

Dear Senators BAIR, Guthrie, Durst, and
Representatives ANDRUS, Boyle, Pence:

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

IDAPA 02.06.09 - Rules Governing Invasive Species (Docket No. 02-0609-1301);

IDAPA 02.06.22 - Noxious Weed Rules (Docket No. 02-0622-1301);

IDAPA 02.06.23 - Rules Governing Noxious Weed Free Gravel And Rock Products (New Chapter)
(Docket No. 02-0623-1301).

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 08/26/2013. 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 09/24/2013.

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: August 07, 2013
SUBJECT: Department of Agriculture

IDAPA 02.06.09 - Rules Governing Invasive Species (Docket No. 02-0609-1301)

IDAPA 02.06.22 - Noxious Weed Rules (Docket No. 02-0622-1301)

IDAPA 02.06.23 - Rules Governing Noxious Weed Free Gravel And Rock Products (New Chapter) (Docket No. 02-0623-1301)

1. IDAPA 02.06.09 - Rules Governing Invasive Species

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.06.09 - Rules Governing Invasive Species. According to the Department, the rule adds definitions, removes a transport permit requirement for bullfrogs, extends transport permit validity to five years, adds a section creating a method of application for energy crop invasive species possession/production permits, adds a section creating a method of application for trap crop invasive species permits, updates various scientific and common names and adds hybrids of certain listed invasive species.

The Department indicates that negotiated rulemaking was conducted. The rule appears to be authorized pursuant to section 22-1907, Idaho Code.

2. IDAPA 02.06.22 - Noxious Weed Rules

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.06.22 - Noxious Weed Rules. According to the Department, the rulemaking removes the statewide monitor list provisions, which applied to water hyacinth and added water hyacinth (scientific name *Eichhornia crassipes*) to the statewide EDRR noxious weed list.

Negotiated rulemaking was conducted. The rulemaking appears to be authorized pursuant to section 22-2403, Idaho Code.

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

3. IDAPA 02.06.23 - Rules Governing Noxious Weed Free Gravel And Rock Products

The Idaho State Department of Agriculture submits notice of proposed rule (a new chapter) at IDAPA 02.06.23 - Rules Governing Noxious Weed Free Gravel And Rock Products. According to the Department, the new rule will provide for inspection and certification of gravel as noxious weed free. Section 100.01 provides that the certification program is voluntary. The program will allow for the preparation of a transit certificate for the purpose of interstate transport or shipping of gravel and rock products into and through states which place regulations and restrictions on such products. The program is intended to reduce the exportation, importation, growth and spread of noxious weeds.

Negotiated rulemaking was conducted. The rulemaking appears authorized pursuant to Section 22-2403, Idaho Code.

cc: Department of Agriculture

Brian J. Oakey

Matt Voile

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.09 - RULES GOVERNING INVASIVE SPECIES

DOCKET NO. 02-0609-1301

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 22-1907, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 21, 2013. 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 proposed rule amendments will:

1. Add three definitions: "Energy Crop Invasive Species," "Facility" and "Trap Crop Invasive Species."
2. Amend Section 103, Possession Permits, to remove the transport permit requirement for bullfrogs.
3. Amend Section 104.03, Exempt Species - Transport Permits, to extend transport permit validity to five (5) years.
4. Add Section 105, Energy Crop Invasive Species Possession/Production Permits, creating a method of application for Energy Crop Invasive Species Possession/Production Permits.
5. Add Section 106, Trap Crop Invasive Species Permits, creating a method of application for Trap Crop Invasive Species Permits.
6. Amend Sections 806, Invasive Species-Insects, 807, Invasive Species-Plant Pathogens and Parasitic Nematodes, 809, Invasive Species-Invasive Plants and 810, Invasive Species - Invasive Plants - Trap Crops, to update scientific and common names and to add hybrids of certain listed invasive species.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking published in the June 5, 2013, Idaho Administrative Bulletin, [Vol. 13-6, Page 21](#). Negotiated rulemaking meetings were held on June 13 and June 27, 2013.

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 Matt Voile, Section Manager, (208) 332-8620.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to Matt Voile and must be delivered on or before August 28, 2013. Comments can be delivered via email to matt.voile@agri.idaho.gov or via regular mail to Matt Voile's attention at the address listed below.

DATED this 3rd day of July, 2013.

Brian J. Oakey
Deputy Director
Idaho State Department of Agriculture

2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701
Phone: (208) 332-8500 Fax: (208) 334-2170

THE FOLLOWING IS THE TEXT OF THE PROPOSED RULE FOR DOCKET NO. 02-0609-1301

010. DEFINITIONS.

The following definitions shall apply in the interpretation and enforcement of this rule. (3-29-10)

01. Acts. Title 22, Chapter 19, Idaho Code, the “Idaho Invasive Species Act of 2008” and Title 22, Chapter 20, the “Idaho Plant Pest Act of 2002.” (3-29-10)

02. Aquatic Invertebrate Invasive Species. Those species listed in Section 800. (3-29-10)

03. Control. The abatement, suppression, or containment of an invasive species or pest population. (3-29-10)

04. Conveyance. A terrestrial or aquatic vehicle or a vehicle part that may carry or contain an invasive species or plant pest. A conveyance includes a motor vehicle, a vessel, a motorboat, a sailboat, a personal watercraft, a container, a trailer, or any other means or method of transportation. “Conveyance” also includes a live well or a bilge area. (3-29-10)

05. Department. The Idaho State Department of Agriculture. (3-29-10)

06. Director. The director of the Idaho State Department of Agriculture or his designee. (3-29-10)

07. Dreissenia Infested Waterbody. Body of water designated by the United States Geological Survey, <http://nas.er.usgs.gov/taxgroup/mollusks/zebramussel/>, or the Director as having a population of any life stage of Dreissenia mussels. (3-29-10)

08. Early Detection/Rapid Response. Finding invasive species during the initial stages of colonization and then responding within ten (10) days. (3-29-10)

09. Energy Crop Invasive Species. An Energy Crop Invasive Species is a non-native plant grown to harvest for use in making biofuels, such as bioethanol, or combusted for its energy content to generate electricity or heat. Energy Crop Invasive Species are non-native plants that are cultivated for the purpose of producing (non-food) energy. ()

~~09~~**10. Equipment.** An article, tool, implement, or device capable of carrying or containing: (3-29-10)

a. Water; or (3-29-10)

b. An invasive species. (3-29-10)

11. Facility. Any place, site or location or part thereof where a species listed as invasive pursuant to this rule are found, handled, housed, held, planted, or otherwise maintained for purposes governed by a possession, production, or transport permit issued pursuant to these rules and includes, but is not limited to all fields, plats, buildings, lots, structures, and other appurtenances and improvements on the land. ()

