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**IDAPA 29
TITLE 01
Chapter 02**

**29.01.02 - RULES GOVERNING PAYMENT OF ADVERTISING TAX
AND USAGE OF FEDERALLY REGISTERED TRADEMARKS**

000. -- 099. (RESERVED).

100. GENERAL.

01. When Idaho Potato Commission Advertising Tax is Due. The Idaho Potato Commission Advertising Tax shall be due on or before the time when such potatoes are first handled in the primary channels of trade and shall be paid not later than the fifteenth day of the month next succeeding the month in which such potatoes were handled in the primary channels of trade. See Section 22-1211, Idaho Code. (7-1-93)

02. Idaho Potato Commission Advertising Tax. There is hereby levied and imposed a tax of four cents (\$0.04) per hundredweight on potatoes covered by this act which tax shall be due on or before the time when such potatoes are first handled in the primary channels of trade and shall be paid not later than the fifteenth day of the month next succeeding the month in which such potatoes were handled in the primary channels of trade. In addition to the four cents (\$0.04) tax herein above provided for there is hereby levied and imposed an additional tax of six cents (\$0.06) per hundredweight on potatoes covered by this act; provided, however, said additional tax of six cents (\$0.06), or any portion thereof, shall only be due and collectible upon a determination by at least two-thirds (2/3) of the commission members that the anticipated expenditures for the next fiscal year following the year in which the determination is made will exceed the anticipated tax revenues to be collected from the said four cents (\$0.04) tax. Upon such a determination, the commission shall collect the additional six cents (\$0.06) tax or such portion thereof as is required by such determination, which shall be collected with, and as, other taxes imposed by this act. The person first selling or otherwise delivering potatoes into primary channels of trade shall be responsible for and make payment of all taxes imposed by this chapter. If such person is the dealer or shipper handling potatoes grown by another, he may charge against and recover from the grower of such potatoes or the person from whom he acquired them sixty percent (60%) of the tax. (7-1-93)

03. Definitions - As Used in These Rules. Section 22-1204, Idaho Code, defines terms used in these rules. (7-1-93)

04. Dealers', Handlers' and Out-of-State Repackers' Records. Idaho Potato Commission Advertising Tax Returns - Audits - Inspections. (7-1-93)

a. Every dealer or handler including out-of-state repackers shall keep a complete and accurate record of all potatoes handled by him in the primary channels of trade. Such record shall be in such form as the Commission's Executive Director shall prescribe. (7-1-93)

b. In addition to such other information that the Executive Director requires, each dealer, handler and out-of-state repacker shall keep records that segregates purchases and sales of Idaho (Registered Trademark) potatoes by calendar month; records of inventories of Idaho (Registered Trademark) potatoes by calendar month; records of inventories of containers bearing the registered trademarks of the Commission by calendar month. Such records shall be preserved for a period of two years and shall be open to inspection at any time upon written or oral request or demand by the Commission or its duly authorized agent or employee. (7-1-93)

c. The Commission's duly authorized agent may enter upon the premises of any grower, dealer, handler, out-of-state repacker, food manufacturer, processor or any other license agreement holder of Idaho (Registered Trademark) potatoes and examine or cause to be examined any books, papers, records or memoranda bearing upon the amount of taxes payable and to secure any other information directly or indirectly concerned with the enforcement of Chapter 12, Title 22, Idaho Code, all rules adopted pursuant thereto and all licensing agreements entered into with the Commission. The Commission's duly authorized agent may also inspect and take samples of any potatoes, potato products or containers from the premises used by a dealer, handler or out-of-state repacker. Regular audits shall be routinely performed by the Commission or its duly authorized agent or employee to assure adherence with these rules. In addition, compliance audits may take place at any time. For further requirements see Section 22-1212, Idaho Code. (7-1-93)

