



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

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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.

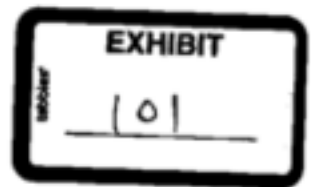
11. The term "processing" means changing the form of potatoes from the raw or natural state into a product for human consumption.

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



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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** _____

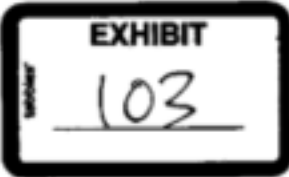
NAME _____ **ADDRESS** _____

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 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

Stephane Mcklesen

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 terms 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.



Signature



Title



Entity



March 23, 2018

The Honorable Lawrence G. Wasden
Office of the Attorney General
700 W. Jefferson Street, Suite 210
P.O. Box 83720
Boise, Idaho 83720-0010

Dear General Wasden,

I write to you seeking guidance regarding the events occurring at nomination meetings held on Monday, March 19, 2018 for commissioner positions on the Idaho Potato Commission ("IPC"). The meetings that took place were to select nominees for three positions: a Grower, a Shipper and a Processor Commissioner. A few days prior to the meeting, an industry member (Mr. Mark Mickelsen) raised questions regarding the way the meeting would be conducted and what type of voting, such as the use of proxies and absentee ballots, would be allowed. Responding to these concerns, I prepared the attached document that addressed the concerns that I knew of and outlined the procedures that the IPC had followed since at least 1984. I reviewed this document with IPC's President and CEO Frank Muir, and it was sent to Mark Mickelsen and current IPC Commissioners and Staff on Friday, March 16, 2018. I also had copies handed out prior to the nomination meetings and provided copies to Mark Mickelsen; his wife, Stephanie Mickelsen; and their son, Andrew Mickelsen.

The IPC is a self-governing state agency created under Chapter 12, Title 22, Idaho Code. The criteria for qualifying as a grower, shipper, or processor is set forth in I.C. §§22-1202 and 2204, and relevant portions therein were set forth in the attached memo. In an effort to provide as ample an opportunity for participation as possible, and acknowledging that technology has advanced since IPC's statutes were enacted, IPC several years ago set up a conference line so industry members who could not be physically present could still participate in these nomination meetings. Participation took place by calling in to the meeting, listening to the proceedings, and then text messaging or phoning IPC's Industry Relations Director to request a ballot by facsimile or request the opportunity to vote by text message. This process was designed to provide assurances that such a vote was equivalent to being physically present and would be subject to the same verification processes. As IPC does not have a process by which nominations are made in advance of balloting, IPC determined that participation in a meeting was the correct way to interpret its statutes. A person who wanted to vote would have to be able to learn the names of all nominees, hear them speak, and then cast their votes. It is not possible to do this if one votes before they even know who will be nominated.

The first nomination meeting was for a grower commissioner opening. We opened the conference call line and commenced the meeting. There were four nominees for the grower position: Stephanie Mickelsen, Dave Robison, Brett Jensen, and the incumbent, James Hoff. Each nominee affirmed that they met the statutory qualifications to be a "grower". The candidates gave a short speech and ballots were distributed. Andrew and Stephanie Mickelsen requested multiple ballots and indicated that they intended to vote for several different business entities they owned. They were advised that the IPC has

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

consistently interpreted its statutes to say that: "Only one person per farm corporation, partnership, or farm family may vote." Mark Mickelsen stated that they had checked with their legal counsel and they were advised that they could represent multiple entities in the various capacities of the businesses they owned. Subsequently multiple ballots with apparently different business names were submitted by the Mickelsen family. These ballots didn't name a natural person or address—just an apparent business name and therefore were incomplete.

The ballots were collected and taken to an adjoining room for counting. To count ballots the IPC uses an independent CPA who is assisted by IPC's Industry Relations Director. Several ballots were found to be "Absentee" ballots. There were also "Proxy" ballots submitted. These "ballots" were designed to look like official IPC ballots, but omitted language from IPC's ballots. In accordance with the IPC's long-standing interpretation of its statutes, I made the decision that absentee, proxy, and incomplete ballots were invalid and should not be counted. With those ballots excluded, the top three nominees were Brett Jensen, Dave Robison and Stephanie Mickelsen.

The nomination for the shipper position was the second meeting convened. There were three nominees: Kevin Searle, Lance Poole, and Todd Cornelison. Mr. Poole was nominated by Stephanie Mickelsen. The question was raised about her doing so as she had just affirmed that she was a grower and that under the statute only those who met the definition of "shipper" could participate in the meeting. The response of Stephanie (in part) and Mark (in part) was that they both grow potatoes and are also one-half (1/2) owners in Rigby Produce, a potato shipping facility. The Mickelsens were advised that the nomination could be invalidated upon review. No vote was necessary on this position as only three persons were nominated.

The nomination for a processor member of the Commission took place next. The nominees were John Shields, Brent Mickelsen, and Dan Nakamura, the incumbent. Brent Mickelsen is a nephew of Stephanie and Mark Mickelsen and was nominated by Stephanie Mickelsen. The Mickelsens also have ownership in a processing facility, Potato Products of Idaho. The question was again raised about her being a qualified participant in the meeting after having first affirmed that she was a grower, then shipper, and now processor. The same discussion regarding multiple entities ensued and again they were advised that the nomination could be invalidated. As there were only three nominees, no vote was taken on this position.

