

Dear Senators SIDDOWAY, 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 02.03.03 - Rules Governing Pesticide and Chemigation Use and Application (Docket No.  
02-0303-1201);

IDAPA 02.04.19 - Rules Governing Domestic Cervidae (Docket No. 02-0419-1201);

IDAPA 02.04.21 - Rules Governing the Importation of Animals (Docket No. 02-0421-1201);

IDAPA 02.06.13 - Rules Relating to Rapeseed Production and Establishment of Rapeseed Districts in  
the State of Idaho (Docket No. 02-0613-1201);

IDAPA 02.06.14 - Rules Governing Annual Bluegrass (POA ANNUA) (Docket No. 02-0614-1201);

IDAPA 02.06.16 - Rules Governing Honey Standards (New Chapter) (Docket No. 02-0616-1201);

IDAPA 02.06.31 - Noxious Weed Free Forage and Straw Certification Rules (Docket No.  
02-0631-1201);

IDAPA 02.06.33 - Organic Food Product Rules (Fee Rule) (Docket No. 02-0633-1201);

IDAPA 02.06.35 - Rules Governing Rough Bluegrass (POA Trivialis) (Docket No. 02-0635-1201).

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 10/16/2012. 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 11/14/2012.

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 on the  
memorandum attached below.



Jeff Youtz  
Director

# Legislative Services Office Idaho State Legislature

*Serving Idaho's Citizen Legislature*

## MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Agricultural Affairs Committee and the House Agricultural Affairs Committee  
**FROM:** Principal Legislative Research Analyst - Katharine Gerrity  
**DATE:** September 26, 2012  
**SUBJECT:** Department of Agriculture

IDAPA 02.03.03 - Rules Governing Pesticide and Chemigation Use and Application (Docket No. 02-0303-1201)

IDAPA 02.04.19 - Rules Governing Domestic Cervidae (Docket No. 02-0419-1201)

IDAPA 02.04.21 - Rules Governing the Importation of Animals (Docket No. 02-0421-1201)

IDAPA 02.06.13 - Rules Relating to Rapeseed Production and Establishment of Rapeseed Districts in the State of Idaho (Docket No. 02-0613-1201)

IDAPA 02.06.14 - Rules Governing Annual Bluegrass (POA ANNUA) (Docket No. 02-0614-1201)

IDAPA 02.06.16 - Rules Governing Honey Standards (New Chapter) (Docket No. 02-0616-1201)

IDAPA 02.06.31 - Noxious Weed Free Forage and Straw Certification Rules (Docket No. 02-0631-1201)

IDAPA 02.06.33 - Organic Food Product Rules (Fee Rule) (Docket No. 02-0633-1201)

IDAPA 02.06.35 - Rules Governing Rough Bluegrass (POA Trivialis) (Docket No. 02-0635-1201)

### **1. IDAPA 02.03.03 - Rules Governing Pesticide and Chemigation Use and Application**

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.03.03 - Rules Governing Pesticide and Chemigation Use and Application. According to the Department, due to recent changes to soil fumigation labels by the EPA, all private applicators who want to purchase or apply soil fumigation products will have to attend training every three years specific to the soil fumigation product they wish to purchase. The EPA will allow any private applicator with a soil fumigation category on their pesticide license to purchase products without the training. The rule change adds a new soil fumigation license category for private applicator licenses. To be certified and licensed in this category, private applicators must pass both the restricted use examination and the soil fumigation examination.

Negotiated rulemaking was conducted. The rule appears to be authorized pursuant to Section 22-3421, Idaho Code.

Mike Nugent Manager  
Research & Legislation

Cathy Holland-Smith, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

## **2. IDAPA 02.04.19 - Rules Governing Domestic Cervidae**

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.04.19 - Rules Governing Domestic Cervidae. The Department states that the rule change will allow the Administrator to grant exemptions to the change of ownership tuberculosis testing requirements for domestic cervidae on a case-by-case basis, based upon individual circumstances. The Department also notes that this will allow cervidae farms that maintain their herd to conform to all TB testing requirements to be sold to another producer without losing their test status. The new owner of the herd may then be granted an exemption as the herd test status will not have changed, only the ownership of the animals. An incorrect acronym was also corrected.

Negotiated rulemaking was conducted and the Department notes that there were no visitors in attendance. The rule appears to be authorized pursuant to Sections 25-221 and 25-3704, Idaho Code.

## **3. IDAPA 02.04.21 - Rules Governing the Importation of Animals**

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.04.21 - Rules Governing the Importation of Animals. According to the Department, the rule more clearly defines the current brucellosis testing requirement as a single blood sample from which two different diagnostic tests for brucellosis shall be performed. The rule also expands the list of testing exemptions for Red Deer Genetic Factor to include any state or province that has implemented an approved prevention program for domestic cervidae. The Department states that the existing rule identifies Montana as the only state that would qualify for a testing exemption because at the time the original rule was written, Montana was the only state to have such a program. The rule also expands the tuberculosis testing exemptions to include any cervidae moving between the Association of Zoos and Aquarium accredited facilities and those facilities that have a USDA exhibitor permit. The existing rule requirements are redundant according to the Department. It is noted that the change would prevent a producer from having to retest an animal that is moving between these types of facilities. Additional "housekeeping" changes have also been proposed.

Negotiated rulemaking was conducted and the Department notes that there were no visitors in attendance. The rule appears to be authorized pursuant to Section 25-221, Idaho Code.

## **4. IDAPA 02.06.13 - Rules Relating to Rapeseed Production and Establishment of Rapeseed Districts in the State of Idaho**

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.06.13 - Rules Relating to Rapeseed Production and Establishment of Rapeseed Districts in the State of Idaho. The proposed rule changes update definitions and revise an outdated testing method.

Negotiated rulemaking was conducted and the Department notes that there were no visitors in attendance. The rulemaking appears to be authorized pursuant to Section 22-108, Idaho Code.

## **5. IDAPA 02.06.14 - Rules Governing Annual Bluegrass**

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.06.14 - Rules Governing Annual Bluegrass. The proposed rule changes allow for the use of a certificate of analysis in lieu of tags and allow for inspection by the Idaho Crop Improvement Association.

Negotiated rulemaking was conducted and the Department notes that there were no visitors in attendance. The Department also states that it received no comments. The rulemaking appears to be authorized pursuant to Section 22-2006, Idaho Code.

## **6. IDAPA 02.06.16 - Rules Governing Honey Standards**

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.06.16 - Rules Governing Honey Standards. This is a new chapter. The Department states that the rule will mirror existing standards adopted by other states relative to the identity, quality and labeling of honey, complaint procedures and enforcement criterion. The Department notes that any funding would come from the Idaho Honey Advertising Commission account. The rule also incorporates by reference the United States Standards for Grades of Extracted Honey adopted by the Agriculture Marketing Service, USDA, effective May 23, 1985. The Department adds that these standards also serve as a basis for the inspection and grading of honey by the federal inspection service.

Members may recall that numerous changes and additions were made to Chapter 28, Title 22, Idaho Code, dealing with the honey industry, during the 2012 legislative session. The proposed changes appear consistent with the statutory revisions. Negotiated rulemaking was conducted. The rulemaking appears to be authorized pursuant to Section 22-2807, Idaho Code.

## **7. IDAPA 02.06.31 - Noxious Weed Free Forage and Straw Certification Rules**

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.06.31 - Noxious Weed Free Forage and Straw Certification Rules. According to the Department, the scope and purpose of the program are clarified to address all possible activities of certified forage and straw products and to add that these products are intended for use on Idaho public lands. In addition, the Department states that a color certification twine that is no longer used is being deleted from the rule, a provision is being added that the year on forage tags and the date on the tag must accurately reflect the year in which the bale was produced and some typographical errors have been corrected. The Department also notes that a contradiction of when transit certificates need to be issued has been corrected.

Negotiated rulemaking was conducted. The Department indicates that although no one attended the meeting, three favorable written comments were received. The rulemaking appears to be authorized pursuant to Section 22-2403, Idaho Code.

## **8. IDAPA 02.06.33 - Organic Food Product Rules**

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.06.33 - Organic Food Product Rules. This is a fee rule. The Department states that the proposed rule provides the industry with a new optional seal for promotion purposes and a new optional registration of branded materials for organic

use. A \$200 initial fee, and annually thereafter, will be imposed on persons already accredited by another qualifying materials entity. A fee of \$500 initially, and then from \$500 to \$5000 annually relative to the amount of annual sales of the registered materials will be charged to all other operations desiring to register branded materials. The Department notes that there is no impact on the general fund. The Organic Food Program Fund will, however, according to the Department, have increased annual revenue estimated at \$10,000 to \$20,000 to cover estimated costs of providing services to the industry.

Negotiated rulemaking was conducted. The rulemaking appears to be authorized pursuant to Section 22-1103, Idaho Code.

### **9. IDAPA 02.06.35 - Rules Governing Rough Bluegrass (POA Trivialis)**

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.06.35 - Rules Governing Rough Bluegrass (POA Trivialis). According to the Department, the purpose of the rulemaking is to allow for the use of a certificate of analysis in lieu of tags and to allow for inspection by the Idaho Crop Improvement Association.

Negotiated rulemaking was conducted. The Department notes that no visitors attended the meeting, nor were any comments received. The rulemaking appears to be authorized pursuant to Section 22-2006, Idaho Code.

cc: Department of Agriculture

Brian J. Oakey

Ben Miller

Dr. Scott Leibsle

Michael Cooper

Dan Safford

Brandon Lamb

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.03.03 - RULES GOVERNING PESTICIDE AND CHEMIGATION USE AND APPLICATION

DOCKET NO.02-0303-1201

#### 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 22-3421, 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 17, 2012.

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 non-technical explanation of the substance and purpose of the proposed rulemaking:

Due to recent changes to soil fumigation labels by the USEPA, all private applicators who want to purchase or apply soil fumigation products will have to attend training every three (3) years, specific to the soil fumigation product they wish to purchase. The USEPA will allow any private applicator with a soil fumigation category on their pesticide license to purchase soil fumigation products without the required training. IDAPA 02.03.03.050.01.c., "Rules Governing Pesticide and Chemigation Use and Application," will be amended to add a new soil fumigation license category for private applicator licenses.

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

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

ISDA does not anticipate any fiscal impact from the changes to be made to the rule during this rulemaking.

**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 4, 2012 Idaho Administrative Bulletin, Vol. 12-7, Page 19. A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on July 10.

**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 Ben Miller, Bureau Chief, 208-332-8593.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to Ben Miller and must be delivered on or before October 24, 2012. Comments can be delivered via email to [Ben.Miller@agri.idaho.gov](mailto:Ben.Miller@agri.idaho.gov) or via regular mail to Ben Miller's attention at the address listed below.

