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**IDAPA 02
TITLE 01
CHAPTER 04**

02.01.04 - RULES GOVERNING THE IDAHO PREFERRED® PROMOTION PROGRAM

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 22, Chapter 1, Section 22-112, Idaho Code. (3-16-04)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.01.04, "Rules Governing the Idaho Preferred® Promotion Program." (3-30-07)

02. Scope. These rules shall govern the participation in, and product selection criteria for the Idaho Preferred® program. The program was developed by the Idaho State Department of Agriculture to identify and promote food and agricultural products from the state of Idaho, elevate consumer awareness of such products, and assist in developing opportunities for sale of such products. These rules establish the requirements for the use of the Idaho Preferred® logo and will define eligible products, application procedures, and participation fees. (3-30-07)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (3-16-04)

003. ADMINISTRATIVE APPEAL.

Persons are entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (3-16-04)

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter. (3-16-04)

005. ADDRESS, OFFICE HOURS, TELEPHONE, AND FAX NUMBERS.

01. Physical Address. The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712-8298. (3-16-04)

02. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays as designated by the State of Idaho. (3-16-04)

03. Mailing Address. The mailing address for the central office is Idaho State Department of Agriculture, P.O. Box 790, Boise, Idaho 83701-0790. (3-16-04)

04. Telephone Number. The telephone number for the central office is (208) 332-8500. (3-16-04)

05. Fax Number. The fax number for the central office is (208) 334-2170. (3-16-04)

006. PUBLIC RECORDS ACT COMPLIANCE.

These rules have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code and are public records. (3-16-04)

007. -- 009. (RESERVED).

010. DEFINITIONS.

The following definitions shall apply in the interpretation and enforcement of this chapter. (3-16-04)

01. Agricultural Product. Any fresh or processed apicultural, aquacultural, avicultural, beverage, cervidae, dairy, horticultural, livestock, forestry, viticultural, or other farm or garden product. (3-16-04)

02. Apicultural Product. Products produced from or related to honey bees or honey. (3-16-04)

- 03. Aquacultural Product.** Products produced from or related to fish, reptiles, or other aquatic animals. (3-16-04)
- 04. Avicultural Product.** Products produced from or related to birds, including but not limited to, ratites or poultry. (3-16-04)
- 05. Beverage.** Drinks including but not limited to wine, beer, distilled spirits, bottled water, or flavored drinks. (3-16-04)
- 06. Broker.** A sales and marketing agent employed to make bargains and contracts for compensation. (3-16-04)
- 07. Cervidae Product.** Products produced from or related to fallow deer, elk, or reindeer owned by a person. (3-16-04)
- 08. Dairy Product.** Products produced from or related to milk from cattle, goats, or sheep. (3-16-04)
- 09. Department.** The Idaho State Department of Agriculture. (3-16-04)
- 10. Director.** The Director of the Idaho State Department of Agriculture or his designated agent. (3-16-04)
- 11. Florist Stock.** All cut flowers, foliage and ferns, all potted plants or cuttings or bedding plants, and all flowering bulbs and rooted herbaceous plants used for ornamental or decorative purposes and all corms, whether grown in boxes, benches, pots, under glass or other artificial covering, or in the field or open ground or cuttings therefrom. (3-16-04)
- 12. Foodservice.** A person engaged in or related to the practice of commercial food preparation and service. (3-16-04)
- 13. Fresh Produce, Commodities, and Fresh Meat.** Bulk or packaged agricultural products that have been cleaned, sorted, or otherwise prepared and are sold or distributed in an unprocessed or minimally processed condition. (3-16-04)
- 14. Horticultural Products.** Plants, including but not limited to, fruits, vegetables, flowers, seeds, or ornamental plants. (3-16-04)
- 15. Livestock.** Domestic animals including but not limited to cattle, sheep, pigs, goats, domestic cervidae, domestic bison, camelids, or horses. (3-16-04)
- 16. Livestock Product.** Products produced from or related to livestock. (3-16-04)
- 17. Non-Food Agricultural Products.** Products not intended for human consumption, including but not limited to, animal feed, compost, hides, or skins. (3-16-04)
- 18. Supporting Organization.** Any commission, association, or incorporated group supporting the efforts of the Idaho Preferred® program. (3-30-07)
- 19. Nursery Stock.** All botanically classified plants or any part thereof, such as aquatic or herbaceous plants, bulbs, sod, buds, corms, culms, roots, scions, grafts, cuttings, fruit pits, seeds of fruits, forest and ornamental trees, and shrubs, berry plants, and all trees, shrubs, vines, and plants collected in the wild that are grown or kept for propagation or sale. Nursery stock does not include field and forage crops, seeds of grasses, cereal grains, vegetable crops and flowers, bulbs and tubers of vegetable crops, vegetables or fruit used for food or feed, cut trees or cut flowers unless stems or other portions thereof are intended for propagation. (3-16-04)

20. Packer/Shipper. A person who packages and ships food or agricultural products to wholesalers, retailers, and other outlets. (3-16-04)

