

Dear Senators BAIR, Guthrie, Durst, 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 02.06.25 - Rules Governing the Planting of Beans other than Phaseolus Species, in Idaho
(New Chapter - Fee Rule) (Docket No. 02-0625-1301).

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 10/08/2013. 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 11/05/2013.

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: September 19, 2013

SUBJECT: Idaho State Department of Agriculture

IDAPA 02.06.25 - Rules Governing the Planting of Beans other than Phaseolus Species, in Idaho (New Chapter - Fee Rule) (Docket No. 02-0625-1301)

The Idaho State Department of Agriculture submits notice of proposed rulemaking at IDAPA 02.06.25 - Rules Governing the Planting of Beans other than Phaseolus Species, in Idaho. According to the department, the new chapter will require that all lots of soybean seed, and as a result of public input through negotiated rulemaking, seed from other related plant species for planting in Idaho, be tested for bean diseases of concern and nematodes that do not occur in Idaho. The department adds that soybeans and other bean species such as mung and azuki beans are known to carry a complex of bacterial blights and other diseases that could affect the longstanding and well established bean seed production industry in the state and that laboratory testing and at least one inspection will occur during the growing season.

This is a fee rule. The department proposes to charge a minimum of \$250.00 for laboratory analysis on a per sample basis and to charge \$3.50 per acre for field inspections, with a \$50.00 minimum. The department notes that the fees are consistent with the fee structure for laboratory analysis and the current Rules Governing the Planting of Beans. The department does not expect the fees to generate more than \$10,000 in dedicated funds per year. The department also states that charges for nematode and soil testing will be at the prevailing rates of those labs capable and approved for that testing.

The department states that negotiated rulemaking was conducted. The rule appears to be authorized pursuant to Section 22-2006, Idaho Code.

cc: Department of Agriculture
Brian J. Oakey
Michael E. Cooper

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: Michael E. Cooper

Phone: (208) 332-8620

Date: August 27, 2013

IDAPA, Chapter and Title Number and Chapter Name:

02.06.25 - RULES GOVERNING THE PLANTING OF BEANS OTHER THAN *PHASEOLUS* SPECIES, IN IDAHO

Fee Rule Status: Proposed Temporary

Rulemaking Docket Number: 02-0625-1301 New Chapter

STATEMENT OF ECONOMIC IMPACT:

Pursuant to Idaho Code Section 22-2006, ISDA proposes to charge a minimum of \$250.00 for laboratory analysis on a per sample basis. ISDA proposes to charge \$3.50 per acre for field inspections, with a \$50.00 minimum. Both of these fee rates are consistent with the already established fee structure for laboratory analysis and field inspection in the current Rules Governing the Planting of Beans (IDAPA 02.06.06). Based on recent acreages planted with soybeans (<1,000 acres) ISDA does not expect fees to generate more than \$10,000 in annual dedicated funds. Charges incurred by growers for nematode and soil testing will be at the prevailing rates, depending on the type and quantity of testing, of any lab capable and approved by ISDA for that testing.

As an example, a twenty (20) acre soybean field would incur \$250.00 in lab testing and \$140.00 in inspection fees during certification. Therefore, a reasonable estimation of costs would be approximately \$400.00 per twenty acres of bean field. At \$38.00 for dry beans or \$57.00 for garden beans per hundred weight contract price and assuming approximately twenty (20) hundred weight per acre yield, the gross for a twenty (20) acre dry bean field would be \$15,200 for a dry bean contract and \$22,800 for a garden bean contract. Therefore the cost of certification compared to the gross income from sales of twenty (20) acres of beans is approximately 1:39 for a dry bean field and 1:58 for a garden bean field.

