 Official Publication of the Association of American Plant Food Control Officials; add an incorporation by reference of the "2005 Official Methods of Analysis (OMA) of the AOAC," 18th Edition, published by the Association of Official Agricultural Chemists (AOAC) International; and Change the Enforcement Guidelines to Civil Penalties to be more consistent with IDAPA 02.06.02, "Rules Pertaining to the Idaho Feed Law."

**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 commercial fertilizers. The rule is, however, consistent with national standards by the Association of American Plant Food Control Officials.

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

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

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

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

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 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 DOCKET NO. 02-0612-1101

**004. INCORPORATION BY REFERENCE.**

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

**01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication.** The Terms, Ingredient Definitions, and Policies, as published in the “2014~~2~~ Official Publication” of AAPFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 22, Chapter 6, Idaho Code, and any rule promulgated thereunder. The AAPFCO Official Publication is a copyrighted publication and not available in electronic format. A copy may be purchased online from the AAPFCO website at: [http://www.aapfco.org/publication\\_order\\_form.pdf](http://www.aapfco.org/publication_order_form.pdf). ~~(4-7-11)~~( )

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

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

(BREAK IN CONTINUITY OF SECTIONS)

**090. ENFORCEMENT GUIDELINES CIVIL PENALTIES.**

**01. Civil Penalties.** In addition to any other penalty provided by law, the Director may assess civil penalties for violations of Title 22, Chapter 6, Idaho Code. Civil penalties will be issued in accordance ~~to the magnitude of the violation~~ with a penalty matrix established by a department guidance document. The department is not precluded from utilizing other enforcement alternatives. Enforcement alternatives may include, but are not limited to, letter of advisement, notice of violation, stop sale, use or removal order, and registration revocation, suspension or denial. ~~Prohibited acts are categorized as to the magnitude of violation as follows:~~ (4-6-05)( )

**a. Category I (Major).** ~~The Director may issue a civil penalty for initial Category I violations in addition to any alternative enforcement action deemed necessary to protect the public interests. Category I violations include but are not limited to the following:~~ (4-6-05)

**i.** ~~Register or attempt to register any fertilizer using fraudulent or deceptive practices to evade or attempt to evade the requirements set forth under Title 22, Chapter 6, Idaho Code, or rules adopted thereunder;~~ (4-6-05)

**ii.** ~~Submit false or fraudulent registration applications, records, invoices or reports;~~ (4-6-05)

**iii.** ~~Sell, use or remove any fertilizer subject to a Stop Sale, Use or Removal Order until the fertilizer has been released in accordance with the provisions of Title 22, Chapter 6, Idaho Code.~~ (4-6-05)

**iv.** ~~Impede, obstruct, hinder or otherwise prevent or attempt to prevent the department from the performance of its duties under Title 22, Chapter 6, Idaho Code.~~ (4-6-05)

**b. Category II (Moderate).** ~~The Director may take initial alternative enforcement action and may~~

~~allow a specified amount of time to take corrective action prior to issuance of a civil penalty for a Category II violation. Failure to complete the required corrective action within the specified time period, or repeat violations, will result in the issuance of a civil penalty. Category II violations include but are not limited to the following:~~

~~(4-6-05)~~

~~i. Sell, offer for sale, or distribute adulterated fertilizers; (4-6-05)~~

~~ii. Fail, refuse, or neglect to keep or maintain records as required under Title 22, Chapter 6, Idaho Code, or refuse to make available such records upon request by the department; (4-6-05)~~

~~iii. Knowingly or intentionally make any false or misleading representations in connection with the sale, offer for sale, or distribution of fertilizer. (4-6-05)~~

~~e. Category III (Minor). The Director may take initial alternative enforcement action in writing and may allow a specified amount of time to take corrective action prior to the issuance of a civil penalty for a Category III violation, except in the case of a deficiency as listed in Subsection 090.01.c.i.(1), in which case a civil penalty will be issued. Failure to complete the corrective action within the specified time period, or repeat violations, may result in the issuance of a civil penalty. Category III violations include but are not limited to the following: (4-6-05)~~

