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ISDA Pending Fee Rules, Dockets 02-0000-2000F & 02-0000-2000FA

Introduction

In 2020, Governor Little initiated a rules moratorium for all agency rulemaking. Consistent with the Governor's moratorium, the ISDA did not plan to do extensive negotiated rulemaking in 2020. However, as a result of the 2020 Legislature adjourning sine die without passing a concurrent resolution, fee rules expired. As was the case in 2020, the pending fee rules before the 2021 legislature have been repromulgated by the ISDA. Each rule contained in your Pending Fee Rules Review Book is a clean version because the existing rules were proposed as new after they expired. With limited exception, no changes were made to the ISDA fee rules during 2020. Each of the 22 rule chapters in dockets 02-0000-2000F and 02-0000-2000FA have been previously reviewed and approved by this committee.

The ISDA made non-substantive changes in three of its rules. Those three rules are listed in the middle column of the corresponding table and amendments highlighted below for your review. Dr. Barton is available to briefly discuss those changes and answer questions about the proposed changes. In addition, the ISDA received approval from the Governor's Office to conduct negotiated rulemaking for the Rules Governing Pesticide and Chemigation Use and Application and Rules for Weights and Measures. The proposed changes to each of these two rules will be discussed in detail at a later date.

Why Are There Two Dockets for the ISDA?

Idaho Code § 22-101A requires additional analysis for those rules that are more stringent or broader in scope than federal regulations or proposes to adopt a scientific standard. Because of these required additional rulemaking steps, the ISDA rules are split into two separate dockets. Rules appearing in docket number 2000F do not require a 22-101A analysis. Rules appearing in docket 2000FA are subject to the additional rulemaking requirements. The 22-101A analyses are not included in your rules review book. They are available on the ISDA rulemaking website and can be viewed by visiting the ISDA rulemaking page.

Rulemaking Procedures

The Idaho Administrative Procedures Act ("APA") guarantees the public has the opportunity to participate in negotiated rulemaking either through participation in meetings, submission of written comments, or public hearings. See Idaho Code § 67-5222(1). The APA requires that the ISDA accept public comments for a minimum of twenty-one (21) days for all rules where amendments are proposed. The ISDA met or exceeded this requirement by soliciting and accepting written comments for each of the rules in dockets 2000F and 2000FA. All comments submitted by the public are made part of the rulemaking record and available for inspection on the ISDA rulemaking website. All written comments must be considered by the agency prior to the adoption of a pending rule. Consideration, of a written comment does not mean that the comment will necessarily cause further amendment to the proposed rule, nor must it be incorporated into the text of the pending rule unless warranted.

Explanation of Rulemaking Changes

The majority of pending fee rules before the committee for consideration have been repromulgated exactly as they were presented in 2020. That is to say, there were no proposed changes to the fees or the rule text. Three pending rules propose non-substantive changes that were grammatical or corrected typographical errors. Two rules underwent extensive

negotiated rulemaking and the ISDA plans to review the substantive changes being proposed on a later date. Rule changes are summarized in the following table:

**2021 ISDA Omnibus
Pending Fee Rules**

ISDA Rules Omnibus – Docket 02-0000-2000F

No changes from 2019/2020 to 2021 No fee changes.	Small grammatical or non-material changes for clarity. No fee changes.	Negotiated rules containing changes from 2019/2020
Idaho Preferred Promotion Program		
Certificates of Frees		
Organic Food Products		

22-101A Related Rules Omnibus – Docket 02-0000-2000FA

Per Idaho Code, this category of rules has additional requirements as part of rulemaking process. As a result, ISDA is required to fulfill additional analyses to ensure the agency is using the best available peer-reviewed science and other standards in proposing the rule.

No changes from 2019/2020 to 2021 No fee changes.	Small grammatical or non-material changes for clarity. No fee changes.	Negotiated rules containing changes from 2019/2020
Bulk Permits & Retail Sale of Potatoes	Grade A Milk & Manufacture Grade Milk	Pesticide & Chemigation Use No increased to fees but added a new category.
Eggs & Egg Products	Poultry Operations	Weights & Measures Includes fee changes.
Bonded Warehouse	Animal Industry	
Commodity Dealers		
Seed Indemnity Fund		
Domestic Cervidae		
Public Exchange of Livestock		
Production & Distribution of Seed		
Registrations & Licenses		
Plant Exports		
Plant Disease & Quarantines		
Planting of Beans		
Invasive Species Noxious Weeds		
Growing of Potatoes		

