

Dear Senators PATRICK, Martin, Schmidt, and
Representatives BARBIERI, Clow, Smith:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Grape Growers and Wine Producers Commission:

IDAPA 48.01.01 - Rules of the Idaho Grape Growers and Wine Producers Commission - Temporary
and Proposed Rule (Docket No. 48-0101-1601).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 10/03/2016. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 11/01/2016.

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

To notify Research and Legislation, call 334-4834, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Commerce & Human Resources Committee and the House Business Committee

FROM: Deputy Division Manager - Katharine Gerrity

DATE: September 16, 2016

SUBJECT: Grape Growers and Wine Producers Commission

IDAPA 48.01.01 - Rules of the Idaho Grape Growers and Wine Producers Commission - Temporary and Proposed Rule (Docket No. 48-0101-1601)

The Grape Growers and Wine Producers Commission submits notice of temporary and proposed rule at IDAPA 48.01.01 - Rules of the Idaho Grape Growers and Wine Producers Commission. According to the commission, the rule change is being made following the enactment by the Legislature of HB 456 during the 2016 session. The department notes that the bill amended Section 54-3610, Idaho Code, and removed statutory assessment language that was inconsistent with and duplicative to the Idaho Grape Growers and Wine Producers Commission's administrative rules that were approved in 2010 with respect to grapes and grape juice purchased from out-of-state producers for the production of wine in Idaho. The commission notes that Idaho wineries brought forth the request to simplify the assessment structure for future assessment cycles. The current structure apparently requires a number of conversions from tons into gallons and gallons into tons. The commission notes that the temporary and proposed rule streamlines the assessment process by requiring both wineries and vineyards to pay assessments based on tons rather than any conversion to gallons, and also removes the need for the commission to convert gallons to tons for proper harvest numbers.

The commission states that the temporary rule was effective on July 1, 2016. The commission states that the assessment cycle is from July 1 to June 30 of each year and the temporary rule was necessary to have the assessment calculation methodology in place for the assessment cycle. Negotiated rulemaking was conducted. The rulemaking appears to be authorized pursuant to Sections 54-3605 and 54-3610, Idaho Code.

cc: Grape Growers and Wine Producers Commission
Moya Dolsby

IDAPA 48 - IDAHO GRAPE GROWERS AND WINE PRODUCERS COMMISSION

48.01.01 - RULES OF THE IDAHO GRAPE GROWERS AND WINE PRODUCERS COMMISSION

DOCKET NO. 48-0101-1601

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2016.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 54-3605(15) and 54-3610, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The passage of House Bill 456 by the 2016 Idaho Legislature amended Section 54-3610, Idaho Code, and removed statutory assessment language that was inconsistent with and duplicative to the Idaho Grape Growers and Wine Producers Commission's administrative rules that were approved by the Idaho Legislature in 2010 with respect to grapes and grape juice purchased from out-of-state producers for the production of wine in Idaho. Omission of this duplicative language was inadvertently overlooked by industry until prior to the 2016 legislative session. By statute, the Commission is charged with setting forth the assessment calculations in rule for Idaho's grape and wine industry. In reviewing the current assessment structure for grapes and grape juice, Idaho wineries have brought forth the request to simplify the assessment structure for future assessment cycles.

The current assessment structure has proven confusing for industry members and requires them to convert wine grapes purchased in tons into gallons produced before applying assessment payments. In turn, the Commission has to reconvert gallons to tons in order to determine total tons harvested in Idaho for that year. The temporary and proposed rule streamlines the assessment process by requiring both wineries and vineyards to pay assessments based on tons rather than any conversion to gallons, as well as removes the need for the Commission to convert gallons to tons for proper harvest numbers.

