



IDAHO POTATO COMMISSION

IDAHO LAWS AND RULES

Idaho Code, Title 22, Chapter 12
Idaho Potato Commission

TITLE 22 — AGRICULTURE AND HORTICULTURE

CHAPTER 12 POTATO COMMISSION

SECTION.

- 22-1201. Declaration of policy.
- 22-1202. Potato commission created.
- 22-1203. Executive office.
- 22-1204. Definitions.
- 22-1205. Administration and enforcement of act.
- 22-1206. Penalty for tax defaults.
- 22-1207. Powers and duties of commission.
- 22-1208. Advertising, publicity and sales promotion.
- 22-1209. Deposit and disbursement of funds.

SECTION.

- 22-1210. Limit on state liability—Compensation and expenses.
- 22-1211. Tax levy.
- 22-1211A. Referendum of continuance of additional tax.
- 22-1212. Dealers' records — Tax returns.
- 22-1213. Penalty for violations.
- 22-1214. Liberal construction — Separability.
- 22-1215. Access to records.

22-1201. Legislative intent. — It is in the best interest of all the people of the state of Idaho that the abundant natural resources of Idaho be protected, fully developed, and uniformly distributed. The potato industry is one of the agricultural industries that contributes to the economic welfare of the state. It is the purpose of this chapter to promote the public health and welfare of the citizens of the state by providing means for the protection, promotion, study, research, analysis and development of markets relating to the growing and promotion of Idaho potato products and byproducts.

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. Three (3) growers shall be nominated for each grower vacancy that occurs, from which the governor shall appoint one (1). Two (2) grower commissioners shall be appointed from the district known as District No. 1, consisting of the counties of Oneida, Franklin, Bear Lake, Caribou, Bannock, Power, Bingham, Bonneville, Teton, Madison, Jefferson, Fremont, Clark, Butte, Custer, and Lemhi; one (1) grower commissioner shall be appointed from the district known as District No. 2A, consisting of the counties of Twin Falls, Jerome, Lincoln, Camas, Elmore, Boise, Valley, and Gooding; one (1) grower commissioner shall be appointed from the district known as District No. 2B, consisting of the counties of Cassia, Minidoka, Blaine, Custer and Lemhi; and one (1) grower commissioner shall be appointed from the district known as District No. 3, consisting of the counties of Owyhee, Ada, Canyon, Gem, Payette, Washington, Adams, Idaho, Lewis, Nez Perce, Clearwater, Latah, Benewah, Shoshone, Kootenai, Bonner, and Boundary. Three (3) shippers shall be nominated for each shipper vacancy that occurs from which the governor shall appoint one (1).

Shipper commissioners do not necessarily need to be nominated from geographical areas. Three (3) processors shall be nominated for each processor vacancy that occurs from which the governor shall appoint one (1). Processor commissioners do not necessarily need to be nominated from geographical areas. Nominations must be made thirty (30) days prior to appointment. 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, as the nominations to be made shall require, in the various districts, to determine who shall be nominated for appointment. Notice of said meetings shall be given by publication in one (1) newspaper published in each county of the district or districts in which said nominations are to be made, and the notice shall be published in two (2) issues of each newspaper, the first to be approximately thirty (30) days and the second approximately ten (10) days before said meeting. The notice shall state the purpose, time and place of said meeting. All meetings held for the selection of nominees shall be held prior to March 31 of the year the appointment or appointments are to be made.

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

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

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

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

22-1203. Executive office. — The executive office of said commission is hereby established in Ada county.

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, and who ships more than he produces.

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.

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

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

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.

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

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

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, and shall administer the taxes levied and imposed by this act. Said commission shall have power to cause its duly authorized agent or representative to enter upon the premises of any grower, dealer and/or handler of potatoes, and to examine or cause to be examined by any such agent or representative any of the following items: any books, papers, records, ledgers, purchase journals, sales journals, electronically and/or magnetically recorded data, computers and computer records or memoranda bearing on the amount of taxes payable or the correct usage of any Idaho trade or certification mark, and to secure all other information directly or indirectly concerned in the enforcement of this act.

