

Dear Senators GUTHRIE, Den Hartog, Jordan, and
Representatives BOYLE, Troy, Erpelding:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Department of Agriculture:

IDAPA 02.00.00 - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking
(Docket No. 02-0000-1900F).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 07/23/2019. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 08/20/2019.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Agricultural Affairs Committee and the House Agricultural Affairs Committee
FROM: Deputy Division Manager - Katharine Gerrity
DATE: July 3, 2019
SUBJECT: Department of Agriculture

IDAPA 02.00.00 - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking (Docket No. 02-0000-1900F)

The Idaho State Department of Agriculture submits notice of temporary and proposed rules at:

- IDAPA 02.01.02, Idaho Department of Agriculture Interest Charge Rules
- IDAPA 02.01.04, Rules Governing the Idaho Preferred Promotion Program
- IDAPA 02.01.05, Rules Governing Certificates of Free Sale
- IDAPA 02.06.33, Organic Food Products Rules

The rulemaking adopts and re-publishes existing and previously approved chapters. IDAPA 02.01.02 is revised by the addition of the standard introductory information such as legal authority, title and scope and office information. A redundancy in the chapter title has also been removed. IDAPA 02.01.04 is revised by the movement or deletion of some definitions. IDAPA 02.01.05 removes an unnecessary citation and streamlines address information. IDAPA 02.06.33 is revised by the modification of some definitions. A number of additional non-substantive changes in the nature of clean-up have been made. No other changes from the existing rules have been noted.

This is a fee rule. The fees or charges reauthorized are currently existing.

These rules were previously analyzed and reviewed by the Legislative Services Office upon their initial promulgation. Rulemaking is authorized by sections 22-103, 22-112 and 22-1103, Idaho Code.

cc: Department of Agriculture
Brian J. Oakey

***** PLEASE NOTE *****

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 02 – DEPARTMENT OF AGRICULTURE

DOCKET NO. 02-0000-1900F

NOTICE OF OMNIBUS RULEMAKING – TEMPORARY AND PROPOSED FEE RULEMAKING

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 22-103(21), 22-112, and 22-1103, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 02, rules of the Idaho State Department of Agriculture:

IDAPA 02

02.01.02, *Idaho Department of Agriculture Interest Charge Rules*, adds required Sections 000-006

02.01.04, *Rules Governing the Idaho Preferred® Promotion Program*, modifies Section 010

02.01.05, *Rules Governing Certificates of Free Sale*

02.06.33, *Organic Food Products Rules*, eliminates Section 400; modifies Section 010

IDAHO CODE SECTION 22-101A STATEMENT: These rules do not regulate an activity not already regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. See table below for agency specific findings.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. See table below for agency specific fee summaries.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules.

IDAPA	Specific Findings	Fee Summary
02.01.02	The fee outlined in this rule funds the required administrative support for certain ISDA programs.	12% per annum
02.01.04	The fee outlined in this rule funds the required activities. Voluntary participation in the Idaho Preferred program provides eligible program participants with marketing and promotion services.	Directs ISDA to set fees annually not to exceed \$1,000
02.01.05	The fee outlined in this rule funds the required activities. Certificates of Free Sale are often required by export markets in order to ship Idaho commodities to them. Certificates of Free Sale provide producers with necessary documentation to show buyers that commodities were grown and harvested in compliance with applicable Idaho laws and rules.	Directs ISDA to set fee annually not to exceed \$50
02.06.33	The fee outlined in this rule funds required activities. The program provides for certifying inspection of organic producers in Idaho. There is no general fund support for this program.	Graduated fee structure

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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Brian Oakey at (208) 332-8550.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 20th day of May, 2019.

Brian Oakey, Deputy Director
Idaho State Department of Agriculture
Phone: (208) 332-8550 / Fax: (208) 334-2710

2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707

**IDAPA 02
TITLE 01
CHAPTER 02**

02.01.02 – INTEREST CHARGE RULES

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Idaho Code Section 22-103(22). (6-30-19)T

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.01.02, “Interest Charge Rules.” (6-30-19)T

02. Scope. These rules govern the interest charged on past due accounts, establish the interest rate, and provide for extreme financial hardship waiver. (6-30-19)T

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (6-30-19)T

003. ADMINISTRATIVE APPEAL.

Persons are entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (6-30-19)T

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter. (6-30-19)T

005. ADDRESS, OFFICE HOURS, TELEPHONE, FAX NUMBERS, WEB ADDRESS.

The Idaho State Department of Agriculture central office is located at 2270 Old Penitentiary Road, Boise, ID 83712-8298. The office is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The mailing address is PO Box 7249, Boise, Idaho 83707. The phone number is (208) 332-8500 and the fax number is (208) 334-2170. The Department web address is <https://agri.idaho.gov/>. (6-30-19)T