~~10~~**2. Invasive Species.** Species not native to Idaho, including their seeds, eggs, spores, larvae or other biological material capable of propagation, that cause economic or environmental harm and are capable of spreading in the state. “Invasive species” does not include crops, improved forage grasses, domestic livestock, or other beneficial nonnative organisms. (3-29-10)

~~13~~**3. Invasive Species Act.** The Idaho Invasive Species Act of 2008. (3-29-10)

~~12~~**4. Plant Pest Act.** The Idaho Plant Pest Act of 2002. (3-29-10)

~~135.~~ **Possession.** The act of cultivating, importing, exporting, shipping or transporting a listed invasive species in Idaho. Possession does not include the act of having, releasing or transporting a listed invasive species through circumstances beyond individual control, including but not limited to infestations in a water supply system, infestations resulting from natural spread of the species or some other acts of nature. (3-29-10)

~~146.~~ **State.** The state of Idaho. (3-29-10)

~~157.~~ **Transportation.** Any and all modes of personal and commercial Conveyance, including but not limited to automobiles, trucks, buses, boats, airplanes, helicopters, and trains. (3-29-10)

18. Trap Crop Invasive Species. A Trap Crop Invasive Species is a non-native plant species planted for purposes of controlling or eradicating a Plant Pest, as defined in the Idaho Plant Pest Act of 2002. ()

~~169.~~ **Water Body.** Natural or impounded surface water, including a stream, river, spring, lake, reservoir, pond, wetland, tank and fountain. (3-29-10)

~~170.~~ **Water Supply System.** A system used to treat, store, convey, or distribute water for irrigation, industrial, waste water treatment, residential, or culinary use. A Water Supply System includes a pump, canal, ditch, regulating impoundment, in-canal forebay, pipeline, or associated wetland and water quality improvement project, but does not include a Water Body as defined in Subsection 010.19. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

101. PROHIBITION ON POSSESSION, IMPORTATION, SHIPPING OR TRANSPORTATION OF INVASIVE SPECIES.

No person may possess, cultivate, import, ship, or transport any invasive species, including but not limited to an Energy Crop Invasive Species or Trap Crop Invasive Species, into or through the state of Idaho following the effective date of this rule, unless the person possessing, importing, shipping or transporting has obtained a permit under Section 103, or unless otherwise exempt by this rule, as set forth in Section 104. Prohibited acts include but are not limited to: ~~(3-29-10)~~()

01. Possession or Transportation. Possessing, cultivating, importing, exporting, shipping, or transporting an invasive species into or through the state of Idaho. (3-29-10)

02. Releasing. Releasing, placing, planting, or causing to be released, an invasive species in a water body, facility, water supply system, field, garden, planted area, ecosystem, or otherwise into the environment within the state of Idaho. (3-29-10)

03. Transporting From an Infested Environment. Transporting a conveyance or equipment into or through the state of Idaho that has been in an infested environment without obtaining a Department-approved decontamination of the conveyance or equipment. (3-29-10)

04. Transporting an Infested Article. Transporting, importing or shipping any plant, animal, mode of transportation, conveyance, or article that is infested with an invasive species into or through the state of Idaho without obtaining a Department-approved decontamination of the object. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

103. POSSESSION PERMITS.

Possession of invasive species is authorized only if the person possessing the species obtains a possession permit. ~~Persons who legally possess and transport bullfrogs pursuant to IDAPA 13.01.06 "Classification and Protection of Wildlife" and IDAPA 13.01.11 "Rules Governing Fish" and Idaho Code, Title 36 are exempted from obtaining a~~

~~possession permit.~~

~~(3-29-10)()~~

01. Application for Possession Permits. Persons seeking a possession permit must make application on a form prescribed by the Director. A separate application must be submitted for each facility where invasive species will be possessed. The application must include: (3-29-10)

- a. The applicant's name, address (residence and mailing), and Employer or Tax Identification Number. (3-29-10)
- b. Description of the proposed facility, including: (3-29-10)
 - i. A map identifying the location of the proposed facility; (3-29-10)
 - ii. The legal description of the real property for the proposed facility; (3-29-10)
 - iii. The approximate total area of the proposed facility; (3-29-10)
 - iv. A detailed diagram of proposed facility, (3-29-10)
 - v. A detailed confinement or HACCP Plan if applicable. (3-29-10)
- c. Name and address of the owner(s) and/or operator(s) of the proposed facility, if different than the applicant. If the proposed facility will be leased, a written and notarized authorization by the property owner must be included. (3-29-10)
- d. A copy of local zoning authority approval, if approval is required by the local zoning authority. (3-29-10)
- e. Description of the invasive species to be possessed at the facility, including, to the extent possible, the genus, species, sex, life state, age, identification, and purpose for possessing each species. (3-29-10)
- f. The date upon which the proposed facility will be available for inspection by the Department, which must be not less than seven (7) days prior to the time the invasive species are possessed at the proposed facility. (3-29-10)

02. Application Process. The Director will consider all information in the application and issue a written decision granting or denying the application. In reviewing the application, the Director will consider factors including but not limited to: (3-29-10)

- a. Proximity of the facility to agricultural operations, and environmentally sensitive lands and waters. (3-29-10)
- b. Potential for access to the facility by unauthorized persons. (3-29-10)
- c. Potential for vandalism, adverse weather, or other events that compromise the security of the facility. (3-29-10)
- d. Potential for the invasive species to escape or be released from the facility. (3-29-10)
- e. Whether, based on the applicant's certification and any other evidence received by the Director in connection with the application or proposed facility, all federal, state, county and city laws applicable to the facility have been met. (3-29-10)
- f. Whether the applicant has adequate knowledge, experience and training to ensure that the invasive species will not harm agriculture, the natural resources and environment of the state of Idaho. Such experience may be documented by a log book, employment records, education records or other means by which experience may be authenticated. (3-29-10)

g. Whether the facility is or will be adequately designed, constructed, and managed to protect agriculture, the natural resources and environment of the state of Idaho from escape of the invasive species.(3-29-10)

h. Prior to issuing a possession permit, the Director or his designee may perform an inspection of the facility to determine if its design, construction and proposed operation is consistent with the applicable provisions of Idaho law. (3-29-10)

03. Grant or Denial of the Permit. Following review of the application and any other relevant information, the Director will either issue the possession permit or deny the application and notify the applicant. If the Director issues the permit, he may include any necessary conditions to prevent release or escape of the invasive species, and to prevent harm to Idaho's agriculture, natural resources, and the environment. (3-29-10)

04. Duration of Possession Permit. A possession permit is valid until the permitted person no longer possesses the invasive species, or until the invasive species leaves the state. (3-29-10)

