

# **AGRICULTURE COMMITTEE**

## **ADMINISTRATIVE RULES REVIEW**

### ***Table of Contents***

#### ***2010 Legislative Session***

#### **IDAPA 02 - DEPARTMENT OF AGRICULTURE**

***02.01.04 - Rules Governing the Idaho Preferred® Promotion Program***

Docket No. 02-0104-0902 .....2

***02.01.05 - Rules Governing Certificates of Free Sale***

Docket No. 02-0105-0901 (New Chapter) .....5

***02.06.03 - Rules Pertaining to the Idaho Nursery and Florists Law***

Docket No. 02-0603-0901 .....10

***02.06.04 - Idaho Department of Agriculture, Phytosanitary  
and Post-Entry Certification Rules***

Docket No. 02-0604-0901 .....15

***02.06.33 - Organic Food Product Rules***

Docket No. 02-0633-0901 .....20

#### **IDAPA 48 - IDAHO GRAPE GROWERS AND WINE PRODUCERS COMMISSION**

***48.01.01 - Rules of Procedure of the Idaho Grape Growers  
and Wine Producers Commission***

Docket No. 48-0101-0902 .....24

#### **IDAPA 51 - IDAHO BEEF COUNCIL**

***51.01.01 - Idaho Beef Council Rules***

Docket No. 51-0101-0901 .....28

## **IDAPA 02 - DEPARTMENT OF AGRICULTURE**

### **02.01.04 - RULES GOVERNING THE IDAHO PREFERRED® PROMOTION PROGRAM**

**DOCKET NO. 02-0104-0902**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 22-122, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending fee rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

**The proposed rule changes will allow ISDA to charge Idaho Preferred® participants for promotional materials such as stickers, banners, signs, aprons, shopping bags, etc. The proposed fee language is similar to Section 301.02 allowing fees to be assessed for Idaho Preferred® activities.**

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in Book 1 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 28 and 29.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 22-122, Idaho Code:

**Current rules allow for collection of fees for promotional activities, but not materials. This rule will allow ISDA to charge Idaho Preferred® participants for promotional materials. Fees collected will offset costs to produce promotional materials increasing the dedicated account by approximately \$3000 annually.**

**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:  
N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending fee rule, contact Laura Johnson, Section Manager at (208) 332-8533 or Leah Clark, Trade Specialist at (208) 332-8684.

DATED this 2nd day of November, 2009.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Rd.  
P.O. Box 790, Boise, ID 83701  
Phone: (208) 332-8503 / Fax: (208) 334-2170

***THE FOLLOWING NOTICE PUBLISHED WITH THE 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 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 October 21, 2009.

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:

**The proposed rule changes will allow ISDA to charge Idaho Preferred® participants for promotional materials such as stickers, banners, signs, aprons, shopping bags, etc. The proposed fee language is similar to Section 301.02 allowing fees to be assessed for Idaho Preferred® activities.**

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

**Current rules allow for collection of fees for promotional activities, but not materials. This rule will allow ISDA to charge Idaho Preferred® participants for promotional materials. Fees collected will offset costs to produce promotional materials increasing the dedicated account by approximately \$3000 annually.**

**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: N/A

**NEGOTIATED RULEMAKING:** Informal negotiated rulemaking was conducted. Input was solicited from all Idaho Preferred® participants.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Laura Johnson, Section Manager at (208) 332-8533 or Leah Clark, Trade Specialist at (208) 332-8684.

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 October 28, 2009.

DATED this 27th day of August, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING FEE RULE***

**303. DISTRIBUTION OF PROMOTIONAL MATERIAL.**

**01. Authorized Use.** The Idaho Preferred® program shall have 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. (~~3-30-07~~)( )

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

## **IDAPA 02 - DEPARTMENT OF AGRICULTURE**

### **02.01.05 - RULES GOVERNING CERTIFICATES OF FREE SALE**

#### **DOCKET NO. 02-0105-0901 (NEW CHAPTER)**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 22-112, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in Book 1 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 30 through 33.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 22-112, Idaho Code:

**This rule will provide for the Department to begin charging a fee for certificates of free sale not to exceed \$50 each. Idaho is one of the very few states that do not charge for this service. The new fee rule is expected to generate \$20,000 - \$30,000 to the dedicated fund.**

**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: There will be no impact to the general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending fee rule, contact Laura Johnson, 208-332-8533.

DATED this 13th day of October, 2009.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790, Boise, Idaho 83701  
Phone: (208) 332-8500  
Fax: (208) 334-2170

***THE FOLLOWING NOTICE PUBLISHED WITH THE 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 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 October 21, 2009.

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:

**Certificates of free sale are most commonly used by processed food companies exporting products internationally. The certificate states that the products are manufactured and distributed generally throughout the state of Idaho and the United States and are in accordance with health laws and sanitary regulations of said state. Idaho is one of only a few states in the country that does not charge a fee for the service. This rule provides for fees as well as application procedures and requirements.**

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

**This rule will provide for the Department to begin charging a fee for certificates of free sale not to exceed \$50 each. Idaho is one of the very few states that does not charge for this service. The new fee rule is expected to generate \$20,000 - \$30,000 to the dedicated fund.**

**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 will be no impact to the general fund.

**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 September 2, 2009 Idaho Administrative Bulletin, Volume 09-9, page 16.

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

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 October 28,

2009.