22-1206. Penalty for tax defaults. — Any handler, dealer or grower who fails to make collection or file return or to pay any tax within the time required by or pursuant to this act shall thereby forfeit to the state a penalty of ten per cent (10%) of the amount of tax determined to be due, as provided in this act, plus one and one-half percent (1 1/2%) of such amount of tax determined to be due for each month of delay or fraction thereof after the expiration of the first month after such return was required to be filed or such tax became due;

but the commission, if satisfied that the delay was excusable, may remit all or any part of such penalty. Such penalty shall be paid to the Idaho potato commission and disposed of as provided with respect to moneys derived from the taxes levied and imposed by this act.

22-1207. Powers and duties of commission. — The powers and duties of the commission shall include the following:

1. To adopt and from time to time alter, rescind, modify and/or amend all proper and necessary rules and orders for the exercise of its powers and the performance of its duties under this chapter.
2. To contract and be contracted with.
3. To employ and at its pleasure discharge agents, personnel, and such other help as it deems necessary and to outline their powers and duties and fix their compensation.
4. To make in the name of the commission such agreements as may be necessary.
5. To keep books, records and accounts of all its doings, which books, records and accounts shall be open to inspection by the state controller at all times.
6. To purchase or authorize the purchase of all office equipment and supplies and to incur all other reasonable and necessary expenses and obligations in connection with and required for the proper carrying out of the provisions of this chapter.
7. To cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state, or the United States government, engaged in work or activity similar to the work and activities of the commission, and to enter into contracts and agreements with such organizations or agencies for carrying on a joint campaign of research, education, product protection, promotion and reciprocal enforcement of these objectives.
8. To investigate and prosecute in the name of the state of Idaho violations of this chapter or any suit or action for the collection of fees, taxes or penalties as hereinafter provided, or to protect brands, marks, packages, brand names, trademarks, certification marks or other intellectual property rights being promoted or used by the commission.
9. To lease, purchase or own the real or personal property deemed necessary in the administration of this chapter.
10. To define and describe such grade or grades of potatoes in accordance with the provisions of this chapter.
11. To define and designate the character of the brands, labels, stencils, or other distinctive marks under which said potatoes may be promoted in order to secure the greatest returns to producers.
12. To devise and require the application of either a seal, label, brand, package, or any other suitable device that will protect the identity of the original Idaho pack of potatoes as near to the final consumer as possible.

13. Whenever and wherever it deems it to be necessary the commission shall use its offices to prevent any substitution of other potatoes for Idaho potatoes and to prevent the misrepresentation, mislabeling or the misbranding of Idaho potatoes at any and all times at any and all points where they discover the same is being done and to require the disclosure of the growing area of origin upon potato containers by all persons doing business in the state of Idaho.

14. To require all those using any of the Idaho potato trade or certification marks, or handling or packing potatoes grown in Idaho, to execute an agreement in the form prescribed by the commission to ensure compliance with the provisions of this chapter.

15. To devise a suitable system for tracking shipments of Idaho potatoes and Idaho potato products to prevent the misrepresentation, mislabeling or the misbranding of Idaho potatoes.

16. To prevent the unlicensed use of the Idaho potato trade or certification marks including, but not limited to, the marks "Grown in Idaho," "Famous Idaho Potatoes" and "Idaho Potatoes."

17. To make, conduct or carry on studies and research in connection with the raising, production and promotion of potatoes, including study and research dealing with the industrial and other uses of potatoes and their byproducts, and the extension and stabilization of markets for such commodities; to disseminate information with respect to such study and research as a part of the commission's promotional activities authorized by this chapter and to assist, aid and educate growers, dealers and handlers in the raising, production and promotion of potatoes.

18. To require all persons with their principal place of business located in the state of Idaho to pay a one hundred dollar (\$100) annual license fee for use of any Idaho potato trade or certification mark and to require all persons with their principal place of business located outside of the state of Idaho to pay a three hundred dollar (\$300) annual license fee for use of any Idaho potato trade or certification mark.

For the accomplishment of such ends the commission is hereby empowered to employ the necessary persons or contract for the performance of required services; to cooperate with any organization of growers in this state, whether organized by authority of law or voluntary, engaged in carrying on similar activities and to participate jointly with any such organization, by contract or otherwise, in financing such study and research or paying for the employment of persons or services required or in carrying out projects and programs as herein contemplated; provided, however, expenditures authorized by the commission for the purposes herein mentioned shall not exceed an amount equal to twelve and one-half percent (12 1/2%) of the tax collected on potatoes levied and imposed pursuant to section 22-1211, Idaho Code.

