

Dear Senators GANNON, Heinrich & Stennett, and
Representatives TRAIL, Andrus & Pence:

The Office of the Legislative Services, Research and Legislation, has received the
enclosed rules of the Idaho Potato Commission:

IDAPA 29.01.02 - Rules Governing Payment of Tax & Usage of Certification

Marks & Trademarks (Docket #29-0102-0801).

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 5-23-08. 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 6-20-08.

_____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 334-2475, or send a written request to the address or FAX number indicated on the memorandum enclosed.

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Agricultural Affairs Committee and the House Agricultural Affairs Committee

FROM: Research & Legislation Analyst - Katharine Gerrity

DATE: May 6, 2008

SUBJECT: Idaho Potato Commission

IDAPA 29.01.02 - Rules Governing Payment of Tax and Usage of Certification Marks and Trademarks (Docket #29-0102-0801)

The Idaho Potato Commission submits notice of a temporary and proposed rule at IDAPA 29.01.02 - Rules Governing Payment of Tax and Usage of Certification Marks and Trademarks. The Commission notes that the purpose of the rule is to clarify IPC tax calculation and reporting methods. There is a fee increase involved with this rule based on a statutory amendment to the Idaho Code during the 2007 legislative session which authorized an increase in the additional potato tax by \$.05 per hundredweight - making the additional tax an amount up to \$.11 per hundredweight. Following that amendment, the Potato Commission voted to authorize an increase of \$.025. The Commission indicates that it operates on a September 1 to August 31 fiscal year and the temporary rule is necessary to coincide with that fiscal year and avoid confusion within the industry. The temporary rule is scheduled to go into effect on August 1, 2008. The Commission also notes that the rule was developed with input from the industry.

The action appears to be authorized pursuant to Section 22-1207, Idaho Code.

cc: Idaho Potato Commission
Patrick Kole

IDAPA 29 – THE IDAHO POTATO COMMISSION

29.01.02 - RULES GOVERNING PAYMENT OF TAX AND USAGE OF CERTIFICATION MARKS AND TRADEMARKS

DOCKET NO. 29-0102-0801

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2008.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 22-1201, et seq., 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 June 18, 2008.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a non-technical explanation of the substance and purpose of the proposed rulemaking:

To clarify IPC tax calculation and reporting methods.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(a) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: It is necessary to protect the public health, safety, or welfare and it confers a benefit by clarifying the tax rate and allowing the tax to be collected more uniformly and without ambiguity.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

Section 22-1211, Idaho Code was amended by the 2007 Legislature and signed by the Governor to increase the potato tax by \$.05 per hundredweight. Following the review required by statute, the Idaho Potato Commission voted unanimously to authorize an increase of \$.025. As the Idaho Potato Commission operates on a September 1 to August 31 fiscal year, this temporary rule is necessary to coincide with that fiscal year and avoid confusion within the industry.

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: No fiscal impact.

NEGOTIATED RULEMAKING: In compliance with ADAPA 04.11.04.811, negotiated rulemaking was not conducted; however, this rule was developed with input from the potato industry which is affected.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact: Patrick J. Kole, VP Legal and Government Affairs, at (208) 334-2350.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 25, 2008

DATED this 2nd day of May, 2008

Name: Patrick J. Kole
Title: VP Legal and Government Affairs
Agency/Division: Idaho Potato Commission
Physical Address: 661 S. Rivershore Lane, Suite 230
Mailing Address: PO Box 1670
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**IDAPA 29
TITLE 01
CHAPTER 02**

**29.01.02 - RULES GOVERNING PAYMENT OF TAX AND USAGE OF
CERTIFICATION MARKS AND TRADEMARKS**

(BREAK IN CONTINUITY OF SECTIONS)

100. GENERAL.

~~**01. When Idaho Potato Commission Tax Is Due.** The Idaho Potato Commission Tax shall be due on or before the time when such potatoes are first handled in the primary channels of trade and shall be paid not later than the fifteenth day of the month next succeeding the month in which such potatoes were handled in the primary channels of trade. See Section 22-1211, Idaho Code. (3-15-02)~~

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. (8-1-08)T

~~**02. Idaho Potato Commission Tax.** There is hereby levied and imposed a tax of four cents (\$0.04) per hundredweight on potatoes covered by this act which tax shall be due on or before the time when such potatoes are first handled in the primary channels of trade and shall be paid not later than the fifteenth day of the month next succeeding the month in which such potatoes were handled in the primary channels of trade. In addition to the four cents (\$0.04) tax herein above provided for there is hereby levied and imposed an additional tax of eleven cents (\$0.11) per hundredweight on potatoes covered by this act; provided, however, said additional tax of eleven cents (\$0.11), or any portion thereof, shall only be due and collectible upon a determination by at least two thirds (2/3) of the commission members that the anticipated expenditures for the next fiscal year following the year in which the determination is made will exceed the anticipated tax revenues to be collected from the said four cents (\$0.04) tax. Upon such a determination, the commission shall collect the additional eleven cents (\$0.11) tax or such portion thereof as is required by such determination, which shall be collected with, and as, other taxes imposed by this act. The person first selling or otherwise delivering potatoes into primary channels of trade shall be responsible for and make payment of all taxes imposed by this chapter. If such person is the dealer or shipper handling potatoes grown by another, he may charge against and recover from the grower of such potatoes or the person from whom he~~

acquired them sixty percent (60%) of the tax.

