

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

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

IDAPA 53.01.01 - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking  
(Docket No. 53-0101-1900F).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the  
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research  
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative  
Services. The final date to call a meeting on the enclosed rules is no later than 07/22/2019. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 08/19/2019.

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

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



Eric Milstead  
Director

# Legislative Services Office

## Idaho State Legislature

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*Serving Idaho's Citizen Legislature*

### MEMORANDUM

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

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

**DATE:** July 2, 2019

**SUBJECT:** Idaho Barley Commission

IDAPA 53.01.01 - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking (Docket No. 53-0101-1900F)

The Idaho Barley Commission submits notice of temporary and proposed rules that reauthorize and re-publish the following previously approved chapter at IDAPA 53.01.01 - Rules of the Idaho Barley Commission.

These rules were previously analyzed and reviewed by the Legislative Services Office upon their initial promulgation. The only changes are minor nonsubstantive changes and the removal of the definitions of "regulation" and "rule." No other changes from the existing rules have been noted.

This is a fee rule. According to the commission, this rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules.

Rulemaking appears to be authorized pursuant to Section 22-4009, Idaho Code.

cc: Idaho Barley Commission  
Laura Wilder

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

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

## IDAPA 53 – IDAHO BARLEY COMMISSION

DOCKET NO. 53-0101-1900F

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

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

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 22-4009, Idaho Code.

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

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

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 53 rules of the Idaho Barley Commission.

#### **IDAPA 53**

- IDAPA 53.01.01, *Rules of the Idaho Barley Commission*

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

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. The expiration of these rules would hamper the ability of Idaho barley growers to properly market their barley in export and domestic channels and would force a shutdown of certain barley variety research programs, as well as critical barley related agronomic research programs. In addition, expiration of these rules would hamper Idaho barley growers from receiving important barley industry information and best practices information needed to help them be successful.

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

**FEE SUMMARY:** The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. Idaho barley growers pay a Barley Tax that is currently \$.03 per hundredweight of barley marketed which is collected at point of first purchase and remitted to the Idaho Barley Commission. Idaho statute 22-4015 allows for the Barley Tax of up to \$.04 per hundredweight.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

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

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Laura Wilder, Administrator of Idaho Barley Commission at (208) 334-2090 or (208) 608-4519 (mobile) or [lwilder@barley.idaho.gov](mailto:lwilder@barley.idaho.gov).

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

Dated this 19th day of June, 2019.

Laura Wilder, Administrator  
Idaho Barley Commission  
821 W. State Street  
Boise, ID 83706  
Office: (208) 334-2090  
Mobile: (208) 608-4519  
E-mail: [lwilder@barley.idaho.gov](mailto:lwilder@barley.idaho.gov)

**IDAPA 53  
TITLE 01  
CHAPTER 01**

**IDAPA 53 – IDAHO BARLEY COMMISSION**

**53.01.01 – RULES OF THE IDAHO BARLEY COMMISSION**

**000. LEGAL AUTHORITY.**

In accordance with Section 22-4009, Idaho Code, the Idaho Barley Commission has promulgated rules implementing the provisions of Chapter 40, Title 22, Idaho Code. (3-20-14)

**001. TITLE AND SCOPE.**

These rules are titled IDAPA 53.01.01, “Rules of the Idaho Barley Commission,” IDAPA 53, Title 01, Chapter 01. These rules provide the means for the protection, promotion, study, research, analysis and development of markets concerning the growing and marketing of Idaho barley. (3-20-14)

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency has written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. The document, known as “Idaho Barley Commission Rules” is available for public inspection and is available at no charge in the main office of this agency. (7-1-93)

**003. ADMINISTRATIVE APPEALS.**

Administrative appeals before the Idaho Barley Commission are provided for in Chapter 52, Title 67, Idaho Code. (3-20-14)

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference into this rule. (3-20-14)

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

**01. Address.** The Idaho Barley Commission is located at 821 W. State Street, Boise, ID 83702. (3-20-14)

**02. Office Hours.** 8:00 a.m. and 5:00 p.m. each day except Saturdays, Sundays and holidays. (3-20-14)

**03. Telephone and Fax.** Office: (208) 334-2090, Fax: 208-334-2335. (3-20-14)

**04. Website.** The Commission’s official website is <https://barley.idaho.gov/>. (3-20-14)

**006. PUBLIC RECORDS ACT COMPLIANCE.**

These rules have been promulgated in accordance with the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and are a public record. (3-20-14)

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

**010. DEFINITIONS.**

**01. Commission.** The Idaho Barley Commission. (7-1-93)

**02. First Purchaser.** Any person, group, association or partnership that buys barley in the first instance, or any lien holder, public or private, including the Commodity Credit Corporation, who may possess barley from the grower under any lien. (7-1-98)

