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Legislative Services Office Idaho State Legislature

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MEMORANDUM

TO: Senators LAKEY, Ricks, Burgoyne and,
Representatives CHANEY, Hartgen, Gannon

FROM: Ryan Bush - Principal Legislative Drafting Attorney

DATE: February 03, 2021

SUBJECT: Temporary Rule

IDAPA 11.08.01 - Rules Governing Hemp Transportation (New Chapter) - Amendment to Temporary Rule - Docket No. 11-0801-2002

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Ryan Bush at the Legislative Services Office at (208) 334-4845. Thank you.

Attachment: Temporary Rule

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IDAPA 11 – IDAHO STATE POLICE
11.08.01 – RULES GOVERNING HEMP TRANSPORTATION
DOCKET NO. 11-0801-2002 (NEW CHAPTER)
NOTICE OF RULEMAKING – AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: A temporary rule was adopted under this docket number in the April 1, 2020, Idaho Administrative Bulletin, [Vol. 20-4, pages 31 through 35](#) with an effective date of March 20, 2020. The effective date of the amendment to the temporary rule is January 7, 2021.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has amended a temporary rule. The action is authorized pursuant to Sections 67-2901, 67-2901A, and 67-2901B, Idaho Code, and the Agricultural Improvement Act of 2018. Pub. Law No. 115-334, 132 Stat. 4490, and the Agricultural Act of 2014. Pub. Law No. 113-79, 128 Stat. 649.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for amending the temporary rule and a statement of any change between the text of the temporary rule and the amended text of the temporary rule with an explanation of the reasons for the change:

These changes would amend the existing temporary rule to eliminate a requirement providing that shipments are limited to interstate highways; eliminate subsequent unnecessary definitions; and to reflect a change and update a reference to an executive order #2021-001 issued by Idaho Governor Little which went into effect January 7, 2021. The impact of these changes comply with the Red Tape Reduction act as they reduce regulation on those impacted by the existing rule; are necessary to maintain compliance with various state and federal statutes as well as current legal interpretations, and to meet new guidelines as outlined by Idaho [Executive Order 2021-01](#). As such, these changes must be implemented effective January 7, 2021.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a) and (1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This rule is necessary to provide for compliance in federal statute and to provide for interstate transportation of hemp, as defined and stated in [Executive Order 2021-01](#).

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:

No fees are imposed by this temporary rule.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the amendments to the temporary rule, contact Major Charlie Spencer, phone 208-884-7203, fax 208-884-7290, email charlie.spencer@isp.idaho.gov.

DATED this 20th day of January, 2021.

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THE FOLLOWING IS THE AMENDED TEMPORARY RULE TEXT FOR DOCKET NO. 11-0801-2002
(Only Those Sections With Amendments Are Shown.)

000. LEGAL AUTHORITY.

01. General. The Director of the Idaho State Police has general rulemaking authority pursuant to Sections 67-2901, 67-2901A, and 67-2901B, Idaho Code. (3-20-20)T

02. Specific. By Executive Order ~~No. 2019-13~~ **2021-01**, the Director of the Idaho State Police was directed by the Governor to engage in rulemaking concerning hemp transportation through the state of Idaho, in light of the 2018 Farm Bill. ~~(3-20-20)T~~ **(1-7-21)T**

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 11.08.01, "Rules Governing Hemp Transportation," IDAPA 11, Title 08, Chapter 01. (3-20-20)T

02. Scope. These rules concern the authorization, transportation, and enforcement for the transportation of hemp through the state of Idaho. Nothing within these rules shall authorize or be interpreted to legalize hemp, its byproducts, oils, or any other derivative prohibited by Idaho law. These rules only permit the interstate transportation of hemp consistent with the 2018 Farm Bill and its implementing regulations and Executive Order ~~No. 2019-13~~ **2021-01**. ~~(3-20-20)T~~ **(1-7-21)T**

002. – 009. (RESERVED)

010. DEFINITIONS.

01. 2014 Farm Bill. The Agricultural Act of 2014. Pub. Law No. 113-79, 128 Stat. 649 (3-20-20)T