Subsequent to meeting, IPC reviewed the grower ballots. We discovered that three ballots were invalid as they had been submitted by seed potato growers, as opposed to potato growers who primarily grow potatoes for human consumption. Seed potato growers do not pay IPC taxes and are not eligible to vote in nomination meetings. IPC has also learned that the capacity of the conference line used was exceeded and at least three people were not able to participate and thus did not vote in the nomination election. It is not possible to determine accurately if there were more potential participants that could not vote or what their vote would have been. Without knowing the number of people who could not participate, we do not know if the outcome would have been affected. We do know that the outcome would not be different with the ballots declared to be invalid not counted. There were several other grower entities present who could have cast multiple votes in the same manner as the Mickelsens, but they chose to follow IPC's interpretation of the statutes and submit a single ballot.

Our questions are these:

- 1.) Can a person, having declared themselves 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.) Under these circumstances is the nomination invalid? 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 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?

IPC has retained all of the ballots and they are available for your review. We very much appreciate your guidance in resolving this matter.

Sincerely,

Patrick Kole
V.P. Legal and Government Affairs
Idaho Potato Commission



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?

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

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 vote¹ 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

¹ 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.

Patrick J. Kole

April 2, 2018

Page 4 of 4

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.

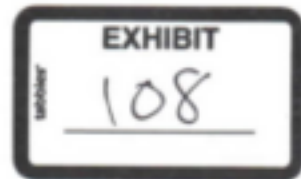
I hope you find this helpful.

Sincerely,



BRIAN KANE
Assistant Chief Deputy

BK:ijn



April 20, 2018

Via US Mail and E-mail

Stephanie Mickelsen
251 N 2800 E
Roberts, ID 83444
swmnick@gmail.com

Brett Jensen
2000 West 113 North
Idaho Falls, ID 83402
brettjensenfarms@gmail.com

James Hoff
10623 S. Hoff Ln.
Idaho Falls, ID 83406
idahjames@aol.com

Dave Robison
2175 E 400 N
Roberts, ID 83444
drobison64@aol.com

Dear Grower Commissioner Nominees:

On April 10, 2018 I forwarded to you the letter we received from the Attorney General regarding the Nomination Meetings held for upcoming commissioner positions on the Idaho Potato Commission ("IPC"). On Wednesday, April 25, 2018 starting at 8:30 a.m. the IPC will hold its regularly scheduled meeting. As some of you know, the regular meeting is preceded by an agenda meeting that is held the previous day. The agenda meeting begins at 2:00 p.m. on Tuesday, April 24, 2018.

As the two meetings are not being held on the same day, I write to advise you that there will not be a discussion of the nomination meeting at the Agenda meeting. All of the discussion will take place at the regular meeting on Wednesday only. Also, as you will see from the attached revised agenda, the IPC is providing notice that an Executive Session can take place following the public discussion of this matter at the regular meeting.

It is important to note that there has been no discussion of this matter as a commission, and therefore no decision has been made regarding the letter from the Attorney General. Again, this discussion will take place on Wednesday, April 25. As always, you are welcome to attend and participate in the public meeting.

Please feel free to send me any questions via e-mail and please use the "Reply to All" function in your e-mail program so that everyone is included in this discussion.

Sincerely,

Patrick Kole
VP Legal and Government Affairs

Cc: IPC Commissioners and Staff

IDAHO POTATO COMMISSION

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

AMENDED AGENDA #1

IDAHO POTATO COMMISSION MEETING IPC Commission Office – EAGLE April 25, 2018 @ 8:30 a.m.

1. CALL TO ORDER & WELCOME –Lynn Wilcox, Chairman
2. MINUTES OF THE MARCH 21, 2018 MEETING
3. STATEMENT OF RECEIPTS & EXPENDITURES (MARCH) – Frank Muir
 - A) Review Delinquent Accounts
4. OFFICE PROCEDURES COMMITTEE REPORT – Lynn Wilcox, Chairman
 - A) Legal & Government Matters – Pat Kole
5. PRESIDENT'S REPORT – Frank Muir
 - A) Advertising, PR; RODS
 - B) Big Idaho Potato Truck
 - C) Quality Project
 - D) Miscellaneous Publicity; videos
 - E) Nominations procedures
 - F) Districts
 - G) Executive Session to Communicate with legal counsel for the Idaho Potato Commission to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated.
6. RETAIL – Randy Hardy, Chairman, Ritchey Toevs, Vice Chairman
 - A) Progress Report – Seth Pemsler
7. EXPORT – Peggy Arnzen, Chairman, Dan Nakamura, Vice Chairman
 - A) Progress Report – Traci Lofthus
8. FOODSERVICE – Tommy Brown, Chairman, James Hoff, Vice Chairman
 - A) Progress Report – Don Odiorne
9. RESEARCH & EDUCATION – Nick Blanksma, Chairman, Mary Hasenoehrl, Vice Chairman
10. INDUSTRY RELATIONS REPORT – Travis Blacker, Dan Nakamura, Chairman
11. LIAISON REPORTS
 - A) NPC – Randy Hardy, Chairman
 - B) POTATOES USA – Lynn Wilcox, Chairman
 - C) IGSA – Peggy Arnzen, Chairman
 - D) IACI – Tommy Brown, Chairman
 - E) United – James Hoff, Chairman
 - F) SIPCO – Ritchey Toevs, Chairman
12. USDA REPORT- Vince Matthews
13. OTHER ITEMS
14. ADJOURNMENT



