

**NOTICE OF RULEMAKING HEARING
STATE OF NEBRASKA
NEBRASKA WHEAT BOARD**

NOTICE IS HEREBY GIVEN that the Nebraska Wheat Board will hold a rulemaking hearing on August 23, 2021, commencing at 3:00 PM, CT, in the West Central Research & Extension Center Conference Room, 402 W State Farm Road, North Platte, Nebraska 69101. The purpose of the hearing is to take testimony and evidence concerning the proposed adoption of Nebraska Administrative Code, Title 483, Chapter 1 entitled Wheat Board Excise Tax Regulations. These regulations are being amended to:

1. Change in collection amount, initiated by constituent.

The rulemaking hearing is being conducted under and by virtue of the provisions of Neb. Rev. Stat. §§84-907 R.R.S. 1943, which provisions provide that COPIES OF THE PROPOSED RULE AND A DESCRIPTION OF THE FISCAL IMPACT ON STATE AGENCIES, POLITICAL SUBDIVISIONS, AND PERSONS BEING REGULATED ARE AVAILABLE FOR PUBLIC EXAMINATION at the office of the Nebraska Wheat Board, Fourth Floor, Nebraska State Office Building and at the Rules and Regulations office of the Secretary of State, Room 1305, State Capitol Building, Lincoln, NE 68509.

ALL INTERESTED PERSONS are invited to attend and testify at the hearing. Reasonable accommodations including, but not limited to, the appointment of a licensed interpreter as provided for in Neb. Rev. Stat §§20-150 to 20-159, R.R. S. 1943, will be provided upon request to the Nebraska Wheat Board at (402) 471-2358 (Voice) or call the Nebraska Relay System at 711 (TTY) or 800-833-7352 (TTY) and ask the operator to call us at (402) 471-2358. Please give **seven (7) days notice**. Interested persons may also submit written or e-mail comments prior to the hearing. Written comments will be made a part of the hearing record if received at Nebraska Wheat Board at least **one (1) day** before the hearing. E-mail comments will also be made a part of the hearing record if received at the Nebraska Secretary of State's Rules and Regulation Hearing Schedule and Proposed Rules web site (www.sos.ne.gov/rules-and-regs/regtrack/index.cgi) at least **one (1) day** before the hearing.

DATED at Lincoln, Nebraska this 21st day of July, 2021.

NEBRASKA WHEAT BOARD

Royce Schaneman, Executive Director



DRAFT/FINAL FISCAL IMPACT STATEMENT

Agency: Nebraska Wheat Development, Utilization, and Marketing Board	
Title: 483	Prepared by: Royce Schaneman, Exec. Director
Chapter: 1	Date prepared: 7-19-21
Subject: Wheat Excise Tax Regulation	Telephone: 402-471-2358

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	()	()	()
Increased Costs	()	()	()
Decreased Costs	()	()	()
Increased Revenue	\$200,000	\$0	\$0
Decreased Revenue	()	()	()
Indeterminable	()	()	()

Provide an Estimated Cost & a Description of Impact:

State Agency: The constituent initiated excise tax rate change would increase collections by the Nebraska Wheat Development, Utilization, and Marketing Board (NWB) by an estimated \$200,000. This amount will vary as it depends upon wheat plantings, wheat harvest, quality of the crop, price, and wheat marketing's. This increase will allow the NWB to invest producer dollars into our statutorily designated programs. The NWB has seen a decrease in planted acres of 44% over past ten years which has drastically lowered revenues, contributing to the NWB failure to meet financial contributions to contractors with dues structures and decreased the NWB investment into research, marketing, promotion, and education.

The increase would solidify our research commitment to develop higher yielding, more disease and pest resistant varieties, with a greater end-use quality. The increase will also keep NWB current with dues to national organizations that market U.S. wheat internationally and domestically. Three of the last five years NWB has not been able to meet our dues commitment to these organizations, which limits our ability to participate in trade teams, reverse trade mission, have officers, and decreases our voting abilities within these organizations. Cost for services continue to increase which limits our participation in promotional and educational activities and the ability to increase awareness of the value of wheat in a healthy diet.

Political
Subdivision:

Regulated
Public:

If indeterminable, explain why:

Revised: August 2016

CODE AGENICES: SUBMIT TO GOVERNOR BEFORE SUBMITTING TO EXECUTIVE BOARD AND BEFORE PUBLIC HEARING DATE IS SET

**PROPOSED REGULATION
GPRO COVERPAGE
(ATTACH TO REVIEW CHECKLIST)**

**Agency: Nebraska Wheat Development, Utilization, and Marketing Board
Title, Chapter of Rules submitted: Title 483 – Wheat Board, Chapter 1
Subject: Rules and Regulations Change
Prepared by: Royce Schaneman, Executive Director, Nebraska Wheat Board
Telephone: 402-471-2358
Date submitted to Governor: July 20, 2021**

Projected dates for public hearings August 23, 2021.

