

Dear Senators BURTENSHAW, Bayer, Nelson, and
Representatives KAUFFMAN, Andrus, Toone:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Department of Agriculture:

IDAPA 02.01.04 - Rules Governing the Voluntary Idaho Preferred Promotion Program (ZBR Chapter
Rewrite, Fee Rule) - Temporary and Proposed Rule (Docket No. 02-0104-2201);

IDAPA 02.02.02 - Rules Governing Apple Grading and Storage (ZBR Chapter Rewrite) - Proposed
Rule (Docket No. 02-0202-2201).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 08/09/2022. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 09/06/2022.

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.



Terri Kondeff
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: July 20, 2022
SUBJECT: Department of Agriculture

IDAPA 02.01.04 - Rules Governing the Voluntary Idaho Preferred Promotion Program (ZBR Chapter Rewrite, Fee Rule) - Temporary and Proposed Rule (Docket No. 02-0104-2201)

IDAPA 02.02.02 - Rules Governing Apple Grading and Storage (ZBR Chapter Rewrite) - Proposed Rule (Docket No. 02-0202-2201)

1. IDAPA 02.01.04 - Rules Governing the Voluntary Idaho Preferred Promotion Program

Summary and Stated Reasons for the Rule

The Idaho State Department of Agriculture submits notice of temporary and proposed rule at IDAPA 02.01.04 - Rules Governing the Voluntary Idaho Preferred Promotion Program. This is a chapter rewrite and a fee rule. According to the department, the rule was open for Zero Based Rulemaking review. The department notes that proposed changes to the rule include the reduction of redundant, unnecessary, or out-of-date language. The department adds that the most substantial change in the rule is to change the membership term from a fiscal year term to a calendar year term. The department also confirms that the rule is neither broader in scope, nor more stringent than federal laws or regulations and do not regulate areas not already regulated by the federal government.

Negotiated Rulemaking / Fiscal Impact

The department states that two negotiated rulemaking meetings were held and that there were no changes to fees from those in the previous rule. No fiscal impact is anticipated.

Statutory Authority

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

Paul Headlee, Deputy Director Kristin Ford, Manager Keith Bybee, Manager April Renfro, Manager Glenn Harris, Manager
Legislative Services Office Research & Legislation Budget & Policy Analysis Legislative Audits Information Technology

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

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

2. IDAPA 02.02.02 - Rules Governing Apple Grading and Storage

Summary and Stated Reasons for the Rule

The Idaho State Department of Agriculture submits notice of a proposed rule at IDAPA 02.02.02 - Rules Governing Apple Grading and Storage. According to the department, the rule is being presented for authorization as part of the five year review under the Governor's Zero-Based Regulation Executive Order. The department notes that redundant language that is verbatim to that in statute has been removed. The department states that the portion of the rule that addresses controlled atmosphere storage regulates an activity not already regulated by the federal government.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was conducted and there is no fiscal impact as a result of the rule.

Statutory Authority

The rulemaking appears to be authorized pursuant to Sections 22-702, 22-802, and 22-803, Idaho Code.

cc: Department of Agriculture
Lloyd Knight

***** 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

02.01.04 – RULES GOVERNING THE VOLUNTARY IDAHO PREFERRED® PROMOTION PROGRAM

DOCKET NO. 02-0104-2201 (ZBR CHAPTER REWRITE, FEE RULE)

NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 6, 2022.

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 22-112, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 27, 2022.

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 nontechnical explanation of the substance and purpose of the proposed rulemaking:

The rule was open for Zero Based Rulemaking review, and two negotiated rulemaking meetings were held on March 16 and April 6. Proposed changes to the rule include the reduction of redundant, unnecessary, or out of date language. The most substantial change in the rule is to change the membership term from a fiscal year (July-June) term to a calendar year (Jan-Dec) term. The rule is proposed as temporary so that this change takes affect immediately for the benefit of program customers, who will now have an extra six months of membership prior to renewal in January.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Publishing this rule as a temporary rule will reduce confusion and immediately simplify renewals for the customer as well as the agency. The rule is changing the membership term from a fiscal year to calendar year-based term. This will ensure more consistency with agricultural production practices. Renewing membership in January will be more advantageous to producers who are extremely busy during the growing season in July. As a temporary rule, current memberships will be extended six months at no additional cost to customers, as the renewal period will change from an expiration date of July 2022 to January 2023 and will continue as a calendar year renewal going forward.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

Fees will be offered on a one-year or three-year basis. Fees will be listed in the participation application and will not exceed one thousand dollars (\$1,000) per year. The total amount to not exceed is unchanged from the prior rule.

