

TRANSPORTATION & DEFENSE COMMITTEE

ADMINISTRATIVE RULES REVIEW

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2010 Legislative Session

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IDAPA 11 - IDAHO STATE POLICE
11.13.01 - RULES GOVERNING MOTOR CARRIERS
DOCKET NO. 11-1301-0901
NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-2901, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This rule making makes technical changes; creates a new Rule 10 to define “commercial motor vehicle” as required in the federal regulations; updates Rule 18 to define “hazardous material” consistent with 49 CFR; and updates the CFR reference in Rule 19.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the September 2, 2009 Idaho Administrative Bulletin, Vol. 09-9, pages 29 through 37.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: No negative fiscal impact will result from this change.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lt. Bill Reese, (208) 884-7220 or william.reese@isp.idaho.gov.

DATED this 15th day of October, 2009.

Colonel G. Jerry Russell, Director
Idaho State Police
700 S. Stratford Drive
Meridian, ID 83643
(208) 884-7003
(208) 884-7090

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 67-2901 and 49-901 Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 16, 2009.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking makes technical changes; creates a new Rule 10 to define “commercial motor vehicle” as required in the federal regulations; updates Rule 18 to define “hazardous material” to be consistent with 49 CFR; and updates the CFR reference in Rule 19.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

No fee or charge is imposed or increased as a result of this rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

No negative fiscal impact on the general fund will result from this change.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rulemaking makes only technical corrections and those required by the federal regulations guiding the Commercial Vehicle Safety program.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lt. Bill Reese, (208) 884-7220 or william.reese@isp.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 23, 2009.

DATED this 14th day of July, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

002. WRITTEN INTERPRETATIONS--AGENCY GUIDELINES (RULE 2).

The Idaho State Police Commercial Vehicle Safety Program Manager is authorized to make and give informal interpretations of the terms and definitions found in the Idaho Code, this Department's rules applicable to motor carriers and other filings relating to motor carriers maintained by the Department pursuant to law. In addition, written interpretations to these rules are available and maintained in the files of the Commercial Vehicle Safety Program Manager. The Commercial Vehicle Safety Program Manager may be contacted in writing at the Idaho State Police, PO Box 700, Meridian, Idaho 83680-0700, or may be reached by telephone at (208) 884-7220. For future rulemakings written interpretations 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 are published in the issues of the Idaho Administrative Bulletin proposing or adopting the rules. *The Department reserves to itself the authority to issue formal declaratory orders construing these items.* (4-5-00)()

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE (RULE 4).

The Code of Federal Regulations (CFR) is referred to in Sections 012, 018 and 019. Federal Regulations are adopted by reference in Sections 018 and 019. The annual volumes of the CFRs may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Amendments to the annual volumes are published in the Federal Register, pending their incorporation in the next annual volumes. The CFRs are also available for inspection and copying at the office of the Idaho State Police and the Idaho State Law Library. Whenever a federal regulation is adopted by reference in these rules, subsequent recompilations are also adopted by reference, but subsequent amendments are not. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS (RULE 5).

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. ()

02. Mailing Address. The mailing address for the headquarters office is Idaho State Police, P.O. Box 700, Meridian, Idaho 83680. ()

03. Street Address. The headquarters office of the Idaho State Police is located at 700 S. Stratford Drive, Meridian, Idaho 83642. ()

0046. PUBLIC RECORD ACT COMPLIANCE (RULE 6).

All materials in motor carrier files, except those that are investigatory records under Section 9-

340(22), Idaho Code, are public records available for inspection, examination and copying. Investigatory records are not public records, but may be examined or disclosed by the object of the investigation pursuant to Section 9-335, Idaho Code. (4-5-00)

0067. CITATION (RULE 7).

The official citation of these rules is IDAPA 11.13.01.000 et seq. For example, this rule is cited as IDAPA 11.13.01.0067. (4-5-00)()

0078. FORMS (RULE 8).

The Idaho State Police Commercial Vehicle Safety Program Manager is authorized to produce and distribute forms and reports to carry out these rules. (4-5-00)()

~~008. (RESERVED).~~

~~009. CODE OF FEDERAL REGULATIONS, FEDERAL REGISTER (RULE 9).~~

~~The Code of Federal Regulations (CFR) is referred to in Sections 012, 018 and 019. Federal Regulations are adopted by reference in Sections 018 and 019. The annual volumes of the CFRs may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Amendments to the annual volumes are published in the Federal Register, pending their incorporation in the next annual volumes. The CFRs are also available for inspection and copying at the office of the Idaho State Police and the Idaho State Law Library. Whenever a federal regulation is adopted by reference in these rules, subsequent recombinations are also adopted by reference, but subsequent amendments are not.~~ (4-5-00)

0109. RELIEF FROM REGULATIONS (RULE ~~109~~).

The Department may issue a declaration of emergency relieving intrastate carriers from the requirements of 49 CFR Parts 390 through 399 adopted by reference in Section 019 following the declaration of an emergency. The maximum duration of the declaration of emergency, the particular rules in 49 CFR Parts 390 through 399 from which the carrier is relieved from complying, and all other aspects ~~relief~~ relieved from regulation shall be the same as provided in those Federal regulations. (4-5-00)()

0105. DEFINITIONS (RULE 10).

Whenever any term used in these rules is defined or referred to in the Idaho Code, that term takes its statutory definition in these rules. (4-5-00)

01. Commercial Motor Vehicle (CMV). ~~Means a motor vehicle that has any of the following three (3) characteristics~~ Any self-propelled or towed motor vehicle used on a highway in interstate or intrastate commerce to transport passengers or property when the vehicle: (4-5-00)()

a. ~~A gross vehicle weight (GVW), gross vehicle weight rating (GVWR), gross combination weight (GCW), or gross combination weight rating (GCWR)~~ Has a gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR), or gross vehicle weight (GVW) or gross combination weight (GCW), of four thousand, five hundred thirty-seven six kilograms (4,5376 kg.), which is equal to (ten thousand, one pounds (10,001 lbs.)), or more, whichever is greater; or (4-5-00)()

b. Is designed or used to transport more than eight (8) passengers, including the driver, for compensation; or ()

~~**bc.** Regardless of weight, Is designed or used to transport more than sixteen fifteen (165) or more passengers, including a the driver, and is not used to transport passengers for compensation; or~~ (4-5-00)()

~~**ed.** Regardless of weight, Is used in transportation transporting material found by the Secretary of Transportation to be of hazardous materials and is required to be placarded under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under the HMRs (49 CFR, Part 172, Subpart F) Subtitle B, Chapter I, Subchapter C.~~ (4-5-00)()

02. Department. Means the Idaho State Police. (4-5-00)

03. Highway. Means the public roads, highways, and streets of the State. (4-5-00)

04. Interstate Carrier. Means any person who or which owns or operates any motor vehicle in the state of Idaho or on the highways of the state of Idaho, in commerce between the States, or between the States and a foreign Nation, used or maintained for the transportation of persons or property. (4-5-00)

05. Motor Carrier. Means an individual, partnership, corporation or other legal entity engaged in the transportation by motor vehicle of persons or property in the furtherance of a business or for hire. (4-5-00)

06. Motor Vehicle. Means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highway in the transportation of passengers and/or property, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails. (4-5-00)

07. Person. Means any individual, firm, copartnership, corporation, company, association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof. (4-5-00)

08. Transportation. Includes all vehicles operated by, for, or in the interest of any motor carrier irrespective of ownership or contract, express or implied, together with all services, facilities and property furnished, operated or controlled by any such carrier or carriers and used in the transportation of passengers and/or property in commerce in the state of Idaho. (4-5-00)()

011. (RESERVED).

012. SAFETY FITNESS PROCEDURES (RULE 12).

01. Purpose And Scope. (4-5-00)

a. The purpose of Section 012 is to establish procedures to determine the safety fitness of motor carriers, assign safety ratings, take remedial action when required and prohibit

motor carriers receiving a safety rating of “unsatisfactory” from operating a commercial motor vehicle: (4-5-00)

i. To provide transportation of hazardous materials for which vehicle placarding is required in accordance with 49 CFR Part 172, subpart F; or (4-5-00)

ii. To transport more than fifteen (15) passengers, including the driver. (4-5-00)

b. All provisions of Section 012 apply to all motor carriers subject to the requirement of this subchapter. (4-5-00)

02. Definitions. The following definitions apply to Section 012. (4-5-00)

a. Applicable safety regulations or requirements. Means 49 CFR subtitle, chapter III, subchapter B- Federal Motor Carrier Safety Regulations; and 49 CFR subtitle B, chapter I, subchapter C- Hazardous Materials Regulations. The annual volumes of the CFRs may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Amendments to the annual volumes are published in the Federal Register, pending their incorporation in the next annual volumes. The CFRs are also available for inspection and copying at the office of the Idaho State Police and the Idaho State Law Library. Whenever a federal regulation is adopted by reference in these rules, subsequent recom compilations are also adopted by reference, but subsequent amendments are not. (4-5-00)

b. Preventable accident on the part of a motor carrier. Means an accident that: (4-5-00)

i. Involved a commercial motor vehicle, and (4-5-00)

ii. Could have been averted but for an act, or failure to act, by the motor carrier or the driver. (4-5-00)

c. Reviews. For the purposes of Section 012: (4-5-00)

i. Compliance review. Means an onsite examination of motor carrier operations, which may be at the carrier’s place of business, including driver’s hours of service, vehicle maintenance and inspection, driver qualifications, commercial driver’s license requirements, financial responsibility, accidents, hazardous materials, and such other related safety and transportation records to determine safety fitness. (4-5-00)

(1) A compliance review may be conducted in response to a request to change a safety rating, to investigate potential violations of safety regulations by motor carriers, or to investigate complaints or other evidence of safety violations. (4-5-00)

(2) A compliance review may result in the initiation of an enforcement action. (4-5-00)

ii. Safety management controls. Means the systems, policies programs, practices, and procedures used by a motor carrier to ensure compliance with applicable safety and hazardous

materials regulations which ensure the safe movement of products and passengers through the transportation system, and to reduce the risk of highway accidents and hazardous materials incidents resulting in fatalities, injuries, and property damage. (4-5-00)

d. Safety ratings. Means, for the purposes of this Section 012: (4-5-00)

i. Satisfactory safety rating. Means that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in Subsection 012.03 of this rule. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier. (4-5-00)

ii. Conditional safety rating. Means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in occurrences listed in Subsection 012.03 of this rule. (4-5-00)

iii. Unsatisfactory safety rating. Means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in Subsection 012.03 of this rule. (4-5-00)

iv. Unrated carrier. Means that a safety rating has not been assigned to the motor carrier. (4-5-00)

03. Safety Fitness Standard. The satisfactory safety rating is based on the degree of compliance with the safety fitness standard for motor carriers. To meet the safety fitness standard, the motor carrier shall demonstrate that it has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with: (4-5-00)

a. Commercial driver's license standards violations. (4-5-00)

b. Inadequate levels of financial responsibility. (4-5-00)

c. The use of unqualified drivers. (4-5-00)

d. Improper use and driving of motor vehicles. (4-5-00)

e. Unsafe vehicles operating on the highways. (4-5-00)

f. Failure to maintain accident register and copies of accident reports. (4-5-00)

g. The use of fatigued drivers. (4-5-00)

h. Inadequate inspection, repair, and maintenance of vehicles. (4-5-00)

i. Transportation of hazardous materials, driving and parking rule violations. (4-5-00)

j. Violation of hazardous materials regulations. (4-5-00)

- k. Motor vehicle accidents and hazardous materials incidents. (4-5-00)

04. Factors to Be Considered in Determining a Safety Rating. The factors to be considered in determining the safety fitness and assigning a safety rating include information from safety reviews, compliance reviews and any other data. The factors may include all or some of the following: (4-5-00)

a. Adequacy of safety management controls. The adequacy of controls may be questioned if their degree of formalization or automation is found to be substantially below the norm for similar carriers. Violations, accidents or incidents substantially above the norm for similar carriers will be strong evidence that management controls are either inadequate or not functioning properly. (4-5-00)

- b. Frequency and severity of regulatory violations. (4-5-00)

c. Frequency and severity of driver/vehicle regulatory violations identified in roadside inspections. (4-5-00)

- d. Number and frequency of out-of-service driver/vehicle violations. (4-5-00)

e. Increase or decrease in similar types of regulatory violations discovered during safety or compliance reviews. (4-5-00)

f. Frequency of accidents; hazardous materials incidents; accident rate per million miles; preventable accident rate per million miles; and other accident indicators; and whether these accident and incident indicators have improved or deteriorated over time. (4-5-00)

g. The number and severity of violations of state safety rules, regulations, standards, and orders applicable to commercial motor vehicles and motor carrier safety that are compatible with Federal rules, regulations, standards and orders. (4-5-00)

05. Determination of Safety Fitness. Following a compliance review of a motor carrier operation, the Idaho State Police Commercial Vehicle Safety Program Manager, using the factors prescribed in Subsection 012.04 of this rule, shall determine whether the present operations of the motor carrier are consistent with the safety fitness standards set forth in Subsection 012.03 of this rule. ~~(4-5-00)~~(____)

06. Notification of a Safety Fitness Rating. Following a compliance review, the Idaho State Police Commercial Vehicle Safety Program Manager will determine the safety fitness of a motor carrier and notify the motor carrier and the Department in writing. Notification will include a list of those items for which immediate corrective actions must be taken. ~~(4-5-00)~~(____)

07. Motor Carrier Certification. Upon notification of violations cited in the compliance review and recommendations made to correct violations a motor carrier shall certify to the Idaho State Police Commercial Vehicle Safety Program Manager, within thirty (30) days, whether all corrective actions identified by the safety review have been taken. Certification required by this subsection must be made to the Idaho State Police Commercial Vehicle Safety

Program Manager. Failure to certify or falsely certifying under Section 012 of this Chapter will be considered a reporting violation under Section 67-2901B(3), Idaho Code. (4-5-00)

013. -- 017. (RESERVED).