~~i. Sell, offer for sale, or distribute mislabeled fertilizers, including, but not limited to, when the fertilizer is: (4-6-05)~~

~~(1) A specialty fertilizer deemed deficient as defined in Section 22-603 (7), Idaho Code; (4-6-05)~~

~~(2) Labeled in violation of Section 22-607, Idaho Code. (4-6-05)~~

~~ii. Fail, refuse, or neglect to deliver to a purchaser of a bulk fertilizer a printed label that complies with Section 22-603 (2) and (3), Idaho Code; (4-6-05)~~

~~iii. Sell, offer for sale, or distribute a fertilizer that is not registered pursuant to Section 22-605, Idaho Code; (4-6-05)~~

~~iv. Fail, refuse, or neglect to file a semi-annual tonnage report pursuant to Sections 22-608 and 22-609, Idaho Code; (4-6-05)~~

~~v. Fail, refuse, or neglect to pay inspection fees required under Section 22-608, Idaho Code. (4-6-05)~~

~~02. **Maximum Civil Penalties.** Penalties for Category II and III violations will accrue during one (1) calendar year; Violations for Category I will accrue during periods of three (3) calendar years beginning these intervals with the year 2004.~~

Category	1st Violation	2nd Violation	3rd+ Violation
Category I (Major)	\$500	\$1500	\$10,000
Category II (Moderate)	\$250	\$750	\$5000
Category III (Minor)	\$125	\$250	\$500

~~(4-6-05)~~

~~03. **Payment of Penalties.** As authorized under Section 22-619, Idaho Code, a civil penalty imposed may be remitted or reduced upon such terms and conditions as the Director considers proper and consistent with the public health and safety; (4-6-05)~~

~~04. **Substantial Harm.** Any violation that results in substantial harm to human health or the environment, may be subject to a civil penalty of not more than ten thousand dollars (\$10,000) for the initial violation or any subsequent violation. (4-6-05)~~



**IDAPA 02 - DEPARTMENT OF AGRICULTURE**  
**02.06.20 - RULES GOVERNING GRAPE PLANTING STOCK**  
**DOCKET NO. 02-0620-1101**  
**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-2013, Idaho Code.

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

This rule updates and clarifies the requirements for shipping grapevines into Idaho for planting. It outlines regulated pests, certifications needed, treatment requirements and penalties.

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

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

**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 the interstate movement of grapevines for any of the regulated pests listed in the rule.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, informal negotiated rulemaking was conducted. A committee consisting of stakeholders, including the Idaho Grape Growers and Wine Producers Commission, Idaho Nursery and Landscape Association, and the Snake River Table Grape Association, met on May 27th, 2010 and December 13, 2010.

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 24th day of August, 2011.

Brian Oakey  
Deputy Director  
Idaho State Dept 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 OF DOCKET NO. 02-0620-1101

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is IDAPA 02.06.20, "Rules Governing Grape Planting Stock." (5-3-03)

**02. Scope.** This chapter has the following scope: These rules are to prevent the introduction of certain grape plant pests and plant diseases into the state of Idaho. To declare that a quarantine be established at the boundaries of the state of Idaho. To define the area regulated under the quarantine, regulated commodities, regulations governing shipments, disposition of commodities in violation of quarantine rules, authority to enter, inspect, and control and penalties. The official citation for this chapter is IDAPA 02.06.20.000 et seq. For example, this section's citation is IDAPA 02.06.20.001. (~~5-3-03~~)(    )

**(BREAK IN CONTINUITY OF SECTIONS)**

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

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m. Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. (5-3-03)

**02. Mailing Address.** The mailing address for the central office is Idaho State Department of Agriculture, P.O. Box 790, Boise, Idaho 83701. (5-3-03)

**03. Street Address.** The central office is located at 2270 Old Penitentiary Road, Boise, Idaho 83712. (5-3-03)

**04. Shipment Notifications.** Shipment notifications may be faxed to (208) 334-2283 or emailed to [Nsy.Idaho@agri.idaho.gov](mailto:Nsy.Idaho@agri.idaho.gov). (    )