05. Permit Revocation. Permits issued pursuant to this chapter may be revoked at any time if the director or his designee finds that the permit holder has violated any of the provisions of this chapter, the Invasive Species Act, the Plant Pest Act, or any of the conditions included in the permit. (3-29-10)

06. Disposition of Non-Permitted Invasive Species. The Director may order non-permitted or illegally imported invasive species to be removed from the state or destroyed. (3-29-10)

07. Annual Report. All permit holders shall submit a report no later than January 1 of each calendar year, on forms provided by the Department. (3-29-10)

104. EXEMPT SPECIES.

The following species were present in portions of the state of Idaho prior to adoption of these Rules. However, they are not present throughout the state, and in accordance with the policy of the state of Idaho, as expressed in Idaho Code, Section 22-1902, the spread of these species should be prevented to the greatest extent possible. Therefore, the species listed below are exempt from the permit requirements of Sections 102 and 103, above. However, those seeking to transport the species listed in Section 104.01 outside the known established distribution area must obtain a transport permit in accordance with Section 104.03. (3-29-10)

01. Exempt Species List: (3-29-10)

a. New Zealand Mud Snail, *Potamopyrgus antipodarum*; (3-29-10)

b. Bullfrog, *Lithobates catesbeianus*; ()

b.c. Asian Clam, *Corbicula fluminea*. (3-29-10)

02. Location of Known Established Populations. Known established distributions of the New Zealand Mud Snail, Bullfrog, and Asian Clam are identified and mapped online at <http://nas.er.usgs.gov/queries>. (3-29-10)()

03. Transport Permits. Any person seeking to transport one of the species listed in Subsection 104.01 above outside of the known established distribution boundaries delineated in Subsection 104.02, above, must obtain a transport permit that will be valid for ~~one~~ five (5) years. For the purposes of this rule, transport of these exempt species is assumed when biological organisms and associated water from aquaculture facilities and hatcheries is moved from known infested areas in the state. (3-29-10)()

04. Application for Transport Permits. Persons seeking a transport permit must make application on a form prescribed by the Director. A separate application must be submitted for each facility from which invasive species will be transported. The application must include: (3-29-10)

a. The applicant's name, address (residence and mailing), and Employer or Tax Identification

- Number. (3-29-10)
- b.** Description of the facility of origin, including: (3-29-10)
 - i. A map identifying the location of the facility; (3-29-10)
 - ii. The legal description of the real property for the facility; (3-29-10)
 - iii. The approximate total area of the facility; (3-29-10)
 - iv. A detailed diagram of facility, (3-29-10)
 - v. A detailed HACCP Plan if applicable. (3-29-10)
 - c.** Name and address of the owner(s) and/or operator(s) of the facility, if different than the applicant. If the proposed facility will be leased, a written and notarized authorization by the property owner must be included. (3-29-10)
 - d.** Description of the invasive species to be transported from the facility, including the genus, species, sex, life state, age, and purpose for transporting the species. (3-29-10)
 - e.** Description of self-contained areas needing draining or discharges of water during or after the transport of invasive species. (3-29-10)
 - f.** Description of procedures to drain self contained areas after transport is complete, including: (3-29-10)
 - i. Into a municipal water treatment facility; or (3-29-10)
 - ii. Into an on-site waste treatment facility incorporating sand filtration and chlorination; or (3-29-10)
 - iii. As approved by the Department. (3-29-10)

105. ENERGY CROP POSSESSION/PRODUCTION PERMITS.

Possession and/or production of Energy Crop Invasive Species is authorized only if the person possessing the species obtains an Energy Crop Invasive Species Possession/Production Permit ("Energy Crop Invasive Species Permit"). ()

01. Application for Energy Crop Invasive Species Permits. Persons seeking an Energy Crop Invasive Species Permit must make application on a form prescribed by the Director. A separate application must be submitted for each facility or field where the Energy Crop Invasive Species will be possessed and/or produced. The application must include: ()

- Number. **a.** The applicant's name, address (residence and mailing), and Employer or Tax Identification ()
- b.** Description of the proposed facility, including: ()
 - i. A map identifying the location of the proposed facility or field; ()
 - ii. The legal description of the real property for the proposed facility or field; ()
 - iii. The approximate total area of the proposed facility or field; ()
 - iv. A detailed diagram of proposed facility or field; ()
 - v. A detailed confinement plan if applicable; and ()

vi. A detailed plan outlining survey and reconnaissance for escaped Energy Crop Invasive Species and a detailed plan for their control or elimination. ()

c. Name and address of the owner(s) and/or operator(s) of the proposed facility or field, if different than the applicant. If the proposed facility or field will be leased, a written and notarized authorization by the property owner must be included. ()

d. A copy of local zoning authority approval, if approval is required by the local zoning authority. ()

e. Description of the Energy Crop Invasive Species to be possessed at the facility or field, including, to the extent possible, the genus, species, sex, life state, age, identification, and purpose for possessing each species. ()

f. The date upon which the proposed facility or field will be available for inspection by the Department, which must be not less than seven (7) days prior to the time the Energy Crop Invasive Species are possessed at the proposed facility. ()

02. Application Process. The Director will consider all information in the application and issue a written decision granting or denying the application. In reviewing the application, the Director will consider factors including but not limited to: ()

a. Proximity of the facility to other agricultural operations, and environmentally sensitive lands and waters. ()

b. Potential for access to the facility or field by unauthorized persons. ()

c. Potential for vandalism, adverse weather, or other events that compromise the security of the facility or field. ()

d. Potential for the Energy Crop Invasive Species to escape or be released from the facility or field. ()

e. Whether, based on the applicant's certification and any other evidence received by the Director in connection with the application or proposed facility, all federal, state, county and city laws applicable to the facility or field have been met. ()

f. Whether the applicant has adequate knowledge, experience and training to ensure that the Energy Crop Invasive Species will not harm agriculture, the natural resources and environment of the state of Idaho. Such experience may be documented by a log book, employment records, education records or other means by which experience may be authenticated. ()

g. Whether the facility or field is or will be adequately designed, constructed, and managed to protect agriculture, the natural resources and environment of the state of Idaho from release or escape of the Energy Crop Invasive Species. ()

h. Prior to issuing an Energy Crop Invasive Species Permit, the Director or his designee may perform an inspection of the facility or field to determine if its design, construction and proposed operation is consistent with the applicable provisions of Idaho law. ()

03. Grant or Denial of the Permit. Following review of the application and any other relevant information, the Director will either issue the permit or deny the application and notify the applicant. If the Director issues the permit, he may include any necessary conditions to prevent release or escape of the Energy Crop Invasive Species, and to prevent harm to Idaho's agriculture, natural resources, and the environment. ()