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

The changes to Idaho Code section 54-3610 are effective as of July 1, 2016. The assessment cycle is from July 1 to June 30 of each year. A temporary rule is necessary to have the assessment calculation methodology in place for the assessment cycle.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

No change to the assessment rate is proposed and the Commission will not experience a fiscal impact. The rule may allow wineries to reduce the time involved in submitting assessments, reducing costs to the wineries.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 1, 2016 Idaho Administrative Bulletin, [Vol. 16-6, pages 59-60](#), and in the July 6, 2016 Idaho Administrative Bulletin, [Vol. 16-7, pages 87-88](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Moya Dolsby, Executive Director, at (208) 332-1538.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 25th Day of July, 2016.

Moya Dolsby
Executive Director
Grape Growers and Wine Producers Commission
821 W. State St.
Boise, ID 83702
Phone: (208) 332-1538
Fax: (208) 334-2505

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 48-0101-1601
(Only Those Sections With Amendments Are Shown.)**

020. TAX AND LATE PAYMENT PENALTY.

01. Levy and Rate of Tax. In accordance with Section 54-3610, Idaho Code, a tax is levied and imposed on wineries, and grapes grown, used, ~~grown~~, or purchased, and grape juice purchased for the production of wine in Idaho. The rate of each tax shall be: ~~(3-19-07)(7-1-16)T~~

a. ~~Four cents (\$.04)~~ Seven dollars (\$7) per gallon ton of ~~wine produced~~ grapes purchased by producers in Idaho during the previous calendar year for the production of wine in Idaho. ~~(3-29-10)(7-1-16)T~~

b. Seven dollars (\$7) per ton of grapes harvested by growers in Idaho during the previous calendar year for the purpose of ~~vinification during the previous calendar year~~ production of wine in Idaho. ~~(3-29-10)(7-1-16)T~~

c. Seven dollars (\$7) per ton for of grapes purchased ~~from~~ by producers outside Idaho during the previous calendar year for the purpose of the production of wine in Idaho ~~during the previous calendar year~~. ~~(3-29-10)(7-1-16)T~~

d. ~~Six dollars and sixty eight~~ Four cents (\$~~6.6804~~) per ~~one hundred sixty seven (167)~~ gallons, ~~or any portion thereof~~, of grape juice purchased ~~from~~ by producers outside Idaho during the previous calendar year for the purpose of the production of wine in Idaho ~~during the previous calendar year~~. ~~(3-29-10)(7-1-16)T~~

~~e. The tax rates set forth in Paragraphs 020.01.a. through 020.01.d., shall be phased in over a three-year (3) period as follows: (3-29-10)~~

~~i. Thirty three percent (33%) in fiscal year 2010; (3-29-10)~~

- ~~ii. Sixty-six percent (66%) in fiscal year 2011; and (3-29-10)~~
- ~~iii. One hundred percent (100%) in fiscal year 2012 and all subsequent years, except that the maximum tax levied upon any winery for fiscal year 2010 shall be one thousand dollars (\$1,000). (3-29-10)~~

02. Minimum Levy. The minimum taxes paid by any grower or winery shall be one hundred dollars (\$100) annually. (3-29-10)

03. Payment of Tax. The grower harvesting grapes for the production of wine shall pay the tax levied upon the grower. Each winery shall pay the tax levied upon the winery for the production of wine. Purchasers of grapes grown or grape juice produced outside Idaho shall pay taxes levied on such grapes and grape juice. Purchasers of grape juice produced in Idaho shall pay taxes levied on such grape juice. All taxes shall be paid on or before June 30 of each year. ~~(3-29-10)~~(7-1-16)T

04. Late Payment Penalty. Persons making payment of the levied tax after the date set forth in this chapter shall be subject to a late payment penalty of fifteen percent (15%) per annum on the amount due. In addition to the late payment penalty, the Commission shall be entitled to recover all costs, fees, and reasonable attorney's fees incurred in the collection of the tax and penalty provided for in Section 020 of these rules. (3-19-07)

05. Opt Out Alternative. A grower or producer may opt out of the levy of tax by submitting a letter to the Commission no later than June 30 of each year stating intent to opt out of the application of the provisions of Title 54, Chapter 36, Idaho Code, for the upcoming fiscal year. The letter shall include the grower or producer's name and address. (3-19-07)