

22-1205. ADMINISTRATION AND ENFORCEMENT OF ACT. The administration of this act shall be vested in the Idaho potato commission which shall have power to prescribe and enforce suitable and reasonable rules for the enforcement of the provisions thereof

22-1207. POWERS AND DUTIES OF COMMISSION. The powers and duties of the commission shall include the following:

- (1) To adopt and from time to time alter, rescind, modify and/or amend all proper and necessary rules and orders for the exercise of its powers and the performance of its duties under this chapter.



State of Idaho  
**DIVISION OF FINANCIAL MANAGEMENT**  
 Executive Office of the Governor

Tracking #: A997-2018-4

Status: DFM Analyst: Recommended 06/07/18

Gov's Office: Recommended 06/07/18

DFM Admin: Approved 06/07/18

## Administrative Rules Request Form

|  |                            |   |                                   |
|--|----------------------------|---|-----------------------------------|
| <b>Agency Name:</b> Miscellaneous Commissions  |                            | <b>Submitted on:</b> 06/04/2018   |                                   |
| <b>Primary Contact:</b> Patrick Kole   | <b>Phone:</b> 120-851-4420 | <b>Email:</b> patrick.kole@potato.idaho.gov   |                                   |
| <b>Secondary Contact:</b> Gracie Bingham   | <b>Phone:</b> 208-514-4206 | <b>Email:</b> gracie.bingham@potato.idaho.gov   |                                   |
| <b>Person Authorizing Rule:</b> Patrick Kole   | <b>Phone:</b> 120-851-4420 | <b>Email:</b> patrick.kole@potato.idaho.gov   |                                   |
| <b>Statutory Authority for the rule making (Idaho Code, Federal Statute or Regulation):</b><br>Idaho Code Chapter 12, Sections 22-1205 and 1207  |                            |   |                                   |
| <b>Title, Chapter, and Possible Docket (IDAPA) Number:</b> 29.01.03 - Rules Governing Nominations for Appointment as a Commissioner to the Idaho Potato  |                            |   |                                   |
| <b>This rule is:</b> <input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Temporary <input type="checkbox"/> Proposed/Temporary   |                            |   | <b>Effective Date:</b> 08/30/2018 |
| <b>If this is a temporary rule:</b>  |                            |   |                                   |
| <input type="checkbox"/> Necessary to protect the public health, safety, or welfare; or<br><input type="checkbox"/> Compliance with deadlines in amendments to governing law or federal programs; or<br><input checked="" type="checkbox"/> Conferring a benefit.  |                            |   |                                   |
| <b>Please explain:</b>   |                            |   |                                   |
| Our current nominating process for selecting Commissioners has never been outlined by administrative rules and our nomination meetings in March 2018 revealed deep flaws in the process. We need to clarify our nominating processes through administrative rulemaking to better serve the Idaho potato industry. Adopting this temporary rule will confer a benefit on the industry by providing a sound method for electing the best-qualified Commissioners to serve the Idaho potato industry. The rule is temporary because the nomination process in part hinges on updating our statutes. Modernizing statutory definitions to reflect the current Idaho potato industry and redrawing more proportional grower districts on the Commission will also confer a substantial benefit on the industry. A temporary rule is the first crucial step we need to take in order to confer the benefit of fair nomination practices, more equitable district representation, and definitions that match the realities of our industry today. |                            |   |                                   |
| <b>If this is a temporary rule which imposes a fee or charge, provide justification as described in Idaho Code 67-5226(2):</b>   |                            |   |                                   |
| Not applicable.  |                            |   |                                   |
| <b>Agency has determined according to Idaho Code 67-5220(1):</b>   |                            |   |                                   |
| <input checked="" type="checkbox"/> This rule is to be negotiated  |                            |   |                                   |
| Agency certifies that the rule : <input type="checkbox"/> has been <input checked="" type="checkbox"/> will be negotiated with interested persons as outlined in Idaho Code 67-5220(3).  |                            |   |                                   |
| <input type="checkbox"/> Negotiation of this rule is not feasible  |                            |   |                                   |
| <input type="checkbox"/> Rule is temporary; or   |                            | <input type="checkbox"/> Lack of identifiable representatives of affected interests; or |                                   |
| <input type="checkbox"/> Rule is simple in nature; or  |                            | <input type="checkbox"/> Affected interests are not likely to reach consensus; or       |                                   |
| <input type="checkbox"/> Other.  |                            |   |                                   |
| <b>Please explain:</b>   |                            |   |                                   |
| <b>Provide a fiscal impact statement for all programs affected. Be sure to reflect both positive and negative impacts and to include all fund sources including both the General Fund and dedicated funds:</b>   |                            |   |                                   |
| This rulemaking will have no fiscal impact.  |                            |   |                                   |
| <b>Provide a short explanation of the need for this rule:</b>  |                            |   |                                   |
| Our March commissioner nomination meetings resulted in discrepancies we need to solve by clarifying our nominating procedures in administrative rules. To prevent future discrepancies we propose to add a chapter clarifying our nominating procedures.   |                            |   |                                   |

Does this rule adopt amendments to materials previously incorporated by reference?  Yes  No **Filename:**

**Provide a short summary of the changes this rule makes:**

This rulemaking will specify our commissioner nomination procedures, including commissioner eligibility, nominating process, and voting methods. Our proposed chapter will be titled IDAPA 29.01.03 - "Rules Governing Nominations and Elections for Candidates to be Selected for Commissioner."

**Provide a list of those persons or interested group(s) affected by the rule:**

Idaho potato growers, shippers, and processors.

**DFM Analyst:** Amber Christofferson **Recommendation:**  Recommended  Not Recommended  Pending **Date:** 06/07/2018

**Comments:**

The Commission has been directed by Dennis to run this as a temporary rule and then to rerun it as a proposed after next session. This rule is necessary for their next commissioner nomination meeting.

**Special Assistant:** Katrine Franks **Recommendation:**  Recommended  Not Recommended **Date:** 06/07/2018

**Comments:**

Creates new rule section clarifying election procedures that have already been in place. Proceed.

**DFM Administrator Action:** 06/07/2018

Authorized to Advance to Rulemaking Process, DFM to review draft rule prior to publication

Approved  Not Approved

## IDAPA 29 – IDAHO POTATO COMMISSION

### 29.01.03 – RULES GOVERNING NOMINATIONS AND ELECTIONS FOR CANDIDATES TO BE SELECTED FOR COMMISSIONER

DOCKET NO. 29-0103-1801 (NEW CHAPTER)

#### NOTICE OF INTENT TO PROMULGATE RULES – NEGOTIATED RULEMAKING

**AUTHORITY:** In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 22-1205 and 22-1207, Idaho Code.

**MEETING SCHEDULE:** Public meetings on the negotiated rulemaking will be held as follows:

| <b>NEGOTIATED RULEMAKING MEETINGS</b><br>(ALL TIMES ARE LOCAL)           |   |   |
|--|---|---|
| <b>Tuesday, July 24, 2018</b><br><b>4:00 to 6:00pm</b>                   | <b>Tuesday, July 31, 2018</b><br><b>5:00 to 9:00 pm</b>                                     | <b>Wednesday, August 1, 2018</b><br><b>5:00 to 9:00 pm</b>                |
| <b>IPC Offices</b><br>661 S. Rivershore Ln., Ste. 230<br>Eagle, ID 83616 | <b>Burley Inn<br/>&amp; Convention Center</b><br>800 N. Overland Avenue<br>Burley, ID 83318 | <b>Shoshone-Bannock Hotel</b><br>777 Bannock Trail<br>Fort Hall, ID 83203 |

The meeting sites will be accessible to persons with disabilities, if needed. Requests for accommodation must be made not later than five (5) days prior to the meeting to the agency address below.

**METHOD OF PARTICIPATION:** Persons wishing to participate in the negotiated rulemaking must do the following:

Interested members of the public who wish to participate must submit any written comments, questions, recommendations, or ideas to the Idaho Potato Commission addressed to Patrick Kole, PO Box 1670, Eagle, ID 83616 or by email to [Patrick.kole@potato.idaho.gov](mailto:Patrick.kole@potato.idaho.gov). Individuals may also attend the public meetings to be conducted on the above dates during which the Idaho Potato Commission will allow oral comments or presentations to be made.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusion reached during the negotiated rulemaking will be addressed in a written summary. The summary will be made available to interested persons who contact the agency or, if the agency chooses, the summary may be posted on the agency website.

**DESCRIPTIVE SUMMARY AND STATEMENT OF PURPOSE:** The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

This rulemaking will specify our commissioner nomination procedures, including commissioner eligibility, nominating process, and voting methods. Our proposed chapter will be titled IDAPA 29.01.03 - "Rules Governing Nominations and Elections for Candidates to be Selected for Commissioner."

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES:** For assistance on technical questions concerning this negotiated rulemaking or to obtain a preliminary draft copy of the rule text contact Patrick Kole, VP of Legal and Government Affairs, at (208) 514-4208. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Idaho Potato Commission's web site at the following web address: [www.idahopotato.com](http://www.idahopotato.com).

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, August 15.

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**IDAHO POTATO COMMISSION**  
**Rules for Candidates to be Selected for Commissioner**

**Docket No. 29-0103-1801**  
**Negotiated Rulemaking**

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Dated this 8th day of June, 2018.

Patrick Kole, VP Legal and Government Affairs  
Idaho Potato Commission  
661 S. Rivershore Ln. Ste. 230  
PO Box 1670  
Eagle, ID 83616  
Phone: (208) 514-4208  
Fax: (208) 334-2274

# **TEMPORARY RULES**

## **COMMITTEE RULES**

### **REVIEW BOOK**

**Submitted for Review Before**  
**Senate Agricultural Affairs Committee**  
**65th Idaho Legislature**  
**First Regular Session – 2019**



*Prepared by:*

*Office of the Administrative Rules Coordinator  
Department of Administration*

*January 2019*

**SENATE AGRICULTURAL AFFAIRS COMMITTEE**

**ADMINISTRATIVE RULES REVIEW**

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**IDAPA 29 – IDAHO POTATO COMMISSION**  
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**COMMISSIONER TO THE IDAHO POTATO COMMISSION**  
**DOCKET NO. 29-0103-1802 (NEW CHAPTER)**  
**NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is August 29, 2018.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 22-1205 and 22-1207, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

Our March commissioner nomination meetings resulted in discrepancies we need to solve by clarifying our nominating procedures in administrative rules. To prevent future discrepancies we propose to add a chapter clarifying our nominating procedures. We intend to submit this rule as a proposed rule after the next legislative session.