IDAPA 02.04.05 – Rules Governing Grade A Milk & Manufacture Grade Milk

281. REGULATORY SAMPLES.

1. Sample Set.

(3-20-20)T

- a. The department will provide sample sets to official laboratories, on a bi-weekly basis or at a frequency determined by the department to be necessary to ensure accurate component testing results.(3-20-20)T
- b. The samples will be obtained from the company or entity that provides calibration samples to the official laboratory, if available. The department may provide regulatory samples from other sources if necessary.

c. The official laboratory must immediately process the samples, ~~while being observed by a department employee or agent~~, for those components used by the processor or procurer as a basis of payment. (3-20-20)T

d. The official laboratory must evaluate the sample set using identical control standards and device settings which are used to routinely evaluate Idaho producer milk components for basis of payment. (3-20-20)T

e. If the official laboratory is unable to process the samples due to maintenance or mechanical issues, ~~the department employee or agent who is delivering the samples may wait for the testing device to become operable. If the integrity of the regulatory samples is compromised due to the delay~~, the department may obtain and deliver an additional set of regulatory samples. (3-20-20)T

2. **Regulatory Sample Results.** The regulatory sample results will be compiled and evaluated by the department in rolling groups of thirteen (13). (3-20-20)T

3. **Outliers.** Sample results that have been identified as outliers will not be used in the calculation of tolerance for regulatory test results. (3-20-20)T

4. **Regulatory Sample Tolerances.** Each group of rolling thirteen (13) average shall be within the...

360.10 Qualifications for Dairy Farm Certification. Dairy Farm certification requires satisfactory compliance with the requirements in Section ~~360~~370.

IDAPA 02.04.32 – Rules Governing Poultry Operations

130. PERMIT CONDITIONS.

The following conditions will apply to all permittees: (3-20-20)T

1. **Compliance Required.** The permittee must comply with all conditions of the permit. The permit must not relieve the permittee of the responsibility of complying with all applicable local, state, and federal laws. (3-20-20)T

2. **Construction, Operation, and Maintenance of the Facility.** The permittee must ensure that construction, operation, and maintenance of the facility proceed according to the construction plans and specifications and the approved nutrient management plans, and comply with the following: (3-20-20)T

a. Within thirty (30) days of construction completion, submit as-built construction plans. (3-20-20)T

b. Apply best management practices as approved by the director. (3-20-20)T

c. The facility or operations associated with the facility must not adversely affect waters of the state or create nuisance conditions including odor. (3-20-20)T

d. The removal of animal waste from an impoundment or storage structure must be performed in a manner not to damage the integrity of the liner. (3-20-20)T

e. Dead animals must be handled in accordance with IDAPA 02.04.17, “Rules Governing Dead Animal Movement and Disposal.” (3-20-20)T

f. Nutrient management plans must be amended in accordance with IDAPA 02.04.30.000 et seq. “Rules Governing ~~Environmental and~~ Nutrient Management.” (3-20-20)T

g. Soil tests must be conducted annually on all land application sites owned or leased by the permittee to determine compliance with the NMP and NMS. The director may require more frequent soil tests if he deems it necessary. (3-20-20)T

3. **Information to be Provided.** The permittee must furnish to the director, within a reasonable time, any information which the director may reasonably require to determine whether causes exists to modify or revoke the permit, or to determine compliance with the permit or applicable rules. (3-20-20)T

4. **Entry and Access.** The permittee must allow the director entry and access in accordance with Section 25-4008, Idaho Code. (3-20-20)T

5. **Reporting.** Permittees must report discharges or noncompliance issues within the following time

frames:

(3-20-20)T

a. Within twenty-four (24) hours of the time the permittee knows or should have known of a discharge or unauthorized discharge, the permittee must verbally report the discharge. (3-20-20)T

b. Within five (5) working days from the time a permittee knows or reasonably should have known of any event which has resulted or which may result in noncompliance with these rules, the permittee must file a written report with the director containing: (3-20-20)T

IDAPA 02.04.03 – Rules Governing Animal Industry

SUBCHAPTER B - ANIMAL HEALTH EMERGENCIES

504. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference and apply only to Subchapter B, Sections 510-591:

Incorporated Documents: IDAPA 02.04.22 incorporates by reference the 9 C.F.R. § 53.2, January 1, 2002, which can be viewed online at http://edocket.access.gpo.gov/cfr_2002/janqtr/pdf/9cfr53.2.pdf. (3-20-20)T