

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

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 (Fee Rule) - Proposed Rule (Docket No.
02-0000-2000F)

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 10/14/2020. 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 11/11/2020.

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: September 24, 2020

SUBJECT: Department of Agriculture

IDAPA 02.00.00 - Notice of Omnibus Rulemaking (Fee Rule) - Proposed Rule (Docket No. 02-0000-2000F)

Summary and Stated Reasons for the Rule

The Idaho State Department of Agriculture submits notice of proposed fee rule. According to the department, the rulemaking republishes the following temporary rule chapters that were previously submitted: IDAPA 02.01.04, Rule Governing the Idaho Preferred® Program, IDAPA 02.01.05, Rules Governing Certificates of Free Sale, and IDAPA 02.06.33, Organic Food Products Rules. The department verifies that the proposed rules meet or are not subject to Section 22-101A, Idaho Code, in that they are not broader in scope nor more stringent than federal law or regulations and do not regulate an activity not regulated by the federal government. In addition, the Idaho Preferred® Program is a voluntary marketing program providing standards, not regulations.

The department states that the fee rules do not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Legislature in the prior rules.

Negotiated Rulemaking/Fiscal Impact

The department notes that negotiated rulemaking was not conducted because engaging in negotiated rulemaking for all previously existing rules would inhibit the agency from carrying out its ability to protect health, safety, and welfare. The department also confirms that the rulemaking is not anticipated to have any fiscal impact on the general fund.

Statutory Authority

The rulemaking appears to be authorized pursuant to Sections 22-103, 22-112, and 22-1103, Idaho Code.

cc: Department of Agriculture
Brian J. Oakey

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

***** 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.

IDAPA 02 – DEPARTMENT OF AGRICULTURE
DOCKET NO. 02-0000-2000F (FEE RULE)
NOTICE OF OMNIBUS RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 22-103(20), 22-112 and 22-1103, Idaho Code.

PUBLIC HEARING SCHEDULE: Opportunity for presentation of oral comments 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 the purpose of the proposed rulemaking:

This proposed rulemaking re-publishes the following existing temporary rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 02, rules of the Department of Agriculture:

IDAPA 02

- IDAPA 02.01.04, *Rules Governing the Idaho Preferred® Promotion Program*;
- IDAPA 02.01.05, *Rules Governing Certificates of Free Sale*; and
- IDAPA 02.06.33, *Organic Food Products Rules*.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government.

The Idaho Preferred Promotion Program is a voluntary marketing program which provides standards, not regulations, for Idaho Preferred products. Therefore, this Rule is not subject to the requirements of Idaho Code Section 22-101A.

The other two rules do not require such statement because they are neither broader in scope, nor more stringent than federal laws or regulations. These rules also do not regulate areas not already regulated by the federal government.

FEE SUMMARY: This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules. The table provides a specific description of fees or charges imposed by specific rules. Fees or charges are imposed pursuant to the Idaho Code Sections listed.

IDAPA	Specific Findings	Fee Summary
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; Authorized by Section 22-112(1), Idaho Code
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 or processed in compliance with applicable Idaho laws and rules and distributed generally throughout Idaho and the United States.	Directs ISDA to set fee annually not to exceed \$50; Authorized by Section 22-112(1), Idaho Code

IDAPA	Specific Findings	Fee Summary
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; Authorized by Section 22-1106, Idaho Code

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 FY2021 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 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 proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the 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 19th of August, 2020.

Brian Oakey
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8500
Fax: (208) 334-2170

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. ()

001. TITLE AND SCOPE.

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

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. ()

002. -- 009. (RESERVED)

010. DEFINITIONS.

The following definitions apply in the interpretation and enforcement of this chapter. ()

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

02. Apicultural Product. Products produced from or related to honey bees or honey. ()

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

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

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

06. Broker. A sales and marketing agent employed to make bargains and contracts for compensation. ()

07. Cervidae Product. Products produced from or related to fallow deer, elk, or reindeer owned by a person. ()

08. Dairy Product. Products produced from or related to milk from cattle, goats, or sheep. ()

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. ()

10. Foodservice. A person engaged in or related to the practice of commercial food preparation and service. ()

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. ()

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. ()