02. 2018 Farm Bill. The Agricultural Improvement Act of 2018. Pub. Law No. 115-334, 132 Stat. 4490. (3-20-20)T

03. Bill of Lading. A shipping document containing the shipment contents, origination, including lot number, and destination of the farm product, the weight of the load, and the type of vehicle hauling or transporting the farm product. This form will be available on the Department website, <https://isp.idaho.gov/>. (3-20-20)T

04. Controlled Substance. As defined in Section 37-2701, Idaho Code. (3-20-20)T

05. Department. The Idaho State Police. (3-20-20)T

06. Driver Affirmation. A form provided by the Department signed by the driver of a vehicle hauling or transporting hemp stating that his or her vehicle contains no illicit drugs or variations of hemp not explicitly authorized by the 2014 Farm Bill or the 2018 Farm Bill. This form will be available on the Department website, <https://isp.idaho.gov/>. (3-20-20)T

07. Entity. As defined in 7 C.F.R. §990.1. (3-20-20)T

08. Farm Product. As defined in Section 22-701, Idaho Code. (3-20-20)T

09. Hemp. As defined in Section 7 U.S.C. §1639o and as measured in conformance with 7 CFR § 990.25. (3-20-20)T

~~**10. Highway.** As defined in Section 49-109, Idaho Code. (3-20-20)T~~

~~11.~~ **Immediate Vicinity of an Interstate Highway.** Within one mile or less of an interstate highway as needed to secure fuel or sustenance. (3-20-20)T

~~12.~~ **Indian Country.** As defined in Section 18 U.S.C. §1151, which has the same meaning as “territory of the Indian Tribe” as defined in 7 C.F.R. §990.1. (3-20-20)T

~~13~~**10.** **Indian Tribe.** As defined in Section 7 U.S.C. §1639o. (3-20-20)T

~~14~~**11.** **Inspection Report.** A report given to transporters upon completion of the hemp inspection at the port of entry or roadside confirming all required documents were presented and whether any samples of the hemp were taken. (3-20-20)T

~~15.~~ **Interstate Highway.** As defined in Section 40-110, Idaho Code. (3-20-20)T

~~16~~**12.** **Laboratory Report.** A laboratory results report which confirms each lot of hemp complies with the 2014 Farm Bill or the 2018 Farm Bill, as provided in 7 C.F.R. §§990.70(d) and 990.71(d), and which was produced by a DEA-registered laboratory. (3-20-20)T

~~17~~**13.** **Lawful-Hemp Verification.** A written verification that the hemp being transported was produced by a grower or producer duly-licensed by a state or Indian Tribe authorized to regulate hemp production under the 2014 Farm Bill or the 2018 Farm Bill or an equivalent USDA hemp producer license. The hemp production license for the producer of the hemp being transported, or a copy thereof, must be attached. This form will be available on the Department website, <https://isp.idaho.gov/>. (3-20-20)T

~~18~~**14.** **Lot.** As defined in 7 C.F.R. §990.1. (3-20-20)T

~~19~~**15.** **Marijuana.** A controlled substance as defined in Section 37-2701, Idaho Code. (3-20-20)T

~~20~~**16.** **Peace Officer.** As defined in Section 19-5101, Idaho Code. (3-20-20)T

~~21~~**17.** **Producer.** As defined in 7 C.F.R. §990.1. (3-20-20)T

~~22~~**18.** **Roadway.** As defined in Section 49-119, Idaho Code. (3-20-20)T

~~23~~**19.** **State.** As defined in Section 7 U.S.C. §1639o. (3-20-20)T

~~24~~**20.** **Transporter.** Any person, individual, partnership, corporation, association, grower, farmer, producer or any other entity engaged in hauling, transporting, delivering, or otherwise moving hemp in interstate commerce. (3-20-20)T

~~25~~**21.** **Vehicle.** As defined in Section 49-123, Idaho Code. (3-20-20)T

(BREAK IN CONTINUITY OF SECTIONS)