018. TRANSPORTATION OF HAZARDOUS MATERIALS, SUBSTANCES, AND WASTES (RULE 18).

01. Adoption of Federal Regulations. Adoption of Federal Regulations 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 are hereby adopted by reference. All interstate and foreign carriers and all intrastate carriers subject to the safety authority of the Idaho State Police while operating in Idaho that transport hazardous materials, substances or wastes listed in, defined by or regulated by 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 must comply with 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 applicable to motor carriers and their shippers, and the laws and rules of the state of Idaho. The annual volumes of the CFRs may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Amendments to the annual volumes are published in the Federal Register, pending their incorporation in the next annual volumes. The CFRs are also available for inspection and copying at the office of the Idaho State Police and the Idaho State Law Library. Whenever any of these federal regulations exempt intrastate carriers from any of their requirements, this Rule at IDAPA 11.13.01, "The Motor Carrier Rules," Section 018, removes that exemption and subjects intrastate carriers to the same requirements. The Department asserts its authority under this Rule, IDAPA 11.13.01, "The Motor Carrier Rules," Section 018, to the maximum extent allowed by Section 67-2901A, Idaho Code, Public Laws 89-670 and 89-170 (see 49 U.S.C. 502(c)(3)), 49 CFR Part 388. (4-5-00)

02. Obligation of Familiarity with Rules. All interstate and foreign carriers and all intrastate carriers subject to this Rule at IDAPA 11.13.01, "The Motor Carrier Rules," Section 018, that transport hazardous materials, substances or wastes listed in, defined by or regulated by 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 must obtain copies of these federal regulations and make them available to their drivers and other personnel handling hazardous materials, substances or wastes and must familiarize their drivers and other personnel handling hazardous materials, substances or wastes with any regulation pertaining to the particular material, substance or waste that is transported. The annual volumes of the CFRs may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Amendments to the annual volumes are published in the Federal Register, pending their incorporation in the next annual volumes. The CFRs are also available for inspection and copying at the office of the Idaho State Police and the Idaho State Law Library. Failure to be familiar with these federal regulations adopted by reference is a violation of Section 018 of this Chapter for any carrier transporting such cargoes. The federal regulations adopted by reference in this Section 018 have the following subject matter: (4-5-00)

- a.** Part 107. Hazardous Materials Program Procedures. (4-5-00)
- b.** Part 171. General Information, Regulations and Definitions. (4-5-00)
- c.** Part 172. Hazardous Materials Tables, and special provisions, hazardous materials communications, emergency response information, and training

requirements. (4-5-00)()

- d. Part 173. Shippers-General Requirements for Shipments and Packaging. (4-5-00)
- e. Parts 174-176. (Not adopted regulations for railroads, aircraft and vessels). (4-5-00)
- f. Part 177. Carriage by Public Highway. (4-5-00)
- g. Part 178. ~~Shipping Container~~ Specifications for packagings. (4-5-00)()
- h. Part 179. (Not adopted regulations for rail tanker cars). (4-5-00)
- i. Part 180. Continuing Qualification and Maintenance of Packagings. (4-5-00)()

03. Recognition of Federal Waivers. Whenever a carrier has applied to a federal agency and been granted a waiver of the packaging requirements of the federal regulations adopted in Subsection 018.01, the federal waiver will also be recognized under these rules. The Department will not administer a program to duplicate consideration or approval of federal waivers on the state level. (4-5-00)

04. Hazardous Materials. As used here in Section 018, means a substance or material, ~~including a~~ that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce and has designated as hazardous under section 5103 of the Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, listed by the U.S. Department of Transportation hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the "Hazardous Materials Table" (see 49 CFR 172.101), which has been determined to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce. Hazardous materials listed include: and materials that meet the defining criteria for hazard classes and divisions in Part 173 of Subchapter C of Title 49 of the Code of Federal Regulations. (4-5-00)()

- ~~a.~~ *Radioactive materials;* (4-5-00)
- ~~b.~~ *Explosives, poisons;* (4-5-00)
- ~~c.~~ *Flammable liquids;* (4-5-00)
- ~~d.~~ *Flammable solids or flammable gases;* (4-5-00)
- ~~e.~~ *Combustible liquids;* (4-5-00)
- ~~f.~~ *Compressed gases;* (4-5-00)
- ~~g.~~ *Blasting agents;* (4-5-00)
- ~~h.~~ *Oxidizers;* (4-5-00)

- ~~i.~~ *Corrosives;* (4-5-00)
- ~~j.~~ *Severely irritating materials; or* (4-5-00)
- ~~k.~~ *Materials with combinations of these properties.* (4-5-00)

05. Hazardous Substances. As used in this Section 018, means a material, its mixtures or solutions, that is listed in the Appendix A to 49 CFR 172.101 and that is in a quantity in one (1) package that equals or exceeds the reportable quantity (RQ) listed in the Appendix A to 49 CFR 172.101. (4-5-00)()

06. Hazardous Waste. As used in this Section 018, means any material that is subject to the Hazardous Waste Manifest requirements of the U.S. Environmental Protection Agency. See 40 CFR Part 262. (4-5-00)

07. Version of Federal Regulations Adopted. The federal regulations adopted by reference in this Section 018 are those contained in the compilations of 40 CFR Part 262 published in the Code of Federal Regulations volume dated July 1, 1998, and as subsequently recompiled, and those contained in the compilations of 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 published in the Code of Federal Regulations volume dated October 1, 1998, and as subsequently recompiled, and all amendments to these rules appearing in the Federal Registers. The annual volumes of the CFRs may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Amendments to the annual volumes are published in the Federal Register, pending their incorporation in the next annual volumes. The CFRs are also available for inspection and copying at the office of the Idaho State Police and the Idaho State Law Library. (4-5-00)

019. CARRIER SAFETY REQUIREMENTS (RULE 19).

01. Adoption of Federal Regulations. Adoption of Federal Regulations 49 CFR Parts 356, 365, 382, 383, 385, 387, 388 and 390 through 399 are hereby adopted by reference. Whenever any one (1) of these federal regulations (except Section 391.11(b)(1)) exempts intrastate carriers from any of their requirements, this rule at IDAPA 11.13.01, "The Motor Carrier Rules," Section 019, removes that exemption and subjects the intrastate carrier to the same requirements. The Department asserts its authority under Section 019 to the maximum extent allowed by Section 67-2901A, Idaho Code, Public Laws 89-679 and 89-170 (see 49 U.S.C. 502(c)(3)), 49 CFR Part 388. (3-30-07)

a. All interstate and foreign carriers and intrastate carriers, except those carriers listed in Subsection 019.01.b., subject to the safety authority of the Idaho State Police while operating in Idaho that transport passengers or property, must comply with 49 CFR Parts 356, 365, 382, 383, 385, 387, 388 and 390 through 399, and the law and rules of the state of Idaho (except Part 391.11(b)(1) for intrastate carriers). (3-30-07)

b. Intrastate carriers operating commercial motor vehicles transporting property with a GVW, GVWR, GCW or GCWR greater than ten thousand (10,000) pounds and up to twenty-six thousand (26,000) pounds, subject to the authority of the Idaho State Police, must comply with 49

CFR Part 390 Subpart A, Part 391.15, Parts 392, 393, and Part 396.1, 396.3(a), (a)(1), and (a)(2), and 396.5 through 396.9 and the law and rules of the state of Idaho. All intrastate carriers transporting placardable quantities of hazardous material under 49 CFR Part 172, Subpart F and passengers, meeting the definition of a commercial motor vehicle, must comply with 49 CFR Parts 356, 365, 382, 383, 385, 387, 388 and 390 through 399, and the law and rules of the state of Idaho (except Part 391.11(b)(1) for intrastate carriers). (3-30-07)

c. The subject matter of 49 CFR 391.11(b)(1) is a twenty-one (21) year minimum age for drivers of commercial vehicles subject to federal safety regulation. Intrastate carriers subject to the safety authority of the Idaho State Police may hire drivers who are eighteen (18) years or older as set forth in Section 49-303, Idaho Code. (3-30-07)

02. Obligation of Familiarity with Rules. All interstate and foreign carriers and all intrastate carriers subject to these Rules at IDAPA 11.13.01, “The Motor Carrier Rules,” Section 019 must obtain copies of the federal regulations adopted by reference in Subsection 019.01 and make them available to their drivers and other personnel affected by the regulations. Failure to be familiar with these federal regulations adopted by reference is a violation of this Subsection 019.02 for any carrier subject to those regulations. The federal regulations adopted by reference address the following subject matter: (4-5-00)

a. Part 356. ~~Authority to Serve a Particular Section~~ Construction Motor Carrier Routing Regulations. (~~3-20-04~~)()

b. Part 365. ~~How to Apply~~ Rules Governing Application for Operating Authority. (~~3-20-04~~)()

c. Part 382. Controlled Substance and Alcohol Use and Testing. (4-5-00)

d. Part 383. Commercial Driver’s License Standards; Requirements and Penalties. (4-5-00)

e. Part 385. Safety Fitness ~~Standards~~ Procedures. (~~4-5-00~~)()

f. Part 387. Minimum Levels of Financial Responsibility. (~~3-20-04~~)()

g. Part 388. Cooperative Agreements with States. (4-5-00)

h. Part 390. Federal Motor Carrier Safety Regulations: General. (4-5-00)

i. Part 391. Qualifications of Drivers. (4-5-00)

j. Part 392. Driving of Commercial Motor Vehicles. (~~4-5-00~~)()

k. Part 393. Parts and Accessories Necessary for Safe Operation. (4-5-00)

l. Part 395. Hours of Service of Drivers. (4-5-00)

m. Part 396. Inspection, Repair and Maintenance. (4-5-00)

- n. Part 397. Transportation of Hazardous Materials; Driving and Parking Rules. (4-5-00)
- o. Part 398. Transportation of Migrant Workers. (4-5-00)
- p. Part 399. Employee Safety and Health Standards. (4-5-00)

03. Recognition of Federal Waivers. Whenever a driver or carrier has applied to a federal agency and been granted a waiver from any of the requirements of the federal regulations adopted in Subsection 019.01, the federal waiver will also be recognized under these rules. The Department reserves the authority to implement a waiver program and grant waivers on the state level for intrastate commercial motor vehicle drivers. (4-5-00)

04. Version of Federal Regulations Adopted. The federal regulations adopted by reference in this Subsection 019 are those contained in the compilation of 49 CFR Parts 356, 365, 382, 383, 385, 387, 388, 390 through ~~394, and 396 through~~ 399 published in the Code of Federal Regulations volumes dated October 1, 2002~~8~~, and ~~Part 393 published in the Code of Federal Regulations volumes dated January 4, 2004, and Part 395 published in the Code of Federal Regulations volume dated August 25, 2005.~~ (3-30-07)()

05. Availability of Incorporated Documents. The 49 CFR's can be found at www.fmcsa.dot.gov or copies may be viewed at the *central* office of the Idaho State Police. (3-20-04)()

IDAPA 35 - STATE TAX COMMISSION

35.01.05 - MOTOR FUELS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0105-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and is now pending review by the 2009 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has adopted a pending rules. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rules and a statement of any change between the text of the proposed rules and the text of the pending rules with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 5, 2009, Idaho Administrative Bulletin, Volume 09-8, pages 129 through 131.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rules, contact Randy Nilson at (208) 334-7544.

DATED this 13th day of November, 2009.

Randy Nilson
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410

***THE FOLLOWING NOTICE PUBLISHED WITH THE
TEMPORARY AND PROPOSED RULE***

EFFECTIVE DATE: The effective date of the temporary rule is **June 1, 2009**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 19, 2009.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

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

Motor Fuels Rule 130 is being amended to be consistent with the passage of House Bill 338 and to notify motor fuels distributors that deductions on the motor fuel distributor report for ethanol and biodiesel cannot be claimed on or after June 1, 2009.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: In compliance with deadlines in amendments to governing law.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the amendments are simple in nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Randy Nilson.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 26, 2009.

