

Dear Senators BAIR, Guthrie, Buckner-Webb, and
Representatives ANDRUS, Boyle, Pence:

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

IDAPA 29.01.02 - Rules Governing Payment of Tax and Usage of Certification Marks and
Trademarks - Proposed Rule (Docket No. 29-0102-1401).

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 09/24/2014. 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 10/23/2014.

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 334-4834, or send a written request to the address on the
memorandum attached below.



Jeff Youtz
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: Principal Legislative Research Analyst - Katharine Gerrity

DATE: September 05, 2014

SUBJECT: Idaho Potato Commission

IDAPA 29.01.02 - Rules Governing Payment of Tax and Usage of Certification Marks and Trademarks - Proposed Rule (Docket No. 29-0102-1401)

The Idaho Potato Commission submits notice of proposed rule at IDAPA 29.01.02 - Rules Governing Payment of Tax and Usage of Certification Marks and Trademarks. According to the commission, changing circumstances in the way labels are marked on potato containers as well as how containers are made have led the industry to request the rules be updated. The commission states that the type of containers used for packing potatoes, the size of the seal used on potato containers and the manner in which variety labeling takes place will be reviewed for bringing the rules current. The commission adds that the Food and Safety Modernization Act as well as Good Agricultural Practices also impact the industry, particularly as it relates to traceability.

The commission states that negotiated rulemaking was not conducted because the proposed changes were recommended by the commission's marketing committee which is made up of potato growers, shippers and container manufacturers. The commission notes that a formal hearing will, however, be held to provide opportunity for additional industry input. The hearing is scheduled for September 24, 2014. The rulemaking appears to be authorized pursuant to Section 22-1207, Idaho Code.

cc: Idaho Potato Commission
Pat Cole

IDAPA 29 - IDAHO POTATO COMMISSION

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

DOCKET NO. 29-0102-1401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 22-1201 through 1215, Idaho Code, and Section 22-1207, Idaho Code, specifically.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Wednesday, September 24, 2014 – 10:00 a.m.

**Idaho Potato Commission
661 S. Rivershore Lane, Suite 230
Eagle, ID 83616**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Changing circumstances in the way labels are marked on potato containers as well as how containers are made have led the industry to request the rules be updated. The type of containers used for packing potatoes, the size of the seal used on potato containers and the manner in which variety labeling takes place will be reviewed for bringing the rules current. The Food and Safety Modernizations Act as well as Good Agricultural Practices also impacts the industry particularly as it relates to traceability.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these proposed changes resulted from recommendations made by IPC's Marketing Committee. The Marketing Committee includes potato growers, shippers and container manufacturers. This committee reviewed and discussed the proposal at several meetings. Nevertheless, as a cautionary measure and to insure that there is full opportunity for additional industry input, IPC's Commissioner's believe that it is preferable to conduct a formal hearing.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Patrick J. Kole (208) 514-4208.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2014.

DATED this 8th Day of August, 2014.

Patrick J. Kole
Idaho Potato Commission
661 S. Rivershore Ln., Ste 230
PO Box 1670
Eagle, Idaho 83616
Phone (208) 334-2350
Fax (208) 334-2274

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 29-0102-1401
(Only those Sections being amended are shown.)

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 ~~the~~ 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. (3-26-08)()

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. (3-26-08)

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 Idaho grown potatoes or potato products made from Idaho, grown potatoes. (3-30-01)

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. (7-1-93)

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. (3-26-08)

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. (3-30-01)

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. (3-26-08)

07. Size. A Certification Mark shall be used on the front of a one hundred pound (100) 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-pound (100) 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 pound (100) sack type containers, if placed as indicated and in the sizes indicated. (3-26-08)

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. (7-1-93)

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 one and one half (1 1/2)~~ two and one quarter (2.25) inches in diameter or width. ~~(3-26-08)~~(____)

10. Box Type Containers. (3-30-01)

a. On all box type containers in which U.S. No. 1 grade Idaho® Potatoes will be packed, a Certification Mark ~~may shall~~ be located on the ~~sides front and back, ends or top panels~~ of the container as ~~desired, but and~~ shall be not less than a width measurement of three and one half inches and a length measurement of five and one half inches so placed ~~and of such size~~ 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. ~~(3-15-02)~~(____)

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: (3-30-01)

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; ~~(3-30-01)~~(____)

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; (3-26-08)

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; (3-26-08)

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; (3-30-01)

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; (3-30-01)

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; (3-26-08)

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 (3-15-02)

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. (3-30-01)

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. (7-1-93)

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. (3-26-08)

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. (7-1-93)

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. (7-1-93)

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. (7-1-93)

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. (7-1-93)

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. (7-1-93)

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. (3-26-08)

19. Compulsory Printing. Printing of the mark "GROWN IN IDAHO®" and the words "PACKED IN IDAHO" is compulsory on all potato containers printed or contracted for after December 1, 1964. (3-26-08)

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. (3-30-01)

21. Exemption. Only shipments of certified seed potatoes to destinations outside of the state of Idaho are exempt from this rule. (7-1-93)

22. Other Rules. Other rules on containers, grade and size are covered under Title 22, Chapter 9, Idaho Code, and applicable marketing orders. (7-1-93)