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 changes to the fiscal impact of this rule are anticipated. The fee schedule is unchanged from the previous rule, with the only change being the timing of membership renewals.

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 following sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

IDAPA 02.01.04 is neither broader in scope, nor more stringent than federal laws or regulations and do not regulate areas not already regulated by the federal government. The detailed 22-101A analysis can be found on the agency's website at www.agri.idaho.gov.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the January 5, 2022 Idaho Administrative Bulletin, [Vol. 22-1, page 11](#).

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: There are no documents Incorporated by Reference.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Laura Johnson, Bureau Chief, (208)332-8533.

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 July 27, 2022.

DATED this July 6, 2022.

Lloyd B. Knight, Rules Review Officer
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249

Boise, Idaho 83707
Phone: (208) 332-8664
Fax: (208) 334-2170
Email: rulesinfo@isda.idaho.gov

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF FEE DOCKET NO. 02-0104-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)**

02.01.04 – RULES GOVERNING THE VOLUNTARY IDAHO PREFERRED® PROMOTION PROGRAM

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 22-112, Idaho Code. (7-6-22)T

001. SCOPE.

These rules govern the participation in, and product selection criteria for the voluntary Idaho Preferred® program. (7-6-22)T

002. -- 009. (RESERVED)

010. DEFINITIONS.

The following definitions apply in the interpretation and enforcement of this chapter. (7-6-22)T

01. Agricultural Product. Any fresh or processed apicultural, aquacultural, avicultural, beverage, cervidae, dairy, horticultural, livestock, forestry, viticultural, or other farm or garden product. (7-6-22)T

02. Apicultural Product. Products produced from or related to honey bees or honey. (7-6-22)T

- 03. Aquacultural Product.** Products produced from or related to fish, reptiles, or other aquatic animals. (7-6-22)T
- 04. Avicultural Product.** Products produced from or related to birds, including but not limited to, ratites or poultry. (7-6-22)T
- 05. Beverage.** Drinks including but not limited to wine, beer, distilled spirits, bottled water, or flavored drinks. (7-6-22)T
- 06. Cervidae Product.** Products produced from or related to fallow deer, elk, or reindeer owned by a person. (7-6-22)T
- 07. Co-Packer.** A co-packer is a food processor that processes and packages products for clients for a fee. (7-6-22)T
- 08. Dairy Product.** Products produced from or related to milk from cattle, goats, or sheep. (7-6-22)T
- 09. 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. (7-6-22)T
- 10. 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. (7-6-22)T
- 11. Horticultural Products.** Plants, including but not limited to, fruits, vegetables, flowers, seeds, or ornamental plants. (7-6-22)T
- 12. Livestock.** Domestic animals including but not limited to cattle, sheep, pigs, goats, domestic cervidae, domestic bison, camelids, or horses. (7-6-22)T
- 13. Livestock Product.** Products produced from or related to livestock. (7-6-22)T
- 14. Non-Food Agricultural Products.** Products not intended for human consumption, including but not limited to, animal feed, compost, hides, or skins. (7-6-22)T
- 15. Supporting Organization.** Any commission, association, or incorporated group supporting the efforts of the Idaho Preferred® program. (7-6-22)T
- 16. 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. (7-6-22)T
- 17. Participant.** A person who has applied to the Department and been approved for participation in the Idaho Preferred® program. (7-6-22)T
- 18. 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. (7-6-22)T
- 19. Processor.** A person engaged in the manufacturing of processed food. (7-6-22)T
- 20. Producer.** A person engaged in the business of growing or raising food, fiber, feed, or other agricultural products. (7-6-22)T

21. Viticultural Products. Products produced from or related to grapes and wine. (7-6-22)T

011. -- 099. (RESERVED)

100. APPLICATION FOR PARTICIPATION.

01. Application Requirement. Applications will be made on a form prescribed by the Department, must be complete and may be submitted any time of the year. (7-6-22)T

101. PARTICIPATION DURATION AND RENEWAL.

01. Duration. Participation is on an annual basis, coinciding with the calendar year beginning January 1 and ending December 31. (7-6-22)T

102. -- 109. (RESERVED)

110. PARTICIPATION FEES.

01. Fee. Participation is offered on a one-year basis. Fees will be listed in the participation application and will not exceed one thousand dollars (\$1,000) per year. (7-6-22)T

111. -- 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. (7-6-22)T

02. Fresh Produce and Commodities. Fresh produce and commodities are one hundred percent (100%) Idaho grown or raised. (7-6-22)T