DATED this 1st day of July, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

130. DISTRIBUTOR'S FUEL TAX REPORTS (RULE 130).

01. Monthly Reports. Every licensed distributor shall file with the State Tax Commission a monthly tax report and supporting detailed schedules on forms prescribed by the State Tax Commission. The distributor must keep detailed inventory records. All reports which require the reporting of the number of gallons of motor fuels and other petroleum products shall be stated in gross gallons. With respect to the quantity of motor fuels and other petroleum products received during the month, the distributor shall include a listing of each person from inside and/or outside Idaho supplying motor fuels and petroleum products to the distributor during the month and the number of gallons supplied by each supplier, on a load-by-load basis. Such reports shall contain a declaration by the person filing the report that the statements contained therein are true and are made under penalties of perjury. The report shall include the following information together with such other information as the State Tax Commission may require: (3-30-01)

a. The beginning inventory of motor fuels and other petroleum products on the first day of the month; (7-1-98)

b. The total quantity of motor fuels and other petroleum products received during the month; (7-1-98)

c. The total quantity of motor fuels and other petroleum products disbursed during the month. Disbursements include motor fuel that is: (4-11-06)

i. Delivered to licensed distributors tax and transfer fee not collected; (4-11-06)

ii. Exported; (4-11-06)

iii. Delivered to the Idaho National Guard tax exempt; or (4-11-06)

iv. Exempt from fuels tax because the fuel is the subject of an agreement authorized by Section 67-4002, Idaho Code, to the extent provided by the agreement, but only if the agreement is signed by the governor and appropriate representative of a tribe before December 1, 2007. (4-2-08)

d. The total quantity of motor fuels and other petroleum products transferred or relabeled from one (1) fuel type to another; (7-1-98)

e. The casualty loss documented with satisfactory written explanation of proof of loss; (7-1-98)

f. The ending inventory of motor fuels and other petroleum products on the last day of the month; (7-1-98)

- g.** The gross taxable gallons of motor fuels and other petroleum products; (7-1-98)
 - h.** The tax-paid purchases; (7-1-98)
 - i.** The net taxable gallons; (7-1-98)
 - j.** The gallons of ethanol reported in ethanol blended fuel. The deduction for ethanol is limited to ten percent (10%) of the total volume of the product that meets the definition of gasohol as defined in Section 63-2401, Idaho Code. Biodiesel reported in biodiesel and biodiesel blended fuel. The deduction for biodiesel is up to ten percent (10%) of the total volume. See Section 63-2407, Idaho Code, for other limitations to these deductions (This subsection only applies to deductions for ethanol or biodiesel that could be made before June 1, 2009); ~~(4-2-08)~~(____)
 - k.** The gallons after deduction of a one percent (1%) or two percent (2%) allowance, whichever is appropriate. (This subsection only applies to receipts of motor fuels received before December 1, 2007.) See Rule 140 of these rules; (4-2-08)
 - l.** The gallons after deduction of a two percent (2%) allowance. (This subsection only applies to receipts of motor fuels received on and after December 1, 2007.) See Rule 140 of these rules; (4-2-08)
 - m.** The tax computation; (7-1-98)
 - n.** The bad debt amounts, refer to Rule 140 of these rules (This section only applies to debt from fuels taxes that have been written off for income tax purposes in the distributor's records before December 1, 2007.); (4-2-08)
 - o.** The gaseous fuels permit fees; and (4-11-06)
 - p.** The net tax due. (4-11-06)
- 02. Report Due and Payment Required.** The report shall be due on or before the last day of the month following the month to which the report relates. Supporting detailed schedules required by the State Tax Commission must accompany the report, together with all documentation and the payment of any tax, transfer fee, annual gaseous fuels permit fees, penalty or interest due. See Rule 010 of these rules relating to method of payment and requirement for payments of one hundred thousand dollars (\$100,000) or more. (5-8-09)
- 03. Machine Tabulated Data.** Machine tabulated data will be accepted in lieu of detailed schedules on State Tax Commission provided forms but only if the data is in the same format as shown on the required schedules. Before any other format may be used, the distributor must make a written request to the State Tax Commission with a copy of the format and must be granted written authorization to use that format. (7-1-98)
- 04. Supplemental Reports.** In addition to the monthly report, a supplemental report may be filed in those cases involving additional shipments of motor fuels and other petroleum

products to the distributor. The supplemental report may be filed only when the distributor is diligent in reporting shipments in the monthly report. Only shipments received within the last five (5) days of the month may be reported in a supplemental report. Shipments received before that date will be subject to penalty if reported in the supplemental report. If a supplemental report is filed, the State Tax Commission will impose interest, but the report will not be subject to penalty. The supplemental report must be postmarked on or before the tenth day of the month following the month in which a report from which shipments were omitted was due. (7-1-98)

05. Timely Reporting. Any petroleum product shipments that are: (7-1-98)

a. Reported on a timely supplemental report shall be subject to interest but are not subject to penalty. (7-1-98)

b. Not reported on a timely monthly or supplemental report shall be subject to interest and may be subject to penalty. (7-1-99)

06. Motor Fuels Receipts. All gasoline, ethanol blended fuels, aircraft engine fuel, biodiesel, biodiesel blends, and undyed diesel fuel or other special fuels received by a distributor are subject to the fuels tax and transfer fee. All receipts of dyed diesel fuel and other petroleum products that are not subject to the special fuels tax are subject to the transfer fee. The special fuels tax is not imposed on gaseous fuels when the fuels are received. Refer to Rule 105 of these rules for the taxation and reporting of gaseous fuels used in motor vehicles. (5-8-09)

IDAPA 35 - STATE TAX COMMISSION

35.01.05 - MOTOR FUELS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0105-0902

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and is now pending review by the 2009 Idaho State Legislature for final approval. The pending rules become final and effective at the conclusion of the legislative session, unless the rules are approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rules are approved, amended or modified by concurrent resolution, the rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has adopted a pending rules. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rules and a statement of any change between the text of the proposed rules and the text of the pending rules with an explanation of the reasons for the change.

The pending rules are being adopted as proposed. The complete text of the proposed rules were published in the October 7, 2009, Idaho Administrative Bulletin, Volume 09-10, Vol. 2, pages 395 through 401.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rules, contact Randy Nilson at (208) 334-7544.

DATED this 13th day of November, 2009.

Randy Nilson
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 130 is being amended to remind motor fuels distributors that ethanol must be reported as a receipt on the motor fuels distributors report when it is blended with gasoline and to notify motor fuels distributors pursuant to House Bill 338 that deductions on the monthly motor fuel distributor report for ethanol and biodiesel cannot be claimed for periods before June 1, 2009.

Rule 131 was created pursuant to House Bill 11 which provided that the State Tax Commission may by rule require a motor fuels distributor who reports at least 25 receipts or disbursements of motor fuel on its monthly fuel tax return to file electronically. To provide for an exemption from the electronic filing requirement that takes into account, among other relevant factors, the ability of the distributor to comply, at a reasonable cost, with the requirements of this rules.

Rule 135 is being amended pursuant to House Bill 9 to exempt persons who produce 5,000 gallons or less of biodiesel fuel in a calendar year for their personal consumption from paying the 1¢ per gallon petroleum transfer fee.

Rule 170 is being amended by adding a reference to Idaho Code section 63-2425 to inform consumers of new penalties for using dyed diesel fuel for an illegal purpose and to remove unrelated subject matter.

Rule 171 is being created to include information deleted from Rule 170 concerning sale and use tax on motor fuels.

Rule 421 is being amended to delete the recordkeeping requirements for carriers registered under the Full Fee Plan and to place them in a new Rule 422.

Rule 422 is being created to show the recordkeeping requirements for carriers registered under the Full Fee Plan.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Randy Nilson, at (208) 334-7544.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2009.

DATED this 21st day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

130. DISTRIBUTOR'S FUEL TAX REPORTS (RULE 130).

01. Monthly Reports. Every licensed distributor shall file with the State Tax Commission a monthly tax report and supporting detailed schedules on forms prescribed by the State Tax Commission. The distributor must keep detailed inventory records. All reports which require the reporting of the number of gallons of motor fuels and other petroleum products shall be stated in gross gallons. With respect to the quantity of motor fuels and other petroleum products received during the month, the distributor shall include a listing of each person from inside and/or outside Idaho supplying motor fuels and petroleum products to the distributor during the month and the number of gallons supplied by each supplier, on a load-by-load basis. Such reports shall contain a declaration by the person filing the report that the statements contained therein are true and are made under penalties of perjury. The report shall include the following information together with such other information as the State Tax Commission may require: (3-30-01)

a. The beginning inventory of motor fuels and other petroleum products on the first day of the month; (7-1-98)

b. The total quantity of motor fuels includes ethanol blended with motor fuel and other petroleum products received during the month; (~~7-1-98~~)()

c. The total quantity of motor fuels and other petroleum products disbursed during the month. Disbursements include motor fuel that is: (4-11-06)

- i. Delivered to licensed distributors tax and transfer fee not collected; (4-11-06)
 - ii. Exported; (4-11-06)
 - iii. Delivered to the Idaho National Guard tax exempt; or (4-11-06)
 - iv. Exempt from fuels tax because the fuel is the subject of an agreement authorized by Section 67-4002, Idaho Code, to the extent provided by the agreement, but only if the agreement is signed by the governor and appropriate representative of a tribe before December 1, 2007. (4-2-08)
- d.** The total quantity of motor fuels and other petroleum products transferred or relabeled from one (1) fuel type to another; (7-1-98)
- e.** The casualty loss documented with satisfactory written explanation of proof of loss; (7-1-98)
- f.** The ending inventory of motor fuels and other petroleum products on the last day of the month; (7-1-98)
- g.** The gross taxable gallons of motor fuels and other petroleum products; (7-1-98)
- h.** The tax-paid purchases; (7-1-98)
- i.** The net taxable gallons; (7-1-98)
- j.** The gallons of ethanol reported in ethanol blended fuel. The deduction for ethanol is limited to ten percent (10%) of the total volume of the product that meets the definition of gasohol as defined in Section 63-2401, Idaho Code. Biodiesel reported in biodiesel and biodiesel blended fuel. The deduction for biodiesel is up to ten percent (10%) of the total volume. See Section 63-2407, Idaho Code, for other limitations to these deductions (This Subsection only applies to deductions for ethanol or biodiesel that could be made before June 1, 2009);
(4-2-08)()
- k.** The gallons after deduction of a one percent (1%) or two percent (2%) allowance, whichever is appropriate. (This subsection only applies to receipts of motor fuels received before December 1, 2007.) See Rule 140 of these rules; (4-2-08)
- l.** The gallons after deduction of a two percent (2%) allowance. (This subsection only applies to receipts of motor fuels received on and after December 1, 2007.) See Rule 140 of these rules; (4-2-08)
- m.** The tax computation; (7-1-98)
- n.** The bad debt amounts; refer to Rule 140 of these rules (This section only applies to debt from fuels taxes that have been written off for income tax purposes in the distributor's records before December 1, 2007.); (4-2-08)()

- o.** The gaseous fuels permit fees; and (4-11-06)
- p.** The net tax due. (4-11-06)

02. **Exemption from Licensing and Monthly Reporting.** See Rule 135 for exemptions from obtaining a motor fuels distributor license and filing monthly reports. ()

023. **Report Due and Payment Required.** The report shall be due on or before the last day of the month following the month to which the report relates. Supporting detailed schedules required by the State Tax Commission must accompany the report, together with all documentation and the payment of any tax, transfer fee, annual gaseous fuels permit fees, penalty or interest due. See Rule 010 of these rules relating to method of payment and requirement for payments of one hundred thousand dollars (\$100,000) or more. (5-8-09)

034. **Machine Tabulated Data.** Machine tabulated data will be accepted in lieu of detailed schedules on State Tax Commission provided forms but only if the data is in the same format as shown on the required schedules. Before any other format may be used, the distributor must make a written request to the State Tax Commission with a copy of the format and must be granted written authorization to use that format. (7-1-98)

045. **Supplemental Reports.** In addition to the monthly report, a supplemental report may be filed in those cases involving additional shipments of motor fuels and other petroleum products to the distributor. The supplemental report may be filed only when the distributor is diligent in reporting shipments in the monthly report. Only shipments received within the last five (5) days of the month may be reported in a supplemental report. Shipments received before that date will be subject to penalty if reported in the supplemental report. If a supplemental report is filed, the State Tax Commission will impose interest, but the report will not be subject to penalty. The supplemental report must be postmarked on or before the tenth day of the month following the month in which a report from which shipments were omitted was due. (7-1-98)

056. **Timely Reporting.** Any petroleum product shipments that are: (7-1-98)

a. Reported on a timely supplemental report shall be subject to interest but are not subject to penalty. (7-1-98)

b. Not reported on a timely monthly or supplemental report shall be subject to interest and may be subject to penalty. (7-1-99)

067. **Motor Fuels Receipts.** All gasoline, ethanol blended fuels, aircraft engine fuel, biodiesel, biodiesel blends, and undyed diesel fuel or other special fuels received by a distributor are subject to the fuels tax and transfer fee. All receipts of dyed diesel fuel and other petroleum products that are not subject to the special fuels tax are subject to the transfer fee. The special fuels tax is not imposed on gaseous fuels when the fuels are received. Refer to Rule 105 of these rules for the taxation and reporting of gaseous fuels used in motor vehicles. (5-8-09)

131. REQUIREMENT TO FILE MOTOR FUELS DISTRIBUTOR REPORTS ELECTRONICALLY (RULE 131).

01. Electronic Filing Requirement. A motor fuels distributor who reports twenty-five (25) or more receipts or disbursements of motor fuels on its monthly distributor report is required to file the distributor report electronically. ()

02. Failure to File Report Electronically. A motor fuels distributor who is required to file its distributor report electronically but does not file the report electronically will be treated as if the distributor did not file the monthly report. ()

03. Waiver from Requirement to File Report Electronically. A motor fuels distributor can request a waiver from the requirement to file motor fuel distributor reports electronically. The distributor making the request for waiver must show that the cost to comply with this rule is unreasonable. The Commission will review each request for waiver and issue a determination. ()

~~132.~~ -- 134. (RESERVED).

