

# **PENDING RULES**

## **COMMITTEE RULES**

### **REVIEW BOOK**

Submitted for Review Before  
**Senate Transportation Committee**  
64th Idaho Legislature  
Second Regular Session – 2018



*Prepared by:*

*Office of the Administrative Rules Coordinator  
Department of Administration*

*January 2018*

**SENATE TRANSPORTATION COMMITTEE**

**ADMINISTRATIVE RULES REVIEW**

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## IDAPA 35 – STATE TAX COMMISSION

### 35.01.05 – IDAHO MOTOR FUELS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0105-1701

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** The rule has been adopted by the agency and is now pending review by the 2018 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 Sections 63-105 and 63-2427, Idaho Code.

**DESCRIPTIVE SUMMARY:** There are no changes to Rules 270, 290, 292 and they are being adopted as originally proposed. The complete text of the proposed rulemaking was published in the October 4, 2017 Idaho Administrative Bulletin, [Vol. 17-10, pages 503 through 512](#).

**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 this pending rule, contact Don W. Williams at (208) 334-7855.

DATED this 22nd day of November, 2017.

Don W. Williams  
Tax Policy Specialist  
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**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 63-105 and 63-2427, Idaho Code, and Sections 63-2410 and 63-2423, 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 18, 2017.

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:

Motor Fuel Tax Rule 270 - Refund Claims – Documentation. This rule outlines the documentation the taxpayer is required to maintain to support refund claims. The intent of amending the rule is to clarify the requirements.

Motor Fuel Tax Rule 290 - Records Required For Intrastate Special Fuels Users Claiming Refunds For Nontaxable Special Fuels Used In Motor Vehicles. This rule outlines the procedure taxpayers are required to use when calculating refund claims of motor fuel tax when using tax-paid special fuel in intrastate motor vehicles to accrue nontaxable miles. The intent of amending the rule is to include the nontaxable mileage refund claims by International Fuel Tax Agreement (IFTA) licensees and clarify the procedure.

Motor Fuel Tax Rule 292 - Calculations Of Refunds For Nontaxable Uses Of Motor Fuels In Motor Vehicles. This rule outlines the documentation taxpayers are required to maintain to support refund claims when using tax-paid motor fuel in auxiliary equipment and special fuel in power-take-off (PTO) equipment. The intent of amending the rule is to clarify the requirements.

**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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 5, 2017 Idaho Administrative Bulletin, [Vol. 17-7, page 93](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact the undersigned using the information below.

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 25, 2017.

DATED this 30th day of August, 2017.

**LSO Rules Analysis Memo**

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0105-1701

270. REFUND CLAIMS – **GENERAL AND BULK DOCUMENTATION (RULE 270).**  
Sections 63-2410, 63-2421, and 63-2423, Idaho Code

**01. Refunds to Consumers.** ~~Any buyer of motor fuels, claiming a refund under Chapter 24, Title 63, Idaho Code, must retain in his records the original invoices from the seller, showing the number of gallons purchased. All invoices, except those prepared by a computer or similar machine, shall be prepared in ink or a double-faced carbon must be used between the original and first duplicate. Only one (1) original invoice may be issued for each delivery. Each invoice must contain or show the following, in addition to the requirements outlined above: Tax-paid fuel used in a nontaxable manner according to Sections 63-2410 and 63-2423, Idaho Code, qualifies for a fuel tax refund. To claim a refund, use Form 75, Idaho Fuels Use Report, with the relevant supplemental worksheets.~~

~~(4-11-06)~~( )

- ~~a. A preprinted identification number;~~ (4-11-06)
- ~~b. Name and address of seller;~~ (7-1-98)
- ~~c. Name of purchaser;~~ (7-1-98)
- ~~d. Date of delivery;~~ (7-1-98)
- ~~e. Type of motor fuel;~~ (7-1-98)
- ~~f. Gallons invoiced;~~ (7-1-98)
- ~~g. Price per gallon;~~ (7-1-98)
- ~~h. At least one (1) of the following to establish that tax has been charged:~~ (7-1-98)
  - ~~i. The amount of Idaho state fuels tax;~~ (7-1-98)
  - ~~ii. The rate of Idaho state fuels tax; or~~ (7-1-98)
  - ~~iii. A statement that the Idaho state fuels tax is included in the price.~~ (7-1-98)

**02. ~~Indian-Owned Retail Outlet~~ Records Retention Requirements.** ~~Motor fuels purchased after December 1, 2007, from an Indian-owned retail outlet do not include the Idaho motor fuels tax and do not qualify as an Idaho tax-paid purchase, unless otherwise provided in an agreement between the state and appropriate tribe under the authority of sections 63-2444 or 67-4002, Idaho Code. See definition of Indian-owned retail outlet in Rule 010 of these rules. All claimants must keep records for the greater of either:~~

~~(4-2-08)~~( )

- ~~a. Three (3) years from the due date, including extensions, of the income tax return;~~ ( )
- ~~b. The time during which the taxpayer's income tax return is subject to adjustment by either the State Tax Commission or voluntary action by the taxpayer if the refund claim is filed with the taxpayer's Idaho income tax return;~~ ( )
- ~~c. Four (4) years, if an International Fuel Tax Agreement (IFTA) licensee.~~ ( )

**03. ~~Corrected Invoices~~ Records Required – Generally.** ~~No altered or corrected invoice will be accepted for refund purposes. When errors occur, the original invoice must not be altered or corrected, but must be voided and a new original invoice issued. All altered or corrected invoices must be marked as voided A claimant~~

must have fuel purchase records and records showing fuel was placed into the supply tank of vehicles or equipment using the fuel in a nontaxable manner. Fuel purchase records must contain the information required by Rule 150 of these rules. Fuel purchase records must be reissued if altered or corrected. (3-20-14)( )

**04. Invoice Retention Records Required – Retail Fuel Purchases.** ~~Original, altered, or corrected invoices required by this rule shall be retained for the greater of either three (3) years or the time during which the taxpayer's Idaho income tax return is subject to adjustment by either the State Tax Commission or by voluntary action of the taxpayer.~~ When claiming a refund of tax for fuel purchased from a retail outlet, a receipt is required. The vehicles or piece of equipment using the fuel must be recorded on the receipt. If claiming refunds for fuel used in more than one vehicle or piece of equipment, make sure all the vehicles and equipment are identified on each receipt. When placing fuel into containers for use in vehicles, pieces of equipment, or commercial motorboats, identify into which the fuel is placed on the receipt. No other records are required if the fuel from the container isn't used in licensed or required to be licensed motor vehicles. (3-20-14)( )

**05. Refund Documents Records Required – Bulk Fuel Purchases.** ~~An original invoice includes any duplicate of the original that is created with the same impression as the original, for example, with carbon paper or NCR paper, if the original is retained by the seller and only the duplicate is provided to the customer. An original invoice does not include any document produced by a copy machine or similar device capable of producing a copy of an existing document.~~ When claiming a refund tax on fuel delivered in bulk, the claimant must prove the following documentation: (3-20-14)( )