DATED this 6th day of August, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING FEE RULE***

**IDAPA 02**  
**TITLE 01**  
**CHAPTER 05**

**02.01.05 - RULES GOVERNING CERTIFICATES OF FREE SALE**

**000. LEGAL AUTHORITY.**

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

**001. TITLE AND SCOPE.**

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

**02. Scope.** These rules govern the issuing of certificates of free sale and establish applicant procedures for obtaining Certificates of Free Sale. The official citation of this chapter is IDAPA 02.01.05, et seq. ( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of these rules. ( )

**003. ADMINISTRATIVE APPEALS.**

Persons are entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. ( )

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference in this chapter. ( )

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- TELEPHONE AND FAX NUMBERS.**

**01. Office.** The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712. ( )

**02. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. ( )

**03. Mailing Address.** The mailing address for the central office is Idaho State Department of Agriculture, P.O. Box 790, Boise, Idaho 83701. ( )

**04. Telephone Number.** The telephone number for the Market Development Division at the central office is (208) 332-8530. ( )

**05. Fax Number.** The fax number for the Market Development Division at the central office is (208) 334-2879. ( )

**006. IDAHO PUBLIC RECORDS ACT COMPLIANCE.**

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. ( )

**007. -- 009. (RESERVED).**

**010. DEFINITIONS.**

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

**02. Certificate of Free Sale.** A certificate issued by the Department for products grown or processed in Idaho to certify that the products are distributed generally throughout the state of Idaho and the United States and are in accordance with Idaho health laws and sanitary regulations. ( )

**03. Department.** The Idaho State Department of Agriculture. ( )

**04. Director.** The director of the Idaho State Department of Agriculture or the director's designee. ( )

**011. -- 099. (RESERVED).**

**100. APPLICATION FOR CERTIFICATION - PROCEDURES.**

**01. Application.** Application must be made in writing (which includes electronic mail) and must include, but will not be limited to, the following information: ( )

**a.** Company name; ( )

**b.** Physical address of packing or processing facility; and ( )

**c.** List of products to be certified. ( )

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

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

**101. -- 109. (RESERVED).**



**110. APPLICANT REQUIREMENTS.**

**01. Applicant Health Inspection.** The Department may request a copy of an applicants' most recent state, federal or third-party health inspection, if applicable. Such inspection records will be kept on file for one (1) year. ( )

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

**111. -- 119. (RESERVED).**

**120. SPECIAL REQUESTS.**

**01. Customized Certificates.** The applicant may request customized text for the certificate of free sale in order to meet the import requirements of a specific country. The Department will make every effort to comply with the request. ( )

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

**121. -- 299. (RESERVED).**

**300. FEES AND CHARGES.**

**01. Certification Fees.** The Director will establish certification fees annually under this chapter. Fees will not exceed fifty dollars (\$50) each. Fees will be set by July 1 of each year. ( )

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

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

**04. Express Mailing.** The applicant will be responsible for express mailing charges. The applicant may provide an account number for the carrier, pre-paid air bill or be invoiced for the actual costs. ( )

**05. Payment.** The applicant will be sent an invoice for fees and charges and will be responsible for payment within thirty (30) days. The Department will not issue a certificate of free sale to any company with an outstanding account balance. ( )

**301. -- 999. (RESERVED).**

## IDAPA 02 - DEPARTMENT OF AGRICULTURE

### 02.06.03 - RULES PERTAINING TO THE IDAHO NURSERY AND FLORISTS LAW

DOCKET NO. 02-0603-0901

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 22-2314, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

**USDA APHIS PPQ published, on July 8, 2009, in the Federal Register (Docket No. APHIS -2006-0137), effective October 1, 2009, their intent to charge to the states that issue federal phytosanitary certificates for the export of agricultural commodities a \$12 administrative fee for each certificate issued by the state. The Department currently charges an hourly rate of \$20 for this service. The Department proposes to drop the hourly rate and initiate a fee of \$60 per certificate issued to cover the federal administrative fee and increased costs to the program. The fees under this rule have not been adjusted since 1986. Section 02.06.03.050, was revised to reference Section 02.06.04.500 of the Phytosanitary and Post-Entry Certification Rules to synchronize the fees and services between the two rules and thus ensuring that all exporters will be subject to the same fee schedule. Technical changes were also made to include proper formatting and sections required by the Office of Administrative Rules.**

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in Book 1 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 72 through 74.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 22-2314, Idaho Code:

**To change the charge to issue phytosanitary certificates on nursery stock from an hourly rate of \$20 to \$60 per certificate.**

**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:

**Based on 2008 figures this change would generate \$9,000 of which \$1,800 would be**

remitted to USDA APHIS and the remaining \$7,200 would remain with the program to cover the cost of the program.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending fee rule, contact Michael E. Cooper, Bureau Chief at (208) 332-8620.

DATED this 2nd day of November, 2009.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790, Boise, Idaho 83701  
Phone: (208) 332-8500  
Fax: (208) 334-2170

***THE FOLLOWING NOTICE PUBLISHED WITH THE  
TEMPORARY AND PROPOSED FEE RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is **October 1, 2009**.

**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 22-2314, 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 October 21, 2009.

