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Legislative Services Office Idaho State Legislature

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MEMORANDUM

TO: Senators BAIR, Guthrie, Buckner-Webb and,
Representatives ANDRUS, Boyle, Pence

FROM: Katharine Gerrity - Principal Legislative Research Analyst

DATE: September 22, 2014

SUBJECT: Temporary Rule

IDAPA 02.06.27 - Rules Governing Bacterial Ring Rot Caused by (*Clavibacter Michiganensis* Subsp. *Sepedonicus*) of Potato (New Chapter) - Amendment to Temporary Rule - Docket No. 02-0627-1401

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Katharine Gerrity at the Legislative Services Office at (208) 334-4834. Thank you.

Attachment: Temporary Rule

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IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.27 - RULES GOVERNING BACTERIAL RING ROT CAUSED BY (*CLAVIBACTER MICHIGANENSIS* SUBSP. *SEPEDONICUS*) OF POTATO

DOCKET NO. 02-0627-1401 (NEW CHAPTER)

NOTICE OF RULEMAKING - AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: A temporary rule was adopted under this docket number in the February 26, 2014, Idaho Administrative Bulletin, **Vol. 14-3, pages 13 through 18** and is being amended. The effective date of the amendment to the temporary rule is September 1, 2014.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given this agency has amended a temporary rule. The action is authorized pursuant to Sections 22-103, 22-505, 22-1907 and 22-2006, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation and the reasons for amending the previously adopted temporary rule:

ISDA adopted a temporary rule regarding Bacterial Ring Rot caused by *Clavibacter michiganensis*, subsp. *sepedonicus* (BRR) on February 26, 2014, and that rule was published in the March 5, 2014, Idaho Administrative Bulletin **Vol. 14-3, pages 13 through 18**. After adoption of the temporary rule, ISDA continued the negotiated rulemaking process in order to present the rule to the Legislature in 2015 as a proposed rule. ISDA made changes to the existing temporary rule as a result of negotiated rulemaking. This rule is in place to help prevent the introduction and/or spread of BRR into and through Idaho and the United States.

This rule is also being promulgated as a proposed rule in this Bulletin under Docket No. 02-0627-1402 and rather than keep the temporary rule as previously adopted, the agency has amended the temporary rule to align it with the language of the proposed rule which accompanies this docket and is being promulgated in this Bulletin under Docket No. 02-0627-1402.

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

The laboratory that performs the testing for *Clavibacter michiganensis*, subsp. *sepedonicus* will set the fee. Any other fees associated with seed potato certification or phytosanitary certification for export are detailed in those respective rules. See IDAPA 08.05.01.000 et seq. and 02.06.04.000 et seq., respectively.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this temporary rule amendment, contact Lloyd B. Knight, Plant Industries Division Administrator, (208) 332-8620 or email Lloyd.Knight@agri.idaho.gov. Materials pertaining to this rulemaking can be found on the ISDA web site at the following web address: http://www.agri.idaho.gov/Categories/LawsRules/sub_rules/Rulemaking.php.

DATED this 8th Day of September, 2014

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THE FOLLOWING IS THE AMENDED TEMPORARY TEXT OF DOCKET NO. 02-0627-1401
(Only those Sections being amended are shown.)

001. TITLE, SCOPE, AND INVESTIGATIONS.

01. **Title.** The title of this chapter is IDAPA 02.06.27, "Rules Governing Bacterial Ring Rot Caused By (*Clavibacter michiganensis* subsp. *sepedonicus*) of Potato." (2-26-14)T

02. **Scope.** These rules are to prevent the introduction and/or spread of *Cms* and subsequently bacterial ring rot into and through Idaho and the United States. These rules govern mandatory and voluntary reporting, mandatory testing, trace back, inspection, investigation, sampling and laboratory analysis of samples. Further, these rules will help ensure that, along with all other Idaho agricultural commodities, commercial potatoes grown in and exported from Idaho and, in particular, that seed potatoes being grown for planting in, exported from or imported into Idaho are of the highest quality. The official citation of this Chapter is IDAPA 02.06.27.000 et seq. For example, this section's citation is IDAPA 02.06.27.001. ~~(2-26-14)T~~(9-1-14)T