03. Processed Foods and Beverages. Processed foods and beverages: (7-6-22)T

a. Contain a minimum of twenty percent (20%) agricultural content by weight that has been grown or raised in Idaho; and (7-6-22)T

b. Be processed in the state of Idaho. (7-6-22)T

c. If a company registered in Idaho uses a co-packing facility and an acceptable co-packing facility is not available in Idaho, the company may request an exception from the Director under section 200.15 (7-6-22)T

04. Non-Food Agricultural Products. 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. (7-6-22)T

05. 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, and provide proof of such permission prior to making application with the Department. (7-6-22)T

06. Wine. Wines contain a minimum of ninety-five percent (95%) Idaho grapes. (7-6-22)T

07. Beer. Beer will be brewed in Idaho and at least one (1) Idaho agricultural product such as malt, wheat or hops, or soluble remnant thereof, but excluding water. (7-6-22)T

08. Distilled Spirits. Distilled spirits will be distilled in Idaho; and contain at least one (1) Idaho

agricultural product such as grains, potatoes or fruit, but excluding water. (7-6-22)T

09. Water. Water must be extracted from an Idaho water source. (7-6-22)T

10. Nursery Stock. Nursery stock will have been grown in Idaho a minimum of one (1) growing season or growing cycle. (7-6-22)T

11. Livestock Products. Livestock products come from livestock that: (7-6-22)T

a. Were born, raised and harvested in the United States. No livestock that originate from outside the United States may qualify. (7-6-22)T

b. Are raised, grazed, fed, or processed in Idaho. (7-6-22)T

12. Poultry and Poultry Products. Poultry and poultry products will come from fowl that: (7-6-22)T

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. (7-6-22)T

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 or processed in Idaho, may qualify for Idaho Preferred®. (7-6-22)T

13. Apicultural Products. Products produced by honey bees including honey, wax, pollen, and propolis will be one hundred percent (100%) Idaho origin. Processed honey will be eighty percent (80%) Idaho origin. (7-6-22)T

14. Forest Products. Forest products will: (7-6-22)T

a. Contain a minimum of eighty percent (80%) of their wood fiber content from trees grown in Idaho; and (7-6-22)T

b. Be manufactured in Idaho. (7-6-22)T

15. Exceptions. The Director has the authority to establish product qualification requirements specific to individual products and commodities by written order. (7-6-22)T

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 Department will provide a logo style manual specifying approved colors, treatments, and fonts for the Idaho Preferred® logo. (7-6-22)T

01. 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. (7-6-22)T

02. Repeal of Approval of Use of Logo. The Department reserves the right to repeal the approval of the use of the logo. The Department will provide notice in writing and the participant must cease use immediately. (7-6-22)T

301. 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. (7-6-22)T

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. (7-6-22)T

302. 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. (7-6-22)T

303. -- 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. (7-6-22)T

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: (7-6-22)T

- a.** Books, papers, records, ledgers, journals, electronically or magnetically recorded data: (7-6-22)T
 - b.** Computers and computer records or memoranda bearing on the usage of the Idaho Preferred® logo; (7-6-22)T
- and
- c.** To secure all other information concerned in the enforcement of these rules. (7-6-22)T

02. Random Compliance Inspection. The Director may perform random compliance inspections. (7-6-22)T

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. (7-6-22)T

312. -- 314. (RESERVED)

315. VIOLATION.

Any person found in violation of these rules is subject to termination of participation privileges. (7-6-22)T

316. -- 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: Lloyd Knight _____ **Phone:** (208)332-8664 _____

Date: _____

IDAPA, Chapter and Title Number and Chapter Name:

[IDAPA 02.01.04 – Rules Governing the Idaho Preferred® Promotion Program](#) _____

Fee Rule Status: x **Proposed** x **Temporary**

Rulemaking Docket Number: 02-0104-2201 _____

STATEMENT OF ECONOMIC IMPACT:

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

The fees are not changing from what has been previously reviewed by the Legislature. The rule only defines those fees will be listed in the participation application and will not exceed \$1,000. The only change included in this Temporary and Proposed Rule is to offer fee options on a one-year or three-year basis.

IDAPA 02 – DEPARTMENT OF AGRICULTURE
02.02.02 – RULES GOVERNING APPLE GRADING AND STORAGE
DOCKET NO. 02-0202-2201 (ZBR CHAPTER REWRITE)
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 22-702, 22-802, and 22-803, 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 July 20, 2022.

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:

This rule is being presented for authorization as part of the ISDA’s plan to review each rule every 5 years. Redundant language that is verbatim in statute has been removed, consistent with the Governor’s [Zero-Based Regulation Executive Order](#).

