

Dear Senators BAIR, Guthrie, Buckner-Webb, and  
Representatives ANDRUS, Boyle, Pence:

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

IDAPA 02.02.14 - Rules Pertaining To The Rules for Weights and Measures (Docket No.  
02-0214-1401);

IDAPA 02.02.14 - Rules Pertaining To The Rules for Weights and Measures (Docket No.  
02-0214-1402).

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 07/31/2014. 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 08/28/2014.

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 334-4834, 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:** July 14, 2014  
**SUBJECT:** Department of Agriculture

IDAPA 02.02.14 - Rules Pertaining To The Rules for Weights and Measures (Docket No. 02-0214-1401)

IDAPA 02.02.14 - Rules Pertaining To The Rules for Weights and Measures (Docket No. 02-0214-1402)

### 1. IDAPA 02.02.14 - Rules Pertaining To The Rules for Weights and Measures

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.02.14 - Rules For Weights and Measures. According to the department, the purpose of the rulemaking is to incorporate by reference the 2015 edition of the National Institute of Standards and Technology Handbook No. 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices."

The Department notes that negotiated rulemaking was not conducted due to the simple nature of the proposed changes. The rule appears to be authorized pursuant to Section 71-111, Idaho Code.

### 2. IDAPA 02.02.14 - Rules Pertaining To The Rules for Weights and Measures

The Idaho State Department of Agriculture submits notice of proposed rule at IDAPA 02.02.14 - Rules For Weights and Measures. According to the department, Idaho's current labeling requirement conflicts with EPA's 40 CFR Section 80.1501 when ethanol blends are offered for sale at greater than ten percent. The department notes that any blend less than ten percent is not required to be labeled under federal requirements, but will continue to be required to be labeled by state rule. The department states that language will be added to the section for oxygenated gasoline that will clarify the labeling requirements of ten percent or less ethanol blend ranges. The department states that the rule change will not impact petroleum retailers that comply with the current rule.

The Department notes that negotiated rulemaking was not conducted due to the simple nature of the proposed changes. The rule appears to be authorized pursuant to Section 71-111, Idaho Code.

cc: Department of Agriculture  
Brian J. Oakey

Mike Nugent, Manager  
Research & Legislation

Cathy Holland-Smith, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.02.14 - RULES FOR WEIGHTS AND MEASURES

DOCKET NO. 02-0214-1401

#### 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 71-111, 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 July 16, 2014.

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

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

To incorporate by reference the 2015 edition of the National Institute of Standards and Technology Handbook 44, specifications, tolerances, and other technical requirements for weighing and measuring devices. NIST documents are available online at <http://www.nist.gov/pml/wmd/index.cfm>.

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

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed amendment.

**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:

This document is recognized nationally as the primary reference document, incorporating the most current version promotes uniformity throughout the United States.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Stacie Ybarra, Program Specialist at (208) 332-8692.

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 July 23, 2014.

DATED this 22nd day of May, 2014.

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

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0214-1401**  
**(Only those Sections being amended are shown.)**

**004. INCORPORATION BY REFERENCE.**

**01. Required Reference Materials.** The 201~~4~~<sup>5</sup> edition of Handbook No. 44 of the National Institute of Standards and Technology, United States Department of Commerce, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," hereby incorporated by reference, shall be the specifications, tolerances and other technical requirements for commercial weighing and measuring devices, unless otherwise stated in these rules. (~~3-20-14~~)(    )

**02. Required Reference Materials for Checking Prepackaged Commodities.** The 4th Edition of Handbook No. 133 of the National Institute of Standards and Technology, United States Department of Commerce, "Checking the Net Contents of Packaged Goods," hereby incorporated by reference, shall be the authority in checking packaged commodities, unless otherwise stated in these rules. (2-13-04)

**03. Specifications for Diesel Fuel and Biodiesel Fuel.** American Society of Testing and Materials (ASTM) D975-07a, "Standard Specification for Diesel Fuel Oils," and ASTM D6751-07a, "Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels," intended for blending with diesel fuel are hereby incorporated by reference and are the specifications for diesel fuel and biodiesel fuel blend stock (B100 biodiesel). (4-2-08)

**04. Specifications for Gasoline.** American Society of Testing and Materials (ASTM) D 4814-07a, "Standard Specification for Automotive Spark-Ignition Engine Fuel", dated October 17, 2007, is hereby incorporated by reference and is the specification for gasoline. (5-8-09)

**05. Local Availability.** Copies of the incorporated documents are on file with the Idaho State Department of Agriculture, 2216 Kellogg Lane, Boise, Idaho 83712. Copies of NIST documents may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Copies are available for downloading at <http://www.nist.gov/pml/wmd/index.cfm>. Copies of ASTM specifications are on file with the Idaho State Department of Agriculture or may be purchased from <http://www.astm.org>, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA, 19428. (4-7-11)

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.02.14 - RULES FOR WEIGHTS AND MEASURES

DOCKET NO. 02-0214-1402

#### 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 71-111, 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 July 16, 2014.

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:

Our current labeling requirement conflicts with the EPA 40 CFR Section 80.1501 when ethanol blends are offered for sale at greater than 10%. Any blend less than 10% is not required to be labeled under federal requirements, but will continue to be required by state rule. Language will be added to the section for oxygenated gasoline that will clarify the labeling requirements of 10% or less ethanol blend ranges. This rule change will not impact petroleum retailers that comply with the current rule.

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

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

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed amendment.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Stacie Ybarra, Program Specialist at (208) 332-8692.