- a. Seller Invoices.** ( )
- b. Withdrawal Logs.** ( )
  - i. Complete withdrawal logs must give the date, the vehicle or piece of equipment, and the amount of fuel withdrawn.** ( )
  - ii. Withdrawal logs aren't required for claimants with two (2) or more bulk storage tanks at the same location with Idaho tax-paid fuel of the same type for taxable and nontaxable uses. Claimants must identify each storage tank for taxable or nontaxable use. The seller must mark the invoices at the time of delivery and identify the storage tanks into which the fuel was delivered.** ( )
- c. Bulk Fuel Inventory Reconciliations. Reconciliations must include beginning inventory, purchases, withdrawals, calculated ending inventory, and actual ending inventory determined by a physical reading.** ( )

**06. Records Required for Motor Fuels Tax Refunds Alternate Method for Bulk Tanks – Authorized Percentage.** ~~Each claimant shall maintain records that are sufficient to prove the accuracy of the fuels tax refund claim. Such records shall include all motor fuels receipts, the gallons of tax-paid fuel used in each type of equipment, both taxable and nontaxable, and other uses. The records must show the date of receipt or disbursements and identify the equipment into which the tax paid fuel is dispensed. Failure of the claimant to maintain the required records and to provide them for examination is a waiver of all rights to the refund. The following rules shall govern records maintained to support claims for refund~~ A claimant can request an authorized percentage if using Idaho tax-paid fuel from one (1) bulk tank in both a taxable and nontaxable manner. International Fuel Tax Agreement (IFTA) licensees and owners of multiple bulk storage tanks containing tax-paid and tax-exempt fuels of the same type at the same location can't use an authorized percentage. The claimant must submit a completed authorized percentage request form before using any percentage to claim a refund. The request must itemize all taxable and nontaxable uses by vehicle and piece of equipment based on previous experience or anticipated use. Records to support an authorized percentage must be kept and presented upon request. Equipment lists must be provided and supported by: (4-11-06)( )

- a. Use of Fuel from a Single Storage Tank.** ~~Idaho tax-paid fuel purchased and delivered into a single bulk storage tank and withdrawn for both taxable and nontaxable uses must be accounted for using either the proration provided by this paragraph or by records showing actual taxable and nontaxable usage. No refund is allowed under this paragraph for fuel purchased for use in: motor vehicles licensed under the authority of the International Fuel Tax Agreement (IFTA); non-IFTA motor vehicles for which a refund for nontaxable use is granted using either Rule 290 or 292 of these rules; or, for diesel when the claimant has both undyed (tax paid) and dyed~~

~~(untaxed) diesel tanks. Taxpayers may claim a refund using a proration percentage instead of claiming actual use. The State Tax Commission must authorize a taxpayer's proration percentage before he may receive a refund using any percentage when filing a refund claim. The authorization request shall itemize all taxable and nontaxable uses by vehicle and type of equipment based on previous experience or anticipated use. The State Tax Commission will refund fuel taxes included on Idaho tax paid fuel for nontaxable use based on an authorized percentage which represents the claimant's reasonable nontaxable use. When using an authorized percentage, certain records must be maintained and made available upon request. Acceptable records of refunds based on an authorized percentage include, but are not limited to: fuel purchase invoices and equipment lists. Equipment lists must be supported by documentation. Acceptable equipment list documentation includes, but is not limited to: Equipment purchase records;~~

~~(3-20-14)( )~~

- ~~i. Equipment purchase; (3-20-14)~~
- ~~ii. Sales or rental receipts; and (3-20-14)~~
- ~~iii. Depreciation schedules. (3-20-14)~~

~~b. Use of Fuel from Multiple Storage Tanks. When a claimant maintains separate bulk storage tanks of Idaho tax paid fuel for taxable and nontaxable uses, the claimant must identify which storage tank is for taxable and which is for nontaxable use. The seller must mark the invoices at the time of delivery, identifying the storage tanks into which the fuel was delivered. Only Idaho tax paid fuel placed in the nontaxable tank is refundable. Detailed withdrawal records will only be required if fuel from these tanks are used in motor vehicles that are licensed under IFTA or in non-IFTA motor vehicles for which refunds are granted for nontaxable uses of motor fuels in motor vehicles granted using either Rule 290 or Rule 292 of these rules. No refund may be claimed under this paragraph for diesel when the claimant has both undyed (tax-paid) and dyed (untaxed) diesel tanks. All fuel invoices must be retained as required by this rule. Sales or rental receipts; and~~

~~(3-20-14)( )~~

~~c. Use of Fuel for Other Than Bulk Storage. Idaho tax paid fuel dispensed into small containers for use in, or into the supply tank of, stationary engines, equipment, commercial motorboats, or vehicles other than registered motor vehicles, must be identified on the purchase invoice. No other records will be required. Depreciation schedules.~~

~~(3-20-14)( )~~

~~07. **Untaxed Motor Fuel.** Under the provisions of Section 63-2421, Idaho Code, untaxed motor fuel ~~may not can't~~ be used in licensed or required to be licensed motor vehicles ~~registered or required to be registered~~ unless authorized ~~elsewhere~~ in the Fuels Tax Act or these rules. Under the audit and enforcement provisions of Sections 63-2410 and 63-2434, Idaho Code, all fuel tax refund claims are subject to audit by the State Tax Commission and no part of these rules may be construed to imply that an audit may not be performed. Tax-paid motor fuel is ~~no longer not~~ exempt from taxes imposed by ~~Chapter 36, Title 63, the Idaho Sales Tax Act~~ when the motor fuel tax is refunded ~~to the consumer according to Rule 171.~~~~

~~(3-20-14)( )~~

~~08. **Indian-Owned Retail Outlet.** Motor fuels purchased after December 1, 2007, from an Indian-owned retail outlet do not include the Idaho motor fuels tax and do not qualify as an Idaho tax-paid purchase, unless otherwise provided in an agreement between the state and appropriate tribe under the authority of Sections 63-2444 or 67-4002, Idaho Code. See definition of Indian-owned retail outlet in Rule 010 of these rules.~~

~~( )~~

271. -- 289. (RESERVED)

~~290. **RECORDS REQUIRED FOR INTRASTATE SPECIAL FUELS USERS CLAIMING REFUNDS FOR NONTAXABLE SPECIAL FUELS USED IN MOTOR VEHICLES REFUND CLAIMS – NONTAXABLE MILES (RULE 290).**~~  
~~Section 63-2423, Idaho Code~~

~~01. **Refund Claims, Required Records Refunds to Consumers – Nontaxable Miles.** Special fuel users, except IFTA licensees, must file a Form 75 with the relevant supplemental worksheet to claim a fuels tax refund. The following information is required to qualify for a refund except for claims based only on the power take-off allowances provided for in Rule 292 of these rules Tax-paid special fuels used as described in Section 63-2423, Idaho Code, qualifies for a fuels tax refund. To claim a refund, use Form 75, Idaho Fuels Use Report, with the~~

relevant supplemental worksheets. The records retention and fuel record requirements in Subsections 270.02 through 270.05 of these rules also apply to this section. (4-5-00)( )