**(BREAK IN CONTINUITY OF SECTIONS)**

**050. REGULATED AREAS ~~UNDER QUARANTINE.~~**  
All areas outside of the territorial borders of the state of Idaho. (2-21-72)

**051. -- 099. (RESERVED)**

**100. REGULATED COMMODITIES.**  
Plants and all parts thereof (except fruits) Planting stock of grape (Vitis species) including live plants, hardwood cuttings, softwood cuttings, rootstocks, and any other parts of the grape plant, except fruit, capable of propagation (except fruit). (~~2-21-72~~)(    )

**101. REGULATED PESTS.**  
Regulated pests include, but are not limited to: (    )

**01. Grapevine Fanleaf Virus.:** (    )

**02. Grapevine Leaf Roll - Associated Viruses.:** (    )

- 03. Grapevine Corky Bark Disease. Which include but may not be limited to: ( )**
- a. Grapevine virus A; and ( )**
- b. Grapevine virus B and synonym rugose wood complex; ( )**
- 04. Grape Phylloxera. (*Daktulosphaira vitifoliae*); ( )**
- 05. Pierce's Disease. As caused by the bacterium *Xylella fastidiosa*; ( )**
- 06. Vine Mealybug. (*Planococcus ficus*); and ( )**
- 07. Glassy-Winged Sharpshooter. (*Homalodisca vitripennis*, formerly known as *H. coagulata*). ( )**

**1012. -- 149. (RESERVED)**

**150. RULES GOVERNING SHIPMENTS.**

**01. Admittance into Idaho. ~~Plants and parts thereof of grapes will be admitted into the state of Idaho provided the following provisions are complied with. Each shipment of a regulated article from a regulated area must be accompanied by a certificate issued by the state or country of origin's plant protection organization, stating that the grape planting stock to be imported has been certified in accordance with the regulations of an official grapevine certification program of the state or country of origin's plant protection organization, that includes annual inspections at all certification levels and testing at the foundation level for regulated pests and;~~ (2-21-72)( )**

**~~a. European or wine grape (*Vitis vinifera*) plants or parts thereof will be admitted when accompanied by phytosanitary certificate, issued by a legal certifying agency of the state of origin, certifying the regulated commodities to be free from known virus diseases and plant pests detrimental to grapes. Phytosanitary certificates are to reach the office of the Division of Plant Industries, Boise, Idaho, ten (10) days prior to shipment. (2-21-72)~~**

**~~b. All other grape (*Vitis* species) and all hybrid grape plants or parts thereof will be admitted when evidence is given that the regulated commodities were treated, heat or fumigation, for plant pests detrimental to grapes. Type of treatment must meet with the approval of the Director of the Idaho Department of Agriculture. (2-21-72)~~**

**~~c. All rooted grape plants (not rooted in sterile media) of (*Vitis vinifera* and/or *Vitis* species) will be admitted when evidence is given that the regulated commodities were treated, heat or fumigation, for plant pests detrimental to grapes, and which type of treatment must meet with the approval of the Director of the Idaho Department of Agriculture. (2-21-72)~~**

**a. The grapevines, rootstock and/or softwood cuttings were grown in and shipped from an area known to be free from regulated pests; or ( )**

**b. For small shipments (five hundred (500) or less) of un-rooted softwood cuttings, were individually inspected by an authorized inspector and were found to be free from regulated pests; or ( )**

**c. The grapevines, rootstock or softwood cuttings were grown under a sterile soil-less media and treated with a soil or systemic insecticide and a hot water dip treatment, as outlined in Section 155 of this rule, proven to be effective against vine mealybug and any other pests that may be present on the roots; or ( )**

**d. The grapevines, rootstock, and/or softwood cuttings were subject to one (1) of the two (2) treatments outlined in Section 155 of this rule, or such additional methods as may be determined to be effective and are approved by the director and were stored in a manner after treatment that would prevent re-infestation. ( )**