The rule was reviewed over the course of two negotiated rulemaking meetings, and that review benefited from the participation of program stakeholders. No negative comments were submitted as part of this rulemaking process.

ISDA is required under 22-802, Idaho Code, to publish apple grades in a publication of regulations. Apple growers are then required to follow these grading regulations in the marketing of their produce.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There is no fee associated with this rule.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: There is no fiscal impact associated with this rulemaking.

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 following sections of the rule are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

IDAPA 02.02.02, Subchapter B – Controlled Atmosphere Storage, in its entirety, regulates an activity not already regulated by the federal government. The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the January 5, 2022 Idaho Administrative Bulletin, [Vol. 22-1, page 11](#) under Docket No. 02-ZBRR-2201.

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:

United States Standards for Apples. This rule incorporates CFR Title 7 Subtitle B Chapter I Subchapter C Part 51, Subpart B: <https://www.ecfr.gov/current/title-7/subtitle-B/chapter-I/subchapter-C/part-51/subpart-B>; published Nov. 19, 2002.

Incorporating these standards ensures that the produce grown in Idaho is eligible for and consistent with grading and marketing of apples grown nationwide.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jared Stuart, Administrator, Division of Agricultural Inspection, at (208) 332-8500 or jared.stuart@isda.idaho.gov.

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 July 27, 2022.

DATED this July 6, 2022.

Lloyd B. Knight
Rules Review Officer
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249
Boise, Idaho 83707
Phone: (208) 332-8664
Fax: (208) 334-2170
Email: rulesinfo@isda.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0202-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

02.02.02 – RULES GOVERNING APPLE GRADING AND STORAGE

000. LEGAL AUTHORITY.

Sections 22-702, 22-802, and 22-803 Idaho Code. ()

001. SCOPE.

These rules govern the criteria and grades for Idaho Apples and Idaho Summer Apples, including color requirements, defects, tolerances, packing, and marking. These rules also govern registration requirements and prescribe the maximum oxygen levels for sealed controlled atmosphere storage of apples. ()

002. -- 008. (RESERVED)

009. INCORPORATION BY REFERENCE.

01. United States Standards for Apples. This rule incorporates CFR Title 7 Subtitle B Chapter I Subchapter C Part 51, Subpart B: <https://www.ecfr.gov/current/title-7/subtitle-B/chapter-I/subchapter-C/part-51/subpart-B>; published Nov. 19, 2002. ()

010. DEFINITIONS.

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

01. Carefully Hand-Picked. Apples do not show evidence of rough handling or of having been on the ground. ()

02. Lot. Any group of containers of apples from one (1) grower or orchard and of one (1) variety and that is set apart or is separate from any other group or groups by some evidence such as a lot number or similar mark of identification. ()

03. Packer or Repacker. A person other than an owner or operator of a controlled atmosphere storage plant who removes apples from the containers in which they were treated and places them into other containers or replaces them into the original containers. ()

011. -- 119. (RESERVED)

SUBCHAPTER A – APPLE GRADES

120. GRADES.

01. Idaho Extra Fancy. “Idaho Extra Fancy” consists of apples of one (1) variety that are mature but not overripe except that Red Delicious and Delicious are not further advanced in maturity than “Firm ripe”. All “Idaho Extra Fancy” apples are to be carefully hand-picked, clean, fairly well formed; free from decay, internal browning, internal breakdown, scald, bitter pit, scab, Jonathan spot, freezing injury, visible water core, and broken skins and bruises except those that are slight and incident to proper handling and packing. The apple is also free from injury caused by smooth net-like russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, disease, insects, or other means; and free from damage by smooth solid, slightly rough or rough russeting, or stem or calyx cracks, and free from damage by invisible water core after January 31st of the year following the year of production. Each apple of this grade has the amount of color specified in US Standards for Grades of Apples. ()

02. Idaho Fancy. “Idaho Fancy” consists of apples of one (1) variety that are mature but not overripe except that Red Delicious and Delicious are not further advanced in maturity than “Firm ripe”. All “Idaho Fancy” apples shall be carefully hand-picked, clean, fairly well formed; free from decay, internal browning, internal breakdown, bitter pit, Jonathan spot, scald, freezing injury, visible water core, and broken skins and bruises except those that are incident to proper handling and packing. The apples are also free from damage caused by russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, stem or calyx cracks, disease, insects, invisible water core after January 31st of the year following the year of production, or damage by other means. Each apple of this grade has the amount of color specified in US Standards for Grades of Apples. ()