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 July 23, 2014.

DATED this 22nd day of May, 2014.

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

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0214-1402**  
**(Only those Sections being amended are shown.)**

**350. SALE AND LABELING OF GASOLINE WHICH CONTAINS OXYGENATES.**

- 01. Definitions.** For purposes of this rule, the following definitions shall apply: (7-1-93)
- a.** Spark-Ignition Motor Fuel. The terms “spark-ignition motor fuel” or “spark-ignition engine fuel” mean gasoline and its blends with oxygenates such as co-solvent and ethers. (10-26-94)
  - b.** Gasoline-Oxygenate Blend. For labeling purposes, the term “gasoline-oxygenate blend” means any spark-ignition motor fuel containing one percent (1%) or more by volume of oxygenates or combination of oxygenates, such as but not restricted to ethanol, methanol, or methyl-tertiary-butyl ether. (10-26-94)
  - c.** Alcohol. A volatile flammable liquid having the general formula  $C_nH_{(2n+1)}OH$  used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles, and commonly or commercially known or sold as an alcohol, including ethanol and methanol. (7-1-93)
  - d.** Co-solvent. An alcohol or any other chemical with higher molecular weight than methanol or ethanol which is blended with either or both to prevent phase separation in gasoline. (7-1-93)
  - e.** Ethanol. Ethyl alcohol, a flammable liquid having the formula  $C_2H_5OH$  used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles, and commonly or commercially known or sold as ethanol or ethyl alcohol. (7-1-93)
  - f.** Gasoline. Any fuel sold for use in motor vehicles and commonly or commercially known or sold as gasoline whether leaded or unleaded. (7-1-93)
  - g.** Methanol. Methyl alcohol, a flammable liquid having the formula  $CH_3OH$  used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles, and commonly or commercially known or sold as methanol or methyl alcohol. (7-1-93)
  - h.** Motor vehicles. Include all vehicles, vessels, watercraft, engines, machines, or mechanical contrivances that are propelled by internal combustion engines or motors. (7-1-93)
  - i.** Person. The word “person” shall be construed to import both the plural and singular, as the case demands, and shall include corporations, companies, societies and associations. When construing and enforcing the provisions of this rule, the act, omission, or failure of any officer, agent, or other person acting for or employed by any corporation, company, society, or association, within the scope of his employment or office shall in every case be also deemed to be the act, omission, or failure of such corporation, company, society or association as well as that of the person. (7-1-93)
  - j.** Retail dealer. Any person who owns, operates, controls, or supervises an establishment at which gasoline is sold or offered for sale to the public. (7-1-93)
  - k.** Wholesale dealer. Any person engaged in the sale of gasoline to others who the seller knows or has reasonable cause to believe intends to resell the gasoline in the same or an altered form to another. (7-1-93)
- 02. Pump Labeling Requirements.** (7-1-93)
- a.** All spark ignition engine fuel kept, offered, or exposed for sale, or sold, at retail containing at least one percent (1%) by volume and not more than ten percent (10%) by volume of any oxygenate or combination of oxygenates shall be identified as “with” or “containing” (or similar wording) the specific type of oxygenate(s) in the

engine fuel. For example, the label may read “contains ethanol” or “with MTBE/ETBE.” This information shall be posted on the upper fifty percent (50%) of the dispenser front panel in a position clear and conspicuous from the driver’s position, in a type at least one half (1/2) inch in height, one-sixteenth (1/16) inch stroke (width of type).

(10-26-94)( )

**b.** The labels shall be furnished by the retail owner or operator. (7-1-93)

**03. Oxygenates Content Labels.** (10-26-94)

**a.** The label shall have letters in bold face, block not less than one-half (1/2) inch high. The lettering shall be in black on a contrasting background. Both colors shall be non-fade. (10-26-94)

**b.** The label shall be displayed on both faces of the dispenser on the upper one-half (1/2) of the dispenser as near the unit price display as practical. (10-26-94)

**04. Documentation for Dispenser Labeling Purposes.** The retailer must be provided, at the time of delivery of the fuel, on an invoice, bill of lading, shipping paper, or other documentation, a declaration of any oxygenate or combination of oxygenates present in concentrations of at least one percent (1%) by volume of the fuel. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending. (10-26-94)

**05. Fuel Specifications for Gasoline and Gasoline-Oxygenate Blends.** (5-8-09)

**a.** The version of ASTM D 4814 “Standard Specification for Automotive Spark-Ignition Engine Fuel” incorporated by reference in this rule is the standard for gasoline and gasoline oxygenate blends, except the volatility standards for unleaded gasoline blended with ethanol shall not be more restrictive than those adopted under the rules, regulations, and Clean Air Act waivers of the U.S. Environmental Protection Agency. Gasoline blended with ethanol shall be blended under any of the following three (3) options. (5-8-09)

i. The base gasoline used in such blends shall meet the requirements of ASTM D 4814, or (5-8-09)

ii. The blend shall meet the requirements of ASTM D 4814, or (5-8-09)

iii. The base gasoline used in such blends shall meet all the requirements for gasoline of ASTM D 4814 except distillation, and the blend shall meet the distillation requirements of the ASTM specification. (5-8-09)

**b.** Blends of gasoline and ethanol shall not exceed the ASTM D 4814 vapor pressure standard by more than one point zero (1.0) psi. (5-8-09)

**06. Penalties.** Any person who shall violate any provisions of these rules shall be punished as provided for in Section 37-2501 and Section 37-2520, Idaho Code. (7-1-93)