DATED this 31st day of August, 2012.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0303-1201

050. PRIVATE APPLICATOR LICENSING.

01. Applying for a Private Applicator's License. Applicants who wish to obtain a private applicator's license shall: ~~(3-20-97)~~( )

a. Fill out an application prescribed by the Department: ~~and~~ ~~(3-20-97)~~( )

b. Take an examination based on the Environmental Protection Agency (EPA) core manual and score a minimum of seventy percent (70%). The examination procedure shall be the same as for professional applicators (Subsection 100.03), except private applicators shall not be assessed an examination fee. (3-20-97)

02. License Categories. ( )

ea. Private applicators shall be certified and licensed in one or ~~both~~ more of the following categories: ~~(3-20-97)~~( )

i. Restricted Use Pesticide (RU). For persons who use or supervise the use of restricted use pesticides to produce agricultural commodities or forest crops on land they or their employer(s) own(s) or operate(s). (3-20-97)

ii. Chemigation (CH). For persons who apply chemicals through irrigation systems on land they or their employer(s) own(s) or operate(s). (3-20-97)

iii. Soil Fumigation (SF). For persons who apply soil fumigants on land they or their employer(s) own(s) or operate(s). In order to be certified and licensed in this category, private applicators must pass both the RU examination and the SF examination. ( )

~~4b.~~ Non-reading applicators may be certified to purchase and apply a single restricted use pesticide when they have demonstrated their competence in the safe and proper use of such pesticide to the Director or other designated agent. (3-20-97)

023. License Recertification. In order for a private applicator's license to be renewed, the license holder must complete the recertification provisions of this section. Beginning July 1, 1996, licenses belonging to private applicators with last names beginning with A through L, inclusive, shall expire on the last day of the month listed on the chart in Subsection 050.023.a. in every odd-numbered year, and licenses belonging to private applicators with last names beginning with M through Z, inclusive, shall expire on the last day of the month listed on the chart in Subsection 050.023.a., in every even-numbered year. The recertification period shall be concurrent with the licensing period. Those persons who are currently licensed as a private applicator or chemigator on June 30, 1996, shall be reissued a private applicator license with the appropriate categories. Those persons who are currently licensed as a private applicator or chemigator on June 30, 1996, shall be grandfathered into the licensing schedule at Subsection 050.023.a. Any person with less than thirteen (13) months in the initial licensing period shall not be required to obtain recertification credits for the initial period. Upon issuance of the replacement license, the previous license shall be null and void. Any private applicator license without an expiration date shall be null and void on December 31, 1996. Recertification and relicensing may be accomplished by complying with either Subsection 050.023.b. or 050.023.c. ~~(3-23-98)~~( )

a. Licensing schedule.

Last Name		Month to License
Odd Year	Even Year	
A-D	M-P	March

Last Name		Month to License
Odd Year	Even Year	
E-H	Q-T	July
I-L	U-Z	October

(3-20-97)

**b.** A person shall accumulate recertification credits by attending Department-accredited pesticide instruction seminars. (3-20-97)

i. A minimum of six (6) credits shall be earned during each recertification period. (3-23-98)

ii. Guidelines for obtaining recertification credits shall be the same as for professional applicators, as described in Subsections 100.04.a.ii. through 100.04.a.v. Any credits accumulated beyond the required six (6) in a recertification period may not be carried over to the next recertification period. (3-23-98)

iii. Upon earning the recertification credits as described above, a person shall be considered by the Department to be recertified and eligible for license renewal for the next licensing period. (3-20-97)

**c.** A person shall pass the Department's private applicator recertification examination(s) for all categories in which the person intends to license with a minimum score of seventy percent (70%). (3-20-97)

i. Recertification examinations may be taken by a person beginning the thirteenth (13th) month of the license period. (3-20-97)

ii. The examination procedures as outlined in Subsection 100.03 shall be followed, except that an examination fee shall not be assessed. (3-20-97)

iii. Upon passing the recertification examinations, a person shall be considered by the Department to be recertified and eligible for license renewal for the next licensing period. (3-20-97)



## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.04.19 - RULES GOVERNING DOMESTIC CERVIDAE

DOCKET NO. 02-0419-1201

#### 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 25-221 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 17, 2012.

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

Amend section 011.04. The acronym AZA, defined as the American Zoological Association, is incorrect. The correct definition for AZA is the Association of Zoos and Aquarium.

Amend section 450.01 to allow the Administrator to grant exemptions to the change of ownership tuberculosis (TB) testing requirement for domestic cervidae on a case-by-case basis, based upon individual circumstances. This would allow cervidae farms that maintain their herd to conform to all TB testing requirements to be sold to another producer without losing their test status. The new owner of the herd may then be granted an exemption as the herd test status will not have changed, only the ownership of the animals.

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

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

ISDA does not anticipate any fiscal impact from the changes to be made to the Rule as a result of this rulemaking.

**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 August 1, 2012 Idaho Administrative Bulletin, Vol. 12-8, page 14. A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on August 15, 2012 and there were no visitors in attendance.

**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:** Technical questions concerning the proposed rule may be directed to Dr. Scott Leibsle, Deputy Administrator, 208-332-8540.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012. Comments can be delivered via email to [Scott.Leibsle@agri.idaho.gov](mailto:Scott.Leibsle@agri.idaho.gov) or via regular mail to Dr. Scott Leibsle's attention at the address listed below.

DATED this 31st day of August, 2012.

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

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0419-1201**

**011. ABBREVIATIONS.**

- |            |  |                         |
|------------|--|-------------------------|
| <b>01.</b> | <b>AAVLD.</b> American Association of Veterinary Laboratory Diagnosticians.          | (4-2-03)                |
| <b>02.</b> | <b>APHIS.</b> Animal and Plant Health Inspection Service.                            | (4-2-03)                |
| <b>03.</b> | <b>AVIC.</b> Area Veterinarian in Charge.  | (4-2-03)                |
| <b>04.</b> | <b>AZA.</b> <del>American Zoological</del> Association <u>of Zoos and Aquariums.</u> | <del>(4-2-03)</del> ( ) |
| <b>05.</b> | <b>CFR.</b> Code of Federal Regulations.   | (4-2-03)                |
| <b>06.</b> | <b>CWD.</b> Chronic Wasting Disease.   | (4-2-03)                |
| <b>07.</b> | <b>CWDP.</b> Chronic Wasting Disease Program.  | (4-2-03)                |
| <b>08.</b> | <b>ISDA.</b> Idaho State Department of Agriculture.                                  | (4-2-03)                |
| <b>09.</b> | <b>NAEBA.</b> North American Elk Breeders Association.                               | (4-2-03)                |
| <b>10.</b> | <b>NVSL.</b> National Veterinary Services Laboratory.                                | (4-2-03)                |
| <b>11.</b> | <b>TB.</b> Tuberculosis.   | (4-2-03)                |
| <b>12.</b> | <b>UM&amp;R.</b> Uniform Methods and Rules.  | (4-2-03)                |
| <b>13.</b> | <b>USDA.</b> United States Department of Agriculture.                                | (4-2-03)                |
| <b>14.</b> | <b>VS.</b> Veterinary Services.  | (4-2-03)                |

**(BREAK IN CONTINUITY OF SECTIONS)**

**450. TUBERCULOSIS.**

**01. Change of Ownership.** All domestic cervidae that are sold, or are in any way transferred from one person to another person in Idaho are required to be tested negative for TB within ninety (90) days prior to the change of ownership or transfer, except: (4-2-03)

**a.** Animals originating from an accredited, qualified or monitored herd, as described in “Bovine Tuberculosis Eradication, Uniform Methods and Rules,” effective January 22, 1999, if they are accompanied by a certificate signed by an accredited veterinarian or the Administrator stating such domestic cervidae have originated directly from such herd; or (4-2-03)

**b.** Those domestic cervidae consigned directly to an approved slaughter establishment or domestic cervidae approved feedlot. (4-2-03)

**02. Rules and UM&R.** Owners of domestic cervidae ranches shall comply with IDAPA 02.04.03, “Rules of the Department of Agriculture Governing Animal Industry,” that apply to domestic cervidae, and the Bovine Tuberculosis Eradication, UM&R, Effective January 22, 1999. (4-2-03)

**c.** The Administrator, following an evaluation, may grant exceptions to the provisions of this section on a case-by-case basis. ( )

**IDAPA 02 - DEPARTMENT OF AGRICULTURE**  
**02.04.21 - RULES GOVERNING THE IMPORTATION OF ANIMALS**  
**DOCKET NO. 02-0421-1201**  
**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 25-221 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 17, 2012.

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

Amend Section 011.03 - the acronym AZA, defined as the American Zoological Association, is incorrect. The correct definition for AZA is the Association of Zoos and Aquariums.

Amend Section 601.01 - more clearly define the current brucellosis testing requirement as a single blood sample from which two (2) different diagnostic tests for brucellosis shall be performed. This will clarify that the producers need only work their elk once to collect blood.

Amend Section 601.02 - expand the list of testing exemptions for Red Deer Genetic Factor (RDGF) to include any state or province that has implemented an approved RDGF prevention program for domestic cervidae. The existing rule identifies Montana as the only state that would qualify for a testing exemption because at the time the original rule was written, Montana was the only state to have implemented an approved RDGF program.

Amend Section 606 - expand the tuberculosis (TB) testing exemptions to include any cervidae moving between the Association of Zoos and Aquarium accredited facilities and those facilities that have a USDA exhibitor permit. The existing rule requirements are redundant to require TB testing for movement between these facilities which are both federally regulated for TB prevention. The change would prevent a producer from having to re-test an animal that is moving between these types of facilities.

Clarify and condense portions of the rule for purposes of simplification and maintaining consistency.

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

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

ISDA does not anticipate any fiscal impact from the changes to be made to the Rule as a result of this rulemaking.

**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 August 1, 2012 Idaho Administrative Bulletin, [Vol. 12-8, pages 15 and 16](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on August 15, 2012 and there were no visitors in attendance.

**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:** Technical questions concerning the proposed rule may be directed to Dr. Scott Leibsle, Deputy Administrator, 208-332-8540.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012. Comments can be delivered via email to [Scott.Leibsle@agri.idaho.gov](mailto:Scott.Leibsle@agri.idaho.gov) or via regular mail to Dr. Scott Leibsle's attention at the address listed below.