03. Idaho No. 1. The requirements of this grade are the same as for “Idaho Fancy” except for color, russeting, and invisible water core. In this grade less color is required for all varieties with the exception of the yellow and green varieties other than Golden Delicious. Apples of this grade are free from excessive damage caused by russeting, which means that apples meet the russeting requirements for “Idaho Fancy” as defined under the definitions of “damage by russeting,” except the aggregate area of an apple that may be covered by smooth net-like russeting does not exceed twenty-five percent (25%); and the aggregate area of an apple that may be covered by smooth solid russeting does not exceed ten percent (10%): Provided, that in the case of the Yellow Newtown or similar varieties the aggregate area of an apple that may be covered with smooth solid russeting. This grade has the amount of color specified in US Standards for Grades of Apples. for the variety. There is no requirement in this grade pertaining to invisible water core. ()

a. Idaho No. 1 Hail consists of apples that meet the requirements of Idaho No. 1 grade except that hail marks where the skin has not been broken, and well healed hail marks where the skin has been broken, are permitted, provided the apples are fairly well formed. ()

04. Idaho Utility. “Idaho Utility” consists of apples of one (1) variety that are mature but not overripe, carefully hand-picked, not seriously deformed, free from decay, internal browning, internal breakdown, scald, and freezing injury. The apples are also free from serious damage caused by dirt or other foreign matter, broken skins, bruises, russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, stem or calyx cracks, visible water core, disease, insects, or other means. ()

05. Combination Grades. ()

a. Combinations of the above grades may be used as follows: ()

- i. Combination Idaho Extra Fancy and Idaho Fancy; ()
- ii. Combination Idaho Fancy and Idaho No. 1; ()
- iii. Combination Idaho No. 1 and Idaho Utility; ()

b. Combinations other than these are not permitted in connection with the Idaho apple grades. When combination grades are packed, at least fifty percent (50%) of the apples in any lot will meet the requirements of the higher grade in the combination. ()

121. UNCLASSIFIED DESIGNATION.

“Unclassified” consists of apples that have not been classified in conformity with any of the foregoing grades. The term “unclassified” is not a grade within the meaning of these standards, but is provided as a designation to show that no definite grade has been applied to the lot. ()

122. TOLERANCES.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances are provided as specified: ()

01. Defects. ()

a. Idaho Extra Fancy, Idaho Fancy, Idaho No. 1, Idaho No. 1 Early and Idaho No. 1 Hail grades: Ten percent (10%) of the apples in any lot may fail to meet the requirements of the grade, but not more than one-half (1/2) of this amount, or five percent (5%), is allowed for apples that are seriously damaged, including therein not more than one percent (1%) for apples affected by decay or internal breakdown. ()

b. Idaho Utility grade: Ten percent (10%) of the apples in any lot may fail to meet the requirements of the grade, but not more than one-half (1/2) of this amount, or five percent (5%), is allowed for apples that are seriously damaged by insects, and including in the total tolerance not more than one percent (1%) for apples affected by decay or internal breakdown. ()

02. Applying Tolerances to Combination Grades. When applying tolerances to combination grades, no part of any tolerance is allowed to reduce, for the lot as a whole, the fifty percent (50%) of apples of the higher grade required in the combination but individual containers will not have less than forty percent (40%) of the higher grade. ()

03. Size. When size is designated by the numerical count for a container, not more than five percent (5%) of the apples in the lot may vary more than one fourth (1/4) inch in diameter. When size is designated by minimum or maximum diameter, not more than five percent (5%) of the apples in any lot may be smaller than the designated minimum and not more than ten percent (10%) may be larger than the designated maximum. ()

04. Firmness. Not more than five percent (5%) of the apples in any lot of Red Delicious and Delicious varieties can be further advanced in maturity than “Firm ripe” as defined in Subsection 010.05.c. Provided, the Idaho No. 1, Idaho No. 1 Hail, and Idaho Utility grades are exempt from this requirement. ()

123. CALCULATION OF PERCENTAGES.

01. When Numerical Count is Marked On Container. Percentages are calculated on the basis of count. ()

02. When Minimum Diameter or Minimum and Maximum Diameters are Marked on Container. Percentages are calculated on the basis of weight. ()

03. Apples are in Bulk. Percentages are calculated on the basis of weight. ()

124. CONDITION AFTER STORAGE OR TRANSIT.

Decay, scald, or any other deterioration that may have developed on apples after they have been in storage or transit are considered as affecting condition and not the grade. ()

125. -- 129. (RESERVED)