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:

**USDA APHIS PPQ published on July 8, 2009, in the Federal Register (Docket No. APHIS-2006-0137), effective October 1, 2009, their intent to charge to the states that issue federal phytosanitary certificates for the export of agricultural commodities a \$12 administrative fee for each certificate issued by the state. The Department currently charges an hourly rate of \$20 for this service. The Department proposes to drop the hourly rate and initiate a fee of \$60 per certificate issued to cover the federal administrative fee and increased costs to the program. The fees under this rule have not been adjusted since 1986.**

Section 02.06.03.050 of this rule will be revised to reference IDAPA 02.06.04, “Phyosanitary and Post-Entry Certification Rules,” Section 500, “Fees and Charges,” to synchronize the fees and services between the two rules and thus ensuring that all exporters will be subject to the same fee schedule. Technical changes will also be made to include proper formatting and sections required by the Office of the Administrative Rules Coordinator.

**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:

**Compliance with changes to federal regulations.**

**FEE SUMMARY:** Pursuant to Section 67-5226(2), Idaho Code, 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:

**Based on 2008 figures this change would generate \$9,000 of which \$1,800 would be remitted to USDA APHIS and the remaining \$7,200 would remain with the program to cover the cost of the program.**

**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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because an informal meeting was held with the Idaho Nursery and Landscape Association Board of Directors at their annual meeting on July 28, 2009, in Stanley, Idaho. In addition, all of the major exporting nurseries were informed of the proposed fee changes in person.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Michael E. Cooper at (208) 332-8620.

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 October 28, 2009.

DATED this 20th day of August, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING FEE RULE***

~~000.—009. (RESERVED).~~

**000. LEGAL AUTHORITY.**

This chapter is adopted under the legal authority of Title 22, Chapter 23, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is IDAPA 02.06.03, “Rules Pertaining to the Idaho Nurseries and Florists Law.” ( )

**02. Scope.** These rules establish a fee schedule for special services and to set forth conditions under which a shipping permit will be issued under the authority of Nurseries and Florists, Title 22, Chapter 23, Idaho Code. ( )

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of these rules. ( )

**003. ADMINISTRATIVE APPEAL.**

There is no provision for administrative appeal before the Department of Agriculture under this chapter. Hearing and appeal rights are pursuant to Title 67, Chapter 52, Idaho Code. ( )

**004. INCORPORATION BY REFERENCE.**

IDAPA 02.06.03 does not incorporate any material by reference. ( )

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.**

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. ( )

**02. Mailing Address.** The mailing address for the central office is Idaho State Department of Agriculture, P.O. Box 790, Boise, Idaho 83701. ( )

**03. Street Address.** The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

These rules are public records available for inspection and copying at the department. ( )

**010. PURPOSE.**

*The purpose of these rules is to establish a fee schedule for special services and to set forth conditions under which a shipping permit will be issued under the authority of Nurseries and Florists, Title 22, Chapter 23, Idaho Code. (4-13-86)*

**0107. -- 049. (RESERVED).**

**050. SPECIAL SERVICE.**

When nurseries or florists require additional inspections and special services, a special service fee will be charged. Refer to IDAPA 02.06.04, “Phytosanitary and Post-Entry Certification Rules,” Section 500, “Fees and Charges,” for a complete schedule of services and fees. (4-13-86)( )

~~01. Description of Additional Inspections and Special Services. Additional inspections and special services are those services and functions performed by the Department in addition to services routinely performed as part of the nursery inspection activities, including but not limited to the following: (4-13-86)~~

~~a. Inspections for and issuance of phytosanitary certificates and other certificates required for entrance of nursery stock into other states and foreign countries; (4-13-86)~~

~~b. Services performed to determine compliance with import regulations of other states and foreign countries; and (4-13-86)~~

~~c. Supervising or monitoring application of pesticide, including fumigants, on nursery stock for phytosanitary purposes. (4-13-86)~~

~~02. Special Service Fee Schedule. A nursery grower, dealer, or individual who requires additional inspections and special services as outlined in Chapter 23, Title 22, Idaho Code, shall pay a fee in accordance with the following schedule: (4-13-86)~~

~~a. A minimum fee of twenty dollars (\$20) per service call and a charge of twenty dollars (\$20) per hour after the first hour will be made. (4-13-86)~~

~~b. If less than three (3) working days' notice is given for a special service call, a fee of forty dollars (\$40) will be assessed in addition to the minimum twenty dollar (\$20) fee and subsequent hourly charge. (4-13-86)~~

~~c. If the entire shipment is brought to a designated location at a time specified by an agent of the Department of Agriculture, the minimum charge for inspection will be ten dollars (\$10), and a charge of twenty dollars (\$20) per hour after the first hour will be made. (4-13-86)~~

~~d. The inspection charges shall include fees for issuance of any appropriate certificates. (4-13-86)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**101. -- 14999. (RESERVED).**

**~~150. EFFECTIVE DATE.~~**

~~These rules shall be in effect on and after April 13, 1986. (4-13-86)~~

**~~151. -- 999. (RESERVED).~~**

## **IDAPA 02 - DEPARTMENT OF AGRICULTURE**

### **02.06.04 - IDAHO DEPARTMENT OF AGRICULTURE, PHYTOSANITARY AND POST-ENTRY CERTIFICATION RULES**

**DOCKET NO. 02-0604-0901**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 22-103(22), 22-107, 22-702, and 22-2006, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

**USDA APHIS PPQ published on July 8, 2009, in the Federal Register (Docket No. APHIS -2006-0137), starting October 1, 2009, their intent to charge to the states that issue federal phytosanitary certificates for the export of agricultural commodities a \$12 federal administrative fee for each certificate issued by the state. The Department currently charges \$40 for each certificate it issues. The Department proposes to increase the fee to \$60 to cover the federal administrative fee and increased costs to the program. This fee has not been adjusted since 2004.**

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in Book 1 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 75 through 77.**

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

**This fee or charge is being imposed pursuant to Section 22-2314, Idaho Code: To change the charge to issue federal phytosanitary certificates from \$40 to \$60 per certificate.**

**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:

**Based on 2008 figures, this change would generate an additional \$74,140 of which, \$44,484 would be remitted to USDA APHIS to cover the administrative fees and the remaining \$29,656 would remain with the program to cover the increased cost of the program.**

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending fee rule, contact Michael E. Cooper, Bureau Chief at (208) 332-8620.