04. Duration of Possession Permit. An Energy Crop Invasive Species Permit is valid for one (1) year.

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05. Permit Revocation. Permits issued pursuant to this section may be revoked at any time if the Director or his designee finds that the permit holder has violated any of the provisions of this chapter, the Invasive Species Act, the Plant Pest Act, or any of the conditions included in the permit. ()

06. Disposition of Non-Permitted Invasive Species. The Director may order non-permitted or illegally imported Energy Crop Invasive Species to be removed from the state or destroyed. ()

07. Annual Report. All permit holders shall submit a report no later than January 1 of each calendar year, on forms provided by the Department. ()

106. TRAP CROP INVASIVE SPECIES PERMITS.

Production/research of Trap Crop Invasive Species is authorized only if the person possessing the species obtains a Trap Crop Production/Research Permit ("Trap Crop Invasive Species Permit"). ()

01. Application for Trap Crop Invasive Species Permits. Persons seeking a Trap Crop Invasive Species Permit must make application on a form prescribed by the Director. A separate application must be submitted for each facility where Trap Crop Invasive Species will be researched or produced. The application must include: ()

a. The applicant's name, address (residence and mailing), and Employer or Tax Identification Number. ()

b. Description of the proposed facility, including: ()

i. A map identifying the location of the proposed facility; ()

ii. The legal description of the real property for the proposed facility; ()

iii. The approximate total area of the proposed facility; ()

iv. A detailed diagram of proposed facility; ()

v. A detailed confinement plan if applicable; and ()

vi. A detailed plan outlining survey and reconnaissance for escaped plants and a detailed plan for their control or elimination. ()

c. Name and address of the owner(s) and/or operator(s) of the proposed facility, if different than the applicant. If the proposed facility will be leased, a written and notarized authorization by the property owner must be included. ()

d. A copy of local zoning authority approval, if approval is required by the local zoning authority. ()

e. Description of the Trap Crop Invasive Species to be possessed at the facility, including, to the extent possible, the genus, species, sex, life state, age, identification, and purpose for possessing each species. ()

f. The date upon which the proposed facility will be available for inspection by the Department, which must be not less than seven (7) days prior to the time the Trap Crop Invasive Species is possessed at the proposed facility. ()

02. Application Process. The Director will consider all information in the application and issue a written decision granting or denying the application. In reviewing the application, the Director will consider factors including but not limited to: ()

- a.** Proximity of the facility to agricultural operations, and environmentally sensitive lands and waters. ()
- b.** Potential for access to the facility by unauthorized persons. ()
- c.** Potential for vandalism, adverse weather, or other events that compromise the security of the facility. ()
- d.** Potential for the Trap Crop Invasive Species to escape or be released from the facility. ()
- e.** Whether, based on the applicant's certification and any other evidence received by the Director in connection with the application or proposed facility, all federal, state, county and city laws applicable to the facility have been met. ()
- f.** Whether the applicant has adequate knowledge, experience and training to ensure that the Trap Crop Invasive Species will not harm agriculture, the natural resources and environment of the state of Idaho. Such experience may be documented by a log book, employment records, education records or other means by which experience may be authenticated. ()
- g.** Whether the facility is or will be adequately designed, constructed, and managed to protect agriculture, the natural resources and environment of the state of Idaho from escape of the Trap Crop Invasive Species. ()
- h.** Prior to issuing a Trap Crop Invasive Species Permit, the Director or his designee may perform an inspection of the facility to determine if its design, construction and proposed operation is consistent with the applicable provisions of Idaho law. ()
- 03.** Grant or Denial of the Trap Crop Invasive Species Permit. Following review of the application and any other relevant information, the Director will either issue the Trap Crop Invasive Species Permit or deny the application and notify the applicant. If the Director issues the Trap Crop Invasive Species Permit, he may include any necessary conditions to prevent release or escape of the Trap Crop Invasive Species, and to prevent harm to Idaho's agriculture, natural resources, and the environment. ()
- 04.** Duration of Trap Crop Invasive Species Permit. A Trap Crop Invasive Species Permit is valid for one (1) year. ()
- 05.** Permit Revocation. Permits issued pursuant to this section may be revoked at any time if the Director or his designee finds that the permit holder has violated any of the provisions of this chapter, the Invasive Species Act, the Plant Pest Act, or any of the conditions included in the permit. ()
- 06.** Disposition of Non-Permitted Invasive Species. The Director may order non-permitted or illegally imported Trap Crop Invasive Species to be removed from the state or destroyed. ()
- 07.** Annual Report. All permit holders shall submit a report no later than January 1 of each calendar year, on forms provided by the Department. ()

1057. -- 199. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

806. INVASIVE SPECIES - INSECTS.

- 01.** Asian Longhorned Beetle, *Anoplophora glabripennis*. (3-29-10)

02. Citrus Longhorned Beetle, *Anoplophora chinensis*. (3-29-10)
03. Emerald Ash Borer, *Agrilus planipennis*. (3-29-10)
04. Marmorated Stink Bug, *Halyomorpha halys*. (3-29-10)
05. European Woodwasp, *Sirex noctilio*. (3-29-10)
06. European Gypsy Moth, *Lymantria dispar*. (3-29-10)
07. Asian Gypsy Moth, *Lymantria dispar*. (3-29-10)
08. Soybean Aphid, *Aphis glycines*. (3-29-10)
09. Potato Tuber Moth, *Tecia solanivora*. (3-29-10)
10. Japanese Beetle, *Popillia japonica*. ~~(3-29-10)~~()
11. Mexican Bean Beetle, *Epilachna varivestis*. (3-29-10)
12. Kaphra beetle, *Trogoderma granarium*. (3-29-10)
13. Red Imported Fire Ant, *Solenopsis invicta*. (3-29-10)
14. Glassy-winged Sharpshooter, *Homalodisca ~~coagulate~~ vitripennis*. ~~(3-29-10)~~()
15. Grape Phylloxera, *Daktulosphaira vitifoliae*. (3-29-10)
16. Vine Mealybug, *Planococcus ficus*. (3-29-10)
17. Summer Fruit Tortix, *Adoxophyes orana*. (3-29-10)
18. Silver Y Moth, *Auto~~o~~grapha gamma*. ~~(3-29-10)~~()
19. False Codling Moth, *Cry~~pt~~ophlebia leucotreta*. ~~(3-29-10)~~()
20. Light Brown Apple Moth, *Epiphyas postvittana*. (3-29-10)
21. Apple Tortrix, *Archips fuscocupreanus*. (3-29-10)
22. Pine Shoot Beetle, *Tomicus piniperda*. (3-29-10)
23. Cherry Bark Tortrix, *Enarmonia formosana*. (3-29-10)
24. Apple Ermine Moth, *Ypo~~m~~~~n~~~~o~~~~r~~~~n~~~~e~~uta malinellus*. ~~(3-29-10)~~()
25. Cherry Ermine Moth, *Enarmonia formosana*. (3-29-10)
26. European Grape Vine Moth, *Lobesia botrana*. (3-29-10)
27. European Grape Berry Moth, *Eupoecilia ambiguella*. (3-29-10)
28. Plum Fruit Moth, *Cydia funebrana*. (3-29-10)
29. Plum Curculio, *Conotrachelus nenuphar*. (3-29-10)
30. Leek Moth, *Acrolepiopsis assectella*. (3-29-10)