EXHIBIT
 109

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

Agency Name: Miscellaneous Commissions	Submitted on: 06/04/2018
Primary Contact: Patrick Kole Phone: 120-851-4420	Email: patrick.kole@potato.idaho.gov
Secondary Contact: Gracie Bingham Phone: 208-514-4206	Email: gracie.bingham@potato.idaho.gov
Person Authorizing Rule: Patrick Kole Phone: 120-851-4420	Email: patrick.kole@potato.idaho.gov
Statutory Authority for the rule making (Idaho Code, Federal Statute or Regulation): Idaho Code Chapter 12, Sections 22-1205 and 1207	
Title, Chapter, and Possible Docket (IDAPA) Number: 29.01.03 - Rules Governing Nominations for Appointment as a Commissioner to the Idaho Potato	
This rule is: <input type="checkbox"/> Proposed <input checked="" type="checkbox"/> Temporary <input type="checkbox"/> Proposed/Temporary	Effective Date: 08/30/2018
<p>If this is a temporary rule:</p> <p><input type="checkbox"/> Necessary to protect the public health, safety, or welfare; or <input type="checkbox"/> Compliance with deadlines in amendments to governing law or federal programs; or <input checked="" type="checkbox"/> Conferring a benefit.</p> <p>Please explain: 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.</p> <p>If this is a temporary rule which imposes a fee or charge, provide justification as described in Idaho Code 67-5226(2): Not applicable.</p>	
<p>Agency has determined according to Idaho Code 67-5220(1):</p> <p><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).</p> <p><input type="checkbox"/> Negotiation of this rule is not feasible</p> <p><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.</p> <p>Please explain:</p>	
<p>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: This rulemaking will have no fiscal impact.</p>	
<p>Provide a short explanation of the need for this 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.</p>	

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:

NEGOTIATED RULEMAKING MEETINGS
(ALL TIMES ARE LOCAL)

Tuesday, July 24, 2018 4:00 to 6:00pm	Tuesday, July 31, 2018 5:00 to 9:00 pm	Wednesday, August 1, 2018 5:00 to 9:00 pm
IPC Offices 661 S. Rivershore Ln., Ste. 230 Eagle, ID 83616	Burley Inn & Convention Center 800 N. Overland Avenue Burley, ID 83318	Shoshone-Bannock Hotel 777 Bannock Trail 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. 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.

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.

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

000. LEGAL AUTHORITY.

These rules are adopted under the legal authority of the Idaho Potato Commission Law, Chapter 12, Title 22, Idaho Code.

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."

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.

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.

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.

003. ADMINISTRATIVE APPEALS

Administrative appeals are governed under the Commission's Rules of Procedure, IDAPA 29.01.01.000, et. seq.

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference into these rules.

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.

006. PUBLIC RECORDS ACT COMPLIANCE.

Except as provided by Rules 52, 233, and law, 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.

007. -- 009. (RESERVED)

010. DEFINITIONS. The definitions set forth in Section 22-1204, Idaho Code, shall apply to this chapter.

011. Commodity commission—Nominations—Elections—Vacancies.

01. Not less than forty-five days prior to March 31 of each year, the Commission will mail notice to all affected growers, shippers and processors with a call for nominations for the position of a Commissioner of the Commission. The notice shall give the final date for filing nominations, which shall not be less than twenty days prior to March 31. 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.

02. On or before March 15, 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.

03. Grower Commissioner nominees must be nominated from the districts established in Idaho Code § 22-1202. Three (3) nominees will be submitted to the Governor for consideration.

04. Shipper Commissioner nominees may be nominated from any district. Three (3) nominees will be submitted to the Governor for consideration.

05. Processor Commissioner nominees may be nominated from any district. Three (3) nominees will be submitted to the Governor for consideration.

06. 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.

07. 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.

012. After any vote —Nominees provided results—Disputes.

01. Upon completion of any nomination vote, the Commission shall tally the results of the vote and provide the results to the nominees.

02. 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.

03. 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.

013. Qualifications

01. Membership qualifications. Commission members shall be citizens and residents of Idaho over the age of eighteen (18) years.

02. Grower members must meet the qualifications set forth in 010.03 and 011.03 above 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.

03. Shipper members must meet the qualifications set forth in 010.12 above 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.

04. Processor members must meet the qualifications set forth in 010.10 above 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.

05. Each grower, shipper, or processor may only vote on one (1) ballot and may only vote once (1x) 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.

06. A designation by a person as a grower, shipper or processor shall continue for the succeeding three years.

[Idea](#) [Proposal SOP](#) [Reports](#)[Modify Profile](#)

EALS# STATUS

EALS#: 212-01 ▼

Status: Approved Jul 06, 2018

DFM Analyst: Amber Christofferson

Agency: Potato Commission

Special Assist.: Kabine Franks

BASIC IDEA INFORMATION

* Title: Critical Statute Changes for the Idaho Potato Commission

* Has this or a similar idea been submitted in the past three years? Yes No

CONTACTS

* Contact 1: Kole, Patrick ▼

* Phone: +1 (208) 514-4208

* Email: patrick.kole@potato.idaho.gov

Contact 2: Bingham, Gracie ▼

Phone: +1 (205) 514-4206

Email: gracie.bingham@potato.idaho.gov

COMMENTARY

* Brief description of legislative idea and how it will "solve the problem":

The potato industry has changed significantly over the last several years and our statutes are seriously out of date. In particular, a grower as defined in the code would exclude 60% or more of Idaho potato growers from becoming a grower commissioner. In addition, potato production has shifted from Western to Eastern Idaho such that two potato grower districts produce less than 10% of the Idaho potato crop. We are proposing to redraw the district boundaries to more equitably reflect potato production by creating

* Fiscal impact of legislative idea:

None

EXHIBIT
113

LEGISLATURE OF THE STATE OF IDAHO
Sixty-fifth Legislature First Regular Session - 2019

IN THE _____

_____ BILL NO. _____

BY _____ COMMITTEE

1 AN ACT

2 RELATING TO AGRICULTURE; AMENDING SECTION 22-1202, IDAHO CODE,
3 TO REVISE IDAHO POTATO COMMISSION COMMISSIONER DISTRICTS.