135. EXEMPTION FROM OBTAINING A MOTOR FUELS DISTRIBUTOR LICENSE AND MONTHLY ~~ALTERNATE~~ REPORTING FOR PERSONS WHO PRODUCE ~~MOTOR FUELS BIODIESEL~~ OR IMPORT MOTOR FUELS INTO IDAHO ONLY FOR USE IN THEIR OWN AIRCRAFT, MOTOR VEHICLES, AND EQUIPMENT (RULE 135).

01. In General. The state of Idaho imposes an excise tax on all motor fuel, except dyed diesel, and the transfer fee on all petroleum and petroleum products, received in Idaho. See Rule 510 of these rules for the definition of petroleum and petroleum products. Motor fuel imported into Idaho is received at the time the fuel arrives in Idaho by the person who is the owner of the motor fuel when the fuel arrives in Idaho. Motor fuel produced in Idaho is received when it is placed into any tank or other container from which sales or deliveries not involving transportation are made. Motor fuels are also received by a qualified consumer who produces motor fuels when the motor fuels are placed into storage tanks. For example: 55 gallon barrels, above ground tanks, stilt tanks, underground tanks, tank wagons, old delivery trucks, old tanker trucks, slip tanks in pickups, and any other storage tank used to store the motor fuel. The excise tax and transfer fee due on the motor fuel received in Idaho during a month are normally reported on a ~~monthly~~ Idaho Motor Fuels Distributor Report ~~on a monthly basis~~. (5-8-09)()

02. Alternative to Monthly Reporting for Qualified Consumers. As an alternative to obtaining an Idaho motor fuel distributor license and filing monthly reports, a qualified consumer may file an annual report to remit the motor fuel tax and transfer fee due to the state of Idaho or to receive a refund of excess tax or transfer fee paid. (7-1-99)

a. A qualified consumer is not required to pay the transfer fee on the biodiesel he produces. ()

03. Qualifications. To be a qualified consumer under this rule, a person must: (7-1-99)

a. Use the produced biodiesel or imported motor fuel only in its own aircraft, motor vehicles, or equipment; and (5-8-09)()

b. Import into Idaho one-hundred thousand (100,000) gallons or less of motor fuel in a calendar year; or (5-8-09)

c. Produce in Idaho five thousand (5,000) gallons or less of ~~motor fuel~~ biodiesel in a calendar year. (~~5-8-09~~)()

04. Documentation of Export. To claim an export of motor fuel or other petroleum products a qualified consumer must have tax reports or other evidence that will verify that the exported fuel was reported to and any tax due was paid to the jurisdiction into which the fuel was claimed to have been exported. (3-30-01)

05. Limitations. (7-1-99)

a. A qualified consumer may not claim an export from Idaho for fuel in the supply tank of a motor vehicle or aircraft. (7-1-99)

b. A licensed Idaho fuel distributor may not file this report. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

170. ~~ADDITIONAL~~ INFORMATION ON DYED & UNDYED DIESEL FUEL (RULE 170).

01. Undyed Diesel Fuel Used for Heating Purposes. The consumer must apply directly to the State Tax Commission for a refund of the special fuels taxes included in the purchase price on purchases of undyed diesel fuel which are used for heating a dwelling or building. The distributor may assist the consumer who is claiming a refund of the special fuels tax from the State Tax Commission by: (4-2-08)

a. Properly documenting information on the sales invoice; and (7-1-98)

b. Providing the customer with a Form ~~75-HF "Heating Fuel Only."~~ (~~7-1-98~~)()

02. Red-Dyed Low-Sulfur and Ultra Low-Sulfur Fuel. It is illegal to use red-dyed low-sulfur and ultra low-sulfur fuel in the supply tank of a licensed, or required to be licensed, motor vehicle in this state unless the type of user is listed in Subsection 170.03 of this rule. Penalties for illegal use of red-dyed low-sulfur and ultra low-sulfur fuel in a motor vehicle are found in Section 63-2425, Idaho Code. (~~4-2-08~~)()

03. Red-Dyed Low-Sulfur and Ultra Low-Sulfur Fuel. The Internal Revenue Code does allow certain types of users to purchase tax-exempt red-dyed low-sulfur and ultra low-sulfur diesel fuel for use in their vehicles. The use of untaxed low-sulfur and ultra low-sulfur red-dyed diesel fuel in motor vehicles may be subject to Idaho's special fuels tax if the motor vehicles are not owned or leased, and operated by the state of Idaho, or any of its political subdivisions such as a city, county, or fire district. The red-dyed low-sulfur and ultra low-sulfur diesel fuel may be

- used: (4-2-08)
- a. By state and local governments (political subdivisions of the state) for their exclusive use; (7-1-98)
 - b. In the engine of a train; (7-1-98)
 - c. In a school bus while the bus is engaged in the transportation of students and school employees; (7-1-98)
 - d. In a vehicle (such as a ground servicing vehicle for aircraft) owned by an aircraft museum; (4-11-06)
 - e. In a highway vehicle that is not registered (and is not required to be registered) for highway use under the laws of any state or foreign country and is used in the operator's trade or business or for the production of income; (4-11-06)
 - f. In a highway vehicle owned by the United States that is not used on a highway; (4-11-06)
 - g. Exclusively by a nonprofit educational organization as defined in Internal Revenue Code Section 4221 (d)(5). (4-11-06)

~~04171~~. MOTOR FUELS EXEMPTION FROM SALES TAX (RULE 171).

Any sale of motor fuels by any fuel distributor that is subject to motor fuels tax is exempt from Idaho sales tax under Chapter 36, Title 63, Idaho Code. If such purchases are later included in credits or refunds for motor fuels tax paid and not subject to taxes imposed by Title 63, Chapter 24, Idaho Code, and no other exemption applies, sales and use taxes will be applicable. ~~If fuel, including dyed diesel fuel, is~~ products are sold without the motor fuels tax, the sale is subject to the Idaho state sales tax unless exempted under the Idaho Sales Tax Act and Rules. Sales of dyed fuel delivered into bulk storage tanks, where that do not include the motor fuels tax is not charged, are exempt from Idaho sales tax only if the ~~distributor~~ seller has taken from the purchaser a sales tax exemption certificate in the manner required by IDAPA 35.01.02, "Idaho Sales and Use Tax Administrative Rules," Rule 128. However, if the dyed fuel product delivered into a bulk storage tank is used exclusively for home heating purposes, a sales tax exemption certificate is not required. (5-3-03)()

~~1712~~. -- 179. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

421. DOCUMENTATION FOR IDAHO INTERNATIONAL REGISTRATION PLAN ~~AND FULL-FEE~~ REGISTRANTS (RULE 421).

Records Required For Idaho International Registration Plan ~~and Full-Fee~~ Registrants. Registrants must keep records to verify the accuracy of any Idaho International Registration Plan (IRP) ~~or~~

~~Full Fee registration~~ application submitted to the Idaho Transportation Department. Registrants must keep the records required by Rule 420 of these rules for all IRP registered vehicles, ~~except for Full Fee vehicles registered at less than sixty-two thousand (62,000) lbs. GVW or those registered at the maximum tier, which is more than fifty thousand (50,000) miles per year.~~ Also, registrants must keep individual vehicle records by registered fleet for each application reporting period of July 1st through June 30th. (4-6-05)()

422. DOCUMENTATION FOR IDAHO FULL FEE REGISTRANTS (RULE 422).

01. Records Required For Idaho Full Fee Registrations. Registrants must keep records to verify the accuracy of any Idaho Full Fee registration application submitted to the Idaho Transportation Department. These records must include all summaries and source documents for all registered vehicles, except for full fee vehicles registered at less than sixty-two thousand (62,000) lbs. gvw or those registered at the maximum tier, which is more than fifty thousand (50,000) miles per year. To provide primary and secondary source verification of the distance reported on the application, registrants must keep records by individual vehicle for each reporting period of July 1st through June 30th using two (2) of the following recordkeeping options: ()

a. Distance Measuring Devices. Odometer, hubometer, GPS or perpetual life-to-date readings must be supported by a second source of documentation such as fuel purchases, trip logs, or daily logs. ()

b. Trip Logs. Daily trip logs should show date of travel, origin and destination of the trip, and number of miles traveled. Daily trip sheets should be supported by load tickets, billing invoices, or other original source documents that can be used as verification of miles traveled. ()

c. Number of Trip/Round Trip Miles. This method is used by registrants making numerous short trips from the same origin to the same destination. Computations should be supported by scale tickets, load tickets, or a Commission approved trip analysis. ()

d. Fuel Purchases. Records of fuel purchases must be supported by fuel invoices that show date, location, quantity, and type of fuel purchased. Fuel purchase records should include the usage per unit. If fuel purchases are used to determine miles, the records should contain documentation of how the average miles-per-gallon (MPG) was calculated. ()

02. Credit For Off-Road Miles And Documentation Required. Credit for off-road miles may be given for roads not maintained by a government entity or roads built or maintained by the registrant pursuant to a contract, according to Subsection 292.03 of these rules. These include roads on private property, roads under construction but not open to the public, and may include designated Forest Service roads. Off-road miles must be documented by using odometer readings, maps, contracts, GPS readings, or a Commission approved trip analysis. ()

4223. -- 499. (RESERVED).

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.02.60 - RULES GOVERNING LICENSE PLATE PROVISIONS

DOCKET NO. 39-0260-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 49-201, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

This rule is being revised to include provisions for issuing Restricted Vehicle plates to Idaho licensed motorbike, all terrain vehicle, and utility vehicle dealers. Neither HB602, 2008, nor SB1098a, 2009, provided for issuing restricted vehicle dealer plates, which are necessary for dealers to conduct their business for demoing such vehicles to potential customers. Revisions are needed to add provisions for issuing wrecker plates to comply with SB1183, 2009. Revisions are being made to clarify unacceptable personalized plate messages to include prohibition against acts of violence, drug references, and sexual preference or orientation. A new section is being added to comply with HB226, 2009, providing for the creation of business logo plates available as permanent commercial trailer plates for businesses who wish to create their own logo plate for registering their commercial trailers and provides for the periodic validation for non-resident owners every 3 years.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in Book 2 of the October 7, 2009 Idaho Administrative Bulletin, Volume 09-10, pages 447 through 452.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than then thousand dollars (\$10,000) during the fiscal year: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Amy Smith, Vehicle services Manager, 334-8660.

DATED this 5th day of November, 2009.

Linda L. Emry
Office of Governmental Affairs
Idaho Transportation Department

3311 West State Street
P O Box 7129, Boise ID 83707-1129
Phone - 208-334-8810 / FAX - 208-332-4107

THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY & PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is **July 1, 2009**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 49-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

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

This rule is being revised to include provisions for issuing Restricted Vehicle plates to Idaho licensed motorbike, all terrain vehicle, and utility vehicle dealers. Neither HB602, 2008 nor SB1098a, 2009 provided for issuing restricted vehicle dealer plates, which are necessary for dealers to conduct their business for demoing such vehicles to potential customers. Amendments are needed to add provisions for issuing wrecker plates to comply with SB1183, 2009. Amendments are being made to clarify unacceptable personalized plate messages to include prohibition against acts of violence, drug references, and sexual preference or orientation. A new section is being added to comply with HB226, 2009, providing for the creation of a business logo plate available as permanent commercial trailer plates for businesses who wish to create their own logo plate for registering their commercial trailers and provides for the periodic validation for non-resident owners every 3 years.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: **Compliance with legislative action in 2008 and 2009.**

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal

impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
N/A

NEGOTIATED RULEMAKING: In compliance with Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because changes are necessary for compliance with changes to Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Amy Smith, Vehicle Services Manager, 334-8660.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2009.

