

TITLE 22
AGRICULTURE AND HORTICULTURE

CHAPTER 1
DEPARTMENT OF AGRICULTURE

22-101. DEPARTMENT CREATED -- APPOINTMENT OF DIRECTOR -- RULES. (1) There is hereby created the department of agriculture. The governor shall appoint a director of the department of agriculture, subject to the provisions of section [67-2404](#), Idaho Code. The director of the department of agriculture shall exercise all of the powers and duties necessary to carry out the proper administration of the department of agriculture. The department of agriculture shall, for the purposes of section 20, article IV, of the constitution of the state of Idaho, be an executive department of the state government.

(2) The director shall be a person who is qualified by training, knowledge and demonstrated ability or experience in agricultural pursuits and their management.

(3) The director is empowered to prescribe rules pursuant to law for the governance of the department.

(4) For the purposes of international trade, the director may use the title of secretary of the department.

[22-101, added 1974, ch. 18, sec. 2, p. 364; am. 2000, ch. 144, sec. 1, p. 373.]

22-101A. RULES OF THE DIRECTOR. (1) The legislature directs that any rule proposed by the director that is broader in scope or more stringent than federal law or regulations, or proposes to regulate an activity not regulated by the federal government, is subject to the following additional requirements: the notice of proposed rulemaking and rulemaking record requirements under [chapter 52, title 67](#), Idaho Code, must clearly specify that the proposed rule, or portions of the proposed rule, are broader in scope or more stringent than federal law or regulations, or regulate an activity not regulated by the federal government, and must delineate which portions of the proposed rule are broader in scope or more stringent than federal law or regulations or regulate an activity not regulated by the federal government.

(2) (a) In proposing any rule or portions of any rule pursuant to [chapter 49, title 22](#), Idaho Code, [chapter 38, title 25](#), Idaho Code, or chapters 4 and 6, [title 37](#), Idaho Code, the director shall:

(i) Utilize the best peer reviewed science and supporting studies conducted in accordance with sound and objective scientific practices, if available;

(ii) Utilize data collected by accepted methods, or best available methods, if the reliability of the method and the nature of the decision justify use of the data, provided that special consideration shall be given to site-specific, local, statewide, and regional data, including economic information;

(iii) Explain how the rules are consistent with applicable legislative findings, policy, and intent; and

(iv) Make available for public review and comment, before making a rulemaking decision, all scientific studies, including underlying methodology, intended to be relied upon by the director.

Where not prohibited by federal or state law, the requirements imposed on agricultural operations shall be economically feasible, based on data, studies, and other information that may be presented to the director by interested parties to the rulemaking process.

(b) For purposes of this subsection, "economically feasible" means that the requirements, when viewed singularly and cumulatively with other requirements, and the costs and burden of implementation of the same, on agricultural operations are reasonably achievable and attainable within the physical, operational, economic, and other constraints that affect such agricultural operations and their local communities. The highest cost or most modern management practices should not be the sole basis for rulemaking.

(3) Any proposed rule subject to this section that proposes a standard necessary to protect human health and the environment shall also include in the rulemaking record requirements under [chapter 52, title 67](#), Idaho Code, the following additional information:

(a) Identification of each population or receptor addressed by an estimate of public health effects or environmental effects;

(b) Identification of the expected risk or central estimate of risk for the specific population or receptor;

(c) Identification of each appropriate upper bound or lower bound estimate of risk;

(d) Identification of each significant uncertainty identified in the process of the assessment of public health effects or environmental effects and any studies that would assist in resolving the uncertainty; and

(e) Identification of studies known to the director that support, are directly relevant to, or fail to support any estimate of public health effects or environmental effects and the methodology used to reconcile inconsistencies in the data.

(4) The director shall also include a summary of the information required by subsection (3) of this section in the notice of rulemaking required by [chapter 52, title 67](#), Idaho Code.

(5) Any rule promulgated or adopted by the director that is broader in scope or more stringent than federal law or regulations, or that regulates an activity not regulated by the federal government, submitted to the standing committee of the legislature pursuant to section [67-5291](#), Idaho Code, shall include a notice by the director identifying the portions of the adopted rule that are broader in scope or more stringent than federal law or rules or that regulate an activity not regulated by the federal government.