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

Our current nominating process for selecting Commissioners has never been outlined by administrative rules and our nomination meetings in March 2018 revealed deep flaws in the process. We need to clarify our nominating processes through administrative rulemaking to better serve the Idaho potato industry.

Adopting this temporary rule will confer a benefit on the industry by providing a sound method for electing the best-qualified Commissioners to serve the Idaho potato industry. The rule is temporary because the nomination process in part hinges on updating our statutes. Modernizing statutory definitions to reflect the current Idaho potato industry and redrawing more proportional grower districts on the Commission will also confer a substantial benefit on the industry. A temporary rule is the first crucial step we need to take in order to confer the benefit of fair nomination practices, more equitable district representation, and definitions that match the realities of our industry today.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), 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 rulemaking will have no fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Patrick Kole, VP of Legal and Government Affairs, at (208) 514-4208.

Dated this 31st day of August, 2018.

Patrick Kole, VP Legal and Government Affairs  
Idaho Potato Commission  
661 S. Rivershore Ln. Ste. 230  
PO Box 1670  
Eagle, ID 83616  
Phone: (208) 514-4208  
Fax: (208) 334-2274



**FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 29-0103-1802**

**IDAPA 29**  
**TITLE 01**  
**CHAPTER 03**

**29.01.03 – RULES GOVERNING NOMINATIONS FOR APPOINTMENT AS  
A COMMISSIONER TO THE IDAHO POTATO COMMISSION**

**000. LEGAL AUTHORITY.**

These rules are adopted under the legal authority of the Idaho Potato Commission Law, Chapter 12, Title 22, Idaho Code. (8-29-18)T

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is IDAPA 29.01.03, “Rules Governing Nominations for Appointment as a Commissioner to the Idaho Potato Commission.” (8-29-18)T

**02. Scope.** These rules govern the way nominations are made by eligible growers, shipper and processors for selection by the Governor to a position of Commissioner of the Idaho Potato Commission. (8-29-18)T

**03. Citation.** The official citation of these rules is IDAPA 29.01.02.000, et seq. For example, this rule is cited as IDAPA 29.01.03.001.03. In documents submitted to the Commission or issued by the Commission, these rules may be cited as Idaho Potato Commission “Rules Governing Nominations for Appointment as a Commissioner to the Idaho Potato Commission,” IDAPA 29.01.03. (8-29-18)T

**002. WRITTEN INTERPRETATIONS – AGENCY GUIDELINES.**

For rulemakings conducted before July 1, 1993, written interpretations to these rules in the form of explanatory comments accompanying the order of proposed rulemaking and review of comments submitted in the order adopting these rules are maintained in the files of the Secretary of the Idaho Potato Commission and are available from the office of the Commission Secretary. For rulemakings conducted after July 1, 1993, written interpretations to these rules in the form of explanatory comments accompanying the notice of proposed rulemaking that originally proposed the rules and review of comments submitted in the rulemaking decision adopting these rules maintained in the files of the Secretary of the Idaho Potato Commission and are available from the office of the Commission Secretary. The Commission Secretary may be contacted in writing at the Idaho Potato Commission, P.O. Box 1670, Eagle, Idaho 83616, or may be reached by telephone at (208) 334-2350. (8-29-18)T

**003. ADMINISTRATIVE APPEALS.**

Administrative appeals are governed under the Commission’s Rules of Procedure, IDAPA 29.01.01.000, et. seq. (8-29-18)T

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference into these rules. (8-29-18)T

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

The principal office of the Commission is in Eagle, Idaho. This office is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The Commission’s telephone number is (208) 334-2350. The Commission’s FAX number is (208) 334-2274. The Commission’s mailing address: Idaho Potato Commission, Post Office Box 1670, Eagle, Idaho 83616. The street address of the Commission is: 661 S. Rivershore Lane, Suite 230, Eagle, Idaho 83616. All

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**IDAHO POTATO COMMISSION**  
**Nominations for Appointment as a Commissioner Rules**
**Docket No. 29-0103-1802**  
**TEMPORARY RULE**


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documents filed in all proceedings must be filed with the Commission at one (1) of these addresses. (8-29-18)T

**006. PUBLIC RECORDS ACT COMPLIANCE.**

Except as provided by Sections 052 and 233 of IDAPA 29.01.01, "Rules of Procedure of the Idaho Potato Commission," and Title 74, Chapter 1, Idaho Code, all materials filed with the Commission pursuant to these rules and all materials issued by the Commission pursuant to these rules are public documents subject to inspection, examination and copying. (8-29-18)T

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

The definitions set forth in Section 22-1204, Idaho Code, shall apply to this chapter. (8-29-18)T

**011. COMMODITY COMMISSION — NOMINATIONS — ELECTIONS — VACANCIES.**

**01. Notice.** On or prior to January 21 of each year, the Commission will mail notice to all affected growers, shippers and processors with a call for nominations for the position of Commissioner of the Commission. The notice shall give the final date for filing nominations, which shall be on or before February 21. The notice shall also advise that nominating petitions must be signed by three (3) persons qualified to vote for such candidates for a grower position. The designated shipper or processor voting representative to the Commission for Commissioner nominations may nominate up to three (3) qualified persons. (8-29-18)T

**02. Ballots.** On or before March 1, the Commission shall mail ballots to all affected growers, shippers and processors. The mailing list of those eligible to receive a ballot and vote will be compiled from those paying assessments on potatoes to the Commission. Grower ballots shall only be mailed to growers within a district where a nomination is required. Ballots shall be required to be returned to the Commission by March 31. The mail ballot shall be conducted in a manner so that it shall be a secret ballot. Each candidate shall have the opportunity to include a statement explaining their candidacy in a format established by the Commission. (8-29-18)T

**03. Grower Commissioner.** Grower Commissioner nominees must be nominated from the districts established in Section 22-1202, Idaho Code. Three (3) nominees will be submitted to the Governor for consideration. (8-29-18)T

**04. Shipper Commissioner.** Shipper Commissioner nominees may be nominated from any district. Three (3) nominees will be submitted to the Governor for consideration. (8-29-18)T

**05. Processor Commissioner.** Processor Commissioner nominees may be nominated from any district. Three (3) nominees will be submitted to the Governor for consideration. (8-29-18)T

**06. Nominee Voting.** Should there only be three (3) nominees for a position, voting shall not be necessary. Should there be more than three (3) nominees, and if prior to appointment by the governor a candidate withdraws or becomes disqualified for appointment, the Commission shall submit replacement nominees to the Governor in the order the votes were tallied. (8-29-18)T

**07. Vacancy.** In the event of a vacancy on the Commission, a special nomination proceeding shall be held as near as possible with the timelines set forth above. (8-29-18)T

**012. AFTER ANY VOTE — NOMINEES PROVIDED RESULTS — DISPUTES.**

**01. Results.** Upon completion of any nomination vote, the Commission shall tally the results of the vote and provide the results to the nominees. (8-29-18)T

**02. Disputes.** If a nominee disputes the results of a vote, that nominee, within ten (10) days of the announced results, shall provide in writing a statement of why he believes the vote is disputed and request a recount. (8-29-18)T

**03. Finalization.** Once the vote is tallied and distributed, all disputes are resolved, and all matters in a

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**IDAHO POTATO COMMISSION**  
**Nominations for Appointment as a Commissioner Rules****Docket No. 29-0103-1802**  
**TEMPORARY RULE**

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vote are finalized, the individual ballots may be destroyed. (8-29-18)T

**013. QUALIFICATIONS.**

**01. Membership Qualifications.** Commission members shall be citizens and residents of Idaho over the age of eighteen (18) years. (8-29-18)T

**02. Grower Qualifications.** Grower members must meet the qualifications set forth in Section 010 and Subsection 011.03 of these rules, and not be delinquent in payment of their assessments. The qualifications of grower members of the commission as herein set forth must continue during their term of office. (8-29-18)T

**03. Shipper Qualifications.** Shipper members must meet the qualifications set forth in Section 010 of these rules, and not be delinquent in payment of their assessments. The qualifications of shipper members of the commission as herein set forth must continue during their term of office. (8-29-18)T

**04. Processor Qualifications.** Processor members must meet the qualifications set forth in Section 010 of these rules and shall not be delinquent in payment of their assessments above. The qualifications of processor members of the commission as herein set forth must continue during their term of office. (8-29-18)T

**05. Voting.** Each grower, shipper, or processor may only vote on the one ballot for which they are eligible to cast a vote and may only vote one time for each position to be filled on behalf of himself, partner(s), corporation, association, and/or any other business unit. A grower, shipper, or processor is entitled to only one vote no matter how many farms, packing facilities, processing plants, entities, or any other type of business organization he has an ownership interest in. (8-29-18)T

**06. Term.** A designation by a person as a grower, shipper or processor shall continue for the succeeding three years, unless there has been a sufficient change in circumstance, as determined by the commission, to warrant a change in designation. (8-29-18)T

**014. -- 999. (RESERVED)**

RS26448



LEGISLATURE OF THE STATE OF IDAHO



Sixty-fifth Legislature

First Regular Session - 2019

IN THE \_\_\_\_\_

BILL NO. \_\_\_\_\_

BY \_\_\_\_\_

AN ACT

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RELATING TO THE IDAHO POTATO COMMISSION; AMENDING SECTION 22-1202, IDAHO CODE, TO PROVIDE THAT MEMBERS OF THE IDAHO POTATO COMMISSION SHALL SERVE AT THE PLEASURE OF THE GOVERNOR, TO REVISE PROVISIONS RELATING TO DISTRICTS, TO REMOVE CERTAIN MEETING PROVISIONS, TO PROVIDE FOR RULEMAKING, AND TO REVISE TERM OF OFFICE PROVISIONS; AMENDING SECTION 22-1204, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING CHAPTER 12, TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 22-1204A, IDAHO CODE, TO PROVIDE FOR THE DESIGNATION OF VOTING REPRESENTATIVES AND TO PROVIDE THAT DESIGNATED REPRESENTATIVES MAY VOTE ON ONLY ONE BALLOT IN ANY ELECTION; AND DECLARING AN EMERGENCY.