006. PUBLIC RECORDS ACT COMPLIANCE.

These rules have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code and are public records. (6-30-19)T

007. – 011. (RESERVED)

012. INTEREST CHARGE.

01. Interest Charge on Late Accounts. An interest charge may be assessed on all accounts which are thirty (30) days past due from the initial billing date or the assessment due date. In cases of extreme financial hardship experienced by the debtor, the assessment may be waived. (4-22-91)

02. Interest Rate. Twelve percent (12%) per annum. (4-22-91)

013. – 999. (RESERVED)

**IDAPA 02
TITLE 01
CHAPTER 04**

02.01.04 – RULES GOVERNING THE IDAHO PREFERRED® PROMOTION PROGRAM

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 22-112, Idaho Code. (3-16-04)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.01.04, “Rules Governing the Idaho Preferred® Promotion Program.” (3-30-07)

02. Scope. These rules govern the participation in, and product selection criteria for the Idaho Preferred® program. The program was developed by the Idaho State Department of Agriculture to identify and promote food and agricultural products from the state of Idaho, elevate consumer awareness of such products, and assist in developing opportunities for sale of such products. These rules establish the requirements for the use of the Idaho Preferred® logo and will define eligible products, application procedures, and participation fees. (3-30-07)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (3-16-04)

003. ADMINISTRATIVE APPEAL.

Persons are entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (3-16-04)

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter. (3-16-04)

005. ADDRESS, OFFICE HOURS, TELEPHONE, FAX NUMBERS, WEB ADDRESS.

The Idaho State Department of Agriculture central office is located at 2270 Old Penitentiary Road, Boise, ID 83712-8298. The office is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The mailing address is PO Box 7249, Boise, Idaho 83707. The phone number is (208) 332-8500 and the fax number is (208) 334-2170. The Department web address is <https://agri.idaho.gov/>. (3-16-04)

006. PUBLIC RECORDS ACT COMPLIANCE.

These rules have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code and are public records. (3-16-04)

007. -- 009. (RESERVED)

010. DEFINITIONS.

The following definitions apply in the interpretation and enforcement of this chapter. (3-16-04)

01. Agricultural Product. Any fresh or processed apicultural, aquacultural, avicultural, beverage, cervidae, dairy, horticultural, livestock, forestry, viticultural, or other farm or garden product. (3-16-04)

02. Apicultural Product. Products produced from or related to honey bees or honey. (3-16-04)

03. Aquacultural Product. Products produced from or related to fish, reptiles, or other aquatic animals. (3-16-04)

04. Avicultural Product. Products produced from or related to birds, including but not limited to, ratites or poultry. (3-16-04)

05. Beverage. Drinks including but not limited to wine, beer, distilled spirits, bottled water, or flavored drinks. (3-16-04)

06. **Broker.** A sales and marketing agent employed to make bargains and contracts for compensation. (3-16-04)
07. **Cervidae Product.** Products produced from or related to fallow deer, elk, or reindeer owned by a person. (3-16-04)
08. **Dairy Product.** Products produced from or related to milk from cattle, goats, or sheep. (3-16-04)
09. **Florist Stock.** All cut flowers, foliage and ferns, all potted plants or cuttings or bedding plants, and all flowering bulbs and rooted herbaceous plants used for ornamental or decorative purposes and all corms, whether grown in boxes, benches, pots, under glass or other artificial covering, or in the field or open ground or cuttings therefrom. (3-16-04)
10. **Foodservice.** A person engaged in or related to the practice of commercial food preparation and service. (3-16-04)
11. **Forest Products.** All products made of wood fiber such as timber, wood chips, sawdust or shavings, including but not limited to lumber, paper, particleboard, fence or corral posts or rails, shingles, shakes, firewood or pellets, logs used in the construction of log homes or any other product sold commercially. (3-29-12)
12. **Fresh Produce, Commodities, and Fresh Meat.** Bulk or packaged agricultural products that have been cleaned, sorted, or otherwise prepared and are sold or distributed in an unprocessed or minimally processed condition. (3-16-04)
13. **Horticultural Products.** Plants, including but not limited to, fruits, vegetables, flowers, seeds, or ornamental plants. (3-16-04)
14. **Livestock.** Domestic animals including but not limited to cattle, sheep, pigs, goats, domestic cervidae, domestic bison, camelids, or horses. (3-16-04)
15. **Livestock Product.** Products produced from or related to livestock. (3-16-04)
16. **Non-Food Agricultural Products.** Products not intended for human consumption, including but not limited to, animal feed, compost, hides, or skins. (3-16-04)
17. **Supporting Organization.** Any commission, association, or incorporated group supporting the efforts of the Idaho Preferred® program. (3-30-07)
18. **Nursery Stock.** All botanically classified plants or any part thereof, such as aquatic or herbaceous plants, bulbs, sod, buds, corms, culms, roots, scions, grafts, cuttings, fruit pits, seeds of fruits, forest and ornamental trees, and shrubs, berry plants, and all trees, shrubs, vines, and plants collected in the wild that are grown or kept for propagation or sale. Nursery stock does not include field and forage crops, seeds of grasses, cereal grains, vegetable crops and flowers, bulbs and tubers of vegetable crops, vegetables or fruit used for food or feed, cut trees or cut flowers unless stems or other portions thereof are intended for propagation. (3-16-04)
19. **Packer/Shipper.** A person who packages and ships food or agricultural products to wholesalers, retailers, and other outlets. (3-16-04)
20. **Participant.** A person who has applied to the Department and been approved for participation in the Idaho Preferred® program. (3-30-07)
21. **Processed Food.** Any food product which has been transformed from its natural state by methods including but not limited to freezing, cutting, heating, drying, treating, or adding ingredients. (3-16-04)
22. **Processor.** A person engaged in the manufacturing of processed food. (3-16-04)
23. **Producer.** A person engaged in the business of growing or raising food, fiber, feed, or other