DATED this 31st day of August, 2012.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Rd.  
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. 02-0421-1201**

**011. ABBREVIATIONS.**

- |             |  |                         |
|-------------|--|-------------------------|
| <b>01.</b>  | <b>APHIS.</b> Animal and Plant Health Inspection Service.                            | (4-2-08)                |
| <b>02.</b>  | <b>AVIC.</b> Area Veterinarian in Charge.  | (5-3-03)                |
| <b>03.</b>  | <b>AZA.</b> <del>American Zoological</del> Association <u>of Zoos and Aquariums.</u> | <del>(5-3-03)</del> ( ) |
| <b>04.</b>  | <b>CF.</b> Complement Fixation Test.   | (3-30-07)               |
| <b>05.</b>  | <b>CFR.</b> Code of Federal Regulations.   | (5-3-03)                |
| <b>06.</b>  | <b>CWD.</b> Chronic Wasting Disease.   | (5-3-03)                |
| <b>07.</b>  | <b>EIA.</b> Equine Infectious Anemia.  | (5-3-03)                |
| <b>08.</b>  | <b>EVA.</b> Equine Viral Arteritis.  | (5-8-09)                |
| <b>09.</b>  | <b>NAEBA.</b> North American Elk Breeders Association.                               | (5-3-03)                |
| <b>10.</b>  | <b>NPIP.</b> National Poultry Improvement Plan.                                      | (5-3-03)                |
| <b>11.</b>  | <b>PCR.</b> Polymerase Chain Reaction.   | (4-2-08)                |
| <b>12.</b>  | <b><u>RDGE. Red Deer Genetic Factor.</u></b>   | ( )                     |
| <b>123.</b> | <b>TB.</b> Tuberculosis.   | (5-3-03)                |
| <b>134.</b> | <b>UM&amp;R.</b> Uniform Methods and Rules.  | (5-3-03)                |
| <b>145.</b> | <b>USDA.</b> United States Department of Agriculture.                                | (5-3-03)                |
| <b>156.</b> | <b>VHSV.</b> Viral Hemorrhagic Septicemia Virus.                                     | (4-2-08)                |
| <b>167.</b> | <b>VS.</b> Veterinary Services.  | (5-3-03)                |

**(BREAK IN CONTINUITY OF SECTIONS)**

**102. EXTENDED VALIDITY EQUINE CERTIFICATES.**

Equidae from other states may enter the state of Idaho for shows, rides or other equine events and return to the state of origin on an extended validity equine certificate provided there is a written agreement between the Administrator and the chief livestock sanitary official of the state of origin. (5-3-03)

**01. Valid for One Animal.** An extended validity equine certificate shall be valid for only one (1) animal. Each animal shall have a separate certificate. (5-3-03)

**02. Contents.** Extended validity equine certificates shall contain the following information: name and address of the owner, location at which the animal is stabled, housed, pastured or kept, if different from that of the owner, an accurate description and identification of the animal, date of veterinary inspection, dates and results of EIA or other required tests or vaccinations, EVA statement, if applicable, and signature of inspecting veterinarian. (~~5-3-03~~)( )

**03. Period of Validity.** Extended validity equine certificates shall be valid for no longer than six (6) months from date of veterinary inspection for the certificate. (3-30-07)

**04. Travel Itinerary.** Recipients of extended validity equine certificates shall submit a completed travel itinerary to the Division of Animal Industries within ten (10) working days of the end of the six (6) month period of validity of the certificate. The travel itinerary shall provide a listing of all travel into the state of Idaho, including travel dates, purpose for travel and destinations, during the period of validity of the certificate. (5-3-03)

**05. Cancellation.** Extended validity equine certificates may be canceled at any time by the Administrator in the event of serious or emergency disease situations or for non-compliance with the provisions of these rules. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**202. WHEN PERMITS ARE REQUIRED FOR CATTLE.**

**01. Dairy.** For all intact male and female cattle of dairy breeds not consigned directly to an approved slaughter establishment, or to a specifically approved livestock market. Dairy cattle three hundred sixty-five (365) days of age or older shall be officially identified as provided in IDAPA 02.04.20. The Administrator may require the identification of dairy cattle less than three hundred sixty-five (365) days of age. (5-3-03)

**02. Beef Bulls.** All bulls of beef breeds not consigned directly to an approved slaughter establishment, or to a specifically approved livestock market, except intact male calves accompanying their dams. (5-3-03)

**03. Female Beef Cattle.** All intact female cattle of beef breeds not consigned directly to an approved slaughter establishment or to a specifically approved livestock market that are: (5-3-03)

**a.** From states or areas that are not Brucellosis Class Free; or (5-3-03)

**b.** Not officially vaccinated pursuant to IDAPA 02.04.20, "Rules Governing Brucellosis," except calves over one hundred twenty (120) days of age accompanying their dam; or (4-11-06)

**c.** Under one hundred twenty (120) days of age, except calves accompanying their dam. (5-3-03)

**04. Restricted Areas.** All cattle from areas or states on which Idaho or USDA has imposed restrictions. (5-3-03)

**05. Domestic Bison.** All domestic bison imported into Idaho shall require an entry permit from the Division of Animal Industries prior to importation and be in compliance with the same requirements as cattle

contained in this chapter and Title 9, Parts 71, 77, and 78, CFR. ( )

~~056.~~ **Canadian Cattle and Canadian Domestic Bison.** All cattle and Canadian domestic bison imported into Idaho from Canada, except those imported directly to slaughter, must have an import permit prior to importation. (5-8-09)( )

~~067.~~ **Other.** Cattle of any classification that do not meet other entry requirements. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

~~261. -- 289.~~ **(RESERVED)**

~~290.~~ **DOMESTIC BISON.**

~~01.~~ **Shipment.** All domestic bison imported into Idaho shall be in compliance with the same requirements as cattle contained in this chapter and Title 9, Parts 71, 77, and 78, CFR. (5-3-03)

~~02.~~ **Permits.** A permit is required from the Division of Animal Industries prior to importation of domestic bison. (5-3-03)

~~291. — 299.~~ **(RESERVED)**

**300. HORSES, MULES, ASSES AND EQUIDAE.**

All horses, mules, asses and other equidae that are to be transported or moved into the state of Idaho shall be accompanied by an official certificate of veterinary inspection or extended validity equine certificate, from the state of origin, stating that the equidae are free from evidence of any communicable disease and have completed EIA test requirements, except as provided in this section. (5-3-03)( )

**01. EIA Test Requirements.** An official EIA test is a blood test conducted by a USDA approved laboratory, within twelve (12) months prior of entry of the equidae into Idaho. (3-30-07)

**a.** Entry of equidae into Idaho shall not be allowed until the EIA test has been completed and reported negative. Equidae which test positive to the EIA test shall not be permitted entry into Idaho, except by special written permission from the Administrator. (5-3-03)

**b.** A nursing foal less than six (6) months of age accompanied by its EIA negative dam is exempt from the test requirements. (5-3-03)

**02. Working Horses Included on Grazing Permits.** "Working horses" used for seasonal ranching purposes may be exempt from the requirements of this section if the horses have been included on a current grazing permit which has received prior approval from the Administrator and the chief livestock sanitary official in a western state which reciprocates with Idaho in honoring grazing permits. (5-3-03)

**03. Slaughter Horses.** Equids being moved to an approved equine slaughter establishment may be exempted from EIA test requirements. (5-3-03)

**04. Equine Feeding Facilities.** Equids being fed for slaughter in an equine feeding facility approved by the Administrator may be exempt from EIA test requirements. (5-3-03)

**05. Reciprocal Agreements.** The Administrator may enter into cooperative reciprocal agreements with neighboring states which exempt EIA testing requirements for movement of equidae between the cooperating states. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**601. TESTING REQUIREMENTS.**

All cervidae imported into Idaho shall meet the following test requirements, except cervidae that do not originate from a CWD or Tuberculosis endemic area, as determined by the administrator, may be imported directly to an approved slaughter establishment for immediate slaughter without meeting the test requirements. (4-2-08)

**01. Brucellosis.** Animals six (6) months of age and older shall be negative to at least two (2) different official brucellosis tests from a single blood sample, one (1) of which shall be either the rivanol, or the CF, within thirty (30) days prior to entry, or the animals shall originate directly from a Brucellosis certified free herd or a brucellosis class free state for cervidae. (~~3-30-07~~)( )

**02. Red Deer Genetic Factor.** Elk shall have either tested negative for red deer genetic factor (RDGF) by a laboratory approved by the Division of Animal Industries, or shall have been registered with NAEBA or the Canadian Food Inspection Agency, or ~~the Montana Department of Livestock~~ a state with an ISDA approved RDGF prevention program. (~~5-8-09~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**606. MOVEMENT OF CERVIDAE BETWEEN AZA AND USDA FACILITIES.**

Movement of cervidae between ~~accredited facilities that are either~~ AZA ~~facilities is~~ accredited or hold a USDA exhibitor permit are exempt from the tuberculosis testing requirements of this rule. All other movement to or from facilities that are not AZA-accredited ~~facilities~~ or hold a USDA exhibitor permit shall comply with the tuberculosis testing requirements. (~~5-3-03~~)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**650. FISH.**

No person shall import, transport, receive or otherwise bring into the State of Idaho any live fish or viable hatching eggs that are listed as Deleterious Exotic Animals in IDAPA 02.04.27 "Rules Governing Deleterious Exotic Animals" or Invasive Species as listed in IDAPA 02.06.09 "Rules Governing Invasive Species." (~~4-2-08~~)( )



## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.06.13 - RULES RELATING TO RAPESEED PRODUCTION AND ESTABLISHMENT OF RAPESEED DISTRICTS IN THE STATE OF IDAHO

DOCKET NO. 02-0613-1201

#### 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 22-108, 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 17, 2012.

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 non-technical explanation of the substance and purpose of the proposed rulemaking:

1. Amending Section 004 to update definitions; and
2. Amending section 150.01b to revise an outdated testing method.

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

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: ISDA does not anticipate any fiscal impact from the changes to be made to the Rule as a result of this rulemaking.

**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 4, 2012 and August 1, 2012 Idaho Administrative Bulletins, [Vol. 12-7, Page 23](#) and [Vol. 12-8, Page 17](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on August 9, 2012 and there were no visitors in attendance at the meeting.

**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 Michael E. Cooper and must be delivered on or before October 24, 2012. Comments can be delivered via email to [Mike.Cooper@agri.idaho.gov](mailto:Mike.Cooper@agri.idaho.gov) or via regular mail to Michael E. Cooper's attention at the address listed below.

DATED this 31st day of August, 2012.