21. Participant. A person who has applied to the Department and been approved for participation in the Idaho Preferred® program. (3-30-07)

22. Person. An individual, firm, partnership, corporation, commission, association, cooperative, business, governmental subdivision or agency, or other business entity. (3-16-04)

23. Processed Food. Any food product which has been transformed from its natural state by methods including but not limited to freezing, cutting, heating, drying, treating, or adding ingredients. (3-16-04)

24. Processor. A person engaged in the manufacturing of processed food. (3-16-04)

25. Producer. A person engaged in the business of growing or raising food, fiber, feed, or other agricultural products. (3-16-04)

26. Retailer. A person engaged in making sales directly to consumers. (3-16-04)

27. Viticultural Products. Products produced from or related to grapes and wine. (3-16-04)

28. Wholesaler. A person who buys in comparatively large quantities and then resells, usually in smaller quantities, but never directly to the consumer. (3-16-04)

011. -- 014. (RESERVED).

015. VOLUNTARY PROGRAM.
The Idaho Preferred® program is a voluntary promotion program. (3-30-07)

016. -- 099. (RESERVED).

100. APPLICATION FOR PARTICIPATION.

01. Application Requirement. Persons interested in becoming a participant in the Idaho Preferred® program shall do so by making application to the Department on forms established by the Director. New applications may be submitted at any time throughout the year. (3-30-07)

02. Application Review and Compliance Verification. The Director, upon receipt of an application, will verify the applicant's compliance with this chapter and approve or deny the application. The Director will notify the applicant in writing of the approval or denial. (3-16-04)

101. PARTICIPATION DURATION AND RENEWAL.

01. Duration. Participation is on an annual basis, coinciding with the fiscal year beginning July 1 and ending June 30, unless otherwise provided for in this chapter. (3-16-04)

02. Renewing Participation. Renewals shall be submitted on forms established by the Director and will be due June 30. (3-16-04)

03. Reporting on Use of Logo. Participants renewing with the Department will report their use of the Idaho Preferred® logo from the concluding program year. The report will include, but may not be limited to, data regarding the number of times the Idaho Preferred® logo was used. (3-30-07)

102. -- 109. (RESERVED).

110. PARTICIPATION FEES.

01. Annual Fee. The Director shall annually establish participation fees for each participation category by April first for the following program year. Participation fees will be listed in the participation application and will not exceed one thousand dollars (\$1,000). Fees for the first program year will be set by July 1, 2003. (3-16-04)

02. Participation Categories: (3-16-04)

a. Producer. (3-16-04)

b. Packer/Shipper/Processor. (3-16-04)

c. Supporting Organization. (3-16-04)

d. Retail/Foodservice. (3-16-04)

e. Broker/Distributor. (3-16-04)

03. Pro-Rated Fees. New participation agreements issued during the program year will be assessed a fee pro-rated on a monthly basis for the duration of the program year. (3-16-04)

04. Participation in Multiple Categories. Persons qualifying in multiple participation categories shall be assessed the greater of participation fees. (3-16-04)

111. PARTICIPATION PRIVILEGES.
Participants will benefit from privileges including: (3-16-04)

01. Use of the Idaho Preferred® Logo. Use of the Idaho Preferred® Logo on product labels, advertising, signage, or other promotional materials as allowed by the department. (3-30-07)

02. Listing. Listing In Idaho Preferred® Product Directories. (3-30-07)

03. Promotion. promotion through the Idaho Preferred® website. (3-30-07)

04. Visibility. Visibility from the department's promotion activities. (3-16-04)

05. Other Privileges. Other privileges as established by the Director. (3-16-04)

112. -- 199. (RESERVED).

200. PRODUCT QUALIFICATION.

01. Authority of Determination. The Director shall have the sole authority in determining the eligibility of a product for participation in the program. (3-16-04)

02. General Product Qualifications. Except as specified in this chapter, or by written order of the Director, products must meet or exceed the following criteria: (3-16-04)

a. Fresh produce, commodities, and meat bearing the Idaho Preferred® logo shall be one hundred percent (100%) Idaho grown or raised. (3-30-07)

b. Processed foods and beverages shall contain a minimum of twenty percent (20%) agricultural content that has been grown or raised in Idaho. The percentage of Idaho agricultural content and the percentage of value added to the product in the state of Idaho, shall total no less than eighty percent (80%) of the total value of the product. Value is determined as a percentage of the wholesale price. (3-16-04)

c. Non-food agricultural products must be at least fifty percent (50%) agricultural content by weight and that agricultural content must have been grown or raised in Idaho. (3-16-04)

03. Potatoes. Only certification marks owned or administered by the Idaho Potato Commission may be branded on potatoes grown in Idaho unless prior Idaho Potato Commission approval in writing is secured and granted for the use of additional words or designs. Any person or participant applying to the Idaho Preferred® program, with the intention to promote Idaho-grown potatoes or products made from Idaho-grown potatoes, shall provide proof of such permission prior to making application with the Department. (3-30-07)