130. SCORABLE DEFECTS.

01. Injury. Any specific defect defined in this subsection or an equally objectionable variation of any one (1) of these defects, any other defect, or any combination of defects, that more than slightly detracts from the appearance or the edible or shipping quality of the apple. The following specific defects are considered as injury: ()

a. Russeting in the stem cavity or calyx basin that cannot be seen when the apple is placed stem end or calyx end down on a flat surface, is not considered in determining whether or not an apple is injured by russetting. Smooth net-like russeting outside of the stem cavity or calyx basin is considered as injury when an aggregate area of more than ten percent (10%) of the surface is covered, and the color of the russeting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous net-like russeting when the appearance is affected to a greater extent than the above amount permitted. ()

b. Sunburn or sprayburn, when the discolored area does not blend into the normal color of the fruit. ()

c. Dark brown or black limb rubs that affect a total area of more than one-fourth (1/4) inch in diameter, except that light brown limb rubs of a russet character are considered under the definition of injury by russeting. The area refers to that area of a circle of the specified diameter. ()

d. Hail marks, drought spots, other similar depressions or scars. ()

i. When the skin is broken, whether healed or unhealed; ()

ii. When there is appreciable discoloration of the surface; ()

iii. When any surface indentation exceeds one-sixteenth (1/16) inch in depth; ()

iv. When any surface indentation exceeds one-eighth inch (1/8) in diameter; or ()

v. When the aggregate affected area of such spots exceeds one-half (1/2) inch in diameter. The area refers to that of a circle of the specified diameter. ()

e. Disease. ()

i. Cedar rust infection that affects a total area of more than three-sixteenths (3/16) inch in diameter. The area refers to that of a circle of the specified diameter. ()

ii. Sooty blotch or fly speck that is thinly scattered over more than five percent (5%) of the surface, or dark, heavily concentrated spots that affect an area of more than one-fourth (1/4) inch in diameter. The area refers to that of a circle of the specified diameter. ()

iii. Red skin spots that are thinly scattered over more than one-tenth (1/10) of the surface, or dark, heavily concentrated spots that affect an area of more than one-fourth (1/4) inch in diameter. ()

f. Insects. ()

i. Any healed sting or healed stings that affect a total area of more than one-eighth (1/8) inch in diameter including any encircling discolored rings. The area refers to that of a circle of the specified diameter. ()

- ii. Worm holes. ()

02. Damage. Any specific defect defined in this subsection or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, that materially detracts from the appearance, or the edible or shipping quality of the apple. The following specific defects are considered damage: ()

a. Russeting in the stem cavity or calyx basin that cannot be seen when the apple is placed stem end or calyx end down on a flat surface, is not considered in determining whether or not an apple is damaged by russeting, except that excessively rough or bark-like russeting in the stem cavity or calyx basin shall be considered as damage when the appearance of the apple is materially affected. The following types and amounts of russeting outside of the stem cavity or calyx basin are considered as damage: ()

- i. Russeting that is excessively rough on Roxbury Russet and other similar varieties. ()

- ii. Smooth net-like russeting, when an aggregate area of more than fifteen percent (15%) of the surface is covered, and the color of the russeting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous net-like russeting when the appearance is affected to a greater extent than the above amount permitted. ()

- iii. Smooth solid russeting, when an aggregate area of more than five percent (5%) of the surface is covered, and the pattern and color of the russeting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous solid russeting when the appearances affected to a greater extent than the above amount permitted. ()

- iv. Slightly rough russeting that covers an aggregate area of more than one-half (1/2) inch in diameter. ()

- v. Rough russeting that covers an aggregate area of more than one-fourth (1/4) inch in diameter. ()

b. Sunburn or sprayburn that has caused blistering or cracking of the skin, or when the discolored area does not blend into the normal color of the fruit unless the injury can be classed as russeting. ()

c. Limb rubs that affect a total area of more than one-half (1/2) inch in diameter, except that light brown limb rubs of a russet character are considered under the definition of damage by russeting. ()

- d.** Hail marks, drought spots, other similar depressions or scars. ()

- i. When any unhealed mark is present; ()

- ii. When any surface indentation exceeds one-eighth (1/8) inch in depth; ()

- iii. When the skin has not been broken and the aggregate affected area exceeds one-half (1/2) inch in diameter. The area refers to that of a circle of the specified diameter; or ()