05. Calculation of Advertising Tax Due. (7-1-93)

a. All first handlers of Idaho (Registered Trademark) Grown Potatoes shall pay the total tax due on all potatoes handled by them on a net weight basis, except as provided in Rule 100.05.b. Net weight shall be determined by subtracting from the gross scale weight the tare for dirt, rock and other foreign material only. Net weight shall then be multiplied by ninety percent (90%) which provides for a ten percent (10%) allowance for those potatoes that are unusable for human consumption. The amount of tax due is the tax rate currently imposed pursuant to Rule 100.02, multiplied by the hundredweight (cwt) calculated above. The following diagram illustrates the manner in which the formula is to be applied:

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

(7-1-93)

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

i. Fresh shipped potatoes. On all Idaho (Registered Trademark) potatoes shipped fresh, a permitted handler shall pay the full Idaho Potato Commission Advertising Tax on all fresh shipments which meet State Grade Standards or Federal Fresh Market Standards whether sold interstate or intrastate. (7-1-93)

ii. Fresh potatoes not meeting grades. A ten percent discount per hundredweight shall be allowed on all intrastate shipments of fresh potatoes not meeting State Grade Standards or Federal Fresh Market Standards, such as culls or processing grade potatoes sold to processors, after tare is taken for dirt and foreign material only, to allow for that portion which is unusable for human consumption. Statements showing Idaho Potato Commission Advertising Tax liability shall be mailed to fresh shippers each month, and payment of Idaho Potato Commission Advertising Tax due to be made within thirty days of receipt of statement. This rule is not to be construed as authorizing any shipments of potatoes contrary to Section 22-901, Idaho Code. (7-1-93)

06. Tax Reports to Be Made by Dealers, Handlers. A report on a form approved by the Commission, showing total weight handled for a given period of time and the Idaho Potato Commission advertising tax due are to be sent to the Idaho Potato Commission office with the tax payment. These reports are to be made on forms furnished by the Commission and shall show such other information as the Commission may require. (7-1-93)

101. INTERSTATE COMMERCE NOT AFFECTED.

These rules shall not apply to interstate commerce except to the extent that the Constitution and laws of the United States permit them to apply to interstate commerce. (7-1-93)

102. CERTIFICATION MARKS FOR IDAHO (Registered Trademark) POTATO CONTAINERS.

01. Containers. All potatoes grown in Idaho and packed or repacked in containers in Idaho shall be in containers printed, labeled or stenciled in a plain and legible manner with one of the Commission's registered Certification Marks, and the "GROWN IN IDAHO (Registered Trademark)" Certification Mark. An exact reproduction of the Commission's Certification Marks appears in appendices. Certification Marks may not be stamped on any Idaho (Registered Trademark) potato container. (7-1-93)

02. Marks. No person, firm or corporation packing or repacking potatoes or potato products outside of the state of Idaho shall use any of the Commission's Certification Marks on any containers of potatoes or potato products packed or repacked outside the state of Idaho unless they have first executed an agreement for the use of the Certification Marks with the Idaho Potato Commission, and unless they are actually packing or repacking in such containers Idaho grown potatoes or potato products made from Idaho (Registered Trademark) grown potatoes.

(7-1-93)

03. Agreement. No person, including without limitation manufacturers, container manufacturers, growers, shippers, processors and repackers, shall use or reproduce any of the Commission's Certification Marks on any container without first executing an agreement for the use of the marks with the Idaho Potato Commission.

(7-1-93)

04. Recognition. Whenever the "GROWN IN IDAHO (Registered Trademark)," "IDAHO (Registered Trademark)" or other Certification Marks are used, recognition must be given that the marks are registered under the appropriate Federal statute. This recognition must be: by printing a legible capital "R" inside a circle, immediately after the word "IDAHO."

(7-1-93)

05. No Certification Mark. No Certification Mark shall be incorporated into any private label, brand or seal but shall be portrayed without embellishment as shown in appendices.

(7-1-93)

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

(7-1-93)

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

(7-1-93)

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

(7-1-93)

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

(7-1-93)

10. Box Type Containers. On all box type containers, a Certification Mark may be located on the sides, ends or top of the container as desired, but shall be so placed and of such size as to be plainly visible.