Projected deadline for final approval August 30, 2021.

 N/A A copy of the section of laws or federal regulations that triggered these changes is attached.

FOR GOVERNOR OFFICE RECORDS

Advisor Assigned: _____

Date approved to proceed: _____

Options for proceeding: _____

- a) No further contact with GPRO is necessary until final rules have been approved by the Attorney General.
- b) Contact Governor through GPRO concerning issues raised in Negotiated Rulemaking procedures.
- c) Submit Rules and Regulations Policy Review Checklist to Governor if rules are changed hereafter and a new public hearing is scheduled.
- d) Keep the Governor informed through GPRO as issues arise in negotiations, drafting sessions, advisory board meetings, and public hearings.
- e) Specific policy comments per Governor's instructions is attached.

PROPOSED REGULATION POLICY REVIEW CHECKLIST

Agency: Nebraska Wheat Development, Utilization, and Marketing Board
Title, Chapter of Regulation: Title 483 – Wheat Board, Chapter 1
Subject: Rules and Regulations Change
Prepared by: Royce Schaneman, Executive Director, Nebraska Wheat Board
Contact Info: Phone (402) 471-2358, Email: Royce.schaneman@nebraska.gov

A. Policy Changes and Impacts

1. What does the regulation do and whom does it impact? The regulation will change the Nebraska Wheat Development, Utilization, and Marketing Board (NWB), excise tax rate from .4% to .5% of the net value of wheat sold at the point of first sale. This change would increase the NWB budget approximately \$200,000 annually.

2. Describe changes being proposed to current policy and briefly provide rationale. This increase would help the NWB meet its statutory and fiduciary responsibilities. This financial increase is dependent upon planted acres, harvested acres, yield, crop quality, price, and marketing of the wheat crop. The NWB funding formula is based on a percent of value of wheat sold, not a flat rate per bushel. The increased funding is needed due to the increasing costs, over 18% inflation rate since 2012, low commodity price (farm gate price lower than average cost of production 6 of the last 10 years), and a 44% decline in planted wheat acres over the past ten years.

B. Why is the rule necessary? Explain and provide an identification of specific authorizing statute(s) or legislative bill(s).

This change is being initiated by constituents. The NWB has the statutory authority to increase the excise tax rate to a maximum of .5% if deemed necessary utilizing the rules process.

C. What happens if these rules are not adopted?

If the excise tax rate is not increased the NWB will continue to decline into obscurity. The NWB works with other wheat producing states to leverage producer investment with federal marketing program dollars for international marketing through our federal cooperator, U.S. Wheat Associates (A group of 21 wheat producing states, that promote U.S. wheat internationally). U.S. Wheat Associates conduct over 300 programs in over 100 countries annually. This is important as 50% of Nebraska's wheat is exported.

NWB has not been able to meet its financial obligation to U.S. Wheat Associates 3 out of the last 5 years. This puts NWB at a disadvantage as a full membership allows states to have officers, allows for state producers to travel on trade missions, allows a 20% increase bonus on weighted votes, and allows two board members from each state. The advantage to full membership allows greater access to our foreign customers and allows the NWB to provide leadership to the organization. The reduction in the NWB contribution directly affects the amount of federal matching dollars to U.S. Wheat Associates.

Wheat research is very important to the NWB, especially in regard to variety development. Wheat does not have the private industry influence like other commodities for variety development. Wheat producing states rely on our land-grant universities and invest approximately 30% of our annual budget toward research. Over the past ten years the number of research projects funded and overall total dollars going into research has declined. We have gone from a high of 20 projects with \$616,000 invested to a low of 5 projects with an investment of \$130,000 in the last ten years. Research for variety development, development of hybrid wheats, nutrient management, stem-sawfly control, and higher end-use quality are priorities of the NWB. These are long term research projects that need consistent funding in order to be effective long-term.

D. Policy Checklist

This proposed change reflects the legislatures intent to allow the NWB to adjust the excise tax rate.

E. Fiscal Impact. In addition to completing the required Fiscal Impact Statement (a copy must be attached to this document), the agency must address the following:

The proposed regulation will increase funds to the NWB. There is no intent to change personnel or approved FTE's.

The NWB has openly discussed this proposed change at several board meetings that are open to the public. An article ran in a widely circulated agricultural publication to make wheat producers aware of the proposed change.

This change would only impact the NWB.

The proposed change will have no change on reporting requirements of businesses. The NWB estimates an increase of approximately \$200,000. This increase would be used to solidify our contributions into domestic and international marketing programs, stabilize our research investment, and increase our promotion and education efforts.

F. Unique problems or issues and recommendations.
None

G. Who is expected to be affected, or to oppose or support the proposed regulation?
Explain what initial informal contacts have been made with organizations or
citizens who may be affected by the regulation prior to the public hearing.


