

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

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

IDAPA 02.06.02 - Rules Pertaining To The Idaho Commercial Feed Law (Fee Rule) (Docket No.  
02-0602-1201).

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 09/29/2012. 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 10/27/2012.

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

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*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 12, 2012  
**SUBJECT:** Idaho State Department of Agriculture

IDAPA 02.06.02 - Rules Pertaining To The Idaho Commercial Feed Law (Fee Rule) (Docket No. 02-0602-1201)

The Idaho State Department of Agriculture submits notice of temporary and proposed rule at IDAPA 02.06.02 - Rules Pertaining To The Idaho Commercial Feed Law. According to the Department, the purpose of the rulemaking is to add a section defining those feed products that will be exempt from registration, to provide for registration and fees and to provide that labeling shall include all statements and promotion on company websites and other internet-based customer interfaces.

The Department notes that the rulemaking establishes a registration fee of \$45.00 per product pursuant to authority provided in SB 1236 from the 2012 legislative session. Negotiated rulemaking was conducted. The rule appears to be authorized pursuant to Sections 25-2704 and 25-2710, Idaho Code.

cc: Idaho State Department of Agriculture  
Brian Oakey  
Kathryn Mink

## 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: Agriculture

Agency Contact: Katie Mink Phone: (208) 332-8564

Date: August 13, 2012

IDAPA, Chapter and Title Number and Chapter Name:

02.06.02 – Rules Pertaining to the Idaho Commercial Feed Law

Fee Rule Status:  Proposed  Temporary

Rulemaking Docket Number: 02-0602-1201

### STATEMENT OF ECONOMIC IMPACT:

The overall economic impact of this rule should be neutral. The rule enforces changes to the program fee structure that were outlined in SB 1236 during the 2012 Session of the Idaho Legislature. The fee in the rule was set based on the following data:

- Number of registered products (FY 2012): 15,327
- Average Revenue per Product: \$59.67
- Total Program Expense: \$661,329
- Average Expense per Product: \$43.15
- Estimated number of registered products (FY 2013): 14,827
- Total Program Expense (Estimated): 694,295
- Estimated Expense per Product: \$46.83
- Proposed Fee per Product: \$45.00

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

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

#### DOCKET NO. 02-0602-1201 (FEE RULE)

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

**EFFECTIVE DATE:** The effective date of the temporary rule is September 5, 2012.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 25-2710, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 19, 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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Add a section, 011 - Exemptions, to define those feed products that will be exempt from registration.

Add a section, 020 - Registration & Fees, to set in rule a fee of \$45 per product.

Add a subsection 050.01.h. - Inclusion of statements and promotion on company websites or other internet-based customer interfaces into the definition of "labeling."

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

The agency facilitated three negotiated rulemaking meetings on July 11, July 18, and August 1, 2012. In these meetings, participants provided input on each of the new sections referenced above. The temporary rule is important in order to provide a registration fee for new and renewed products. Without the temporary rule, the program would be unable to register products and provide funding for program activities.

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

The registration fee included in this temporary rule is authorized in Section 25-2704(2), which authorizes the Director to set a registration fee in rule. This authorization is the result of SB 1236, which was passed by the 2012 Idaho Legislature. Changes to the statute included the authorization to set the registration fee in rule, as well as the elimination of the tonnage fee.

The registration fee is set at \$45 per product. This is an increase in the per product registration fee of \$5 or \$25. The new registration fee also replaces the former tonnage fee requirement.

**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:

The commercial feed program is a dedicated fund program and there is no impact to the state general fund.

**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 June 6, 2012 Idaho Administrative Bulletin, [Volume 12-6, Page 14](#).

**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:

ISDA has incorporated the Association of American Feed Control Officials (AAFCO) Official Publication into

the Rules Pertaining to the Idaho Commercial Feed law for a number of years. The only change to the incorporation by reference section is to the date of the Official Publication.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Kathryn Mink, Section Manager Feed, Fertilizer & Seed at (208) 332-8620.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 26, 2012.

DATED this 3rd day of August, 2012.