A potential cost to landowners may arise if the landowner has to destroy a field due to infestation. Under Idaho's current bean rule IDAPA 02.06.06 - Rules Governing the Planting of Beans, (*Phaseolus* Species) fields found to be infested have to be plowed down. Assuming a one to one ratio and assuming the above ratios of 1:39 and 1:58, the cost of the certification fees benefits growers greatly because certification makes it less likely that bean fields will have to plowed under for a total loss. If an infested field were discovered ISDA would

provide supervision of the destruction of the bean field and may incur additional costs related to that supervision.

If an exotic bean pest, such as the Asian Soybean rust or Soybean Cyst Nematode were introduced into Idaho bean fields, there could be severe potential negative market impacts. Lost contracted sales or delays in introducing new varieties into the market are difficult to quantify and are not analyzed in this scenario.

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.06.25 - RULES GOVERNING THE PLANTING OF BEANS,
OTHER THAN *PHASEOLUS* SPECIES, IN IDAHO
DOCKET NO. 02-0625-1301 (NEW CHAPTER - FEE RULE)
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 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 16, 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:

This rule will require that all lots of soybean seed, and as a result of public input from two negotiated rule-making meetings, seed from other related plant species for planting in Idaho to be tested for bean diseases of concern and nematodes that do not occur in Idaho. Soybeans and other bean species such as mung or azuki beans are known to carry a complex of bacterial blights and other diseases that could affect the long standing and well established bean seed (*Phaseolus* sp.) production industry in the state. Laboratory testing and at least one inspection will occur during the growing season.

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

Pursuant to Section 22-2006, Idaho Code, the Department proposes to charge a minimum of \$250.00 for laboratory analysis on a per sample basis. ISDA proposes to charge \$3.50 per acre for field inspections, with a \$50.00 minimum. These fees are consistent with the fee structure for laboratory analysis and the current Rules Governing the Planting of Beans (IDAPA 02.06.06). Based on recent acreages planted (<1,000 acres) we do not expect this rule to generate more than \$10,000 in dedicated funds per year. Charges for nematode and soil testing will be at the prevailing rates of those labs capable and approved for that testing.

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 July 3, 2013, Idaho Administrative Bulletin, [Vol. 13-7, page 26](#). Negotiated Rulemaking was held on July 23 and 29, 2013, in Boise, Idaho.

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 Phone (208) 332-8620. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2013.

DATED this 28th day of August, 2013.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0625-1301

IDAPA 02
TITLE 06
CHAPTER 23

**02.06.25 - RULES GOVERNING THE PLANTING OF BEANS,
OTHER THAN *PHASEOLUS* SPECIES, IN IDAHO**

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 22, Chapter 20, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.06.25, "Rules Governing the Planting of Beans, other than *Phaseolus* Species, in Idaho." ()

02. Scope. These rules will govern the planting of beans in Idaho, other than *Phaseolus* Species, which are regulated under IDAPA 02.06.06. The official citation for this Chapter is IDAPA 02.06.25.000 et seq. For example, this section's citation is IDAPA 02.06.25.001. ()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. ()

003. ADMINISTRATIVE APPEAL.

Hearing and appeal rights are set forth in Title 67, Chapter 52, Idaho Code. ()

004. INCORPORATION BY REFERENCE.

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

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

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

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

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

006. PUBLIC RECORDS ACT COMPLIANCE.

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

007. -- 010. (RESERVED)

011. DEFINITIONS.

The Department adopts the definitions set forth in Section 22-2005, Idaho Code. In addition, as used in this chapter: ()

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

02. Department Approved Tag (Yellow Tag). A tag issued by the Department to seed lots produced outside of Idaho and imported into Idaho for planting. The seed lot must be certified by the seed certification agency of the state of origin and be accompanied by a phytosanitary certificate issued by the regulatory agency of the state of origin. Seed lots must pass laboratory testing performed by the Department, or Department approved laboratories, on samples drawn in Idaho by the Department and found free from regulated pest(s) and soil as listed in Sections 012 and 013 of this rule. ()

03. Department In-State Planting Tag (Green Tag). A tag issued by the Department to seed lots grown in Idaho in compliance with growing season and pre-harvest or windrow inspections in Idaho. ()