13. Horticultural Products. Plants, including but not limited to, fruits, vegetables, flowers, seeds, or ornamental plants. ()

14. **Livestock.** Domestic animals including but not limited to cattle, sheep, pigs, goats, domestic cervidae, domestic bison, camelids, or horses. ()
15. **Livestock Product.** Products produced from or related to livestock. ()
16. **Non-Food Agricultural Products.** Products not intended for human consumption, including but not limited to, animal feed, compost, hides, or skins. ()
17. **Supporting Organization.** Any commission, association, or incorporated group supporting the efforts of the Idaho Preferred® program. ()
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. ()
19. **Packer/Shipper.** A person who packages and ships food or agricultural products to wholesalers, retailers, and other outlets. ()
20. **Participant.** A person who has applied to the Department and been approved for participation in the Idaho Preferred® program. ()
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. ()
22. **Processor.** A person engaged in the manufacturing of processed food. ()
23. **Producer.** A person engaged in the business of growing or raising food, fiber, feed, or other agricultural products. ()
24. **Retailer.** A person engaged in making sales directly to consumers. ()
25. **Viticultural Products.** Products produced from or related to grapes and wine. ()
26. **Wholesaler.** A person who buys in comparatively large quantities and then resells, usually in smaller quantities, but never directly to the consumer. ()

011. -- 014. (RESERVED)

015. VOLUNTARY PROGRAM.

The Idaho Preferred® program is a voluntary promotion program. ()

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. ()

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. ()

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. ()

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

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. ()

102. -- 109. (RESERVED)

110. PARTICIPATION FEES.

01. Annual Fee. Participation fees will be listed in the participation application and will not exceed one thousand dollars (\$1,000). ()

02. Participation Categories: ()

a. Producer. ()

b. Packer/Shipper/Processor. ()

c. Supporting Organization. ()

d. Retail/Foodservice. ()

e. Broker/Distributor. ()

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. ()

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

111. PARTICIPATION PRIVILEGES.

Participants will benefit from privileges including: ()

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. ()

02. Listing. Listing In Idaho Preferred® Product Directories. ()

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

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

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. ()

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: ()

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

b. Processed foods and beverages shall: ()

i. Contain a minimum of twenty percent (20%) agricultural content by weight that has been grown or raised in Idaho; and ()

ii. Be processed in the state of Idaho. ()

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. ()

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. ()

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

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. ()

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

08. Beef and Beef Products. Beef and beef products shall come from cattle that: ()

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. ()

b. Are raised, fed, or processed in Idaho. ()

c. Are processed in federally inspected plants. ()

09. Lamb and Lamb Products. Lamb and lamb products shall come from sheep that: ()

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. ()

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. ()

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. ()

- 10. Pork and Pork Products.** Pork and pork products shall come from hogs that: ()
- 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. ()
 - b.** Are raised in or processed in Idaho. ()
 - 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. ()
- 11. Poultry and Poultry Products.** Poultry and poultry products shall come from fowl that: ()
- 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. ()
 - 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®. ()
 - c.** Are processed in a facility that is approved through a District Health Department for retail sales, or in a federally inspected plant. ()
- 12. Game Meat.** Game meat shall: ()
- a.** Come from domestic Cervidae that are born, raised and processed in Idaho and originate from a facility regulated by the Idaho State Department of Agriculture. ()
 - b.** Come from domestic buffalo that are born, raised and processed in Idaho. ()
 - c.** Be processed in a federally inspected plant. ()
- 13. Apicultural Products.** Products produced by honey bees including honey, wax, pollen, and propolis shall be one hundred percent (100%) Idaho origin. Processed honey shall be eighty percent (80%) Idaho origin. ()
- 14. Forest Products.** Forest products shall: ()
- a.** Contain a minimum of eighty percent (80%) of their wood fiber content from trees grown in Idaho; and ()
 - b.** Be manufactured in Idaho. ()
- 15. Exceptions.** The Director has the authority to establish product qualification requirements specific to individual products and commodities by written order. ()

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. ()

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. ()

02. Graphic Depiction of the Idaho Preferred® Logo:



()

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. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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

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. ()

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: ()

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

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

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

02. Random Compliance Inspection. The Director shall annually perform random compliance inspections. ()

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. ()