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Be It Enacted by the Legislature of the State of Idaho:

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SECTION 1. That Section 22-1202, Idaho Code, be, and the same is hereby amended to read as follows:

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22-1202. POTATO COMMISSION CREATED. There is hereby created and established in the department of self-governing agencies the "Idaho potato commission" to be composed of nine (9) practical potato persons, resident citizens of the state of Idaho for a period of three (3) years prior to their appointment, each of whom has had active experience in growing, or shipping, or processing of potatoes produced in the state of Idaho. At least five (5) members of said commission shall be growers who are actually now engaged in the production of potatoes. Two (2) of the members shall be shippers who are actually now engaged in the shipping of potatoes, and two (2) of the members shall be processors who are actually now engaged in the processing of potatoes. The qualifications for members of said commission as above required shall continue throughout their respective terms of office, and members shall serve at the pleasure of the governor. Three (3) growers shall be nominated for each grower vacancy that occurs, from which the governor shall appoint one (1). Two (2) grower commissioners shall be appointed from the district known as District No. 1, consisting of the counties of Oneida, Franklin, Bear Lake, Caribou, Bannock, Power, Bingham, Bonneville, Teton, Madison, Jefferson, Fremont, Clark, and Butte, ~~Custer, and Lemhi~~; one (1) grower commissioner shall be appointed from the district known as District No. 2A, consisting of the counties of Twin Falls, Jerome, Lincoln, Camas, Elmore, Boise, Valley, and Gooding; one (1) grower commissioner shall be appointed from the district known as District No. 2B, consisting of the counties of Cassia, Minidoka, Blaine, Custer, and Lemhi; and one (1) grower commissioner shall be appointed from the district known as District No. 3, consisting of the counties of Owyhee, Ada, Canyon, Gem, Payette, Washington, Adams, Idaho, Lewis, Nez Perce, Clearwater, Latah, Benewah, Shoshone, Kootenai, Bonner, and Boundary. Three (3) shippers shall be nominated for each shipper vacancy that occurs, from which the governor shall appoint one



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1 (1). Shipper commissioners do not necessarily need to be nominated from geo-  
 2 graphical areas. Three (3) processors shall be nominated for each processor  
 3 vacancy that occurs, from which the governor shall appoint one (1). Proces-  
 4 sor commissioners do not necessarily need to be nominated from geographical  
 5 areas. Nominations must be made thirty (30) days prior to appointment. All  
 6 nominations must give equal consideration to all who are eligible for ap-  
 7 pointment as defined in this act. ~~The Idaho potato commission shall hold~~  
 8 ~~separate meetings of the growers, shippers, or processors, as the nomina-~~  
 9 ~~tions to be made shall require, in the various districts, to determine who~~  
 10 ~~shall be nominated for appointment. Notice of said meetings shall be given~~  
 11 ~~by publication in one (1) newspaper published in each county of the district~~  
 12 ~~or districts in which said nominations are to be made, and the notice shall be~~  
 13 ~~published in two (2) issues of each newspaper, the first to be approximately~~  
 14 ~~thirty (30) days and the second approximately ten (10) days before said meet-~~  
 15 ~~ing. The notice shall state the purpose, time and place of said meeting. All~~  
 16 ~~meetings held for the selection of nominees shall be held prior to March 31 of~~  
 17 ~~the year the appointment or appointments are to be made. The commission shall~~  
 18 ~~adopt rules for nominating commissioners to serve on the commission.~~

19 The term of office shall be three (3) years and no commissioner shall  
 20 serve more than two (2) consecutive terms. The commissioners shall elect a  
 21 chairman for a term of one (1) year.

22 Vacancies shall be filled as terms expire. Each of such commissioners  
 23 shall hold office until his successor has been appointed and qualified. The  
 24 term of office shall commence on September 15 of the year of appointment and  
 25 expire on ~~September 14~~ August 31 of the last year of the term of office.

26 A majority of the members of said commission shall constitute a quorum  
 27 for the transaction of all business and the carrying out of the duties of said  
 28 commission. Before entering on the discharge of their duties as members of  
 29 said commission, each member shall take and subscribe to the oath of office  
 30 prescribed for state officers.

31 Each member of the commission shall be compensated as provided by sec-  
 32 tion 59-509(j), Idaho Code, provided however, that compensation paid to mem-  
 33 bers of the commission from and after April 1, 1992, shall not be considered  
 34 salary as defined in section 59-1302(31), Idaho Code.

35 SECTION 2. That Section 22-1204, Idaho Code, be, and the same is hereby  
 36 amended to read as follows:

37 22-1204. DEFINITIONS. As used in this act:

- 38 1. The term "commission" means the Idaho potato commission.
- 39 2. The term "person" means individual, partnership, corporation, asso-  
 40 ciation, grower and/or any other business unit.
- 41 3. The term "potatoes" means and includes only potatoes sold or in-  
 42 tended for human consumption and grown in the state of Idaho.
- 43 4. "Shipment" of potatoes shall be deemed to take place when the pota-  
 44 toes are loaded within the state of Idaho, in a car, bulk, truck or other con-  
 45 veyance in which the potatoes are to be transported for sale or otherwise.
- 46 5. The term "dealer" means and includes any person engaged in the busi-  
 47 ness of buying, receiving, processing, or selling potatoes for profit or re-  
 48 muneratation.



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1           6. The term "shipper" means and includes one who is properly licensed  
2 under federal and state laws and actively engaged in the packing and ship-  
3 ping of potatoes in the primary channel of trade in interstate commerce in  
4 the state of Idaho, and who ships more than he produces.

5           7. The term "grower" means one who ~~is actively engaged in the production~~  
6 ~~of farm products, primarily potatoes, and who is not engaged in the shipping~~  
7 ~~or processing of potatoes:~~

8           (a) Is actively engaged in the production of potatoes in the state of  
9 Idaho and derives a substantial portion of his income therefrom;

10           (b) Is not primarily engaged in the shipping or processing of potatoes;

11           (c) Grows potatoes on five (5) or more acres; and

12           (d) Has been actively engaged in growing potatoes in the state of Idaho  
13 for a period of at least three (3) years prior to nomination and has paid  
14 assessments to the commission on potatoes in each of the preceding three  
15 (3) calendar years.

16           8. Potatoes shall be deemed to be delivered into the primary channel of  
17 trade when any such potatoes are sold or delivered for shipment, or delivered  
18 for canning and/or processing into by-products.

19           9. The term "hundredweight" means each one hundred (100) pound unit or  
20 combination of packages making a one hundred (100) pound unit of any shipment  
21 of potatoes based on invoice and/or bill of lading records.

22           10. The term "processor" means a person who is actively engaged in the  
23 processing of potatoes in Idaho for human consumption and transacting busi-  
24 ness in the state of Idaho.

25           11. The term "processing" means changing the form of potatoes from the  
26 raw or natural state into a product for human consumption.

27           12. The term "handler" means and includes any person processing pota-  
28 toes or handling them in the primary channel of trade.

29           13. The term "tax" means an assessment levied on potatoes covered by  
30 this act for the sole purpose of financing, on behalf of the potato industry  
31 in Idaho, the commission's activities in carrying out the purposes of this  
32 act.

33           SECTION 3. That Chapter 12, Title 22, Idaho Code, be, and the same is  
34 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
35 ignated as Section 22-1204A, Idaho Code, and to read as follows:

36           22-1204A. DESIGNATION OF VOTING REPRESENTATIVES -- VOTING. (1) Each  
37 grower entity shall designate annually its voting representative to the com-  
38 mission for commissioner nominations. Designated representatives may vote  
39 on only one (1) ballot in any election.

40           (2) Each shipper entity shall designate annually its voting represen-  
41 tative to the commission for commissioner nominations. Designated repre-  
42 sentatives may vote on only one (1) ballot in any election.

43           (3) Each processor entity shall designate annually its voting repre-  
44 sentative to the commission for commissioner nominations. Designated rep-  
45 resentatives may vote on only one (1) ballot in any election.

46           SECTION 4. An emergency existing therefor, which emergency is hereby  
47 declared to exist, this act shall be in full force and effect on and after its  
48 passage and approval.

### EXISTING IPC STATUTE

**22-1202. POTATO COMMISSION CREATED.** There is hereby created and established in the department of self-governing agencies the "Idaho potato commission" to be composed of nine (9) practical potato persons, resident citizens of the state of Idaho for a period of three (3) years prior to their appointment each of whom has had active experience in growing, or shipping, or processing of potatoes produced in the state of Idaho. At least five (5) members of said commission shall be growers who are actually now engaged in the production of potatoes. Two (2) of the members shall be shippers who are actually now engaged in the shipping of potatoes, and two (2) of the members shall be processors who are actually now engaged in the processing of potatoes. The qualifications for members of said commission as above required shall continue throughout their respective terms of office.

| Current definitions under statute<br>22-1204  | IPC Proposal<br>Revised definitions to 22-1204 - RS26448   | Mickelsen proposal<br>Revised definitions to 22-1204   |
|---|--|--|
| The term "grower" means one who is actively engaged in the production of farm products, primarily potatoes, and who is not engaged in the shipping or processing of potatoes.   | The term "grower" means one who (a) Is actively engaged in the production of potatoes in the state of Idaho and derives a substantial portion of his income therefrom; (b) Is not primarily engaged in the shipping or processing of potatoes; (c) Grows potatoes on five (5) or more acres; and (d) Has been actively engaged in growing potatoes in the state of Idaho for a period of at least three (3) years prior to nomination and has paid assessments to the commission on potatoes in each of the preceding three (3) calendar years | The term "grower" means an individual who actively owns and operates a potato producing farm of more than 5 acres for human consumption and paid IPC tax on those potatoes or their designee.  |
| The term "shipper" means and includes one who is properly licensed under federal and state laws and actively engaged in the packing and shipping of potatoes in the primary channel of trade in interstate commerce, and who ships more than he produces. | The term "shipper" means and includes one who is properly licensed under federal and state laws and actively engaged in the packing and shipping of potatoes in the primary channel of trade in interstate commerce in the State of Idaho and who ships more than he produces.   | The term "shipper" means and includes one who is properly licensed under federal and state laws and actively engaged in the packing and shipping of potatoes in the primary channel of trade in interstate commerce and resides in the State of Idaho. |
| The term "processor" means a person who is actively engaged in the processing of potatoes for human consumption.  | The term "processor" means a person who is actively engaged in the processing of potatoes in Idaho for human consumption and transacting business in the State of Idaho.   | The term "processor" means a person who is actively engaged in the processing of potatoes for human consumption and who resides in the State of Idaho.   |

IDAHO POTATO COMMISSION RULEMAKING HEARING  
July 24, 2018

Idaho Potato Commission  
661 South Rivershore Lane, Suite 230  
Eagle, Idaho 83816

TRANSCRIPTION BY:  
Tamara A. Weber, CSR  
P.O. Box 387  
Caldwell, Idaho 83606

Proceedings recorded by electronic sound recording.  
Transcript produced by transcription service.