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

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

7 22-1202. POTATO COMMISSION CREATED. There is hereby
8 created and established in the department of self-governing
9 agencies the "Idaho potato commission" to be composed of nine
10 (9) practical potato persons, resident citizens of the state of
11 Idaho for a period of three (3) years prior to their appointment
12 each of whom has had active experience in growing, or shipping,
13 or processing of potatoes produced in the state of Idaho. At
14 least five (5) members of said commission shall be growers who
15 are actually now engaged in the production of potatoes. Two (2)
16 of the members shall be shippers who are actually now engaged in
17 the shipping of potatoes, and two (2) of the members shall be
18 processors who are actually now engaged in the processing of
19 potatoes. The qualifications for members of said commission as
20 above required shall continue throughout their respective terms
21 of office and shall serve at the pleasure of the governor. Three
22 (3) growers shall be nominated for each grower vacancy that
23 occurs, from which the governor shall appoint one (1). Two (2)
24 grower commissioners shall be appointed from the district known
25 as District No. 1, consisting of the counties of Oneida,
26 Franklin, Bear Lake, Caribou, Bannock, Power, Bingham,
27 Bonneville, Teton, Madison, Jefferson, Fremont, Clark, and
28 Butte, ~~Custer, and Lemhi~~; one (1) grower commissioner shall be
29 appointed from the district known as District No. 2A, consisting
30 of the counties of Twin Falls, Jerome, Lincoln, Camas, Elmore,
31 Boise, Valley, and Gooding; one (1) grower commissioner shall be
32 appointed from the district known as District No. 2B, consisting
33 of the counties of Cassia, Minidoka, Blaine, Custer and Lemhi;
34 and one (1) grower commissioner shall be appointed from the

1 district known as District No. 3, consisting of the counties of
2 Owyhee, Ada, Canyon, Gem, Payette, Washington, Adams, Idaho,
3 Lewis, Nez Perce, Clearwater, Latah, Benewah, Shoshone,
4 Kootenai, Bonner, and Boundary. Three (3) shippers shall be
5 nominated for each shipper vacancy that occurs from which the
6 governor shall appoint one (1). Shipper commissioners do not
7 necessarily need to be nominated from geographical areas. Three
8 (3) processors shall be nominated for each processor vacancy that
9 occurs from which the governor shall appoint one (1). Processor
10 commissioners do not necessarily need to be nominated from
11 geographical areas. Nominations must be made thirty (30) days
12 prior to appointment. All nominations must give equal
13 consideration to all who are eligible for appointment as defined
14 in this act. ~~The Idaho potato commission shall hold separate~~
15 ~~meetings of the growers, shippers, or processors, as the~~
16 ~~nominations to be made shall require, in the various districts,~~
17 ~~to determine who shall be nominated for appointment. Notice of~~
18 ~~said meetings shall be given by publication in one (1) newspaper~~
19 ~~published in each county of the district or districts in which~~
20 ~~said nominations are to be made, and the notice shall be~~
21 ~~published in two (2) issues of each newspaper, the first to be~~
22 ~~approximately thirty (30) days and the second approximately ten~~
23 ~~(10) days before said meeting. The notice shall state the~~
24 ~~purpose, time and place of said meeting. All meetings held for~~
25 ~~the selection of nominees shall be held prior to March 31 of the~~
26 ~~year the appointment or appointments are to be made. The~~
27 Commission shall adopt rules for nominating commissioners to
28 serve on the Commission.

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

33 Vacancies shall be filled as terms expire. Each of such
34 commissioners shall hold office until his successor has been
35 appointed and qualified. The term of office shall commence on
36 September 15 of the year of appointment and expire on September
37 14 of the last year of the term of office.

38 A majority of the members of said commission shall
39 constitute a quorum for the transaction of all business and the
40 carrying out of the duties of said commission. Before entering
41 on the discharge of their duties as members of said commission,
42 each member shall take and subscribe to the oath of office
43 prescribed for state officers.

44 Each member of the commission shall be compensated as
45 provided by section 59-509(j), Idaho Code, provided however,
46 that compensation paid to members of the commission from and

1 after April 1, 1992, shall not be considered salary as defined
2 in section 59-1302(31), Idaho Code.

3 SECTION 2: An emergency existing therefor, which emergency is
4 hereby declared to exist, this act shall be in full force and
5 effect on and after its passage and approval.

LEGISLATURE OF THE STATE OF IDAHO
Sixty-fifth Legislature First Regular Session - 2019

IN THE _____

_____ BILL NO. _____

BY _____ COMMITTEE

1 AN ACT

2 RELATING TO AGRICULTURE; AMENDING SECTION 22-1202, IDAHO CODE,
3 TO REVISE IDAHO POTATO COMMISSION COMMISSIONER DISTRICTS.