(6) Nothing provided herein is intended to alter the scope or effect of any other provision of state law that limits or prohibits agency action or rulemaking that is broader in scope or more stringent than federal law or regulations.

(7) The provisions of this section place conditions on the director's rulemaking authority, which authority is authorized pursuant to provisions other than those set forth in [chapter 1, title 22](#), Idaho Code. Nothing provided in this section is intended to grant the director additional rulemaking authority.

(8) The requirements of this section shall apply to the director's promulgation of new rules as well as the amendment, extension, or renewal of rules in effect on the effective date of this act.

[22-101A, added 2011, ch. 233, sec. 1, p. 636; am. 2021, ch. 128, sec. 1, p. 373.]

22-102. ORGANIZATION OF DEPARTMENT -- DIVISIONS. The director shall organize the department into such divisions and other administrative sub-units as may be necessary in order to efficiently administer the department. The director may apportion duties and responsibilities among the divisions and subordinate units.

[22-102, added 1974, ch. 18, sec. 2, p. 364; am. 1981, ch. 40, sec. 1, p. 63.]

22-102A. AIRCRAFT USE IN CONTROLLING UNPROTECTED OR PREDATORY ANIMALS. The director of the department of agriculture is hereby designated as the authorized agent of this state to aid in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life or crops for the purposes of issuing permits to persons to shoot or attempt to shoot, capture, harass or kill unprotected or predatory animals, as designated by the director, while such person is airborne in an aircraft, under authority vested in such agency by public laws 92-159 and 92-502.

The director shall issue such permits to applicants at no charge and shall require each permittee to submit a report each calendar quarter. The director also shall file with the United States secretary of the interior an annual report as prescribed in public laws 92-159 and 92-502.

The director is authorized to promulgate such regulations as may be necessary for the effective administration of this subsection. Any violation of such regulations shall constitute a civil offense for which a civil penalty of not to exceed one thousand dollars (\$1,000) may be imposed per incident of violation.

[(22-102A) 1976, ch. 95, sec. 2, p. 357; am. and redesignated 22-102A, 1989, ch. 211, sec. 1, p. 520.]

22-103. DUTIES OF DIRECTOR. The director of the department of agriculture shall execute the powers and discharge the duties vested by law in him or in the department, including, but not limited to, the following:

(1) Pursuant to [chapter 53, title 67](#), Idaho Code, hire, assign duties and evaluate the performance of all employees of the department.

(2) Designate employees for special assignment, office or function as the needs of the department may require.

(3) Acquire, generate, develop and disseminate information and data concerning agricultural pursuits, productivity and product quality.

(4) Encourage and promote in every practical manner, the interests of agriculture, horticulture, apiculture, aquaculture, the livestock industries, poultry and fowl raising, wool and fur-bearing animals and their allied industries.

(5) Assist, encourage and promote the organization of farmers' institutes, agricultural, horticultural, management or cooperative societies and organizations for the benefit of agricultural pursuits in this state.

(6) Promote improved methods of production, storage, sales and marketing of agricultural industries.

(7) Establish and promulgate standards of construction, use and sanitation of open and closed receptacles for farm products and standards for grade or other classification of farm products.

(8) Prescribe and promulgate rules governing marks, brands and labels, and the registration thereof, for use upon receptacles for farm products.

(9) Promote, in the interest of the public, economical and efficient use of products and commodities used in the production of agricultural, horticultural, meats and other products and farm commodities and their distribution.

(10) Cooperate with producers, processors and consumers in devising and maintaining economical and efficient systems of distribution and assist in the reduction of waste and expense incidental to the marketing of agricultural products.

(11) Cooperate with the secretary, colleges and universities, experiment stations, and other agencies which cooperate in devising, research and development and utilization of improved agricultural production and other activities.

(12) Investigate the practices, methods of factors, management techniques of commission merchants, track buyers and others who receive, solicit, buy, sell, handle on commission or otherwise, or deal in grains, eggs, livestock, vegetables or other products used as human foods, to the end that distribution of such commodities through such factors, commission merchants, track buyers and others be efficiently and economically accomplished without hardship, waste or fraud.