03. **Trace Back Investigations.** The public disclosure of information obtained during an investigation conducted under this rule shall be subject to disclosure to the public only insofar as it is allowed by Title 9, Chapter 3, Idaho Code. (2-26-14)T

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

Copies of the following document may be viewed at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.27 incorporates by reference: (2-26-14)T

01. ~~The Idaho Crop Improvement Association, Inc. (ICIA) Rules of Certification for Seed Potatoes in Idaho (2013 Edition)~~ IDAPA 08.05.01.000 et seq., "Rules Governing Seed and Plant Certification" and materials incorporated therein by reference. A copy of which may be accessed online ~~from the ICIA website at:~~ <http://www.idahocrop.com/StandardDocs/2013%20Potato-R&R.pdf> <http://adminrules.idaho.gov/rules/current/08/index.html>. ~~(2-26-14)T~~(9-1-14)T

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

In addition to the definitions in Sections 22-1904 and 22-2005, Idaho Code, the following definitions shall apply in the interpretation and the enforcement of this rule: (2-26-14)T

01. **Bacterial Ring Rot.** Caused by a bacterium, *Clavibacter michiganensis* subsp. *sepedonicus*. (2-26-14)T

~~02. **Cutting Operation.** Any person in the regular business of providing seed potato cutting and/or treatment services to the public for a fee.~~ ~~(2-26-14)T~~

~~03.~~ **Contact Lot.** A seed lot produced on a farming operation using common production and handling equipment and/or storage facilities. (2-26-14)T

~~04.~~ **Department.** The Idaho State Department of Agriculture. (2-26-14)T

~~05.~~ **Director.** The Director of the Idaho State Department of Agriculture. (2-26-14)T

065. **Idaho Crop Improvement Association, Inc.** A grower association of certified seed producers and conditioners. In 1959, the Regents of the University of Idaho appointed the Idaho Crop Improvement Association, Inc. as its duly authorized agent to administer and conduct seed certification in Idaho. (2-26-14)T

076. **Person.** An individual, partnership, corporation, firm, association, agent, grower, processor, shipper or inspector. (2-26-14)T

087. **Seed Lot.** A field or a group of fields producing seed potatoes or the potatoes (tubers) harvested from a seed potato field, identified with a certification number and a North American Plant Health Certificate, enabling identity preservation and tracking. (2-26-14)T

08. **Seed Potato Certification Process.** The process, timing and requirements for the certification of seed potatoes in Idaho, as set forth in IDAPA 08.05.01, "Rules Governing Seed and Plant Certification," and the materials incorporated therein by reference. (9-1-14)T

09. **Seed Stock.** Seed potatoes intended for use as a planting source for certification that are "Identity Preserved" with a certification number and a North American Plant Health Certificate. (2-26-14)T

10. **Sister Lot.** Seed lots originating from the same lot of seed stock. (2-26-14)T

(BREAK IN CONTINUITY OF SECTIONS)

101. ~~MANDATORY~~ REPORTING OF BRR.

01. Mandatory Reporting. It is mandatory for Aany person, including but not limited to, a grower, processor, shipper, laboratory staff member, field inspector, and/or shipping point inspector ~~who discovers Cms or observes BRR within the state, or who discovers potato plants or tubers that are confirmed to be infested with Cms causing BRR, shall to~~ immediately report the discovery presence of BRR to the Department when: The responsibility for reporting the results of Cms testing completed by laboratories outside of the state of Idaho resides with the person submitting the samples. This reporting requirement is mandatory. (2-26-14)T(9-1-14)T

a. The BRR is discovered or observed in seed potato plants or tubers prior to final seed potato certification by ICIA; and (9-1-14)T

b. The presence of BRR is confirmed via laboratory testing; and (9-1-14)T

c. The positive tubers or plant parts are still in the possession of the original seed grower. (9-1-14)T

