

IDAPA 29 – IDAHO POTATO COMMISSION

DOCKET NO. 29-0000-1900

NOTICE OF OMNIBUS RULEMAKING – TEMPORARY AND PROPOSED 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 22-1205 and 22-1207, 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 29, rules of the Idaho Potato Commission (IPC).

IDAPA 29

- 29.01.01, *Rules of Procedure of the Idaho Potato Commission - updated and streamlined to include rules that were previously in 29.01.01 and 29.01.02, while deferring to the rules of procedure of the Attorney General when possible.*

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. Without these rules in place, the IPC cannot bring administrative proceedings to protect the IPC's trademarks and certification marks and undertake necessary enforcement actions relating to the infringement of these marks; we will not have any requirements for packaging and container branding and not be able to offer the industry guidance or outline how to protect the Idaho brand; and we will not have a written explanation of the methodology by which IPC taxes are assessed and collected.

FEE SUMMARY: This rulemaking does not impose a fee or charge.

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 FY 2020 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 Patrick Kole at (208) 514-4208 or Patrick.Kole@potato.idaho.gov.

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 June, 2019.

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**IDAPA 29
TITLE 01
CHAPTER 01**

IDAPA 29 – IDAHO POTATO COMMISSION

29.01.01 – RULES OF THE IDAHO POTATO COMMISSION

000. LEGAL AUTHORITY.

These rules are adopted under the general legal authority of the Idaho Potato Commission Law, Chapter 12, Title 22, Idaho Code. (6-30-19)T

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 29.01.01, "Rules of the Idaho Potato Commission." (6-30-19)T

02. Scope. These rules govern payment of taxes to the Idaho Potato Commission (the Commission); records required to be kept by growers, dealers, handlers, shippers, processors, container manufacturers, and out-of-state repackers of Idaho® potatoes; use of Certification Marks and Trademarks owned or administered by the Commission; branding of individual potatoes, state brand grade and packing requirements, reporting, labeling and revocation, and additional labeling requirements. These rules govern all procedure before the Idaho Potato Commission (the Commission). (6-30-19)T

002. WRITTEN INTERPRETATIONS – AGENCY GUIDELINES.

Written interpretations to these rules, if any, are available from the office of the Commission Secretary. (6-30-19)T

003. ADMINISTRATIVE PROCEEDINGS AND APPEALS.

Administrative proceedings and appeals are administered by the Commission in accordance with the "Idaho Rules of Administrative Procedure of the Attorney General." IDAPA 04.11.01, Subchapter B - Contested Cases, Sections 100 through 800, which for the purpose of Section 22-1201 et seq., Idaho Code, shall be known as Rules of Practice and Procedure of the Idaho Potato Commission Governing Contested Cases. Whenever these rules address the same subject matter as IDAPA 04.11.01, the specific provisions of these rules govern. There are no provisions for administrative appeals within the Commission under these rules of procedure, except that under Sections 202 and 203 a presiding officer may in the presiding officer's discretion refer a ruling on evidence or a motion to the full Commission. (6-30-19)T

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference into these rules. (6-30-19)T

005. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.

The principal office of the Commission is in Eagle, Idaho. This office is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The Commission's telephone number is (208) 334-2350. The Commission's FAX number is (208) 334-2274. The Commission's mailing address: Idaho Potato Commission, Post Office Box 1670, Eagle, Idaho 83616. The street address of the Commission is: 661 S. Rivershore Lane, Suite 230, Eagle, Idaho 83616. All documents filed in all proceedings must be filed with the Commission at one (1) of these addresses. (6-30-19)T

006. PUBLIC RECORDS ACT COMPLIANCE.

Except as otherwise provided by law, all materials filed with the Commission pursuant to these rules and all materials issued by the Commission pursuant to these rules are public documents subject to inspection, examination and copying. (6-30-19)T

007. – 010. (RESERVED)

010. DEFINITIONS.

The terms defined in Section 22-1204, Idaho Code, apply to this chapter. In addition, the following terms are defined

as follows:

(6-30-19)T

01. Primary Channel of Trade. Potatoes are deemed to be delivered for shipment into the primary channel of trade when any such potatoes are sold or delivered for shipment, or delivered for canning and/or processing into by-products. (6-30-19)T

