

Dear Senators GUTHRIE, Den Hartog, Jordan, and  
Representatives BOYLE, Troy, Erpelding:

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

IDAPA 42.01.01 - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking  
(Docket No. 42-0101-1900F) - Idaho Wheat Commission.

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the  
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research  
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative  
Services. The final date to call a meeting on the enclosed rules is no later than 07/18/2019. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 08/15/2019.

The germane joint subcommittee may request a statement of economic impact with respect to a  
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,  
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has  
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the  
memorandum attached below.



Eric Milstead  
Director

# Legislative Services Office

## Idaho State Legislature

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*Serving Idaho's Citizen Legislature*

### MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Agricultural Affairs Committee and the House Agricultural Affairs Committee

**FROM:** Deputy Division Manager - Katharine Gerrity

**DATE:** June 27, 2019

**SUBJECT:** Idaho Wheat Commission

IDAPA 42.01.01 - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking (Docket No. 42-0101-1900F) - Idaho Wheat Commission

The Idaho Wheat Commission submits notice of temporary and proposed rule at IDAPA 42.01.01. According to the commission, the rulemaking adopts and re-publishes existing and previously approved chapters. These rules were previously analyzed and reviewed by the Legislative Services Office upon their initial promulgation. There are several nonsubstantive changes in the nature of clean-up. No other changes from the existing rules have been noted.

This is a fee rule. The commission states that the rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. The rulemaking appears to be authorized pursuant to sections 22-3309 and 22-3315, Idaho Code.

cc: Idaho Wheat Commission  
Blaine Jacobson

**\*\*\* PLEASE NOTE \*\*\***

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

## IDAPA 42 – IDAHO WHEAT COMMISSION

DOCKET NO. 42-0101-1900F

### NOTICE OF OMNIBUS RULEMAKING – TEMPORARY AND PROPOSED FEE RULEMAKING

**EFFECTIVE DATE:** The effective date of the temporary rule listed in the descriptive summary of this notice is June 30, 2019.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 22-3309(2)(i), 22-3315(1), and 22-3315(5) Idaho Code.

**PUBLIC HEARING SCHEDULE:** Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

**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:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 42 rules of the Idaho Wheat Commission.

#### **IDAPA 42**

- IDAPA 42.01.01, *Rules of the Idaho Wheat Commission*

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. The expiration of these rules would hamper the ability of Idaho wheat growers to properly market their wheat in export and domestic channels and would force a shutdown of certain variety research programs.

The fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. An inability to collect the Wheat Tax would jeopardize funding for critical research programs, causing some of them to be suspended.

**FEE SUMMARY:** The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Wheat growers pay a Wheat Tax of \$.035/bushel of wheat marketed which is collected at point of first purchase and remitted to the Idaho Wheat Commission.

**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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Blaine Jacobson, Executive Director of Idaho Wheat Commission at (208) 332-1522.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

Blaine Jacobson  
Executive Director  
Idaho Wheat Commission  
821 W. State Street  
Boise, ID 83702  
Tel: (208) 334-2353  
Fax: (208) 334-2505

**IDAPA 42  
TITLE 01  
CHAPTER 01**

**IDAPA 42 – IDAHO WHEAT COMMISSION**

**42.01.01 – RULES OF THE IDAHO WHEAT COMMISSION**

**000. LEGAL AUTHORITY.**

In accordance with Section 22-3309, Idaho Code, the Idaho Wheat Commission has promulgated rules implementing the provisions of Title 22, Chapter 33, Idaho Code. (3-14-16)

**001. TITLE AND SCOPE.**

**01. Title.** These rules are titled IDAPA 42.01.01, “Rules of the Idaho Wheat Commission,” IDAPA 42, Title 01, Chapter 01. (3-14-16)

**02. Scope.** Pursuant to Section 22-3301, Idaho Code, the rules of the Idaho Wheat Commission promote the public health and welfare of the citizens of our state by providing means for the protection, promotion, study, research, analysis and development of markets concerning the growing and marketing of Idaho wheat. (3-14-16)

**002. WRITTEN INTERPRETATIONS.**

The Commission may have written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. These documents are available for public inspection at the Commission office. (3-14-16)

**003. ADMINISTRATIVE APPEALS.**

The Idaho Rules of Administrative Procedure of the Attorney General on contested cases, IDAPA 04.11.01, “Idaho Rules of Administrative Procedure,” Section 100, et seq., apply. (3-14-16)

**004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into these rules. (3-14-16)

**005. OFFICE INFORMATION.**

**01. Street Address.** The office is located at 821 W. State Street, Boise, Idaho 83702. (3-14-16)

**02. Mailing Address.** The mailing address is P. O. Box 83720, Boise, Idaho 83720-0099. (3-14-16)

**03. Telephone Number.** The telephone number is (208) 334-2353. (3-14-16)

**04. Facsimile Number.** The fax number is (208) 334-2505. (3-14-16)

**05. Website Address.** The website address is <http://idahowheat.org/>. (3-14-16)

**06. Office Hours.** The office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, excluding state holidays. (3-14-16)

**006. PUBLIC RECORDS ACT COMPLIANCE.**

Commission records are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (3-14-16)

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

**010. DEFINITIONS.**

The definitions set forth in Section 22-3303, Idaho Code, apply to this chapter. (3-14-16)