DATED this 19th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

150. VEHICLE DEALER LICENSE PLATES FORMATS.

01. Designation for Manufacturers Plates. Plates issued to manufacturers shall bear the designation “MFR” and be numbered from nine thousand (9000) through nine thousand, nine hundred, ninety-nine (9999). (1-3-92)

02. Designation for Dealer Plates. Plates issued to dealers shall bear the designation “DLR” and the sequential license plate number shall be a maximum of two (2) digits. (1-3-92)

a. If a dealer is issued more than ninety-nine (99) plates, an alpha character will be placed in the first position, followed by a number. (1-8-90)

b. The dealer number shall be a maximum of four (4) digits. No dealer number shall be preceded by a zero (0): Dealer number one (1), plate number one (1): 1-01; Dealer number one thousand one (1001), plate number one hundred (100): 1001-A1. (1-8-90)

c. Dealer restricted vehicle plates will display the abbreviation “DLR” within the lower left hand box labeled “Restricted Vehicle”. The dealer validation sticker shall be displayed within the box labeled “Dealer Validation Sticker”. ()

151. VEHICLE DEALER LICENSE PLATES RESTRICTIONS.

01. Restrictions. Restrictions on the use of manufacturer or dealer plates are provided for by Section 49-1627, Idaho Code. In addition, the following restrictions shall apply: (1-3-92)

a. Authorized employees may operate vehicles displaying dealer plates only when operated in the furtherance of the dealer’s business. The authorized employee must carry an

identification card issued by the dealer. The identification card shall contain the employee name, dealership, date of issue, dealer number and signature of an authorized representative of the dealership and the signature of the employee. This use shall be limited to normal business hours unless the operator is in possession of a letter from the dealer listing the specific reason for the after-hour use. (1-3-92)

b. A manufacturer shall not display manufacturer plates on vehicle types other than those manufactured by the manufacturer. (1-8-90)

c. A new or used motorcycle ~~or all-terrain vehicle~~ dealer shall not display motorcycle dealer plates on other vehicle types nor on a new motorcycle ~~or all-terrain vehicle~~ that the dealer is not enfranchised to sell. (4-2-08)()

d. A new vehicle dealer shall not display new vehicle dealer plates on new vehicles that the dealer is not enfranchised to sell. (4-2-08)

e. A new or used motorbike, all terrain vehicle, or utility vehicle dealer shall not display dealer restricted vehicle plates on other vehicle types nor on any new motorbike, all terrain vehicle, or utility vehicle that the dealer is not enfranchised to sell. ()

f. Vehicles displaying a dealer restricted vehicle plate shall be limited to operation off-highway, on authorized local jurisdiction roadways, on those roadways maintained by the Idaho Department of Lands, the Bureau of Land Management, and the US Forest Service. Restricted vehicles displaying the dealer restricted vehicle plate shall not operate on any state highway, but may cross such at a designated crossing. ()

g. Vehicles displaying a dealer restricted vehicle plate are not required to display the Idaho Department of Parks and Recreation Off-highway registration to be valid, but are required to be validated in the same manner as are standard dealer plates and display the required annual validation sticker on the restricted plate. ()

eh. A prospective purchaser shall not have in his possession a vehicle belonging to a dealership after normal business hours without a letter of authority from the dealership. (4-2-08)

fi. A dealer or manufacturer shall not display a dealer plate for purposes other than provided for by law or regulation. (4-2-08)

02. Penalties. In addition to the penalties for violation of plate use provided for in Section 49-236, Idaho Code, a dealer or manufacturer may have his license to do business in Idaho suspended for a period not less than fifteen (15) days nor more than thirty (30) days. (1-8-90)

(BREAK IN CONTINUITY OF SECTIONS)

154. PROVISIONS FOR WRECKER PLATES.

01. Purpose. Wrecker plates are for the exclusive use of businesses engaged in the towing of a wrecked, abandoned, salvaged, or disabled motorized vehicle. Plates shall not be used on vehicles being repossessed. ()

02. Numbering of Plates. Plates shall be numbered as determined by the department and shall display the abbreviation "WRKR" vertically on the left hand side of the plate. ()

03. Renewal of Plates. The wrecker registration and plate are valid for one (1) year from January 1 through December 31 and may be renewed by use of a registration sticker showing the year of validation. ()

04. Use of Plates. Plates are not to be displayed on the towing power unit vehicle nor are they to be used on a vehicle not being towed. Plates are to be displayed on the rear of the towed vehicle in such a manner as to be visible to vehicles approaching from the rear. Wrecker plates may be moved from one (1) towed motorized vehicle to another vehicle under the direct lawful control of the registration holder. ()

05. Possession of Registration. When towing a motorized vehicle displaying a wrecker plate, the operator of the towing vehicle shall carry the wrecker plate registration in the towing vehicle. ()

06. Acquisition/Renewal of Wrecker Plates. Wrecker plates will be issued and renewed through the department by mail or by fax using an application and renewal process determined by the department. ()

1545. -- 198. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

202. PROVISIONS FOR PERSONALIZED LICENSE PLATES.

01. Special Characters or Marks. No special characters, or punctuation marks, may be used for personalized messages on license plates. (1-3-92)

a. Up to seven (7) letters or any combination of seven (7) letters and numbers and spaces (no half spaces) may be used for personalized messages on eligible six inch by twelve inch (6" x 12") license plates. (5-8-09)

b. Up to six (6) letters or any combination of six (6) letters and numbers and spaces (no half spaces) may be used for personalized messages on four inch by seven inch (4" x 7") motorcycle plates. (5-8-09)

c. Up to six (6) letters or any combination of six (6) letters and numbers and spaces (no half spaces) may be used for personalized messages on specialty program license plates. (5-8-09)

d. Disability six inch by twelve inch (6" x 12") plates will display the international handicapped symbol followed by up to five (5) letters, numbers, and spaces in the personalized message. Disability four inch by seven inch (4" x 7") motorcycle plates will display the international handicapped symbol followed by up to four (4) letters, numbers, and spaces (no half spaces) in the personalized message. (5-8-09)

02. Issue of Personalized Plates. Personalized plates can be issued only to vehicles if no specific wording is required on the plate to identify the purpose for which the vehicle is registered. Personalized plates will not be issued if such plates would jeopardize the integrity of unique plate identification requirements. Examples include but are not limited to: (1-3-92)

a. Commercial vehicles registered under the International Registration Plan (IRP), because the designators PRP are required to be printed on the plate; (1-3-92)

b. Vehicles for which the designators "PRP" are required to be printed on the plate to identify the use; and (4-2-08)

c. Utility, horse, or enclosed car hauling trailers with RV facilities or boat trailers. (4-2-08)

03. Specific Requests. Requests for specific plate letters and/or numbers will be issued on a first come, first served basis. In the event of a request for the same plate by more than one (1) individual, the request with the earliest postmark, e-mail transmission time, or fax transmission time will prevail. If the postmarks are the same, the date stamped upon arrival at the Department will prevail. Applications submitted at county assessors' offices will not be considered valid until stamped in by the Department. Telephone requests will not be accepted. (4-2-08)

04. Lack of Current Plates. When an applicant for personalized plates does not have current regular number plates: (1-3-92)

a. The Department may issue a thirty (30) day temporary registration to allow time for the billing process for personalized plates. The fee for each thirty (30) day temporary registration shall be as required by Section 49-523, Idaho Code. (4-2-08)

b. The Department may, upon payment of all required fees, issue a temporary registration document as provided in Section 012 of these rules. (4-2-08)

05. Credits. When personalized plates are issued before an applicant's current registration is expired, credit will be given for unexpired registration fees only. (1-3-92)

06. Renewing Plates. The applicant will have the choice of renewing existing personalized plates with validation stickers or ordering a new set of plates at the time of renewal. If new plates are requested, the plate fee will be charged in addition to all other fees that are due. New plates must be purchased every seven (7) years as provided in Section 49-443, Idaho Code. (4-2-08)

07. Transfer of Plates. When personalized plates are issued, the vehicle's regular

number plates may be transferred to another vehicle belonging to the owner. If registration credit is given from the regular number plates to the personalized, the regular number plate registration is canceled. (1-3-92)

08. Acceptability of Plates Message. Acceptability of the personalized license plate message and issuance, denial or cancellation will be determined by the Department based on the following criteria: (1-3-92)

a. The combination of numbers and letters requested or combinations of same may not duplicate an existing combination in use. (1-3-92)

b. The message, in any language, may not carry a sexual connotation nor consist of a term that is considered to be one of: obscenity; contempt; prejudice; hostility; insult; racial degradation; ethnical degradation; profanity; or refers to bodily functions, bodily fluids, or intimate body parts; sexual preference or orientation; act of violence, illegal substances; or vulgarity as defined in dictionaries of general use, including, but not limited to, Webster's Unabridged Dictionary and the Harper & Row New Dictionary of American Slang. (5-8-09)()

c. The criteria in Paragraph 202.08.b. of these rules is not to be considered an exhaustive list. A compilation of offensive or obscene words, terms or letter/number combinations gathered from the experience of Idaho and other states may also be used as a guide. (4-2-08)

d. When a complaint is received from the public concerning an issued plate, the name of the caller will not be recorded nor, if known, revealed. (1-3-92)

e. Final determination regarding applications for questionable messages or cancellation of issued plates will be made by the Division of Motor Vehicles. The determination process shall include a first review by technical staff, followed by a second review by supervisory and management staff. An applicant does, however, have a right to a hearing on the decision. (4-2-08)

09. Message Preferences. Applicants may submit three (3) message preferences including the specific meaning of each. The first choice that is available and acceptable will be issued. If none of the preferences are available or acceptable, the applicant will be notified by return mail. (4-2-08)

10. Recalled Plates. Personalized plates may be recalled by the Department for the following reasons: (1-3-92)

a. Error in manufacturing; or (1-3-92)

b. Clerical error. (1-3-92)

c. Unacceptable personalized messages as outlined in Paragraph 202.08.b. of these rules. (4-2-08)

11. Unexpired Fees. If a set of personalized plates is recalled, the personalized plate program fee, unexpired portion of the registration fee, E.M.S. fee, plate fee, (if plates are returned to the department), and all other applicable special plate fees, will be refunded or transferred to a new issue of personalized plates. (4-2-08)

12. Expired Plates. Personalized plates that are allowed to expire shall become immediately available for reissue to another applicant. There is no grace period. (1-3-92)

(BREAK IN CONTINUITY OF SECTIONS)

204. PERMANENT COMMERCIAL TRAILER - BUSINESS LOGO PLATES PROVISIONS.

01. Applying for a Business Logo Plate. Businesses applying for a business logo plate pursuant to Section 49-415G, Idaho Code, will be required to remit a non-refundable fee as set by the Idaho Transportation Board for programming costs of a business logo plate. This fee will be utilized for programming of state systems to accommodate the new plate type, and periodic verification of ownership of trailers issued such plates. Such fee shall not exceed actual costs. ()

02. Completed Application. Businesses applying for a business logo plate must complete an application provided by the department. ()

03. Listed Business Name. Business logo plates are only available to a company whose name is listed on any Secretary of State's business name listing. ()

04. Licensed Business Name Only. Business logos may only contain the licensed business name of the designated company and not the products or business it provides or transports. ()

05. Copyrighted or Trademarked Designs. Any copyrighted or trademarked design must be accompanied by a written release or authorization to reproduce such design on Idaho license plates. ()

06. Verified Business Vehicles. Business logo plates will only be issued to vehicles verified to be owned and titled in the name of the business applying for such logo. ()

07. Business Logo Graphics. Messages and designs contained within the business logo graphics must comply with Subsection 202.08.b. of this rule regarding acceptability of plate messages including designs. ()

08. Verification of Business Owner Status. Periodic verification of owner status shall be sent by the department to non-resident owners of business logo plates and North America permanent trailer plates, every three (3) years to verify current vehicle ownership. Failure of the owner to respond and confirm ownership shall result in the plate being canceled. ()

2045. -- 299. (RESERVED).

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.12 - RULES GOVERNING SAFETY REQUIREMENTS OF OVERLEGAL PERMITS

DOCKET NO. 39-0312-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 49-201, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The Federal Motor Carrier Safety Regulations (FMCSR 393.87) have recently changed the required dimensions for flags from 12"x12" to 18"x18." This rule change is being made to ensure that the administrative rule is in compliance with federal regulation.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Volume 09-10, page 453 and 454.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than then thousand dollars (\$10,000) during the fiscal year: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Regina Phipps, Vehicle Size & Weight Specialist, 334-8418.

DATED this 5th day of November, 2009.

Linda L. Emry
Office of Governmental Affairs
Idaho Transportation Department
3311 West State Street
P O Box 7129, Boise ID 83707-1129
Phone - 208-334-8810 / FAX - 208-332-4107

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule-making procedures. The action is authorized pursuant to Section 49-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Federal Motor Carrier Safety Regulations (FMCSR 393.87) have recently changed the required dimension for flags from 12"x12" to 18"x18". This change is being made to ensure that the administrative rule is in compliance with federal regulation.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased.

There are no fee or charges being imposed through this rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ((\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this change was necessary for compliance with federal regulations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Regina Phipps, Vehicles Size and Weight Specialist, 334-8418.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2009.