31. Bee Mite, *Tropilaelaps cleareae*. ~~(3-29-10)~~()
 32. Small Hive Beetle, *Aethina tumida*. (3-29-10)
 33. Africanized Honey Bee, *Apis mellifera*. (3-29-10)
 34. Black Currant Gall Mite, *Cecidophyopsis ribis*. (3-29-10)
 35. Exotic Bark Beetles, (Scolytidae): (3-29-10)
 - a. *Scolytus mali*. (3-29-10)
 - b. *Xylosandrus crassiusculus*. (3-29-10)
 - c. *Xylosandrus germanus*. (3-29-10)
 - d. *Xyleborus californicus*. (3-29-10)
 36. Sunni Bug, *Eurygaster integriceps*. ~~(3-29-10)~~()
 37. German Yellowjacket, *Vespula germanica*. (3-29-10)
 38. European Paper Wasp, *Polistes dominulus*. (3-29-10)
 39. European Elm Bark Beetle, *Scolytus multistriatus*. (3-29-10)
 40. Banded Elm Bark Beetle, *Scolytus schevyrewi*. (3-29-10)
 41. Wheat Blossom Midge, *Sitodiplosis mosellana*. (3-29-10)
 42. Potato Tuberworm, *Phthorimeaea operculella*. (3-29-10)
 43. Pink Hibiscus Mealybug, *Maconellicoccus hirsutus*. ~~(3-29-10)~~()
 - 44. Bean Plataspid (Kudzu Bug), *Megacopta cribraria*.** ()
807. INVASIVE SPECIES - PLANT PATHOGENS AND PARASITIC NEMATODES.
01. ~~Sudden Oak Death (Ramorum blight)~~ **Phytophthora blight (nursery stock), *Phytophthora ramorum*, *Phytophthora kernoviae*.** ~~(3-29-10)~~()
 02. Karnal Bunt, *Tilletia indica*. (3-29-10)
 - ~~03. Bean Common Mosaic Virus, (strain US-6).~~ ~~(3-29-10)~~
 - ~~04~~3. Bean Common Mosaic Necrosis Virus (strain NL-3 and NL-5). (3-29-10)
 - ~~05~~4. Potato Wart, *Synchytrium endobioticum*. (3-29-10)
 - ~~06~~5. Golden Nematode, *Globodera rostochiensis*. (3-29-10)
 - ~~07~~6. Soybean Cyst Nematode, *Heterodera glycines*. (3-29-10)
 - ~~08~~7. Bacterial Wilt of Alfalfa, *Clavibacter michiganensis* spp. *insidiosus*. (3-29-10)
 - ~~09~~8. Wheat Seed Gall Nematode, *Anguina tritici*. (3-29-10)

- ~~109.~~ Pine Wilt Nematode, *Bursaphelenchus xylophilus*. (3-29-10)
- ~~110.~~ Brown Rot of Potatoes, *Ralstonia solanacearum*, race 3, biovar 2 (alternate hosts include tomato, pepper, eggplant, and some greenhouse plants including geranium). (3-29-10)
- ~~121.~~ Java Downy Mildew of Corn, *Peronosclerospora maydis*. (3-29-10)
- ~~132.~~ Philippine Downy Mildew of Corn, *Peronosclerospora philipeninsis*. (3-29-10)
- ~~143.~~ Asian Soybean Rust, *Phakospora pachyrhizi*. (3-29-10)
- ~~154.~~ Plum Pox Potyvirus. (3-29-10)
- ~~165.~~ Cherry Leaf Roll Virus. (3-29-10)
- ~~176.~~ Stewart's Wilt of Corn, *Pantoea stewartii*. (3-29-10)
- ~~187.~~ Brown Stripe Downy Mildew of Corn, *Sclerophthora rayssiae* var. *zeae*. (3-29-10)
- ~~198.~~ Potato Spindle Tuber Viroid. (3-29-10)
- ~~2019.~~ Pierce's Disease of Grapes, *Xylella fastidiosa*. (3-29-10)
- ~~210.~~ Black Currant Reversion Disease. (3-29-10)
- ~~221.~~ Powdery Mildew of Hops, *Sphaerotheca macularis* (s. *humuli*). (3-29-10)
- ~~23.~~ ~~Bacterial Brown Spot of Beans, *Pseudomonas syringae* pv *syringae*.~~ (~~3-29-10~~)
- ~~242.~~ Wheat Smut, *Tilletia tritici*. (3-29-10)
- ~~253.~~ Wheat Scab, *Fusarium graminearum*. (~~3-29-10~~) ()
- ~~264.~~ Potato Ring Rot, ~~*Corynebacterium sepedonicum*~~ *Clavibacter michiganensis* subsp. *sepidonicus*. (~~3-29-10~~) ()
- ~~275.~~ Potato Late Blight, *Phytophthora infestans*. (3-29-10)
- ~~286.~~ Onion White ~~FR~~rot, *Sclerotium cepivorum*. (~~3-29-10~~) ()
- ~~29.~~ ~~Sugar Beet Rhizomania (beet necrotic yellow vein virus (BNYVV) and transmitted by the soil fungus *Polymyxa betae*).~~ (~~3-29-10~~)
- ~~3027.~~ White Pine Blister Rust, *Cronartium ribicola*. (3-29-10)
- ~~31.~~ ~~Cereal Cyst Nematode, *Heterodera avenae*.~~ (~~3-29-10~~)
- ~~32.~~ ~~Columbia Root Knot Nematode, *Meloidogyne chitwoodi*.~~ (~~3-29-10~~)
- ~~33.~~ ~~Onion Stem and Bulb Nematode, *Ditylenchus dipsaci* (onion race).~~ (~~3-29-10~~)
- ~~34.~~ ~~Iris Yellow Spot Virus—IYSV of onions.~~ (~~3-29-10~~)
- ~~3528.~~ Potato Mop Top Virus, PMTV. (3-29-10)
- ~~3629.~~ Black Stem Rust, *Puccinia graminis* f.sp. *tritici* Race *UG99*. (~~3-29-10~~) ()

30. Apple proliferation phytoplasma, *Candidatus Phytoplasma mali*. ()

(BREAK IN CONTINUITY OF SECTIONS)

809. INVASIVE SPECIES: INVASIVE PLANTS: ENERGY CROPS.

1. Giant Reed, *Arundo donax* (and hybrids). ()

2. Switch Grass, *Panicum virgatum* (and hybrids). ()

3. Kudzu, *Pueraria montana* (and hybrids). ()

4. Chinese Silver Grass, *Miscanthus giganteus* (and hybrids). ()

5. Purging Nut, *Jatropha curcus* (and hybrids). ()

6. Cold tolerant Eucalyptis (and hybrids). ()

810. INVASIVE SPECIES: INVASIVE PLANTS: TRAP CROPS.

1. Litchi Tomato, *Solanum sisymbriifolium* (and hybrids) otherwise known as Sticky nightshade
or Fire and Ice. ()

2. Black nightshade, *Solanum nigrus* (and hybrids). ()

~~809~~11. -- 999. (RESERVED)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.22 - NOXIOUS WEED RULES

DOCKET NO. 02-0622-1301

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 22-2403, 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 August 21, 2013.