011. -- 099 (RESERVED)

100. GENERAL.

01. Potato Tax. All potatoes grown in Idaho, no matter how grown (i.e. by conventional, organic, or other methods) and no matter what variety (i.e. russet, red, yellow, specialty, or other variety) are subject to the potato tax imposed by Section 22-1211, Idaho Code. (6-30-19)T

02. Potato Tax Base Rate and Additional Tax. A base tax of four cents (\$0.04) per hundredweight is imposed by statute on all potatoes grown in Idaho. In addition, an additional tax of eleven cents (\$0.11) per hundredweight may be imposed upon a determination by at least two-thirds (2/3) of commission members that the anticipated expenditures for the fiscal year following the year in which the determination is made will exceed the anticipated tax revenues to be collected from the four cents (\$0.04) base tax rate. (6-30-19)T

03. Potato Tax Due Date and Responsible Party. The potato tax is due when potatoes are first handled in the primary channels of trade and must be paid not later than the fifteenth day of the next month. The first person selling or otherwise delivering potatoes into primary channels of trade is responsible for and must pay the full potato tax. However, if the first person is a dealer or shipper handling potatoes grown by another, he may charge back to the person he acquired the potatoes from sixty percent (60%) of the potato tax. The charge back does not reduce the first person's tax liability due to the commission. (6-30-19)T

04. Growers', Dealers', Handlers', Shippers', Processors', Container Manufacturers', and Out-of-State Repackers' Records. Idaho Potato Commission Tax Report Forms - Audits - Inspections. (6-30-19)T

a. Every dealer or handler including out-of-state repackers shall keep a complete and accurate record of all potatoes handled in the primary channels of trade. Such record shall be in such form as the Commission's Executive Director, duly authorized agent, representative or employee shall prescribe. (6-30-19)T

b. In addition to such other information that the Executive Director, duly authorized agent, representative or employee requires, each grower, dealer, handler, shipper, processor, container manufacturer, and out-of-state repacker shall keep records that segregates purchases and sales of Idaho® potatoes by calendar month; records of inventories of Idaho® potatoes by calendar month; and records of inventories of containers bearing the registered Certification Marks of the Commission by calendar month. Such records shall be preserved for a minimum period of two (2) years and shall be open to inspection at any time upon written or oral request or demand by the Commission or its duly authorized agents, representatives, or employees. (6-30-19)T

c. The Commission's duly authorized agent, representative or employee may enter upon the premises of any grower, dealer, handler, out-of-state repacker, container manufacturer, processor or any other license agreement holder of Idaho® potatoes and examine or cause to be examined any books, papers, records, ledgers, purchase journals, sales journals, electronically and/or magnetically recorded data, computers and computer records or memoranda bearing upon the amount of taxes payable or the correct usage of any Idaho Trade or Certification Mark, and to secure any other information directly or indirectly concerned with the enforcement of Chapter 12, Title 22, Idaho Code, all rules adopted pursuant thereto and all licensing agreements entered into with the Commission. The Commission's duly authorized agents, representatives or employees may also inspect and take samples of any potatoes, potato products or containers from the premises used by a grower, dealer, handler, shipper, processor, container manufacturer, or out-of-state repacker. Regular audits shall be routinely performed by the Commission or its duly authorized agents, representatives, or employees to assure adherence with these rules. In addition, compliance audits may take place at any time. For further requirements see Section 22-1212, Idaho Code. (6-30-19)T

05. Calculation of Tax Due. All first handlers of Idaho® Grown potatoes shall pay the total tax due on all potatoes handled by them on a net weight basis. Net weight shall be determined by subtracting from the gross

scale weight the dirt, rock, other foreign material only, and potatoes that are not used for human consumption. The amount of tax due is the tax rate currently imposed pursuant to Section 100.03 multiplied by the net hundredweight (cwt). The following diagram illustrates the manner in which the formula is to be applied:

| | | | | | | | | |
|--------------------------|------|------------------------------------------------------------------------------------------|---|-------------------------------------------------------|---|-------------|---|-------------------|
| Gross Scale Weight | Less | Dirt, rock, other foreign material, and potatoes not used for human consumption | = | Net CWT (Hundred- weight) upon which tax is due | X | Tax Rate | = | Tax Amount Due |
|--------------------------|------|------------------------------------------------------------------------------------------|---|-------------------------------------------------------|---|-------------|---|-------------------|