04. Director. Director of the Idaho State Department of Agriculture or his duly authorized representative. ()

05. Farmstead. All land farmed in common with the land upon which a trial ground is located. ()

06. In-State Planting Tag Number (State Number). A number assigned by the Department to each lot which has successfully passed the Department's inspection requirements, as defined in Section 200 of this rule, in which no regulated pests were found. ()

07. Oregon Department of Agriculture Inspection Tag. A tag issued to seed lots produced in Malheur County, Oregon which were inspected in the growing season and pre-harvest or windrow by the Oregon Department of Agriculture for the regulated pests defined in Section 012 of these rules. ()

08. Rill Irrigation. A method of applying non-pressurized irrigation water to crops in a free flow manner by using a series of ditches, canals, siphon tubes, and gated pipe utilizing gravity as means of conveyance within the field. ()

09. Seed Borne. Pest(s) that can be found on the seed or within the seed coat but do not necessarily result in the transfer of the pest to the resulting plant. ()

10. Seed Lot. A definite quantity of seed identified by a lot number, every portion or bag of which is uniform, within permitted tolerances, for factors that appear in the labeling. ()

11. Seed Transmitted. Pest(s) that can be transferred from the seed into the resulting plant. ()

12. Sprinkler Irrigation. An overhead water delivery system used to disperse irrigation water to crops in a designated pattern utilizing a pump, a network series of pipes and delivering water under a controlled pressure in a predetermined quantity. ()

13. True Identity of Seed Lot. True identity of seed lot is recorded using information provided by the applicant on the application for field inspection or on the detailed varietal planting plan and harvest records. The true identity of the seed lot is maintained by the Department after the applicant has finalized the harvest information and provided such to the Department. ()

14. Windrow Inspection. An inspection procedure performed on a seed crop prior to harvest but after the crop has been cut and allowed for curing or drying. ()

012. REGULATED PESTS.

01. Anthracnose. Caused by (*Colletotrichum lindemuthianum*), (*Glomerella lindemuthiana*). ()

02. Bacterial Wilt. Caused by (*Curtobacterium flaccumfaciens pv. flaccumfaciens*), (*Corynebacterium flaccumfaciens*). ()

03. Brown Spot. Caused by (*Pseudomonas syringae pv. syringae*), (*P. syringae*). ()

04. Common Blight. Caused by (*Xanthomonas axonopodis pv. phaseoli*), (*X. phaseoli*), (*X. phaseoli var. fuscans*). ()

05. Halo Blight. Caused by (*Pseudomonas savastanoi pv. phaseolicola*), (*P. phaseolicola*). ()

06. Soybean Cyst Nematode. (*Heterodera glycines*). ()

07. Asian Soybean Rust. Caused by (*Phakopsora pachyrhizi*). ()

013. SOIL.

There shall be a zero (0) tolerance for soil in any lot of a regulated article destined for planting in Idaho. ()

014. -- 049. (RESERVED)

050. REGULATED ARTICLES.

All seed of soybean (*Glycine max*), mung bean (*Vigna radiata*), and azuki bean (*Vigna angularis*) and any other plant species capable of spreading a regulated pest as a contaminant or in a seed borne or seed transmitted manner, from any source and being planted within the state of Idaho, unless otherwise exempted in this rule. ()

051. -- 099. (RESERVED)

100. AUTHORITY TO ENTER AND INSPECT.

The Department has the authority to enter onto lands and conduct inspections pursuant to Section 22-2007, Idaho Code. ()

101. -- 149. (RESERVED)

150. REQUIREMENTS FOR PLANTING REGULATED ARTICLES IN IDAHO.

In order to be eligible for planting seed in Idaho: ()

01. Idaho Origin Seed to be Replanted. Seeds planted must be from a lot that was produced in accordance with these rules and has an in-state planting tag number (state number) assigned by the Department based on growing season and pre-harvest or windrow inspections and be tagged by the Department with a Department In-State Planting Tag (Green tag). ()