agricultural products. (3-16-04)

24. Retailer. A person engaged in making sales directly to consumers. (3-16-04)

25. Viticultural Products. Products produced from or related to grapes and wine. (3-16-04)

26. Wholesaler. A person who buys in comparatively large quantities and then resells, usually in smaller quantities, but never directly to the consumer. (3-16-04)

011. -- 014. (RESERVED)

015. VOLUNTARY PROGRAM.

The Idaho Preferred® program is a voluntary promotion program. (3-30-07)

016. -- 099. (RESERVED)

100. APPLICATION FOR PARTICIPATION.

01. Application Requirement. Persons interested in becoming a participant in the Idaho Preferred® program shall do so by making application to the Department on forms established by the Director. New applications may be submitted at any time throughout the year. (3-30-07)

02. Application Review and Compliance Verification. The Director, upon receipt of an application, will verify the applicant's compliance with this chapter and approve or deny the application. The Director will notify the applicant in writing of the approval or denial. (3-16-04)

101. PARTICIPATION DURATION AND RENEWAL.

01. Duration. Participation is on an annual basis, coinciding with the fiscal year beginning July 1 and ending June 30, unless otherwise provided for in this chapter. (3-16-04)

02. Renewing Participation. Renewals shall be submitted on forms established by the Director and will be due August 1. (3-29-10)

03. Reporting on Use of Logo. Participants renewing with the Department will report their use of the Idaho Preferred® logo from the concluding program year. The report will include, but may not be limited to, information regarding how the Idaho Preferred® logo was used. (3-29-10)

102. -- 109. (RESERVED)

110. PARTICIPATION FEES.

01. Annual Fee. The Director shall annually establish participation fees for each participation category by April first for the following program year. Participation fees will be listed in the participation application and will not exceed one thousand dollars (\$1,000). Fees for the first program year will be set by July 1, 2003. (3-16-04)

02. Participation Categories: (3-16-04)

a. Producer. (3-16-04)

b. Packer/Shipper/Processor. (3-16-04)

c. Supporting Organization. (3-16-04)

d. Retail/Foodservice. (3-16-04)

e. Broker/Distributor. (3-16-04)

03. Pro-Rated Fees. New participation agreements issued during the program year will be assessed one hundred percent (100%) of the annual fee if applying between July 1 and December 31 and fifty percent (50%) of the fee if applying between January 1 and June 30. (3-29-10)

04. Participation in Multiple Categories. Persons qualifying in multiple participation categories shall be assessed the greater of participation fees. (3-16-04)

111. PARTICIPATION PRIVILEGES.
Participants will benefit from privileges including: (3-16-04)

01. Use of the Idaho Preferred® Logo. Use of the Idaho Preferred® Logo on product labels, advertising, signage, or other promotional materials as allowed by the department. (3-30-07)

02. Listing. Listing In Idaho Preferred® Product Directories. (3-30-07)

03. Promotion. Promotion through advertising, retail and foodservice promotions, consumer and education events, and the Idaho Preferred® website. (3-29-10)

04. Visibility. Visibility from the department's promotion activities. (3-16-04)

05. Other Privileges. Other privileges as established by the Director. (3-16-04)

112. -- 199. (RESERVED)

200. PRODUCT QUALIFICATION.

01. Authority of Determination. The Director shall have the sole authority in determining the eligibility of a product for participation in the program. (3-16-04)