312. -- 314. (RESERVED)

315. VIOLATION.

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

316. -- 999. (RESERVED)

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. ()

001. TITLE AND SCOPE.

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

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

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Applicant. Any person applying for certification under these rules. ()

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. ()

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: ()

- a.** Company name; ()
- b.** Physical address of packing or processing facility; and ()
- c.** List of products to be certified. ()

02. Application Forms. No application form(s) are necessary. ()

03. Multiple Certificates. Multiple certificates may be requested at one time. ()

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. ()

02. Applicant Licenses or Registrations. If the applicant is regulated by the Department, the applicant must meet all state laws and Department regulations. ()

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. ()

02. Additional Charges. There will be no additional charges for special requests. ()

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. ()

02. Notary Charges. Notary certification will be provided for each certificate at no additional charge. ()

03. Shipping and Delivery Charges. There will be no fees for mailing costs unless the applicant requests express mailing. ()

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. ()

05. Payment. The applicant will be sent an invoice for fees and charges and will be responsible for payment. ()

301. -- 999. (RESERVED)

02.06.33 – ORGANIC FOOD PRODUCTS RULES

000. LEGAL AUTHORITY.

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

001. TITLE AND SCOPE.

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

02. **Scope.** These rules govern definitions, requirements for production, handling, and labeling of organic plant and animal products. These rules further govern the general requirements for certification of producers and handlers of plant and animal products, as well as program fee structures. ()

002. -- 003. (RESERVED)

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. ()

005. -- 009. (RESERVED)

010. DEFINITIONS.

In addition to the definitions found in Section 22-1102, Idaho Code, the following definitions apply to the interpretation and enforcement of these rules: ()

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. ()

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. ()

03. **Educational Activity.** Seminar, conference, farm tour, class, or research. ()

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. ()

05. **Materials.** Any substance or mixture of substances that is intended to be used in agricultural production, processing, or handling. ()

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



()

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 and signifies 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. ()

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

b. Authorization granted to imprint facsimile seals is subject to review by the director on an annual basis, or more frequently if necessary. ()

201. REGISTRATION OF APPROVED MATERIALS.

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

01. Registration. Registration is voluntary. ()

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

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. ()

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. ()

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. ()

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

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. ()

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

05. Initial and Annual Inspection Fees. ()

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

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. ()

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

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

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. ()

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

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



()

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. ()

202. -- 299. (RESERVED)

300. CERTIFICATION REQUIREMENTS AND FEES.

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

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

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

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

d. Livestock producer and handler applications will be accepted throughout the year. ()

02. Certification Fees. ()

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). ()

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

c. A person who produces and handles their own organic food products pays only one (1) annual certification fee based on gross annual organic sales. ()

03. Certification Inspection Fees. ()

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

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. ()

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

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

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. ()

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

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 must 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

()

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

()

302. -- 999. (RESERVED)

PROPOSED RULE COST/BENEFIT ANALYSIS

Section 67-5223(3), Idaho Code, requires the preparation of an economic impact statement for all proposed rules imposing or increasing fees or charges. This cost/benefit analysis, which must be filed with the proposed rule, must include the reasonably estimated costs to the agency to implement the rule and the reasonably estimated costs to be borne by citizens, or the private sector, or both.

Department or Agency: Idaho State Department of Agriculture _____

Agency Contact: Brian Oakey _____ **Phone:** 208-332-8500 _____

Date: August 19, 2020 _____

IDAPA, Chapter and Title Number and Chapter Name:

- 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

Fee Rule Status: Proposed Temporary

Rulemaking Docket Number: 02-0000-2000F _____

STATEMENT OF ECONOMIC IMPACT:

This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules. The table provides a specific description of fees or charges imposed by specific rules. Fees or charges are imposed pursuant to the Idaho Code Sections listed.

IDAPA	Specific Findings	Fee Summary
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; Authorized by Section 22-112(1), Idaho Code
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 or processed in compliance with applicable Idaho laws and rules and distributed generally throughout Idaho and the United States.	Directs ISDA to set fee annually not to exceed \$50; Authorized by Section 22-112(1), Idaho Code
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; Authorized by Section 22-1106, Idaho Code