DATED this 2nd day of November, 2009.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790, Boise, Idaho 83701  
Phone: (208) 332-8500  
Fax: (208) 334-2170

***THE FOLLOWING NOTICE PUBLISHED WITH THE  
TEMPORARY AND PROPOSED FEE RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is **October 1, 2009**.

**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 Sections 22-103(22), 22-107, 22-702, and 22-2006, 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 October 21, 2009.

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:

**USDA APHIS PPQ published on July 8, 2009, in the Federal Register (Docket No. APHIS-2006-0137), starting October 1, 2009, their intent to charge to the states that issue federal phytosanitary certificates for the export of agricultural commodities a \$12 federal administrative fee for each certificate issued by the state. The Department currently charges \$40 for each certificate it issues. The Department proposes to increase the fee to \$60 to cover the federal administrative fee and increased costs to the program. This fee has not been adjusted since 2004.**

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



reasons:

**Compliance with federal regulation changes.**

**FEE SUMMARY:** Pursuant to Section 67-5226(2), Idaho Code, 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:

**This fee or charge is being imposed pursuant to Section 22-2314, Idaho Code: To change the charge to issue federal phytosanitary certificates from \$40 to \$60 per certificate.**

**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:

**Based on 2008 figures, this change would generate an additional \$74,140 of which, \$44,484 would be remitted to USDA APHIS to cover the administrative fees and the remaining \$29,656 would remain with the program to cover the increased cost of the program.**

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because informal meetings were held with the Idaho Eastern Oregon Seed Association at their annual membership and board of directors meetings over the past two years. The most recent membership meeting was held June 23-24, 2009. The Idaho Nursery and Landscape Association Board of Directors were informed of the proposed change July 28, 2009 at their annual meeting in Stanley, Idaho. In addition, all of the major exporting nurseries were informed of the proposed fee changes in person.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Michael E. Cooper at (208) 332-8620.

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 October 28, 2009.

DATED this 20th day of August, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING FEE RULE***

**500. FEES AND CHARGES.**

**01. Phytosanitary Certificates. (3-16-04)**

**a. Federal Phytosanitary Inspection Certificates or like documents: ~~forty~~ sixty dollars**

(\$460) per certificate. ~~(3-16-04)~~(\_\_\_\_)

**b.** State Phytosanitary Inspection Certificates or like documents: twenty-five dollars (\$25) per certificate. (3-16-04)

**02. Phytosanitary Certification and Like Inspections and Official Treatment Observations.** (2-1-95)

**a.** Officially Drawn Samples: (i.e., purity and germ samples, referee samples, lab analysis) - twenty dollars (\$20) per sample. (3-16-04)

**b.** Submitted Samples: twenty dollars (\$20) per item submitted. (3-16-04)

**c.** Treatment Observations: for official verification of seed and plant treatment, seed lot fumigation, cold storage treatments, and treatment of agricultural products brought into the state in violation of a state quarantine, fees are thirty dollars (\$30) per hour (including travel time), and any per diem incurred. Per diem will be at established state rates. ~~(3-16-04)~~(\_\_\_\_)

**d.** Rush service fees will be one hundred dollars (\$100) per certification which will be in addition to the normal phytosanitary certification charges outlined in this Section 500. (2-1-95)

**e.** Request for phytosanitary or treatment observation services after normal working hours, on weekends, or holidays are subject to overtime and state per diem charges in addition to the normal charges outlined in this section. (2-1-95)

**03. Area Inspections.** Area Inspection: fourteen cents (\$.14) per hundred-weight. (3-16-04)

**04. Field or Lot Inspections.** (2-1-95)

**a.** Application for Field Inspection: five dollars (\$5) per application. (3-16-04)

**b.** Acreage Inspection Fee: three dollars and fifty cents (\$3.50) per acre per inspection. A minimum of fifty dollars (\$50) per inspection will be charged when the total acreage submitted by any one (1) applicant is fifteen (15) acres or less. (3-16-04)

**05. Post-Entry Quarantine Inspections.** The inspection fee is two hundred dollars (\$200) for the required two (2) year quarantine and an additional one hundred dollars (\$100) per year for each year beyond the initial two (2) years, if required. For rejected applications, twenty-five dollars (\$25) of the two hundred dollar (\$200) inspection fee is non-refundable, and will be retained to cover administrative costs. (2-1-95)

**06. Plant Pathological Laboratory Services.** Fees available upon request. (2-1-95)

**07. Special Project Fee.** (\_\_\_\_)

**a.** Special projects not covered by the existing fee schedule may be billed at twenty-

five dollars (\$25) per hour with a minimum twenty-five dollar (\$25) fee. Special projects include, but are not limited to, the following: ( )