02. General Product Qualifications. Except as specified in this chapter, or by written order of the Director, products must meet or exceed the following criteria: (3-16-04)

a. Fresh produce and commodities bearing the Idaho Preferred® logo shall be one hundred percent (100%) Idaho grown or raised. (4-2-08)

b. Processed foods and beverages shall contain a minimum of twenty percent (20%) agricultural content by weight that has been grown or raised in Idaho and shall be processed in the state of Idaho. (4-2-08)

c. Non-food agricultural products must be at least twenty percent (20%) agricultural content by weight that has been grown or raised in Idaho and processing must occur in Idaho. (4-7-11)

03. Potatoes. Only certification marks owned or administered by the Idaho Potato Commission may be branded on potatoes grown in Idaho unless prior Idaho Potato Commission approval in writing is secured and granted for the use of additional words or designs. Any person or participant applying to the Idaho Preferred® program, with the intention to promote Idaho-grown potatoes or products made from Idaho-grown potatoes, shall provide proof of such permission prior to making application with the Department. (3-30-07)

04. Wine. Wines shall contain a minimum of ninety-five percent (95%) Idaho grapes. (4-6-05)

05. Nursery Stock. Nursery stock shall have been grown in Idaho a minimum of one (1) growing season or growing cycle. (4-6-05)

06. Beef and Beef Products. Beef and beef products shall come from cattle that: (4-6-05)

a. Were born, raised and harvested in the United States. No cattle that originate from outside the United States may qualify for the Idaho Preferred® logo. (3-30-07)

- b.** Reside in Idaho at least twelve (12) months prior to harvest. The twelve (12) months need not be contiguous, but must be verifiable. (4-6-05)
 - c.** Reside their entire lives in Idaho if harvested prior to twelve (12) months of age. (4-6-05)
 - d.** Are processed in federally inspected plants and meet marbling and age requirements for USDA grade Select or better. (4-6-05)
- 07. Lamb and Lamb Products.** Lamb and lamb products shall come from sheep that: (5-8-09)

 - a.** Are born, raised and harvested in the United States. No lambs that originate from, or reside for any portion of their life outside the United States may qualify for the Idaho Preferred® logo. (5-8-09)
 - b.** Have grazed or been fed in Idaho at least three (3) months prior to harvest. The three (3) months need not be contiguous, but must be verifiable. (5-8-09)
 - c.** Are processed at approximately one (1) year of age or less and qualify as lamb or carcasses from older animals, identified as mutton by USDA inspectors, may qualify if they have met requirements in Subsection 200.07.b. (5-8-09)
- 08. Pork and Pork Products.** Pork and pork products shall come from hogs that: (5-8-09)

 - a.** Are born, raised and harvested in the United States. No hogs that originate from, or reside for any portion of their life outside the United States may qualify for the Idaho Preferred® logo. (5-8-09)
 - b.** Are raised in or processed in Idaho. (5-8-09)
 - c.** Are processed at less than one (1) year of age unless used exclusively for ground pork or sausage products, and are processed in a federally inspected plant. (4-7-11)
- 09. Poultry and Poultry Products.** Poultry and poultry products shall come from fowl that: (5-8-09)

 - a.** Are hatched, raised and harvested in the United States. No fowl that originate from, or reside for any portion of their life outside the United States may qualify for the Idaho Preferred® logo. (5-8-09)
 - b.** Are raised and processed in Idaho. Fertile eggs, also known as hatching eggs, or chicks less than three (3) days of age that originate outside of Idaho, but are raised and processed in Idaho, may qualify for Idaho Preferred®. (5-8-09)
 - c.** Are processed in a facility that is approved through a District Health Department for retail sales, or in a federally inspected plant. (5-8-09)
- 10. Game Meat.** Game meat shall: (5-8-09)

 - a.** Come from domestic elk that are born, raised and processed in Idaho and originate from a facility licensed by the Idaho State Department of Agriculture. (5-8-09)
 - b.** Come from domestic buffalo that are born, raised and processed in Idaho. (5-8-09)
 - c.** Be processed in a federally inspected plant. (5-8-09)
- 11. Apicultural Products.** Products produced by honey bees including raw honey, wax, pollen, and propolis shall be one hundred percent (100%) Idaho origin. Processed honey shall be eighty percent (80%) Idaho origin. (4-6-05)
- 12. Forest Products.** Forest products shall contain a minimum of eighty percent (80%) of their wood

fiber content from trees grown in Idaho and shall be manufactured in Idaho. (3-29-12)

13. Exceptions. The Director has the authority to establish product qualification requirements specific to individual products and commodities by written order. (3-16-04)

201. -- 299. (RESERVED)

300. LOGO.

The Idaho Preferred® logo has been registered by the Department with the United States Library of Congress (Copyright registration), the United States Patent and Trademark Office (Certification Mark registration), the Idaho Secretary of State (Certificate of Trademark) and is afforded all protections provided for by law. The logo shall be used only by those participants in compliance with this chapter. The Director will establish by written order a logo style manual specifying approved colors, treatments, and fonts for the Idaho Preferred® logo. (5-8-09)