~~a. Total miles. The total miles traveled should be included for motor vehicles which have nontaxable uses of special fuels. Special fuel users who qualify to use one of the "Standard MPGs" found in Subsection 290.02 need only record and report Idaho taxable miles. (4-5-00)~~

~~b. Total fuel. The total number of gallons of fuel delivered into the supply tanks of the motor vehicles should be included for motor vehicles which have nontaxable uses of special fuels. The total miles figure and the total fuel figure must be for the same vehicles. (7-1-98)~~

~~c. Actual miles per gallon. The miles per gallon shall be computed by dividing gallons determined according to Subsection 290.01.b. into the number of miles determined according to Subsection 290.01.a. The computation of fleet miles per gallon should be carried to three (3) decimal places and rounded to two (2) decimal places. Example: 4.514 = 4.51 and 4.515 = 4.52. (4-5-00)~~

~~d. Presumed miles per gallon. In the event that the claimant fails to keep sufficiently detailed records showing the number of miles actually operated per gallon of special fuel consumed, it shall be presumed that one (1) gallon of special fuel was consumed for every: (3-30-07)~~

~~i. Four (4) miles traveled by vehicles over forty thousand (40,000) pounds gross registered vehicle weight; or (7-1-98)~~

~~ii. Five and one half (5 1/2) miles traveled by vehicles from twenty-six thousand one (26,001) to forty thousand (40,000) pounds gross registered vehicle weight; or (7-1-98)~~

~~iii. Seven (7) miles traveled by vehicles from twelve thousand one (12,001) to twenty-six thousand (26,000) pounds gross registered vehicle weight; or (7-1-98)~~

~~iv. Ten (10) miles traveled by vehicles twelve thousand (12,000) pounds or less gross registered vehicle weight. (3-30-07)~~

~~e. The total taxable miles traveled in Idaho. Only taxable miles traveled in Idaho by the motor vehicles which have nontaxable uses of special fuels should be included. Taxable miles are miles driven on any road that is open to the use of the public and maintained by a governmental entity. Such roads may be constructed using concrete, asphalt, gravel, composition, dirt, or other surfaces. (7-1-98)~~

~~f. The number of gallons of special fuels consumed in Idaho. The gallons consumed in Idaho shall be computed by dividing the miles per gallon determined according to Subsection 290.01.e. and 290.01.d. into the total taxable miles in Idaho according to Subsection 290.01.e. (4-5-00)~~

**02. Alternative Refund Calculation for Special Fuels Users Engaged in Certain Industries Nontaxable Miles Defined.** A special rule may be applied for motor vehicles, except IFTA licensees, that use special fuels and accrue both taxable and nontaxable miles. Operators of motor vehicles that use special fuels, except those licensed under IFTA, may, instead of using the computations provided in Subsections 290.01.e. and 290.01.d., presume that when engaged in operations in the following industries and accruing taxable miles in Idaho, that such motor vehicles consume fuel at the following rates Nontaxable miles are miles driven on roads:

Logging	4.3 MPG
Agricultural	4.5 MPG
Sand, gravel & rock hauling	4.0 MPG
Construction	4.4 MPG

(4-5-00)( )



- a. Not open to the public; or ( )
- b. Not maintained by a governmental entity; or ( )
- c. Located on private property maintained by the property owner; or ( )
- d. Under construction and not open to the public; or ( )
- e. Constructed and maintained by the United States Forest Service, the United States Bureau of Land Management, the Idaho Department of Lands, or forest protective associations with which the state of Idaho has contracted or become a member pursuant to Chapter 1, Title 38, Idaho Code. Miles traveled on these roads are nontaxable when the contractor or subcontractor is required to pay the cost of maintaining these roads by contract or permit. ( )

**03. ~~Actual MPG Calculation~~ Records Required – Mileage Records. *If an operator has reason to believe the standard on-road miles per gallon (MPG) in Subsection 290.02 is not an accurate reflection of his specific operation, the operator can calculate an actual MPG using the computations provided in Subsection 290.01.e. or presumed MPG provided in Subsection 290.01.d* Mileage records are required to claim a refund of tax when using special fuels on nontaxable roads. Claimants operating under the authority of the International Fuel Tax Agreement (IFTA) or International Registration Plan (IRP) are required to follow the recordkeeping requirements of IFTA and IRP in addition to the requirements of this section. Idaho Full Fee registrants must follow the requirements of Rule 422 of these rules and this section. (3-30-07)( )**

**04. ~~Claims Subject to Review or Audit~~ Records Required – Actual Nontaxable Miles. *All fuels tax refund claims are subject to review or audit by the State Tax Commission* Nontaxable miles must be documented for each trip using odometer, hubometer, or GPS readings. (4-5-00)( )**

**05. Alternate Methods.** A claimant may use an alternate method to determine nontaxable miles or use a presumed MPG to determine fuel use unless they are an IFTA licensee or IRP registrant in any participating jurisdiction. Claimants may estimate using one of the methods below. ( )

**a. Estimating Nontaxable Miles.** Nontaxable miles may be estimated by using maps, contracts, or a State Tax Commission approved trip analysis. Upon request, the claimant must provide the documents supporting the estimation. Maps other than the Official Idaho Highway map miles are estimates. ( )

**b. Estimating Nontaxable Gallons.** Nontaxable gallons may be estimated using presumed MPGs. Upon request, the claimant must provide the tax-paid fuel purchase records supporting the total gallons claimed. ( )

**i. Presumed MPGs by Weight.** The following are presumed MPGs by gross vehicle weight (GVW) or registered GVW:

<u>Over 40,000 GVW</u>	<u>4.0 MPG</u>
<u>Over 26,000 GVW to 40,000 GVW</u>	<u>5.5 MPG</u>
<u>Over 12,000 GVW to 26,000 GVW</u>	<u>7.0 MPG</u>
<u>12,000 GVW or less</u>	<u>10.0 MPG</u>

( )

**ii. Presumed MPGs by Operation.** The following are presumed MPGs for vehicles over 40,000 GVW or registered GVW used in certain industries:

<u>Logging</u>	<u>4.3 MPG</u>
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<u>Agricultural</u>	<u>4.5 MPG</u>
<u>Sand, gravel &amp; rock hauling</u>	<u>4.0 MPG</u>
<u>Construction</u>	<u>4.4 MPG</u>

( )

291. (RESERVED)

292. ~~CALCULATION OF REFUNDS FOR NONTAXABLE USES OF MOTOR FUELS IN MOTOR VEHICLES~~ REFUND CLAIMS – POWER TAKE-OFF (PTO) AND AUXILIARY ENGINES (RULE 292).