- i. Research; ( )
- ii. Lot history verification; ( )
- iii. Data entry; ( )
- iv. Sales and purchases; ( )
- v. Transfer of lots into ISDA database; ( )
- vi. ISDA training of private company personnel; ( )
- vii. Special plant pest detection surveys; or ( )
- viii. Any other circumstance approved by the Director. (~~3-16-04~~)( )

**b.** This fee does not include any laboratory analysis fees that might be required as part of a special plant pest detection survey. ( )

## **IDAPA 02 - DEPARTMENT OF AGRICULTURE**

### **02.06.33 - ORGANIC FOOD PRODUCT RULES**

**DOCKET NO. 02-0633-0901**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. Pursuant to Section 67-5221(1), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 22-1103, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 85 through 87.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 22-1103, Idaho Code.

**The pending rule will not impose or increase fees but rather discontinue the late fees of \$250 for certification and \$100 for registration.**

**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:

There will be no impact to the general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Brandon Lamb, Agricultural Program Manager, at 208-332-8675.

DATED this 4th day of November, 2009.

Brian J. Oakey, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
P.O. Box 790, Boise, Idaho 83701  
Phone: (208) 332-8500 / Fax: (208) 334-2170

***THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED FEE 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 Section 22-1103, 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 October 21, 2009.

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:

**To change the application and registration deadline from March 31st to July 1st and to discontinue the late fees of \$250 for certification and \$100 for registration. The existing March 31st deadline does not provide organic producers and handlers with sufficient time to make cropping decisions.**

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

**To change the application and registration deadline from March 31st to July 1st and to discontinue the late fees of \$250 for certification and \$100 for registration.**

**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 will be no impact to the general fund.

**NEGOTIATED RULEMAKING:** Informal negotiations were conducted with industry. The Organic Food Advisory Council met October 27, 2008 and recommended the changes.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Brandon Lamb, Agricultural Program Manager, 208-332-8675.

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 October 28, 2009.

DATED this 19th day of August, 2009.

**THE FOLLOWING IS THE TEXT OF THE PENDING FEE RULE**

**300. REGISTRATION REQUIREMENTS, DEADLINES AND FEES.**

**01. Registration Requirements and Deadlines.** All applicants applying for registration with the Department, shall submit the application to the Department on forms prescribed by the Department. (3-19-07)

**a.** All organic producers/handlers in Idaho with five thousand dollars (\$5,000) or less annual gross organic sales shall register with the Department by ~~March 31~~ July 1st of each year. (3-19-07)(    )

**b.** All organic producers/handlers in Idaho certified by agents other than the Department shall register with the Department within thirty (30) days of initial certification and by ~~March 31st~~ July 1st of each year thereafter. (3-19-07)(    )

**c.** All agents certifying producers/handlers in Idaho shall register with the Department within thirty (30) days of issuing their first Idaho producer/handler certificate. (3-19-07)

**d.** Agents shall provide the Department, by January 2 of each year, a list of Idaho producers/handlers, addresses, and telephone numbers for each certificate issued during the prior calendar year. (3-19-07)

**02. Registration Fees, ~~Late Fees.~~** (3-19-07)(    )

**a.** The annual registration fee is fifty dollars (\$50). (3-19-07)

~~**b.** Applications for registration postmarked after the deadline listed in Subsection 300.01.a. will be assessed a late fee of one hundred dollars (\$100). (3-19-07)~~

**eb.** A person who produces and handles their own organic food products shall pay only one (1) annual registration fee. (3-19-07)

**301. CERTIFICATION REQUIREMENTS, DEADLINES AND FEES.**

**01. Certification Requirements and Deadlines.** All applicants applying for certification with the Department, shall submit the application to the Department on forms prescribed by the Department by ~~March 31st~~ July 1st of each year. (3-19-07)(    )

**a.** All organic food producers/handlers in Idaho with annual gross organic sales of more than five thousand dollars (\$5,000) shall be certified with the Department, unless certified by agents other than the Department accredited under the National Organic Program. (3-19-07)

**b.** Producers/handlers with annual gross organic income of five thousand dollars (\$5,000) or less may select certification in place of registration. (3-19-07)

**c.** All organic food producers and organic handlers certifying with the Department are subject to an annual on-site inspection. (3-19-07)

~~**d.** Applications for crop producer certification will not be accepted if postmarked after June 1st. (3-19-07)~~

~~**ed.** Livestock producer and handler applications will be accepted throughout the year. (3-19-07)~~

**02. Certification Fees, ~~Late Fees.~~** (3-19-07)( )

**a.** Organic producers/handlers with annual gross organic income of more than five thousand dollars (\$5,000) up to fifteen thousand dollars (\$15,000) or producers with annual gross income of five thousand dollars (\$5,000) or less requesting certification - One hundred twenty-five dollars (\$125). (3-19-07)

**b.** Organic producer/handler with annual gross organic income of more than fifteen thousand dollars (\$15,000) –Two hundred dollars (\$200). (3-19-07)

**c.** A person who produces and handles their own organic food products shall pay only one (1) annual certification fee based on gross annual organic sales. (3-19-07)

~~**d.** Applications for producer/handler certification postmarked after March 31st will be assessed a late fee of two hundred fifty dollars (\$250). (3-19-07)~~