(6-30-19)T

06. Tax Reports to Be Made by Growers, Dealers, Handlers, Shippers and Processors. A report on a form approved by the Commission, showing total weight handled for a given period of time and the Idaho Potato Commission tax due are to be sent to the Idaho Potato Commission office with the tax payment. These reports are to be made on forms furnished by the Commission and shall show such other information as the Commission may require. (6-30-19)T

101. INTERSTATE COMMERCE NOT AFFECTED.

These rules shall not apply to interstate commerce except to the extent that the Constitution and laws of the United States permit them to apply to interstate commerce. (6-30-19)T

102. CERTIFICATION MARKS FOR IDAHO® POTATO CONTAINERS.

01. Containers. All potatoes grown in Idaho and packed or repacked in containers in or outside of the state of Idaho shall be in containers printed, labeled or stenciled in a plain and legible manner with one (1) of the Commission's registered Certification Marks, and a "GROWN IN IDAHO®" Certification Mark. An exact reproduction of the Commission's Certification Marks appears in appendix A. Certification Marks may not be stamped on any Idaho® potato container without a temporary written variance. No container may use a "Check Off" box format for state of origin. All containers must use Idaho specific approved produce code identification numbers, where the same have been obtained and approved. No container of Idaho® potatoes or potato products may be manufactured or used without prior written approval of the Commission or its employee. No Seal, Trademark, Certification Mark, brand, or similar device used to promote potatoes not grown in Idaho can be placed on a container. (6-30-19)T

a. Upon written application, the Idaho Potato Commission may grant a variance from these rules for special purpose shipments for charity, certified seed, experimentation and processing. If a variance is granted, the applicant shall comply with all terms and conditions of such variance. If applicable, the application shall be accompanied by a valid Certificate of Privilege issued by the Idaho and Eastern Oregon Potato Committee, and the applicant shall furnish copies of all of the reports required by the Idaho and Eastern Oregon Potato Committee to the Idaho Potato Commission. (6-30-19)T

02. Marks. No person, firm or corporation packing or repacking potatoes or potato products outside of the state of Idaho shall use any of the Commission's Certification Marks on any containers of potatoes or potato products packed or repacked outside the state of Idaho unless they have first executed an agreement for the use of the Certification Marks with the Idaho Potato Commission, and unless they are actually packing or repacking in such containers of Idaho grown potatoes or potato products made from Idaho grown potatoes. (6-30-19)T

03. Agreement. No person, including without limitation manufacturers, container manufacturers, growers, shippers, processors and repackers, shall use or reproduce any of the Commission's Certification Marks on any container without first executing an agreement for the use of the marks with the Idaho Potato Commission. (6-30-19)T

04. Recognition. Whenever the "GROWN IN IDAHO®," "IDAHO®," or other Certification Marks are used, recognition must be given that the marks are registered under the appropriate Federal statute. This recognition must be: by printing a legible capital "R" inside a circle ®, immediately after the word "IDAHO" or where designated by a duly authorized employee of the Commission. (6-30-19)T

05. No Certification Mark. No Certification Mark shall be incorporated into any private label, brand or seal but shall be portrayed without embellishment as shown in appendix A. (6-30-19)T

06. Not Incorporated. The word "IDAHO®," shall not be incorporated into any private label, brand or seal unless such label, brand or seal was registered with the U.S. Patent Office prior to January 1, 1966. (6-30-19)T

07. Size. A Certification Mark shall be used on the front of a one hundred (100) pound sack type container, it shall not be less than five (5) inches in diameter or width and shall not be placed closer than two (2) inches from the bottom of said container. Any Certification Mark used on the rear of a one hundred (100) pound sack type container, it shall not be less than twelve (12) inches in diameter or width. The marks may also be used on both the front and back of one hundred (100) pound sack type containers, if placed as indicated and in the sizes indicated. (6-30-19)T

08. Limitation of Use. On fifty (50) pound sack type containers, a Certification Mark shall be used as on the one hundred (100) pound containers, but in proportionate sizes. (6-30-19)T