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

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**THE FOLLOWING IS THE PROPOSED TEXT FOR FEE DOCKET NO. 02-0602-1201**

**004. INCORPORATION BY REFERENCE.**

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

**01. The Association of American Feed Control Officials (AAFCO) Official Publication.** The Terms, Ingredient Definitions and Policies as published in the “2012<sup>3</sup> Official Publication” of AAFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 25, Chapter 27, Idaho Code, and any rule promulgated thereunder. The AAFCO Official Publication is a copyrighted publication and not available in electronic format. A copy may be purchased online from the AAFCO website at: [www.aafco.org](http://www.aafco.org). (~~3-29-12~~)(9-5-12)T

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

**(BREAK IN CONTINUITY OF SECTIONS)**

**011. EXEMPTIONS.**

Exemptions from product registration shall include: (9-5-12)T

**01. Unmixed Whole Seeds.** Unmixed whole seeds and physically altered entire unmixed seeds, when such whole or physically altered seeds are not chemically changed or are not adulterated within the meaning of Section 25-2707, Idaho Code, or misbranded within the meaning of Section 25-2708, Idaho Code. (9-5-12)T

**02. Seed Mixtures.** Seeds mixed and planted as such mixture, grown and harvested as one (1) crop and processed as one (1) mixture when not adulterated within the meaning of Section 25-2707, Idaho Code, or misbranded within the meaning of Section 25-2708, Idaho Code. (9-5-12)T

**03. Hay.** All hay, except commercially dehydrated legumes and grasses and when not adulterated within the meaning of Section 25-2707, Idaho Code, or misbranded within the meaning of Section 25-2708, Idaho Code. (9-5-12)T

**04. Straw.** Whole or ground straw, stover, silage, cobs, husks, hulls, wet or pressed beet pulp, pea screenings and beet discard molasses when not mixed with other materials and when not adulterated within the meaning of Section 25-2707, Idaho Code, or misbranded within the meaning of Section 25-2708, Idaho Code. (9-5-12)T

**05. Animals.** Live, whole or unprocessed animals when not adulterated within the meaning of Section 25-2707, Idaho Code, or misbranded within the meaning of Section 25-2708, Idaho Code. (9-5-12)T

**06. Animal Remedies.** Animal remedies when not adulterated within the meaning of Section 25-2707, Idaho Code, or misbranded within the meaning of Section 25-2708, Idaho Code. (9-5-12)T

**07. Minerals.** Individual mineral substances when not mixed with another material and when not adulterated within the meaning of Section 25-2707, Idaho Code, or misbranded within the meaning of Section 25-2708, Idaho Code. (9-5-12)T

**012. -- 019. (RESERVED)**

**020. REGISTRATION AND FEES.**

**01. Product Registration Fee.** Whenever a commercial feed is registered for distribution in the state of Idaho, a fee of forty-five dollars (\$45) per product shall be collected. (9-5-12)T

**a.** The Department shall utilize these funds for the operation of all program activities, including but not limited to, registration, label review, inspection and sampling, and laboratory analysis. (9-5-12)T

**b.** The fee shall be set by the Department such that all costs associated with the commercial feed program will be covered by the registration fee without the need for additional state general or dedicated funding. A dedicated fund balance of not more than one million dollars (\$1,000,000) will be maintained. The registration fee will be reduced or increased by the Department in order to maintain this balance. (9-5-12)T

**02. Product Registration Fee Exemption.** Sellers who are not regularly engaged in the business of manufacturing or selling commercial feed and whose total amount of gross annual sales does not exceed five hundred dollars (\$500) shall be exempt from payment of the registration fee. However, the Department retains the right to inspect any feed in the possession of those persons exempted by Subsection 020.02 at any time. (9-5-12)T

**a.** This exemption pertains to the registration fee only, and does not exempt a person or business from other sections of these rules and/or the Idaho Commercial Feed Law. (9-5-12)T

**b.** The Department reserves the right to review the records of sellers who are claiming or who have claimed that they are exempt from the payment of the registration fee, in order to ensure that they qualify for the exemption. (9-5-12)T

**c.** The Department further reserves the right to conduct any and all inspections allowed under Section 25-2709, Idaho Code, in order to ensure compliance with these rules and/or the Idaho Commercial Feed Law. (9-5-12)T

**0421. -- 049. (RESERVED)**

**050. LABEL FORMAT.**

**01. Label Format.** Commercial feeds shall be labeled with the information prescribed in this rule on the principal display panel of the product and in the following general format. (8-16-71)