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:

Amend Section 100.01, Statewide EDRR Noxious Weed List, to add one species: Water Hyacinth, *Eichhornia crassipes*.

Remove Section 100.04, Statewide Monitor List, from the Rules Governing Noxious Weeds.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 5, 2013, Idaho Administrative Bulletin, [Vol. 13-6, Page 24](#). Negotiated rulemaking meetings were held at the Idaho State Department of Agriculture on June 12 and 26, 2013; 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 Matt Voile, Section Manager, (208) 332-8620.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to Matt Voile and must be delivered on or before August 28, 2013. Comments can be delivered via email to matt.voile@agri.idaho.gov or via regular mail to Matt Voile's attention at the address listed below.

DATED this 3rd day of July, 2013

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

THE FOLLOWING IS THE TEXT OF THE PROPOSED RULE FOR DOCKET NO. 02-0622-1301

100. NOXIOUS WEEDS - DESIGNATIONS.

The weeds listed on the Statewide EDRR, Containment, and Control lists- are hereby officially designated and published as noxious. (3-30-07)

01. Statewide EDRR Noxious Weed List.

Common Name	Scientific Name
1. Brazilian Elodea	1. <i>Egeria densa</i>
2. Common/European Frogbit	2. <i>Hydrcharis morsus-ranae</i>
3. Fanwort	3. <i>Cobomba caroliniana</i>
4. Feathered Mosquito Fern	4. <i>Azolla pinnata</i>
5. Giant Hogweed	5. <i>Heracleum mantegazzianum</i>
6. Giant Salvinia	6. <i>Salvinia molesta</i>
7. Hydrilla	7. <i>Hydrilla verticillata</i>
8. Policeman's Helmet	8. <i>Impatiens glandulifera</i>
9. Squarrose Knapweed	9. <i>Centaurea triumfetti</i>
10. Syrian Beancaper	10. <i>Zygophyllum fabago</i>
11. Tall Hawkweed	11. <i>Hieracium piloselloides</i>
12. Variable-Leaf-Milfoil	12. <i>Myriophyllum heterophyllum</i>
13. Water Chestnut	13. <i>Trapa natans</i>
14. Water Hyacinth	14. <i>Eichhornia crassipes</i>
145. Yellow Devil Hawkweed	145. <i>Hieracium glomeratum</i>
156. Yellow Floating Heart	156. <i>Nymphoides pelata</i>

If any of the above listed plants (Subsection 100.01) are found to occur in Idaho, they shall be reported to the Department within ten (10) days following positive identification by the University of Idaho or other qualified authority as approved by the Director. These weeds shall be eradicated during the same growing season as identified. (3-29-10)()

02. Statewide Control Noxious Weed List.

Common Name	Scientific Name
1. Black Henbane	1. <i>Hyoscyamus niger</i>
2. Bohemian Knotweed	2. <i>Polygonum X bohemicum</i>
3. Buffalobur	3. <i>Solanum rostratum</i>
4. Common Crupina	4. <i>Crupina vulgaris</i>
5. Common Reed (Phragmites)	5. <i>Phragmites australis</i>

Common Name		Scientific Name	
6.	Dyer's Woad	6.	<i>Isatis tinctoria</i>
7.	Eurasian Watermilfoil	7.	<i>Myriophyllum spicatum</i>
8.	Giant Knotweed	8.	<i>Polygonum sachalinense</i>
9.	Japanese Knotweed	9.	<i>Polygonum cuspidatum</i>
10.	Johnsongrass	10.	<i>Sorghum halepense</i>
11.	Matgrass	11.	<i>Nardus stricta</i>
12.	Meadow Knapweed	12.	<i>Centaurea debeauxii</i>
13.	Mediterranean Sage	13.	<i>Salvia aethiopsis</i>
14.	Musk Thistle	14.	<i>Carduus nutans</i>
15.	Orange Hawkweed	15.	<i>Hieracium aurantiacum</i>
16.	Parrotfeather Milfoil	16.	<i>Myriophyllum aquaticum</i>
17.	Perennial Sowthistle	17.	<i>Sonchus arvensis</i>
18.	Russian Knapweed	18.	<i>Acroptilon repens</i>
19.	Scotch Broom	19.	<i>Cytisus scoparius</i>
20.	Small Bugloss	20.	<i>Anchusa arvensis</i>
21.	Vipers Bugloss	21.	<i>Echium vulgare</i>
22.	Yellow Hawkweed	22.	<i>Hieracium caespitosum</i>

Weeds listed in the control list are known to exist in varying populations throughout the state. The concentration of these weeds is at a level where control and/or eradication may be possible. A written plan for weeds on the Statewide Control Noxious Weed List shall be developed by the control authority that specifies active control methods to reduce known populations in not more than five (5) years. The plan shall be available to the Department upon request.

(3-29-10)

03. Statewide Containment Noxious Weed List.

Common Name		Scientific Name	
1.	Canada Thistle	1.	<i>Cirsium arvense</i>
2.	Curlyleaf Pondweed	2.	<i>Potamogeton crispus</i>
3.	Dalmatian Toadflax	3.	<i>Linaria dalmatica ssp. dalmatica</i>
4.	Diffuse Knapweed	4.	<i>Centaurea diffusa</i>
5.	Field Bindweed	5.	<i>Convolvulus arvensis</i>
6.	Flowering Rush	6.	<i>Butomus umbellatus</i>
7.	Hoary Alyssum	7.	<i>Berteroa incana</i>
8.	Houndstongue	8.	<i>Cynoglossum officinale</i>
9.	Jointed Goatgrass	9.	<i>Aegilops cylindrica</i>
10.	Leafy Spurge	10.	<i>Euphorbia esula</i>
11.	Milium	11.	<i>Milium vernale</i>