A P P E A R A N C E S:

Michael Kane, Hearing Officer  
Frank Muir  
Patrick Kole  
Ritchy Toevs  
Travis Blacker  
Dan Moss  
Mark Coombs  
Laura Martin  
Linda Whittig  
Joanna Hiller  
Dan Nakamura  
Jamie Bowen  
James Hoff  
Randy Hardy  
Eric Jemmett  
Mary Hasenoehrl  
Peggy Arnzen  
Lynn Wilcox  
Nick Blanksma  
Jewellean Hull  
Doug Gross  
Shawn Boyle  
Rep. Megan Blanksma  
Rep. Thomas Dayley  
Seth Pemsler  
Ross Johnson  
Karin Searle  
Andrew Mickelsen  
Stephanie Mickelsen

IDAHO POTATO COMMISSION RULEMAKING HEARING  
July 31, 2018

Burley Inn & Convention Center  
800 North Overland Avenue  
Burley, Idaho

TRANSCRIPTION BY:  
Tamara A. Weber, CSR  
P.O. Box 387  
Caldwell, Idaho 83606

Proceedings recorded by electronic sound recording.  
Transcript produced by transcription service.

A P P E A R A N C E S:

Michael Kane, Hearing Officer  
Frank Muir  
Pat Kole  
Gracie Bingham  
Todd Gerratt  
Andrew Mickelsen  
Rep. Scott Bedke  
Rep. Megan Blanksma  
Rob Roche  
Craig Searle  
Todd Cornelison  
Mike Larsen  
Comm. Randy Hardy  
Brian Hansen  
Dan Moss  
Dean Gibson  
Jerry Callen  
Zak Miller  
Mark Darrington  
Randy Bauscher

IDAHO POTATO COMMISSION RULEMAKING HEARING  
August 1, 2018

Shoshone Bannock Hotel  
700 Bannock Trail  
Fort Hall, Idaho

TRANSCRIPTION BY:  
Tamara A. Weber, CSR  
P.O. Box 387  
Caldwell, Idaho 83606

Proceedings recorded by electronic sound recording.  
Transcript produced by transcription service.

A P P E A R A N C E S:

Michael Kane, Hearing Officer  
Pat Kole  
Gracie Bingham  
James Hoff  
Shawn Boyle  
Travis Blacker  
Dan Nakamura  
Marc Gibbs  
Rick Shawrer  
Britt Raybould  
Randy Hardy  
Rod Furniss  
Andrew Mickelsen  
Boyd Foster  
Carl Taylor  
David Robison  
Todd Cornelison  
Kim Wahlen  
Bryan Mickelsen  
Kevin Loveland  
Tanner Wahlen  
(Illegible) Mickelsen

# Rulemaking hearing

## July 24, 2018

|     | <u>Name</u>                   | <u>Company</u>            |
|-----|-------------------------------|---------------------------|
| 1.  | Patrick Kole                  | IPC                       |
| 2.  | Ridhy Toers                   | IPC Grower comm           |
| 3.  | Travis Blacker                | IPC                       |
| 4.  | Dan Moss                      | Grower / Potatoes USA     |
| 5.  | Mark Cook                     | Grower                    |
| 6.  | LAURA MARTIN<br>LINDA WHITTIG | FOERSTEL DESIGN           |
| 7.  | Joannattiller                 | IPC                       |
| 8.  | DAN NAKAMURA                  | IDAHOAN FOODS/IPC         |
| 9.  | Jamie Bowen                   | IPC                       |
| 10. | James Hoff                    | IPC Comm/Grower           |
| 11. | Randy Hardy                   | IPC Commissioner          |
| 12. | Eric Semmett                  | Grower NPC                |
| 13. | Mary Hasenel                  | IPC Comm                  |
| 14. | Peggy Amzon                   | IPC Com / Shipper         |
| 15. | Lynn Wilcox                   | IPC Com / Shipper.        |
| 16. | Nick Blanksma                 | IPC Commissioner / Grower |

|     |                       |                                   |
|-----|-----------------------|-----------------------------------|
| 17. | Jewel Jean Hull       | IPC                               |
| 18. | <del>Don</del>        | Gross Farms District              |
| 19. | Shawn Boyle           | Idaho Grower Shippers Association |
| 20. | Rep. Megan Blankensma | Dist 23 B                         |
|     | Rep Thomas Dayley     | Dist 21 B                         |
|     | Seth Penster          | IPC                               |
|     | Ross Johnson          | IPC                               |
|     | Marion Searle         | GPAD of Idaho                     |
|     | Andrew Mickelson      | Mickelson Farms                   |
|     | Stephanie Mickelson   | Mickelson Farms                   |

| Name, Company                       | Note whether you are a grower, shipper, or processor | Street Address, City, and ZIP           | Email address             | Do you wish to testify? (Yes or no) |
|-------------------------------------|--|---|---------------------------|-------------------------------------|
| TOE Ferratt<br>Ida. Cold-Farms      | grower   | 2500 Overland<br>Ave Burley ID<br>83318 | ToferrattFarms@gmail.com  | no                                  |
| Andrew Mickelsen<br>Mickelsen Farms | All  | 2783 E 500N<br>Roberts, ID 83444        | andrew@mickelsenfarms.com | Yes                                 |
| Rep<br>Scott Bedke                  | Idaho<br>House                                       |   | sbedkeH@gmail             |                                     |
|                                     |  |   |                           |                                     |
|                                     |  |   |                           |                                     |
|                                     |  |   |                           |                                     |
|                                     |  |   |                           |                                     |
|                                     |  |   |                           |                                     |



| Name, Company                   | Note whether you are a grower, shipper, or processor | Street Address, City, and ZIP                 | Email address             | Do you wish to testify? (Yes or no) |
|---------------------------------|--|---|---------------------------|-------------------------------------|
| Megan Blanksma<br>Dist 23B Rep. |  | 595 S Thacker<br>Hammett, ID 83627            | mblanksma@house.idaho.gov | No                                  |
| Rob Roche<br>LAMS WESTON        | Processor  | 856 Russell St<br>Twin Falls ID 83301         | Rob.Roche@LambWeston.com  | NO                                  |
| Craig Searle                    | Grower   | 522 E 600 S<br>Burley, Idaho 83318            | C.Searle@pmt.org          | NO                                  |
| TODD L. CORNELISON              | SHIPPER  | 6055 E. SAGEWOOD DR.<br>IDAHO FALLS, ID 83406 | Todd@IDAHO.POTATO.CC      | ?                                   |
| Mike Larsen                     | Grower   | 195N 840 E<br>Declo ID 83323                  | mike@martproduce.com      | No                                  |
| Randy Hardy                     | IPC Commission                                       | 1818 South 500W<br>Oakley, ID                 | hardy1@pmt.org            | Yes                                 |
| Brian Hansen                    | Grower   | 366 E 800 N<br>Rupert, ID 83350               | briandhansen@gmail.com    | No                                  |
| Dan Moss                        | Grower   | 390N 925E<br>Declo Id 83323                   | dan.moss@farms.com        | NO                                  |

| Name, Company                      | Note whether you are a grower, shipper, or processor | Street Address, City, and ZIP                | Email address               | Do you wish to testify? (Yes or no) |
|------------------------------------|--|--|-----------------------------|-------------------------------------|
| DEAN Gibson                        | Grower<br>shipper                                    | PO Box 730<br>Paul ID 83747                  | dean@musicvalleyproduce.com |                                     |
| Triple C Farms<br>Jerry Callen Jr. | Grower   | 474 S 5000<br>Jerome Idaho<br>83338          | jrcj1953@gmail              | No                                  |
| Zak Miller<br>Idaho Farm Bureau    | IFB  | 3782 E Terrace<br>Hills Ln Rigby ID<br>83442 | zmiller@idahofb.org         | No                                  |
|                                    |  |  |                             |                                     |
|                                    |  |  |                             |                                     |
|                                    |  |  |                             |                                     |
|                                    |  |  |                             |                                     |
|                                    |  |  |                             |                                     |



| Name, Company                             | Note whether you are a grower, shipper, or processor | Street Address, City, and ZIP  | Email address            | Do you wish to testify? (Yes or no) |
|---|--|--|--------------------------|-------------------------------------|
| JAMES HOFF<br>Hoff Bros Inc.              | grower   | 10623 S. Hoff Ln. Home<br>10741 S. 25th E Business<br>Idaho Falls ID 83406 | idahjames@ncl.com        | Yes                                 |
| Shawn Boyle<br>Idaho Grower Shippers      | N/A  | 3670 S 25 E.<br>Idaho Falls, ID<br>83404                                   | sboyle@idahoshippers.org | No                                  |
| Trovis Blacker<br>Idaho Potato Commission | N/A  | 3670 S 25 E<br>Idaho Falls, ID<br>83404                                    | trovis.blacker@idaho.gov | yes                                 |
| DAN NAKAMURA<br>IDAHOAN FOODS/IPC         | PROCESSOR  | 654E 49S<br>IF, ID 83404   |                          | no                                  |
| MARC GIBBS<br>Gibbs Farms/ House of Rep   | GROWER   | P.O. Box 241<br>GRACE ID<br>83241  | mgibbs@houseofidaho.gov  | no                                  |
| Rick Shawver<br>UPLI                      | N/A  | Blackfoot ID<br>83221  |                          |                                     |
| Britt Raybould<br>Raybould Brothers Farms | Grower   | 301 N 1500 E<br>St. Anthony, ID<br>83445                                   | britt@raybouldbros.com   | Yes                                 |
| Randy Hardy                               | IPC<br>Commissioner                                  | 1818 South 500 West<br>Oakley ID<br>83516                                  | randy@ipmt.org           |                                     |