(7-1-93)

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

(7-1-93)

12. Identity of Commodity. All containers bearing the marks shall specify the identity of the commodity contained therein and the name and place of business of the manufacturer, packer or distributor of the commodity. Containers which do not comply with the rules of the Idaho Potato Commission shall not be used by any manufacturer, packer or distributor for any potatoes or potato products subject to these rules.

(7-1-93)

13. Words Printed. All potatoes grown in Idaho and packed or repacked in Idaho shall have the words "PACKED IN IDAHO" printed on the container.

(7-1-93)

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

(7-1-93)

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

(7-1-93)

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

(7-1-93)

17. Colors. All marks when used and the words "PACKED IN IDAHO" shall be in color or colors in contrast with the color of the container. (7-1-93)

18. Use. Only in connection with potatoes and potato products grown within the state of Idaho may growers, shippers and packers use the name "IDAHO (Registered Trademark)" in any mark, label or stencil applied to containers for such produce and products. The growers, shippers and packers of potatoes within the state of Idaho are not precluded from processing, packing and shipping potatoes grown outside the state of Idaho so long as such potatoes are not misrepresented or misbranded as Idaho (Registered Trademark) potatoes. (7-1-93)

19. Compulsory Printing. Printing of the mark "GROWN IN IDAHO (Registered Trademark) and the words "PACKED IN IDAHO" is compulsory on all potato containers printed or contracted for after December 1, 1964. (7-1-93)

20. Idahos. The word "IDAHOS" shall not be used on any container for potatoes, potato products nor on any other printing or advertising material or correspondence used to identify or promote Idaho (Registered Trademark) potatoes. (7-1-93)

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

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

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

01. Branding or Marking of Individual Idaho (Registered Trademark) Potatoes. (7-1-93)

a. Idaho (Registered Trademark) potatoes are considered to be branded when they are individually marked or identified as such. The methods of branding shall include: marking of individual potatoes by ink, heat, light, labeling or puncturing and such other methods as may from time to time be authorized by the Idaho Potato Commission. (7-1-93)

b. The certification mark "Idaho (Registered Trademark)" shall be one (1) inch in length and one-quarter (1/4) inch in height unless prior Idaho Potato Commission approval is secured and granted for any variation. (7-1-93)

c. The purchase or the leasing or use of branding machines shall be entirely voluntary. (7-1-93)

d. There shall be no limitations on the size and type of containers in which branded potatoes may be packed as long as they meet the licensing requirements of Rule 102. (7-1-93)

e. Grade for branding shall be U.S. Number one or better (as defined in the U.S. Standards effective March 27, 1991) and not less than two (2) inches in diameter or four (4) ounces in weight. (7-1-93)

f. Only the word "Idaho (Registered Trademark)" 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. (7-1-93)

g. The operation of branding the word "Idaho (Registered Trademark)" upon potatoes shall be carried on only within the state of Idaho. (7-1-93)

h. Only varieties of Russet potatoes grown in Idaho may be so branded. (7-1-93)

i. No person, firm or corporation may brand the word "Idaho (Registered Trademark)" on potatoes or sell machinery for the purpose of branding potatoes with either of the Idaho certification marks unless granted the right to do so by written agreement with the Idaho Potato Commission. (7-1-93)