(13) Enter and inspect any right-of-way of any irrigation canal, railway, public highway, field, orchard, nursery, fruit or vegetable packing house, storeroom, sales room, storage facility, depot or other place where fruits and vegetables are grown or stored and to inspect fruits, trees, plants, vines, shrubs or other articles within the state, and if such places or articles are infested with pests, insects or their eggs or larvae, or with any contagious or transmittable diseases injurious to plant life, to abate or eradicate the same as a nuisance.

(14) Provide treatment for and prevent the spread of infectious or communicable diseases among bees, livestock, fur-bearing animals or domestic animals through the systematic and periodic inspection, testing or treatment of such bees and animals at the expense of the owner thereof.

(15) Protect the livestock interests of the state from losses due to disease or hazards to animal health and communicable to humans through agricultural products. The director is authorized to regulate, as deemed necessary, commercial livestock truck-washing facilities. This includes permitting for the treatment or disposal, at any location, of any wash water generated by the facility. This subsection preempts the Idaho department of environmental quality's authority to issue land application permits and to do plan and specification reviews under section [39-118](#), Idaho Code, for livestock truck-washing facilities, but does not affect any other authority of the Idaho department of environmental quality.

(16) Maintain recording of earmarks, eartags or other identifying marks not covered under any other provisions of law.

(17) Purchase, lease, hold, sell, and dispose of real and personal property of the department when, in the judgment of the director, such transactions promote the purposes for which the department is established.

(18) Contract with any state agency, federal agency or agency of another state concerning any matter, program or cooperative effort within the scope and jurisdiction of its authority pursuant to law.

(19) Assist in the improvement of country life, farm occupations and to cooperate in effectuating equality of opportunity of those employed in agricultural pursuits in the state of Idaho.

(20) Investigate diseases, contamination of livestock and poultry, agricultural, horticultural, and farm products suspected to be infected or contaminated by bacterial, viral, protozoal, parasitic, chemical, nuclear, botanical or other disease-producing agents, or carrying a residue of any such disease-producing agent or chemical in excess of any tolerance established by federal or state law or regulation and to examine, conduct tests, and issue "hold orders" on any livestock, poultry, agricultural, horticultural or farm products as deemed necessary to effectuate a diagnosis of disease, contamination or chemical level to safeguard and protect animal and man. And additionally, authorize and implement a predator control program on state and private lands using any kind of toxic material or substance suitable for such purpose. Any toxic material or substance shall be approved for use by the director. In order to carry out the provisions of this subsection, the director shall prescribe and promulgate rules pursuant to [chapter 52, title 67](#), Idaho Code.

(21) May assess an interest charge on accounts that are thirty (30) days past due from the initial billing date or the assessment due date. The interest rate charged shall not exceed twelve percent (12%) per annum.

(22) To take all steps that are deemed necessary to prevent and control damage or conflicts on federal, state, or other public or private lands caused by predatory animals, rodents, or birds, including threatened or endangered wildlife within the state of Idaho, as are established by federal or state law, federal or state regulation, or county ordinance, that are injurious to animal husbandry, agriculture, horticulture, forestry, wildlife and human health and safety.

(23) Administer a range program to provide support, coordination and expertise to Idaho rangeland livestock producers and land and wildlife management agencies for the planning and management of vegetation, grazing permits and other rangeland resources that are of importance to the livestock industry. The program shall also provide technical expertise and support to state and industry entities in reviewing various federal environmental impact statements, federal environmental assessments and other state and federal proposals that impact grazing, vegetation management or other rangeland resources or uses important to the livestock industry.

(24) To administer oaths, certify to all official acts and subpoena any person in this state as a witness; to compel through subpoena the production of books, papers, and records; and to take the testimony of any person on deposition in the same manner as prescribed by law in the procedure before the courts of this state. A subpoena issued by the director shall extend to all parts of the state and may be served by any person authorized to do so. All powers of the director enumerated in this subsection with respect to administering oaths, power of subpoena, and other powers in hearings on complaints shall likewise be applicable to hearings held on applications for the issuance or renewal of licenses.

