

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 02.01.05 - Rules Governing Certificates of Free Sale (Docket No. 02-0105-1401);

IDAPA 02.03.03 - Idaho Department of Agriculture Rules Governing Pesticide and Chemigation Use  
and Application (Docket No. 02-0303-1401).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the  
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research  
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative  
Services. The final date to call a meeting on the enclosed rules is no later than 09/03/2014. 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 10/01/2014.

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:** August 14, 2014

**SUBJECT:** Department of Agriculture

IDAPA 02.01.05 - Rules Governing Certificates of Free Sale (Docket No. 02-0105-1401)

IDAPA 02.03.03 - Idaho Department of Agriculture Rules Governing Pesticide and Chemigation Use and Application (Docket No. 02-0303-1401)

### **1. IDAPA 02.01.05 - Rules Governing Certificates of Free Sale**

The Idaho State Department of Agriculture submits notice of proposed rulemaking at IDAPA 02.01.05 - Rules Governing Certificates of Free Sale. According to the department, the purpose of the rulemaking is to remove the requirement that payment of annual certification fees be made within thirty days of receipt of invoice.

The department states that negotiated rulemaking was not conducted because of the simple nature of the proposed rule. Rulemaking appears to be authorized pursuant to section 22-112, Idaho Code.

### **2. IDAPA 02.03.03 - Idaho Department of Agriculture Rules Governing Pesticide and Chemigation Use and Application**

The Idaho State Department of Agriculture submits notice of proposed rulemaking at IDAPA 02.03.03 - Idaho Department of Agriculture Rules Governing Pesticide and Chemigation Use and Application. According to the department, the purpose of the rulemaking is to eliminate the specific names of low volatile liquid ester formulations and the date restriction of May 1 to October 1. The department states that the dates were put in rule to prevent the possibility of low volatile esters being applied on days when the air temperature might exceed eighty degrees. The department notes that the industry has informed it that the dates are no longer needed because many parts of the state do not reach the temperature threshold until June or July, if at all, and most low volatile ester herbicides now have temperature restrictions on the label. The department also states that the temperature restriction is a much better cut-off mechanism to reduce the likelihood of possible damage throughout the different parts of the state. In addition, the department notes that the newer low volatile ester herbicides being used around homes and gardens in Idaho are safer, more stable and more effective than older

Mike Nugent, Manager  
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ester herbicides and have adequate restrictions on the label to protect against volatilization., The department states that the industry also recommended that the specific names of the herbicides be removed so that all liquid ester herbicides are included and not just those named in the existing rule. The rulemaking was apparently recommended by the Pesticide Licensing Advisory Committee.

The department notes that negotiated rulemaking was conducted in June of this year. The rulemaking appears to be authorized pursuant to section 22-3421, Idaho Code.

cc: Department of Agriculture  
Brian J. Oakey

**IDAPA 02 - IDAHO STATE DEPARTMENT OF AGRICULTURE**

**02.01.05 - RULES GOVERNING CERTIFICATES OF FREE SALE**

**DOCKET NO. 02-0105-1401**

**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 22-112, 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 20, 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 amend IDAPA 02.01.05, Section 300, to remove the requirement that payment of annual certification fees be made within 30 days of receipt of invoice.

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

No fee is being imposed or charged through the adoption of this proposed rule.

**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:

There is no fiscal impact to the general fund as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed rule.

**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 Laura Johnson, Bureau Chief at (208) 332-8533.

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 August 27, 2014.

DATED this 3rd day of July, 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  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0105-1401**  
**(Only those Sections being amended are shown.)**

**300. FEES AND CHARGES.**

**01. Certification Fees.** The Director will establish certification fees annually under this chapter. Fees will not exceed fifty dollars (\$50) each. Fees will be set by July 1 of each year. (3-29-10)

**02. Notary Charges.** Notary certification will be provided for each certificate at no additional charge. (3-29-10)

**03. Shipping and Delivery Charges.** There will be no fees for mailing costs unless the applicant requests express mailing. (3-29-10)

**04. Express Mailing.** The applicant will be responsible for express mailing charges. The applicant may provide an account number for the carrier, pre-paid air bill or be invoiced for the actual costs. (3-29-10)

**05. Payment.** The applicant will be sent an *and* invoice for fees and charges and will be responsible for payment ~~within thirty (30) days. The Department will not issue a certificate of free sale to any company with an outstanding account balance.~~ (3-29-10) ( )

**IDAPA 02 - IDAHO STATE DEPARTMENT OF AGRICULTURE**  
**02.03.03 - IDAHO DEPARTMENT OF AGRICULTURE RULES GOVERNING**  
**PESTICIDE AND CHEMIGATION USE AND APPLICATION**

**DOCKET NO. 02-0303-1401**

**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 22-3421, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 20, 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:

02.03.03.500.02, "Rules Governing Pesticide and Chemigation Use and Application," will be amended to eliminate the specific names of low volatile liquid ester formulations and the date restriction of May 1 to October 1. The dates were put in rule to prevent the possibility of low volatile esters being applied on days when the air temperature might exceed eighty (80) degrees. The industry has informed the Department that the dates are no longer needed because many parts of the state do not reach the eighty (80) degree threshold until June or July, if at all, and most low volatile ester herbicides now have temperature restrictions on the label. The temperature restriction is a much better cut-off mechanism to reduce the likelihood of possible damage throughout the different parts of the state. Also, the newer low volatile ester herbicides being used around homes and gardens in Idaho are safer, more stable, are more effective than older ester herbicides, and have adequate restrictions on the label to protect against volatilization. The industry also recommended that the specific names of the herbicides be removed so that all liquid ester herbicides are included and not just those named in this older rule. This proposed rule change was recommended by the Pesticide Licensing Advisory Committee.

**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 as a result of this rulemaking:

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 4, 2014 Idaho Administrative Bulletin, [Vol. 14-6, pages 16 and 17](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on June 18, 2014.

**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 Ben Miller, Bureau Chief at (208) 332-8593.

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 August 27, 2014.

DATED this 3rd day of July, 2014.

Brian J. Oakey, Deputy Director  
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Boise, Idaho 83701  
Phone: (208) 332-8500  
Fax: (208) 334-2170

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0303-1401**  
**(Only those Sections being amended are shown.)**

**500. NON-DOMESTIC PESTICIDES.**

**01. Home and Garden Restrictions.** The following listed pesticides shall not be sold to home and garden users, nor shall they be applied by professional applicators around any home or garden. These pesticides shall be registered only when labeled, distributed, sold or held for sale and use other than home and garden use. (3-20-97)

- a. Bidrin (Foliar applications). (3-20-97)
- b. Disyston (two point one percent (2.1%) and above). (3-20-97)
- c. Guthion (fifteen percent (15%) and above). (3-20-97)
- d. Strychnine (one percent (1%) and above). (3-20-97)
- e. Zinc Phosphide (two point one percent (2.1%) and above). (3-20-97)
- f. All high volatile liquid ester formulations of 2,4-D. (3-20-97)

**02. Ester Restriction.** Low volatile liquid ester formulations of ~~2,4-D; 2,4-DP; MCPA and MCPB~~ herbicides shall not be applied around any home or garden ~~between May 1 and October 1 of any year or~~ at any time when ambient air temperature exceeds or is forecasted to exceed eighty (80) degrees Fahrenheit during the day of application. ~~(3-20-97)( )~~