01. Description of the Idaho Preferred® Logo. The Idaho Preferred® logo is an oval background containing a snow-capped mountain range topped with a sunburst. The word "IDAHO" appears in Brand Idaho logotype, and a banner emblazoned with the word "PREFERRED" scrolls across the bottom of the logo. (3-30-07)

02. Graphic Depiction of the Idaho Preferred® Logo:



(3-30-07)

03. Approval for Use of Logo. Participants who wish to use the Idaho Preferred® logo on packaging, labels, flyers, promotional materials, or any other materials that will be viewed by the public must submit a proof of text and design to the Department for approval. Requests for approval must be submitted to the Idaho State Department of Agriculture, Marketing Division not less than five (5) working days prior to the proposed date of use. Written approval from the Department for logo use must be issued prior to use of the logo. (5-8-09)

301. SPECIAL PROMOTIONAL ACTIVITIES.

01. Activities. The Department may engage in special promotional activities including, but not limited to, advertising, product demonstrations, events, publicity, and cooperative activities. The Department may invite participants in the Idaho Preferred® program to participate in any activities. (3-30-07)

02. Fees. The Department may assess a separate fee for any special promotional activity. This fee will not exceed the actual cost of conducting the activity. (3-16-04)

302. OTHER IDAHO PROMOTION PROGRAMS.

01. Commodity-Specific Promotion Programs. Commissions, boards, associations, or other organizations authorized by statute to promote or regulate agricultural products grown, packed, or processed in the state of Idaho shall be the primary and principal promotion and certification mark and trademark organizations for the particular commodity they are authorized to promote or regulate. (3-16-04)

02. Ownership of Marks. Any trademarks, certification marks, brands, seals, logos or other

identification marks, that are established, owned or used by such commissions, boards, associations or organizations shall remain their sole property. 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.

(3-16-04)

303. DISTRIBUTION OF PROMOTIONAL MATERIAL.

01. Authorized Use. The Idaho Preferred® program has the authority to provide retail and food service outlets, farmers' markets, schools, media, fairs, and other such businesses, organizations, and venues the opportunity to promote Idaho food and agricultural products using the program logo and promotional materials. Open distribution of any and all point-of-sale materials, signage, advertising, identification placards, and other such promotional material, in accordance with this chapter and other applicable laws and precedent, is acceptable use and not considered an infringement on the ownership rights of any mark or seal of a supporting organization as defined in this chapter. (3-29-10)

02. Fees. The Department may assess a fee for promotional materials such as, but not limited to, banners, stickers, signs, aprons, shopping bags, etc. (3-29-10)

304. -- 309. (RESERVED)

310. SELF-CERTIFICATION.

All participants shall self-certify that all products marked with the Idaho Preferred® logo meet the qualification criteria as set forth in this chapter. Self-certification is subject to verification through the application and compliance process. (3-30-07)

311. COMPLIANCE.

01. Authority of Director. The Director has the authority to enter upon the premises of any participant to examine and copy any of the following items: (3-16-04)

a. Books, papers, records, ledgers, journals, electronically or magnetically recorded data: (3-16-04)

and b. Computers and computer records or memoranda bearing on the usage of the Idaho Preferred® logo; (3-30-07)

c. To secure all other information concerned in the enforcement of these rules. (3-16-04)

02. Random Compliance Inspection. The Director shall annually perform random compliance inspections. (3-16-04)

03. Samples. The participant shall, upon the request of the Director, provide samples of the participant's labels, packaging, merchandising, and promotional materials featuring the Idaho Preferred® logo. (3-30-07)

312. -- 314. (RESERVED)

315. VIOLATION.

Any person found in violation of these rules is subject to termination of participation privileges. (3-16-04)

316. -- 999. (RESERVED)

**IDAPA 02
TITLE 01
CHAPTER 05**

02.01.05 – RULES GOVERNING CERTIFICATES OF FREE SALE

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 22-112, Idaho Code. (3-29-10)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.01.05, “Rules Governing Certificates of Free Sale.” (3-29-10)

02. Scope. These rules govern the issuing of certificates of free sale and establish applicant procedures for obtaining Certificates of Free Sale. (3-29-10)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (3-29-10)

003. ADMINISTRATIVE APPEALS.

Persons are entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (3-29-10)

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter. (3-29-10)

005. ADDRESS, OFFICE HOURS, TELEPHONE, FAX NUMBERS, WEB ADDRESS.

The Idaho State Department of Agriculture central office is located at 2270 Old Penitentiary Road, Boise, ID 83712-8298. The office is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The mailing address is PO Box 7249, Boise, Idaho 83707. The phone number is (208) 332-8500 and the fax number is (208) 334-2170. The Department web address is <https://agri.idaho.gov/>. (6-30-19)T