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



THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0613-1201

004. DEFINITIONS.

01. **Department.** The Department of Agriculture of the state of Idaho. (7-1-93)
02. **Director.** The Director of the Department or his duly authorized agent. (7-1-93)
03. **Person.** A natural person, individual, firm, partnership, corporation, company, society, association, cooperative, two (2) or more persons having a joint or common interest, or any unit or agency of local, state, or federal government. (7-1-93)
04. **Producer.** Any person who is the owner, tenant, or operator of land who has an interest in and is entitled to receive all or any part of the proceeds from the sale of any commodity produced on that land. (7-1-93)
05. **Rapeseed.** Those species of *Brassica napus*, *Brassica rapa* (formerly *Brassica campestris*), and *Brassica juncea*. (7-1-93)( )
06. **Types.** Those species and varieties of rapeseed classified as follows: (7-1-93)
- a. Edible: (7-1-93)
- i. Low Erucic Acid Rapeseed -- Low Glucosinolates (LEAR-LG), commonly called "canola," shall be the seed of the species *Brassica napus*, *Brassica juncea*, or *Brassica campestris rapa*, the oil components of which seed contain less than two percent (2.0%) erucic acid and the seed meal will contain less than thirty (30) micromoles of any one (1) or any mixture of 3-butenyl glucosinolate, 4-pentenyl glucosinolate, 2-hydroxy - 3-butenyl glucosinolate, and 2-hydroxy - 4 pentenyl glucosinolate per gram ( $\mu\text{m/g}$ ) of air dry, oil free solid as determined by any approved method. (7-1-93)( )
- ii. Low Erucic Acid Rapeseed -- High Glucosinolates (LEAR-HG) Rapeseed varieties shall contain less than two percent (2.0%) erucic acid in the oil of the rapeseed and more than thirty (30) micromoles per one (1) gram ( $\mu\text{m/g}$ ) glucosinolates in the rapeseed meal. (7-1-93)( )
- b. Industrial: (7-1-93)
- i. High Erucic Acid Rapeseed -- Low Glucosinolates (HEAR-LG) Rapeseed shall be rapeseed varieties used for production of industrial oil which shall contain erucic acid levels above forty percent (40%) in the oil of the rapeseed and less than thirty (30) micromoles per one (1) gram ( $\mu\text{m/g}$ ) glucosinolates in the meal of the rapeseed. (7-1-93)( )
- ii. High Erucic Acid Rapeseed -- High Glucosinolates (HEAR-HG) Rapeseed shall be rapeseed varieties used for production of industrial oil which shall contain erucic acid levels above forty percent (40%) in the oil of the rapeseed and more than thirty (30) micromoles per one (1) gram ( $\mu\text{m/g}$ ) glucosinolates in the meal of the rapeseed. (7-1-93)( )
07. **Volunteer Rapeseed.** A plant that arises from accidental or unintentional scattering of seed. (7-1-93)
08. **Condiment Mustard.** Varieties of *Brassica juncea* produced for seed to be used for spice or condiment. ( )
09. **Green Manure Rapeseed.** Varieties of rapeseed used as a cover crop to be plowed down prior to flowering and maturity. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**150. REQUIREMENTS FOR ALL BRASSICA SEEDS TO BE PLANTED IN IDAHO.**

- 01. Requirements.** All *Brassica* seeds to be planted in Idaho shall meet the following requirements. (9-1-94)
- a.** *Brassica* seeds shall be treated with an EPA and State registered fungicide for the control of blackleg (*Leptosphaeria maculans*). (9-1-94)
- b.** *Brassica* seed lots produced outside Idaho shall be accompanied by a phytosanitary certificate stating that the seed is free (zero tolerance) from blackleg based on a laboratory test of a minimum of ~~one and three-tenths~~ two point nine (1.329) ~~ounces~~ grams or ~~ten one~~ thousand (~~10,000~~) seeds. ~~(9-1-94)~~ ( )
- 02. Exemptions.** The following are not subject to the provisions of Subsections 150.01.a. and 150.01.b. (9-1-94)
- a.** *Brassica* seeds sold in lots of two (2) pounds or less. (9-1-94)
- b.** *Brassica* seeds produced in Idaho. (9-1-94)

**IDAPA 02 - DEPARTMENT OF AGRICULTURE**  
**02.06.14 - RULES GOVERNING ANNUAL BLUEGRASS (POA ANNUA)**

**DOCKET NO. 02-0614-1201**

**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 22-2006, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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 non-technical explanation of the substance and purpose of the proposed rulemaking:

Amending Section 200 - Rules Governing the Planting of Regulated Articles - to allow for the use of a certificate of analysis in lieu of tags.

Amending Section 300 - Application for Nursery Inspections - to allow for inspection by the Idaho Crop Improvement Association.

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

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

ISDA does not anticipate any fiscal impact as a result of this rule change.

**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 4, 2012 Idaho Administrative Bulletin, [Vol. 12-7, Page 24](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on July 17, 2012 and there were no visitors in attendance at the meeting nor did the department receive comments.

**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 Michael E. Cooper and must be delivered on or before October 24, 2012. Comments can be delivered via email to [Mike.Cooper@agri.idaho.gov](mailto:Mike.Cooper@agri.idaho.gov) or via regular mail to Michael E. Cooper's attention at the address listed below.

DATED this 31st day of August, 2012.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0614-1201

**200. RULES GOVERNING PLANTING OF REGULATED ARTICLES.**

**01. Requirements.** Prior to any person planting any grass species seed stock in Idaho, that person shall comply with the following requirements: (3-30-01)

**a.** Submit ~~for~~ an official laboratory analysis ~~of~~ a representative sample showing freedom from annual bluegrass based on a five (5) gram sample for bentgrass or redtop, a twenty-five (25) gram sample for bluegrass, or a fifty (50) gram sample for other grasses; or ~~(3-30-01)~~( )

**b.** Have a representative sample submitted for testing. (3-30-01)

**02. Tags.** Upon receipt by the Director of an official seed laboratory analysis showing freedom from annual bluegrass, sequentially numbered tags will be issued for each bag found free of annual bluegrass from those lots according to Subsection 010.06. (5-3-03)

**03. Analysis Certificate.** In lieu of tags, a seed analysis certificate from an official seed laboratory showing each lot being planted to be free from annual bluegrass must be kept on file for a minimum of one (1) year after all of the inventory of that lot's harvested seed has been sold. ( )

**201. -- 249. (RESERVED)**

**250. INFESTED SEED STOCK.**

Each lot of seed found to contain annual bluegrass shall be placed under a "Hold Order" pursuant to Section 22-103(22), Idaho Code, to be released only for shipment out of Idaho or for planting in nurseries of two (2) acres or less under supervision of the Director. The nursery shall be seeded in rows spaced twenty-four (24) inches apart and it shall be the duty of the person receiving such seed to rogue this increase area or chemically treat to eradicate the annual bluegrass. Seed increases shall be inspected by the department or the Idaho Crop Improvement Association at least three (3) times during the seedling year. Any areas not passing inspection shall not be harvested but shall be destroyed upon the order of the Director at the owner's expense. ~~(4-6-90)~~( )

**251. -- 299. (RESERVED)**

**300. APPLICATION FOR NURSERY INSPECTION.**

A person shall make application for nursery inspection to the Idaho Department of Agriculture or the Idaho Crop Improvement Association at least fourteen (14) days prior to planting. ~~(4-6-90)~~( )

## **IDAPA 02 - DEPARTMENT OF AGRICULTURE**

### **02.06.16 - RULES GOVERNING HONEY STANDARDS**

#### **DOCKET NO. 02-0616-1201 (NEW CHAPTER)**

#### **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 22-2807, 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 17, 2012.

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 non-technical explanation of the substance and purpose of the proposed rulemaking:

A new rule chapter would be developed that would mirror existing standards adopted by other states relative to the identity, quality and labeling of honey, complaint procedures and enforcement criterion.

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

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

ISDA does not anticipate any fiscal impact to the state general fund from the promulgation of this rule. Any funding will come from the Idaho Honey Advertising Commission account.

**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 4, 2012 and August 1, 2012 Idaho Administrative Bulletins, [Vol. 12-7, Page 25](#) and [Vol. 12-8, Page 18](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on August 9, 2012 and there were eight visitors in attendance at the meeting.

**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 United States Standards for Grades of Extracted Honey adopted by the Agriculture Marketing Service, United States Department of Agriculture effective May 23, 1985, are hereby adopted as the standards for the purposes of this rule. These standards also serve as a basis for the inspection and grading of Honey by the Federal inspection service. This manual contains detailed interpretations of the grade standards and provide step-by-step procedures for grading the product. In all instances, a grade can be assigned based on final product factors or characteristics. In addition to the U.S. grade standards, grading manuals or instructions for inspection of several processed fruits and vegetables are available.

**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 Michael E. Cooper and must be delivered on or before October 24, 2012. Comments can be delivered via email to [Mike.Cooper@agri.idaho.gov](mailto:Mike.Cooper@agri.idaho.gov) or via regular mail to Michael E. Cooper's attention at the address listed below.

DATED this 31st day of August, 2012

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Rd.  
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. 02-0616-1201**

**IDAPA 02  
TITLE 06  
CHAPTER 16**

**02.06.16 - RULES GOVERNING HONEY STANDARDS**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Section 22-2808, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is IDAPA 02.06.16, "Rules Governing Honey Standards. ( )

**02. Scope.** These rules apply to all honey produced by honey bees from nectar and covers all styles of honey presentation that are processed and ultimately intended for direct consumption, and to all honey packed, processed or intended for sale in bulk containers as honey that may be repacked for retail sale or for sale or use as an ingredient in other foods. The official citation of this chapter is IDAPA 02.06.14.000 et seq. For example, the citation for this section is IDAPA 02.06.14.001. ( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of these rules. ( )

**003. ADMINISTRATIVE APPEAL.**

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

**004. INCORPORATION BY REFERENCE.**

**01. United States Standards for Grades of Extracted Honey, Effective Date May 23, 1985.** The United States Standards for Grades of Extracted Honey adopted by the Agriculture Marketing Service, United States Department of Agriculture effective May 23, 1985 are hereby adopted for the purposes of this rule for extracted honey grades. See Section 018 of this rule. A copy of such federal standards is available at the following USDA Website <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELDEV3011895>. ( )

**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 Idaho State Department of Agriculture Central Office. ( )

**007. -- 009. (RESERVED)**

**010. DEFINITIONS.**

The Department adopts the definitions set forth in Section 22-2803, Idaho Code. In addition, as used in this chapter, the following definitions apply: ( )

**01. Air Bubble.** The small visible pockets of air in suspension that may be numerous in the honey and contribute to the lack of clarity in filtered style. ( )