- iv. When the skin has been broken and well healed, and the aggregate affected area exceeds one-fourth (1/4) inch in diameter. ()

e. Stem or calyx cracks that are not well healed, or well healed stem or calyx cracks that exceed an aggregate length of one-fourth (1/4) inch. ()

f. Invisible water core existing around the core and extending to water core in the vascular bundles; or surrounding the vascular bundles when the affected area surrounding three (3) or more vascular bundles meet or coalesce; or existing in more than slight degree outside the circular area formed by the vascular bundles. ()

- g.** Disease. ()

i. Scab spots that affects a total area of more than one-fourth (1/4) inch in diameter. The area refers to that of a circle of the specified diameter. ()

ii. Cedar rust infection that affects a total area of more than one-fourth (1/4) inch in diameter. The area refers to that of a circle of the specified diameter. ()

iii. Sooty blotch or fly speck that is thinly scattered over more than one-tenth (1/10) of the surface, or dark, heavily concentrated spots that affect an area of more than one-half (1/2) inch in diameter. The area refers to that of a circle of the specified diameter. ()

iv. Red skin spots that are thinly scattered over more than one-tenth (1/10) of the surface, or dark, heavily concentrated spots that affect an area of more than one-half (1/2) inch in diameter. The area refers to that of a circle of the specified diameter. ()

h. Insects. ()

i. Any healed sting or healed stings that affect a total area of more than three-sixteenths (3/16) inch in diameter including any encircling discolored rings. The area refers to that of a circle of the specified diameter. ()

ii. Worm holes. ()

03. Serious Damage. Any specific defect defined in this subsection or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects that seriously detracts from the appearance, or the edible or shipping quality of the apple. The following specific defects are considered as serious damage: ()

a. The following types and amounts of russetting are considered as serious damage: Smooth solid russetting, when more than one-half (1/2) of the surface in the aggregate is covered, including any russetting in the stem cavity or calyx basin, or slightly rough, or excessively rough or bark-like russetting, that detracts from the appearance of the fruit to a greater extent than the amount of smooth solid russetting permitted: Provided, that any amount of russetting is permitted on Roxbury Russet and other similar varieties. ()

b. Sunburn or sprayburn that seriously detracts from the appearance of the fruit. ()

c. Limb rubs that affect more than one-tenth (1/10) of the surface in the aggregate. ()

d. Hail marks, drought spots, or scars, if they materially deform or disfigure the fruit, or if such defects affect more than one-tenth (1/10) of the surface in the aggregate: Provided, that no hail marks that are unhealed are permitted and not more than an aggregate area of one-half (1/2) inch is allowed for well healed hail marks where the skin has been broken. The area refers to that of a circle of the specified diameter. ()

e. Stem or calyx cracks that are not well healed, or well healed stem or calyx cracks that exceed an aggregate length of one-half (1/2) inch. ()

f. Visible water core that affects an area of more than one-half (1/2) inch in diameter. ()

g. Disease. ()

i. Scab spots that affect a total area of more than three-fourths (3/4) inch in a circle of the specified diameter. ()

ii. Cedar rust infection that affects a total area of more than three-fourths (3/4) inch in diameter. The area refers to that of a circle of the specified diameter. ()

iii. Sooty blotch or fly speck that affects more than one-third (1/3) of the surface. ()

- iv. Red skin spots that affect more than one-third (1/3) of the surface. ()
- v. Bitter pit or Jonathan spot that is thinly scattered over more than one-tenth (1/10) of the surface and does not materially deform or disfigure the fruit. ()
- h. Insects. ()
- i. Healed stings that affect a total area of more than one-fourth (1/4) inch in diameter including any encircling discolored rings. The area refers to that of a circle of the specified diameter. ()
- ii. Worm holes. ()

131. -- 219. (RESERVED)

SUBCHAPTER B – CONTROLLED ATMOSPHERE STORAGE

220. APPLES, CONTROLLED ATMOSPHERE REGISTRATION.

01. Registration. Any person who owns or operates a controlled atmosphere room or storage building for apples in Idaho, and any person who engages in this State in the business of packing or repacking apples so treated in this State or any other state and who intends to, or does, represent such apples as having been exposed to “controlled atmosphere” storage, shall register with the Director on a form prescribed by the Director. ()

02. Registration Period. The registration period for owners or operators of controlled atmosphere rooms or storage buildings in this State commences on September 1 and end on August 31 of each year, and for packers or repackers of apples that have been held in a controlled atmosphere room or storage building in this State or in any other state, the registration period extends for a period not to exceed one (1) year. Owners or operators of such rooms or storage buildings shall register on or before September 1 of each year. ()