Common Name		Scientific Name	
12.	Oxeye Daisy	12.	<i>Leucanthemum vulgare</i>
13.	Perennial Pepperweed	13.	<i>Lepidium latifolium</i>
14.	Plumeless Thistle	14.	<i>Carduus acanthoides</i>
15.	Poison Hemlock	15.	<i>Conium maculatum</i>
16.	Puncturevine	16.	<i>Tribulus terrestris</i>
17.	Purple Loosestrife	17.	<i>Lythrum salicaria</i>
18.	Rush Skeletonweed	18.	<i>Chondrilla juncea</i>
19.	Saltcedar	19.	<i>Tamarix sp.</i>
20.	Scotch Thistle	20.	<i>Onopordum acanthium</i>
21.	Spotted Knapweed	21.	<i>Centaurea stoebe</i>
22.	Tansy Ragwort	22.	<i>Senecio jacobaea</i>
23.	White Bryony	23.	<i>Bryonia alba</i>
24.	Whitetop (Hoary Cress)	24.	<i>Cardaria draba</i>
25.	Yellow Flag Iris	25.	<i>Iris pseudocorus</i>
26.	Yellow Starthistle	26.	<i>Centaurea solstitialis</i>
27.	Yellow Toadflax	27.	<i>Linaria vulgaris</i>

Weeds listed in the containment noxious weeds list are known to exist in various populations throughout the state. Weed control efforts may be directed at reducing or eliminating new or expanding weed populations while known and established weed populations, as determined by the weed control authority, may be managed by any approved weed control methodology, as determined by the weed control authority. (3-29-10)

04. ~~Statewide Monitor List.~~

Common Name		Scientific Name	
4.	Water Hyacinth	4.	<i>Echhorinia crassipes</i>

(3-29-10)

~~α. Plants listed on the statewide monitor list are not designated as noxious weeds. The Department will investigate plants listed on the statewide monitor list to determine if the plant should be designated as a noxious weed. Plants may be placed on the statewide monitor list for any of the following criteria: (3-29-10)~~

~~i. There is reason to believe this species is invasive or poses a potential threat to Idaho due to damage caused by the species in other states or biological conditions which may allow the escape and survival of this species in Idaho. (3-29-10)~~

~~ii. The species exists in an adjacent state or province. (3-29-10)~~

~~iii. The species is on an adjacent state or province's noxious weed list. (3-29-10)~~

~~iv. Additional information about the species is needed on distribution, abundance or biology. (3-29-10)~~

~~v. There is a need to verify the presence of escaped species in Idaho, verify identification and/or~~

~~obtain voucher specimen. (3-29-10)~~

~~vi. The species is currently available in the state through the nursery, pet, or ornamental seed/plant industry but may be closely related to current noxious/invasive species or suspected of being able to spread outside of intended sites and become escaped species. (3-29-10)~~

~~b. Native species of the state or region will not be included on the monitor list. (3-29-10)~~

054. Designation of Articles Capable of Disseminating Noxious Weeds. The following articles are designated by the Director as capable of disseminating noxious weeds: (7-1-93)

- a. Construction equipment, road building and maintenance equipment, and implements of husbandry. (3-30-07)
- b. Motorized vehicles such as, all-terrain vehicles, motorcycles, and other off-road vehicles and non-motorized vehicles such as bicycles and trailers. (3-30-07)
- c. Grain and seed. (7-1-93)
- d. Hay, straw and other material of similar nature. (7-1-93)
- e. Nursery stock including plant material propagated for the support of aquarium, pet, or horticultural activities. (3-30-07)
- f. Feed and seed screenings. (7-1-93)
- g. Fence posts, fencing and railroad ties. (7-1-93)
- h. Sod. (7-1-93)
- i. Manure, fertilizers and material of similar nature. (7-1-93)
- j. Soil, sand, mulch, and gravel. (3-30-07)
- k. Boats, personal watercraft, watercraft trailers, and items of a similar nature. (3-30-07)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.23 - RULES GOVERNING NOXIOUS WEED FREE GRAVEL AND ROCK PRODUCTS

DOCKET NO. 02-0623-1301 (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 22-2403, 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 August 21, 2013.

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 proposed new rule will provide for inspection and certification of gravel as noxious weed free.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 5, 2013 Idaho Administrative Bulletin, [Vol. 13-6, Page 25](#). Negotiated rulemaking meetings were held at the Idaho State Department of Agriculture on June 12 and June 26, 2013; 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 Matt Voile, Section Manager, (208) 332-8620.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to Matt Voile and must be delivered on or before August 28, 2013. Comments can be delivered via email to matt.voile@agri.idaho.gov or via regular mail to Matt Voile's attention at the address listed below.

DATED this 5th day of July, 2013.

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

THE FOLLOWING IS THE TEXT OF THE PROPOSED RULE FOR DOCKET NO. 02-0623-1301

IDAPA 02
TITLE 06
CHAPTER 23

02.06.22 - RULES GOVERNING NOXIOUS WEED FREE GRAVEL AND ROCK PRODUCTS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 22-101(3), 22-2403, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is the “Rules Governing Noxious Weed Free Gravel and Rock Products.” ()

02. Scope. These rules shall govern the inspection and certification of noxious weed free gravel and rock products to allow for the transportation and use of gravel and rock products in Idaho and states where regulations and restrictions are placed on such commodities. The official citation of this chapter is IDAPA 02.06.23.000 et seq. For example, the citation for this section is IDAPA 02.06.23.001. ()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. ()

003. ADMINISTRATIVE APPEALS.

There is no provision for administrative appeals before the Department of Agriculture under this chapter. ()

004. INCORPORATION BY REFERENCE.

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

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

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

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

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

006. PUBLIC RECORDS.

The records associated with this chapter are subject to Title 9, Chapter 3, Idaho Code. ()

007. -- 009. (RESERVED)

010. DEFINITIONS.

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

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 gravel and rock products to determine if such products are noxious weed free. ()

02. Approved Inspector. An individual who has been accredited by the Department or by the Department's agent in the noxious weed free gravel and rock products certification program. ()

03. Certificate of Inspection. A record of inspection issued by an approved inspector that states the results of a Pit/Pile/Lot inspection. ()

04. Certification. The process whereby an approved inspector conducts pit or pile inspections to determine that the pit or pile is noxious weed free. ()

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

06. Gravel. Unconsolidated rock fragments that have a general **particle** size range and include size classes from granule to **boulder-sized** fragments. ()

07. Pile. A stockpile of crushed or processed rock. ()

08. Pit. A natural or artificial hole or cavity in the ground. An excavation for the removal of mineral deposits. ()

09. Pit/Pile/Lot Certification Inspection. An on-site inspection of gravel or rock products in the Pits, Piles or Lots and adjacent areas for the presence of noxious weeds. ()