**02. Bees.** Honey-producing insects of the genus *Apis* and includes the adults, eggs, larvae, pupae or other immature stages thereof. ( )

**03. Comb.** The wax-like cellular structure that bees use for retaining their brood or as storage for pollen and honey. ( )

**04. Crystallize.** The spontaneous solidification of the natural glucose content from solution as the monohydrate. ( )

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

**06. Floral Source.** The flower from which the bees gather nectar to make honey. ( )

**07. Food.** ( )

**a.** Articles used for food or drink, including ice, for human consumption or food for dogs and cats; ( )

**b.** Chewing gum; and ( )

**c.** Articles used for components of any such article. ( )

**08. Food Additive.** Any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component of or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food. It also includes any source of radiation intended for any such use, if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures or experience based on common use in food to be safe under the conditions of its intended use. 'Food additive' does not include: ( )

**a.** A pesticide chemical in or on a raw agricultural commodity; ( )

**b.** A pesticide chemical to the extent that it is intended for use, or is used in the production, storage or transportation of any raw agricultural commodity; or ( )

**c.** A color additive. ( )

**09. Granulate.** The initial formation of crystals in honey. ( )

**10. Honey.** The natural sweet substance produced by bees resulting from the harvest of plant nectar or plant secretions that has been collected and transformed by the deposition, dehydration, and storage in comb to ripen and mature. ( )

**11. Pollen Grain.** The granular, dust-like microspores that bees gather from flowers. Pollen grains in suspension contribute to the lack of clarity in filtered style. ( )

**011. COMPLAINT PROCESS.**

**01. Complaint Contents.** Complaints shall be directed to the department, in writing, and contain the following information: ( )

**a.** The name, address and contact information of the complainants; and ( )

**b.** The location and brand name of the product which is the subject of complaint. ( )

**02. Initial Review.** The department will forward written complaints to the commission for initial review. ( )

**03. Sampling and Analysis.** Upon review, the commission may request the department to acquire an official sample of the product, in accordance with Title 22, Chapter 28, Idaho Code, and send it to an analytical laboratory that possesses the ability to analyze honey for adulteration, or other testing deemed appropriate in accordance with the nature of the complaint. The laboratory analysis shall be reviewed by the commission and the department for compliance with Title 22, Chapter 28, Idaho Code, and these rules. ( )

**04. Violations.** If, after investigation, the commission and the department find that a violation of title 22, Chapter 28, Idaho Code and/or these rules has occurred the commission and the department shall confer and agree on an appropriate course of action as authorized by Section(s) 22-2811 or 22-2812, Idaho Code. ( )

**012. -- 014. (RESERVED)**

**015. STANDARDS OF IDENTITY - HONEY.**

Honey sold as such shall not have added to it any food additives, nor shall any other additions be made other than honey. It shall not have begun to ferment or effervesce and no pollen or constituent unique to honey may be removed except where unavoidable in the removal of foreign matter. ( )

**01. Treatments.** Chemical or biochemical treatments shall not be used to influence honey crystallization. ( )

**02. Moisture Content.** Honey shall not have a moisture content exceeding twenty-three percent (23%). ( )

**03. Sugars Content.** ( )

**a.** The ratio of fructose to glucose shall be greater than zero point nine (0.9). ( )

**b.** Fructose and glucose (Sum of Both) shall not be less than 60g/100g. ( )

**c.** Sucrose content for honey not listed below shall not be more than 5g/100g. ( )

**i.** Honey from Alfalfa (*Medicago sativa*), Citrus spp., False Acacia (*Robinia pseudoacacia*), French Honeysuckle (*Hedysarum*), Menzies Banksia (*Banksia menziesii*), Red Gum (*Eucalyptus camaldulensis*), Leatherwood (*Eucryphia lucida*), and Eucryphia milligani shall have sucrose levels not to exceed 10g/100g. ( )

**ii.** Honey from Lavender (*Lavandula* spp.) and Borage (*Borago officinalis*) shall have sucrose levels not to exceed 15g/100g. ( )



**04. Name of the Food.** Products conforming to the standard of identity as adopted in this rule shall be designated "honey". Foods containing honey and any flavoring, spice, or other added ingredient, or honey that is processed in such a way that materially changes the flavor, color, viscosity or other material characteristics of pure honey, shall be distinguished from honey in the food name by declaration of the food additive or modification. ( )

**a.** Honey may be designated according to floral or plant source if it comes predominately from that particular source and has the organoleptic and physicochemical properties corresponding with that origin. ( )

**b.** Where honey has been designated according to floral or plant source, as stated in Paragraph 015.04.a., then the common name or the botanical name of the floral source shall be used in conjunction with or joined with the word "honey". ( )

**c.** Honey may be designated according to the following styles, which style shall be declared on packaging: ( )

**i.** "Honey" - this is honey in liquid or crystalline state or a mixture of the two (2); ( )

**ii.** "Comb Honey" - this is honey stored by bees in the cells of freshly built brood-less combs and which is sold in sealed whole combs or sections of such combs. ( )

**iii.** "Cut Comb in Honey," "Honey with Comb," or "Chunk Honey" - this is honey containing one (1) or more pieces of comb honey. ( )

**016. TYPES AND STYLES OF HONEY.**

**01. Extracted Honey.** Honey that has been separated from the comb by centrifugal force, gravity, straining, or other means. It is identified in the following types: ( )

**a.** Liquid Honey. Honey that is free of visible crystals; ( )

**b.** Crystallized Honey. Honey that is solidly granulated or crystallized, irrespective of whether candied, fondant, creamed or spread types of crystallized honey; and ( )

**c.** Partially Crystallized Honey. Honey that is a mixture of liquid honey and crystallized honey. ( )

**02. Styles.** Extracted honey styles are: ( )

**a.** Filtered Honey. Honey of any type defined in these standards that has been filtered to the extent that all or most of the fine particles, pollen grains, air bubbles, or other materials normally found in suspension, have been removed. Honey shall not be filtered to less than one point zero (1.0) micron. ( )

**b.** Strained Honey. Honey of any type defined in these standards that has been strained to the extent that most of the particles, including comb, propolis, or other defects normally found in honey, have been removed. Pollen grains, small air bubbles, and very fine particles are not normally removed from strained honey. ( )

**c.** Unfiltered/Unstrained - Unfiltered/Unstrained Honey. Honey that has not been filtered or strained by United States Standards for Grades of Extracted honey and may include extracted or non-extracted honey. ( )

**d.** Raw Honey. Honey that has not been pasteurized. ( )

**017. -- 022. (RESERVED)**

**023. MISBRANDING.**

Food labeled as a honey product, but not meeting the provisions of this rule may be subject to a stop sale order as authorized under Section 22-2812, Idaho Code. ( )

**024. PENALTY.**

Any person violating the provision of these rules shall be subject to the penalty provisions of Title 22, Chapter 28, Idaho Code. ( )

**025. -- 999. (RESERVED)**

## IDAPA 02 – DEPARTMENT OF AGRICULTURE

### 02.06.31 - NOXIOUS WEED FREE FORAGE AND STRAW CERTIFICATION RULES

DOCKET NO. 02-0631-1201

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-2403, 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 17, 2012.

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

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

The scope and purpose of the program will be clarified to address all possible activities of certified forage and straw products and to add that these products are intended for use on Idaho public lands.

A color of certification twine that is no longer used will be deleted from the rules. Add the year on forage tags and the date on the tag must accurately reflect the year in which the bale was produced. Correct typographical errors of plant scientific names and amend several sections to correct a contradiction of when transit certificates need to be issued.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: Not applicable.

**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:

ISDA does not anticipate any fiscal impact from the changes to be made to the Rule during this rulemaking.

**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 2012 Idaho Administrative Bulletin, [Vol. 12-7, page 26](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on July 19, 2012. No one attended the meeting, however three favorable written comments were received.

**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: Not applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dan Safford, Noxious Weed Specialist, 208-332-8592.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to Dan Safford and must be delivered on or before October 24, 2012 via email to [dan.safford@agri.idaho.gov](mailto:dan.safford@agri.idaho.gov) or via regular mail to Dan Safford's attention at the address listed below.

DATED this 31st day of August, 2012.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0631-1201

001. TITLE AND SCOPE.

01. **Title.** The title of this chapter is the “Noxious Weed Free Forage and Straw Certification Rules.” (3-19-07)

02. **Scope.** This chapter has the following scope: these rules shall govern the inspection, ~~and~~ certification, ~~and marking~~ of noxious weed free forage and straw to allow for the transportation and ~~safe use~~ of forage and straw in ~~to~~ Idaho and ~~through~~ states where regulations and restrictions are placed on such commodities. The official citation of this chapter is IDAPA 02.06.31.000 et seq. For example, the citation for this section is IDAPA 02.06.31.001. (~~3-10-00~~)(    )

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

The definitions found in Section 22-2402, Idaho Code, apply to this chapter. In addition, as used in this chapter: (7-1-94)

01. **Agent.** Any instrumentality or entity authorized by the director of the department, and acting on behalf of the department, to administer the provisions of this rule. Any designated agent shall act in an official capacity for the department and under the supervision of the director of the department. The principal purpose of the agent is to establish, conduct, and maintain a uniform and reasonable system of inspection and certification of forage and straw crops to determine if such crops are noxious weed free. (3-19-07)

02. **Approved Inspector.** An individual who has been accredited by the department or by the department’s agent in the noxious weed free forage and straw certification program. (3-19-07)

03. **Bale.** A mechanically compressed package of forage or straw bound by string or wire, or other binding material. (3-19-07)

04. **Bale Tag.** A tag or label which is attached to the string or wire, or other binding material of a bale of certified forage or straw, and identifies the bale as being certified noxious weed free. (3-19-07)

05. **Certificate of Inspection.** A record of inspection issued by an approved inspector that states the results of a field or commodity inspection. The certificate shall document that the inspected field or commodity is Idaho State Noxious Weed Free, North American Noxious Weed Free, or that the field or commodity contains noxious weeds. (5-8-09)

06. **Certification.** The process whereby an approved inspector conducts field or commodity inspections to determine that the field or commodity is noxious weed free. (3-19-07)

07. **Certification Markings.** Bale tags, ~~blue and orange colored twine~~, purple and yellow colored twine, compressed forage bale binding material, and forage cubes/pellets container tags/labels. (~~5-8-09~~)(    )

08. **Certified Compressed Forage Bale Binding Material.** An ISDA approved binding material which is attached to a compressed forage bale of certified noxious weed free forage and identifies the bale as being certified to the North American Standards. (5-8-09)