| Name, Company                       | Note whether you are a grower, shipper, or processor | Street Address, City, and ZIP | Email address                | Do you wish to testify? (Yes or no) |
|-------------------------------------|--|-------------------------------|------------------------------|-------------------------------------|
| ROD FURNISS<br>Rep. District 35B    | State Rep.   | 346 N 4456 E<br>Rigby ID      | ROD FURNISS<br>@gmail.com    | no                                  |
| Andrew Mickelson<br>Mickelson Farms | All  | 27826 500 N<br>Roberts, ID    | Andrew<br>mickelsonfarms.com | Yes                                 |
| Boyd Foster<br>Tri Vista            | Grower   | 332 N 4440 E<br>Rigby Id      |                              | YES                                 |
| Carl Taylor<br>Hunter/Gatherer      | Grower   | PO Box 51780<br>IF 83405      |                              | —                                   |
| Dail Robison                        | Grower   | 2175 E 400 W<br>83444         | drobison64@aol               | NO                                  |
|                                     |  |                               |                              |                                     |
|                                     |  |                               |                              |                                     |
|                                     |  |                               |                              |                                     |





| Name, Company   | Note whether you are a grower, shipper, or processor | Street Address, City, and ZIP           | Email address              | Do you wish to testify? (Yes or no) |
|-----------------|--|---|----------------------------|-------------------------------------|
| B               |  |   |                            |                                     |
| Kevin Loveland  | Grower,<br>Shipper                                   | Rt 6 Box 682<br>Joice, Id 83202         | kevin.spud@<br>hotmail.com | Y                                   |
| Tanner Wahlen   | grower<br>shipper                                    | 2275 S 2900 W<br>Aberdeen ID 83200      | tannerwahlen@gmail.com     | No                                  |
| Brent Mickelson | processor  | 398 N Yedonshoe Hwy/<br>R 967, ID 83242 | bmick@pprodaho.com         | No                                  |
|                 |  |   |                            |                                     |
|                 |  |   |                            |                                     |
|                 |  |   |                            |                                     |
|                 |  |   |                            |                                     |





July 3, 2018

The Honorable C. L. "Butch" Otter  
Governor, State of Idaho  
P.O. Box 83720  
Boise, Idaho 83720

Dear Governor Otter:

Pursuant to Idaho Code §22-1202, nomination meetings were conducted on March 19th at the Idaho Potato Commission Office in Idaho Falls, ID located at 3670 S. 25<sup>th</sup> E. Suite 3, Idaho Falls, ID 83404 at 10:30, 11:00, and 11:30 a.m. for one grower member from District No. 1, one shipper, and one processor of the Idaho Potato Commission.

For one grower member in District No. 1 the following were nominated:

|                            |   |              |  |
|----------------------------|---|--------------|--|
| <b>Brett Jensen</b>        | 2000 W. 113 N. Idaho Falls, Id. 83402     | 208-313-4308 | <a href="mailto:brettjenson@gmail.com">brettjenson@gmail.com</a> |
| <b>Stephanie Mickelsen</b> | 9088 N. River Road, Idaho Falls, ID 83402 | 208-709-1295 | <a href="mailto:sjwmick@gmail.com">sjwmick@gmail.com</a>         |
| <b>Dave Robison</b>        | 2175 E. 400 N. Roberts, ID 83444          | 208-313-7674 | <a href="mailto:Drobison64@aol.com">Drobison64@aol.com</a>       |

For one shipper the following were nominated:

|                        |   |              |  |
|------------------------|---|--------------|--|
| <b>Todd Cornelison</b> | 6085 E. Sagewood, Idaho Falls, ID 83406 | 208-351-6108 | <a href="mailto:toddic@mac.com">toddic@mac.com</a>                       |
| <b>Lance Poole</b>     | 4152 E. 421 N. Rigby, ID 83442          | 208-243-1068 | <a href="mailto:lance@eagleeyeproduce.com">lance@eagleeyeproduce.com</a> |
| <b>Kevin Searle</b>    | 1266 N 550 E. Shelly, ID 83274          | 208-681-3173 | <a href="mailto:Kevin_searl@gpod.org">Kevin_searl@gpod.org</a>           |

For one processor member the following were nominated:

|                        |   |              |  |
|------------------------|---|--------------|--|
| <b>Brent Mickelsen</b> | 1031 W. Riverview Dr. Idaho Falls, ID 83401   | 208-403-1009 | <a href="mailto:Bmick@ppidaho.com">Bmick@ppidaho.com</a>         |
| <b>Dan Nakamura</b>    | 654 E. 49S Idaho Falls, ID 83401              | 208-409-8156 | <a href="mailto:dnakamura@idahoan.com">dnakamura@idahoan.com</a> |
| <b>John Shields</b>    | 210 Carol Drive, Unit #3, Blackfoot, ID 83221 | 208-317-8163 | <a href="mailto:jshields@baf.com">jshields@baf.com</a>           |

Commissioner, Dan Nakamura is completing his first term and up for re-nomination. Please advise us immediately when the appointments have been made. If we can furnish any other information, we will be glad to do so.

Sincerely,

Frank W. Muir  
President/CEO  
Idaho Potato Commission

January 18, 2019

Dear Idaho Potato Grower in District 1,

I write to you on behalf of the Idaho Potato Commission (IPC) regarding the upcoming nomination and election for a Grower Commissioner position on the IPC. Our records indicate that your home residence is located within District 1, which includes Oneida, Franklin, Bear Lake, Caribou, Bannock, Power, Bingham, Bonneville, Teton, Madison, Jefferson, Fremont, Clark, Butte, Custer, and Lemhi counties. If this is correct, please continue reading. If not, please let us know your correct address so we can update our records.

The current statutory law provides that nominations for IPC Commissioners are selected at meetings held prior to March 31 of the year in which nominations are to be made with a vote at that meeting by those present in person or by phone. This process was fine when the law was passed many years ago, but times have changed and participation at meetings for this important part of our industry has declined. To encourage greater participation and allow equal opportunity for all growers to participate, and after extensive public hearings, review of multiple laws from other states and federal agencies, together with a finding by the Governor's Office that allowed IPC to move forward with a Temporary Rule, IPC promulgated an administrative rule setting up this new procedure for nominations and elections. The rule and proposed legislation are currently before the Idaho Legislature. IPC is working with the Legislature to move this forward during this session. Should the Legislature not approve the changes, the old process will be used by March 31 as previously done.

The first step in the new process is to allow all growers the opportunity to nominate someone to be a Commissioner. That is the first form included in this mailing. Please review the form carefully to be sure that the person you nominate meets the definition of a grower and that all the information on the nomination form is completely provided. Failure to do so will disqualify the nomination. If you have questions, don't guess – call us. We will help you complete the form. The qualifications to be a Grower Commissioner are as follows:

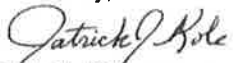
- Must be citizens and residents of Idaho over the age of eighteen (18) years;
- Actively engaged in the production of potatoes in the state of Idaho and derives a substantial portion of his income therefrom;
- Is not primarily engaged in the shipping or processing of potatoes;
- Grows potatoes on five (5) or more acres; and
- Has been actively engaged in growing potatoes in the state of Idaho for a period of at least three (3) years prior to nomination and has paid assessments to the commission.

Also included is the "Grower Entity Voting Representative Form". Each year, we will ask you to let us know who will be the person within your organization you would like to be your voting representative. Please remember, a Designated Representative may only vote on one (1) ballot in any election. You can return both forms to us by mail, email or fax. **Regardless if you choose to nominate a grower or not, we ask that everyone return the Grower Entity Voting Representative Form because this directs us to whom we need to send a ballot.**

It is important that you know you must certify the information you are providing. IPC does this to ensure that this process is fair to every Grower and there is integrity in our nomination and election process. Again, if you have questions about any aspect of this process, please reach out to us.

IPC is doing all we can to give every grower the opportunity to have their voice heard in the selection of Commissioners of the IPC. We will monitor how this proceeds very carefully and make changes as needed to improve this as we move forward. We value your suggestions and ideas!

Sincerely,



Patrick Kole, VP, Legal and Government Affairs

«BALLOT\_NUMBER»



### Nomination Process for Idaho Potato Commissioners

The statutory language below defines who is considered a grower, shipper and processor for purposes of qualifying to be nominated and then appointed as a Commissioner of the Idaho Potato Commission. During the existence of the IPC, this statute has been interpreted by the IPC to hold separate meetings where equal consideration of eligibility for appointment to the Commission could be established at the meeting. Proxies have never been allowed. However, the Commission has allowed participation in the nomination meetings to take place by phone and allowed those who call in to vote by either facsimile or by texting their vote to a designated IPC employee. If there are over three nominees for a position, IPC allows up to three votes per ballot. Voting cannot be cumulative.

IPC has used its records to answer questions regarding voting and nomination eligibility. Interpretive language is also included below. This language appears on the ballot forms of the IPC. Only the relevant portions of the Idaho Code relating to nominations of IPC Commissioners are included here. Highlighting is used to provide guidance relative to IPC's administrative interpretation of law. The language differs between the Grower ballot and the Shipper and Processor ballot. Growers, unlike Shippers and Processors, are not licensed by the IPC. It is necessary therefor to provide clarity regarding voting eligibility as to a Grower.

22-1202. POTATO COMMISSION CREATED. There is hereby created and established in the department of self-governing agencies the "Idaho potato commission" to be composed of nine (9) practical potato persons, resident citizens of the state of Idaho for a period of three (3) years prior to their appointment each of whom has had active experience in growing, or shipping, or processing of potatoes produced in the state of Idaho. At least five (5) members of said commission shall be growers who are actually now engaged in the production of potatoes. Two (2) of the members shall be shippers who are actually now engaged in the shipping of potatoes, and two (2) of the members shall be processors who are actually now engaged in the processing of potatoes. The qualifications for members of said commission as above required shall continue throughout their respective terms of office.

Nominations must be made thirty (30) days prior to appointment. All nominations must give equal consideration to

#### IDAHO POTATO COMMISSION

661 S Rivershore Lane, Suite 230 | Eagle, Idaho 83616 | tel 208.334.2350 | fax 208.334.2274 | www.idahopotato.com

all who are eligible for appointment as defined in this act. The Idaho potato commission shall hold separate meetings of the growers, shippers, or processors, as the nominations to be made shall require, in the various districts, to determine who shall be nominated for appointment.