10. Idaho State Noxious Weed Free. Gravel and rock products 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. ()

11. Lot. A pile of gravel or rock product having specific quantity and or boundaries. ()

12. North American Noxious Weed Free. Gravel and rock products 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. ()

13. North American Weed Free Gravel Certification Program. The North American Weed Management Association standard for gravel and rock products certification. ()

14. Noxious Weed Free. No noxious weeds with viable seed, injurious portions, or propagating parts were found during inspection procedures. ()

15. Rock Products. Byproducts of measured sizes of gravel crushed from blasted or dug rock, such as sand, chips, fines or other terms exclusive of topsoil or overburden. ()

16. Transit Certificate. A document completed by an approved inspector to certify products proposed for movement as certified noxious weed free into states that require noxious weed free gravel and rock products certification. The transit certificate must be in the possession of the transporter. ()

011. ABBREVIATIONS.

01. ISDA. The Idaho State Department of Agriculture. ()

02. NAWMA. North American Weed Management Association. ()

03. NWFGRP. Noxious Weed Free Gravel and Rock Products. ()

012. -- 099. (RESERVED)

100. VOLUNTARY NOXIOUS WEED FREE GRAVEL AND ROCK PRODUCTS CERTIFICATION PROGRAM.

01. Purpose. The noxious weed free gravel and rock products certification program is a voluntary program, the purpose of which is to provide a means for the inspection and certification of gravel and rock products 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 preparation of a transit certificate for the purpose of interstate transport or shipping of gravel and rock products into and through states which place regulations and restrictions on such products. The program is intended to reduce the exportation, importation, growth, and spread of noxious weeds.

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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.

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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:

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a. Pit/Pile/Lot inspection techniques and procedures; ()

b. ISDA and North American Noxious Weed List plant identification; ()

c. ISDA and North American Weed Free Gravel Certification Program; ()

d. Knowledge of weed management, including: ()

i. Burning; ()

ii. Mechanical methods or roguing; ()

iii. Herbicides. ()

e. Inspection forms. ()

04. Certification Program. ()

a. The Department or its agent shall: ()

i. Train persons who serve as approved inspectors; ()

ii. Issue Certificates of Inspection and/or Transit Certificates to qualifying participants; ()

iii. Maintain a record of inspections performed and certificates issued. ()

b. Under the direction of the Department or its agent, an approved inspector may perform inspections and issue Certificates of Inspection and/or Transit Certificates within the state. ()

05. Application for Certification. ()

a. Application for certification shall be made on forms available from the Department or its agent and submitted to the Department or its agent. ()

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. ()

06. Pit/Pile/Lot Inspection Procedures. ()

a. Gravel or rock products shall be inspected no more than ten (10) days prior to shipping or loading in the Pit/Pile/Lot of origin for each Pit/Pile/Lot to be certified. ()

b. Each Pit/Pile/Lot inspected shall be identified by the name of the owner and a Pit/Pile/Lot name or number. The certification inspection may be performed on an entire Pit/Pile/Lot or a portion of a Pit/Pile/Lot, if the portion is plainly marked and identified prior to inspection. ()

c. Pit/Pile/Lot inspections must take place prior to any operation that will limit the approved inspector's ability to properly inspect and certify the Pit/Pile/Lot. A Pit/Pile/Lot that has been moved or loaded prior to inspection is ineligible for certification. ()

d. The entire Pit/Pile/Lot and border shall be physically inspected. ()

e. The Pit/Pile/Lot inspection will include all ditches, fence rows, roads, easements, rights-of-way, or buffer zones surrounding the Pit/Pile/Lot. ()

f. Gravel or rock products which contain any noxious weeds, as identified in Section 22-2402(15), Idaho Code, or noxious weeds listed on the North American Noxious Weed List, may be certified if the following requirements are met: ()

i. Pit/Pile/Lot in which the gravel or rock products were 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; ()

ii. Noxious weed(s) were treated not later than rosette to bud stage, or boot stage for grass species classified as noxious weeds; and ()

iii. Treatment methods can include, but are not limited to burning, roguing, mechanical methods, or chemicals. ()

g. An inspection certificate shall document that the above requirements have been met. ()

h. Interstate shipment of gravel and rock products shall be accompanied by an original transit certificate issued by the approved inspector in the county of origin. The storage area shall also be inspected and shall be free of noxious weeds. ()

i. An approved inspector may not inspect any Pit/Pile/Lot of which said inspector has ownership or financial interest. ()

07. Certification Standards. After completing an inspection the approved inspector shall complete a Certificate of Inspection. ()

a. If the Pit/Pile/Lot is certified as North American Noxious Weed Free, the approved inspector shall issue a Certificate of Inspection for that Pit/Pile/Lot. If the Pit/Pile/Lot 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. ()

b. If the Pit/Pile/Lot is certified as North American Noxious Weed Free, as defined in these rules, the approved inspector may also issue, upon request, a Transit Certificate. ()

c. Certificates of Inspection and Transit Certificates shall be on forms prescribed by the Department

or its agent. ()

d. Certificates of Inspection are valid for a maximum of thirty (30) days. ()

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. ()

09. Reciprocity. Gravel or rock products 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. ()

10. Exports. Certification under these rules does not qualify a product for export from the United States. Applications for certification for export may be made directly to the Division of Plant Industries within the Department. ()

11. Voluntary Posting. After certification, signs or other forms of notification may be posted on the certified product indicating that the product is certified as noxious weed free. ()

12. Post-Certification and Distribution Requirements. After a gravel or rock product has been inspected and certified: ()

a. Reasonable and prudent steps must be taken to protect the certified product from contamination; ()

b. The certified product must be separated from all uncertified product; ()

c. Each shipper, trucker, or transporter must have the appropriate Transit Certificates. ()

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 gravel and rock products program. ()

14. Enforcement and Cancellation. Gravel or rock products from certified Pits/Piles/Lots may be checked at any time by an approved inspector. Manufactured gravel or rock products may be checked at any time by an approved inspector. Gravel or rock products from a certified Pit/Pile/Lot which has not been protected from contamination shall be cause for cancellation of certification. ()

15. Misuse of Transit Certificate and Certification Markings. Using a Transit Certificate or certification marking for gravel or rock products from a Pit/Pile/Lot that has not been certified shall constitute a violation of these rules. ()

101. -- 149. (RESERVED)

150. NORTH AMERICAN NOXIOUS WEED LIST.

Common Name	Scientific Name
Absinth wormwood	<i>Artemisia absinthium</i>
Bermudagrass	<i>Cynodon dactylon</i>
Buffalobur	<i>Solanum rostratum</i>
Canada thistle	<i>Cirsium arvense</i>

Common Name	Scientific Name
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>
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>

Common Name	Scientific Name
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>
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>

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151. -- 999. (RESERVED)