



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

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MEMORANDUM

TO: Senators RICE, Den Hartog, Jordan and,
Representatives BOYLE, Dayley, Erpelding

FROM: Katharine Gerrity - Deputy Division Manager

DATE: October 04, 2018

SUBJECT: Temporary Rule

IDAPA 29.01.03 - Rules Governing Nominations for Appointment as a Commissioner to the Idaho Potato Commission (New Chapter) - Adoption of Temporary Rule - Docket No. 29-0103-1802

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Katharine Gerrity at the Legislative Services Office at (208) 334-4834. Thank you.

Attachment: Temporary Rule

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 29 – IDAHO POTATO COMMISSION
29.01.03 – RULES GOVERNING NOMINATIONS FOR APPOINTMENT AS A
COMMISSIONER TO THE IDAHO POTATO COMMISSION
DOCKET NO. 29-0103-1802 (NEW CHAPTER)
NOTICE OF RULEMAKING – ADOPTION OF 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

THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 29-0103-1802
(New Chapter)

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 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 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)