01. ~~Fuel Records Required for Refund Claims~~ Refund to Consumers — PTO and Auxiliary Engines. ~~Special fuels users may be eligible for a fuels tax refund of tax-paid special fuels if their motor vehicles have accrued nontaxable miles or have power take-off (PTO) equipment. Records must be kept as described in Subsection 290.01 of these rules.~~ Tax-paid fuel used in PTO and auxiliary engines qualifies for a fuels tax refund under Sections 63-2410 and 63-2423, Idaho Code. PTO refunds are only allowed for special fuels. Auxiliary engine refunds are allowed for gasoline or special fuels. To claim a refund, use Form 75, Idaho Fuels Use Report, with the relevant supplemental worksheets. The records retention and fuel record requirements in Subsections 270.02 through 270.05 of these rules also apply to this section. (4-5-00)( )

02. ~~Nontaxable Miles Defined~~ PTO and Auxiliary Engines Defined. ~~Nontaxable miles are miles driven on roads which are not open to the public, not maintained by a governmental entity, located on private property that are maintained by the property owner, or defined in Subsection 292.03 of this rule. Miles driven on a construction site would also be considered nontaxable miles and may be eligible for a special fuels tax refund. See Rule 171 of these rules regarding application of Idaho Sales and Use Taxes.~~ A PTO uses fuel from the main supply tank to operate the main engine for a purpose other than operating or propelling the vehicle on the road. An auxiliary engine uses fuel from the vehicle's main supply tank to operate an engine other than the vehicle's main engine. (4-6-05)( )

03. ~~Additional Nontaxable Roadways~~ Records Required – Actual Consumption Refunds. ~~Roadways defined in Section 63-2401, Idaho Code, include those constructed and maintained by the United States Forest Service, the United States Bureau of Land Management, the Idaho Department of Lands, or forest protective associations with which the state of Idaho has contracted or become a member pursuant to Chapter 1, Title 38, Idaho Code. The special fuels user must maintain records documenting nontaxable miles traveled on roadways that qualify for exclusion under this provision, unless using the "standard miles per gallon (MPG)" for its industry found in Subsection 290.02 of these rules. When special fuels users compute their special fuels tax liability or refund, they may exclude from total taxable miles traveled in Idaho the miles traveled on these roadways if the cost of maintaining the roadway pursuant to a contract or permit is primarily borne by them or if the special fuel user is a subcontractor of a prime contractor required by contract to bear the primary cost of maintaining the roadway.~~ Actual fuel consumption for PTO and auxiliary engines may be claimed when the PTO or auxiliary engines are equipped with an electronic monitoring device. The monitoring device must provide the date, time of use, and gallons metered. The State Tax Commission may request verification that the electronic monitoring device is reporting consumption correctly. (3-20-14)( )

04. ~~Calculation~~ Alternate Methods – Standard Allowances. ~~Determine the number of taxable miles driven in Idaho following the procedure established in Subsection 290.01 of these rules. Divide this number by the actual MPG, the presumed MPG established by Subsection 290.01 of these rules, or the industry standard MPG provided by Subsection 290.02 of these rules. Subtract this number of gallons from the total Idaho tax paid gallons purchased for the subject vehicles. Motor fuels purchased after December 1, 2007, from an Indian-owned retail outlet do not include the Idaho motor fuels tax and do not qualify as an Idaho tax-paid purchase, unless otherwise provided in an agreement between the state and appropriate tribe under the authority of Sections 63-2444 or 67-4002, Idaho Code. See definition of Indian-owned retail outlet in Rule 010 of these rules.~~ The following are standard allowances adopted by the State Tax Commission. An International Fuel Tax Agreement (IFTA) licensee isn't allowed to use alternate methods to determine nontaxable fuel use. Claimants may estimate using unit quantities, percentages, or the nonstandard allowance method. (4-2-08)( )

**a.** Allowances based on unit quantities:

Allowance Type	Allowance Rates	x	Unit Quantities
Gasoline/fuel oil	0.00015 gallons	x	Gallons pumped
Bulk cement	0.1858 gallons	x	Tons pumped
Refrigeration unit/reefer	0.75 gallons	x	Hours unit operated
Tree length timber/logs	0.0503 gallons	x	Tons Hauled
Tree length timber/logs	3.46 gallons	x	Hours unit operated
Carpet cleaning	0.75 gallons	x	Hours unit operated
Concrete Pumping	0.142857 gallons	x	Yards pumped

( )

**b.** Allowances based on percentages:

Allowance Type	Percentage Per Gallon	x	Gallons Consumed
Concrete mixing	30%	x	Gallons consumed
Garbage trucks	25%	x	Gallons consumed

( )

**05.** ~~Power Take Off (PTO) and Auxiliary Engine Allowances (Allowances)~~ **Nonstandard Allowances.** ~~PTO allowances are available for special fuels powered vehicles. Auxiliary engine allowances are available for both special fuels and gasoline powered vehicles. A claimant must request a nonstandard allowance from the State Tax Commission if they want to use an allowance different from those listed in this section. A claimant must request approval of the proposed allowance in writing with a copy of the supporting calculations used to compute the proposed allowance. The State Tax Commission may request additional information or documentation as needed in order to make a determination on he request.~~ (3-20-14)( )

~~**a.** Standard Allowances for Special Fuels. Nontaxable gallons of special fuels may be claimed when special fuels are used for purposes other than to operate, propel, or idle, as defined in Section 63-2401, Idaho Code, a motor vehicle and the fuel is drawn from the main supply tank of the motor vehicle. Examples of uses that qualify for allowances are turning a vehicle mounted cement mixer or off loading product. (4-6-05)~~

~~**b.** Standard Allowances for Gasoline. Nontaxable gallons of gasoline may be claimed when gasoline is used in an auxiliary engine and the fuel is drawn from the main supply tank of the registered motor vehicle. No claim for gasoline is allowed when gasoline is used by the registered motor vehicle's main engine even to operate the motor vehicle's PTO unit. (3-30-07)~~

~~**c.** Rates for Standard Allowances. The number of gallons of fuel actually delivered into the fuel tank of the vehicle may be reduced by the following allowances: (4-5-00)~~

~~**i.** Allowances based on unit quantities:~~

Allowance Type	Allowance Rates	x	Unit Quantities
Gasoline/fuel oil	0.00015 gallons	x	Gallons pumped
Bulk cement	0.1858 gallons	x	Tons pumped

Allowance Type	Allowance Rates	x	Unit Quantities
Refrigeration unit/reefer	0.75 gallons	x	Hours unit operated
Tree length timber/logs	0.0503 gallons	x	Tons Hauled
Tree length timber/logs	3.46 gallons	x	Hours unit operated
Carpet cleaning	0.75 gallons	x	Hours unit operated
Concrete Pumping	0.142857 gallons	x	Yards pumped

(4-11-06)

ii. Allowances based on percentages:

Allowance Type	Percentage Per Gallon	x	Gallons Consumed
Concrete mixing	30%	x	Gallons consumed
Garbage compaction	25%	x	Gallons consumed

(3-15-02)

~~06. Nonstandard Allowances. A request for an allowance not listed in Subsection 292.05 of this rule, or greater than those listed must be submitted by the taxpayer to the State Tax Commission for approval before being used. Taxpayers must request approval of the proposed allowance in writing with a copy of the supporting calculations used to compute the proposed allowance. The State Tax Commission may request additional information or documentation as needed in order to make a determination on the request.~~ (3-20-14)