(25) To appoint, as necessary, committees for the purpose of advising the director on any and all matters relating to agricultural programs within the Idaho department of agriculture.

(26) Cooperate with producers, industry and technology groups, and other agencies to encourage the growth of technology within the state's

agricultural industries while protecting, as necessary, the integrity of existing agriculture and agricultural marketing channels.

[22-103, added 1974, ch. 18, sec. 2, p. 364; am. 1976, ch. 90, sec. 1, p. 304; am. 1978, ch. 238, sec. 1, p. 508; am. 1982, ch. 9, sec. 1, p. 12; am. 1990, ch. 376, sec. 1, p. 1039; am. 1993, ch. 30, sec. 1, p. 98; am. 1994, ch. 96, sec. 1, p. 219; am. 1998, ch. 120, sec. 1, p. 448; am. 2002, ch. 104, sec. 1, p. 282; am. 2006, ch. 220, sec. 1, p. 657; am. 2009, ch. 32, sec. 1, p. 87; am. 2009, ch. 123, sec. 1, p. 388; am. 2010, ch. 79, sec. 4, p. 134; am. 2011, ch. 95, sec. 1, p. 206; am. 2020, ch. 142, sec. 1, p. 433.]

22-104. AGRICULTURE DEPARTMENT INSPECTION ACCOUNT -- OTHER ACCOUNTS. (1) All moneys received by the department of agriculture for any inspection, which the department by law may be authorized or required to make, except those moneys specifically received for and credited to another account or accounts, shall be credited to the agriculture department inspection account, which is hereby created in the treasury of the state of Idaho.

(2) Moneys received by the division of animal industries for sales of licenses, for inspections or fines shall be deposited to the livestock disease control and T.B. indemnity account.

(3) Moneys received by the department of agriculture under the bonded warehouse law and the weightmaster's licensing act shall be deposited to the credit of the general account.

[22-104, added 1974, ch. 18, sec. 2, p. 364; am. 1988, ch. 115, sec. 1, p. 212.]

22-105. AGRICULTURAL DEPARTMENT INSPECTION FUND -- CONTINUING APPROPRIATION. All moneys coming into the said agricultural department inspection fund from whatever source are hereby appropriated and set aside for the uses and purposes of the department of agriculture, including administrative expenses of the department, salaries and/or wages of the director and of subordinates and employees, expenses of travel, communication, supplies, equipment, fixed charges, inspection, and all other necessary expenses of the department of agriculture in carrying out its functions and the duties enjoined on it by law, not otherwise provided for, and this appropriation is intended as a continuing appropriation of said fund for the uses and purposes herein mentioned; and all claims against the said agricultural department inspection fund shall be examined by said department of agriculture and certified to the state controller, who shall, upon the approval of the board of examiners, draw his warrant against said agricultural department inspection fund for all bills and claims so allowed by said department of agriculture.

[22-105, added 1974, ch. 18, sec. 2, p. 364; am. 1994, ch. 180, sec. 13, p. 429.]

22-106. INJUNCTION. In addition to the other remedies, criminal or civil, provided by law, the department of agriculture may apply to the district courts for, and the district courts are vested with, civil jurisdiction to enforce, prevent, restrain or enjoin violations of any provision of a law or regulation made pursuant thereto under the jurisdiction of the department of agriculture.

[22-106, added 1974, ch. 18, sec. 2, p. 364.]

22-107. VOLUNTARY SERVICES FOR PUBLIC -- FEES -- APPROPRIATION OF MON- EYS. The department of agriculture may after notice and hearing provide by rule for voluntary services to be performed by it at the request of the public, such as developing and implementing services relating to hazard controls, good manufacturing practices, food safety manuals for packhouse operations, sanitation standards and operating procedures for producers and packers, laboratory analyses and testing, inspecting, grading, sampling and all similar things. It may also provide for reasonable fees for performing such voluntary services; the moneys derived from this activity shall be received and handled as provided for by sections [67-3609](#) and [67-3611](#), Idaho Code. The department of agriculture may also receive and use as directed any donations, grants or federal funds available for such purposes to be accounted for as prescribed by the state controller and any such moneys the department receives are hereby appropriated for the purpose for which they are received only, and may be spent for such purposes by the department of agriculture.

