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Legislative Services Office Idaho State Legislature

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MEMORANDUM

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

FROM: Katharine Gerrity - Deputy Division Manager

DATE: August 04, 2021

SUBJECT: Temporary Rule

IDAPA 42.01.01 - Notice of Omnibus Rulemaking (Fee Rule) - Adoption of Temporary Rule \ Rescission of Previous Temporary Rule - Docket No. 42-0101-2100F

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) 334-4845. Thank you.

Attachment: Temporary Rule

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IDAPA 42 – IDAHO WHEAT COMMISSION

DOCKET NO. 42-0101-2100F (FEE RULE)

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF TEMPORARY RULE \ RESCISSION OF PREVIOUS TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule being adopted through this omnibus rulemaking as listed in the descriptive summary of this notice is July 1, 2021. The rescission of previous temporary rule under docket 42-0101-2000F is effective July 1, 2021.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule and rescinded a previous temporary rule. The action is authorized pursuant to Title 22, Chapter 33, Idaho Code.

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

This temporary rulemaking adopts and republishes the following existing rule chapter previously submitted to and reviewed by the Idaho Legislature under IDAPA 42, rules of the Idaho Wheat Commission:

IDAPA 42

- 42.01.01 *Rules of the Idaho Wheat Commission.*

Rescission of previous temporary rule aligns this chapter wholly with the administrative code effective 7-1-21.

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

This temporary rule is necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. The temporary rule implements the duly enacted laws of the state of Idaho, provides citizens with the detailed rules and standards for complying with those laws, and assists in the orderly execution and enforcement of those laws. The expiration of this rule 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 this rule. The temporary rule provides means for the protection, promotion, study, research, analysis, and development of markets concerning the growing and marketing of Idaho wheat.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fees or charges being imposed or increased are justified and necessary to avoid immediate danger and the fees are described herein:

The fees or charges, authorized in Section 22-3309, Idaho Code, are part of the agency's 2022 budget that relies upon the existence of these fees or charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these temporary 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. The following is a specific description of the fees or charges:

The fees or charges, authorized in Section 22-3315, Idaho Code, allow for a three and one-half cents per bushel collection at point of first purchase.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the adoption of temporary rule and rescission of temporary rule, contact Casey Chumrau, Executive Director, 208-334-1522.

DATED this 1st day of July, 2021.

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IDAPA 42 – IDAHO WHEAT COMMISSION

42.01.01 – RULES OF THE IDAHO WHEAT COMMISSION

000. LEGAL AUTHORITY.

In accordance with Section 22-3309, Idaho Code, the Idaho Wheat Commission has promulgated rules implementing the provisions of Title 22, Chapter 33, Idaho Code. (7-1-21)T

001. SCOPE.

The rules of the Idaho Wheat Commission promote the public health and welfare of the citizens of our state by providing means for the protection, promotion, study, research, analysis and development of markets concerning the growing and marketing of Idaho wheat. (7-1-21)T

002. -- 099. (RESERVED)

100. WHEAT TAX RETURN FORM.

01. Form. Wheat Tax Return forms are available at the Commission office for use by the first purchaser (buyer) of Idaho grown wheat in transmitting the Idaho wheat tax to the Commission. (7-1-21)T

02. Procedures. At the end of each quarter, buyers shall execute the Wheat Tax Return (form). One (1) copy of the form and a check covering the entire amount of all wheat tax collections made during the quarter shall be mailed to the Executive Director of the Commission not later than the fifteenth day of the month at the end of each quarter (October 15, January 15, April 15, and July 15, respectively) of each calendar year. If no wheat has been purchased during any quarter, one (1) copy of the Wheat Tax Return form declaring that no wheat has been purchased, shall be signed and mailed to the Executive Director of the Commission. (7-1-21)T

101. MIXTURES.

When the grain is purchased as wheat, the tax must be collected on the full net weight of the grain purchased and on any mixtures containing fifty percent (50%) or more of wheat. (7-1-21)T

102. NET WEIGHT.

The tax must be collected on the net weight of the wheat after deduction of dockage and smut, and not upon the gross weight. (7-1-21)T