~~07. Nontaxable Gallons of Fuel Claimed by Non-IFTA Licensees. The nontaxable gallons of fuel claimed by non-International Fuel Tax Agreement (IFTA) licensees may be the allowance gallons listed in Subsections 292.05 and 292.06 of this rule and/or the gallons calculated under Subsection 292.04 of this rule. Only actual MPGs, computed by adjusting total fuel as defined in Subsection 290.01 of these rules by the allowance gallons, may be used to calculate a fuels tax refund based on both nontaxable miles and allowances. Fuels tax refunds based solely on an allowance may be calculated without regard to MPG information.~~ (3-20-14)

~~08. IFTA Licensees. An IFTA licensee may qualify for standard or nonstandard PTO and auxiliary engine allowances listed in this rule or authorized by request, by recomputing the total gallons of fuel consumed in all jurisdictions. IFTA licensees claiming refunds of Idaho fuels tax resulting from the allowances established in Subsections 292.05 and 292.06 of this rule, must file the claim on an Idaho Fuels Use Report Form 75 with the relevant supplemental worksheet.~~ (3-20-14)

~~a. The IFTA licensee must recompute the total taxable fuel for Idaho by deducting the gallons determined by the allowances in all jurisdictions from the total number of gallons of fleet fuel consumed that was reported on the IFTA return. Using the new net gallons consumed, the IFTA licensee will recompute the new fleet MPG. The new fleet MPG is applied to the reported Idaho taxable miles to calculate the corrected Idaho taxable gallons. To calculate the Idaho nontaxable gallons available for refund, the IFTA licensee must subtract the recomputed taxable gallons for Idaho from the original taxable gallons reported for Idaho. This nontaxable gallon figure is then entered on the line labeled nontaxable gallons on the Form 75.~~ (3-20-14)

~~b. A copy of the IFTA tax return for the period subject to the refund claim and a statement or worksheet showing how the allowance was calculated must be included as an attachment to the Form 75. All refund claims are subject to review and audit, therefore, adequate documentation must be retained by the licensee.~~ (3-20-14)

~~e. IFTA licensees must use an actual MPG when preparing their original IFTA return to claim any refund.~~ (3-20-14)

## **IDAPA 35 – STATE TAX COMMISSION**

### **35.01.05 – IDAHO MOTOR FUELS TAX ADMINISTRATIVE RULES**

**DOCKET NO. 35-0105-1702**

#### **NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** The rule has been adopted by the agency and is now pending review by the 2018 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 Sections 63-105 and 63-2427, Idaho Code.

**DESCRIPTIVE SUMMARY:** There are no changes to Rule 420, and it is being adopted as originally proposed. The complete text of the proposed rulemaking was published in the September 6, 2017 Idaho Administrative Bulletin, [Vol. 17-9, pages 276 through 279](#).

**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 this pending rule, contact Don W. Williams at (208) 334-7855.

DATED this 22nd day of November, 2017.

Don W. Williams  
Tax Policy Specialist  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
Phone (208) 334-7855  
Fax (208) 334-7690  
[Don.williams@tax.idaho.gov](mailto:Don.williams@tax.idaho.gov)

**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 63-105 and 63-2427, Idaho Code, and Section 63-2442A, 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 20, 2017.

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:

Motor Fuel Tax Rule 420, Documentation for IFTA Licensee Reporting and Special Fuels Users Claiming Nontaxable Use of Special Fuels in a Motor Vehicle. This rule gives records requirements for International Fuel Tax Agreement (IFTA) licensees and other taxpayers claiming nontaxable fuel use. Changes will be made to IFTA requirements so the rule conforms to IFTA. All other records requirements will be removed so only IFTA requirements remain.

**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(2), Idaho Code, negotiated rulemaking was not conducted because the rule was amended to comply with Subsection 63-2442A(9), Idaho Code.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact the undersigned using the contact information below.

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 27, 2017.

DATED this 6th day of September, 2017.

**LSO Rules Analysis Memo**

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0105-1702

420. DOCUMENTATION FOR IFTA LICENSEE REPORTING ~~AND SPECIAL FUELS USERS CLAIMING NONTAXABLE USE OF SPECIAL FUELS IN A MOTOR VEHICLE~~ (RULE 420).  
Sections 63-2439, Idaho Code

01. **Records Required for Idaho IFTA Licensee ~~and Special Fuels Users Claiming Nontaxable Use of Special Fuels in a Motor Vehicle~~.** Records are required to verify the accuracy of any tax report or worksheet filed with the State Tax Commission. The taxpayer displaying, or required to display, an IFTA decal or a temporary permit, ~~or a special fuels user claiming nontaxable use of tax-paid special fuels in a motor vehicle using a Form 75, shall~~ **must** retain originals of all invoices or other documents relating to purchases of special fuels and all records relating to the mileage of the motor vehicles. (3-15-02)(    )

02. **Fuel Records.** In order for the IFTA licensee ~~or other special fuels user seeking a refund for the nontaxable use of special fuels in its motor vehicle~~ to obtain credit for tax-paid purchases, a receipt or invoice, a credit card receipt, or microfilm/microfiche of the receipt or invoice must be retained ~~by the special fuels user~~ showing evidence of such purchases and tax having been paid. An acceptable receipt or invoice for tax-paid purchases taken as credit must include, but **is** not **be** limited to, the following: (3-15-02)(    )

- a. The date of each receipt of fuel; (7-1-98)
- b. The name and address of the person from whom purchased or received; (7-1-98)
- c. The number of gallons received; (7-1-98)
- ~~d. Both taxable and nontaxable usage of fuel; (7-1-98)~~
- ed.** The type of fuel; (7-1-98)
- fe.** The specific vehicle ~~or equipment~~ into which the fuel was placed; **and** (7-1-98)(    )
- gf.** Detailed records of all withdrawals from bulk storage tanks, including the date of withdrawal, the number of gallons withdrawn, the fuel type, the unit number, the equipment type, and inventory records; **and**. (4-6-05)(    )
- ~~h. Documents necessary to substantiate volume, time or weight for power take-off and auxiliary engine allowances described in Rule 292 of these rules. (3-30-01)~~

03. **Mileage Records.** ~~Non-IFTA special fuels users who qualify to use one (1) of the "Standard MPG's" found in Rule 290 of these rules need only record and report Idaho taxable miles.~~ All IFTA licensees ~~and all other special fuels users seeking a fuels tax refund for nontaxable special fuels used in a motor vehicle shall~~ **must** maintain detailed mileage records, such as trip logs or trip sheets, on an individual-vehicle basis. Such records ~~shall~~ **must** contain, but not be limited to: (3-15-02)(    )

- a. Total trip miles, including vicinity miles, ~~except for non-IFTA motor vehicle(s) using one (1) of the "standard miles per gallon" (MPG) found in Rule 290 of these rules;~~ (3-30-01)(    )
- b. Miles traveled for taxable and nontaxable use. ~~Only taxable miles traveled are required for non-IFTA motor vehicles using one (1) of the "standard miles per gallon" found in Rule 290 of these rules;~~ (3-30-01)(    )
- c. Mileage ~~recaps for each vehicle. IFTA licensees are required to keep mileage recaps for each~~