**02. Marking Contents and Treatment. All shipments of grape ~~plants or parts thereof shall be~~ planting stock must be plainly marked with the contents ~~and treatment applied~~ on the outside of the package or container.**

(2-21-72)( )

**03. Shipment Inspection Provisions.** ~~Any and all shipments of commodities under the foregoing provisions must be held by the person who ordered such grape plants or parts thereof. Such person shall immediately notify the Department at the time the grape plants or parts thereof are received. The person shipping or moving the grape plants or parts thereof into Idaho shall immediately notify the Department at the time of shipment. The grape plants or parts thereof shall be held as required by this Subsection until they have been inspected and passed by the Director of the Idaho Department of Agriculture, his deputy, or by a state plant quarantine officer.~~ **Shipment Notification.** Persons shipping or transporting grape planting stock into this state from areas under regulation shall notify the department by electronic mail, regular mail or fax prior to shipment at the address, electronic mail address or fax number set forth in Section 005 for specific notification information. The notification must include the nature of the grape planting stock (such as live plants, hardwood cuttings, softwood cuttings, rootstocks, or other similar categories), the quantity in each shipment, the expected date of arrival, the name of the intended receiver and the destination. Notification shall also include an official certificate issued by the plant protection organization of the state of origin certifying that the grapevines meet the requirements of this chapter must accompany the grape planting stock into the state. All treatments and inspections must have been witnessed or performed by an official of the state of origin's plant protection organization. (2-21-72)( )

151. -- ~~199~~54. (RESERVED)

**155. ACCEPTABLE TREATMENTS.**

**01. Hot Water Treatment.** Dormant, rooted grapevines or rootstock shall be washed to remove all soil or other propagative media. Dormant rooted plants or rootstock shall be immersed in a hot water bath for a period of not less than three (3) minutes, nor more than five (5) minutes, at a temperature of not less than one hundred twenty-five degrees Fahrenheit (125° F.) or fifty-two degrees Celsius (52° C.), nor more than one hundred thirty degrees Fahrenheit (130° F.) or fifty-five degrees Celsius (55° C.) at any time during immersion; or ( )

**02. Methyl Bromide Fumigation.** Grapevines, rootstock or softwood cuttings may be treated by methyl bromide fumigation. Fumigation shall be in an approved gastight fumigation chamber, equipped with a heating unit, a fan for dispersal of gas and clearing the chamber of gas after fumigation, and an interior thermometer readable from the outside. Fumigation shall be with a dosage of two (2) pounds (nine-hundred eight thousandths of a kilogram (0.908 kg.)) of methyl bromide per one thousand (1,000) cubic feet (twenty-eight (28) cubic meters) for a period of three (3) hours at a temperature of between sixty-five degrees Fahrenheit (65° F.) or eighteen point three degrees Celsius (18.3° C.) and seventy degrees Fahrenheit (70° F.) or twenty-one point one degrees Celsius (21.1° C.). The fan shall be operated for a period of ten (10) minutes after the injection of the gas. ( )

**03. Other Methods.** Upon written application to the Director, variations to the above mentioned acceptable treatments or additional treatment methods may be considered. ( )

156. -- 199. (RESERVED)

**200. DISPOSITION OF COMMODITIES IN VIOLATION OF QUARANTINE RULES.**

Any commodity set forth in Section 150 of ~~this quarantine~~ **these rules**, or any grape plants or parts thereof, not meeting the requirements of ~~this quarantine~~ **these rules** shall immediately be sent out of the state of Idaho or destroyed at the option and expense of the owner or owners, his or their responsible agents and under the direction of the Director ~~of the Idaho Department of Agriculture or his deputies.~~ (2-21-72)( )

**IDAPA 02 - DEPARTMENT OF AGRICULTURE**  
**02.06.30 - RULES UNDER THE IDAHO BEE INSPECTION LAW**  
**DOCKET NO. 02-0630-1101**  
**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-2511, 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:

Updates to the rule reflect the re-numbering of the Bee Inspection Law Title 22, Chapter 25, Idaho Code. In addition, sections required by the Office of the Administrative Rules Coordinator have been added to the rule. The emphasis on which diseases will be inspected for has shifted and will be reflected in the rules.