09. Other Type Containers. On all sack type containers of less than fifty (50) pounds, a Certification Mark shall appear plainly visible on the front of the containers; and it shall be in relative proportion to brands, labels, or other printed matter thereon, but not less than two and one quarter (2 1/4) inches in diameter or width. (6-30-19)T

10. Box Type Containers. (6-30-19)T

a. On all box type containers in which U.S. No. 1 grade Idaho® Potatoes will be packed, a Certification Mark shall be located on the front and back panels of the container and shall be not less than a width measurement of three and one half (3 1/2) inches and a length measurement of five and one half (5 1/2) inches so placed as to be plainly visible. Unless an approved product traceability sticker is used, the top one and three quarters (1 3/4) inches of the carton shall contain no preprinting on all four (4) sides of the container. The container shall be packed with an approved box bottom bearing Idaho® Potato Certification Marks as specified by the commission. (6-30-19)T

b. On all box type containers in which number two (2) grade Idaho® Potatoes will be packed, packing is permitted only when the following requirements are met: (6-30-19)T

i. The container must be manufactured in a kraft, or non-colored cardboard material and may either be of a single or double piece construction that uses a box bottom bearing Idaho® Potato Certification Marks as specified by the commission; (6-30-19)T

ii. The rectangular "Grown in Idaho®" certification mark shall be placed on each side and end panel of the container, with a width measurement of three and one-half (3 1/2) inches and length measurement of five and one-half (5 1/2) inches. The mark shall be located as shown in Appendix B; (6-30-19)T

iii. The certification mark "Idaho® Potatoes" shall be printed on all four (4) sides of the container in one (1) inch lettering in the locations shown in Appendix B; (6-30-19)T

iv. The words "U.S. NO. 2" shall be printed on all four (4) sides of the container in one (1) inch lettering in the locations shown in Appendix B and on one (1) of the top flaps of the container; (6-30-19)T

v. The top one and three quarters (1 3/4) inches of the carton shall contain no preprinting on all four (4) sides of the container; (6-30-19)T

vi. One (1) of the elongated top flaps shall contain the "Grown in Idaho®" certification mark with a width of three and one-half (3 1/2) inches and length of five and one-half (5 1/2) inches, together with the certification mark "Idaho® Potatoes" in one (1) inch height and the words "U.S. NO. 2" in one (1) inch height; (6-30-19)T

vii. Product code identification numbers on containers bearing the certification marks shall use Idaho specific codes where the same have been obtained and approved; and (6-30-19)T

viii. All other requirements regarding container packaging set forth in these rules and the license agreements of the Idaho Potato Commission apply to the use of this type of container. (6-30-19)T

11. **Tote Bin Type.** On all tote bin type containers, Certification Marks must be used on the front of said container but may be used elsewhere and shall not be less than twelve (12) inches in diameter or width. (6-30-19)T

12. **Identity of Commodity.** All containers bearing the marks shall specify the identity of the commodity contained therein and the name and place of business of the manufacturer, packer, licensee, or distributor of the commodity. Containers which do not comply with the rules of the Idaho Potato Commission shall not be used by any grower, dealer, handler, shipper, processor, or out-of-state repacker for any potatoes or potato products subject to these rules. (6-30-19)T

13. **Words Printed.** All potatoes grown in Idaho and packed or repacked in Idaho shall have the words "PACKED IN IDAHO" printed on the container. (6-30-19)T

14. **Sack Type Containers -- Fifty Pounds or Over.** On all sack type containers for fifty (50) pounds or over the words "PACKED IN IDAHO" shall be located on the front lower half of the container but not closer than six (6) inches to the bottom thereof. (6-30-19)T

15. **Sack Type Containers -- Less Than Fifty Pounds.** On all sack type containers containing less than fifty (50) pounds of potatoes the words "PACKED IN IDAHO" may be placed anywhere on the container but shall be so placed as to be plainly visible. (6-30-19)T

16. **Location of Words.** On all box type containers the words "PACKED IN IDAHO" may be located on the ends, sides or top of the container but shall be so placed as to be plainly visible. (6-30-19)T

17. **Colors.** All marks when used and the words "PACKED IN IDAHO" shall be in color or colors in contrast with the color of the container. (6-30-19)T