- j. Branded potatoes shall be Federal-State inspected. (7-1-93)
02. State Brand Grade and Packaging Requirements. Idaho (Registered Trademark) potatoes shall meet all requirements of U.S. Extra No. 1 as defined in the U.S. Standards for Grades of Potatoes, March 27, 1991, with the following additions or exceptions: (7-1-93)
- a. Mature. (7-1-93)
- b. Fairly well shaped. Defined as excluding the lower limits of such classification. (7-1-93)
- c. Appearance as related to russeting. Defined: at least seventy five percent (75%) of the surface of the individual potato shall be moderately netted which means the netting will be solid net-like in appearance. (7-1-93)
- d. Size shall be two and one eighth (2-1/8) inches in diameter and four (4) ounces minimum, eleven ounces maximum. Each lot shall meet the specifications of Size A as defined in 51.1545, Table I(2) of the Standards. (7-1-93)
- e. Tolerances for grade defects are defined in 51.1546(a)(2), for U.S. No. 1. (7-1-93)
- f. All other tolerances and definitions of the Standards apply. (7-1-93)
03. Packaging. (7-1-93)
- a. Container Requirement: Maximum size not to exceed twenty pounds. (7-1-93)
- b. Miscellaneous Requirements: Use of the state brand packaging shall be entirely voluntary. Potatoes grown only in Idaho may be packed in state branded containers. State branded containers shall be packed only in Idaho. Only varieties of Russet potatoes grown in Idaho may be packed in state branded containers. The Commission shall require a written agreement between the Idaho Potato Commission and Idaho packers for the use of the state brand. All state branded containers shall be Federal-State inspected. (7-1-93)
- c. The grade used in state brand containers shall be as defined in Rule 103.03 and "Idaho State Code 22-908" and "Federal-State Inspected" shall be printed in three-eighths (3/8) inch or larger letters, on front of each container. (7-1-93)
- d. If individually branded Idaho (Registered Trademark) potatoes are packaged in state brand packaging they must meet grade requirements as defined in Rule 103.03. (7-1-93)

104. REPORTING, LABELING AND REVOCATION.

01. Reporting of Fresh Shipments of Potatoes. (7-1-93)
- a. Effective July 1, 1976, handlers of Idaho (Registered Trademark) potatoes who have a valid licensing agreement with the Idaho Potato Commission for the use of the "Grown in Idaho (Registered Trademark)" registered trademark on potato containers are required to report shipments of all fresh Idaho grown potatoes to designated geographical locations giving information as to weight, packaging and type of receiver. Reporting forms will be furnished for this information by the Idaho Potato Commission and information will be sent to and tallied by an independent accounting firm. All information received by this firm will be kept in strictest confidence as to individual shipments. (7-1-93)
- b. The purpose of this information is to provide the Idaho Potato Commission with information concerning fresh potato sales in geographical marketing areas receiving Idaho (Registered Trademark) grown potatoes to enable it to design and evaluate advertising and marketing programs. (7-1-93)
02. Labeling Containers of Fresh Idaho Potatoes To Indicate the Variety Packed Therein. (7-1-93)

a. All potatoes grown in Idaho that are packed or repacked in containers in Idaho, or packed or repacked in containers outside of Idaho under an out-of-state packer license agreement, shall be packed or repacked in containers that are printed, marked, labeled or stenciled in a plain and legible manner that identifies the variety packed therein. (1-3-96)T

b. No container may contain more than one variety of potato. (1-3-96)T

c. Any mark, label or stencil required by this rule shall be conspicuously placed on the container and printed in a color contrasting with the background and shall be of a size determined as follows: (7-1-93)

i. For bags and other containers holding one hundred (100) pounds of potatoes or more, the letters of the label shall be at least one (1) inch high; (7-1-93)

ii. For bags and other containers holding fifty (50) pounds or more of potatoes, but less than one hundred (100) pounds, the letters of the label shall be at least three-fourths (3/4) of an inch high; (7-1-93)

iii. For bags or other containers holding less than fifty (50) pounds of potatoes, the letters on the label shall be five-eighths of an inch high. (7-1-93)

d. Any person seeking authorization to comply with this rule in a manner other than that specified herein shall submit a written request to the Commission for approval of an alternate method of compliance, which alternative method shall be in substantial compliance with these standards and which request shall describe in detail the proposed alternate method of compliance. The Executive Director of the Commission shall have the authority and responsibility to review such requests and rule whether they should be allowed, said determination to be based upon a finding that such alternate method has not been shown to comply with the purpose and meet the standards of this rule; provided, any interested person may request in writing that the Commission grant a de novo review of said request at a subsequent regular meeting deemed convenient and appropriate by the Commission, which request the Commission may in its discretion, either grant or deny. (7-1-93)