02. Malheur County, Oregon Grown Seed. Seed produced in Malheur County, Oregon must be from a lot inspected in the growing season and pre-harvest or windrow for the regulated pests as defined in Section 012 of these rules and tagged by the Oregon Department of Agriculture. ()

03. Imported Seed From Other Than Malheur County, Oregon. Imported seed must: ()

a. Be certified by the seed certification agency of the state of origin and be accompanied by a state phytosanitary certificate issued by the regulatory agency of the state of origin, listing the diseases for which the crop was inspected, that must include the regulated pests and soil as defined in Sections 012 and 013 of these rules; or ()

- b.** Each seed lot shall successfully pass laboratory tests on untreated seed for regulated pests and soil conducted by the Department (in the case of nematodes and soil by a Department approved lab) from samples officially drawn in the state of Idaho by the Department; and ()
- c.** Must bear a Department Approved Tag (Yellow Tag) at the time of planting; and ()
- d.** Be submitted for a growing season inspection in compliance with Section 200 of this rule; and ()
- e.** If intended for replanting for future seed or commercial production, be submitted for a growing season inspection in accordance with Section 200 of this rule; and ()
- f.** If intended for seed production, not be planted under sprinkler irrigation for the first growing season. ()

04. Contaminated Seeds. The seeds from any field found or known to be contaminated with a regulated pest, as defined in Section 012 of these rules, or soil as defined in Section 013, shall not be planted in Idaho. ()

05. True Identity of Seed Lots. Failure to maintain the true identity of any seed lot intended for seed purposes will automatically disqualify that lot for future planting in Idaho. ()

06. Tags. Seeds planted in Idaho shall be from an approved lot bearing an approved tag on each bag or container, stating the kind, variety, and lot number. The following is a list of approved planting tags in Idaho: ()

- a.** Department in-state planting tag (green tag); ()
- b.** Department approved tag (yellow tag); ()
- c.** Oregon Department of Agriculture inspection tag. ()

151. -- 199. (RESERVED)

200. INSPECTION.

All imported or Idaho origin seeds intended for planting or replanting in Idaho shall be submitted to the Department for growing season inspections, in accordance with Section 150 of this rule. ()

01. Application for Inspection. ()

- a.** Deadline for Submission. Received by the Department on or before July 1 of each year. ()
- b.** Application Forms. Forms will be provided by the Department or may be company generated. Company generated application forms must be approved by the Department prior to submission. ()
- c.** Additional or Substitute Acreage. Applications for additional or substitute acreage may be submitted until September 1 and will be accepted on a case by case basis and the cost of inspection to be determined by the Director. ()

02. Growing Season Inspection. Unless the Director, at his sole discretion, deems additional inspections are necessary, the bean seed for planting will be inspected as follows: ()

- a.** Fields under rill or sprinkler irrigation -- at least once; ()
- b.** Pre-Harvest or Windrow Inspection -- at least once. ()

201. -- 299. (RESERVED)

300. SPECIAL SITUATIONS.

The Director may grant specific exemptions for research purposes for the planting of regulated articles that do not meet the requirements of Section 150 of this rule. Regulated articles not meeting the requirements of Section 150 must be planted only in counties where commercial beans and bean seed are not produced, as determined by the Director. ()

301. -- 349. (RESERVED)

350. DETECTION, IDENTIFICATION, AND REPORTING OF REGULATED PESTS.

01. Reporting. Any person may report to the Department the detection of any of the regulated pests. ()

02. Observation. Detection of regulated pests will be based on the observance of symptoms in the field. ()

03. Disagreement. In case of disagreement concerning the identity of the regulated pest or the virulence of the pathogen to its host, the Department will submit cultures of the suspected pathogen to a plant pathologist appointed by the Dean of the College of Agriculture, University of Idaho. The results and findings obtained by the approved pathologist are final. ()