012. TRANSPORTATION.

01. First Port of Entry. Any transporter or vehicle hauling hemp shall have the affirmative duty to stop at the first port of entry encountered in the state of Idaho to declare the presence of any hemp. No transporter or vehicle hauling hemp shall proceed past or travel through an established or temporary port of entry during its hours of operation while transporting hemp without presenting the hemp for inspection. Should the first established or temporary port of entry be closed for operations, the transporter or vehicle must stop at the first available port of entry. (3-20-20)T

02. Required Documentation. Any transporter or vehicle hauling hemp shall carry and provide upon

initial declaration at a port of entry, and upon request during any contact with a peace officer in the State of Idaho, the following documents: (3-20-20)T

- a. The Driver Affirmation; (3-20-20)T
- b. The Lawful-Hemp Verification; (3-20-20)T
- c. The Laboratory Report; and (3-20-20)T
- d. The Bill of Lading. (3-20-20)T

03. Vehicle Detention. Authorized ITD personnel at ports of entry and any peace officer may detain any vehicle transporting hemp and said detention shall be as long as reasonably necessary to effectuate inspection, sampling, and weighing of any hemp. (3-20-20)T

04. Transporter Consent to Inspection. Any transporter of hemp shall consent to inspection of the shipment to ensure that the hemp complies with the 2014 Farm Bill or the 2018 Farm Bill and 7 C.F.R. §990.1 et seq., and to randomly-selected, reasonably-sized samples, retained by the inspecting peace officer for further off-sight testing. Transporters shall not be entitled to compensation for these de minimis samples. (3-20-20)T

05. Sample Analysis. Samples shall be subjected to analysis in a manner consistent with the 2018 Farm Bill and 7 C.F.R. §990.1 et seq., to determine total delta-9 tetrahydrocannabinol (THC) including all tetrahydrocannabinolic acid (THCA). Hemp samples not in compliance with the 2018 Farm Bill and 7 C.F.R. §990.1 et seq., may subject the transporter to criminal penalties for marijuana under Chapter 27, Title 37, Idaho Code. (3-20-20)T

06. Shipment Weight. Weight for purposes of enforcement is deemed to be the declared weight on the transporter's bill of lading or the actual weight at time of inspection, whichever is greater. (3-20-20)T

07. Transporter Receipt of Inspection Report. Once the hemp inspection is complete at the port of entry or roadside, hemp transporters will be given an inspection report, which must be presented upon request during any contact with a peace officer in the state of Idaho subsequent to the initial declaration at the port of entry or roadside. (3-20-20)T

~~**08. Permissible Roadways for Transport.** Within the state of Idaho, hemp shall only be transported on interstate highways and in the immediate vicinity of an interstate highway. No hemp shall be transported on any other roadway or highway other than an interstate highway or in the immediate vicinity of an interstate highway except in the case of a detour authorized by ITD, as the transporter is directed by any peace officer, or to facilitate transport to or from Indian Country located wholly or partially within the state of Idaho to or from the closest interstate highway. (3-20-20)T~~

~~**0908. Transporter to Avoid Delay.** Any transporter hauling hemp shall proceed through the state of Idaho with all due speed and avoid any unnecessary delay. (3-20-20)T~~

~~**109. Law Enforcement.** Except when hemp is transported as authorized by these rules, nothing in these rules shall inhibit or restrict any peace officer from enforcing to the fullest extent the laws of this state prohibiting marijuana under Chapter 27, Title 37, Idaho Code. (3-20-20)T~~

~~**110. Failure to Comply.** Failure to comply with any of these rules may subject a transporter to the laws of this state prohibiting marijuana under Chapter 27, Title 37, Idaho Code, including any and all criminal and civil penalties as authorized by law. (3-20-20)T~~

~~**1211. Enforcement of Rule.** The Department may contract with ISDA and ITD as necessary to efficiently carry out these rules. (3-20-20)T~~

~~**1312. Rules Are Effective Upon Adoption.** These rules apply prospectively and nothing within these rules shall authorize or be interpreted to apply to hemp transported in the state of Idaho prior to these rules being adopted. (3-20-20)T~~