18. **Use.** Only in connection with potatoes and potato products grown within the state of Idaho may growers, handlers, shippers, processors, and packers use the name "IDAHO®" in any mark, label or stencil applied to containers for such produce and products. The growers, dealers, handlers, shippers, processors, and packers of potatoes within the state of Idaho are not precluded from processing, packing, and shipping potatoes grown outside the state of Idaho so long as such potatoes are not misrepresented or misbranded as Idaho® Potatoes. (6-30-19)T

19. **Compulsory Printing.** Printing of the mark "GROWN IN IDAHO®" and the words "PACKED IN IDAHO" is compulsory on all potato containers printed or contacted for after December 1, 1964. (6-30-19)T

20. **Idahos.** The word "IDAHOS" shall not be used on any container for potatoes, potato products nor on any other printing or advertising material or correspondence used to identify or promote Idaho potatoes. (6-30-19)T

21. **Exemption.** Only shipments of certified seed potatoes to destinations outside of the state of Idaho are exempt from this rule. (6-30-19)T

22. **Other Rules.** Other rules on containers, grade, and size are covered under Title 22, Chapter 9, Idaho Code, and applicable marketing orders. (6-30-19)T

103. BRANDING, AND GRADE AND PACKAGING REQUIREMENTS OF STATE BRAND.

01. **Branding or Marking of Individual IDAHO® Potatoes.** (6-30-19)T

a. Idaho® potatoes are considered to be branded when they are individually marked or identified as

such. The methods of branding shall include: marking of individual potatoes by ink, heat, light, labeling, stickering, or puncturing and such other methods as may from time to time be authorized by the Idaho Potato Commission. (6-30-19)T

b. The certification mark "Idaho®" shall be one (1) inch in length and one-quarter (1/4) inch in height unless prior Idaho Potato Commission written approval is secured and granted for any variance. (6-30-19)T

c. The purchase or the leasing or use of branding machines shall be entirely voluntary. (6-30-19)T

d. There shall be no limitations on the size and type of containers in which branded potatoes may be packed as long as they meet the licensing requirements of Section 102. (6-30-19)T

e. Grade for branding shall be U.S. No. 1 or better (as defined in the U.S. Standards effective March 27, 1991) and not less than two (2) inches in diameter or four (4) ounces in weight. (6-30-19)T

f. 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. (6-30-19)T

g. The operation of branding the word "Idaho®" upon potatoes shall be carried on only by licensees of the Idaho Potato Commission, and only upon such terms and conditions that will insure that only Idaho grown potatoes are branded as such. (6-30-19)T

h. All varieties of potatoes grown in Idaho may be so branded. (6-30-19)T

i. No person, firm, or corporation may brand the word "Idaho®" on potatoes or sell machinery for the purpose of branding potatoes with any of the Idaho certification marks unless granted the right to do so by written agreement with the Idaho Potato Commission. (6-30-19)T

j. Branded potatoes must use Idaho specific, approved produce code identification numbers, where the same have been obtained and approved. (6-30-19)T

k. On all branded potatoes using a standard size sticker, the Certification Mark "Idaho® Potatoes" shall be printed in eight (8) point type and the Certification Mark "Grown in Idaho®" shall be printed with a minimum height of eight point one hundred twenty-nine (8.129) mm and minimum width of five point thirty-seven (5.37) mm. (6-30-19)T

02. State Brand Grade and Packaging Requirements. Idaho® potatoes shall meet all requirements of U.S. Extra No. 1 as defined in the U.S. Standards for Grades of Potatoes, March 27, 1991, with the following additions or exceptions: (6-30-19)T

a. Mature. (6-30-19)T

b. Fairly well shaped. Defined as excluding the lower limits of such classification. (6-30-19)T

c. Appearance as related to russeting. Defined: at least seventy five percent (75%) of the surface of the individual potato shall be moderately netted which means the netting will be solid net-like in appearance. (6-30-19)T

d. Size shall be two and one eighth (2-1/8) inches in diameter and four (4) ounces minimum, eleven (11) ounces maximum. Each lot shall meet the specifications of Size A as defined in 51.1545, Table I(2) of the Standards. (6-30-19)T