04. Release of Information. When the presence of a regulated pest is confirmed, information regarding the location and acres involved will be released upon request. ()

351. -- 399. (RESERVED)

400. DISPOSITION OF DISEASED SEED AND INFECTED FIELDS.

01. Quarantine. Any field in which there is a disagreement concerning the identity of the regulated pest or the virulence of the pathogen to its host, the field will be placed under quarantine. Entry to the quarantined area will be restricted to the grower or his agents, Department officials, University of Idaho plant pathologists, and persons authorized in writing by the Director. Persons granted entry to the quarantined area will be required to take all necessary sanitary precautions prescribed by the Director. ()

02. Destruction. Upon the confirmation of a regulated pest, infected fields within the boundaries of the state shall be destroyed in part or in total, as required by the Director, to eliminate the pest at the expense of the grower and his landlord. The Director will notify the grower or his landlord of the method and extent of the destruction and safeguards against pest spread in order for the parties to comply. ()

03. Threshing and Segregating. When the symptoms of a regulated pest are first detected during pre-harvest inspection and laboratory confirmation is necessary, the Director may allow the regulated articles to be harvested and held until laboratory results are obtained. ()

401. -- 499. (RESERVED)

500. PENALTY.

Any person violating any of the provisions of these rules will be subject to the penalty provisions of Title 22, Chapter 20, Idaho Code. ()

501. -- 549. (RESERVED)

550. FEES AND CHARGES.

01. Tags. Green tags or Yellow tags for In-State Planting Purposes -- Eighteen cents (\$0.18) per hundred weight. ()

- 02. Applications.** ()
- a.** Application for Field Inspection -- Five dollars (\$5) each. ()
- b.** Late Application for Field Inspection -- Ten dollars (\$10) each. ()
- 03. Field Inspections.** ()
- a.** Active Growth and pre-harvest / windrow Inspection Fees. ()
- i.** Three dollars and fifty cents (\$3.50) per acre, per inspection, fifty dollar (\$50.00) minimum. ()
- ii.** Requests for pre-harvest inspections after office hours, on weekends, or holidays will be charged at cost plus mileage. ()
- 04. Laboratory Seed Sampling.** Official Sample -- twenty dollars (\$20) per sample. Sample size requirements for imported seed:

| Lot size | Sample Size |
|--------------------|---|
| <10 pounds | Negotiable |
| 10 - 14 pounds | 0.5 pounds |
| 15 - 25 pounds | 1.0 pounds |
| 26 - 50 pounds | 1.5 pounds |
| 51 - 200 pounds | 2.0 pounds |
| 201 - 1,000 pounds | 3.0 pounds |
| >1,000 pounds | 5.0 pounds for every 10,000 pounds or portion thereof |

- ()
- 05. Plant Pathological Laboratory Services.** Fees will be charged at current laboratory rates and are available upon request. ()
- 06. Soil Analysis.** Testing for the presence of soil shall be performed by the Idaho State Seed Laboratory or other seed laboratory approved by the Department. The cost of soil analysis shall be at the normal rates as is charged by those approved laboratories. ()
- 07. Nematode Analysis.** Nematodes testing shall be performed by the University of Idaho Nematology Laboratory or other laboratory approved by the Department. The cost of analysis for nematodes shall be at the normal rates for testing as is charged by those approved laboratories. ()
- 08. Confirmation Fees.** The party disputing the Department's determination of the presence of a regulated pest per Subsection 350.03 will be responsible for the payment of fees charged by the University of Idaho. ()
- 09. Special Project Fee.** Special projects not covered by existing fee schedule may be billed at twenty-five dollars (\$25) per hour with a minimum twenty-five dollar (\$25) fee. Special projects, include but are not limited to, research, lot history verification, data entry, sales and purchases, transfer of lots into ISDA database, ISDA training of private company personnel, or any other circumstance approved by the Director. ()
- 551. -- 999. (RESERVED)**