006. IDAHO PUBLIC RECORDS ACT COMPLIANCE.

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. (3-29-10)

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. Applicant. Any person applying for certification under these rules. (3-29-10)

02. Certificate of Free Sale. A certificate issued by the Department for products grown or processed in Idaho to certify that the products are distributed generally throughout the state of Idaho and the United States and are in accordance with Idaho health laws and sanitary regulations. (3-29-10)

011. -- 099. (RESERVED)

100. APPLICATION FOR CERTIFICATION - PROCEDURES.

01. Application. Application must be made in writing (which includes electronic mail) and include, but will not be limited to, the following information: (3-29-10)

a. Company name; (3-29-10)

b. Physical address of packing or processing facility; and (3-29-10)

- c. List of products to be certified. (3-29-10)
02. **Application Forms.** No application form(s) are necessary. (3-29-10)
03. **Multiple Certificates.** Multiple certificates may be requested at one time. (3-29-10)
101. -- 109. (RESERVED)
110. **APPLICANT REQUIREMENTS.**
01. **Applicant Health Inspection.** The Department may request a copy of an applicants' most recent state, federal or third-party health inspection, if applicable. Such inspection records will be kept on file for one (1) year. (3-29-10)
02. **Applicant Licenses or Registrations.** If the applicant is regulated by the Department, the applicant must meet all state laws and Department regulations. (3-29-10)
111. -- 119. (RESERVED)
120. **SPECIAL REQUESTS.**
01. **Customized Certificates.** The applicant may request customized text for the certificate of free sale in order to meet the import requirements of a specific country. The Department will make every effort to comply with the request. (3-29-10)
02. **Additional Charges.** There will be no additional charges for special requests. (3-29-10)
121. -- 299. (RESERVED)
300. **FEES AND CHARGES.**
01. **Certification Fees.** The Director will establish certification fees annually under this chapter. Fees will not exceed fifty dollars (\$50) each. Fees will be set by July 1 of each year. (3-29-10)
02. **Notary Charges.** Notary certification will be provided for each certificate at no additional charge. (3-29-10)
03. **Shipping and Delivery Charges.** There will be no fees for mailing costs unless the applicant requests express mailing. (3-29-10)
04. **Express Mailing.** The applicant will be responsible for express mailing charges. The applicant may provide an account number for the carrier, pre-paid air bill or be invoiced for the actual costs. (3-29-10)
05. **Payment.** The applicant will be sent an invoice for fees and charges and will be responsible for payment. (4-11-15)
301. -- 999. (RESERVED)

**IDAPA 02
TITLE 06
CHAPTER 33**

02.06.33 – ORGANIC FOOD PRODUCTS RULES

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 22-1103, Idaho Code. (4-2-03)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.06.33, “Organic Food Products Rules.” (4-2-03)

02. Scope. These rules govern: (4-2-03)

a. Definitions; (4-2-03)

b. The requirements for production and handling of organic plant and animal products; (4-2-03)

c. Labels and labeling of organic plant and animal products; (4-2-03)

d. General requirements for certification of producers and handlers of plant and animal products; (4-2-03)

e. Fee structure; and (4-2-03)

f. Penalty provisions for violation of organic law and rules. (4-2-03)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (4-2-03)

003. ADMINISTRATIVE APPEAL.

Section 22-1108, Idaho Code, provides for an appeal process. (4-2-03)

004. INCORPORATION BY REFERENCE.

The Code of Federal Regulations, Title 7, Part 205, National Organic Program Regulations (July 7, 2010), except sections 205.620 through 205.622, is incorporated by reference and can be viewed online at <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=b885492294d6e01d334ae6076da2c3c2&rgn=div5&view=text&node=7.3.1.1.9.32&idno=7>. Copies of this document may be obtained from the Idaho State Department of Agriculture (ISDA), 2270 Old Penitentiary Road, Boise, Idaho 83712. (4-7-11)

005. ADDRESS, OFFICE HOURS, TELEPHONE, FAX NUMBERS, WEB ADDRESS.

The Idaho State Department of Agriculture central office is located at 2270 Old Penitentiary Road, Boise, ID 83712-8298. The office is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The mailing address is PO Box 7249, Boise, Idaho 83707. The phone number is (208) 332-8500 and the fax number is (208) 334-2170. The Department web address is <https://agri.idaho.gov/>. (4-2-03)

006. PUBLIC RECORDS ACT COMPLIANCE.

These rules are public records available for inspection and copying at the department. (4-2-03)

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. Agent. Any entity accredited by the Secretary of the United States Department of Agriculture as a certifying agent for the purpose of certifying a production or handling operation. (3-19-07)

02. Certification. A document issued by the Department to a producer/handler who is in compliance with this rule who has more than five thousand dollars (\$5,000) annual gross organic sales. (3-19-07)