22-1204. DEFINITIONS. As used in this act:

2. The term "person" means individual, partnership, corporation, association, grower and/or any other business unit.

6. The term "shipper" means and includes one who is properly licensed under federal and state laws and actively engaged in the packing and shipping of potatoes in the primary channel of trade in interstate commerce, and who ships more than he produces.

4. "Shipment" of potatoes shall be deemed to take place when the potatoes are loaded within the state of Idaho, in a car, bulk, truck or other conveyance in which the potatoes are to be transported for sale or otherwise.

**On the Shipper Nominating Ballot, the following language is used:**

**The Idaho Potato Commission law provides: "Three shippers shall be nominated for each vacancy that occurs from which the Governor shall appoint one."**

7. The term "grower" means one who is actively engaged in the production of farm products, primarily potatoes, and who is not engaged in the shipping or processing of potatoes.

**On the Grower Nominating Ballot, the following language is used:**

**Only one person per farm corporation, partnership, or farm family may vote. Voter must be a potato grower, resident of Idaho area designated for this nomination, over 18 and within the Idaho Potato Commission law that defines a grower (singular) to be "...one who is actively engaged in the production of farm products, primarily potatoes, and who is not engaged in the shipping or processing of potatoes."**

10. The term "processor" means a person who is actively engaged in the processing of potatoes for human consumption.

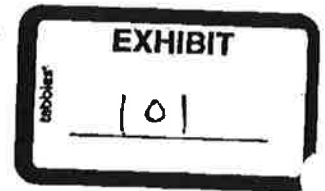
11. The term "processing" means changing the form of potatoes from the raw or natural state into a product for human consumption.

**On the Processor Nominating Ballot, the following language is used:**

The Idaho Potato Commission law provides: "Three processors shall be nominated for each processor vacancy that occurs from which the Governor shall appoint one. Processor commissioners do not necessarily need to be nominated from geographical areas."

22-1211A. REFERENDUM OF CONTINUANCE OF ADDITIONAL TAX. As soon as possible after July 1, 1972, the commissioner of agriculture shall conduct a referendum among all eligible growers to determine whether or not the additional tax of one cent (1¢) shall be continued. An eligible grower for the purpose of the referendum shall be any grower engaged in the growing of five (5) or more acres of potatoes.

22-1205. ADMINISTRATION AND ENFORCEMENT OF ACT. The administration of this act shall be vested in the Idaho potato commission which shall have power to prescribe and enforce suitable and reasonable rules for the enforcement of the provisions thereof



**IDAHO POTATO COMMISSION**

**GROWER NOMINATING BALLOT**

NOTE: The Idaho Potato Commission law defines a grower to be "one who is actively engaged in the production of farm products, primarily potatoes, and who is not engaged in the shipping or processing of potatoes, and further has been a resident citizen of the State of Idaho for a period of three years prior to his possible appointment.

**WRITE IN THREE GROWER NAMES**

NOTE: The Idaho Potato Commission law provides: "Three growers shall be nominated, from which the Governor shall appoint one."

NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_

NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_

NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_

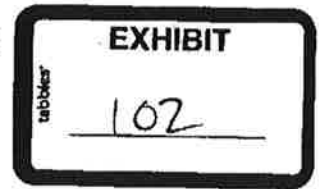
I hereby affirm\* that to the best of my knowledge I qualify as a grower (singular) under the Idaho potato Commission law; and to the best of my knowledge my nominees qualify as growers under the Idaho Potato Commission law.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

\*NOTE: Only one person per farm corporation, partnership, or farm family may vote. Voter must be a potato grower, resident of Idaho area designated for this nomination, over 18 and within the Idaho Potato Commission law that defines a grower (singular) to be "...one who is actively engaged in the production of farm products, primarily potatoes, and who is not engaged in the shipping or processing of potatoes."



**IDAHO POTATO COMMISSION**  
**PROCESSOR NOMINATING BALLOT**

**NOTE:** The Idaho Potato Commission law defines a processor to be "...a person who is actively engaged in the processing of potatoes for human consumption."

**WRITE IN THREE PROCESSORS' NAMES**

**NOTE:** The Idaho Potato Commission law provides: "Three processors shall be nominated for each processor vacancy that occurs from which the Governor shall appoint one. Processor commissioners do not necessarily need to be nominated from geographical areas."

**NAME** \_\_\_\_\_ **ADDRESS** \_\_\_\_\_

**NAME** \_\_\_\_\_ **ADDRESS** \_\_\_\_\_

**NAME** \_\_\_\_\_ **ADDRESS** \_\_\_\_\_

I hereby affirm to the best of my knowledge my nominees and I qualify as processors under the Idaho Potato Commission law.

**NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**DATE:** \_\_\_\_\_



**IDAHO POTATO COMMISSION**

**SHIPPER NOMINATING BALLOT**

**NOTE:** The Idaho Potato Commission law defines a shipper to be "...one who is properly licensed under federal and state laws and actively engaged in the packing and shipping of potatoes in the primary channel of trade in interstate commerce and who ships more than he produces."

**WRITE IN THREE SHIPPER NAMES**

**NOTE:** The Idaho Potato Commission law provides: "Three shippers shall be nominated for each vacancy that occurs from which the Governor shall appoint one."

NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_

NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_

NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_

I hereby affirm to the best of my knowledge my nominees and I qualify as shippers under the Idaho Potato Commission law.

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

DATE: \_\_\_\_\_



### VOTING PROXY

(For Idaho Potato Commission District No 1 Grower Nomination Meeting)

The undersigned, being over the age of 18, is actively engaged in the production of farm products, primarily potatoes, and is not engaged in the shipping or processing of potatoes and in all respects is a Grower located in District No. 1 as those term are defined in Idaho Code §22-1201 et seq. The undersigned represents and warrants its eligibility and asserts the right and privilege to vote on all issues that a Grower may vote upon related to the Idaho Potato Commission. In furtherance of that right and privilege to vote, the undersigned does hereby constitute and appoint \_\_\_\_\_ to be my proxy agent, with full power of substitution, to vote on ~~on~~ my rights with respect to all matters submitted during the March 19, 2018 Idaho Potato Commission Grower Nomination Meeting to be held at the Idaho Potato Commission offices or at any adjournments thereof as if the undersigned was personally present. I further hereby ratify and confirm all acts that my proxy shall do or cause to be done by virtue of this proxy. I hereby revoke all proxies previously given by me with respect to my voting rights.

IN WITNESS WHEREOF, I have executed this Proxy effective as of March 17, 2018.

Signed \_\_\_\_\_

Title \_\_\_\_\_

Entity \_\_\_\_\_

Stephanie Miklesen

Brett Jensen

Dave Robison



# ABSENTEE BALLOT

(For Idaho Potato Commission District No 1 Grower Nomination Meeting)

The undersigned, being over the age of 18, is actively engaged in the production of farm products, primarily potatoes, and is not engaged in the shipping or processing of potatoes and in all respects is a Grower located in District No. 1 as those term are defined in Idaho Code §22-1201 et seq. The undersigned represents and warrants their eligibility and asserts the right and privilege to vote on all issues that a Grower may vote upon related to the Idaho Potato Commission. In furtherance of that right and privilege to vote, the undersigned does hereby nominate and vote for the following three persons to be submitted to the Governor to fill the vacancy for the Grower representative from District No. 1 to serve on the Idaho Potato Commission:


Stephanie Mickelsen

Dave Robison

 Brett Jensen

I acknowledge compliance with the following language listed in the Nomination Process for Idaho Potato Commissioners: "Only one person per farm corporation, partnership, or farm family may vote. Voter must be a potato grower, resident of Idaho area designated for this nomination, over 18 and within the Idaho Potato Commission law that defines a grower (singular) to be "...one who is actively engaged in the production of farm product, primarily potatoes, and who is not engaged in the shipping or processing of potatoes."

IN WITNESS WHEREOF, I have executed this Ballot effective as of March 19, 2018.

  
\_\_\_\_\_  
Signed

  
\_\_\_\_\_  
Title

  
\_\_\_\_\_  
Entity



STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
LAWRENCE G. WARDEN

April 2, 2018

Patrick J. Kole  
VP Legal & Government Affairs  
Idaho Potato Commission  
661 S. Rivershore Ln., Ste. 230  
Eagle, ID 83616

Re: Idaho Potato Commission Commissioner Positions – Our File No. 18-61025

Dear Mr. Kole:

The Idaho Potato Commission asked this Office to answer four questions that arose out of its recent meetings conducted for purposes of nominating three slates of practical potato persons (one slate for a grower, one for a shipper, and one for a processor) from whom the Governor would appoint a grower, a shipper, and a processor commissioner. Those questions are:

- (1) Can a person, having declared [himself or herself] to be a grower and accepting the nomination to be a grower commissioner, then participate as a shipper and processor in nomination meetings held immediately thereafter?
- (2) [a] Under these circumstances is the nomination invalid? [b] If this is the case, there would be fewer than three names to submit to the Governor, so would a new nomination meeting need to be held?
- (3) Is the IPC's refusal to allow Proxy and Absentee ballots in nomination meetings within its discretion under IPC's statute and Idaho law?
- (4) Was the failure to anticipate the number of people who would call in to the nomination meeting and then who could not vote such a factor as to require a new nomination meeting?

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April 2, 2018  
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## BACKGROUND

These questions arise out of the following recitation of events provided by the Idaho Potato Commission. This Office has not conducted any independent investigation of the facts provided by the Potato Commission.

On Monday, March 19, 2018, the Idaho Potato Commission held three meetings, one each for nominating a slate of growers, a slate of shippers, and a slate of processors from whom the Governor will appoint a grower, a shipper, and a processor commissioner. Eligible growers, shippers, and processors could participate by appearing at the meetings in person or by telephone.

The first meeting was for the purpose of nominating three persons for a grower position on the Commission. There were four nominees for the grower position, each of whom affirmed that they met the statutory qualifications to be a grower: Stephanie Mickelsen, Dave Robison, Brett Jensen, and James Hoff. After nominations closed, Andrew Mickelsen and Stephanie Mickelsen requested multiple ballots so that they could vote for several different businesses that they owned. The Mickelsens submitted multiple ballots with different business names and no natural person or address listed. The IPC did not count these ballots because they were incomplete; neither did the IPC count proxy or absentee ballots. Based upon the ballots counted, the three nominees for the position of grower commissioner to be submitted to the Governor were Brett Jensen, Dave Robison, and Stephanie Mickelsen. Three of the counted ballots came from seed potato growers, *i.e.*, growers producing potatoes intended for planting, not for human consumption. The Commission learned after the meeting that the telephone conference line that it was using had reached capacity during the meeting and that some growers who had wanted to participate could not.

