

Dear Senators BRACKETT, Nonini, Buckner-Webb, and  
Representatives PALMER, Shepherd, King:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of  
the State Tax Commission:

IDAPA 35.01.05 - Idaho Motor Fuels Tax Administrative Rules - Proposed Rule (Docket No.  
35-0105-1801).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the  
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research  
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative  
Services. The final date to call a meeting on the enclosed rules is no later than 08/27/2018. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 09/25/2018.

The germane joint subcommittee may request a statement of economic impact with respect to a  
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,  
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has  
been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the  
memorandum attached below.



Eric Milstead  
Director

# Legislative Services Office

## Idaho State Legislature

*Serving Idaho's Citizen Legislature*

### MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Transportation Committee and the House Transportation & Defense Committee

**FROM:** Division Manager - Kristin Ford

**DATE:** August 08, 2018

**SUBJECT:** State Tax Commission

IDAPA 35.01.05 - Idaho Motor Fuels Tax Administrative Rules - Proposed Rule (Docket No. 35-0105-1801)

#### Summary and Stated Reasons for the Rule

The State Tax Commission submits notice of proposed rulemaking relating to the Motor Fuels Tax. The agency states that it is amending Rule 170 to clarify which vehicles can use dyed diesel, according to section 63-2425, Idaho Code.

#### Negotiated Rulemaking / Fiscal Impact

The agency states that negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules was published in the June 6, 2018 edition of the Idaho Administrative Bulletin, Vol. 18-6, page 111. No fiscal impact is expected.

#### Statutory Authority

The proposed rule appears to be within the agency's statutory authority under section 63-2427, Idaho Code.

cc: State Tax Commission  
Kimberlee Stratton

#### \*\*\* PLEASE NOTE \*\*\*

Per the Idaho Constitution, all administrative rules must be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

**IDAPA 35 – STATE TAX COMMISSION**  
**35.01.05 – IDAHO MOTOR FUELS TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0105-1801**  
**NOTICE OF RULEMAKING – 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, 63-2427, 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 August 15, 2018.

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 170** – This rule will be amended to clearly define which vehicles can use dyed diesel, according to 63-2425, Idaho Code.

**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 June 6, 2018 Idaho Administrative Bulletin, **Vol. 18-6, page 111**.

**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 Don Williams, (208) 334-7855. For general questions, contact Kimberlee Stratton, (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 August 22, 2018.

DATED this 19th day of June, 2018.

Don Williams  
Tax Policy Specialist  
State Tax Commission  
P.O. Box 36  
Boise, ID 83722-0410  
Phone: (208) 334-7855  
Fax: (208) 334-7846  
[Don.williams@tax.idaho.gov](mailto:Don.williams@tax.idaho.gov)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0105-1801  
(Only Those Sections With Amendments Are Shown.)

170. INFORMATION ON DYED & UNDYED DIESEL FUEL (RULE 170).  
Section 63-2425, Idaho Code

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. (3-29-10)

02. **Red-Dyed ~~Low-Sulfur and Ultra Low-Sulfur Fuel Diesel.~~** It is illegal to use red-dyed ~~low-sulfur and ultra low-sulfur fuel diesel~~ in the ~~main~~ 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 below.~~ Penalties for illegal use of red-dyed ~~low-sulfur and ultra low-sulfur fuel diesel~~ in a motor vehicle are found in Section ~~63-2425~~ 63-2460, Idaho Code. The Internal Revenue Code does allow certain types of users to purchase tax-exempt red-dyed diesel for use in their vehicles. Red-dyed diesel may be used: (3-29-10)(    )

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)