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

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

7 22-1202. POTATO COMMISSION CREATED. There is hereby
8 created and established in the department of self-governing
9 agencies the "Idaho potato commission" to be composed of nine
10 (9) practical potato persons, resident citizens of the state of
11 Idaho for a period of three (3) years prior to their appointment
12 each of whom has had active experience in growing, or shipping,
13 or processing of potatoes produced in the state of Idaho. At
14 least five (5) members of said commission shall be growers who
15 are actually now engaged in the production of potatoes. Two (2)
16 of the members shall be shippers who are actually now engaged in
17 the shipping of potatoes, and two (2) of the members shall be
18 processors who are actually now engaged in the processing of
19 potatoes. The qualifications for members of said commission as
20 above required shall continue throughout their respective terms
21 of office and shall serve at the pleasure of the governor. Three
22 (3) growers shall be nominated for each grower vacancy that
23 occurs, from which the governor shall appoint one (1). ~~Two (2)~~
24 ~~grower commissioners shall be appointed from the district known~~
25 ~~as District No. 1, consisting of the counties of Oneida,~~
26 ~~Franklin, Bear Lake, Caribou, Bannock, Power, Bingham,~~
27 ~~Bonneville, Teton, Madison, Jefferson, Fremont, Clark, Butte,~~
28 ~~Guster, and Lemhi; one (1) grower commissioner shall be appointed~~
29 ~~from the district known as District No. 2A, consisting of the~~
30 ~~counties of Twin Falls, Jerome, Lincoln, Camas, Elmore, Boise,~~
31 ~~Valley, and Gooding; one (1) grower commissioner shall be~~
32 ~~appointed from the district known as District No. 2B, consisting~~

1 ~~of the counties of Cassia, Minidoka, Blaine, Custer and Lemhi;~~
2 ~~and one (1) grower commissioner shall be appointed from the~~
3 ~~district known as District No. 3, consisting of the counties of~~
4 ~~Owyhee, Ada, Canyon, Gem, Payette, Washington, Adams, Idaho,~~
5 ~~Lewis, Nez Perce, Clearwater, Latah, Benewah, Shoshone,~~
6 ~~Kootenai, Bonner, and Boundary. One (1) grower commissioner shall~~
7 ~~be appointed from the district known as District No. 1,~~
8 ~~consisting of the counties of Fremont, Jefferson, Madison, and~~
9 ~~Teton; one (1) grower commissioner shall be appointed from the~~
10 ~~district known as District No. 2, consisting of the counties of~~
11 ~~Bingham, Butte and Clark; one (1) grower commissioner shall be~~
12 ~~appointed from the district known as District No. 3, consisting~~
13 ~~of the counties of Power, Oneida, Franklin, Bear Lake, Bannock,~~
14 ~~Caribou, and Bonneville; one (1) grower commissioner shall be~~
15 ~~appointed from the district known as District No. 4, consisting~~
16 ~~of the counties of Cassia, Minidoka, Jerome, Lincoln, Blaine,~~
17 ~~Custer, and Lemhi; and one (1) grower commissioner shall be~~
18 ~~appointed from the district known as District No. 5, consisting~~
19 ~~of the counties of Boundary, Bonner, Kootenai, Benewah, Latah,~~
20 ~~Nez Perce, Lewis, Shoshone, Clearwater, Idaho, Adams, Valley,~~
21 ~~Washington, Payette, Gem, Boise, Canyon, Ada, Elmore, Owyhee,~~
22 ~~Camas, Gooding, and Twin Falls; Three (3) shippers shall be~~
23 ~~nominated for each shipper vacancy that occurs from which the~~
24 ~~governor shall appoint one (1). Shipper commissioners do not~~
25 ~~necessarily need to be nominated from geographical areas. Three~~
26 ~~(3) processors shall be nominated for each processor vacancy that~~
27 ~~occurs from which the governor shall appoint one (1). Processor~~
28 ~~commissioners do not necessarily need to be nominated from~~
29 ~~geographical areas. Nominations must be made thirty (30) days~~
30 ~~prior to appointment. All nominations must give equal~~
31 ~~consideration to all who are eligible for appointment as defined~~
32 ~~in this act. The Idaho potato commission shall hold separate~~
33 ~~meetings of the growers, shippers, or processors, as the~~
34 ~~nominations to be made shall require, in the various districts,~~
35 ~~to determine who shall be nominated for appointment. Notice of~~
36 ~~said meetings shall be given by publication in one (1) newspaper~~
37 ~~published in each county of the district or districts in which~~
38 ~~said nominations are to be made, and the notice shall be~~
39 ~~published in two (2) issues of each newspaper, the first to be~~
40 ~~approximately thirty (30) days and the second approximately ten~~
41 ~~(10) days before said meeting. The notice shall state the~~
42 ~~purpose, time and place of said meeting. All meetings held for~~
43 ~~the selection of nominees shall be held prior to March 31 of the~~
44 ~~year the appointment or appointments are to be made. The~~

1 Commission shall adopt rules for nominating commissioners to
2 serve on the Commission.

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

7 Vacancies shall be filled as terms expire. Each of such
8 commissioners shall hold office until his successor has been
9 appointed and qualified. The term of office shall commence on
10 September 15 of the year of appointment and expire on September
11 14 of the last year of the term of office.

12 A majority of the members of said commission shall
13 constitute a quorum for the transaction of all business and the
14 carrying out of the duties of said commission. Before entering
15 on the discharge of their duties as members of said commission,
16 each member shall take and subscribe to the oath of office
17 prescribed for state officers.

18 Each member of the commission shall be compensated as
19 provided by section 59-509(j), Idaho Code, provided however,
20 that compensation paid to members of the commission from and
21 after April 1, 1992, shall not be considered salary as defined
22 in section 59-1302(31), Idaho Code.

23 SECTION 2: This section shall be in full force and effect for
24 appointments to the commission on and after September 1, 2020.

LEGISLATURE OF THE STATE OF IDAHO
Sixty-fifth Legislature First Regular Session - 2019

IN THE _____

_____ BILL NO. _____

BY _____ COMMITTEE

1 AN ACT

2 RELATING TO AGRICULTURE; AMENDING SECTION 22-1204, IDAHO CODE,
3 TO REVISE DEFINITIONS RELATED TO THE IDAHO POTATO COMMISSION.