[22-107, added 1974, ch. 18, sec. 2, p. 364; am. 1976, ch. 51, sec. 4, p. 170; am. 1994, ch. 180, sec. 14, p. 430; am. 2001, ch. 146, sec. 1, p. 515.]

22-108. AUTHORITY AND DUTIES OF DIRECTOR CONCERNING RAPESEED. (1) In addition to other powers and duties, the director of the department of agriculture shall have regulatory authority to specify the varieties of rapeseed produced in the state and the geographical locations where each variety may be produced or stored. The director shall promulgate rules and regulations in compliance with [chapter 52, title 67](#), Idaho Code, that may be necessary for the efficient enforcement of the provisions of this section and may prescribe grade and quality standards for rapeseed.

(2) The director may, by rule and regulation, establish a schedule of fees for services performed by the department in the administration of this section and rules and regulations promulgated pursuant thereto, and the director may levy a fee on each hundredweight of rapeseed produced in this state sufficient to defray the costs of administering the provisions of this section and rules and regulations promulgated pursuant thereto. Receipts of these fees shall be deposited in the agricultural inspection account created pursuant to section [22-105](#), Idaho Code, and shall be used, subject to annual appropriation of the legislature, to pay the cost of administering the provisions of this section and rules and regulations promulgated pursuant thereto.

(3) Every violation of the provisions of this section and any rules and regulations promulgated pursuant thereto shall be a misdemeanor and shall be punished by a fine not exceeding one thousand dollars (\$1,000).

[22-108, added 1986, ch. 249, sec. 1, p. 670.]

22-109. QUALITY ASSURANCE LABORATORY PROGRAM -- MANDATORY ASSESSMENT REFERENDUM AUTHORITY. (1) In addition to the authority of commodity commissions to levy assessments and conduct referendums, if the department of agriculture receives a petition requesting a referendum signed by ten per cent (10%) or more Idaho producers of a particular commodity or if the department of agriculture receives a written request for a referendum from

a commodity commission, the department of agriculture may provide for a referendum by a commodity to determine if a mandatory assessment should be levied on the commodity producer group for the specific quality assurance laboratory program purposes identified in the referendum. No assessment shall become effective unless the same shall first be referred on a referendum mail ballot to producers of that commodity in this state and is approved by a majority of the producers voting in the referendum.

(2) All moneys derived from the assessment and collected by a commodity commission shall be deposited in one (1) or more separate accounts in the name of the commission in one (1) or more banks or trust companies approved under [chapter 27, title 67](#), Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the specific purposes identified in the referendum.

(3) All moneys derived from the assessment and collected by the department of agriculture shall be deposited with the state treasurer and be credited to the agriculture department inspection account. All funds so deposited are hereby continuously appropriated for the specific purposes identified in the referendum.

(4) The department of agriculture shall be reimbursed for the costs of the referendum by moneys derived from the assessment.

(5) The director of the department of agriculture shall have the authority to implement the provisions of any approved referendum and may promulgate rules necessary for carrying out the purposes of this section.

[22-109, added 1992, ch. 79, sec. 1, p. 220.]

22-110. AUTHORITY AND DUTIES OF DIRECTOR CONCERNING AGRICULTURAL WASTE. (1) In addition to other powers and duties, the director of the state department of agriculture shall have authority to regulate agricultural solid waste, agricultural composting and other similar agricultural activities to safeguard and protect animals, man and the environment. The director may promulgate rules in compliance with [chapter 52, title 67](#), Idaho Code, that may be necessary for the efficient enforcement of the provisions of this section. The director may collaborate with any state agency, federal agency or other governmental entity in the development of rules promulgated pursuant to this section.

(2) The director may, by rule, establish a schedule of fees for services performed by the department in the administration of this section and rules promulgated pursuant thereto. Receipts of these fees shall be deposited in the agricultural inspection fund pursuant to section [22-104](#), Idaho Code, and shall be used, subject to annual appropriation of the legislature, to pay the cost of administering the provisions of this section and rules promulgated pursuant thereto.