09. **Compressed Forage Bale.** A bale that has been twice compressed, once in the field by a forage baler and then recompressed a second time and bound by string, wire or other binding material. (3-19-07)

- 10. Department.** The Idaho State Department of Agriculture. (3-19-07)
- 11. Field.** The land on which a forage or straw crop is grown and is not divided by streams, public roads, other crops, or other barriers. (3-19-07)
- 12. Field Certification Inspection.** An on-site inspection of forage or straw in the field, and areas adjacent to the field, for the presence of noxious weeds. The inspection shall be conducted prior to cutting or harvesting. (3-19-07)
- 13. Forage.** Alfalfa, grain, and grass hay, and/or combinations of alfalfa, grain, or grass hay; the term “forage” includes forage cubes, compressed forage bales, and pellets. (3-19-07)
- 14. Forage Cubes.** Forage that is harvested from a field certified to North American Standards and is mechanically compacted into wafers or cubes. (3-19-07)
- 15. Forage Cube/Pellet Tag.** A tag, label, or statement which is attached or printed on a container of certified noxious weed free forage cubes or pellets, and identifies the container as being certified to the North American Standards. (5-8-09)
- 16. Idaho State Noxious Weed Free.** Forage and straw inspected for weeds designated by the director as noxious as defined in Section 22-2402(15), Idaho Code, and determined to be free of such weeds. (3-19-07)
- 17. Idaho State Noxious Weed Free Standards.** Forage and straw that meets the requirements Idaho State Noxious Weed Free. (3-19-07)
- 18. North American Noxious Weed Free.** Forage and straw inspected for, and determined to be free of, weeds designated as noxious by the director as defined in Section 22-2402(15) Idaho Code and noxious weeds listed on the North American Weed List. (3-19-07)
- 19. North American Weed Free Forage Certification Program.** The North American Weed Management Association standard for forage certification. (3-19-07)
- 20. North American Twine.** Purple and yellow colored twine that is used to mark bales as certified to the North American Standards. (5-8-09)
- 21. North American Standards.** Requirements of the North American Weed Free Forage Certification Program. (3-19-07)
- 22. Noxious Weed Free.** No noxious weeds with viable seed, injurious portions, or propagating parts were found during inspection procedures. (3-19-07)
- ~~**23. Official Sample.** A sample taken by an approved inspector. (3-19-07)~~
- ~~**243. Pellets.** Forage that is harvested from a field certified to North American Standards and is manufactured into an agglomerated feed, formed by compacting and forcing through die openings by a mechanical process. (3-19-07)~~
- ~~**254. Straw.** The dried stalks or stems remaining after grain is harvested. (3-19-07)~~
- ~~**265. Transit Certificate.** A document completed by an approved inspector to ~~authorize the certify~~ products proposed for movement ~~of as certified~~ noxious weed free ~~certified forage bales or straw bales~~ into ~~or through areas~~ states which require noxious weed free forage and straw certification. The transit certificate must be in the possession of the transporter. If individual bales are tagged with an approved bale tag, a transit certificate is not required. (3-19-07)( )~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. VOLUNTARY NOXIOUS WEED FREE FORAGE AND STRAW CERTIFICATION PROGRAM.**

**01. Purpose.** The noxious weed free forage and straw certification program is a voluntary program, the purpose of which is to provide a means for the inspection, ~~and~~ certification, ~~and marking~~ of forage and straw as noxious weed free. The program will be managed by the department and may be implemented through an agent of the department. The program will allow for the ~~transportation, possession, storage, and sale~~ preparation of a transit certificate for the purpose of interstate transport or shipping of forage and straw into and through states which place regulations and restrictions on such commodities. The program is intended to reduce the exportation, importation, growth, and spread of noxious weeds. (3-19-07)(      )

**02. Certifying Authority.** The department or its agent is the certifying authority. The certifying authority shall appoint, as needed, approved inspectors throughout the state, who may issue certificates of inspection. (3-10-00)

**03. Certification Training.** The department shall determine minimum training and accreditation standards for approved inspectors. Training will be provided annually by the department or its agent. Attendance at annual training will certify accreditation for the inspector for that calendar year. Approved inspectors will be issued a certificate of training for the calendar year. Annual training shall include: (3-19-07)

- a. Field inspection techniques and procedures; (3-19-07)
- b. ISDA and North American Noxious weed list plant identification; (3-19-07)
- c. ISDA and North American certification standards and guidelines; (3-19-07)
- d. Knowledge of weed management, including: (3-19-07)
  - i. Burning; (3-19-07)
  - ii. Mowing, cutting or roguing; (3-19-07)
  - iii. Mechanical methods; and (3-19-07)
  - iv. Herbicides. (3-19-07)
- e. Inspection forms. (3-19-07)

**04. Certification Program.** (3-10-00)

- a. The department or its agent shall: (3-10-00)
  - i. Coordinate forage and straw inspections within the state; (3-10-00)
  - ii. Select, train, and supervise persons who serve as approved inspectors; (3-10-00)
  - iii. Issue certificates of inspection, transit certificates, North American Twine, forage cubes/pellets tags/labels, certified compressed forage bale binding material, and bale tags to qualifying participants; (3-19-07)
  - iv. Maintain a record of inspections performed and certificates and tags issued; (7-1-94)
- b. Under the direction of the department or its agent an approved inspector may perform inspections and issue certificates of inspection, transit certificates, North American Twine, forage cubes/pellets tags/labels, and bale tags within the state at cost. (3-19-07)

**05. Application for Certification.** (7-1-94)

**a.** Application for certification inspection shall be made on forms available from the department or its agent and submitted to the department or its agent. (5-8-09)

**b.** An applicant's signature on the application for certification is verification of the accuracy of the information submitted, and signifies the applicant's intent to comply with the post-certification and distribution requirements. (3-10-00)

**06. Field Inspection Procedures.** (7-1-94)

**a.** Forage or straw shall be inspected within ten (10) days prior to harvest in the field of origin for each field and cutting to be certified. (3-19-07)

**b.** Each field inspected shall be identified by the name of the owner and a field name or number. The certification inspection may be performed on an entire field or a portion of a field, if the portion is plainly marked and identified prior to inspection. (3-10-00)

**c.** Field inspections must take place prior to any operation that will limit the approved inspector's ability to properly inspect and certify the field. Fields that have been cut or harvested prior to inspection are ineligible for certification. (3-19-07)

**d.** There shall be a minimum of two (2) entry points per field. (3-19-07)

**e.** There shall be minimum of one (1) entry point per each ten (10) acres. (3-19-07)

**f.** Each point of entry shall be at least one-hundred fifty (150) feet into the field, and each additional one-hundred fifty (150) feet traveled shall constitute an entry point. Travel shall be uninterrupted, proceeding through the field being inspected. (3-19-07)

**g.** The entire field border shall be physically inspected. (3-19-07)

**h.** The field inspection will include all ditches, fence rows, roads, easements, rights-of-way, or buffer zones surrounding the field. (3-19-07)

**i.** Forage which contains any noxious weeds as identified in Section 22-2402(15) or noxious weeds listed on the North American Noxious Weed List, may be certified if the following requirements are met: (3-19-07)

**i.** Field upon which the forage was produced was treated to prevent seed formation or seed ripening to the degree that there is no danger of dissemination of the seed, or any injurious portion thereof from such noxious weeds, or undesirable plant species, or the propagating parts of the plant are not capable of producing a new plant; (3-19-07)

**ii.** Noxious weed(s) were treated not later than rosette to bud stage, or boot stage for grass species classified as noxious weeds, prior to cutting or harvesting; and (3-19-07)

**iii.** Treatment method can include, but is not limited to burning, mowing, cutting or roguing, mechanical methods, or chemicals. (3-19-07)

**j.** An inspection certificate shall document that the above requirements have been met. (3-19-07)

**k.** Baling equipment must be cleaned of any noxious weeds prior to harvesting certified forage. If the baling equipment is not cleaned, the first three (3) small square bales or the first large round or square bale produced shall be considered non-certified. (3-19-07)

**l.** Interstate shipment of baled forage and straw shall be accompanied by an original transit certificate issued by the approved inspector in the county of origin. If individual bales are tagged with an approved bale tag, a transit certificate is not required. The storage area shall also be inspected and shall be free of noxious weeds. (3-19-07)( )

**m.** An approved inspector may not inspect fields of which said inspector has ownership or financial interest. (3-19-07)

**07. Certification Standards.** After completing an inspection, the approved inspector shall complete a certificate of inspection. (3-10-00)

**a.** If the field or commodity inspected is certified as North American Noxious Weed Free, the approved inspector shall issue a certificate of inspection for that harvest or cutting. If the field or commodity contains North American Noxious Weeds, but does not contain Idaho State noxious weeds, it may be certified as Idaho State noxious weed free, and such certification shall be noted on the certificate of inspection. (3-19-07)

**b.** If the field or commodity inspected is certified as noxious weed free, as defined in these rules, the approved inspector may also issue, upon request, any of the following documents: (3-19-07)

**i.** Transit certificates. (7-1-94)

**ii.** Bale tags. The date on the bale tag must accurately reflect the year in which the bale was produced.  
(7-1-94)( )

**iii.** North American Twine only if the field or commodity is certified as North American Noxious Weed Free. (3-19-07)

**iv.** Forage cube/pellet tag/labels only if the field or commodity is certified as North American Noxious Weed Free. (3-19-07)

**v.** Certified compressed forage bale binding material only if the field or commodity is certified as North American Noxious Weed Free. (3-19-07)

**c.** Certificates of inspection, transit certificates and bale tags shall be on forms prescribed by the department or its agent. (3-10-00)

**d.** North American Twine and bale tags must be purchased from the department or its agent. (5-8-09)

**08. Copy of Inspections and a List of Approved Inspectors.** Upon request, the agent shall provide the department with a copy of certificates of inspections issued and a current list of approved inspectors. (3-10-00)

**09. Reciprocity.** Forage or straw certified under a reciprocal agreement between the department and another state, and certified as North American Noxious Weed Free according to the other state's approved certification standards, may be shipped into the state of Idaho and shall be considered to meet the requirements of the Idaho program. (3-19-07)

**10. Exports.** Certification under these rules does not qualify a commodity for export from the United States. Applications for certification for export should be made directly to the Division of Plant Industries within the department. (3-10-00)

**11. Voluntary Posting.** After certification, a producer may post signs, or other forms of notification, on the certified commodity indicating that the commodity is certified as noxious weed free. (3-10-00)

**12. Post-Certification and Distribution Requirements.** After a producer's commodity has been inspected and certified, the producer shall: (3-19-07)