DATED this 19th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

000. LEGAL AUTHORITY.

This rule, governing the movement of vehicles or loads which are in excess of the sizes or weights allowed by Sections 49-940, 49-1001, 49-1002, 49-1004, or 49-1010, Idaho Code, is adopted under the authority of Sections ~~40-312 and 49-1004~~ 201, Idaho Code. ~~(9-14-92)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

005. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS -- PHONE NUMBERS.

01. Street And Mailing Address. The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of PO Box 7129, Boise, ID 83707-1129. (4-2-08)

02. Office Hours. Daily office hours are 7:30 a.m. to 5 p.m. except Saturday, Sunday and state holidays. ~~(4-2-08)~~(____)

03. Telephone and Fax Numbers. The central office may be contacted during office hours by phone at 208-334-8420 or by fax at 334-8419. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

200. FLAGGING REQUIREMENTS FOR OVERSIZE VEHICLES AND/OR LOADS.

Warning flags for oversize vehicles and/or loads, excluding extra-length vehicle combinations, shall be marked by warning flags meeting the following: (4-5-00)

01. Warning Flags. Warning flags are required on all overwidth vehicles and/or loads and when the rear overhang exceeds the end of the trailer by four (4) feet or more. (4-5-00)

02. Size. Minimum size of flags is ~~twelve~~ eighteen (128) inches by ~~twelve~~ eighteen (128) inches. ~~(4-5-00)~~(____)

03. Color. Red or fluorescent orange. (4-5-00)

04. Placement of Flags. On overwidth vehicles and/or loads, flags shall be placed at the four (4) corners and/or extremities of the vehicle and/or load as follows: (4-5-00)

a. Front. Fastened to each front corner of the vehicle and/or load if it exceeds legal

width. (4-5-00)

b. Rear. Fastened to each rear corner of the vehicle and/or load if it exceeds legal width. (4-5-00)

c. Side. Fastened to mark any extremity, when extremity is wider than the front or the rear of the vehicle and/or load. (4-5-00)

d. Overhang. If the overhang is two (2) feet wide or less only one (1) flag is required on the end of the overhang. If the overhang is over two (2) feet wide, two (2) flags are required on the end of the overhang to show the maximum width of the overhang. (4-5-00)

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.16 - RULES GOVERNING OVERSIZE PERMITS FOR NON-REDUCIBLE VEHICLES AND/OR LOADS

DOCKET NO. 39-0316-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 49-201, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

As written, the current restriction applies to loads exceeding four feet overhang at the front of flatbed trailers, between the trailer and the tractor of the vehicle combination. Staff partnered with industry to research, and determined that seven feet of front trailer overhang can be safely accommodated for night operations on two-lane, two-way highways. An overhang which exceeds seven feet will be restricted to daylight only travel when operating on two-lane, two-way highways.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Volume 09-10, pages 455 and 456.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than then thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Regina Phipps, Vehicle Size and Weight Specialist, 334-8418.

DATED this 6th day of November, 2009.

Linda L. Emry
Office of Governmental Affairs
Idaho Transportation Department

3311 West State Street
P O Box 7129, Boise ID 83707-1129
Phone – 208-334-8810 / FAX – 208-332-4107

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking procedures. The action is authorized pursuant to Section 49-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

As written, the current restriction applies to loads exceeding four feet overhang in front of flatbed trailers, between the trailer and the tractor of the vehicle combination. Staff partnered with industry to research and determined that seven feet of front trailer overhang can be safely accommodated for night operations on two-lane, two-way highways. An overhang which exceeds seven feet will be restricted to daylight only travel when operating on two-lane, two-way highways.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ((\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the rulemaking was initiated at the request of industry and confers a benefit.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Regina Phipps, Vehicle Size and Weight Specialist, 334-8418.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2009.

DATED this 19th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

000. LEGAL AUTHORITY.

This rule, governing the movement of vehicles and/or loads which are in excess of the sizes allowed by Sections 49-1004 and 49-1010, Idaho Code, is adopted under the authority of Sections ~~40-312 and 49-1004~~ 201, Idaho Code. (4-5-00)(____)

(BREAK IN CONTINUITY OF SECTIONS)

005. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS -- PHONE NUMBERS.

01. Street and Mailing Address. The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of PO Box 7129, Boise, ID 83707-1129. (3-20-04)

02. Office Hours. Daily office hours are 7:30 a.m. to 5 p.m. except Saturday, Sunday and state holidays. (3-20-04)(____)

03. Telephone and Fax Numbers. The central office may be contacted during office hours by phone at 208-334-8420 or by fax at 334-8419. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

600. OVERLENGTH RESTRICTIONS.

Oversize vehicles operating under authority of an overlegal permit ~~for oversize vehicles~~ which exceed ~~four~~ seven (7) feet of front overhang, on any vehicle in the combination, are restricted to daylight travel only on two (2) lane, two (2) way highways. (4-5-00)(____)

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.17 - RULES GOVERNING PERMITS FOR MANUFACTURED HOMES, MODULAR BUILDINGS, AND OFFICE TRAILERS

DOCKET NO. 39-0317-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 40-312, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The rule-making will allow the manufactured housing industry to obtain permits to transport houses larger than the current limitation of sixteen feet at the base, on a case-by-case basis, as approved by the Commercial Vehicles Services Section and the District Offices.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the September 2, 2009 Idaho Administrative Bulletin, Volume 09-09, pages 320 through 322.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than then thousand dollars (\$10,000) during the fiscal year: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Regina Phipps, Vehicle Size and Weight Specialist, 334-8418.

DATED this 6th day of November, 2009.

Linda L. Emry
Office of Governmental Affairs
Idaho Transportation Department

3311 West State Street
P O Box 7129, Boise ID 83707-1129
Phone – 208-334-8810 / FAX – 208-332-4107

***THE FOLLOWING NOTICE PUBLISHED WITH THE
TEMPORARY AND PROPOSED RULE***

EFFECTIVE DATE: The effective date of the temporary rule is **July 1, 2009**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 40-312, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 16, 2009.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

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

This rulemaking will allow the manufactured housing industry to obtain permits to transport houses larger than the current limitation of sixteen feet at the base, on a case-by-case basis, as approved by the Commercial Vehicle Services Section and the District Offices.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: **This rulemaking is conferring a benefit on the manufactured home industry, by establishing a provision to permit wider units to be transported.**

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A The only fiscal impact is the cost to promulgate the rule.

NEGOTIATED RULEMAKING: In compliance with Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the rulemaking is in response to industry request and will confer a benefit by providing for reduced restrictions.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Regina Phipps, Vehicle Size and Weight Specialist, ITD Division of Motor Vehicles, 334-8418.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 23, 2009.

DATED this 3rd day of July, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

000. LEGAL AUTHORITY.

This rule, governing the movement of manufactured homes, modular buildings, and office trailers in excess of the sizes allowed by Sections 49-1004 and 49-1010, Idaho Code, is adopted under the authority of Sections 40-312 ~~and 49-1004~~, Idaho Code. (~~8-25-94~~)()

(BREAK IN CONTINUITY OF SECTIONS)

005. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS -- PHONE NUMBERS.

01. Street and Mailing Address. The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of P O Box 7129, Boise, ID 83707-1129. (4-11-06)

02. Office Hours. Daily office hours are 7:00 a.m. to 5:00 p.m. except Saturday, Sunday and state holidays. (~~4-11-06~~)()

03. Telephone and Fax Numbers. The central office may be contacted during office hours by phone at 208-334-8420 or by fax at 208-334-8419. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

200. MANUFACTURED HOMES AND OFFICE TRAILERS BEING TOWED.

01. Connection Device. Shall meet the requirements of Federal Motor Carrier Safety Regulations, 49 CFR part 393. (4-2-08)

02. Length. Not in excess of eighty (80) feet including tongue. (10-2-89)

03. Width. Shall be limited to a maximum of sixteen (16) feet at the base and shall not exceed eighteen (18) feet overall width including the eaves, except on a case-by-case basis as approved by the department. All movements with a base width in excess of sixteen (16) feet and an overall width in excess of eighteen (18) feet must submit a written request for movement of these units prior to being manufactured and a traffic control plan may also be required with the submission. Prior approval for the movement must be granted before an overlegal permit is issued.

** Determination of manufactured home or office trailer width shall be exclusive of such appurtenances as clearance lights, door handles, window fasteners, door and window trim, moldings and load securement devices up to but not in excess of three (3) inches on each side of load. ~~(3-23-98)~~()

04. Eaves. No restrictions on eaves as long as the eighteen (18) feet maximum overall width limitation is not exceeded, or for those movements approved by the department on a case-by-case basis. ~~(4-11-06)~~()

05. Weight. The maximum allowable load for any vehicle tire operated on any public highway shall be in accordance with Code of Federal Regulations, Title 24, Chapter 20, Office of Assistant Secretary for Housing - Federal Housing Commissioner, Department of Housing and Urban Development, Part 3280, Subpart J, (CFR Title 24). (3-23-98)

06. Running Gear Assembly -- General. The entire system (frame, drawbar, and coupling mechanism, running gear assembly including brake systems, axles and lights) shall be in accordance with CFR Title 24, for the year the manufactured home was built. In addition thereto, all tires used in transportation of manufactured homes under this category shall be in accordance with Federal Motor Carrier Safety Regulations, part 393. (3-23-98)

07. Construction. Construction shall be in accordance with CFR Title 24, for the year the manufactured home was built. (3-23-98)

08. Axles. All axles shall be in accordance with CFR Title 24, for the year the manufactured home was built, except that sixteen (16) foot wide (at the base) manufactured homes shall be required to have a minimum of four (4) axles. (3-23-98)

09. Brakes. Brakes shall be in accordance with CFR Title 24, for the year the manufactured home was built, except that sixteen (16) foot wide (at the base) manufactured homes shall be required to have brakes on a minimum of three (3) axles. (3-23-98)

10. Lights. The unit shall have stop lights, turn signals and tail lights that meet the requirements of Federal Motor Carrier Safety Regulations, part 393. (3-23-98)

11. Safety Chains. Two (2) safety chains shall be used, one (1) each on right and left sides of, but separate from, the coupling mechanism connecting the tow vehicle and the manufactured home while in transit. Chain shall be three-eighths (3/8) inch diameter steel. Chains shall be strongly fastened at each end to connect the tow vehicle and manufactured home and assure that in the event of a coupling failure the manufactured home will track behind the tow vehicle. (3-23-98)

(BREAK IN CONTINUITY OF SECTIONS)

300. MANUFACTURED HOME, MODULAR BUILDING, OR OFFICES BEING HAULED.

01. Length. Not in excess of eighty (80) feet. (10-2-89)

02. Width. Not in excess of sixteen (16) feet at the base and eighteen (18) feet overall, except on a case-by-case basis as approved by the department. All movements with a base width in excess of sixteen (16) feet and an overall width in excess of eighteen (18) feet must submit a written request for movement of these units prior to being manufactured and a traffic control plan may also be required with the submission. Prior approval for the movement must be granted before an overlegal permit is issued. (~~3-23-98~~)()

03. Eaves. No restrictions on eaves as long as the eighteen (18) foot maximum overall width limitation is not exceeded, or for those movements approved by the department on a case-by-case basis. (~~4-11-06~~)()

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.18 - RULES GOVERNING OVERLEGAL PERMITS FOR RELOCATION OF BUILDINGS OR HOUSES

DOCKET NO. 39-0318-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 40-312, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

This rule-making will allow the manufactured housing industry to obtain permits to transport houses larger than the current limitation of sixteen feet at the base, on a case-by-case basis, as approved by the Commercial Vehicle Services Section and the District Offices. This rule-making is being promulgated, concurrently, to maintain consistency with changes to IDAPA 39.03.17, "Rules Governing Permits for Manufactured Homes, Modular Buildings, and Office Trailers."

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the September 2, 2009 Idaho Administrative Bulletin, Volume 09-09, pages 323 and 324.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than then thousand dollars (\$10,000) during the fiscal year: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Regina Phipps, Vehicle Size and Weight Specialist, 334-8418.

DATED this 6th day of November, 2009.

Linda L. Emry
Office of Governmental Affairs
Idaho Transportation Department

3311 West State Street
P O Box 7129, Boise ID 83707-1129
Phone - 208-334-8810 / FAX - 208-332-4107

***THE FOLLOWING NOTICE PUBLISHED WITH THE
TEMPORARY AND PROPOSED RULE***

EFFECTIVE DATE: The effective date of the temporary rule is **July 1, 2009**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 40-312, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 16, 2009.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

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

This rulemaking will allow the manufactured housing industry to obtain permits to transport houses larger than the current limitation of sixteen feet at the base, on a case-by-case basis, as approved by the Commercial Vehicle Services Section and the district Offices. This rulemaking is being promulgated, concurrently, to maintain consistency with changes to IDAPA 39.03.17, "Rules Governing Permits for Manufactured Homes, Modular Buildings, and Office Trailers."