e. Tolerances for grade defects are defined in 51.1546(a)(2), for U.S. No. 1. (6-30-19)T

f. All other tolerances and definitions of the Standards apply. (6-30-19)T

- 03. Packaging.** (6-30-19)T
- a.** Container Requirement: Maximum size not to exceed twenty (20) pounds. (6-30-19)T
- b.** Miscellaneous Requirements: Use of the state brand packaging shall be entirely voluntary. Potatoes grown only in Idaho may be packed in state branded containers. State branded containers shall be packed only in Idaho. All varieties of potatoes grown in Idaho may be packed in state branded containers. The Commission shall require a written agreement between the Idaho Potato Commission and Idaho packers for the use of the state brand. All state branded containers shall be Federal-State inspected. (6-30-19)T
- c.** The grade used in state brand containers shall be as defined in Subsection 103.03 and "Idaho State Code 22-908" and "Federal-State Inspected" shall be printed in three-eighths (3/8) inch or larger letters, on front of each container. (6-30-19)T
- d.** If individually branded Idaho® potatoes are packaged in state brand packaging they must meet grade requirements as defined in Subsection 103.03. (6-30-19)T

104. REPORTING, LABELING, AND REVOCATION.

- 01. Reporting of Fresh Shipments of Potatoes.** (6-30-19)T
- a.** Effective July 1, 1976, growers, dealers, handlers, and shippers of Idaho® potatoes are required to report shipments of all fresh Idaho grown potatoes giving information as to weight, packaging, and type of receiver. Reporting forms will be furnished for this information by the Idaho Potato Commission. All information received will be kept in strictest confidence as to individual shipments. (6-30-19)T
- b.** The purpose of this information is to provide the Idaho Potato Commission with information concerning fresh potato sales in geographical marketing areas receiving Idaho® grown potatoes to enable it to design and evaluate advertising and marketing programs. (6-30-19)T
- 02. Labeling Containers of Fresh Idaho® Potatoes to Indicate the Variety Packed Therein.** (6-30-19)T
- a.** All potatoes grown in Idaho that are packed or repacked in containers in Idaho, or packed or repacked in containers outside of Idaho under an out-of-state packer license agreement, shall be packed or repacked in containers that are printed, marked, labeled or stenciled in a plain and legible manner that identifies the variety packed therein. (6-30-19)T
- b.** No container may contain more than one (1) variety of potato, except as provided by written variance for non-russet variety potatoes. (6-30-19)T
- c.** Any mark, label, or stencil required by this rule shall be conspicuously placed on the container and printed in a color contrasting with the background and shall be of a size determined as follows: (6-30-19)T
- i.** For bags and other containers holding one hundred (100) pounds of potatoes or more, the letters of the label shall be at least one (1) inch high; (6-30-19)T
- ii.** For bags and other containers holding fifty (50) pounds or more of potatoes, but less than one hundred (100) pounds, the letters of the label shall be at least three-fourths (3/4) of an inch high; (6-30-19)T
- iii.** For bags or other containers holding less than fifty (50) pounds of potatoes, the letters on the label shall be five-eighths (5/8) of an inch high. (6-30-19)T
- iv.** For containers holding less than five (5) potatoes, the letter on the label shall be in a size that is plainly visible and approved in writing by a duly authorized Commission employee. (6-30-19)T
- d.** Any person seeking authorization to comply with this rule in a manner other than that specified

herein shall submit a written request to the Commission for approval of an alternate method of compliance, which alternative method shall be in substantial compliance with these standards and which request shall describe in detail the proposed alternate method of compliance. The Executive Director of the Commission or a duly authorized employee shall have the authority and responsibility to review such requests and rule whether they should be allowed, said determination to be based upon a finding that such alternate method has nor has not been shown to comply with the purpose and meet the standards of this rule; provided, any interested person may request in writing that the Commission grant a de novo review of said request at a subsequent regular meeting deemed convenient and appropriate by the Commission, which request the Commission may in its discretion, either grant or deny.(6-30-19)T

e. No potatoes grown in Idaho and packed or repacked in containers in Idaho, or packed or repacked outside of Idaho under an out-of-state packer license agreement, shall carry or be printed, labeled, or identified with the GROWN IN IDAHO® or IDAHO® marks unless this rule is fully complied with as respects said potatoes. (6-30-19)T

f. All persons growing potatoes in Idaho or packing or repacking in containers in Idaho, or packing or repacking outside of Idaho under an out-of-state license agreement, shall have the affirmative duty to avoid and refrain from ambiguous or misleading practices, acts or representations and to eliminate the same in marketing or handling Idaho® potatoes if such practice does or is likely to mislead any purchaser or consumer regarding the quality and variety of Idaho® potatoes purchased by such buyer or consumer. (6-30-19)T