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

5 SECTION 1. That Section 22-1204, Idaho Code, be, and the same is
6 hereby amended to read as follows:

7 22-1204. DEFINITIONS. As used in this act:

8 1. The term "commission" means the Idaho potato commission.

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

11 3. The term "potatoes" means and includes only potatoes
12 sold or intended for human consumption and grown in the state of
13 Idaho.

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

18 5. The term "dealer" means and includes any person engaged
19 in the business of buying, receiving, processing, or selling
20 potatoes for profit or remuneration.

21 6. The term "shipper" means and includes one who is
22 properly licensed under federal and state laws and actively
23 engaged in the packing and shipping of potatoes in the primary
24 channel of trade in interstate commerce in the state of Idaho,
25 and who ships more than he produces. Each shipper entity shall
26 designate annually its voting representative to the Commission
27 for Commissioner nominations. Designated representatives may
28 only vote on one ballot in any election.

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

32 a. Is actively engaged in the production of potatoes
33 in the state of Idaho and derives a substantial
34 portion of his income therefrom;

- 1 **b.** Is not primarily engaged in the shipping or
2 processing of potatoes;
- 3 **c.** Grows potatoes on five (5) or more acres, and
- 4 **d.** Has been actively engaged in growing potatoes in
5 the state of Idaho for a period of at least three
6 (3) years prior to nomination and has paid
7 assessments to the commission on potatoes in each
8 of the preceding three (3) calendar years.
- 9 **e.** Each grower entity shall designate annually its
10 voting representative to the Commission for
11 Commissioner nominations. Designated
12 representatives may only vote on one ballot in
13 any election.

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

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

22 10. The term "processor" means a person who is actively
23 engaged in the processing of potatoes in Idaho for human
24 consumption, and licensed to do business in the state of Idaho.
25 Each processor entity shall designate annually its voting
26 representative to the Commission for Commissioner nominations.
27 Designated representatives may only vote on one ballot in any
28 election.

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

32 12. The term "handler" means and includes any person
33 processing potatoes or handling them in the primary channel of
34 trade.

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

39 SECTION 2: An emergency existing therefor, which emergency
40 is hereby declared to exist, this act shall be in full force and
41 effect on and after its passage and approval.

LEGISLATURE OF THE STATE OF IDAHO
Sixty-fifth Legislature First Regular Session - 2019

IN THE _____

_____ BILL NO. _____

BY _____ COMMITTEE

AN ACT

RELATING TO AGRICULTURE; AMENDING SECTION 22-1204, IDAHO CODE,
TO REVISE DEFINITIONS RELATED TO THE IDAHO POTATO COMMISSION.

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

SECTION 1. That Section 22-1204, Idaho Code, be, and the same is hereby amended to read as follows:

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

1. The term "commission" means the Idaho potato commission.

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

3. The term "potatoes" means and includes only potatoes sold or intended for human consumption and grown in the state of Idaho.

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.

5. The term "dealer" means and includes any person engaged in the business of buying, receiving, processing, or selling potatoes for profit or remuneration.

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 in the state of Idaho, and who ships more than he produces. Each shipper entity shall designate annually its voting representative to the Commission for Commissioner nominations. Designated representatives may only vote on one ballot in any election.

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.~~

- a. Is actively engaged in the production of potatoes in the state of Idaho and derives a substantial portion of his income therefrom;

- 1 **b.** Is not primarily engaged in the shipping or
2 processing of potatoes;
- 3 **c.** Grows potatoes on five (5) or more acres, and
- 4 **d.** Has been actively engaged in growing potatoes in
5 the state of Idaho for a period of at least three
6 (3) years prior to nomination and has paid
7 assessments to the commission on potatoes in each
8 of the preceding three (3) calendar years.
- 9 **e.** Each grower entity shall designate annually its
10 voting representative to the Commission for
11 Commissioner nominations. Designated
12 representatives may only vote on one ballot in
13 any election.

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

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


22 10. The term "processor" means a person who is actively
23 engaged in the processing of potatoes in Idaho for human
24 consumption, and transacting business in the state of Idaho. Each
25 processor entity shall designate annually its voting
26 representative to the Commission for Commissioner nominations.
27 Designated representatives may only vote on one ballot in any
28 election.

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

32 12. The term "handler" means and includes any person
33 processing potatoes or handling them in the primary channel of
34 trade.

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

39 SECTION 2: An emergency existing therefor, which emergency
40 is hereby declared to exist, this act shall be in full force and
41 effect on and after its passage and approval.



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COMMITTEE INFORMATION MARKETING LINKS

Rulemaking and Statutes

The Idaho Potato Commission (IPC) has recently begun its 2018 rulemaking. As part of that rulemaking, it is necessary to also amend certain existing laws so the rules and laws are harmonized. As of this date, the IPC will undertake negotiated rulemaking related to the following rule and hold meetings to discuss two sections of the Idaho Code:

- Rules Governing Nominations for Appointment as a Commissioner to the Idaho Potato Commission
- Idaho Code 22-1202—consideration of new district boundaries
- Idaho Code 22-1204—clarifying industry definitions

Meeting Schedule: Public meetings on the negotiated rulemaking will be held as follows:

Negotiated Rulemaking Meetings (All Times Are Local)

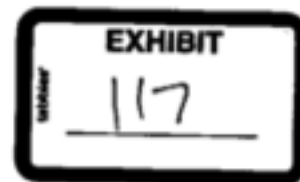
<p>Tuesday, July 24, 2018 4:00 to 6:00pm</p> <p>IPC Offices 661 S. Riverside Ln., Ste. 230 Eagle, ID 83616</p>	<p>Tuesday, July 31, 2018 5:00 to 9:00pm</p> <p>Burley Inn & Convention Center 800 N. Overland Avenue Burley, ID 83318</p>	<p>Wednesday, August 1, 2018 5:00 to 9:00pm</p> <p>Shoshone-Bannock Hotel 777 Bannock Trail Fort Hall, ID 83203</p>
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Rulemaking and Statute Documents