Provided, further, that none of the powers specified in subsection (17) of this section shall be exercised, and no expenditure of revenue as provided in subsection (17) of this section shall be authorized except upon the affirmative vote of six (6) or more of the members of the commission.

19. The commission, in furtherance of its duties under this chapter and under its rules, shall have the power to administer oaths, certify to official acts and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and

testimony. The commission may, if a witness refuses to attend or testify, or to produce any papers required by such subpoenas, report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witnesses, or the production of said papers, that the witness has been properly summoned, and that the witness has failed and refused to attend or produce the papers required by this subpoena before the commission, or has refused to answer questions propounded to him in the course of said proceedings, and ask an order of said court compelling the witness to attend and testify and produce said papers before the commission. The court, upon the petition of the commission, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten (10) days from the date of the order, and then and there shall show cause why he had not attended and testified or produced said papers before the commission. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission and regularly served, the court shall thereupon order that said witness appear before the commission at the time and place fixed in said order, and testify or produce the required papers. Upon failure to obey said order, said witness shall be dealt with for contempt of court. Provided that in proceedings before the commission where evidence is sought from witnesses who are not residents of this state, the commission is authorized to obtain subpoenas issued by the clerk of the district court. Subpoenas so requested shall be issued by the clerk of the district court under the seal of the court, shall state the name of the court and the title of the administrative action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. Subpoenas shall be used only to require attendance of a witness at a deposition or hearing. The clerk shall issue a subpoena or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

22-1208. Commodity facts and benefits -- Promotion. — The commission is authorized and directed to disseminate information:

(a) Relating to potatoes and the importance thereof in preserving the public health, the economy thereof in the diet of the people and the importance thereof in the nutrition of children;

(b) Relating to the manner, method and means used and employed in the production, transportation, promotion and grading of potatoes and to laws of the state regulating and safeguarding such production, transportation, promotion and grading;

(c) Relating to the added cost to the producer and dealer in producing and handling potatoes to meet the high standards imposed by the state that insure a pure and wholesome product;

(d) Relating to the effect upon the public health which would result from a breakdown of the Idaho potato industry;

(e) Relating to the reasons why producers and dealers should receive a reasonable return on their labor and investment;

(f) Relating to the problem of furnishing the consumer at all times with an abundant supply of fine quality potatoes at reasonable prices;

(g) Relating to factors of instability peculiar to the vegetable industry in general, and the potato industry in particular, such as unbalanced production, effect of the weather, influence of consumer purchasing power and price relative to the cost of other items of food in the normal diet of people, all to the end that an intelligent and increasing consumer demand may be created;

(h) Relating to the possibilities of increased consumption of Idaho potatoes;

(i) Relating to such other, further and additional information as shall tend to promote increased consumption of Idaho potatoes, as may foster a better understanding and more efficient cooperation between producers, dealers and the consuming public;

(j) Relating to branding, labeling, stenciling, sealing or packaging to promote and use Idaho potatoes and to protect their identity as far as possible to the final consumer.

22-1209. Deposit and disbursement of funds. — (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the director of legislative services and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

22-1210. Limit on state liability -- Compensation and expenses. — All contractual expenses incurred by the commission in performing its duties and exercising its powers shall be without liability on the part of the state. All tort obligations arising out of acts and omissions of the commission are binding on the state of Idaho as, and to the extent provided for, in chapter 9, title 6, Idaho Code.

No member of the commission shall receive any compensation for his services as such member, except as provided in section 22-1202, Idaho Code, but members and employees of the commission and other persons acting under the direction of the commission shall, if approved by the commission, be reimbursed for their actual and reasonable expenses incurred in performing their duties under this chapter.

22-1211. Tax levy. — There is hereby levied and imposed a tax of four cents (4¢) per hundredweight on potatoes covered by this chapter, which tax shall be due on or before the time when such potatoes are first handled in the primary channels of trade and shall be paid at such time or times as the commission may by rule prescribe, but not later than the fifteenth day of the month next succeeding the month in which such potatoes were handled in the primary channels of trade. The commission is authorized to make appropriate rules to implement the collection of the taxes imposed by this chapter.