03. Revocation of Right to Use Marks . (6-30-19)T

a. The Commission shall have the power to revoke the right of any person, firm, or corporation to use any of the Commission's Certification Marks or Trademarks if such person, firm, or corporation fails to pay any advertising tax assessed against it, license fees, or royalties, or fails to comply with any of these rules or applicable law. (6-30-19)T

b. Revocation of the right to use the Certification Marks or Trademarks shall not occur without reasonable notice of at least twenty (20) days and an opportunity for a hearing pursuant to Section 67-5242, Idaho Code. However, where the Executive Director determines that expedited action is necessary, he may: (6-30-19)T

i. Issue an order immediately suspending the right to use any of the Commission's Certification Marks or Trademarks pending a hearing, which hearing shall be held within twenty (20) days from the Executive Director's order; or (6-30-19)T

ii. Issue an order conditioning the right to use any of the Commission's Certification Marks or Trademarks pending a hearing, which hearing shall be held within twenty (20) days from the Executive Director's order; or (6-30-19)T

iii. Issue an order directing that the user of the Commission's Certification Marks or Trademarks show cause why the right to use the marks should not be suspended or conditioned further. (6-30-19)T

105. ADDITIONAL LABELING REQUIREMENTS, POTATOES.

01. **Disclosure of Geographic Growing Area of Origin upon Potato Containers.** All persons doing business in the state of Idaho are required to disclose the growing area of origin upon all potato containers in accordance with this rule and Section 22-1207, Idaho Code. For purposes of these rules, doing business in the state of Idaho means the doing of any of the acts which would subject a person to the jurisdiction of the courts of this state or defined in Section 5-514, Idaho Code. (6-30-19)T

02. **Compliance for Idaho Grown Potatoes.** For potatoes "Grown in Idaho®," this rule is complied with by meeting the requirements of Section 102. (6-30-19)T

03. **Compliance for Private Brands or Labels That Reference Idaho Locations.** Private brands or labels of containers that reference an Idaho location, geographical feature, or otherwise attempt to imply directly or indirectly that a container of potatoes contains potatoes grown in Idaho when in fact such is not the case are prohibited. (6-30-19)T

04. Compliance for Private Brands or Labels That Do Not Reference Idaho Locations. Private brands or labels that do not reference an Idaho location, geographical feature, or otherwise attempt to imply directly or indirectly that a container of potatoes contains potatoes grown in Idaho when in fact such is not the case, but only have an Idaho address on the container, are permitted when approved by the commission or its designee. This rule is complied with by private brands or labels that (6-30-19)T

a. Meet the requirements of Subsection 104.02.c.; (6-30-19)T

b. State the geographical state of origin of the potatoes followed by the word "potatoes"; and (6-30-19)T

c. The lettering size of the Idaho address on the container does not exceed one-half (1/2) inch for containers fifty (50) pounds or greater and one-quarter (1/4) inch for containers less than fifty (50) pounds. For example, for potatoes grown in the state of Washington, the phrase "Washington potatoes" would comply with these rules. The use of the words "Grown in" preceding the state of origin is prohibited. (6-30-19)T

106. ADDITIONAL REQUIREMENTS FOR USE OF TRADEMARKS.

01. Marks. No person is permitted to use any trademark owned or administered by the Commission unless authorized to do so pursuant to a license agreement entered into with the Commission. (6-30-19)T

02. Agreement. Trademarks owned or administered by the Commission may be licensed for use as permitted under federal and state law and as authorized by the Commission. (6-30-19)T

03. Royalty Fees. In addition to license fees, the Commission may set royalty fees for the use of trademarks. (6-30-19)T

04. Reproductions. Exact reproductions of the trademarks owned or administered by the Commission are set forth in Appendix C of these rules. (6-30-19)T