03. Interstate Registration. Any person who owns or operates a controlled atmosphere room or storage building located outside of Idaho or who engages at a place outside of this State in the business of packing or repacking apples that have been held in controlled atmosphere storage and who intends to, or does, market in the state of Idaho apples so treated and represented as having been exposed to “controlled atmosphere” storage, shall register with the Director in the same manner as required of any person within the State unless such person has registered with the proper authorities in the state of origin and has been assigned a comparable registration number or CA identification under authority of laws or rules of such state that at least conform to the provisions of these rules. ()

04. Written Agreement. The Director will assign each approved registrant a registration number preceded by the letters CA. The Director shall require from each applicant for registration, an agreement in writing in the form required by the Director that the apples so treated or packed or repacked by said applicant will be or have been kept in a room or storage building with not more than five percent (5%) oxygen for a minimum of not less than forty-five (45) days for Gala and Jonagold varieties and not less than sixty (60) days for other apples, and that the oxygen level in such room or storage building will be or has been reduced to five percent (5%) within twenty (20) days after the date of sealing of the storage room, and including any other pertinent facts as may be required by the Director to assure that the apples in question have been so treated. ()

05. Refusal Upon Violation. The Director may refuse to approve an application for registration and refuse to issue a registration number if the applicant previously has violated any of the provisions of these rules, or has failed or refused to furnish the information or evidence required by these rules. ()

06. Required Air Components Determinations. Each owner or operator of a controlled atmosphere room or storage building in this state shall make the required air components determinations as to the percentage of carbon dioxide and oxygen and temperature at least once each day and maintains a record in the form as required by the Director of Agriculture, including the name and address of the owner or operator, room number or numbers, room capacity, lot identification, quantity in each lot, date of sealing, date of opening; a daily record of date and time of test, percentage of carbon dioxide, percentage of oxygen and the temperature. ()

07. Written Reports. Each owner or operator of a controlled atmosphere room or storage building in this state will submit to the Idaho Director of Agriculture, within ten (10) days after the date of sealing, a written report pertaining to each room showing the owner's room number, or numbers, date of sealing, and variety and quantity of apples contained therein. ()

08. Maintaining Identity. The identity of all apples represented as having been exposed to “controlled atmosphere” storage will be maintained from the original room or storage building where they were treated through the various channels of trade to the retailer. ()

09. Investigations. Enforcing officers may investigate and examine records and invoices relating to any transactions in order to determine the identity of apples represented as having been exposed to controlled atmosphere storage and in this connection gives consideration to the presence of CA storage registration numbers on invoices submitted in transactions by the owners or operators and a combination of both the CA storage and packer or repacker's CA registration number on invoices submitted in transactions by said packer or repacker. ()

221. APPLES REPRESENTED AS HAVING BEEN EXPOSED TO “CONTROLLED ATMOSPHERE” STORAGE.

01. Registration Number -- Owner/Operator. Each container and consumer package of such apples moved into the channels of trade by the owner or operator of a controlled atmosphere room or storage building located in Idaho or by any other person, will be marked with said owner or operator's assigned registration number. ()

02. Registration Number -- Packer/Repacker. Each container and consumer package of such apples received from an owner or operator of a controlled atmosphere room or storage building located either in Idaho or in another state and that are packed or repacked by another person in this state, will be marked with the said packer or repacker's assigned registration number. ()

03. Controlled Atmosphere (CA) Identification. Each container and consumer package of such apples moved into the channels of trade in Idaho by the owner or operator of a controlled atmosphere room or storage building located outside of Idaho or by any other person or by a packer or repacker of such apples engaged in such business outside of Idaho will be marked with the proper registration number or CA identification. Such registration number or CA identification is the registration number assigned by the Director to such owner or operator of a CA plant or to such packer or repacker as the case may be or a comparable registration number of identification assigned under authority of laws or regulations of another state that at least conform to the provisions of Subsection 200.04 above. ()

04. Labeling Requirements. The registration number or other identification required to be marked on containers is in letters or figures at least one-half (1/2) inch in height, and all such markings are clear and conspicuous and in a place readily visible to the purchaser, and shall meet the rule requirements of Sections 22-801 and 22-802, Idaho Code. ()

05. Inspection and Certification. All apples sold as Controlled Atmosphere apples must be inspected and certified as to grade and condition and be marked with a state lot number in addition to the CA number. ()

06. Conditions and Standards. At the time of shipment, all apples shipped and marked with a CA number will meet the U.S. condition and maturity standards for Export. ()

07. Failure to Meet Requirements. Failure to meet any one of the requirements noted above will prohibit such apples from being sold as CA storage apples or the containers marked as such. ()

222. -- 999. (RESERVED)