- Notice of Intent to Promulgate Rules
- Draft Rules

Draft Statute Changes

- Proposed Updates to 22-1202
- Proposed Updates to 22-1204



July 6, 2018

Re: 2018 IPC Rulemaking Information

Dear Potato Industry Stakeholder,

The Idaho Potato Commission (IPC) has recently begun its 2018 rulemaking. As part of that rulemaking, it is necessary to also amend certain existing laws so the rules and laws are harmonized. The purpose of this letter is to inform you of our rulemaking efforts and the proposed changes to our laws as well as provide information on how you can participate and obtain more information.

As of this date, the IPC will undertake negotiated rulemaking related to the following rule and hold meetings to discuss two sections of the Idaho Code:

- Rules Governing Nominations for Appointment as a Commissioner to the Idaho Potato Commission
- Idaho Code 22-1202—consideration of new district boundaries
- Idaho Code 22-1204—clarifying industry definitions

Information related to this rulemaking docket and draft legislation is accessible on the IPC's website: <https://idahopotato.com>. The website will be updated as necessary so the information is timely and up to date. The website will include dates, times and locations of meetings, draft rules as they are being negotiated, drafts of the proposed legislation and other pertinent information associated with both of these activities.

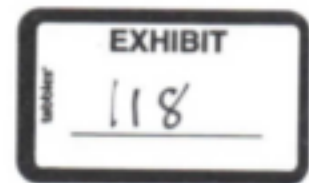
I invite and encourage you to keep abreast of the IPC's activities throughout the summer and fall. Additionally, because you are uniquely situated to know the industry's areas of interest or concern, please help us spread the word about rulemaking and legislative information and opportunities by steering potentially interested parties toward the IPC website or the administrative bulletin. If you have any questions or suggestions, I can be reached via email at Patrick.kole@potato.idaho.gov or by phone at (208) 514-4208.

Sincerely,

Patrick Kole
VP, Legal and Government Affairs

IDAHO POTATO COMMISSION

Potato Pulse - Announcement Of Hearings For Proposed Changes To IPC Rules And Statutes



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Dear Potato Industry Stakeholder,

The Idaho Potato Commission (IPC) has recently begun its 2018 rulemaking. As part of that rulemaking, it is necessary to also amend certain existing laws so the rules and laws are harmonized. The purpose of this notice is to inform you of our rulemaking efforts and the proposed changes to our laws as well as provide information on how you can participate and obtain more information. As of this date, the IPC will undertake negotiated rulemaking related to the following rule and hold meetings to discuss two sections of the Idaho Code:

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I invite and encourage you to keep abreast of the IPC's activities throughout the summer and fall. Additionally, because you are uniquely situated to know the industry's areas of interest or concern, please help us spread the word about rulemaking and legislative information and opportunities by steering potentially interested parties toward the IPC website or the [administrative bulletin](#). If you have any questions or suggestions, I can be reached via email at Patrick.kole@potato.idaho.gov or by phone at (208) 514-4208.

Sincerely,

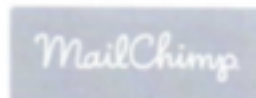
Patrick Kole
VP, Legal and Government Affairs

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661 S. Rivershore Ln.
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Eagle, Idaho 83616

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TITLE 22
AGRICULTURE AND HORTICULTURE
CHAPTER 33
WHEAT - PROMOTION OF MARKETING

22-3302. WHEAT COMMISSION CREATED - MEMBERS. There is hereby created and established in the department of self-governing agencies the "Idaho Wheat Commission" to be composed of five (5) members appointed by, and serving at the pleasure of, the governor, one (1) from each of the five (5) commission districts referred to in section 22-3304, Idaho Code, who shall be appointed by the governor from a list of names with at least three (3) names for each appointive office for each district submitted to the governor by the Idaho state wheat growers association, doing business as the Idaho grain producers association, and they shall hold office for a term of five (5) years. The dean of the college of agriculture, university of Idaho, or his duly authorized representative, shall be an ex officio member without vote of the commission.

History:

[22-3302, added 1959, ch. 6, sec. 2, p. 13; am. 1974, ch. 13, sec. 11, p. 138; am. 2012, ch. 77, sec. 2, p. 223.]

How current is this law?

Search the Idaho Statutes and Constitution

SECTION 1. That Section 22-3301, Idaho Code, be, and the same is hereby amended to read as follows:

22-3301. DECLARATION OF POLICY. It is to the interest of all the people that the abundant natural resources of Idaho be protected, fully developed and uniformly distributed. Among the agricultural industries of the state of Idaho that contribute to the economic welfare of the state is the wheat industry. ~~Because of a surplus of wheat grown in this state, and because a surplus during recurrent years has become excessive and difficult to market in the available markets, it is necessary, in order to provide a profitable enterprise for the wheat growers of the state and to promote employment of labor and to assist the wheat growers and those in the various industries dependent upon the wheat growers, that additional markets be found and developed.~~ It is the purpose of this act to 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.