- ~~totaled by~~ jurisdiction in which the IFTA vehicle operated; (3-15-02)( )
- d. Starting and ending dates of trips; (7-1-98)
  - e. Trip origin, ~~interim stops~~ and destination; (7-1-98)( )
  - f. Hubometer or odometer readings from the beginning and ending of each trip ~~and at the crossing of each jurisdiction's border. Interstate motor vehicles that, for certain time periods, do not cross jurisdiction borders need only record daily hubometer or odometer readings for those time periods;~~ (7-1-98)( )
  - g. Complete routes of travel, ~~that~~ ~~includes~~ ~~interim stops such as~~ pick up and delivery locations; ~~and~~ (7-1-98)( )
  - h. Vehicle license number or unit number; ~~and~~; (4-6-05)( )
  - ~~i. Driver's name. (7-1-98)~~
04. **Additional Records Requirements.** Other records may be ~~required~~ ~~requested~~, such as: (7-1-98)( )
- a. Bills of lading or manifest documents; (7-1-98)
  - b. Vehicle dispatch ledgers; (7-1-98)
  - c. Accounts payable and receivable; (7-1-98)
  - d. Lease agreements; (7-1-98)
  - e. Driver pay records; (7-1-98)
  - f. Driver logs; (7-1-98)
  - g. Fuel use trip permits; and (7-1-98)
  - h. Other documents used in preparing fuel tax reports. (7-1-98)
05. **Trip Summaries.** Individual trips ~~shall~~ ~~must~~ be accumulated into monthly, ~~quarterly, or annual~~ summaries ~~in total and by jurisdiction~~. These summaries ~~shall~~ ~~must~~ be used as the basis for the miles submitted on the IFTA quarterly or annual reports, ~~and on the worksheet submitted with the Form 75.~~ (7-1-98)( )
06. **Computer ~~Printout~~ Support.** ~~Hard copies of summary e~~Computer ~~printouts~~ summaries must be supported by trip sheets or logs verifying mileage traveled. (7-1-98)( )
07. **Mileage Information.** Information recorded on trip sheets must be legible and reflect actual miles traveled. Mileage records must include all movement of the vehicle including loaded, empty, and tractor-only (bobtail) miles. ~~Non-IFTA special fuels users who qualify to use a "Standard MPG" need only record and report taxable miles in Idaho.~~ (3-15-02)( )
08. **Records Retention.** ~~The records required in this rule shall be retained for the greater of three (3) years for Idaho special fuels users or the time during which the taxpayer's income tax return is subject to adjustment by either the State Tax Commission or voluntary action by the taxpayer if the refund claim is filed with the taxpayer's Idaho income tax return.~~ Records ~~shall~~ ~~must~~ be retained for four (4) years for IFTA license holders. (7-1-98)( )
09. **U.S./Metric Conversion.** The following conversion factors must be used, when necessary, to convert fuel and mileage records to U.S. or metric measurement:

One (1) Liter = .2642 gallons
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One (1) Gallon = 3.785 liters
One (1) Mile = 1.6093 kilometers
One (1) Kilometer = .62137 miles

(7-1-98)

**10. Mileage Disputes.** Whenever a mileage dispute arises between the taxpayer and the State Tax Commission, the official mileage map distributed by the appropriate authority in each jurisdiction will be used to resolve the point-to-point mileage differences. (4-6-05)

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT**

**39.02.02 – RULES GOVERNING VEHICLE AND VESSEL DEALER  
LICENSE REQUIREMENTS – MOTOR VEHICLES**

**DOCKET NO. 39-0202-1701**

**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2018 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 Sections 40-312 and 49-201, Idaho Code.

**DESCRIPTIVE SUMMARY:** There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 6, 2017, Idaho Administrative Bulletin, [Vol. 17-9, pages 283-284](#).

**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:

There is no impact to the state general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Brian Goeke, Dealer Licensing/Investigations Program Supervisor, at (208) 334-8684.

DATED this 2nd day of November, 2017.

Ramón S. Hobdey-Sánchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 West State Street  
P.O. Box 7129  
Boise, ID 83707-1129  
Phone: (208) 334-8810  
[ramon.hobdey-sanchez@itd.idaho.gov](mailto:ramon.hobdey-sanchez@itd.idaho.gov)

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

**EFFECTIVE DATE:** The effective date of the temporary rule is July 21, 2017.

**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 Sections 40-312 and 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 September 20, 2017.

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 change is being initiated based on the passage of House Bill 131a (2017) which amended Section 49-1602, Idaho Code. The change being made eliminates section 400 of IDAPA 39.02.02, which addresses penalties for violation of dealer rules or Idaho Code. Section 49-1602, Idaho Code, now provides and defines the penalties and length of dealer and salesman license denials and suspensions.

**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:

The rule change is needed to align IDAPA rule with Idaho Code, due to the passage of House Bill 131a (2017) which went into effect July 1, 2017.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There are no fees being imposed or increased with 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: There is no impact to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule change is simple in nature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Brian Goeke, Dealer Licensing/ Investigations Program Supervisor, at (208) 334-8684.

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 27, 2017.

DATED this 25th day of July 2017.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 39-0202-1701

302. -- ~~399.~~ (RESERVED)

~~400. PENALTIES.~~

~~01. License Suspension. Any person who violates this rule is subject to a license suspension or the non-issuance of a license for a period of not less than thirty (30) days and no more than six (6) months. (9-14-92)~~

~~02. Hearing Requests. Prior to a license suspension or the non-issuance of a license, persons may request a hearing as provided for by Section 49-1618, Idaho Code. (9-14-92)~~

~~03. Unlicensed Person. Any unlicensed person who violates this rule is subject to penalty under Chapter 16, Title 49, Idaho Code. (12-26-90)~~

~~401. 999. (RESERVED)~~

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT**

**39.02.71 – RULES GOVERNING DRIVER'S LICENSE VIOLATION POINT SYSTEM**

**DOCKET NO. 39-0271-1701**

**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2018 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 Sections 40-312 and 49-201, Idaho Code.

**DESCRIPTIVE SUMMARY:** There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 6, 2017, Idaho Administrative Bulletin, [Vol. 17-9, pages 285-288](#).

**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:

There is no impact to the state general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact David Metcalf, Driver License Program Supervisor, at (208) 334-8709.

DATED this 2nd day of November, 2017.

Ramón S. Hobdey-Sánchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 West State Street  
P.O. Box 7129  
Boise, ID 83707-1129  
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**THE FOLLOWING NOTICE PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is July 21, 2017.

**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 Sections 40-312 and 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 September 20, 2017.

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 change is being initiated based on the passage of Senate Bill 1019 (2017) that established a new traffic infraction and created a new section to Idaho Code, Section 49-652. The change being made adds a new traffic infraction to the list of moving traffic convictions or violations point count table, or both, for failure to obey a school safety patrol.

**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:

The rule change is needed to align IDAPA rule with Idaho Code, due to the passage of Senate Bill 1019 (2017) which went into effect July 1, 2017.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There are no fees being imposed or increased with 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: There is no impact to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule change is simple in nature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact David Metcalf, Driver License Program Supervisor, at (208) 334-8709.

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 27, 2017.