(3) Any person violating the provisions of this section or rules promulgated pursuant thereto may be assessed a civil penalty by the department or its duly authorized agent of not more than three thousand dollars (\$3,000) for each offense and shall be liable for reasonable attorney's fees. Assessment of a civil penalty may be made in conjunction with any other department administrative action. No civil penalty may be assessed unless the person charged has been given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act, [chapter 52, title 67](#), Idaho Code. If the department is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the

department, it may recover such amount by action in the appropriate district court. Any person against whom the department has assessed a civil penalty under this section may, within twenty-eight (28) days of the final agency action making the assessment, seek judicial review of the assessment in accordance with the provisions of [chapter 52, title 67](#), Idaho Code. Moneys collected for violations of this section or rules promulgated thereunder shall be deposited in the state treasury and credited to the agricultural inspection fund. When the director identifies items of noncompliance with the rules promulgated pursuant to this section, appropriate corrective actions will be identified. The director may develop a formal compliance schedule as appropriate to correct deficiencies. The director may, through the formal compliance schedule, allow all or part of the value of assessed civil penalties to be applied toward correction of deficiencies.

[22-110, added 1998, ch. 417, sec. 1, p. 1315.]

22-112. PROMOTION AND CERTIFICATION OF IDAHO AGRICULTURAL PRODUCTS. (1) Except as provided in subsection (2) of this section, the department of agriculture may promulgate rules in compliance with [chapter 52, title 67](#), Idaho Code, for the purpose of assisting others in the domestic and international promotion and certification of Idaho agricultural products. Programs authorized by this section are for the purpose of promoting Idaho agricultural products and/or to certify that Idaho agricultural products meet required standards in order to move in commerce. Programs authorized by this section are to be funded by the assessment of fees directly related to the provision of voluntary services and programs authorized and provided by rules adopted pursuant to this section. Fees assessed and collected pursuant to rules adopted according to this section shall be deposited in the agricultural department inspection fund and subject to the provisions of section [22-105](#), Idaho Code.

(2) Commissions, boards, associations, or other organizations authorized by statute to promote or regulate agricultural products grown, packed, or processed in the state of Idaho under Idaho law shall be the primary and principal promotion and certification mark and trademark organizations for the particular commodity they are authorized to promote or regulate. Any trademarks, certification marks, brands, seals, logos or other identification marks, whether registered or not, that are established, owned or used by such commissions, boards, associations or organizations shall remain their sole property, and any use or infringement of their ownership right is prohibited unless written permission is obtained from an authorized representative of the commission, board, association or organization.

(3) A commission, board, association or other organization referenced in subsection (2) of this section may, upon a request to and acceptance by the Idaho department of agriculture, participate in the promotion and certification programs administered by the department, including the payment of fees as required by rules adopted pursuant to subsection (1) of this section.

(4) Neither the Idaho department of agriculture, nor any agricultural entity referenced in subsection (2) of this section, shall be responsible for any negligent or other tortious act of the other while participating in a joint promotional activity.

[22-112, added 2003, ch. 148, sec. 1, p. 426.]

22-113. UNITED STATES FOOD AND DRUG ADMINISTRATION FOOD SAFETY MODERNIZATION ACT -- REGULATIONS FOR HUMAN FOOD PROCESSING. The Idaho legislature hereby directs that the Idaho state department of agriculture shall be the contracting agency for inspections in the state of Idaho that are contracted by the United States food and drug administration for the inspection of non-retail activities subject to registration under section 415 of the federal food, drug and cosmetic act. Any existing contracts and contracting authority shall transition to the Idaho state department of agriculture by September 29, 2021. Processors conducting nonretail activities and not subject to registration under section 415 of the federal food, drug and cosmetic act shall not be subject to regulation by the Idaho state department of agriculture pursuant to the provisions of this section. Prior to the Idaho state department of agriculture engaging in the regulation of any activities pursuant to the provisions of this section, the Idaho state department of agriculture, in consultation and cooperation with the department of health and welfare, shall conduct negotiated rulemaking to provide for the implementation of such regulation.

[22-113, added 2016, ch. 172, sec. 1, p. 474; am. 2018, ch. 216, sec. 1, p. 486; am. 2019, ch. 27, sec. 1, p. 76.]