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: **This rulemaking, in conjunction with Docket 39-0317-0901, is conferring a benefit on the manufactured home industry, by establishing a provision to permit wider units to be transported.**

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: The only fiscal impact is the cost to promulgate the rule.

NEGOTIATED RULEMAKING: In compliance with Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the rulemaking is in response to industry request and will confer a benefit by providing for reduced restrictions.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Regina Phipps, Vehicle Size and Weight Specialist, ITD Division of Motor Vehicles, 334-8418. Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 23, 2009.

DATED this 3rd day of July, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

000. LEGAL AUTHORITY.

This rule, governing the movement of vehicles or loads which are in excess of the sizes or weights allowed by 49-1001, 49-1002, 49-1004, or 49-1010, is adopted under the authority of Sections 40-312 ~~and 49-1004~~, Idaho Code. (10-2-89)()

(BREAK IN CONTINUITY OF SECTIONS)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for this chapter. ()

003. ADMINISTRATIVE APPEALS.

Administrative appeals under this chapter shall be governed by the rules of administrative procedure of the attorney general, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." ()

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter. ()

005. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS -- PHONE NUMBERS.

01. Street and Mailing Address. The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of PO Box 7129, Boise, ID 83707-1129. ()

02. Office Hours. Daily office hours are 7:30 a.m. to 5 p.m. except Saturday, Sunday and state holidays. ()

03. Telephone and Fax Numbers. The central office may be contacted during office hours by phone at 208-334-8420 or by fax at 334-8419. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. ()

0029. -- 009. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

100. GENERAL REQUIREMENTS.

01. Buildings Exceeding Sixteen Feet Wide. Overlegal permits for the transportation of buildings or houses having a basic width in excess of sixteen (16) feet shall be limited to the relocation of previously used buildings. The transportation of new, centrally manufactured houses, buildings, building sections, mobile or modular homes, etc., shall may be denied overlegal permits if the width at the base is in excess of sixteen (16) feet. (~~4-5-00~~)()

02. Requirements for Permit. The requirements of each permit for relocation of a used building or house shall depend on the dimensions of the load as well as a consideration of the width and alignment of the roadway, passing opportunity for the traveling public, vertical or horizontal clearance of bridges or other structures along the route of travel, and traffic volumes. (10-2-89)

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.41 - RULES GOVERNING TRAFFIC CONTROL DEVICES

DOCKET NO. 39-0341-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective May 1, 2010, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 40-313 and 49-201(3), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

This rulemaking adopts the most recent edition of the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), the 2003 edition including revisions #1 and #2, published December 21, 2007. It also adds conforming additions to the manual, as adopted by the Idaho Transportation Board and approved by FHWA/Idaho, allowing the optional use of the IdaShield object marker for additional delineation of non-signalized at-grade railroad/road crossings of public roads. Studies show driver awareness and compliance with traffic rules at these crossings increases 20%-25% with the use of IdaShield, which results in increased public safety and a decrease in the number of vehicular accidents.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Volume 09-10, pages 457 through 463.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than then thousand dollars (\$10,000) during the fiscal year: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Brent Jennings, Highway Operations and Safety Engineer, 334-8557.

DATED this 6th day of November, 2009.

Linda L. Emry
Office of Governmental Affairs
Idaho Transportation Department

3311 West State Street
P O Box 7129, Boise ID 83707-1129
Phone – 208-334-8810 / FAX – 208-332-4107

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking procedures. The action is authorized pursuant to Sections 40-313 and 49-201(3), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking adopts the most recent edition of the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), the 2003 edition including revisions #1 and #2, published December 21, 2007. It also adds conforming additions to the manual, as adopted by the Idaho Transportation Board and approved by FHWA/Idaho, allowing the optional use of the IdaShield object marker for additional delineation of non-signalized at-grade railroad/road crossings of public roads. Studies show driver awareness and compliance with traffic rules at these crossings increases 20-25% with the use of IdaShield, which results in increased public safety and a decrease in the number of vehicular accidents.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

There is no fee or charge being imposed through this rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ((\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the MUTCD is the nationwide standard for traffic control devices and the department is required by statute to adopt such a standard with conforming additions to address needs and exceptions, unique to Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Brent

Jennings, Highway Operations and Safety Engineer, 334-8557.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2009.

DATED this 19th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

000. LEGAL AUTHORITY.

The Idaho Transportation Board adopts this rule under the authority of Sections 40-313, and 49-201(3) ~~and 67-5203A~~, Idaho Code. ~~(5-16-90)~~()

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

The “Manual on Uniform Traffic Control Devices for Streets and Highways” is published by the Federal Highway Administration of the U.S. Department of Transportation. The 2003 edition of the Manual and all subsequent amendments, through and including revision number ~~one two~~ (#2) dated ~~July~~ December 21, 20047, are hereby incorporated by reference and made a part of the Rules of the Idaho Transportation Department. The following ~~exceptions~~ conforming additions to the Manual are adopted by the Idaho Transportation Board: ~~(4-1-05)~~()

01. Section 2H-04, General Design Requirements for Recreational and Cultural Interest Area Symbol Signs. On page 2H-1, modify the first sentence under Standard to read as follows: Recreational and cultural interest area symbol signs shall be square or rectangular in shape and shall have a white symbol or message and white border on a brown background, with the exception of Scenic Byway signs which shall be allowed to use a multi-colored format. (4-1-05)

02. Section 1A.11, Relation to Other Documents. On page 1A-7, in the first paragraph under Standard, change the paragraph to read as follows: To the extent that they are incorporated by specific reference, the latest editions of the following publications, or those editions specifically noted, shall be a part of this Manual: Idaho Transportation Department (ITD) Sign Chart; and “Color Specifications for Retroreflective Sign and Pavement Marking Materials” (appendix to subpart F of Part 655 of Title 23 of the Code of Federal Regulations). The “Standard Highway Signs” book (FHWA) shall be a part of this Manual as a supporting document and add the following as the first sentence of the “Support” statement: Idaho Transportation Department Sign Chart includes all signs approved for use on a highway under the jurisdiction of the Idaho Transportation Department, their sign number designations and a cross reference index for

comparison of all MUTCD approved signs and those included on the Idaho Transportation Department sign chart. (4-1-05)

03. Section 2C.30, Speed Reduction Signs (W3-5, W3-5a) on page 2C-15, delete “W3-5” from the title of the section and from the first sentence of the Guidance Statement, and Figure 2C-5, Advisory Speed and Speed Reduction Signs, on page 2C-16, remove the W3-5 sign from the figure. (4-1-05)

04. Section 2C.39, Traffic Signal Signs (W25-1, W25-2). On page 2C-20, delete the section in its entirety, and Figure 2C-8. Intersection Warning Signs, on page 2C-20, remove the W25-1 and W25-2 signs from the figure. (4-1-05)

05. Section 2D.15, Cardinal Direction Auxiliary Signs (M3-1 Through M3-4). On page 2D-6, change the first sentence under Standard to read as follows: “To improve the readability, the first letter of the cardinal direction words shall be ten percent larger, rounded up to the nearest whole number size, except for those sign installations that were in existence prior to the adoption of this rule.” (4-1-05)

06. Section 2E.28, Interchange Exit Numbering. On page 2E-24, in the fourth sentence under Standard, revise the sentence to read as follows: “The standard exit number plaque shall include the word EXIT, the appropriate exit number, and the suffix letter A or B (on multi-exit interchanges) in a single-line format on a plaque ~~750 mm(30)~~ thirty-six (36) inches in height, except for those sign installations that were in existence prior to the adoption of this rule.” (4-1-05)()

07. Section 2E.37, Interchange Sequence Signs. On page 2E-38, revise the last Standard to an Option to read as follows: “Interchange Sequence signs located in the median may be installed at overhead sign height.” (4-1-05)

08. Section 3C.01, Object Marker Design and Placement Height. On page 3C-1 under “Standard:” add the following paragraphs as a second paragraph under Type 1, Type 2 and Type 3 Object Markers to allow an alternate method of marker construction: ()

a. Type 1 - either a marker consisting of a rigid substrate sheeted with yellow ASTM 4956D, TYPE IV retroreflective sheeting screen printed to display nine (9) yellow retroreflective circles, each with a minimum diameter of seventy-five (75) millimeters (three (3) inches), arranged symmetrically on a black (OM1-2) diamond shaped panel four hundred fifty (450) millimeters (eighteen (18) inches) or more on a side; or an all-yellow ASTM 4956D, TYPE IV retroreflective diamond shaped panel (OM1-3) of the same size. ()

b. Type 2 - either a marker (OM2-1V or OM2-1H) consisting of a rigid substrate sheeted with white ASTM 4956D, TYPE IV retroreflective sheeting and displaying three (3) yellow circles of ASTM 4956D, TYPE IV retroreflective sheeting, each with a minimum diameter of seventy-five (75) millimeters (three (3) inches), arranged either horizontally or vertically on a white panel measuring at least one hundred fifty (150) millimeters by three hundred (300) millimeters (six (6) inches by twelve (12) inches); or on an all-yellow horizontal or vertical retroreflective panel (OM2-2V or OM2-2H), sheeted with ASTM 4956D, TYPE IV retroreflective sheeting measuring at least one hundred fifty (150) millimeters by three hundred

(300) millimeters (six (6) inches by twelve (12) inches). ()

c. Type 3 - a striped marker, three hundred (300) millimeters by nine hundred (900) millimeters (twelve (12) inches by thirty-six (36) inches), consisting of a rigid substrate sheeted with yellow ASTM 4956D, TYPE IV retroreflective sheeting screen printed to display a vertical rectangle with alternating black stripes and retroreflective yellow stripes sloping downward at an angle of forty-five (45) degrees toward the side of the obstruction on which traffic is to pass. The minimum width of the yellow and black stripes shall be seventy-five (75) millimeters (three inches (3 in)). ()

d. Add a category for Type 4 object markers, to read as follows: ()

i. Type 4 - a striped marker, eight hundred thirty-eight (838) millimeters by nine hundred sixty-five (965) millimeters (thirty-three (33) inches by thirty-eight (38) inches), consisting of a vertical rectangle with two (2), two hundred ninety-two (292) millimeter (eleven point five (11.5) inch) side wings and a two hundred sixteen (216) millimeter (eight point five (8.5) inch) center section which are formed by bending the panel from top to bottom at a forty-five (45) degree angle away from approaching traffic. The rigid substrate panel is sheeted on both sides with white ASTM 4956D, TYPE IX diamond grade prismatic retroreflective sheeting and has reflective chrome stripes and red transparent ink stripes applied to the side wings sloping downward from the top outer corners at an angle of forty-five (45) degrees toward the center of the marker where they meet corresponding stripes which have been placed at a ninety (90) degree angle across the center section of the marker, except on the back of the marker which shall have the center section unsheeted and on the areas of the bends which shall have a nineteen (19) millimeter (point seventy-five (.75) inch) wide strip from top to bottom left unsheeted. The stripes shall meet the following dimensions: chrome stripes shall be thirty-eight (38) millimeters (one point five (1.5) inches) and red stripes shall be one hundred forty (140) millimeters (five point five (5.5) inches). ()

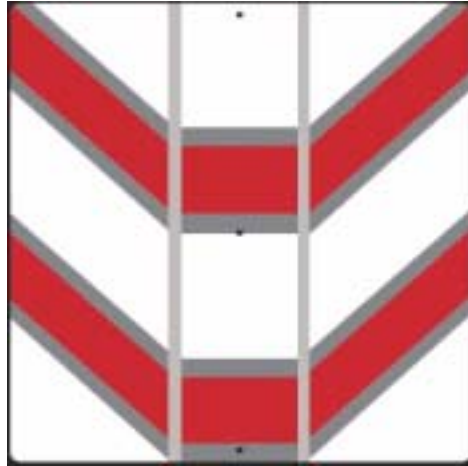
ii. Under "Support:" add the following as paragraph three (3): ()

(1) The Type 4 object marker, known in Idaho as OM-4 (IdaShield), shall be placed below the Highway-Rail Grade or Highway-Light Rail Transit Grade crossing Crossbuck Sign Assembly on the right hand side of the roadway on each approach to a crossing where automatic signal warning devices do not exist. The bottom of the shield should be six hundred ten (610) millimeters (twenty-four (24) inches) above the top of the rail and shall not be more than nine hundred fifteen (915) millimeters (thirty-six (36) inches) above the ground. ()

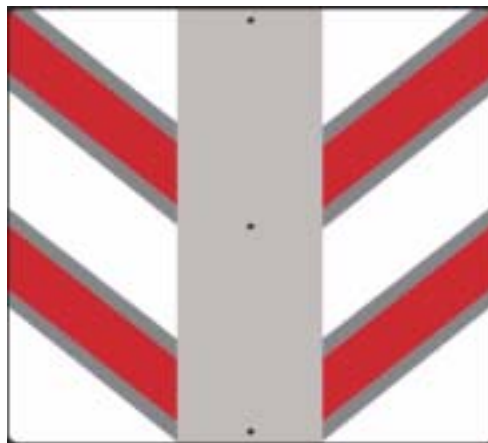
(2) On page 3C-2 Figure 3C-1. Object Markers and End-of-Roadway Markers, add a Type 4 Object Marker category to the figure which shall include an example of an OM-4 object marker known in Idaho as IdaShield. ()