(3-26-08)

03.02. Definitions - as Used in These Rules. Section 22-1204, Idaho Code, defines terms used in these rules. As defined in Section 22-1204, and stated below. (7-1-93) (8-1-08)T

1. The term "commission" means the Idaho potato commission.
2. The term "person" means individual, partnership, corporation, association, grower and/or any other business unit.
3. The term "potatoes" means and includes only potatoes sold or intended for human consumption and grown in the state of Idaho.
4. "Shipment" of potatoes shall be deemed to take place when the potatoes are loaded within the state of Idaho, in a car, bulk, truck or other conveyance in which the potatoes are to be transported for sale or otherwise.
5. The term "dealer" means and includes any person engaged in the business of buying, receiving, processing, or selling potatoes for profit or remuneration.
6. The term "shipper" means and includes one who is properly licensed under federal and state laws and actively engaged in the packing and shipping of potatoes in the primary channel of trade in interstate commerce, and who ships more than he produces.
7. The term "grower" means one who is actively engaged in the production of farm products, primarily potatoes, and who is not engaged in the shipping or processing of potatoes.
8. Potatoes shall be deemed to be delivered 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.
9. The term "hundredweight" means each one hundred (100) pound unit or combination of packages making a hundred (100) pound unit of any shipment of potatoes based on invoice and/or bill of lading records.
10. The term "processor" means a person who is actively engaged in the processing of potatoes for human consumption.
11. The term "processing" means changing the form of potatoes from the raw or natural state into a product for human consumption.
12. The term "handler" means and includes any person processing potatoes or handling them in the primary channel of trade. (8-1-08)T

03. 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. (8-1-08)T

04. 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. (8-1-08)T

04.05. Growers', Dealers', Handlers', Shippers', Processors' Container Manufacturers' and Out-of-State Repackers' Records. Idaho Potato Commission Tax Returns Report Forms - Audits - Inspections. (3-26-08) (8-1-08)T

a. Every dealer or handler including out-of-state repackers shall keep a complete and accurate record of all potatoes handled by him 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. (3-26-08) (8-1-08)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 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. ~~(3-26-08)~~ (8-1-08)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. (3-26-08)

05.06. Calculation of Tax Due. ~~a.~~ All first handlers of Idaho® Grown Potatoes shall pay the total tax due on all potatoes handled by them on a net weight basis, ~~except as provided in Rule 100.05.b.~~ Net weight shall be determined by subtracting from the gross scale weight the ~~tare for dirt, rock, and other foreign material only,~~ and Net weight shall then be multiplied by ninety percent (90%) which provides for a ten percent (10%) allowance for those potatoes that are unusable ~~not used~~ for human consumption. The amount of tax due is the tax rate currently imposed pursuant to Rule 100.023 multiplied by the net hundredweight (cwt) ~~calculated above.~~ The following diagram illustrates the manner in which the formula is to be applied: ~~(3-15-02)~~ (8-1-08)T

	Tare	90%	CWT
Gross Scale Weight	Less (Dirt, rock and other foreign materials ONLY)	X (Allowance for potatoes unfit for consumption is 10%)	= (Upon which TAX is DUE)

$$\begin{array}{l}
 \text{Gross Scale Weight} \\
 \text{(Less) - Dirt, rock, other foreign material, and potatoes not used for human consumption} \\
 \text{(Equals) = Net CWT (Hundredweight) upon which TAX is DUE} \\
 \text{(Times) X Tax Rate} \\
 \hline
 \text{(Equals) = TAX AMOUNT DUE}
 \end{array}$$

~~(7-1-93)~~ (8-1-08)T

~~b.~~ Any first handler of Idaho® Grown Potatoes who does not have reasonable access to a scale to calculate the tax due on a net weight basis, may make application to the Commission's Executive Director for permission to use the following alternate procedure: (7-1-93)

i. ~~Fresh Shipped Potatoes.~~ On all Idaho® potatoes shipped fresh, a permitted handler shall pay the full Idaho Potato Commission Tax on all fresh shipments which meet State Grade Standards or Federal Fresh Market Standards whether sold interstate or intrastate. (3-15-02)

ii. ~~Fresh Potatoes Not Meeting Grades.~~ A ten percent (10%) discount per hundredweight shall be allowed on all intrastate shipments of fresh potatoes not meeting State Grade Standards or Federal Fresh Market Standards, such as culls or processing grade potatoes sold to processors, after tare is taken for dirt and foreign material only, to allow for that portion which is unusable for human consumption. Statements showing Idaho Potato Commission Tax liability shall be mailed to fresh shippers each month, and payment of Idaho Potato Commission Tax due to be made within thirty days of receipt of statement. This rule is not to be construed as authorizing any shipments of potatoes contrary to Section 22-901, Idaho Code. (3-15-02)

06.07 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. (3-26-08) (8-1-08)T

(BREAK IN CONTINUITY OF SECTIONS)