

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 02.01.04 - Rules Governing the Idaho Preferred® Promotion Program - Proposed Rule
(Docket No. 02-0104-1901).

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 08/28/2019. 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 09/26/2019.

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: August 09, 2019

SUBJECT: Department of Agriculture

IDAPA 02.01.04 - Rules Governing the Idaho Preferred® Promotion Program - Proposed Rule (Docket No. 02-0104-1901)

Summary and Stated Reasons for the Rule

The Idaho Department of Agriculture submits notice of proposed rule at IDAPA 02.01.04 - Rules Governing the Idaho Preferred® Promotion Program. According to the department, the rulemaking was conducted to revise product qualifications for the program. The department states that existing product qualifications for processed food and beverage products were not appropriate for some products. In addition, new categories were created for beer and water. The department states that changes were also made to beef and game meat. Beef qualifications were revised to be more in line with other meat products and game meat was revised to include all Cervidae and not just elk.

The department confirms that the rule does not regulate an activity not already regulated by the federal government, nor is it broader in scope or more stringent than federal regulations (section 22-101A, Idaho Code, statement).

Negotiated Rulemaking / Fiscal Impact

The department states that negotiated rulemaking was conducted and comments were considered when drafting the proposed rule.

Statutory Authority

The rulemaking appears to be authorized pursuant to section 22-112, Idaho Code.

cc: Department of Agriculture
Brian J. Oakey

*** PLEASE NOTE ***

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
www.legislature.idaho.gov

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.

IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.01.04 – RULES GOVERNING THE IDAHO PREFERRED® PROMOTION PROGRAM

DOCKET NO. 02-0104-1901

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 to Section 22-112, 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 August 21, 2019.

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:

The rulemaking was conducted to revise product qualifications for the voluntary Idaho Preferred program. Existing product qualifications for “processed food and beverage” products were not appropriate for some products. New categories were created for beer and for water. Changes were also made to beef and game meat. The beef qualifications were revised to be more in line with other meat products and game meat was revised to include all Cervidae and not just elk. In addition to the proposed changes, IDAPA 02.01.04 was reviewed for amendment or repeal of select sections in order to comply with the Red Tape Reduction Act resulting in the elimination of some portions of the rule.

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

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

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:

ISDA does not anticipate any fiscal impact as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 1, 2019 Idaho Administrative Bulletin, [Vol. 19-5, page 41](#). A negotiated rulemaking meeting was held at the Idaho State Department of Agriculture on May 21, 2019. There were 15 in attendance at the meeting. There were some written comments submitted and entered into the record that were taken into consideration when drafting this proposed rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Laura Johnson, Bureau Chief, Market Development at (208) 332-8533. 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 August 28, 2019.

Dated this 3rd day of July, 2019.

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

2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0104-1901
(Only Those Sections With Amendments Are Shown.)

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 has 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: (4-2-08)
 - i. Contain a minimum of twenty percent (20%) agricultural content by weight that has been grown or raised in Idaho; and (4-2-08)
 - ii. 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. Beer. Beer shall: ()

a. Be brewed in Idaho; and ()

b. Contain at least one (1) Idaho agricultural product such as Idaho malt, Idaho wheat or Idaho hops, or soluble remnant thereof, but excluding water. ()

06. Water. Water must be extracted from an Idaho water source. ()

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

068. 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~~ **Are raised, fed, or processed in Idaho.** (4-6-05)()

e. ~~Reside their entire lives in Idaho if harvested prior to twelve (12) months of age.~~ (4-6-05)

d.c. Are processed in federally inspected plants ~~and meet marbling and age requirements for USDA grade Select or better.~~ (4-6-05)()

079. 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)

108. 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)

0911. 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)

102. Game Meat. Game meat shall: (5-8-09)

a. Come from domestic ~~elk~~ Cervidae that are born, raised and processed in Idaho and originate from a facility ~~licensed~~ regulated 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)

143. Apicultural Products. Products produced by honey bees including ~~honey~~ 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)()

124. Forest Products. Forest products shall: (3-29-12)

a. Contain a minimum of eighty percent (80%) of their wood fiber content from trees grown in Idaho; and (3-29-12)

b. Be manufactured in Idaho. (3-29-12)

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