e. No potatoes grown in Idaho and packed or repacked in containers in Idaho, or packed or repacked outside of Idaho under an out-of-state packer license agreement, shall carry or be printed, labeled or identified with the GROWN IN IDAHO (Registered Trademark) or IDAHO (Registered Trademark) marks unless this rule is fully complied with as respects said potatoes. (7-1-93)

f. All persons growing potatoes in Idaho or packing or repacking in containers in Idaho, or packing or repacking outside of Idaho under an out-of-state license agreement, shall have the affirmative duty to avoid and refrain from ambiguous or misleading practices, acts or representations and to eliminate the same in marketing or handling Idaho (Registered Trademark) potatoes if such practice does or is likely to mislead any purchaser or consumer regarding the quality and variety of Idaho (Registered Trademark) potatoes purchased by such buyer or consumer. (7-1-93)

g. All persons licensed as of January 3, 1996, shall have until August 31, 1996, to use existing supplies of containers and such use of existing supplies of containers shall not be a violation of Subsection 104.02.a. or 02.b. (1-3-96)T

03. Revocation of Right to Use Marks. (7-1-93)

a. The Commission shall have the power to revoke the right of any person, firm or corporation to use any of the Commission's Certification Marks if such person, firm or corporation fails to pay any advertising tax assessed against it or fails to comply with any of these rules. (7-1-93)

b. Revocation of the right to use the Certification Marks shall not occur without reasonable notice of at least twenty (20) days and an opportunity for a hearing pursuant to Section 67-5242, Idaho Code. However, where the Executive Director determines that expedited action is necessary, he may: (7-1-93)

i. Issue an order immediately suspending the right to use any of the Commission's Certification

Marks pending a hearing, which hearing shall be held within twenty (20) days from the Executive Director's order; or (7-1-93)

ii. Issue an order conditioning the right to use any of the Commission's Certification Marks pending a hearing, which hearing shall be held within twenty (20) days from the Executive Director's order; or (7-1-93)

iii. Issue an order directing that the user of the Commission's Certification Marks show cause why the right to use the marks should not be suspended or conditioned further. (7-1-93)

105. ADDITIONAL LABELING REQUIREMENTS, FRESH POTATOES (Rule 105).

01. Disclosure of Geographic Growing Area of Origin upon Potato Containers. All persons doing business in the state of Idaho are required to disclose the growing area of origin upon all potato containers packed, repacked, handled or brokered by said person in accordance with this rule and Section 22-1207, Idaho Code. For purposes of these rules, doing business in the state of Idaho means the doing of any of the acts which would subject a person to the jurisdiction of the courts of this state or defined in Section 5-514, Idaho Code. (10-26-94)

02. Compliance for Idaho Grown Potatoes. For potatoes "Grown in Idaho (Registered Trademark)," this rule is complied with by meeting the requirements of Rule 102. (10-26-94)

03. Compliance for Private Brands or Labels that Reference Idaho Locations. Private brands or labels of containers that reference an Idaho location, geographical feature or otherwise attempt to imply directly or indirectly that a container of potatoes contains potatoes grown in Idaho when in fact such is not the case are prohibited. (10-26-94)

04. Compliance for Private Brands or Labels that Do Not Reference Idaho Locations. Private brands or labels that do not reference an Idaho location, geographical feature or otherwise attempt to imply directly or indirectly that a container of potatoes contains potatoes grown in Idaho when in fact such is not the case, but only have an Idaho address on the container, are permitted when approved by the commission or its designee. This rule is complied with by private brands or labels that: (10-26-94)

a. Meet the requirements of Rule 104.02.c; (10-26-94)

b. State the geographical state of origin of the potatoes followed by the word "potatoes"; and (10-26-94)

c. The lettering size of the Idaho address on the container does not exceed one-half (1/2) inch for containers fifty (50) pounds or greater and one-quarter (1/4) inch for containers less than fifty (50) pounds. For example, for potatoes grown in the state of Washington, the phrase "Washington potatoes" would comply with these rules. The use of the words "Grown in" preceding the state of origin is prohibited. (10-26-94)

106. -- 999. (RESERVED).



"IDAHO®"