- a.** Net Weight. (8-16-71)
- b.** Product name and brand name if any. (8-16-71)
- c.** If a drug is used: (8-16-71)
  - i.** The word “Medicated” shall appear directly following and below the product name in type size, no smaller than one-half (1/2) the type size of the product name. (8-16-71)
  - ii.** The purpose of medication (claim statement). (8-16-71)
  - iii.** An active drug ingredient statement listing the active drug ingredients by their established name and the amounts in accordance with Subsection 150.04. (8-16-71)
  - iv.** The required directions for use and precautionary statements or reference to their location if the detailed feeding directions and precautionary statements required by Sections 250 and 300 appear elsewhere on the label. (8-16-71)
- d.** The guaranteed analysis of the feed as required under the provisions of Section 25-2705(1)(c) of the Commercial Feed Law include the following items, unless exempted in Subsection 050.01.d.viii., and in the order listed: (3-30-07)
  - i.** Minimum percentage of crude protein. (8-16-71)
  - ii.** Maximum or minimum percentage of equivalent protein from non-protein nitrogen as required in Subsection 150.05. (8-16-71)
  - iii.** Minimum percentage of crude fat. (8-16-71)
  - iv.** Maximum percentage of crude fiber. (8-16-71)
  - v.** Minerals, to include, in the following order: minimum and maximum percentages of calcium (Ca), minimum percentage of phosphorus (P), minimum and maximum percentages of salt (NaCl), and other minerals. (8-16-71)
  - vi.** Vitamins in such terms as specified in Subsection 150.03. (8-16-71)
  - vii.** Total sugars as invert on dried molasses products or products being sold primarily for their sugar content. (8-16-71)
  - viii.** Exemptions. Guarantees for minerals are not required when there are no specific label claims and when the commercial feed contains less than six and one-half percent (6 1/2%) of Calcium, Phosphorus, Sodium, or Chloride. Guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin supplement. Guarantees for crude protein, crude fat, and crude fiber are not required when the commercial feed is intended for purposes other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, such as drug premixes, mineral or vitamin supplements, and molasses. (4-7-11)
- e.** Feed ingredients, collective terms for the grouping of feed ingredients, or appropriate statements as provided under the provisions of Section 25-2705(1)(d) of the Commercial Feed Law shall be listed in decreasing order of predominance by weight: (4-7-11)
  - i.** The name of each ingredient as defined in the Official Publication of the Association of American

Feed Control Officials, common or usual name, or one approved by the Director. (8-16-71)

ii. Collective terms for the grouping of feed ingredients as defined in the Official Definitions of Feed Ingredients published in the Official Publication of the Association of American Feed Control Officials in lieu of the individual ingredients; provided that when a collective term for a group of ingredients is used on the label, individual ingredients within that group shall not be listed on the label. The manufacturer shall provide the feed control official, upon request, with a list of individual ingredients within a defined group, that are or have been used at manufacturing facilities distributing in or into the state. (8-16-71)

iii. The registrant may affix the statement, "ingredients as registered with the State" in lieu of the ingredient list on the label. The list of ingredients must be on file with the Director. This list shall be made available to the feed purchaser upon request. (8-16-71)

f. Name and principal mailing address of the manufacturer or person responsible for distributing the feed. The principal mailing address shall include the street address, city, state, and zip code; however, the street address may be omitted if it is shown in the current city directory or telephone directory. (8-16-71)

g. The information required in Section 25-2705 of the Commercial Feed Law must appear in its entirety on the principal display panel of the container. (4-7-11)

h. Labeling shall include all statements and promotion on company websites or other internet based customer interfaces. (9-5-12)T

**02. Customer Formula Invoice and Tag Requirements.** (8-16-71)

a. Bulk shipments of customer-formula feed shall be accompanied by an invoice, delivery slip or other shipping documents identifying the shipment as customer-formula feed and the name and address of the customer to whose order it is made. (8-16-71)

b. Bagged customer-formula feed will be labeled with a tag identifying each bag as such. The total bags in each customer's shipment will be segregated from other bagged feed and identified with the name and address of the customer to whose order it is made. (8-16-71)

c. Nutritional guarantees and guarantees of other analytes, and a list of ingredients, in descending order of predominance by weight, of a customer-formula feed may be used in lieu of specific weights or volumes of each ingredient, as required in Section 25-2705(2)(d), Idaho Code, when so ordered by the customer. (4-7-11)