- 03. Educational Activity.** Seminar, conference, farm tour, class, or research. (3-19-07)
- 04. Food Products.** Includes all agricultural, horticultural, viticultural and vegetable products of the soil, apiary and apiary products, poultry and poultry products, livestock and livestock products, milk and dairy products and aquaculture products. (4-2-03)
- 05. Handler.** Any person engaged in the business of handling agricultural products, including producers who handle crops or livestock of their own production, except such term does not include final retailers of agricultural products that do not process agricultural products. (4-2-08)
- 06. Livestock.** Any cattle, sheep, goat, swine, poultry, or equine animals used for food or in the production of food, fiber, feed, or other agricultural- based consumer products; wild or domesticated game; or other non-plant life, except such term does not include aquatic animals or bees for the production of food, fiber, feed, or other agricultural-based consumer products. (4-2-08)
- 07. Materials.** Any substance or mixture of substances that is intended to be used in agricultural production, processing, or handling. (3-27-13)
- 08. Organic Certification Seal.** The design approved by the director and which when imprinted or affixed on labels, packages or products, or used in advertising in any manner, signifies that the standards and rules developed in accordance with the provisions of Chapter 11, Title 22, Idaho Code, and all other conditions of the provisions of that chapter have been met. (4-2-03)
- 09. Organic Food Product.** Any food product that is marketed using the term organic, or any derivative of the term organic in its labeling or advertising. Organic foods are those processed, packaged, transported and stored to retain maximum nutritional value, without the use of artificial preservatives, coloring or other additives, irradiation, or synthetic pesticides. (4-2-03)
- 10. Organically Grown Food Products.** Food products which are produced without the use of synthetically compounded fertilizers, pesticides, or growth regulators for a period not less than thirty-six (36) months prior to harvest. Organically grown food products are produced under the standards and rules established in accordance with the provisions of Chapter 11, Title 22, Idaho Code, and by other qualified agencies. (4-2-03)
- 11. Producer.** A person who engages in the business of growing or producing food, fiber, feed, or other agricultural-based consumer products. (4-2-08)
- 12. Vendor.** Any person who sells organic food products to the consumer or another vendor. (4-2-03)
- 011. -- 199. (RESERVED)**
- 200. IDAHO ORGANIC CERTIFICATION SEAL.**
- 01. Description of Seal.** Certified operations that become certified for the first time prior to July 1, 2013 may continue to use the seal depicted in Figure 1. Certified operations that become certified for the first time July 1, 2013 and later may only use the seal in Figure 2.

FIGURE 1



FIGURE 2



(3-27-13)

02. Utilization of Seal. The Idaho organic certification seal as approved by the director and as shown in Figure 1 and Figure 2, may be imprinted or affixed on labels, packages or products, or used in advertising in any manner, shall signify that the standards and rules developed in accordance with the provisions of this rule and all other conditions of the provisions of this chapter have been met. (3-27-13)

a. Any container manufacturer may apply for authorization to imprint facsimiles of the ISDA organic certification seal on containers of organic products. (4-2-03)

b. Authorization granted to imprint facsimile seals shall be subject to review by the director on an annual basis, or more frequently if necessary. (4-2-03)

201. REGISTRATION OF APPROVED MATERIALS.

The director may establish a list of registered branded materials for use in organic production, processing, or handling. (3-27-13)

01. Registration. Registration is voluntary. (3-27-13)

a. All applicants applying for registration of materials must submit the application to the Department on forms prescribed by the Department. (3-27-13)

b. An applicant for materials registration must demonstrate that the material meets the requirements and standards of the National Organic Program. Specifically, the material may not be a material prohibited for use in the production, processing, or handling of organic products by 7 C.F.R. Section 205.105, and may not be otherwise prohibited for use in organic production, processing, or handling by the National Organic Program. (3-27-13)

02. Effect of Registration. The fact that a material is registered is not a guarantee that the registered material will be acceptable for use by certified organic producers, processors, or handlers or other organic certifying agencies other than ISDA. (3-27-13)

03. Department Not Liable. The Department is not liable for any losses or damages that occur as a result of any person's use of any registered branded material. The Department is not liable for any losses or damages

that result from delays that occur in the registration process due to lack of resources or expertise. (3-27-13)

04. Registration Fees. The Director may charge the following fees, which are nonrefundable and are not to exceed the stated amounts. (3-27-13)

a. Operations that hold a current approval from a reputable third party accredited material evaluation program such as the Environmental Protection Agency, an NOP Accredited Certifying Agent, or ISO Guide 65 for the material(s) which it is seeking to register in Idaho must pay two hundred dollars (\$200) for an initial registration application fee, and two hundred dollars (\$200) each year thereafter for renewal of the registration. (3-27-13)

b. All operations must pay initial and annual inspection fees to keep their product registered. (3-27-13)