Nebraska wheat producers would be affected and the ones to support or oppose the proposed regulation. The NWB directors have discussed this change at two NWB meetings and unanimously passed a motion on April 29, 2021, to move forward with the increase. This decision was made by those paying the excise tax. The discussion has taken place at two public meetings. Furthermore, a reporter covered one meeting and published an article about the proposed increase that ran in a print agriculture publication, and on their digital publication, available to all producers. The Nebraska Wheat Growers Association (NWGA) has representation at all NWB meetings and can share this information with their membership. There has been no opposition to the proposed change.

H. Are these proposed rules a likely candidate for negotiated rulemaking?
Explain. Has the process been completed? If so, explain how the issues were
addressed.

This proposed rule change is not a candidate for negotiated rulemaking. The NWB has the statutory authority to make this increase of .1%.

Director's Verification of Review

I have reviewed these proposals and verify that, at this stage of the regulation's development, these questions have been accurately addressed.

Director's Signature  Date 7-20-21

NEBRASKA ADMINISTRATIVE CODE

TITLE 483 – WHEAT BOARD
CHAPTER 1 – WHEAT EXCISE TAX REGULATION
TABLE OF CONTENTS

Subject	Statutory Authority	Code Section
Wheat Excise Tax Regulation	2-2301 to 2-2321	1-004

NEBRASKA ADMINISTRATIVE CODE

Title 483 – WHEAT BOARD
Chapter 1 – WHEAT EXCISE TAX REGULATION

001 Parliamentary Procedure.

Robert's Rules of Order Revised Edition will be used to assure the orderly transaction of business in meetings.

002 Quorum.

A quorum shall consist of the majority of the members of the Board for the transaction of business. Actions require a majority of all members present, with the exception of decisions to fire the Director, which would require at least four affirmative votes.

003 Officers.

At the first meeting after the start of the State fiscal year the Committee shall select a chairperson, and may select such other officers as it may deem necessary. A special election may be held whenever a vacancy occurs. Officers will hold office until their successors are elected. No officer may serve more than two consecutive years in a position. Nebraska Wheat Board Office staff will serve as secretary, pursuant to statute.

004 Rate.

The amount of the excise tax provided for under section 2-2311 of the Act shall be set at ~~0.4%~~ 0.5% of net value upon all wheat sold through commercial channels on and after ~~October 1, 2012~~ September 1, 2021. The rate may be reduced or increased to not more than .5% of the net market value by the rules process, pursuant to statute.

005 Hearings.

005.1 General Provision.

The board may conduct public hearings for any purpose consistent with its responsibilities, including but not limited to the adoption, amendment or repeal of rules and regulations and providing growers of wheat the opportunity to offer ideas and suggestions relative to board policy.

005.2 Notice.

Notice shall be given of all public hearings held by the board. The notice shall be published at least once either in a newspaper of general circulation in the area affected by the business of the hearing or in a newspaper of general circulation in the state, and the publication shall be made at least 30 days prior to the date of hearing. Such notice shall contain information as to the date, time, place and purpose of the hearing.

005.3 Procedure.

The chairperson, vice-chairperson or a designated member shall serve as hearing officer. The hearing officer may appoint a hearing examiner to assist in the conduct of the hearing. The hearing officer or examiner shall, among other things, open the proceedings, enter into the record the notice of hearing, take appearances, receive exhibits, answer questions or call upon other persons present to answer questions, and close the proceedings. No person shall be required to be sworn in prior to presenting any evidence, which may consist of

oral or written comments and any document. All persons presenting evidence shall state their name, address, and organization they represent, if any. All evidence is to be directed at the business of the hearing and may be excluded by the hearing officer or examiner if cumulative, repetitive, or irrelevant.

005.4 Record.

A record shall be made of the hearing, with the evidence presented being a part thereof. It may consist of written statements and any other documents, along with tape recordings or oral evidence. The record may be held open for a designated period of time at the discretion of the hearing officer for submission of any evidence not available at the time of hearing, pursuant to statute.

006 Refunds for Overpayment of Fees.

Any first purchaser or grower who would like to receive reimbursement for overpayment of fees must submit a written application for the same to the board. Said application shall state the following information:

- 006.1 The name and address of the grower,
- 006.2 The name and address of the first purchaser,
- 006.3 The date of the payment of the overpaid fee,
- 006.4 The amount of fee paid,
- 006.5 The actual bushels subject to the fee,
- 006.6 The net value of the wheat sold or mortgaged,
- 006.7 Any other relevant information,
- 006.8 Signature of the person requesting the reimbursement, and proof of the assessment must be attached thereto. Reimbursement will be pursuant to statute.

ANNOTATION: ENABLING LEGISLATION: Sections 2-2301 to 2-2321, R.R.S., Nebraska, 1943.