**03. Certification Inspection Fees.** (3-19-07)

**a.** The hourly rate is thirty-five dollars (\$35) including travel time. (3-19-07)

**b.** Travel time from an inspector's normal duty station to the inspection site and return to normal duty station will be compensable time charged to the applicant. (3-19-07)

**c.** There will be a minimum charge of thirty-five dollars (\$35) plus mileage for any inspection. (3-19-07)

**d.** A mileage rate as approved by the Board of Examiners will be included in the inspection fees. (3-19-07)

**e.** The costs for chemical residue analysis of soil or organically grown food products may be assessed against the producer or handler. (3-19-07)

**f.** Inspections conducted on weekends, holidays, or after normal office hours will be charged at an hourly rate of forty-seven dollars and fifty cents (\$47.50) including travel time with a minimum charge of one (1) hour plus mileage. (3-19-07)

**g.** Upon approval by the Department, private inspectors may be utilized ~~for operations that submitted their application after March 31 or under special circumstances.~~ The applicant shall bear the total cost of the private inspection. (3-19-07)( )

**IDAPA 48 - IDAHO GRAPE GROWERS AND  
WINE PRODUCERS COMMISSION**

**48.01.01 - RULES OF PROCEDURE OF THE IDAHO GRAPE GROWERS  
AND WINE PRODUCERS COMMISSION**

**DOCKET NO. 48-0101-0902**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-3605(15), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 494 through 495.**

**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:

**The Commission may receive additional revenue from the proposed changes. Idaho Code provides persons subject to the tax with an opportunity to opt out of the tax. The Commission is not able to determine whether more taxpayers will opt out due to the revisions.**

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the proposed rule, contact Moya Shatz, Executive Director, (208) 455-8354.

DATED this 2nd day of November, 2009.

Moya Shatz, Executive Director  
Idaho Grape Growers and Wine Producers Commission  
117 9<sup>th</sup> Ave., Ste. 2  
P. O. Box 1218, Caldwell, ID 83606  
Telephone: (208) 455-8354  
Facsimile: (208) 455-8364



***THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED FEE 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 Section 54-3605(15), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be held as follows:

**WEDNESDAY, OCTOBER 28, 2009 -- 9:30 to 11:00 a.m.**

**J.R. WILLIAMS BUILDING**  
**East Conference Room**  
**700 West State St., Boise, Idaho**

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:

**Section 54-3610, Idaho Code, was revised to authorize the proposed rule changes in the 2009 legislative session. Increase to the tax rates applicable to grape growers and wineries in Idaho.**

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

**The tax on wine production is revised to four cents (\$.04) per gallon, seven dollars (\$7) per ton of grapes, and six dollars and sixty-eight cents (\$6.68) per one hundred sixty-seven (167) gallons of grape juice produced outside of Idaho. The tax is phased in over a three (3) year period with a cap for taxes on wineries imposed in the first year.**

**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:

**The Commission may receive additional revenue from the proposed changes. Idaho Code provides persons subject to the tax with an opportunity to opt out of the tax. The Commission is not able to determine whether more taxpayers will opt out due to the revisions.**

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Moya Shatz, Executive Director, (208) 455-8354.

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 October 28, 2009.

DATED this 24th day of August, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING FEE RULE***

**020. TAX AND LATE PAYMENT PENALTY.**

**01. Levy and Rate of Tax.** In accordance with Section 54-3610, Idaho Code, a tax is levied and imposed on wineries and grapes used, grown, or purchased for the production of wine in Idaho. The rate of tax shall be: (3-19-07)

**a.** ~~One hundred dollars (\$100)~~ Four cents (\$.04) per winery gallon of wine produced during the previous calendar year. (3-19-07)( )

**b.** ~~Five Seven~~ dollars (\$57) per acre ton of grapes cultivated harvested in Idaho for the purpose of vinification during the previous calendar year. (3-19-07)( )

**c.** ~~Five Seven~~ dollars (\$57) per ton for grapes purchased from producers outside Idaho for the production of wine in Idaho during the previous calendar year. (3-19-07)( )

**d.** ~~Five Six~~ dollars and sixty-eight cents (\$56.68) per one hundred sixty-seven (167) gallons, or any portion thereof, of grape juice purchased from producers outside Idaho for the production of wine in Idaho during the previous calendar year. (3-19-07)( )

**e.** The tax rates set forth in Paragraphs 020.01.a. through 020.01.d., shall be phased in over a three-year (3) period as follows: ( )

**i.** Thirty-three percent (33%) in fiscal year 2010; ( )

**ii.** Sixty-six percent (66%) in fiscal year 2011; and ( )

**iii.** One hundred percent (100%) in fiscal year 2012 and all subsequent years, except that the maximum tax levied upon any winery for fiscal year 2010 shall be one thousand dollars (\$1,000). ( )

**02. ~~Maximum~~ Minimum Levy.** The ~~total~~ minimum taxes paid by any ~~individual grower or winery~~ shall ~~not exceed three~~ be one hundred dollars (\$100) annually.(3-19-07)( )

**03. Payment of Tax.** The ~~producer-cultivating~~ grower harvesting grapes for the production of wine shall pay the tax levied upon the ~~producer~~ grower. Each winery shall pay the tax levied upon the winery. Purchasers of grapes grown or grape juice produced outside Idaho shall pay taxes levied on such grapes and grape juice. All taxes shall be paid on or before June 30 of each year. (3-19-07)( )