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

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

**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 the interstate movement of honeybees or the keeping of honeybees. However, the existing rule has been in effect since 1991. The proposed rule updates references to Idaho Code sections, updates information regarding bee diseases, removes a rule for which there is no longer statutory authority, and adds rule provisions that are now standard in Idaho's administrative rules.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes are housekeeping changes to the rule and do not require anything of the affected public.

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 16th day of August, 2011.

Brian Oakey, Deputy Director  
Idaho State Dept 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 OF DOCKET NO. 02-0630-1101

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Title 22, Chapter 25, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is IDAPA 02.06.30, "Rules Under the Idaho Bee Inspection Law." ( )

**02. Scope.** This chapter has the following scope: These rules are to prevent the introduction or further dissemination of certain bee diseases into the state of Idaho. To provide authority to enter, inspect, and control bee pests and levy penalties. The official citation for this chapter is IDAPA 02.06.20.000 et seq. For example, this section's citation is IDAPA 02.06.20.001. ( )

**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. ( )

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference in this chapter. ( )

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

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

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

**03. Street Address.** The central office is located at 2270 Old Penitentiary Road, Boise, Idaho 83712. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

These rules are public records available for inspection and copying at the Department and the State Law Library. ( )

~~007.~~ -- 009. (RESERVED)

*Codified Section 010 has been moved and renumbered to proposed Section 015.*

**010. DEFINITIONS.**

The Department adopts the definitions set forth in Section 22-2502, Idaho Code. ( )

**011. -- 014. (RESERVED)**

**015. REGULATED BEE DISEASES.**

~~Certain diseases of bees,~~ Specifically, American foulbrood, European foulbrood, sac brood and bee paralysis, Varroa mite, tracheal mite, or any other disease or abnormal condition of egg, larval, pupal, or adult stages of honey bees, hereinafter is referred to as bee diseases. (H-21-91)( )

~~0146~~ -- 049. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

150. INSPECTION PROCEDURES.

**01. Request for Inspection.** All beekeepers requiring an apiary inspection shall complete the "Request for Inspection" form provided by the Department of Agriculture. Information shall include name, address, telephone number of the applicant, number of colonies to be inspected and the state(s) to which entry is desired. The applicant agrees to pay the costs of the inspection according to the fee schedule in Section 300. The request for inspection must be returned to the Department of Agriculture no later than August 15 of each year. Late requests will be accepted through August 31, after which no requests for inspection will be accepted. No inspections will be conducted after ~~October~~ November 15 of each year. Apiaries found free of disease will be entitled to receive a health certificate valid for one (1) year from date of issuance permitting access to those states which require and recognize Idaho certification. (11-21-91)( )

**02. Disease Inspection.** The apiary inspector shall inspect for all diseases and pests cited in Section 0105, specifically for American foulbrood and Varroa mite or other bee diseases as specified by the importing state regulatory agency. (11-21-91)( )

**03. Posting of Registration.** All apiaries located within the state of Idaho shall be conspicuously posted with the name, address and telephone number and state registration number of the owner. (11-21-91)

**04. Necessary Precautions.** The apiary inspector shall take all necessary precautions to properly disinfect all tools and any other thing which may have come into contact with diseased bees or equipment to prevent spread of the disease. (11-21-91)

(BREAK IN CONTINUITY OF SECTIONS)

~~201. -- 249.~~ (RESERVED)

~~250. HEALTH CERTIFICATE FOR IMPORT PERMIT.~~

~~The certificate of health from the state of origin required for an importation permit as provided by Idaho Code, Section 22-2526 shall specifically state that the apiary was inspected and found free of American foulbrood and Varroa mite.~~ (11-21-91)

~~251. — 299.~~ (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

350. VIOLATION.

Violation of any of the provisions of the Idaho Bee Inspection Law, Title 22, Chapter 25, Idaho Code, or rules promulgated thereunder is a misdemeanor. A civil penalty may also be assessed pursuant to Idaho Code, Section 22-2539(2)12. (11-21-91)( )

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

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

#### DOCKET NO. 02-0641-1101

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5220(2), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-2204, Idaho Code.