SECTION 2. That Section 22-3302, Idaho Code, be, and the same is hereby amended to read as follows:

22-3302. WHEAT COMMISSION CREATED -- MEMBERS. There is hereby created and established in the department of self-governing agencies the "Idaho Wheat Commission" to be composed of five (5) members appointed by, and serving at the pleasure of, the governor, one (1) from each of the five (5) commission districts referred to in section 22-3304, Idaho Code, who shall be appointed by the governor from a list of names with at least three (3) names for each appointive office for each district submitted to the governor by the Idaho State Wheat Growers Association, Inc., a wheat growers association representing wheat growers throughout the state of Idaho doing business as the Idaho grain producers association, and they shall hold office for a term of five (5) years. The dean of the College of Agriculture, University of Idaho, or his duly authorized representative, shall be an ex officio member without vote of the commission.

SECTION 3. That Section 22-3304, Idaho Code, be, and the same is hereby amended to read as follows:

22-3304. QUALIFICATION OF MEMBERS. (1) Members of the commission shall be selected and appointed because of their ability and disposition to serve the state's interest and for knowledge of the state's natural resources. Members shall be citizens over twenty-five (25) years of age, residents of the state who have been actually engaged in growing wheat in this state for at least five (5) years, and who derive a substantial portion of their income from growing wheat in the state of Idaho.

(2) There shall be one (1) member from each of the five (5) districts described hereinafter:

District 1. The six (6) northern counties: Boundary, Bonner, Kootenai, Benewah, Latah and Shoshone.

District 2. Nez Perce, Lewis, Idaho, Adams, Washington, Payette, Gem, Boise, Valley and Clearwater Counties.

District 3. Canyon, Owyhee, Ada, Elmore, Camas, Gooding, Twin Falls, Blaine, Lincoln, Jerome, Minidoka and Cassia Counties.

District 4. Lemhi, Custer, Butte, Clark, Fremont, Jefferson, Madison, Teton, Bingham and Bonneville Counties.

District 5. Power, Bannock, Caribou, Oneida, Franklin and Bear Lake Counties.



Idaho Statutes

EXHIBIT

121

TITLE 22
AGRICULTURE AND HORTICULTURE
CHAPTER 40

BARLEY - PROMOTION OF MARKETING

22-4002. BARLEY COMMISSION CREATED - MEMBERS. There is hereby created and established in the department of self-governing agencies the Idaho barley commission to be composed of three (3) grower members appointed by, and serving at the pleasure of, the governor, one (1) from each of the three (3) commission districts referred to in section 22-4004, Idaho Code, who shall be appointed by the governor from a list of names with at least three (3) names for each appointive office for each district submitted to the governor by the Idaho grain producers association, inc., a grain growers' association representing barley growers throughout the state of Idaho, and each shall hold office for the term specified in section 22-4005, Idaho Code. The commissioners appointed by the governor may select a barley industry representative to serve a three (3) year term on the commission. The dean of the college of agriculture, university of Idaho, or his duly authorized representative, shall be an ex officio member of the commission without vote.

History:

[22-4002, added 1988, ch. 194, sec. 1, p. 351; am. 2012, ch. 263, sec. 1, p. 731.]

How current is this law?

Search the Idaho Statutes and Constitution

A COMMISSIONER, TO PROVIDE THAT THE GOVERNOR MAY WITHDRAW A COMMISSIONER'S APPOINTMENT AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 22-4015, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE AND TO REVISE THE TAX IMPOSED ON CERTAIN BARLEY.

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

SECTION 1. That Section 22-4002, Idaho Code, be, and the same is hereby amended to read as follows:

22-4002. BARLEY COMMISSION CREATED -- MEMBERS. There is hereby created and established in the department of self-governing agencies the Idaho barley commission to be composed of three (3) grower members appointed by, and serving at the pleasure of, the governor, one (1) from each of the three (3) commission districts referred to in section 22-4004, Idaho Code, who shall be appointed by the governor from a list of names with at least three (3) names for each appointive office for each district submitted to the governor by the Idaho grain producers association, inc., a grain growers' association representing barley growers throughout the state of Idaho, and each shall hold office for the term specified in section 22-4005, Idaho Code. The commissioners appointed by the governor may select a barley industry representative to serve a three (3) year term on the commission. The dean of the college of agriculture, university of Idaho, or his duly authorized representative, shall be an ex officio member of the commission without vote.

SECTION 2. That Section 22-4005, Idaho Code, be, and the same is hereby amended to read as follows:

22-4005. TERM OF MEMBERS. (1) Except as provided in subsection (3) of this section, the term of office of a member of the barley commission shall be three (3) years. Any member of the commission who has served for two (2) full consecutive terms shall not be eligible for reappointment until the expiration of a three (3) year period.

(2) Appointments to fill vacancies shall be for the balance of the unexpired term.

(3) (a) Beginning July 1, 1988, a member from district 1 will be appointed for a full four (4) year term ending in 1992. Subsequent terms will be for three (3) years.

(b) Beginning July 1, 1988, a member from district 2 will be appointed for a full three (3) year term ending in 1991. Subsequent terms will be for three (3) years.

(c) Beginning July 1, 1988, a member from district 3 will be appointed for a full two (2) year term ending in 1990. Subsequent terms will be for three (3) years.

(4) The executive committee of the Idaho state wheat growers association, doing business as the Idaho grain producers association, may request the removal of a commissioner, with or without cause, by a majority vote. Upon receipt of the request, the governor may immediately withdraw the commissioner's appointment.

SECTION 3. That Section 22-4015, Idaho Code, be, and the same is hereby amended to read as follows:

22-4015. IMPOSITION OF TAX. (1) ~~From and after the first day of July, 1997,~~ There is hereby levied and imposed a tax of two up to four cents (2¢ to 4¢) per hundredweight on all barley grown in the state of Idaho or given to Idaho growers under a crop reduction program, and sold or contracted in this state, and each and every crop grown or barley given to growers under a crop reduction program thereafter. The tax shall be due on barley given to growers un-