

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

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

IDAPA 42.01.01 - Rules of the Idaho Wheat Commission - Notice of Omnibus Rulemaking (Fee
Rule) - Proposed Rule (Docket No. 42-0101-2100F).

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 11/12/2021. 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 12/10/2021.

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

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



Terri Kondeff
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

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

FROM: Deputy Division Manager - Katharine Gerrity

DATE: October 26, 2021

SUBJECT: Idaho Wheat Commission

IDAPA 42.01.01 - Rules of the Idaho Wheat Commission - Notice of Omnibus Rulemaking (Fee Rule) - Proposed Rule (Docket No. 42-0101-2100F)

Summary and Stated Reasons for the Rule

The Idaho Wheat Commission submits notice of proposed rule at IDAPA 42.01.01 - Rules of the Idaho Wheat Commission. According to the commission, the rulemaking publishes the rule chapter previously submitted to and reviewed by the Legislature.

Negotiated Rulemaking/Fiscal Impact

The commission states that negotiated rulemaking was not conducted "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." The commission notes that there is no fee or charge imposed or increased beyond what was previously submitted to and reviewed by the Legislature in prior rules. Fees charged are three and one half cents per bushel of wheat assessed at the first point of sale. No fiscal impact is anticipated.

Statutory Authority

The rulemaking appears to be authorized pursuant to chapter 33, title 22, Idaho Code.

cc: Idaho Wheat Commission
Casey Chumrau

*** PLEASE NOTE ***

Paul Headlee, Deputy Director Legislative Services Office	Kristin Ford, Manager Research & Legislation	Keith Bybee, Manager Budget & Policy Analysis	April Renfro, Manager Legislative Audits	Glenn Harris, Manager Information Technology
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Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

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

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. 42-0101-2100F (FEE RULE)

NOTICE OF OMNIBUS RULEMAKING – PROPOSED RULEMAKING

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 22, Chapter 33, 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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This proposed rulemaking publishes the following rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 42, rules of the Idaho Wheat Commission:

IDAPA 42

- 42.01.01 *Rules of the Idaho Wheat Commission.*

FEE SUMMARY: This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature in the prior rules. The following is a specific description of the fees or charges: three and one half cent (\$0.035) per bushel of wheat assessed at the first point of sale.

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 FY2022 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 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 proposed rule(s) attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule(s), contact Casey Chumrau, Executive Director, 208-334-1522.

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 October 20, 2021.

Casey Chumrau, Executive Director
Idaho Wheat Commission
821 W. State Street
Boise, ID 83702

Phone: (208) 334-2353
Fax: (208) 334-2505
casey@idahowheat.org

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. ()

001. SCOPE.

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. ()

002. -- 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. ()

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. ()

101. MIXTURES.

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

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. ()

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. ()

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. ()

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. ()

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, is 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. ()

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. ()

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. ()

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. ()

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. ()

02. Vouchers. Buyers do not need 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. ()

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 is due on the same date as the final quarter wheat tax as specified in Section 22-3315(1), Idaho Code, and along with the following: ()

a. Name or names of the grower and seller; and ()

b. Address or addresses of the grower and seller. ()

302. -- 999. (RESERVED)

PROPOSED RULE COST/BENEFIT ANALYSIS

Section 67-5223(3), Idaho Code, requires the preparation of an economic impact statement for all proposed rules imposing or increasing fees or charges. This cost/benefit analysis, which must be filed with the proposed rule, must include the reasonably estimated costs to the agency to implement the rule and the reasonably estimated costs to be borne by citizens, or the private sector, or both.

Department or Agency: Idaho Wheat Commission

Agency Contact: Casey Chumrau

Phone: (208) 334-2353

Date: 10/20/2021

IDAPA, Chapter and Title Number and Chapter Name:

IDAPA 42.01.01 Rules of the Idaho Wheat Commission

Fee Rule Status: X **Proposed** _____ **Temporary**

Rulemaking Docket Number: 42-0101-2100F

STATEMENT OF ECONOMIC IMPACT:

Fee are unchanged from the previous year's temporary fee rule dockets. The fees or charges, authorized in Section 22-3315, Idaho Code, allow for a three and one-half cents per bushel collection at point of first purchase.