DATED this 25th day of July, 2017.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 39-0271-1701**

**200. LIST OF MOVING TRAFFIC CONVICTIONS AND/OR VIOLATIONS POINT COUNT.**

<b>Idaho Code</b>	<b>Convictions Reported by Court</b>	<b>Point Count</b>
49-603	Starting Parked Vehicle	two (2)
49-604	Limitations On Backing	one (1)
49-605	Driving Upon Sidewalk	three (3)
49-606	Coasting Prohibited	two (2)
49-612	Obstruction To Driver's View Or Driving Mechanism	three (3)
49-614	Stopping When Traffic Obstructed	one (1)
49-615	Drivers To Exercise Due Care	three (3)
49-616	Driving Through Safety Zone Prohibited	two (2)
49-619	Slow Moving Vehicles	two (2)
49-623(4)	Authorized Emergency Or Police Vehicles	three (3)
49-624	Duty Upon Approaching A Stationary Police Vehicle Or An Emergency Vehicle Displaying Flashing Lights	three (3)
49-625	Operation Of Vehicles On Approach Of Authorized Emergency Or Police Vehicles	three (3)
49-626	Following Fire Apparatus Prohibited	three (3)
49-627	Crossing Fire Hose	one(1)
49-630	Drive On Right Side Of Roadway - Exceptions	three (3)
49-631	Passing Vehicles Proceeding In Opposite Directions	two (2)
49-632	Overtaking A Vehicle On Left	three (3)
49-633	When Passing On The Right Is Permitted	two (2)
49-634	Limitations On Overtaking On The Left	three (3)
49-635	Further Limitations On Driving On Left Of Center Of Highway	three (3)
49-636	One-way Highways	one (1)
49-637	Driving On Highways Laned For Traffic	one (1)
49-638	Following Too Closely	three (3)
49-639	Turning Out Of Slow Moving Vehicles	two (2)
49-640	Vehicles Approaching Or Entering Unmarked Or Uncontrolled Intersection	three (3)

<b>Idaho Code</b>	<b>Convictions Reported by Court</b>	<b>Point Count</b>
49-641	Vehicle Turning Left	three (3)
49-642	Vehicle Entering Highway	three (3)
49-643	Highway Construction And Maintenance	three (3)
49-644	Required Position And Method Of Turning	three (3)
49-645	Limitations On Turning Around	three (3)
49-648	Obedience To Signal Indicating Approach Of Train	four (4)
49-649	Compliance With Stopping Requirement At All Railroad Grade Crossings	four (4)
49-650	Moving Heavy Equipment At Railroad Grade Crossings	three (3)
49-651	Emerging From Alley, Driveway Or Building	three (3)
<u>49-652</u>	<u>School Safety Patrols – Failure to Obey Unlawful</u>	<u>three (3)</u>
49-654	Basic Rule And Maximum Speed Limits	three (3) four (4)
49-655	Minimum Speed Regulation	three (3)
49-656	Special Speed Limitations	three (3) four (4)
49-657	Work Zone Speed Limits	four (4)
49-658	School Zone Speed Limit	three (3)
49-663	Restricted Use Of Neighborhood Electric Vehicles On Highways	two (2)
49-673(3)&(4)	Safety Restraint Use	Exempt
49-702	Pedestrians' Right Of Way In Crosswalks	three (3)
49-706	Blind And/Or Hearing Impaired Pedestrian Has Right-of-Way	three (3)
49-707	Pedestrians' Right-of-Way On Sidewalks	three (3)
49-801	Obedience To And Required Traffic Control Devices	three (3)
49-802	Traffic Control Signal Legend	three (3)
49-804	Flashing Signals	three (3)
49-806	Lane Use Control Signals	three (3)
49-807(2)	Stop Signs	three (3)
49-807(3)	Failure To Yield – Signed Intersection	three (3)
49-808	Turning Movements And Required Signals	three (3)
49-1302	Duty To Give Information In Accident Involving Damage To A Vehicle	four (4)
49-1303	Duty Upon Striking Unattended Vehicle	four (4)
49-1304	Duty Upon Striking Fixtures Upon Or Adjacent To A Highway	four (4)
49-1401(3)	Inattentive Driving	three (3)
49-1401A	Texting While Driving	Exempt
49-1419	Obedience To Traffic Direction	two (2)



<b>Idaho Code</b>	<b>Convictions Reported by Court</b>	<b>Point Count</b>
49-1421(1)	Driving On Divided Highways	one (1)
49-1421(2)	Restricted Access	one (1)
49-1422	Overtaking And Passing School Bus	four (4)
49-1424	Racing On Public Highways	four (4)

~~(1-14)~~( )

## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.03.10 – RULES GOVERNING WHEN AN OVERLEGAL PERMIT IS REQUIRED

DOCKET NO. 39-0310-1701

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2018 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 Sections 40-312 and 49-201, Idaho Code.

**DESCRIPTIVE SUMMARY:** There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 6, 2017, Idaho Administrative Bulletin, [Vol. 17-9, pages 289-290](#).

**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:

There is no impact to the state general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Lance Green, Technical Records Specialist, at (208) 334-8427.

DATED this 2nd day of November, 2017.

Ramón S. Hobdey-Sánchez  
Governmental Affairs Program Specialist  
Idaho Transportation Department  
3311 West State Street  
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**THE FOLLOWING NOTICE PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is July 21, 2017.

**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 Sections 40-312 and 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 September 20, 2017.

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 change is being initiated based on the passage of Senate Bill 1043a (2017) that amended Section 49-1010, Idaho Code. The change being made amends Section 300.03 in order to clarify when there is an emergency movement of implements of husbandry and provides that verbal approval of the movement may be allowed on official state holidays and weekends in lieu of a written permit.

**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:

The rule change is needed to align IDAPA rule with Idaho Code, due to the passage of Senate Bill 1043a (2017) which went into effect March 24, 2017.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There are no fees being imposed or increased with 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: There is no impact to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule change is simple in nature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Reymundo Rodriguez, Compliance Program Manager, at (208) 334-4426.

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 27, 2017.

DATED this 25th day of July, 2017.