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

Update the incorporation by reference section to reflect the 2012 Official Publication of the Association of American Plant Food Control Officials; add an incorporation by reference of the "2005 Official Methods of Analysis (OMA) of the AOAC," 18th Edition, published by the Association of Official Agricultural Chemists (AOAC) International; Remove the sub-section regarding PAM products, and amend the labeling requirements to include Guaranteed Analysis and directions for use.

**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 Soil and Plant Amendments. The rule is, however, consistent with national standards by the Association of American Plant Food Control Officials.

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

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

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

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

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 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 DOCKET NO. 02-0641-1101

**004. INCORPORATION BY REFERENCE.**

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

**01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication.** The terms, ingredient definitions and policies as published in the “201~~4~~<sup>2</sup> Official Publication” of AAPFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 22, Chapter 22, Idaho Code, and any rule promulgated thereunder. The AAPFCO Official Publication is a copyrighted publication and not available in electronic format. A copy may be purchased online from the AAPFCO website at: [http://www.aapfco.org/publication\\_order\\_form.pdf](http://www.aapfco.org/publication_order_form.pdf). ~~(4-7-11)~~( )

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

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

**(BREAK IN CONTINUITY OF SECTIONS)**

**008. ABBREVIATIONS.**

- 01. AAPFCO.** Association of American Plant Food Control Officials. (3-15-02)
- 02. AOAC.** Association of Official Analytical Chemists, International. (3-15-02)
- 03. ISDA.** Idaho State Department of Agriculture. (3-15-02)
- ~~**04. PAM.** Polyacrylamide. (3-15-02)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**010. SOIL AMENDMENT AND PLANT AMENDMENT REGISTRATION.**

Each separately identifiable soil amendment or plant amendment product shall be registered pursuant to Section 22-2205, Idaho Code. (3-15-02)

**01. Product Registration.** All soil amendment and plant amendment companies, including companies engaged in custom-formula mixing of dry or liquid soil amendments or plant amendments, shall comply with the product registration requirements of the Idaho Soil and Plant Amendment Act of 2001, Section 22-2205, Idaho Code, subject to the provisions of this chapter. (3-15-02)

**02. Exemptions from Registration.** (3-15-02)

**a.** Dried animal manure without nutrient claims and not commercially packaged or labeled. (3-15-02)

- b. Horticultural growing media containing live plant material. (3-15-02)

**03. Alteration from Original State.** When a soil amendment or plant amendment that has been registered is mixed, added to, or in any way changed from its original content, it is a different product, and must be registered as provided under Section 22-2205, Idaho Code. (3-15-02)

**04. Sale of Soil Amendment or Plant Amendment.** When a commercial soil amendment or plant amendment is removed from the package or container in which it was placed by the original registrant and then offered for sale by a person other than the original registrant, it is a different product and shall be registered in accordance with Section 22-2205, Idaho Code, except that it shall not be subject to an additional inspection fee as provided under Section 22-2208, Idaho Code, provided that said fee was paid on the product by the original or prior registrant. (3-15-02)

~~05. PAM Products. PAM polymers must have residual acrylamide monomer limits of no greater than five hundredths percent (0.05%). The following information must be submitted to register PAM products: (3-15-02)~~

- ~~a. Percent of residual acrylamide monomer; (3-15-02)~~  
~~b. Charge of polymer (cationic, anionic, nonionic); (3-15-02)~~  
~~c. Branching characteristic of polymer (linear, cross-linked); and (3-15-02)~~  
~~d. Molecular weight of polymer. (3-15-02)~~

011. -- 029. (RESERVED)

**030. SOIL AMENDMENT AND PLANT AMENDMENT LABELS.**

~~01. Ingredient List. The label shall state the name of each ingredient in decreasing amounts present. (3-15-02)~~