Next, the shipper nominating meeting was held. There were only three nominees, one of whom, Lance Poole, was nominated by Stephanie Mickelsen. Because three is the number of nominees that must be sent to the Governor, no vote was taken. Finally, the processor nominating meeting was held. Again, there were only three nominees, one of who was nominated by Stephanie Mickelsen. Again, no vote was taken because three is the number of nominees that must be sent to the Governor.

**Question 1. Can a person, having declared [himself or herself] to be a grower and accepting the nomination to be a grower commissioner, then participate as a shipper and processor in nomination meetings held immediately thereafter?**

The Potato Commission Act defines grower, shipper, and processor: “The term ‘grower’ means one who is actively engaged in the production of farm products, primarily potatoes, and *who is not engaged in the shipping or processing of potatoes.*” Idaho Code § 22-1204, subsection 7 (emphasis added). “Growers” are contrasted with “shippers,” who are “properly licensed under federal and state laws,” “pack[] and ship[] potatoes ... in interstate commerce”, and “ship[] more than they grow,” and with “processors,” who “process[] potatoes for human consumption.” *Id.*, subsections 6 and 10. Thus, if there are vertically integrated operations that grow and also ship and/or process potatoes for human consumption, the Potato Commission Act has carved them out

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of the definition of “grower” and has reserved the term “grower” for one who does not also have shipping operations (other than for potatoes that the grower has grown) or processing operations. I would revise the first question to ask: If a person who is a shipper or a processor is nominated for a grower position or participates in nominating or voting for a grower position, was that person ineligible to be nominated to a grower position and ineligible to nominate growers and to vote for growers? Based upon the definitions quoted above, it appears the answer is “Yes” because growing potatoes does not disqualify one from also being a shipper or a processor, but being a shipper or processor does disqualify one from being a grower.

**Question 2: [a] Under these circumstances is the nomination invalid? [b] If this is the case, there would be fewer than three names to submit to the Governor, so would a new nomination meeting need to be held?**

The grower nominations were invalid because a shipper and/or a processor was nominated and participated in the process. A new nominating meeting should be called for the grower position. This is would also allow the Potato Commission to cure the incorrect processes of (a) allowing seed potato growers to vote<sup>1</sup> and (b) shutting off some growers from voting when the conference line reached capacity. Assuming that there were no other reasons to disqualify the shipper or processor nominations, the nominations for those positions do not need to be redone.

**Question 3: Is the IPC’s refusal to allow Proxy and Absentee ballots in nomination meetings within its discretion under IPC’s statute and Idaho law?**

The Potato Commission Act does not address this question as directly as the previous two questions. The relevant statutory language is:

All nominations must give equal consideration to all who are eligible for appointment as defined in this act. The Idaho potato commission shall hold separate meetings of the growers, shippers, or processors, ... to determine who shall be nominated for appointment. Notice of said meetings ... shall state the purpose, time and place of said meeting.

Idaho Code § 22-1202. One can glean several things from these sentences. The first sentence requires “equal consideration” for all who are eligible under the Act. That means that the most modest grower, whose potato farm is small and unincorporated, is given “equal consideration” with the largest, who may operate several farms through many different corporations or partnerships or other business organizations. A grower is “*one* ... actively engaged in the production of farm products, primarily potatoes,” Idaho Code § 22-1204, subsection 7, and “one” does not become “many” by creating multiple farming operations or ownership vehicles. A grower

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<sup>1</sup> The Potato Commission Act does not consider all potatoes grown in Idaho to be “potatoes” for purposes of the Act. “The term ‘potatoes’ means and includes *only potatoes sold or intended for human consumption* and grown in the state of Idaho.” Idaho Code § 22-1204, subsection 3 (emphasis added). Thus, the Act does not apply to growers of seed potatoes, which are intended to be planted, not eaten, and growers of seed potatoes are not “growers” as defined by the Act.

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gets only one vote, no matter how many farms he or she may operate or own.

Second, a meeting “to determine who shall be nominated for appointment” means that the process for nominating a slate to be sent to the Governor takes place at the meeting. The statute has no procedure for absentee or proxy ballots for someone who does not attend the meeting, either in person or by telephone. I would not characterize the issue as whether the Potato Commission has discretion not to allow absentee or proxy ballots; I would characterize the question as does the statute allow those not participating in the meeting to vote and would answer that it does not.

**Question 4: Was the failure to anticipate the number of people who would call in to the nomination meeting and then who could not vote such a factor as to require a new nomination meeting?**

The answer to this question is yes because it is another aspect of giving “equal consideration to all who are eligible for appointment.” Those who were blocked from participating in the meeting were not given equal consideration. If a meeting is held at which those eligible to participate are prohibited from participating through no fault of their own (i.e. absenteeism) but instead trying to join and being blocked or locked out of the meeting, then the meeting should be rescheduled to allow all eligible participants who want to attend to be permitted to attend.

I hope you find this helpful.

Sincerely,



BRIAN KANE  
Assistant Chief Deputy

BK/tjn

On July 28 an email was sent to members of the Idaho Potato Industry that was not accurate. The email was from Stephanie Mickelsen. Here is what was said and what is true:

- After the disaster of a nominating meeting this spring, the IPC was instructed to work with the stakeholders and create new rules and re-write the code to reflect a new and updated IPC. Pat Kole decided to create some new rules with no input from potato growers. We were told by a current commissioner that they hadn't even seen the re-write until the very morning of the first public hearing.

**Facts:** As a result of the actions of Mark, Stephanie and Andrew Mickelsen, the Idaho Potato Commissioners directed the staff to take actions to prevent a repeat of the "disaster" the Mickelsens caused at the nomination meeting. This directive was made at a public meeting of the IPC after hours of discussion. In crafting draft rules, Mr. Kole reviewed the laws of potato commissions including Washington, Oregon, Michigan and Maine, other commodity commissions in Idaho including the Wheat and Barley Commissions, and also consulted, as required by state law, with the Idaho Governor's office, the Division of Financial Management and the Office of Administrative Rules. Following that process, an entire morning was spent by the Commissioners in a public meeting where growers reviewed and commented on the drafts. Based upon that input, changes were made based on the comments made. At the next two Commission public meetings there were further discussions about and changes made to these proposals.

The draft rules are currently just that—a draft. The purpose of having informal hearings is to solicit input from industry members and the draft gives us a framework to build upon. Because the IPC is only proposing temporary rules, the IPC is not required by law to hold public hearings. However, in the best interest of the industry, the IPC is gathering input from stakeholders. The IPC submitted a public Notice of Intent to Promulgate Rules, which was published in the administrative bulletin on July 4. The bulletin listed the dates of upcoming hearings and we posted our draft legislation to the website for public view. We sent out a Pulse on July 6 notifying the industry of that bulletin and directing them to visit the website to view drafts of our legislation and rules.

At the hearing on July 24, there was one very small change made in the language that related to a Processor. That change was this: changing the words "licensed to do business in" to "transacting business in". This particular change has nothing to do with growers at all. Further, it's important to understand that the purpose of having these informal hearings is to fine tune what's being proposed and to make changes. Nothing is final at this stage.

- The IPC is proposing rules that will limit voting on growers that have ownership in shipping and processing facilities. The IPC is also trying to make it one vote for any common ownership entity. The problem with this whole proposal is that first off, how in the world will they ever police that? How will they find who owns what business? That information isn't even required by the Idaho Secretary of State's office. They need to address the bigger problem of how do you allow multiple owners of a business the right to vote? Or do you vote by production? The real problem is that currently a farm with 5 acres has one vote and a farm with multiple owners that might have 10,000 acres is only allowed one vote. They won't even allow different owners of a single entity to vote under their current proposal.

**Facts:** The IPC has operated under the principle of "One person, one vote" since it started nominations for being a Commissioner. This is true for elections to Congress, Statewide

positions such as Governor, Secretary of State, the Idaho Legislature, County Commissioners, City Councils, School Boards, and more. This comment suggests that the bigger a grower is, the more votes a grower should get. This would be harmful to small growers and the IPC's duty is to represent the entire industry, regardless of size. The practical impact of what the Mickelsens are proposing is a property qualification for voting or holding office as an IPC Commissioner. This is prohibited under Art. 1 Section 20 of the Idaho Constitution.

- The IPC wants to make some funny rule that if you vote as a grower then you would be unable to vote as a shipper/processor for a period of 3 years. They are totally ignoring or completely misunderstanding legal entities and how they must have a legal representative to vote for them as they aren't a sole proprietorships. Maybe we growers should vote on the processor and shipper representatives on the IPC???

**Facts:** Since nominations for IPC Commissioners began, the law required that Commissioners be a grower, shipper or processor. You couldn't be part grower, part shipper or part processor. Times have changed and the law has not kept up with the emergence of growers who have ownership in packing sheds or processing plants. What the IPC is proposing is simply this: what a person predominantly is will determine what they are. Once they make that declaration, then that is who they will represent for the next three years, which is the length of term for being a Commissioner. This would prevent someone from running for the Commission as a grower one year, a shipper the next year and a processor the following year.

- Pat Kole is also proposing that we add language to Idaho Code that says all commissioners shall serve at the pleasure of the governor. Well depending upon who is in the governor's office at a particular time that is a REALLY bad idea. If the state is paying the IPC tax then I think that would be a reasonable proposal, however, since the growers are paying the tax they should have the total and complete say about who is representing them on the commission.

**Facts:** The IPC is a state agency. The IPC is required to follow a process that requires approval from the Governor to submit legislation for the Legislature to consider. When this proposal was submitted, the IPC asked if including this language "serves at the pleasure of the Governor" was required. The answer was "Yes". It's also important to know this: this language is already in the statutes of the Wheat and Barley Commission.

- The commission needs to take the time to re-write the entire code section. If you listen to Pat Kole he will tell you all the reasons why we can't do that. The Idaho code on the IPC hasn't been re-written in a good 50 years. WE need to work together to update our commission to reflect the current state of the industry and the current needs of the growers it serves.