**LSO Rules Analysis Memo**

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 39-0310-1701**

**300. WAIVER OF LIMITATIONS FOR EMERGENCY MOVEMENTS.**

Notwithstanding other provisions of these rules, the Idaho Transportation Board may waive existing permit policy limitations in the event of an emergency, subject to such limitations or special requirements as the Board may impose. (8-25-94)

**01. Military Emergency Affecting National Security.** Any movement by or for a military or other government agency which is in excess of permit policy maximum limits of weight or size or which is otherwise outside established rules must be certified as a military necessity involving national security before receiving any special consideration to provide any waiver of normal permit rules. Certification of military necessity must be made by an official designated as having such authority by the Department of Defense Directory, issued by the Office of the Chief of Transportation, Department of Army. All applications for military emergency movements must be channeled through the Vehicle Size and Weight Specialist, Idaho Transportation Department. (8-25-94)

**02. Emergencies Endangering the Public Health, Safety or Welfare Including but Not Limited to Fire, Flood, or Earthquake.** During an emergency endangering the public health, safety or welfare, there may be an urgent and immediate need for equipment and it will not be in the public interest to require that a overlegal permit be in the vehicle prior to an over legal movement. Verbal approval to proceed without an overlegal permit in the vehicle may be obtained from the Overlegal Permit Office or an Idaho Port-of-Entry. Once the emergency movement is completed, formal application for an Overlegal Permit must be submitted to the Overlegal Permit Office. (4-2-08)

**03. Emergency Movement of Implements of Husbandry.** It shall be considered an emergency when an implement of husbandry being operated on an official state holiday or a weekend (~~the Overlegal Permit Office is closed on weekends and holidays for hours of Permit Office operation see IDAPA 39.03.09, "Rules Governing Overlegal Permits-General Conditions and Requirements"~~) breaks down and a dealer brings replacement equipment to the farmer that exceeds ~~the annual permit maximum width of fourteen (14) feet – six (6) inches~~ **legal height, length and weight**. Verbal approval to proceed without an overlegal permit in the vehicle may be obtained from ~~an Idaho Port-of-Entry~~ **the Overlegal Permit on-call staff**. That verbal authorization ~~will~~ **may** include escort vehicle requirements based on the route of travel and **width dimensions** of load. Once the emergency movement is completed, the permittee shall make formal application for a permit to the Overlegal Permit Office on the first working day after the occurrence. (4-4-13)(    )

**04. Economic Emergencies.** When a circumstance occurs in which an economic hardship is expected to result due to the application of existing rules or limitations, the Transportation Board may consider a petition for the temporary waiver of those rules or limitations which are perceived as being the cause of such economic hardship. (8-25-94)

**05. Emergency Movements After Dark or Weekends.** Any overwidth load moving after dark or on weekends on a red coded route of the Pilot/Escort Vehicle and Travel Time Requirements Map must be preceded by an escort vehicle displaying a rotating or flashing amber light to warn other traffic of the presence of the hazard. Any overwidth load moving after dark on black coded routes, if width exceeds ten (10) feet, must also be preceded by such a pilot/escort vehicle. All overwidth loads moved after dark shall have the extreme dimensions marked by lights as required by IDAPA 39.03.12, "Rules Governing Safety Requirements For Overlegal Permits." Self-propelled vehicles utilized to clear the travelway of snow or debris are exempt from the provisions listed in this Subsection. (4-2-08)

## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

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

DOCKET NO. 39-0316-1701

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2018 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 or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part 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 Sections 40-312 and 49-201, Idaho Code.

**DESCRIPTIVE SUMMARY:** There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 6, 2017, Idaho Administrative Bulletin, [Vol. 17-9, pages 291-292](#).

**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:

There is no impact to the state general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Lance Green, Technical Records Specialist, at (208) 334-8427.

DATED this 2nd day of November 2017.

Ramón S. Hobdey-Sánchez  
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Idaho Transportation Department  
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**THE FOLLOWING NOTICE PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is July 21, 2017.

**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 Sections 40-312 and 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 September 20, 2017.

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 change is being initiated based on the passage of Senate Bill 1043a (2017) that amended Section 49-1010, Idaho Code. The change being made addresses the movement of implements of husbandry and when such movement must be permitted or is allowed to move without an overlegal permit. Language has been modified to exempt equipment dealers moving implements of husbandry larger than legal size to or from a farm to a dealer for repair, rental, lease or purchase.

**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:

The rule change is needed to align IDAPA rule with Idaho Code, due to the passage of Senate Bill 1043a (2017) which went into effect March 24, 2017.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: There are no fees being imposed or increased with 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: There is no impact to the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule change is simple in nature.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Craig Roberts, Compliance Program Supervisor, at (208) 334-8292.

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 27, 2017.

DATED this 25th day of July, 2017.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF DOCKET NO. 39-0316-1701

400. OVERWIDTH PERMITS FOR IMPLEMENTS OF HUSBANDRY.

**01. Farm Tractors on Interstate Highways.** Farm tractors transported on Interstate Highways are required to have overlegal permit authority if width exceeds nine (9) feet. A farm tractor when attached to an implement of husbandry or when drawing an implement of husbandry shall be construed to be an implement of husbandry and is not required to have a permit. Farmers, equipment dealers or custom operators may be issued single trip or annual permits under this rule for transportation of farm tractors, having a width in excess of nine (9) feet to or from a farm involving Interstate Highway travel. The transportation of farm tractors or implements of husbandry for hire, or not being transported from one farm operation to another, is a common-carrier operation. Exemptions from legal width limitation do not apply to common-carrier operations. Farm tractors or implements of husbandry hauled for hire, or used in the furtherance of a business (not to include farming operations), are subject to the same overlegal permit regulations as other oversize loads when the width of the load exceeds legal-width limitations, and must operate under oversize permits. (3-30-01)

**02. Other Than Farm to Farm.** Implements of husbandry exceeding eight (8) feet six (6) inches in width being transported other than from one (1) farm operation to another farm operation shall require overlegal permits except when the farmer or their designated agents, including without limitation, equipment dealers ~~is~~ transporting implements of husbandry and equipment for the purpose of: (3-29-12)(    )

a. The repair or maintenance of such implements of husbandry and equipment when traveling between to or from a farm ~~and~~ to a repair or maintenance facility during daylight hours; or (3-29-12)(    )

b. The purchase, ~~or~~ sale, lease or rental of such implements of husbandry or equipment when traveling between a farm and a dealership, auction house, or other facility during daylight hours. (3-29-12)(    )

**03. Farm Permits.** Single trip permits must be ordered at the permit office. Under provisions of IDAPA 39.03.19, "Rules Governing Annual Overlegal Permits," Section 100, annual permits will be issued to towing units or to self-propelled farm tractors or towed units, or blanket permits may be issued to an Idaho domicile applicant without vehicle identification. Such blanket permits may be transferred from one vehicle to another vehicle but shall be valid only when the permit is with the overwidth vehicle and/or load. A photocopy of the permit is valid provided that the Pilot/Escort Vehicle and Travel Time Requirements Map and Vertical Clearance of Structures Map furnished by the Idaho Transportation Department are included. Such annual permits for implements of husbandry or farm tractors are subject to the same maximum dimensions, travel time exclusions and safety requirements as other overwidth annual permits and are valid for continuous travel for twelve (12) consecutive months. (3-25-16)

**04. Overwidth Farm Trailers.** Trailers or semi-trailers exceeding eight feet six inches (8' 6") wide, but not wider than the implement of husbandry, used for the transportation of implements of husbandry from a farm to or from a farm for agricultural operations, shall be exempt from overlegal permitting requirements. This exemption does not apply to trailers or semi-trailers used in common carrier operations, hauling for hire or used in the furtherance of a business (not to include farming operations). (3-29-12)(    )

a. Exempt trailers, as listed above, may not be used to haul implements of husbandry that are narrower than the overwidth trailer. (3-20-04)

b. Empty trailers, as listed above, being used to pick up or drop off an implement of husbandry from a farm to a farm are also exempt and must be reduced to a practical minimum dimension (i.e. dropping side extensions). (3-20-04)