**04. Late Payment Penalty.** Persons making payment of the levied tax after the date set forth in this chapter shall be subject to a late payment penalty of fifteen percent (15%) per annum on the amount due. In addition to the late payment penalty, the Commission shall be entitled to recover all costs, fees, and reasonable attorney's fees incurred in the collection of the tax and penalty provided for in Section 020 of these rules. (3-19-07)

**05. Opt Out Alternative.** A grower or producer may opt out of the levy of tax by submitting a letter to the Commission no later than June 30 of each year stating intent to opt out of the application of the provisions of Title 54, Chapter 36, Idaho Code, for the upcoming fiscal year. The letter shall include the grower or producer's name and address. (3-19-07)

## IDAPA 51 - IDAHO BEEF COUNCIL

### 51.01.01 - IDAHO BEEF COUNCIL RULES

DOCKET NO. 51-0101-0901

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Section 25-2906, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the September 2, 2009 Idaho Administrative Bulletin, Vol. 09-9, pages 330 through 333.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 25-2907, Idaho Code:

**The increase to one dollar and fifty cents (\$1.50) per head is needed in order to counter the effects of inflation and provide needed funding to maintain our consumer demand building programs and sustain growth in the beef 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:

There is no negative fiscal impact to the general fund as a result of this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending fee rule, contact Traci O'Donnell, Executive Director, (208) 376-6004.

DATED this 24th day of September, 2009.

Traci O'Donnell  
Executive Director  
Idaho Beef Council  
2118 Airport Way, Boise, ID 83705  
Telephone: (208) 376-6004  
Facsimile: (208) 376-6002

***THE FOLLOWING NOTICE PUBLISHED WITH THE  
TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** The effective date of the temporary rule is **July 1, 2009**.

**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 25-2906, 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 September 16, 2009.

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 Idaho Beef Council was created in 1967 by the Idaho Legislature to promote the Idaho cattle industry and to support a national beef marketing effort. Idaho's initial checkoff was ten cents (\$.10) per head. It increased to twenty-five cents (\$.25) per head in 1981, and again in 1984 to fifty cents (\$.50). The collection rate was raised to one dollar (\$1)-per-head with the passage of the 1985 Farm Bill.

The Beef Checkoff Program is a self-help program aimed at building consumer demand for beef. This is accomplished through a combination of initiatives, including consumer advertising, research, public relations, and promotional program activities. Since 1986, the Beef Checkoff has been assessed at one dollar (\$1) per head in the state of Idaho. We have faced diminished buying power as a result of inflation. We have seen a large increase in our operating costs, media expenses, postage, printing, etc., the past 20 years. In addition, our checkoff collections have decreased 20% since 2001. The increase to one dollar and fifty cents (\$1.50) per head was needed in order to counter the effects of inflation and provide needed funding to maintain our consumer demand building programs and sustain growth in the beef industry. The proposed rule changes reflect the increase in the amount of the checkoff assessment from one dollar (\$1) per head to one dollar and fifty cents (\$1.50) per head effective July 1, 2009. The rule changes will also provide refund information on the Idaho state assessment, up to fifty cents (\$.50) per head.

**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:

2009 House Bill No. 101 authorized the Council to increase, to one dollar and fifty cents (\$1.50) per head, the assessment on cattle sold in this state. The increase is needed

**immediately in order to counter the effects of inflation and provide needed funding so that the Council can maintain its marketing efforts and sustain growth in the beef industry.**

**FEE SUMMARY:** Pursuant to Section 67-5226(2), Idaho Code, 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:

**Pursuant to Section 25-2907, Idaho Code, the increase to one dollar and fifty cents (\$1.50) per head is needed in order to counter the effects of inflation and provide needed funding to maintain our consumer demand building programs and sustain growth in the beef 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:  
N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Traci O'Donnell, Executive Director, (208) 376-6004.

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 September 23, 2009.

DATED this 30th day of July, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING FEE RULE***

**001. TITLE AND SCOPE.**

These rules shall be cited in full as IDAPA 51.01.01, "Idaho Beef Council Rules," Title 01, Chapter 01. These rules provide for a coordinated federal and state program of beef promotion and research funded by a one dollar and fifty cents (\$1.50) assessment on each head of cattle marketed in the state of Idaho. ~~(7-1-93)~~( )

***(BREAK IN CONTINUITY OF SECTIONS)***

**004. INCORPORATION BY REFERENCE.**

The Idaho Beef Council operates under the rules and regulations of the National Beef Promotion

and Research Order. 7 CFR 1260 (Federal Register July 18, 1986). ( )

**0045. -- 006. (RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**~~010.~~ DEFINITIONS.**

*As used in these rules, unless the context requires otherwise:* (7-1-93)

~~01. **Assessment.** An amount of money levied upon the sale of each head of cattle. This amount shall be one dollar (\$1) in conformity with the National Beef Promotion and Research Order.~~ (7-1-93)

~~02. **Checkoff.** The one dollar (\$1) assessment collected by the Brand Inspector, upon the sale of each head of cattle, which is remitted to the Idaho Beef Council in accordance with the National Beef Promotion and Research Order.~~ (7-1-93)

~~03. **Collection Fee.** The amount of money paid to the State Brand Inspector for reasonable and necessary expenses incurred in collecting the one dollar (\$1) per head assessment.~~ (7-1-93)

~~04. **Idaho Credit.** That portion of the one dollar (\$1) that shall be administered by the Idaho Beef Council. That portion shall be fifty cents (\$.50). The remaining portion shall be remitted to the Cattlemen's Beef Promotion and Research Board in accordance with the National Beef Promotion and Research Order.~~ (7-1-93)