Type 4 Object Markers
OM-4 (IdaShield)

FRONT



BACK



()

089. Table 4C-1, Warrant 1, Eight-Hour Vehicular Volume. On page 4C-3, remove all references to the fifty-six percent (56%) volume columns and note “d” and Section 4C.02 Warrant 1, Eight-Hour Vehicular Volume, on page 4C-4, remove the Option statement in its entirety. (4-1-05)

0910. Section 4D.04, Meaning of Vehicular Signal Indications. On page 4D-2, in the second paragraph of Item C.1, substitute the following for the first sentence: “Except when a sign is in place prohibiting a turn on red or a RED ARROW signal indication is displayed, vehicular

traffic facing a CIRCULAR RED signal indication may cautiously enter the intersection to turn right, or to turn left from a one (1) way or two (2) way street into a one (1) way street, after stopping in conformance with the provisions of the Idaho Vehicle Code.” (4-1-05)

101. Section 4K.03, Warning Beacon. On page 4K-2, in the second paragraph under Standard, revise the second sentence to read as follows: “The beacon shall not be included within the border of the sign.” (4-1-05)

142. Section 5F.02, Highway-Rail Grade Crossing (Crossbuck) Sign Assembly (R15-1, R15-2). On page 5F-1, in the title add the word “Assembly” after the word “Sign,” and Under Standard, insert the following text as the first sentence: “The Highway-Rail Grade Crossing (Crossbuck) (R15-1) sign (see Figure 5F-1) may be an assembly consisting of separate sign blades, assembled to appear as a single sign when installed at a highway-rail grade crossing.” (4-1-05)

123. Section 5F.04, STOP or YIELD Signs (R1-1, R1-2). On page 5F-1, delete the first paragraph titled as Option Statement, retaining the Standard for Stop Ahead (W3-1) or Yield Ahead (W3-2) signs and insert the following paragraph as the second paragraph under Standard: “Under Idaho law, wherever a highway crosses one (1) or more railroads at grade, the Department or local authorities within their respective jurisdictions, shall place and maintain stop signs, directing vehicular traffic approaching the crossing to come to a full stop prior to entering the crossing at all railroad crossings where electric or mechanical warning signals do not exist. Placement of these stop signs shall be mandatory except when, in the determination of the Department or local authorities, the existence of stop signs at a given crossing would constitute a greater hazard than their absence.” (4-1-05)

134. Section 7B.11, School Speed Limit Assembly (S4-1, S4-2, S4-3, S4-4, S4-6, S5-1). On page 7B-7, in the fourth paragraph under Option, revise the second sentence to read as follows: “The lenses of the Speed Limit Sign Beacon shall not be positioned within the face of the School Speed Limit (S5-1) sign.” (4-1-05)

15. Section 8B.05, EXEMPT Highway-Rail Grade Crossing Signs (R15-3, W10-1a). ()

a. On page 8B-5, add the following paragraph titled as: “Standard: All EXEMPT (R15-3) signs placed at a highway-rail grade crossing, shall require train crews to flag the crossing and stop all vehicular traffic prior to allowing any railroad equipment to enter the crossing. Placement of an EXEMPT (R15-3) sign shall require a written agreement between the railroad company and the agency having jurisdiction over the highway which requires both parties to comply with the proper procedures for placement of EXEMPT signs at Highway-Rail Grade Crossings. A copy of all agreements shall be forwarded to the Idaho Transportation Department Highway-Rail Safety Coordinator.” ()

b. Retain the “Option” statement and modify the “Support” statement as follows: Support: These supplemental signs inform drivers of vehicles carrying passengers for hire, school buses carrying students, or vehicles carrying hazardous materials that a stop is not required at certain designated highway-rail grade crossings. ()

146. Section 8B.08, STOP (R1-1) or YIELD (R1-2) Signs at Highway-Rail Grade Crossings. On page 8B-6, delete the first five paragraphs titled as “Option, Support and Guidance Statements,” retaining the Standard for Stop Ahead or Yield Ahead Advance Warning signs and insert the following paragraph as the second paragraph under Standard: “Under Idaho law, wherever a highway crosses one (1) or more railroads at grade, the Department or local authorities within their respective jurisdictions, shall place and maintain stop signs, directing vehicular traffic approaching the crossing to come to a full stop prior to entering the crossing at all railroad crossings where electric or mechanical warning signals do not exist. Placement of these stop signs shall be mandatory except when, in the determination of the Department or local authorities, the existence of stop signs at a given crossing would constitute a greater hazard than their absence.” (4-1-05)

157. Section 8B.22, Dynamic Envelope Markings. On page 8B-13, revise the first sentence under Standard to read as follows: “If used, the dynamic envelope shall be contrasting pavement color and/or contrasting pavement texture.” And, on page 8B-13, revise the first sentence under Guidance to read as follows: “If used, dynamic envelope pavement markings with contrasting pavement color and/or texture should be placed for a distance of 1.8 m (6 ft.) from the nearest rail, installed parallel to the tracks, unless the operating railroad company advises otherwise.” (4-1-05)

168. Figure 8B-8, Typical Train Dynamic Envelope Pavement Markings. On page 8B-13, delete Figure in its entirety. (4-1-05)

179. Section 8D.07, Traffic Control Signals at or Near Highway-Rail Grade Crossings. On page 8D-07, in the tenth paragraph titled Standard, add text “if justified by an engineering study,” to the end of the final sentence in the paragraph. (4-1-05)

1820. Section 10C.04, STOP (R1-1) Or YIELD (R1-2) Signs at Highway-Light Rail Transit Grade Crossings. On page 10C-2 and 10C-4, delete the Guidance, and Option Statements,” retaining the Standard for Stop Ahead or Yield Ahead Advance Warning signs and insert the following paragraph as the first paragraph under Standard: “Under Idaho law, wherever a highway crosses one (1) or more railroads at grade, the Department or local authorities within their respective jurisdictions, shall place and maintain stop signs, directing vehicular traffic approaching the crossing to come to a full stop prior to entering the crossing at all railroad crossings where electric or mechanical warning signals do not exist. Placement of these stop signs shall be mandatory except when, in the determination of the Department or local authorities, the existence of stop signs at a given crossing would constitute a greater hazard than their absence.” (4-1-05)

21. Section 10C.10, EXEMPT Highway-Rail Grade Crossing Sign (R15-3, W10-1a). ()

a. On page 10C-5, add the following paragraph titled as: “Standard: All EXEMPT (R15-3) signs placed at a highway-rail grade crossing, shall require train crews to flag the crossing and stop all vehicular traffic prior to allowing any railroad equipment to enter the crossing. Placement of an EXEMPT (R15-3) sign shall require a written agreement between the railroad company and the agency having jurisdiction over the highway which requires both parties to comply with the proper procedures for placement of EXEMPT signs at Highway-Rail

Grade Crossings. A copy of all agreements shall be forwarded to the Idaho Transportation Department Highway-Rail Safety Coordinator. ()

b. Retain the “Option” statement and modify the “Support” statement as follows: Support: These supplemental signs inform drivers of vehicles carrying passengers for hire, school buses carrying students, or vehicles carrying hazardous materials that a stop is not required at certain designated highway-light rail transit grade crossings. ()

~~192~~. Section 10C.25 Dynamic Envelope Delineation. (4-1-05)

a. On page 10C-12, delete the word “markings” in the title and, under Support, delete the word “markings” and replace with “contrasting pavement color and/or contrasting pavement texture.” (4-1-05)

b. On page 10C-12, under Option: Replace the sentence with the following: “The dynamic envelope may be delineated on the pavement using contrasting pavement color and/or contrasting pavement texture (see Figures 10C-7 and Figure 10C-10),” and on page 10C-12, delete “Standard, relating to pavement markings in its entirety,” and on page 10C-12, revise Guidance, to read as follows: “If used at the light-rail transit crossing, dynamic envelope contrasting pavement color and/or texture should be placed at a distance of 1.8 m (6 ft.) from the nearest rail, installed parallel to the tracks, unless the transit authority and/or operating railroad company advises otherwise,” and on page 10C-12, delete the work “markings” in all four paragraphs under the second Option and replace with “delineation.” (4-1-05)

203. Figure 10C-8, Typical Light Rail Transit Vehicle Dynamic Envelope Delineation Pavement Markings. On page 10C-13, delete Figure 10C-8 in it’s entirety. (4-1-05)

~~214~~. Section 10D.06, Traffic Signal Preemption Turning Restrictions. On page 10D-4, under the third paragraph titled Guidance: add text “if justified by an engineering study,” to the end of the final sentence in the paragraph. (4-1-05)

(BREAK IN CONTINUITY OF SECTIONS)

100. AVAILABILITY OF THE “MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES FOR STREETS AND HIGHWAYS.”

01. Review of Manual. Persons wishing to review the Manual may do so at any of the locations listed in Section 005. The Manual and subsequent amendments are also available for review at the Idaho State Library. (3-20-04)

02. Purchase of Manual. The Manual and all subsequent amendments dated ~~July~~ December 21, 2004, with Revision No. 1 and Revision No. 2 changes may be viewed and printed from the Federal Highway Administration website, <http://mutcd.fhwa.dot.gov> or purchased from a number of organizations described on the website, such as the U.S. Government Printing Office, AASHTO, ATSSA, and ITE. (~~4-1-05~~)()

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.04.05 - RULES GOVERNING AIRCRAFT REGISTRATION

DOCKET NO. 39-0405-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 21-111 and 21-114, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The rule currently cites Section 63-1203, Idaho Code, which has been repealed by the legislature and replaced with Section 63-301, Idaho Code, with equivalent wording. Minor wording changes were included in the rulemaking to clarify intent and other language was added as prescribed by the Office of Administrative Rules.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Volume 09-10, pages 464 and 465.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than then thousand dollars (\$10,000) during the fiscal year: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact John DeThomas, Aeronautics Division Administrator, 334-8788.

DATED this 6th day of November, 2009.

Linda L. Emry
Office of Governmental Affairs
Idaho Transportation Department

3311 West State Street
P O Box 7129, Boise ID 83707-1129
Phone – 208-334-8810 / FAX – 208-332-4107

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking procedures. The action is authorized pursuant to Section(s) 21-111 and 21-114, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The rule currently cites Section 63-1203, Idaho Code, which has been repealed by the legislature and replaced with Section 63-301, Idaho Code, with equivalent wording. Minor wording changes were included to clarify the intent of the rule and language added as prescribed by the Office of the Administrative Rules Coordinator.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ((\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted since there is no impact to the industry or to the public.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact John DeThomas, Aeronautics Division Administrator, 334-8788.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2009.

DATED this 19th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

001. TITLE AND SCOPE.

01. Title. This rule shall be known as IDAPA 39.04.05, “Rules Governing Aircraft Registration,” IDAPA 39, TITLE 04, Chapter 05. ()

02. Scope. This rule establishes the procedures for aircraft registration in the state of Idaho. (~~11-28-90~~)()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for this chapter. ()

003. ADMINISTRATIVE APPEALS.

Administrative appeals under this chapter shall be governed by the rules of administrative procedure of the attorney general, IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General.” ()

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter. ()

005. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS -- PHONE NUMBERS.

01. Street and Mailing Address. The Idaho Transportation Department Division of Aeronautics maintains an office in Boise at 3483 Rickenbacker Street with a mailing address of P O Box 7129, Boise ID 83707-1129. ()

02. Office Hours. Daily office hours are 8 a.m. to 5 p.m. except Saturday, Sunday and state holidays. ()

03. Telephone and FAX Numbers. The division office may be contacted during office hours by phone at 208-334-8775 or 800-426-4587 or by fax at 208-334-8789. The central office may be contacted during office hours by phone at 208-334-8000 or by fax at 208-334-3858. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. ()

0027. -- 099. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

101. REGISTRATION PERIOD.

01. Annual Period. The registration period for the registration of aircraft in the state of Idaho shall run from January 1 through December 31 of each year. (11-28-90)

02. Annual Registration Closing Date. The closing date for the annual registration shall be the first Monday of November in each year. A list of unregistered aircraft, as of that date, shall be forwarded to the proper county assessor for inclusion in personal property assessment due on the fourth Monday in November, as required by Section 63-~~1203~~ 301, Idaho Code. (~~11-28-90~~)()

102. APPLICATIONS FOR AIRCRAFT REGISTRATION.

01. Current Registration Certificate. An owner who holds a currently effective registration certificate for an aircraft issued by the Federal government shall make application for an aircraft registration upon appropriate forms to be prescribed and furnished by the Division. Every such application shall contain a statement of the applicant's title and the names and addresses of all persons having any interest therein. (11-28-90)

02. Application Information. Every application for an aircraft registration shall contain: The name of the manufacturer, model, year, the aircraft identification number and serial number, engine type, and aircraft manufacturer's certified maximum gross weight.(~~1-2-93~~)()