103. TRUCKERS.

When a trucker purchases wheat from a grower, it is his responsibility under the law to deduct the tax and remit the amount to the Commission. The trucker in such instances is liable for the deduction of tax. Those who purchase wheat from such truckers are not directly liable for the deduction of tax, but buyers should make sure that the trucker has in fact purchased the wheat from a grower and is not the person who produced the wheat. (7-1-21)T

104. WHEAT DELIVERED ON ACCOUNT OR EXCHANGED FOR OTHER WHEAT.

When wheat is delivered and credited to the account of a grower who is purchasing mixed feeds and other commodities, such transactions are really sales of the wheat delivered. In these cases, the buyer must deduct the tax from the amount credited to the grower and remit to the Commission just as though the sale had been made for cash. On the other hand, if the grower delivers the wheat in exchange for other wheat and no sale of the wheat is involved, the tax should not be deducted. (7-1-21)T

105. END USE.

Idaho wheat is subject to tax when it is first sold or contracted into commercial channels. Beside traditional uses of wheat for flour milling, domestic and export, commercial channels include sale of wheat for use as feed, or any industrial or chemurgic use. (7-1-21)T

106. -- 199. (RESERVED)

200. PENALTY FOR LATE PAYMENT OF WHEAT TAX.

01. Interest Penalties. Any person or firm who makes payment of wheat tax collections to the Commission at a date later than the fifteenth day of the month at the end of each quarter as prescribed in Subsection 100.02 of these rules, is subject to a late payment penalty of fifteen percent (15%) per annum on the amount due, unless that person or firm, within fifteen (15) days of the date, notifies the Commission in writing of any delay in

payment and submits the payment of wheat tax collections within thirty (30) days of the prescribed due date.

(7-1-21)T

02. Additional Penalties. The Commission is entitled, in addition to the penalty of fifteen percent (15%) per annum, to recover from the buyer, all costs, fees, and reasonable attorney's fees incurred in collecting the wheat tax collections and penalty as prescribed in Section 22-3315, Idaho Code.

(7-1-21)T

201. -- 299. (RESERVED)

300. WHEAT UNDER COMMODITY CREDIT CORPORATION LOANS.

01. Payee. The Commission will be named as payee to receive three and one half cents (\$.3½) per bushel when the producer's note and loan agreement is executed by the Farm Service Agency (FSA). In such cases, the lending agency will send the tax directly to the Commission. When the producer's note and loan agreement shows that the tax has been deducted and sent to the Commission, it will not be necessary for the buyer to deduct the tax when the wheat is purchased.

(7-1-21)T

02. Tax. Since the legislature has made the tax a lien prior to all other liens and encumbrances of the wheat, it is necessary for the grain buyer to make sure the tax has been paid in order to obtain clear title to the wheat. The tax should be deducted in all cases where there is not evidence that the tax was previously paid by a lending agency. In case errors occur and the tax is deducted by a lending agency and again deducted by a grain buyer, refund will be made by the Commission.

(7-1-21)T

301. INVOICES AND RECORDS.

01. Invoices. Section 22-3316, Idaho Code, provides for invoices to be delivered to the grower for each purchase. The Wheat Commission is not providing a special form for this purpose and suggests that buyers use the final settlement vouchers of accounts of sale commonly used in Idaho. The amount of the Idaho state wheat tax deducted must be shown on each settlement voucher.

(7-1-21)T

02. Vouchers. Buyers do not need to send the Commission copies of their settlement vouchers issued to individual growers but should keep copies available for examination by representatives of the Commission at a later date. Where it is not the practice to issue settlement vouchers of accounts of sale, buyers should be sure that they have accurate records of all wheat bought from growers and the amount of wheat bought from each grower.

(7-1-21)T

03. Delivery of Documents to Commission. The first purchaser of wheat shall complete and return the Report of Tax, or equivalent, to the Commission office at the end of each production year (July 1 through June 30). The report is due on the same date as the final quarter wheat tax as specified in Section 22-3315(1), Idaho Code, and along with the following:

(7-1-21)T

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

(7-1-21)T

b. Address or addresses of the grower and seller.

(7-1-21)T

302. -- 999. (RESERVED)