05. Initial and Annual Inspection Fees. (3-27-13)

a. The hourly rate for inspections is fifty dollars (\$50), including travel time. (3-27-13)

b. Travel time from an inspector's normal duty station to the inspection site and return to normal duty station will be compensable time charged to the applicant. (3-27-13)

c. There will be a minimum charge of fifty dollars (\$50) plus mileage for any inspection. (3-27-13)

d. A mileage rate as approved by the Board of Examiners will be included in the inspection fees. (3-27-13)

e. A per diem, lodging, and travel as allowed by state and ISDA rules, and any other out of pocket costs incurred by ISDA in conducting annual or initial certification inspections will be charged to the operation. (3-27-13)

f. Upon approval by ISDA, private inspectors may be utilized. The applicant or operator will bear the total cost of the private inspection. (3-27-13)

06. Seal for Registered Branded Materials. When a material is registered and added to the list of registered branded materials, the Director will approve the use of the seal in Figure 3 on the packaging and in the promotions for the sale of the registered material subject to the National Organic Program and Idaho state rules:

FIGURE 3



(3-27-13)

07. Revocation of Registration. If at any time the registered material is determined to be not suitable for organic use, the Director may revoke the registration of the branded material, remove the material from the list of registered branded materials, and revoke authorization to use the seal shown in Subsection 201.06. (3-27-13)

202. -- 299. (RESERVED)

300. CERTIFICATION REQUIREMENTS AND FEES.

01. Certification Requirements. All applicants applying for certification with the Department, shall submit the application to the Department on forms prescribed or approved by the Department. (3-29-12)

a. All organic food producers/handlers in Idaho with annual gross organic sales of more than five thousand dollars (\$5,000) shall be certified with the Department, unless certified by agents other than the Department accredited under the National Organic Program. (3-19-07)

b. Producers/handlers with annual gross organic sales of five thousand dollars (\$5,000) or less may select certification. (4-11-15)

c. All organic food producers and organic handlers certifying with the Department are subject to an annual on-site inspection. (3-19-07)

d. Livestock producer and handler applications will be accepted throughout the year. (3-19-07)

02. Certification Fees. (3-29-10)

a. Organic producers/handlers with annual gross organic sales of more than five thousand dollars (\$5,000) up to fifteen thousand dollars (\$15,000) or producers with annual gross income of five thousand dollars (\$5,000) or less requesting certification - One hundred twenty-five dollars (\$125). (4-7-11)

b. Organic producer/handler with annual gross organic sales of more than fifteen thousand dollars (\$15,000) – Two hundred dollars (\$200). (4-7-11)

c. A person who produces and handles their own organic food products shall pay only one (1) annual certification fee based on gross annual organic sales. (3-19-07)

03. Certification Inspection Fees. (3-19-07)

a. The hourly rate is thirty-five dollars (\$35) including travel time. (3-19-07)

b. Travel time from an inspector's normal duty station to the inspection site and return to normal duty station will be compensable time charged to the applicant. (3-19-07)

c. There will be a minimum charge of thirty-five dollars (\$35) plus mileage for any inspection. (3-19-07)

d. A mileage rate as approved by the Board of Examiners will be included in the inspection fees. (3-19-07)

e. Inspections conducted on weekends, holidays, or after normal office hours will be charged at an hourly rate of forty-seven dollars and fifty cents (\$47.50) including travel time with a minimum charge of one (1) hour plus mileage. (3-19-07)

f. Upon approval by the Department, private inspectors may be utilized. The applicant bears the total cost of the private inspection. (3-29-10)

301. GRADUATED GROSS SALES FEE SCHEDULE.

01. Graduated Gross Sales Fee Table. In addition to the fees prescribed above, all producers and handlers certified by the Department shall remit with their certification application an amount based on their annual gross organic sales during the last calendar year, or in the case of a first-time applicant, a projected gross dollar amount for the upcoming calendar year, with a minimum fee of ten dollars (\$10). The graduated gross organic sales fee structure is as follows:

0 - 2,000	\$10
2,001 - 5,000	\$25
5,001 - 10,000	\$50
10,001 - 15,000	\$75
15,001 - 20,000	\$100
20,001 - 25,000	\$125
25,001 - 30,000	\$150
30,001 - 35,000	\$175
35,001 - 50,000	\$250
50,001 - 75,000	\$375
75,001 - 100,000	\$500
100,001 - 150,000	\$750
150,001 - 200,000	\$1,000
200,001 - 280,000	\$1,400
280,001 - 375,000	\$1,875
375,001 - 500,000	\$2,500
500,001 and up	0.5% of gross organic sales up to \$5,000

(4-11-15)

02. Non-Refundable. Certification application fees are non-refundable.

(4-11-15)

302. -- 999. (RESERVED)