04. Wine. Wines shall contain a minimum of ninety-five percent (95%) Idaho grapes. (4-6-05)

05. Nursery Stock. Nursery stock shall have been grown in Idaho a minimum of one (1) growing season or growing cycle. (4-6-05)

06. Beef and Beef Products. Beef and beef products shall come from cattle that: (4-6-05)

a. Were born, raised and harvested in the United States. No cattle that originate from outside the United States may qualify for the Idaho Preferred® logo. (3-30-07)

b. Reside in Idaho at least twelve (12) months prior to harvest. The twelve (12) months need not be contiguous, but must be verifiable. (4-6-05)

c. Reside their entire lives in Idaho if harvested prior to twelve (12) months of age. (4-6-05)

d. Are processed in federally inspected plants and meet marbling and age requirements for USDA grade Select or better. (4-6-05)

07. Apicultural Products. Products produced by honey bees including raw honey, wax, pollen, and propolis shall be one hundred percent (100%) Idaho origin. Processed honey shall be eighty percent (80%) Idaho origin. (4-6-05)

08. Exceptions. The Director shall have the authority to establish product qualification requirements specific to individual products and commodities by written order. (3-16-04)

201. -- 299. (RESERVED).

300. LOGO.

The Idaho Preferred® logo has been registered or filed for registration by the Department with the United States Library of Congress (Copyright registration), the United States Patent and Trademark Office (Certification Mark registration), the Idaho Secretary of State (Certificate of Trademark) and is afforded all protections provided for by law. The logo shall be used only by those participants in compliance with this chapter. The Director will establish by written order a logo style manual specifying approved colors, treatments, and fonts for the Idaho Preferred® logo. (3-30-07)

01. Description of the Idaho Preferred® Logo. The Idaho Preferred® logo is an oval background containing a snow-capped mountain range topped with a sunburst. The word "IDAHO" appears in Brand Idaho logotype, and a banner emblazoned with the word "PREFERRED" scrolls across the bottom of the logo. (3-30-07)

02. Graphic Depiction of the Idaho Preferred® Logo:



®

(3-30-07)

03. Approval for Use of Logo. Participants who wish to use the Idaho Preferred® logo on packaging, labels, flyers, promotional materials, or any other materials that will be viewed by the public must submit a proof of text and design to the Department for approval. Requests for approval must be submitted to the Idaho State Department of Agriculture, Marketing Division not less than five (5) working days prior to the proposed date of use. Written approval from the Department for logo use must be issued prior to use of the logo. Participants must provide a sample of the finished packaging, labels, flyers or promotional materials to the Department. (3-30-07)

301. SPECIAL PROMOTIONAL ACTIVITIES.

01. Activities. The Department may engage in special promotional activities including, but not limited to, advertising, product demonstrations, events, publicity, and cooperative activities. The Department may invite participants in the Idaho Preferred® program to participate in any activities. (3-30-07)

02. Fees. The Department may assess a separate fee for any special promotional activity. This fee will not exceed the actual cost of conducting the activity. (3-16-04)

302. OTHER IDAHO PROMOTION PROGRAMS.

01. Commodity-Specific Promotion Programs. Commissions, boards, associations, or other organizations authorized by statute to promote or regulate agricultural products grown, packed, or processed in the state of Idaho shall be the primary and principal promotion and certification mark and trademark organizations for the particular commodity they are authorized to promote or regulate. (3-16-04)

02. Ownership of Marks. Any trademarks, certification marks, brands, seals, logos or other identification marks, that are established, owned or used by such commissions, boards, associations or organizations shall remain their sole property. Any use or infringement of their ownership right is prohibited unless written permission is obtained from an authorized representative of the commission, board, association or organization. (3-16-04)

303. DISTRIBUTION OF PROMOTIONAL MATERIAL.

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 an organization as defined in this chapter. (3-30-07)

304. -- 309. (RESERVED).

310. SELF-CERTIFICATION.

All participants shall self-certify that all products marked with the Idaho Preferred® logo meet the qualification criteria as set forth in this chapter. Self-certification is subject to verification through the application and compliance process. (3-30-07)

311. COMPLIANCE.

01. Authority of Director. The Director shall have the authority to enter upon the premises of any participant to examine and copy any of the following items: (3-16-04)

- a.** Books, papers, records, ledgers, journals, electronically or magnetically recorded data; (3-16-04)
- b.** Computers and computer records or memoranda bearing on the usage of the Idaho Preferred® logo; and (3-30-07)
- c.** To secure all other information concerned in the enforcement of these rules. (3-16-04)

02. Random Compliance Inspection. The Director shall annually perform random compliance inspections. (3-16-04)

03. Samples. The participant shall, upon the request of the Director, provide samples of the participant's labels, packaging, merchandising, and promotional materials featuring the Idaho Preferred® logo. (3-30-07)

312. -- 314. (RESERVED).

315. VIOLATION.
Any person found in violation of these rules is subject to termination of participation privileges. (3-16-04)

316. -- 999. (RESERVED).

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