~~021. Declaration of Ingredient Percentage Content or Guaranteed Analysis Exemptions. ( )~~

a. The labeling requirements of the Idaho Soil and Plant Amendments Act of 2001, Section 22-2207(1)(c), Idaho Code, requiring that soil and plant amending ingredients and other ingredients shall be stated in terms of percentage is required except in the following cases single ingredient soil amendments, when clearly and conspicuously identified as such on the label, are exempt from the content or guaranteed analysis: (3-15-02)( )

- ~~a. Horticultural growing media. (3-15-02)~~  
i. Mulch; ( )  
ii. Peat; ( )  
iii. Perlite; ( )  
iv. Vermiculite; and ( )  
v. Vermicompost. ( )

b. In lieu of a content or guaranteed analysis as required in 22-2207(1)(c), Idaho Code, the label of the following soil amendments when clearly and conspicuously identified as such on the label may include an ingredient statement: ( )

- bi. Compost; (3-15-02)( )

- ii. Garden Soil: ( )
- iii. Landscape Soil: ( )
- iv. Mulch: ( )
- v. Planting Mix; and ( )
- vi. Potting Mix. ( )

c. In lieu of a content or guaranteed analysis as required in Section 22-2207(1)(c), Idaho Code, a product that claims the presence of a microbe(s), other than naturally occurring microbes, shall guarantee the microbe(s) as follows: ( )

- i. Minimum number of each claimed viable organism at the genus and species level in colony forming units (CFU), spores or propagules per gram or milliliter (cm3): ( )
- ii. Expiration date; and ( )
- iii. Storage & handling instructions. ( )

**032. Nutrient Claims and the Use of the Term “Fertilizer.”** (3-15-02)

a. The term “fertilizer” and like terms shall not be used in labeling or literature to describe a soil amendment or plant amendment. (3-15-02)

b. Nutrient claims do not change the primary intended use of a soil or plant amendment product. Any nutrient claim shall be provided on the labeling and literature as an estimated range and shall be stated as a percentage. Nutrient claims and estimates must be supported by lab analysis or documentation acceptable by the ISDA. (3-15-02)

c. Labeling or literature that makes nutrient claims or estimates is required to contain the following statement: “This product is recognized for its soil amendment characteristics. It is recognized that it has nutrient value. Any nutrient claims, verbal or written, are estimates and not guaranteed.” (3-15-02)

d. At the discretion of the registrant, labeling or literature that does not make nutrient claims or estimates may contain the following statement: “This product is recognized for its soil amendment characteristics. It is recognized that it has nutrient value. Any nutrient claims, verbal or written, are estimates and not guaranteed.” (3-15-02)

e. A guaranteed analysis of plant nutrients will be permitted on potting soils, landscape and garden soils, and related amendment products containing only levels of fertilizer sufficient to initiate growth. (4-7-11)

**043. Microbiological Product.** If the soil amendment or plant amendment is a microbiological product intended as an inoculum, the product label shall include an expiration date and state the number and kind of viable organisms per milliliter or, if the product is other than liquid, state the number and kind of viable organisms per gram. However, if the soil amendment or plant amendment is derived from a microbiological process or culture but is not intended as an inoculum, then the product label shall state that the product is not a viable culture. (3-15-02)

**054. Ninety-Five Percent Rule.** When a soil amendment or plant amendment is labeled as a specific material, such as peat moss or leaf mold, the product shall consist of not less than ninety-five percent (95%) of that specific material. (3-15-02)

**065. Other Ingredients.** When the name of an ingredient(s) appears on the label of a soil amendment or plant amendment and is not one of the ingredients required to be listed, the percentage of that ingredient(s) shall appear prominently in print of the same size and color. (3-15-02)

**07.6.** **Warning or Caution Statements.** The ISDA may require a registrant to include a warning or caution statement to ensure safety to handlers, crops, and the environment. (3-15-02)

**07.** **Precautionary Statements.** ISDA may require precautionary statements when needed for safe and effective use of the soil amendment or plant amendment. ( )