107. – 199. (RESERVED)

Subchapter A - Rules of Procedure
(Sections 200 through 204)

200. INFORMAL FILES MAY BE INVESTIGATIVE RECORDS.

Files created by the Commission and its staff in response to informal inquiries or complaints are investigatory records within the meaning of Sections 74-101(6) and 74-107(16), Idaho Code, are generally exempt from disclosure according to the standards of Sections 74-101 through 74-108, Idaho Code, but are available under Section 74-113, Idaho Code, to the customer, applicant, licensee, etc., that are the subjects of the investigation. (6-30-19)T

201. SUBPOENAS.

01. Issuance of Subpoenas. Upon a motion in writing, or upon a Commissioner's own initiative without motion, any Commissioner or the Commission's Secretary may issue subpoenas: (6-30-19)T

a. Requiring the attendance of a witness from any place in Idaho; (6-30-19)T

b. The production of documents from any place in Idaho; or (6-30-19)T

c. The production of any books, accounts, papers, or records of a licensee kept within or without Idaho to any designated place of deposition, hearing, or investigation for the purpose of taking testimony or examining documents before the Commission, a Commissioner or hearing examiner. (6-30-19)T

02. Witness or Travel Fees. A party's motion to issue a subpoena must be accompanied by a statement that the party will tender to the subpoenaed person all fees required by statute and rules if the subpoena is issued.

(6-30-19)T

03. **Motions to Quash.** The Commission upon motion to quash made promptly, and in any event, before the time to comply with the subpoena, may: (6-30-19)T

a. Quash the subpoena; or (6-30-19)T

b. Condition denial of the motion to quash upon reasonable terms. (6-30-19)T

202. RULINGS AT HEARINGS

The presiding officer rules on motions presented at hearing. The presiding officer's rulings may be reviewed by the full Commission in determining the matter on its merits. In extraordinary circumstances, the presiding officer may refer or defer these matters to the full Commission for determination. (6-30-19)T

203. OBJECTIONS – OFFERS OF PROOF.







Grounds for objection to the admission or exclusion of evidence must be stated briefly at the time the evidence is offered. Formal exceptions to rulings admitting or excluding evidence are unnecessary and need not be taken. An offer of proof for the record consists of a statement of the substance of the excluded evidence. When a party objects to the admission of evidence, the presiding officer will rule on the objection or the presiding officer may receive the evidence subject to the later ruling by the full Commission or refer to the matter to the full Commission. (6-30-19)T

204. – 999. **(RESERVED)**

APPENDIX A



APPENDIX B

| | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>IDAHO POTATOES U.S. NO. 2</p> <p>CONCISELY OF ITEMS TO BE PLACED ON THE LABEL</p>  <p>Concise of items to be placed on the label. Items to be placed on the label are limited. Other items may also be placed on the label.</p> | <p>Grown in Idaho® (total area of 20% or more) and must be placed on the right side of the label. The word "Grown in Idaho" and "U.S. No. 2" (total area of 20% or more) must be placed on the label.</p> |  <p>IDAHO POTATOES U.S. NO. 2</p>  |
| <p>IDAHO POTATOES U.S. NO. 2</p> <p>4-1/2" net type 4-1/2" x 1/2" type</p>  <p>NET CODE PLACEMENT ONLY</p> | <p>IDAHO POTATOES U.S. NO. 2</p>  <p>NET CODE PLACEMENT ONLY</p> | <p>IDAHO POTATOES U.S. NO. 2</p>  <p>NET CODE PLACEMENT ONLY</p> |

- "Placed in" or address line labels placed at least 1/8 inch from bottom edge and at least 1/8 inch from left edge. Labels must be placed on the right corner panel. It is not limited to one line but cannot exceed beyond the word "Placed".
- "Grown in Idaho" label must be 20% or more with placement at top or right corner panel. Resemblance: "GTA" label must be 1% and from bottom score and at least 1/8 inch from side score.
- Company or farm logo may be placed on the right corner panel. Resemblance: "GTA" label must be 1% and from bottom score and at least 1/8 inch from side score.

APPENDIX C