02. Contents. ~~The~~ All reports shall, to the best of the reporter's ability, contain the following information: (2-26-14)T(9-1-14)T

a. The field, facility or other location at which Cms was found; (2-26-14)T

b. The date of discovery; (2-26-14)T

c. The location at which the suspect potatoes were grown; (2-26-14)T

d. The variety and generation of the suspect potatoes; (2-26-14)T

e. The laboratory submission report and test results; (2-26-14)T

f. The certification tags and origin of the seed potatoes used to produce the suspect crop; (2-26-14)T

g. North American Plant Health Certificate. (2-26-14)T

03. **Methods of Reporting.** The report shall be made by phone, in person or in writing (which may include electronic mail sent to BRR@agri.idaho.gov). Full Department headquarters contact information is listed in Section 005 of this rule. (2-26-14)T

(BREAK IN CONTINUITY OF SECTIONS)

103. **TRACE BACK INVESTIGATION, SAMPLING, AND TESTING.**

The department shall, upon receiving a mandatory report of *Cms* infected potatoes, investigate the origin and destination of such potatoes. Trace back and investigation activities may include, but not be limited to: a review of all inspection, certification, shipping and production records held by any person for the potatoes in question; inspection and sampling at the reporting operation as well as points for origin, storage and destination related to that operation; and laboratory testing records of any samples. The Department and the Idaho Crop Improvement Association shall mutually cooperate with each other in trace back investigations where appropriate. (2-26-14)T(9-1-14)T

01. Testing Positive for *Cms*. If certified seed potatoes in a lot test positive for *Cms* after they have left the control of the grower of that lot, ISDA's trace back investigation may include *Cms* testing any remaining seed from that lot that is still at the seed potato grower's facility. The testing level will be at a rate, depending on lot size, up to a maximum of four hundred (400) randomly selected tubers. (9-1-14)T

(BREAK IN CONTINUITY OF SECTIONS)

150. **TESTING FOR BRR.**

01. **Compliance With Certification Standards.** Seed potato tubers for planting for commercial production or for seed certification in Idaho or being imported into Idaho as seed potatoes for commercial production or certification as seed for planting must comply with the ICIA Rules of Certification for Seed Potatoes in Idaho as they relate to *Cms*, as incorporated in Section 004 of this rule. (2-26-14)T

02. **Seed Potatoes to Be Exported Tested.** Seed ~~P~~potato tubers being exported from Idaho to a foreign country as seed potatoes for planting must ~~be tested at a laboratory approved by the Idaho State Department of Agriculture for the presence of *Cms* at a rate, depending on lot size, of a maximum, of 400 randomly selected tubers per shipment being exported~~ meet all ICIA requirements for certification and export tag placement, as well as all phytosanitary certification requirements of the importing country. All costs for sampling, transport, and testing shall be borne by the exporter. (2-26-14)T(9-1-14)T

151. -- ~~2399.~~ (RESERVED)

~~300. CUTTING OPERATIONS.~~

~~01. Records Kept and Maintained. All cutting operations shall keep and maintain records of any and all cutting undertaken by the operation. The records must include, at a minimum:~~ (2-26-14)T

~~a. The origin of all seed lots cut by the operation;~~ (2-26-14)T

~~b. The cutting sequence employed by the operation;~~ (2-26-14)T

~~c. The sanitation schedule and methodology employed by the operation;~~ (2-26-14)T

~~d. Documents demonstrating that the operation has complied with the sanitation schedule and methodology; and~~ (2-26-14)T

~~e. A North American plant health certificate for each seed lot.~~ (2-26-14)T

~~301. — 399.~~ ~~(RESERVED)~~

400. HOLD ORDERS.

The Director may authorize Hold Orders restricting the movement of infested or suspect potatoes until investigation, trace back, and sample analysis are complete. Hold Orders may require verification that said potatoes will not be utilized for any purposes not authorized in writing by the Department. When potatoes from a certified seed potato lot are sampled and test positive for BRR after the seed potatoes have left the seed potato grower's facility, the Department will not issue a hold order on any seed potatoes from that lot that remain on the seed potato grower's facility unless and until potatoes from the affected lot are sampled at the seed potato grower's facility and test positive for BRR. ~~(2-26-14)T~~(9-1-14)T