In addition to the four cent (4¢) tax hereinabove provided for, there is hereby levied and imposed an additional tax of eleven cents (11¢) per hundredweight on potatoes covered by this chapter; provided however, said additional tax of eleven cents (11¢), or any portion thereof, shall only be due and collectible upon a determination by at least two-thirds (2/3) of the commission members that the anticipated expenditures for the next fiscal year following the year in which the determination is made will exceed the anticipated tax revenues to be collected from the said four cent (4¢) tax. Upon such a determination, the commission shall collect the additional eleven cent (11¢) tax or such portion thereof as is required by such determination, which shall be collected with, and as, other taxes imposed by this chapter.

The person first selling or otherwise delivering potatoes into primary channels of trade shall be responsible for and make payment of all taxes imposed by this chapter. If such person is the dealer or shipper handling potatoes grown by another, he may charge against and recover from the grower of such potatoes or the person from whom he acquired them sixty percent (60%) of the tax.

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.

All provisions relating to the referendum shall be prescribed by and supervised by the commissioner of agriculture.

The commission shall pay the costs of the referendum.

The results of the referendum shall be declared by the commissioner of agriculture, and the results recorded in the office of the secretary of state.

If a majority of the eligible growers voting, who grow a majority of the hundredweight of potatoes grown by those voting in the referendum, or if two-thirds (2/3) of the eligible growers voting in the referendum, are in favor of continuance of the additional tax of one cent (1¢), the additional tax of one cent (1¢) shall be continued, but if the results of the referendum do not show the required majority or majorities, the additional tax of one cent (1¢) shall be discontinued immediately upon declaration of the results of the referendum by the commissioner of agriculture. If the additional tax of one cent (1¢) is discontinued, the tax of two and one-fourth cents (2 1/4¢) shall continue in full force and effect.

22-1212. Dealers' records -- Tax returns. — Every dealer, or handler shall keep a complete and accurate record of all potatoes handled by him in the primary channel of trade, such record shall be in such form as the commission shall by regulation or rule prescribe. Such records shall be preserved by such dealer or handler for a period of two (2) years and shall be open to inspection at any time upon written or oral request or demand by the commission or its duly authorized agent or employee. Every dealer or handler shall at such times as the commission may by rule or regulation require file with the commission a return under oath on forms to be prescribed and furnished by the commission, stating the quantity of potatoes handled by such dealer or handler in the primary channel of trade during the period or periods of time prescribed by the commission. Such returns shall contain such further information as the commission may require.

22-1213. Penalty for violations. — (1) Any person who shall violate or aid in the violation of any of the provisions of this chapter, any rules promulgated pursuant thereto, or the terms of any licensing agreement may be assessed a civil penalty by the commission or its duly authorized agent of not more than one thousand dollars (\$1,000) for each offense and a civil penalty of not more than one thousand dollars (\$1,000) for each day of continuing violation of such statute or rule or licensing agreement and shall be liable for investigatory costs and attorney's fees reasonably incurred by the commission in connection with the violation.

(2) For purposes of this section, each container of potatoes in violation of this chapter, rules or any licensing agreement, shall constitute a separate violation for each day the container is in violation thereof.

(3) Procedure. No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to chapter 52, title 67, Idaho Code. If the commission or its agent is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the commission or its agent, it may enforce its penalty by action in the appropriate district court. Any person against whom the commission or its agent has assessed a civil penalty pursuant to this section may, within twenty-eight (28) days of the final agency action making the assessment, appeal the assessment in accordance with chapter 52, title 67, Idaho Code. All penalties collected pursuant to this section shall be paid into the general fund of the Idaho potato commission. Nothing contained in this section shall be deemed to preclude the commission from pursuing any other civil or criminal remedies available to it as provided by law.

22-1214. Liberal construction -- Separability. — This act shall be liberally construed, and if any part or portion thereof be declared invalid, or the application thereof to any person, circumstance or thing is declared invalid, the validity of the remainder of this act and/or the applicability thereof to any person, circumstance or thing shall not be affected thereby, and it is the intention of the legislature to preserve any and all parts of said act if possible.

22-1215. Access to records. — All papers, records, correspondence, communications and proceedings of the Idaho potato commission shall be subject to disclosure according to chapter 3, title 9, Idaho Code.