**a.** Take reasonable and prudent steps to protect the certified commodity from contamination; (7-1-94)

**b.** Keep the certified commodity separated from all uncertified commodity; (3-10-00)



c. Attach bale tags, certified compressed forage bale binding material, or North American Twine to each bale of certified forage or straw intended for sale as noxious weed free forage or straw prior to the bales leaving the producers stack yard or storage area; and (3-19-07)

d. Attach cube/pellet tag/label to each container of certified forage cubes/pellets intended for sale as noxious weed free forage prior to the containers leaving the producer's facility. (3-19-07)

e. Provide the shipper, trucker, or transporter with the appropriate number of transit certificates. If individual bales are tagged with an appropriate bale tag, a transit certificate is not required. ~~(3-10-00)~~( )

**13. Cancellation for Failure to Comply.** Any person who provides false information on an application for inspection or who fails to comply with the post-certification and distribution requirements may, upon order of the director, be suspended for a period of up to two (2) years from participating in the forage and straw certification program. (7-1-94)

**14. Enforcement and Cancellation.** Harvested lots of forage or straw from certified fields may be checked at any time by an approved inspector. Manufactured lots of forage cubes, pellets, and compressed forage bales may be checked at any time by an approved inspector. Evidence that forage, straw, forage cubes/pellets, or compressed forage bales are not from a certified field or that any lot has not been protected from contamination shall be cause for cancellation of certification. (3-19-07)

**15. Misuse of Transit Certificate and Certification Markings.** Using a transit certificate or certification marking for forage from a field that has not been certified shall constitute a violation of these rules. (3-19-07)

**16. Certification Fees.** A minimum of thirty dollars (\$30) per inspection shall be charged for up to ten (10) acres, and three dollars (\$3) per acre thereafter, for fields up to ninety-nine (99) acres. Fields that are one-hundred (100) acres or larger in size, the fee is three dollars (\$3) per acre for the first one-hundred (100) acres and two dollars (\$2) per acre thereafter. The agent is authorized to assess a general fee of thirty dollars (\$30) per year to recover overhead costs. The agent may waive the general fee if the applicant has already been assessed a similar fee for other types of crop inspections. (3-19-07)

**101. -- 149. (RESERVED)**

**150. NORTH AMERICAN NOXIOUS WEED LIST.**

<b>Common Name</b>	<b>Scientific Name</b>
Absinth wormwood	<i>Artemisia absinthium</i>
Bermudagrass	<i>Cynodon dactylon</i>
Buffalobur	<i>Solanum rostratum</i>
Canada thistle	<i>Cirsium arvense</i>
Common burdock	<i>Arctium minus</i>
Common crupina	<i>Crupina vulgaris</i>
Common tansy	<i>Tanacetum vulgare</i>
Dalmatian toadflax	<i>Linaria dalmatica</i>
Diffuse knapweed	<i>Centaurea diffusa</i>
Dyers woad	<i>Isatis tinctoria</i>
Field bindweed	<i>Convolvulus arvensis</i>
Hemp (marijuana)	<i>Cannabis sativa</i>

Common Name	Scientific Name
Henbane, Black	<i>Hyoscyamus niger</i>
Hoary cress	<i>Cardaria spp.</i>
Horsenettle	<i>Solanum carolinense</i>
Houndstongue	<i>Cynoglossum officinale</i>
Johnsongrass	<i>Sorghum halepense</i>
Jointed goatgrass	<i>Aegilops cylindrica</i>
Leafy spurge	<i>Euphorbia esula</i>
Matgrass	<i>Nardus stricta</i>
Meadow knapweed	<i>Centaurea pratensis</i>
Medusahead	<i>Taeniatherum caput-medusae</i>
Milium	<i>Milium vernale</i>
Musk thistle	<i>Carduus nutans</i>
Orange hawkweed	<i>Hieracium aurantiacum</i>
Oxeye daisy	<i>Chrysanthemum leucanthemum</i>
Perennial pepperweed	<i>Lepidium latifolium</i>
Perennial sorghum	<i>Sorghum almum</i>
Perennial sowthistle	<i>Sonchus arvensis</i>
Plumeless thistle	<i>Carduus acanthoides</i>
Poison hemlock	<i>Conium maculatum</i>
Puncturevine	<i>Tribulus terrestris</i>
Purple loosestrife	<i>Lythrum salicaria</i>
Quackgrass	<i>Agropyron repens</i>
Rush skeletonweed	<i>Chondrilla juncea</i>
Russian knapweed	<i>Centaurea repens</i>
Scentless chamomile	<i>Matricaria perforata</i> or <i>M. milaceum</i>
Scotch broom	<i>Cytisus scoparius</i>
Scotch thistle	<i>Onopordum acanthium</i>
Sericea Lespedeza	<i>Lespedeza cuneata</i>
Silverleaf nightshade	<i>Solanum elaeagnifolium</i>
Skeletonleaf bursage	<i>Ambrosia tomentosa</i>
Spotted knapweed	<i>Centaurea maculosa</i>
Squarrose knapweed	<i>Centaurea virgata</i>
St. Johnswort	<i>Hypericum perforatum</i>
Sulfur cinquefoil	<i>Potentilla recta</i>

Common Name	Scientific Name
Syrian beancaper	<i>Zygophyllum fabago</i>
Tansy ragwort	<i>Senecio jacobaea</i>
Toothed spurge	<i>Euphorbia dentata</i>
Wild oats	<i>Avena fatua</i>
Wild proso millet	<i>Panicum miliaceum</i>
Yellow hawkweed	<i>Hieracium pratense</i>
Yellow starthistle	<i>Centaurea solstitialis</i>
Yellow toadflax	<i>Linaria vulgaris</i>

(5-8-09)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**250. CERTIFICATION MARKING.**

Each certified bale or container shall be marked by one (1) of the following: (3-19-07)

**01. North American Twine.** Only one (1) strand is required per bale. (3-19-07)

**02. Forage Tag.** The following information shall be shown on baled forage and straw: (5-8-09)

**a.** The words - “North American Weed Free Forage Certification Program” or “Idaho State Noxious Weed Free Forage & Straw Certification Program”; (3-19-07)

**b.** Bale tag serial number; (3-19-07)

**c.** County of origin identification; (3-19-07)

**d.** ISDA emblem; (3-19-07)

**e.** ISDA telephone number; and (3-19-07)

**f.** A statement that the product is “Certified to the North American Standards” or “Certified to the Idaho State Noxious Weed Free Standards.” (3-19-07)

**g.** Year the bale tag was issued. ( )

**03. Forage Cube/Pellet Tag/Label.** Certification tags/labels shall be attached to or a statement with the following information shall be printed on each container of noxious weed free product: (3-19-07)

**a.** The words - “North American Weed Free Forage Certification Program”; (3-19-07)

**b.** ISDA forage manufacturer identification number; (3-19-07)

**c.** ISDA emblem; (3-19-07)

**d.** ISDA telephone number; and (3-19-07)

**e.** A statement that the product is “Certified to the North American Standards.” (3-19-07)

**04. Certified Compressed Forage Bale Binding Material.** The following information shall be printed in purple ink on yellow binding material. Two (2) consecutive vertical purple lines approximately one-eighth of an inch (1/8") wide, spaced approximately one and one-quarter inches (1 1/4") apart, placed before and after written text which includes the acronym "ISDA NWFFS" and can include the manufacturer's name. (5-8-09)

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.06.33 - ORGANIC FOOD PRODUCT RULES

#### DOCKET NO. 02-0633-1201 (FEE RULE)

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-1103, 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 17, 2012.

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 non-technical explanation of the substance and purpose of the proposed rulemaking:

The proposed rule provides industry with a new optional seal for promotion purposes, and a new optional registration of branded materials for organic use.

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

ISDA may charge fees no greater than the following amounts to those persons desiring to register branded materials with the Organic Foods Program:

1. \$200 initially, and annually thereafter, to persons already accredited by another qualifying materials entity;
2. \$500 initially, and from \$500 to \$5000 annually relative to the amount of annual sales of the registered materials.

**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:

No impact on the general fund. The Organic Food Program Fund 0332-10 will have increased annual revenue estimated at \$10,000 to \$20,000 to cover estimated costs of providing services to industry.

**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 4, 2012 Idaho Administrative Bulletin, [Vol. 12-7, Page 27](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on July 16.

**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 Brandon Lamb, Program Manager at (208) 332-8675.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to Brandon Lamb and must be delivered on or before October 24, 2012. Comments can be delivered via email to [Brandon.Lamb@agri.idaho.gov](mailto:Brandon.Lamb@agri.idaho.gov) or via regular mail to Brandon Lamb's attention at the address listed below.

DATED this 31st day of August, 2012.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Rd.  
P.O. Box 790

Boise, Idaho 83701  
Phone: (208) 332-8500  
Fax: (208) 334-2170

**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0633-1201**

**010. DEFINITIONS.**

**01. Agent.** Any entity accredited by the Secretary of the United States Department of Agriculture as a certifying agent for the purpose of certifying a production or handling operation. (3-19-07)

**02. Certification.** A document issued by the Department to a producer/handler who is in compliance with this rule who has more than five thousand dollars (\$5,000) annual gross organic sales. (3-19-07)

**03. Department.** The Idaho State Department of Agriculture. (4-2-03)

**04. Director.** The director of the department of agriculture or the director's designee. (4-2-03)

**05. Educational Activity.** Seminar, conference, farm tour, class, or research. (3-19-07)

**06. Food Products.** Shall include all agricultural, horticultural, viticultural and vegetable products of the soil, apiary and apiary products, poultry and poultry products, livestock and livestock products, milk and dairy products and aquaculture products. (4-2-03)

**07. Handler.** Any person engaged in the business of handling agricultural products, including producers who handle crops or livestock of their own production, except such term shall not include final retailers of agricultural products that do not process agricultural products. (4-2-08)

**08. Livestock.** Any cattle, sheep, goat, swine, poultry, or equine animals used for food or in the production of food, fiber, feed, or other agricultural- based consumer products; wild or domesticated game; or other non-plant life, except such term shall not include aquatic animals or bees for the production of food, fiber, feed, or other agricultural-based consumer products. (4-2-08)

**09. Materials.** Any substance or mixture of substances that is intended to be used in agricultural production, processing, or handling. ( )

~~09~~**10. Organic Certification Seal.** The design approved by the director and which when imprinted or affixed on labels, packages or products, or used in advertising in any manner, shall signify that the standards and rules developed in accordance with the provisions of Chapter 11, Title 22, Idaho Code, and all other conditions of the provisions of that chapter have been met. (4-2-03)

