

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.02.09 - RULES REQUIRING INSPECTION OF POTATOES INTENDED FOR SALE OR OFFERED FOR SALE IN RETAIL OUTLETS

DOCKET NO. 02-0209-0501

#### 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 Sections 22-901, 22-911 and 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 September 20, 2006.

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 change is needed to update and clarify the requirements under the current rule and list specific exotic pests of concern to the Idaho Potato Industry for which a zero tolerance will be specified.

The proposed rule, with one exception, is the same as the temporary rule that was previously adopted and is currently in effect. The temporary rule was published in the Idaho Administrative Bulletin November 2, 2005, Vol. 05-11. Subsection 02.02.09.100.03.c. of the temporary rule regarding bacterial ring rot will not be included in this proposed rule.

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

**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:** Negotiated rulemaking was not conducted because informal meetings with potato industry representatives concerning the adoption of this rule were held on September 8, 2005 and March 7, 2006.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact: Lee Stacey, Bureau Chief at (208) 332-8670 or Michael E. Cooper, Bureau Chief at (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 September 27, 2006.

DATED this 20th day of July, 2006.

Phil Bandy  
Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790  
Boise, Idaho 83701  
Phone: (208) 332-8503  
Fax: (208) 334-2170

Pursuant to Section 67-5221(1) the text of this Proposed Rule docket is being published.

This docket has been previously published as a Temporary Rule.  
The temporary effective date is October 1, 2005.

The text of the Temporary Rule was published in the Idaho Administrative  
Bulletin, Volume 05-11, November 2, 2005, pages 15 through 17.

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0209-0501

**02.02.09 - RULES REQUIRING THE INSPECTION OF POTATOES INTENDED  
FOR SALE OR OFFERED FOR SALE IN RETAIL OUTLETS**  
*(Chapter 9, Title 22, Idaho Code, Section 22-911)*

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Sections 22-901, 22-911, and 22-2006, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is IDAPA 02.02.09, "Rules Requiring the Inspection of Potatoes Intended for Sale or Offered for Sale in Retail Outlets." ( )

**02. Scope.** These rules specify the general requirements for the inspection, grading, marking and retail sales of potatoes in the state of Idaho. ( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of these rules. ( )

**003. ADMINISTRATIVE APPEAL.**

There is no provision for administrative appeals before the Idaho State Department of Agriculture under this chapter. Hearing and appeal rights are pursuant to Title 67, Chapter 52, Idaho Code. ( )

**004. INCORPORATION BY REFERENCE.**

IDAPA 02.02.09 incorporates by reference: Federal Marketing Order Number 945 – U.S.D.A. Handling Regulations May 4, 2000 Until Revised. Copies of this document may be obtained from the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, P.O. Box 790, Boise, Idaho 83701. ( )

**005. ADDRESS, OFFICE HOURS, TELEPHONE AND FAX NUMBERS.**

**01. Physical Address.** The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712-0790. ( )

**02. 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. ( )

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

**04. Telephone Number.** The telephone number of the central office is (208) 332-8500. ( )

05. Fax Number. The fax number of the central office is (208) 334-2170. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

These rules are public records and are available for inspection and copying at the Idaho State Department of Agriculture. ( )

0007. -- 099. (RESERVED).

**100. ~~COMPULSORY INSPECTIONS, -- WHOLESALE LEVEL -- TIME VALIDITY OF CERTIFICATE DECLARED RESTRICTIONS, AND IDENTIFICATION REQUIRED.~~**

~~All potatoes packed for resale to retail outlets in Idaho shall be inspected and have a Federal-State Certificate issued as to marked grade of the container. Accountable lots: A packer of potatoes packing for sale to retail outlets in Idaho may if he so desires, establish a designated lot for inspection that may be later divided into several sales. Simple identity of the lot will be maintained to the satisfaction of the inspector. The original Federal-State certificate will be valid for a period of seventy-two (72) hours. All potatoes packed for resale to retail outlets in Idaho shall be inspected as outlined in Section 100.02 and shall meet the requirements of Federal Marketing Order number 945-USDA and the conditions outlined below: (3-20-77)( )~~

01. Certification and Markings. Each shipment packed for resale to retail outlets in Idaho shall be accompanied by a valid inspection certificate, numbered note sheet or be marked with a positive lot identification number (PLI) number. ( )

02. Inspections. For other than Idaho or Oregon, inspections may be performed by any person or persons authorized under the USDA Agricultural Marketing Services Federal--State Service inspection program to inspect potatoes. ( )

03. Restrictions. All potatoes packed for resale to retail outlets in Idaho under the provision of this rule shall be inspected as outlined in Section 100.02 and found free from: ( )

a. Potato Tuberworm (*Phthorimaea operculella* (Zeller)). ( )

b. Potato Wart (*Synchytrium endobioticum*). ( )

**101. LOTS TAGGED NOT FOR SALE -- REMOVAL THEREOF.**

Retail outlets ~~will~~ may be periodically checked by the ~~Bureau of Market Inspections~~ Idaho State Department of Agriculture. Lots found failing to grade as marked or otherwise found out of compliance with the provisions of this rule will be tagged "Not For Sale" until removed from display and regraded, destroyed or remarked to a lower grade if feasible. (3-20-77)( )

**102. COMPLIANCE OR NON-COMPLIANCE CERTIFICATE.**

Each inspection at the retail outlet will be acknowledged by an ~~certificate~~ inspection report showing compliance or non-compliance. (3-20-77)( )

**103. SECOND NOTICE ACTION -- NON-COMPLIANCE.**

A second inspection showing evidence of non-compliance in any calendar year will constitute sufficient grounds to proceed with prosecution in accordance with Section 108 of this rule. (3-20-77)( )

(BREAK IN CONTINUITY OF SECTIONS)

**105. BULK LOTS LABELED NOT FOR SALE -- REMOVAL THEREOF.**

Bulk potatoes failing to meet the grade shown or otherwise found out of compliance with the provisions of this rule shall be labeled "Not For Sale" until removed. They may be regraded, destroyed or re-marked to a lower grade if feasible. (3-20-77)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**108. PENALTIES FOR VIOLATIONS.**

Any person violating the provisions of these rules shall be subject to the penalty provisions of Section 22-2020, Idaho Code. ( )

**1089. -- 999. (RESERVED).**