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

**100. WHEAT TAX RETURN FORM.**

**01. Form.** Wheat Tax Return forms are available at the Commission office for use by the first purchaser (buyer) of Idaho grown wheat in transmitting the Idaho wheat tax to the Commission. (3-14-16)

**02. Procedures.** At the end of each quarter, buyers shall execute the Wheat Tax Return (form. One (1) copy of the form and a check covering the entire amount of all wheat tax collections made during the quarter shall be mailed to the Executive Director of the Commission not later than the fifteenth day of the month at the end of each quarter (October 15, January 15, April 15, and July 15, respectively) of each calendar year. If no wheat has been purchased during any quarter, one (1) copy of the Wheat Tax Return form declaring that no wheat has been purchased, shall be signed and mailed to the Executive Director of the Commission. (3-14-16)

**101. MIXTURES.**

When the grain is purchased as wheat, the tax must be collected on the full net weight of the grain purchased. The tax must also be collected on any mixtures containing fifty percent (50%) or more of wheat. (3-14-16)

**102. NET WEIGHT.**

The tax must be collected on the net weight of the wheat after deduction of dockage and smut, and not upon the gross weight. (3-14-16)

**103. TRUCKERS.**

When a trucker purchases wheat from a grower, it is his responsibility under the law to deduct the tax and remit the amount to the Commission. The trucker in such instances is liable for the deduction of tax. Those who purchase wheat from such truckers are not directly liable for the deduction of tax, but buyers should make sure that the trucker has in fact purchased the wheat from a grower and is not the person who produced the wheat. (3-14-16)

**104. WHEAT DELIVERED ON ACCOUNT OR EXCHANGED FOR OTHER WHEAT.**

When wheat is delivered and credited to the account of a grower who is purchasing mixed feeds and other commodities, such transactions are really sales of the wheat delivered. In these cases, the buyer must deduct the tax from the amount credited to the grower and remit to the Commission just as though the sale had been made for cash. On the other hand, if the grower delivers the wheat in exchange for other wheat and no sale of the wheat is involved, the tax should not be deducted. (7-1-93)

**105. END USE.**

Idaho wheat is subject to tax when it is first sold or contracted into commercial channels. Beside traditional uses of wheat for flour milling, domestic and export, commercial channels include sale of wheat for use as feed, or any industrial or chemurgic use. (3-14-16)

**106. -- 199. (RESERVED)**

**200. PENALTY FOR LATE PAYMENT OF WHEAT TAX.**

**01. Interest Penalties.** Any person or firm who makes payment of wheat tax collections to the Commission at a date later than the fifteenth day of the month at the end of each quarter as prescribed in Subsection 100.02 of these rules, shall be subject to a late payment penalty of fifteen percent (15%) per annum on the amount due, unless that person or firm, within fifteen (15) days of the date, notifies the Commission in writing of any delay in payment and submits the payment of wheat tax collections within thirty (30) days of the prescribed due date. (3-14-16)

**02. Additional Penalties.** The Commission is entitled, in addition to the penalty of fifteen percent (15%) per annum, to recover from the buyer, all costs, fees, and reasonable attorney's fees incurred in collecting the wheat tax collections and penalty as prescribed in Section 22-3315, Idaho Code. (3-14-16)

**201. -- 299. (RESERVED)**

**300. WHEAT UNDER COMMODITY CREDIT CORPORATION LOANS.**

**01. Payee.** The Commission will be named as payee to receive three and one half cents (\$.3½) per bushel when the producer's note and loan agreement is executed by the Farm Service Agency (FSA). In such cases, the lending agency will send the tax directly to the Commission. When the producer's note and loan agreement shows that the tax has been deducted and sent to the Commission, it will not be necessary for the buyer to deduct the tax when the wheat is purchased. (3-14-16)

**02. Tax.** Since the legislature has made the tax a lien prior to all other liens and encumbrances of the wheat, it is necessary for the grain buyer to make sure the tax has been paid in order to obtain clear title to the wheat. The tax should be deducted in all cases where there is not evidence that the tax was previously paid by a lending agency. In case errors occur and the tax is deducted by a lending agency and again deducted by a grain buyer, refund will be made by the Commission. (3-14-16)

**301. INVOICES AND RECORDS.**

**01. Invoices.** Section 22-3316, Idaho Code, provides for invoices to be delivered to the grower for each purchase. The Wheat Commission is not providing a special form for this purpose and suggests that buyers use the final settlement vouchers of accounts of sale commonly used in Idaho. The amount of the Idaho state wheat tax deducted must be shown on each settlement voucher. (7-1-93)

**02. Vouchers.** Buyers are not required to send the Commission copies of their settlement vouchers issued to individual growers but should keep copies available for examination by representatives of the Commission at a later date. Where it is not the practice to issue settlement vouchers of accounts of sale, buyers should be sure that they have accurate records of all wheat bought from growers and the amount of wheat bought from each grower. (7-1-93)

**03. Delivery of Documents to Commission.** The first purchaser of wheat shall complete and return the Report of Tax, or equivalent, to the Commission office at the end of each production year (July 1 through June 30). The report shall be due on the same date as the final quarter wheat tax as specified in Section 22-3315(1), Idaho Code, and shall include the following: (3-28-18)

**a.** Name or names of the grower and seller; and (3-28-18)

**b.** Address or addresses of the grower and seller. (3-28-18)

**302. -- 999. (RESERVED)**