~~10~~**1. Organic Food Product.** Any food product that is marketed using the term organic, or any derivative of the term organic in its labeling or advertising. Organic foods are those processed, packaged, transported and stored to retain maximum nutritional value, without the use of artificial preservatives, coloring or other additives, irradiation, or synthetic pesticides. (4-2-03)

~~12~~**2. Organically Grown Food Products.** Food products which are produced without the use of synthetically compounded fertilizers, pesticides, or growth regulators for a period not less than thirty-six (36) months prior to harvest. Organically grown food products are produced under the standards and rules established in accordance with the provisions of Chapter 11, Title 22, Idaho Code, and by other qualified agencies. (4-2-03)

~~12~~**3. Person.** Any individual, partnership, association, corporation, cooperative, or other entity. (4-2-08)

~~13~~**4. Producer.** A person who engages in the business of growing or producing food, fiber, feed, or other agricultural-based consumer products. (4-2-08)

~~14~~**5. Registration.** (3-19-07)

**a.** A document issued by the Department to an organic producer/handler who has five thousand

- dollars (\$5,000) or less annual gross organic sales; or (3-19-07)
- b.** A document issued by the Department to an agent certifying organic producers/handlers in the state of Idaho; or (3-19-07)
  - c.** A document issued by the Department to a producer/handler certified by an agent other than the Department. (3-19-07)
- 156.** **Vendor.** Any person who sells organic food products to the consumer or another vendor. (4-2-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**200. IDAHO ORGANIC CERTIFICATION SEAL.**

**01. Description of Seal.** ~~The Idaho seal must replicate the form and design of the example in Figure 1 and must be printed legibly and conspicuously.~~ Certified operations that become certified for the first time prior to July 1, 2013 may continue to use the seal depicted in Figure 1. Certified operations that become certified for the first time July 1, 2013 and later may only use the seal in Figure 2.

**FIGURE 1**



**FIGURE 2**



~~(4-2-03)~~( )

**02. Utilization of Seal.** The Idaho organic certification seal as approved by the director and as shown in Figure 1 and Figure 2, may be imprinted or affixed on labels, packages or products, or used in advertising in any manner, shall signify that the standards and rules developed in accordance with the provisions of this rule and all other conditions of the provisions of this chapter have been met. ~~(4-2-03)~~( )

**a.** Any container manufacturer may apply for authorization to imprint facsimiles of the ISDA organic certification seal on containers of organic products. (4-2-03)

b. Authorization granted to imprint facsimile seals shall be subject to review by the director on an annual basis, or more frequently if necessary. (4-2-03) ( )

**201. REGISTRATION OF APPROVED MATERIALS.**

The director may establish a list of registered branded materials for use in organic production, processing, or handling. ( )

**01. Registration.** Registration is voluntary. ( )

a. All applicants applying for registration of materials must submit the application to the Department on forms prescribed by the Department. ( )

b. An applicant for materials registration must demonstrate that the material meets the requirements and standards of the National Organic Program. Specifically, the material may not be a material prohibited for use in the production, processing, or handling of organic products by 7 C.F.R. Section 205.105, and may not be otherwise prohibited for use in organic production, processing, or handling by the National Organic Program. ( )

**02. Effect of Registration.** The fact that a material is registered is not a guarantee that the registered material will be acceptable for use by certified organic producers, processors, or handlers or other organic certifying agencies other than ISDA. ( )

**03. Department Not Liable.** The Department is not liable for any losses or damages that occur as a result of any person's use of any registered branded material. The Department is not liable for any losses or damages that result from delays that occur in the registration process due to lack of resources or expertise. ( )

**04. Registration Fees.** The Director may charge the following fees, which are nonrefundable and are not to exceed the stated amounts. ( )

a. Operations that hold a current approval from a reputable third party accredited material evaluation program such as the Environmental Protection Agency, an NOP Accredited Certifying Agent, or ISO Guide 65 for the material(s) which it is seeking to register in Idaho must pay two hundred dollars (\$200) for an initial registration application fee, and two hundred dollars (\$200) each year thereafter for renewal of the registration. ( )

b. All other operations will be charged an initial registration application fee not to exceed five hundred dollars (\$500), and must pay an annual fee based on registered branded materials sales volume, not to exceed the following amounts:

<u>Annual Sales</u>	<u>Annual Fees</u>
<u>\$0 to \$20,000</u>	<u>\$500</u>
<u>\$20,001 to \$75,000</u>	<u>\$2,500</u>
<u>\$75,000 and above</u>	<u>\$5,000</u>

( )

c. All operations must pay initial and annual inspection fees to keep their product registered. ( )

**05. Initial and Annual Inspection Fees.** ( )

a. The hourly rate for inspections is fifty dollars (\$50), including travel time. ( )

b. Travel time from an inspector's normal duty station to the inspection site and return to normal duty station will be compensable time charged to the applicant. ( )

c. There will be a minimum charge of fifty dollars (\$50) plus mileage for any inspection. ( )



d. A mileage rate as approved by the Board of Examiners will be included in the inspection fees. ( )

e. A per diem, lodging, and travel as allowed by state and ISDA rules, and any other out of pocket costs incurred by ISDA in conducting annual or initial certification inspections will be charged to the operation. ( )

f. Upon approval by ISDA, private inspectors may be utilized. The applicant or operator will bear the total cost of the private inspection. ( )

**06.** **Seal for Registered Branded Materials.** When a material is registered and added to the list of registered branded materials, the Director will approve the use of the seal in Figure 3 on the packaging and in the promotions for the sale of the registered material subject to the National Organic Program and Idaho state rules:

**FIGURE 3**



( )

**07.** **Revocation of Registration.** If at any time the registered material is determined to be not suitable for organic use, the Director may revoke the registration of the branded material, remove the material from the list of registered branded materials, and revoke authorization to use the seal shown in Subsection 201.06. ( )

~~2012.~~ -- 299. (RESERVED)

## PROPOSED RULE COST/BENEFIT ANALYSIS

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

**Department or Agency:** Idaho State Department of Agriculture

**Agency Contact:** Brandon Lamb      **Phone:** 208-332-8675

**Date:** August 26, 2012

**IDAPA, Chapter and Title Number and Chapter Name:**02.06.33 – Organic Food Product Rules

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

**Rulemaking Docket Number:** 02.0633-1201

### STATEMENT OF ECONOMIC IMPACT:

The rule creates a material review program and fees to implement the program. Idaho's organic industry has expressed the need for an Idaho program which can review products to the United States Department of Agriculture's - National Organic Program Standards. Those products stamped with a seal of approval could then be marketed and sold to organic operations resulting in more options and confidence in the marketplace. It is expected the revenue generated by the fee will cover the additional costs of providing the services outlined in the rule, resulting in a net neutral revenue stream. The fee in the rule was set based on estimated staff time to perform the work required. Because this is a new program there is no historical data to base costs or revenue on. The information below is provided as an estimate of program participants.

<u>Revenue Source</u>	<u>Number</u>	<u>Estimated Revenue</u>	
		<u>Low</u>	<u>High</u>
Applications @ \$200	3 to 4	\$600	\$800
Applications@ \$500	4 to 5	\$2,000	\$2,500
Annual Fees @ \$500	1 to 2	\$500	\$1,000
Annual Fees @ \$2,500	1 to 2	\$2,500	\$ 5,000
Annual Fees@ \$5000	<u>1 to 2</u>	<u>\$5,000</u>	<u>\$10,000</u>
Totals	10 to 15	\$10,600	\$19,300

**IDAPA 02 - DEPARTMENT OF AGRICULTURE**  
**02.06.35 - RULES GOVERNING ROUGH BLUEGRASS (*POA TRIVIALIS*)**  
**DOCKET NO. 02-0635-1201**  
**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 22-2006, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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 non-technical explanation of the substance and purpose of the proposed rulemaking:

Amending Section 101 - Qualification of Regulated Articles for Quarantine Release - to allow for the use of a certificate of analysis in lieu of tags.

Amending Section 102 - Rough Bluegrass Quarantine Inspections - to allow for inspection by the Idaho Crop Improvement Association.

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

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

ISDA does not anticipate any fiscal impact as a result of this rule change.

**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 4, 2012 Idaho Administrative Bulletin, [Vol. 12-7, Page 28](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on July 17, 2012; there were no visitors in attendance at the meeting, nor were any comments received.

**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 Michael E. Cooper and must be delivered on or before October 24, 2012. Comments can be delivered via email to [Mike.Cooper@agri.idaho.gov](mailto:Mike.Cooper@agri.idaho.gov) or via regular mail to Michael E. Cooper's attention at the address listed below.

DATED this 31st day of August, 2012.

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

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0635-1201

**101. QUALIFICATIONS OF REGULATED ARTICLES FOR QUARANTINE RELEASE.**

**01. Planting Seed Stock of Regulated Articles.** Any person planting seed stock of regulated articles shall comply with the following requirements: (3-30-01)

**a.** Submit to the Director an official laboratory analysis of a representative sample showing freedom from rough bluegrass based on a five (5) gram sample for bentgrass or redtop, a twenty-five (25) gram sample for bluegrass, or a fifty (50) gram sample for other grasses; or (3-30-01)

**b.** Submit to the Director a representative sample for laboratory analysis. (3-30-01)

**02. Quarantine Release Tag.** Upon receipt of an official seed laboratory analysis, the Director may upon request issue sequentially numbered tags for each bag of regulated article found free of rough bluegrass. (3-30-01)

**03. Analysis Certificate.** In lieu of tags, a seed analysis certificate from an official seed laboratory showing each lot being planted to be free from rough bluegrass must be kept on file for a minimum of one (1) year after all of the inventory of that lots harvested seed has been sold. ( )

**102. ROUGH BLUEGRASS QUARANTINE - INSPECTIONS.**

The Director shall cause inspections to be made in accordance with the provisions of Section 22-2007, Idaho Code. (5-3-03)

**01. Infested Seed Stock.** Lots of turf seed stock contaminated with rough bluegrass seeds may be planted in an approved nursery of two (2) acres or less under the supervision of the Director. The nursery shall be seeded in rows spaced twenty-four (24) inches apart and it shall be the duty of the person receiving such seed stock to rogue the planting or chemically treat to eradicate the rough bluegrass. The approved nursery shall be inspected by the Department or the Idaho Crop Improvement Association at least three (3) times during the seedling year. Any approved nursery not passing inspection shall not be harvested but shall be destroyed upon the order of the Director at the owner's expense. (~~3-20-97~~)( )

**02. Application for Nursery Inspection.** A person shall make application for nursery inspection to the Director or the Idaho Crop Improvement Association at least fourteen (14) days prior to planting. (~~3-20-97~~)( )