**03. Grower.** Any landowner personally engaged in growing barley, a tenant of the landowner

personally engaged in growing barley, or both the owner and the tenant jointly, and includes a person, partnership, association, corporation, cooperative, trust, sharecropper or any and all other business units, devices and arrangements. And for the purposes of payment of the barley assessment pursuant to Section 22-4015, Idaho Code, a person who delivers into, stores within, or makes the first sale of barley in the state of Idaho. (7-1-98)

**04. Seller.** Any person or entity, including growers, who sells barley in the first instance in the state of Idaho. (7-1-98)

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

**100. FIRST PURCHASER RULES.**

In accordance with Section 22-4015(1), Idaho Code, the Commission shall designate the quarters (three (3) month periods) for the purpose of collecting the tax imposed on all barley grown, delivered into, or stored within the state of Idaho and sold or contracted in the state. (3-20-14)

**01. Designated Quarters.** The quarters designated by the Commission for payment of tax, as required in Section 22-4015 (1), Idaho Code are: (7-1-93)

**a.** The Commission's first quarter will begin on the first day of July and end the thirtieth day of September. The first quarter barley tax shall be due on or before the fifteenth day of October. (7-1-93)

**b.** The Commission's second quarter will begin on the first day of October and end the thirty-first day of December. The second quarter barley tax shall be due on or before the fifteenth day of January. (7-1-93)

**c.** The Commission's third quarter will begin on the first day of January and end the thirty-first day of March. The third quarter barley tax shall be due on or before the fifteenth day of April. (7-1-93)

**d.** The Commission's fourth quarter will begin on the first day of April and end the thirtieth day of June. The fourth quarter barley tax shall be due on or before the fifteenth day of July. (7-1-93)

**02. Barley Tax Return (Form Number 1).** The first purchaser of barley shall be required to complete and send the Barley Tax Return (Form Number 1) to the commission office each and every quarter on or before the dates specified in IDAPA 53.01.01, Subsection 100.01. The Barley Tax Return (Form Number 1) shall be provided to the first purchaser by the Commission. The Barley Tax Return (Form Number 1) shall, at a minimum, require the following legible information: (7-1-93)

**a.** The tax reporting period. (7-1-93)

**b.** The name and address of the barley purchaser. (7-1-93)

**c.** The net weight of the barley purchased (if any) in pounds or hundredweights. (7-1-93)

**d.** The total amount of tax deducted (if any) from sellers by the purchaser. (7-1-98)

**e.** The tax withheld by Commodity Credit Corporation loans. (7-1-93)

**f.** The total amount of tax due the Commission (if any). (7-1-93)

**03. Delivery of Documents to Commission (Form Number 2).** The first purchaser of barley shall complete and return the Report of Tax on Barley (Form Number 2), or equivalent, to the commission office each and every quarter on or before the dates specified in IDAPA 53.01.01, Subsection 100.01. The Commission shall provide blank copies of Form Number 2 to the first purchaser. Form Number 2, or equivalent, shall, at a minimum, require the following legible information: (7-1-93)

**a.** The name and address of the purchaser. (7-1-93)

**b.** The quarter the barley was purchased. (7-1-93)

- c. The name or names and address or addresses of the grower and seller. (7-1-93)
- d. The number of pounds of barley purchased. (7-1-93)
- e. The total barley tax withheld from each purchase. (7-1-93)

**04. Deduction of Tax on Net Weight of Barley.** The first purchaser shall deduct the barley tax on the NET weight of the barley after deduction of dockage. (7-1-93)

**05. Late Payment Penalty** (As specified in Section 22-4018 (2), Idaho Code). Any person or firm who makes payment to the Commission at a date later than prescribed in Section 22-4015, Idaho Code, shall be subject to a late payment penalty of fifteen percent (15%) per annum on the amount due. (7-1-93)

**101. -- 199. (RESERVED)**

**200. EXEMPTIONS.**

In accordance with Section 22-4015, Idaho Code, the barley assessment shall be imposed on all barley grown, delivered into or stored within, and sold or contracted in Idaho. If a barley assessment that serves a comparable purpose to the Idaho assessment was previously paid in a jurisdiction outside Idaho, the seller of the barley is exempt from payment of the Idaho barley assessment. The Commission shall determine jurisdictions outside of Idaho that collect an assessment that serves a comparable purpose, which shall include, as a minimum, funding for research and market development programs. In order to qualify for the exemption, the seller must demonstrate to the first purchaser in the state of Idaho that an assessment has been previously paid to such a jurisdiction. (7-1-98)

**201. -- 999. (RESERVED)**