

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.02 - RULES PERTAINING TO THE IDAHO COMMERCIAL FEED LAW

DOCKET NO. 02-0602-1201 (FEE RULE)

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is November 29, 2012. This pending fee rule has been adopted by the agency and is now pending review by the 2013 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule and amended a temporary rule. The action is authorized pursuant to Section 25-2710, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the temporary rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

Add a section, 011. Exemptions, to define those feed products that will be exempt from registration. Exemptions are being added to the Rule in an effort to align with what is currently outlined in statute, and to provide a more transparent process in the future should exemptions need to be added or discontinued to meet changes in the feed industry or state needs. Based on public comment, ISDA chose to add Subsection 011.08 -- Byproducts or Production Waste in the exemptions. Such an exemption has previously existed in statute.

Add a section, 020. Registration & Fees, to set in rule a fee of \$40 per product. This increase in the registration fee will support a shift in program operating revenue from the termination of previously collected tonnage fees. This shift allows ISDA to better align revenue collection and services provided to registrants with the per-product regulatory activity expenses of the Commercial Feed Program. The revised fee was originally set at \$45 with a \$1,000,000 cap on the dedicated fund balance; after consideration of public comment, ISDA chose to decrease the fee to \$40 and remove the dedicated fund cap language. The dedicated fund cap would be difficult to manage in a timely and responsive manner outside the appropriation or rulemaking process.

Add a section 050.01.H, Inclusion of statements and promotion on company websites or other internet based customer interfaces into the definition of "labeling." Including websites and other internet based customer interfaces into the definition of "labeling" allows ISDA to ensure consistent and truthful information is disseminated by registrants where consumers are able to obtain decision-influencing information. This change also ensures that the Rules are consistent with the Commercial Feed Law.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the September 5, 2012 Idaho Administrative Bulletin, Vol. 12-9, pages 17 through 21.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger. This fee or charge is being imposed pursuant to Section 25-2704(2), Idaho Code. The following is a specific description of the fee or charge imposed or increased:

The registration fee included in this temporary rule is authorized in Section 25-2704(2), Idaho Code which authorizes the Director to set a registration fee in rule. This authorization is the result of SB 1236, which was passed by the 2012 Idaho Legislature. Changes to the statute included the authorization to set the registration fee in rule, as well as the elimination of the tonnage fee.

The registration fee is set at \$40 per product. This is an increase in the per product registration fee from \$5 or \$25. The new registration fee also replaces the former tonnage fee requirement.

Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking.

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:

The commercial feed program is a dedicated fund program and there is no impact to the state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending fee rule, contact Kathryn Mink, Section Manager Feed, Fertilizer & Seed at (208) 332-8620.

DATED this 29th day of November, 2012.

Brian J. Oakey, 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

**DOCKET NO. 02-0602-1201 - ADOPTION OF PENDING FEE RULE
AND AMENDMENT TO TEMPORARY RULE**

Substantive changes have been made to the pending fee rule.
Italicized red text that is *double underscored* is new text that has been added to the pending rule.
Italicized green text that is *underscored and struck through* is codified temporary text that is being removed from the temporary rule. This is also an amendment to the pending fee rule text.

Only those sections or subsections that have changed from the original temporary/proposed text are printed in this Bulletin following this notice.

The text of the temporary/proposed rule was published in the Idaho Administrative Bulletin, Volume 12-9, September 5, 2012, pages 17 through 21.

This rule has been adopted as a pending fee rule by the Agency and is now awaiting review and approval by the 2013 Idaho State Legislature for final adoption.

**THE FOLLOWING IS THE AMENDED TEMPORARY RULE AND THE
AMENDED PENDING RULE TEXT FOR FEE DOCKET NO. 02-0602-1201**

011. EXEMPTIONS.

Exemptions from product registration shall include:

(9-5-12)T

[New Subsection 011.08]

08. **Byproducts or Production Waste.** Processing byproducts or production waste, which do not undergo further processing, received by the end user directly from the fuel or food processor, when not adulterated within the meaning of Section 25-2707, Idaho Code, or misbranded within the meaning of Section 25-2707, Idaho Code. This may include wet or pressed beet pulp, pea screenings, and beet discard molasses. (11-29-12)T

020. REGISTRATION AND FEES.

[Subsection 020.01]

01. **Product Registration Fee.** Whenever a commercial feed is registered for distribution in the state of Idaho, a fee of forty-five dollars (\$45) per product shall be collected. (9-5-12)T(11-29-12)T

[Paragraph 020.01.b.]

b. The fee shall be set by the Department such that all costs associated with the commercial feed program will be covered by the registration fee without the need for additional state general or dedicated funding. A dedicated fund balance of not more than one million dollars (\$1,000,000) will be maintained. The registration fee will be reduced or increased by the Department in order to maintain this balance. (9-5-12)T(11-29-12)T