**0140. -- 099. (RESERVED).**

**100. INCOME FUNDING.**

~~01. **National Beef Promotion and Research Order.** The Idaho Beef Council will operate under the rules and regulations of the National Beef Promotion and Research Order issued July 18, 1986, from the U.S. Department of Agriculture, as long as that order is in effect. The regulations governing assessments and exemptions will be as stated in that order. In Idaho that order will be interpreted as follows:~~ (7-1-93)

**021. Assessments.** (7-1-93)

~~a. In conformity with the National Beef Promotion and Research Order, each producer shall pay an assessment of one dollar and fifty cents (\$1.50) per head of cattle at the time the cattle are sold. The assessment shall be collected by the State Brand Inspector or his agent. Assessments collected will be remitted to the Idaho Beef Council, a qualified state council, together with a remittance report. This assessment consists of:~~ (7-1-93)( )

~~i. One dollar (\$1) required by the National Beef Promotion and Research Order, and~~

( )

ii. Fifty cents (\$.50) authorized by Section 25-2907(1), Idaho Code. ( )

**b.** Producers selling or marketing cattle in interstate commerce will pay only one (1) assessment per individual sale of cattle. When cattle leave Idaho for the purpose of sale or slaughter, the assessment will be made at the time of brand inspection. When cattle leave Idaho for feeding or pasture where no change of ownership occurs, the promotion assessment will not be made. (7-1-93)

**c.** When cattle enter Idaho for sale or slaughter, the assessment will be made only if the assessment has not been paid when the cattle left their state of origin. These cattle will be assessed by the Idaho Brand Inspector, but they will be considered cattle from their state of origin. All assessments will be remitted to the Idaho Beef Council, with these cattle indicated by their state of origin. The Idaho Beef Council will pay to the originating state the assessments due them in a timely manner after payment has been received from the State Brand Inspector. (7-1-93)

~~**d.** *Importers of cattle, beef, and beef products into the United States shall pay an assessment to the Cattlemen's Beef Promotion and Research Board through the U.S. Customs Service. (Federal Register, July 18, 1986, 7 CFR 1260.172)*~~ (7-1-93)

**ed.** The assessment implemented by this rule does not apply to the seller of cattle if the seller certifies that the seller's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee or other service fee; or if the seller certifies that he acquired ownership of cattle to facilitate the transfer of ownership of such cattle to a third party, establishes that such cattle are being resold not later than ten (10) days from the date on which the person acquired ownership and certifies that the assessment was collected from the seller when the person acquired ownership. A completed certificate of "non-producer status" must be given to the brand inspector or his agent at the time of inspection. If no certificate is produced the assessment will be levied. (7-1-93)

**02. Collection.** The State Brand Inspector shall collect the assessment in addition to and at the same time and manner as the fee charged for state brand inspection. ~~Checkoff dollars collected~~ The assessment will be submitted each month to the Beef Council, less collection fee. In addition, the State Brand Inspector will submit monthly, a written accounting of total number of head marketed, number of cattle assessed and not assessed (along with copies of the appropriate non-producer exemption forms), total collections, and state of origin documentation. (7-1-93)( )

**03. Refunds.** ( )

**a.** Any person from whom an assessment is collected has the right to request a refund of not more than fifty cents (\$.50) per head (Section 25-2907, Idaho Code). Refund requests must be mailed to the Idaho Beef Council within ninety (90) calendar days of payment of the assessment. The refund request must include the: ( )

i. Name and address of the producer; ( )



- ii. Name and address of the entity collecting the assessment (brand inspector or livestock market); ( )
- iii. Number of head on which a refund is requested; ( )
- iv. Total amount of refund requested; ( )
- v. Date of assessment; ( )
- vi. Producer's signature; and ( )
- vii. Proof of payment of the assessment (such as the brand inspection slip). ( )

**b.** The Idaho Beef Council will process the requested refunds on a calendar quarterly basis. Any refund request that is received by the Idaho Beef Council less than fifteen (15) days from the end of the calendar quarter shall be paid at the end of the next quarter. ( )

**101. -- 199. (RESERVED).**

**200. DISBURSEMENTS.**

**01. Collection Fee, Brand Inspector.** The Idaho Beef Council shall reimburse the State Brand Inspector for the reasonable and necessary expenses incurred in the collection of the assessment in an amount determined by the Beef Council and the State Brand Inspector, not to exceed five percent (5%) of gross collections. (7-1-93)

**02. National Beef Promotion and Research Board.** ~~Of the one dollar (\$1) national assessment, \$~~The Idaho Beef Council ~~will receive~~ shall forward fifty cents (\$.50) credit per head of cattle assessed. ~~The remaining fifty cents (\$.50) will be forwarded~~ to the Cattlemen's Beef Promotion and Research Board. (*Federal Register, July 18, 1986, 7 CFR 1260*). (7-1-93)( )

**03. National Idaho Beef Promotion Program Council.** ~~A total of at least twenty percent (20%) of the Idaho credit shall be paid by the Idaho Beef Council to a national beef promotion program for use in promotion, research and educational activities.~~ Assessment funds remaining after payment of collection fee and disbursement to the National Beef Promotion and Research Board shall be retained by the Idaho Beef Council and used to fund its activities and operations. (4-6-05)( )