**Facts:** This is an election year. The Governor has stated that he wants to give whoever is elected as Idaho's next Governor a clean slate to set their own agenda. As such, only mission-critical legislation can be proposed by state agencies. After reviewing IPC's proposals and learning of the above-referenced "disaster" at the nomination meeting, the Governor's office and the Division of Financial Management gave the IPC permission to propose changes to the nomination process. It is neither a quick nor simple process to propose legislation, particularly this year.



- We need to have a referendum code section that allows the growers the ability to call for referendums if we believe a change needs to take place. Although code refers to a referendum it doesn't really spell out how that can actually occur.

**Facts:** IPC is unique in that it is an industry commission with 2 shipper commissioners and 2 processor commissioners in addition to the 5 grower commissioners. Clearly, grower commissioners have the majority voice at all times. Having the input, insight and industry-wide perspective of the entire industry has served everyone well. There's a reason why Idaho® Potatoes is the produce industry's most recognized brand.

- IACI (Idaho Association of Commerce and Industry) lobbying group is fighting very hard against having certain individuals appointed to the IPC. IACI shouldn't be involved in the activities of the nominations or the appointment of IPC commissioners.

**Facts:** IACI has a Potato Committee that includes frozen and dehydrated potato companies. These companies pay assessments to the IPC. IACI, IGSA and PGI have all been involved in the nomination and appointment process for years.

Stephanie asked that you come to the meetings in Burley and at Fort Hall on Tuesday and Wednesday. We strongly welcome your presence and participation and we urge you to come learn what is true.



(Slip Opinion)

OCTOBER TERM, 2014

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## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

**SUPREME COURT OF THE UNITED STATES**

## Syllabus

**NORTH CAROLINA STATE BOARD OF DENTAL  
EXAMINERS v. FEDERAL TRADE COMMISSION****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE FOURTH CIRCUIT**

No. 13–534. Argued October 14, 2014—Decided February 25, 2015

North Carolina’s Dental Practice Act (Act) provides that the North Carolina State Board of Dental Examiners (Board) is “the agency of the State for the regulation of the practice of dentistry.” The Board’s principal duty is to create, administer, and enforce a licensing system for dentists; and six of its eight members must be licensed, practicing dentists.

The Act does not specify that teeth whitening is “the practice of dentistry.” Nonetheless, after dentists complained to the Board that nondentists were charging lower prices for such services than dentists did, the Board issued at least 47 official cease-and-desist letters to nondentist teeth whitening service providers and product manufacturers, often warning that the unlicensed practice of dentistry is a crime. This and other related Board actions led nondentists to cease offering teeth whitening services in North Carolina.

The Federal Trade Commission (FTC) filed an administrative complaint, alleging that the Board’s concerted action to exclude nondentists from the market for teeth whitening services in North Carolina constituted an anticompetitive and unfair method of competition under the Federal Trade Commission Act. An Administrative Law Judge (ALJ) denied the Board’s motion to dismiss on the ground of state-action immunity. The FTC sustained that ruling, reasoning that even if the Board had acted pursuant to a clearly articulated state policy to displace competition, the Board must be actively supervised by the State to claim immunity, which it was not. After a hearing on the merits, the ALJ determined that the Board had unreasonably restrained trade in violation of antitrust law. The FTC again sustained the ALJ, and the Fourth Circuit affirmed the FTC in

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all respects.

*Held:* Because a controlling number of the Board's decisionmakers are active market participants in the occupation the Board regulates, the Board can invoke state-action antitrust immunity only if it was subject to active supervision by the State, and here that requirement is not met. Pp. 5–18.

(a) Federal antitrust law is a central safeguard for the Nation's free market structures. However, requiring States to conform to the mandates of the Sherman Act at the expense of other values a State may deem fundamental would impose an impermissible burden on the States' power to regulate. Therefore, beginning with *Parker v. Brown*, 317 U. S. 341, this Court interpreted the antitrust laws to confer immunity on the anticompetitive conduct of States acting in their sovereign capacity. Pp. 5–6.

(b) The Board's actions are not cloaked with *Parker* immunity. A nonsovereign actor controlled by active market participants—such as the Board—enjoys *Parker* immunity only if “the challenged restraint . . . [is] clearly articulated and affirmatively expressed as state policy,” and . . . “the policy . . . [is] actively supervised by the State.” *FTC v. Phoebe Putney Health System, Inc.*, 568 U. S. \_\_\_, \_\_\_ (quoting *California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, 445 U. S. 97, 105). Here, the Board did not receive active supervision of its anticompetitive conduct. Pp. 6–17.

(1) An entity may not invoke *Parker* immunity unless its actions are an exercise of the State's sovereign power. See *Columbia v. Omni Outdoor Advertising, Inc.*, 499 U. S. 365, 374. Thus, where a State delegates control over a market to a nonsovereign actor the Sherman Act confers immunity only if the State accepts political accountability for the anticompetitive conduct it permits and controls. Limits on state-action immunity are most essential when a State seeks to delegate its regulatory power to active market participants, for dual allegiances are not always apparent to an actor and prohibitions against anticompetitive self-regulation by active market participants are an axiom of federal antitrust policy. Accordingly, *Parker* immunity requires that the anticompetitive conduct of nonsovereign actors, especially those authorized by the State to regulate their own profession, result from procedures that suffice to make it the State's own. *Midcal*'s two-part test provides a proper analytical framework to resolve the ultimate question whether an anticompetitive policy is indeed the policy of a State. The first requirement—clear articulation—rarely will achieve that goal by itself, for entities purporting to act under state authority might diverge from the State's considered definition of the public good and engage in private self-dealing. The second *Midcal* requirement—active supervision—seeks to avoid this

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harm by requiring the State to review and approve interstitial policies made by the entity claiming immunity. Pp. 6–10.

(2) There are instances in which an actor can be excused from *Midcal*'s active supervision requirement. Municipalities, which are electorally accountable, have general regulatory powers, and have no private price-fixing agenda, are subject exclusively to the clear articulation requirement. See *Hallie v. Eau Claire*, 471 U. S. 34, 35. That *Hallie* excused municipalities from *Midcal*'s supervision rule for these reasons, however, all but confirms the rule's applicability to actors controlled by active market participants. Further, in light of *Omni*'s holding that an otherwise immune entity will not lose immunity based on ad hoc and *ex post* questioning of its motives for making particular decisions, 499 U. S., at 374, it is all the more necessary to ensure the conditions for granting immunity are met in the first place, see *FTC v. Ticor Title Ins. Co.*, 504 U. S. 621, 633, and *Phoebe Putney, supra*, at \_\_\_\_\_. The clear lesson of precedent is that *Midcal*'s active supervision test is an essential prerequisite of *Parker* immunity for any nonsovereign entity—public or private—controlled by active market participants. Pp. 10–12.

(3) The Board's argument that entities designated by the States as agencies are exempt from *Midcal*'s second requirement cannot be reconciled with the Court's repeated conclusion that the need for supervision turns not on the formal designation given by States to regulators but on the risk that active market participants will pursue private interests in restraining trade. State agencies controlled by active market participants pose the very risk of self-dealing *Midcal*'s supervision requirement was created to address. See *Goldfarb v. Virginia State Bar*, 421 U. S. 773, 791. This conclusion does not question the good faith of state officers but rather is an assessment of the structural risk of market participants' confusing their own interests with the State's policy goals. While *Hallie* stated "it is likely that active state supervision would also not be required" for agencies, 471 U. S., at 46, n. 10, the entity there was more like prototypical state agencies, not specialized boards dominated by active market participants. The latter are similar to private trade associations vested by States with regulatory authority, which must satisfy *Midcal*'s active supervision standard. 445 U. S., at 105–106. The similarities between agencies controlled by active market participants and such associations are not eliminated simply because the former are given a formal designation by the State, vested with a measure of government power, and required to follow some procedural rules. See *Hallie, supra*, at 39. When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest. Thus,

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the Court holds today that a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal's* active supervision requirement in order to invoke state-action antitrust immunity. Pp. 12-14.

(4) The State argues that allowing this FTC order to stand will discourage dedicated citizens from serving on state agencies that regulate their own occupation. But this holding is not inconsistent with the idea that those who pursue a calling must embrace ethical standards that derive from a duty separate from the dictates of the State. Further, this case does not offer occasion to address the question whether agency officials, including board members, may, under some circumstances, enjoy immunity from damages liability. Of course, States may provide for the defense and indemnification of agency members in the event of litigation, and they can also ensure *Parker* immunity is available by adopting clear policies to displace competition and providing active supervision. Arguments against the wisdom of applying the antitrust laws to professional regulation absent compliance with the prerequisites for invoking *Parker* immunity must be rejected, see *Patrick v. Burget*, 486 U. S. 94, 105-106, particularly in light of the risks licensing boards dominated by market participants may pose to the free market. Pp. 14-16.

(5) The Board does not contend in this Court that its anticompetitive conduct was actively supervised by the State or that it should receive *Parker* immunity on that basis. The Act delegates control over the practice of dentistry to the Board, but says nothing about teeth whitening. In acting to expel the dentists' competitors from the market, the Board relied on cease-and-desist letters threatening criminal liability, instead of other powers at its disposal that would have invoked oversight by a politically accountable official. Whether or not the Board exceeded its powers under North Carolina law, there is no evidence of any decision by the State to initiate or concur with the Board's actions against the nondentists. P. 17.

(c) Here, where there are no specific supervisory systems to be reviewed, it suffices to note that the inquiry regarding active supervision is flexible and context-dependent. The question is whether the State's review mechanisms provide "realistic assurance" that a non-sovereign actor's anticompetitive conduct "promotes state policy, rather than merely the party's individual interests." *Patrick*, 486 U. S., 100-101. The Court has identified only a few constant requirements of active supervision: The supervisor must review the substance of the anticompetitive decision, see *id.*, at 102-103; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy, see *ibid.*; and the "mere potential for state

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supervision is not an adequate substitute for a decision by the State," *Ticor, supra*, at 638. Further, the state supervisor may not itself be an active market participant. In general, however, the adequacy of supervision otherwise will depend on all the circumstances of a case. Pp. 17–18.

717 F. 3d 359, affirmed.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed a dissenting opinion, in which SCALIA and THOMAS, JJ., joined.