

Dear Senators BRACKETT, Johnson, Bock, and  
Representatives PALMER, Shepherd, Ringo:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of  
the Idaho State Police - Motor Carrier:

IDAPA 11.13.01 - The Motor Carrier Rules - Proposed Rule (Docket No. 11-1301-1401);

IDAPA 11.13.01 - The Motor Carrier Rules - Proposed Rule (Docket No. 11-1301-1402).

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 10/27/2014. 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 11/25/2014.

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

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*Serving Idaho's Citizen Legislature*

### MEMORANDUM

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

**FROM:** Principal Legislative Research Analyst - Katharine Gerrity

**DATE:** October 07, 2014

**SUBJECT:** Idaho State Police - Motor Carrier

IDAPA 11.13.01 - The Motor Carrier Rules - Proposed Rule (Docket No. 11-1301-1401)

IDAPA 11.13.01 - The Motor Carrier Rules - Proposed Rule (Docket No. 11-1301-1402)

#### 1. IDAPA 11.13.01 - The Motor Carrier Rules

The Idaho State Police submits notice of proposed rule at IDAPA 11.13.01 - The Motor Carrier Rules. According to the department, Idaho has adopted the Federal Motor Carrier Safety Regulations through incorporation by reference. The department notes, however, that the state has not adopted 49 CFR Part 386 which provides regulations and penalties for out-of-service interstate carriers that continue to operate after being declared an imminent hazard or that have failed to pay outstanding civil penalties. The department indicates that this rule would adopt 49 CFR Part 386, Subparts F & G only. According to the department, the changes will provide law enforcement with the ability to put interstate carriers, who have been declared an imminent hazard, out of service and thus prohibit the carriers from operating on Idaho's highways until the issue is resolved. The department states that "imminent hazard" means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury or a substantial endangerment to health, property or the environment may occur. The department goes on to say that Idaho currently does not have the authority to put these carriers out of service and these carriers pose a significant risk to public health and safety. The department notes that some may also be out of service for failure to pay fines that were previously imposed for violations and the state does not currently have the authority to place these carriers out of service.

The department states that negotiated rulemaking was not conducted because states are required to adopt these rules by reference to remain in compliance with the Federal Motor Carrier Safety Administration and remain eligible for grant funding and highway funds. The rule appears to be authorized pursuant to Sections 67-2901 and 49-901, Idaho Code.

#### 2. IDAPA 11.13.01 - The Motor Carrier Rules

The Idaho State Police submits notice of proposed rule at IDAPA 11.13.01 - The Motor Carrier Rules. According to the department, on October 1, 2012, the Federal MAP-21 legislation went into effect which provides

Mike Nugent, Manager  
Research & Legislation

Cathy Holland-Smith, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

additional exemptions from the Federal Motor Carrier Safety Regulations for interstate operations of "covered farm" vehicles and vehicles engaged in the "transportation of agricultural commodities and farm supplies." The department notes that the rule extends the hours of service exemption for farm and agricultural commodity, retail and wholesale distribution points from 100 to 150 air miles. The department indicates that covered farm vehicles are exempted from most of the regulations within 150 air mile radius of the farm or ranch if the gross vehicle weight rating of the vehicle is over 26,001 pounds. If the weight is less than that, the vehicle is exempt, regardless of the distance from the farm or ranch.

The department states that negotiated rulemaking was not conducted because states are required to adopt these rules by reference to remain in compliance with the Federal Motor Carrier Safety Administration and remain eligible for grant funding and highway funds. The rule appears to be authorized pursuant to Sections 67-2901 and 49-901, Idaho Code.

cc: Idaho State Police - Motor Carrier  
Capt. William Reese

**IDAPA 11 - IDAHO STATE POLICE  
ISP COMMERCIAL VEHICLE SAFETY**

**11.13.01 - THE MOTOR CARRIER RULES**

**DOCKET NO. 11-1301-1401**

**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 67-2901 and 49-901, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

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:

Idaho has adopted the Federal Motor Carrier Safety Regulations through incorporation by reference. In the past, Idaho has not adopted 49 CFR Part 386, which provides regulations and penalties for out of service provisions for interstate carriers who continue to operate after being declared an imminent hazard and/or have failed to pay outstanding civil penalties.

This rule would adopt 49 CFR Part 386, Subparts F & G only. These changes will provide law enforcement the ability to put interstate carriers, who have been declared an imminent hazard, out of service and thus prohibit the carriers from operating on Idaho's highways until the issue is resolved. Imminent hazard means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur. Currently Idaho does not have the authority to put these carriers out of service and these carriers pose a significant risk to public health and safety. Some carriers may also be out of service for failure to pay fines that were previously imposed for violations. Currently Idaho does not have the authority to place these carriers out of service.

States are required to incorporate these regulations by reference to maintain compliance with the Federal Motor Carrier Safety Administration and remain eligible for grant funding and highway funds.

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

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

Adoption of these rules will not affect general or dedicated funds. If the rules are not adopted Idaho could sustain a reduction in federal grant funding as well as have a negative impact on dedicated funding.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because states are required to adopt these rules by reference to remain in compliance with the Federal Motor Carrier Safety Administration (FMCSA). The rules were adopted by FMCSA in compliance with the federal law and are published in the Federal Register and the Code of Federal Regulations.

**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:

All states adopt the Federal Motor Carrier Safety Regulations for interstate transportation; otherwise, a driver would have to comply with different rules in each state. Standardized rules provide for consistent transportation safety nationwide.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Capt. William Reese, Idaho State Police

Commercial Vehicle Safety (208) 884-7220 or [william.reese@isp.idaho.gov](mailto:william.reese@isp.idaho.gov).

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 29th Day of August, 2014.

Colonel Ralph W. Powell, Director  
Idaho State Police  
700 S. Stratford Drive  
Meridian, ID 83642  
Tel: (208) 884-7003 / Fax: (208) 884-7090

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1301-1401**  
**(Only those Sections being amended are shown.)**

**019. CARRIER SAFETY REQUIREMENTS (RULE 19).**

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

(3-30-07)

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

(3-30-07)

**b.** Intrastate carriers operating commercial motor vehicles transporting property with a GVW, GVWR, GCW or GCWR greater than ten thousand (10,000) pounds and up to twenty-six thousand (26,000) pounds, subject to the authority of the Idaho State Police, must comply with 49 CFR Part 390 Subpart A, Part 391.15, Parts 392, 393, and Part 396.1, 396.3(a), (a)(1), and (a)(2), and 396.5 through 396.9 and the law and rules of the state of Idaho. All intrastate carriers transporting placardable quantities of hazardous material under 49 CFR Part 172, Subpart F and passengers, meeting the definition of a commercial motor vehicle, must comply with 49 CFR Parts 356, 365, 382, 383, 385, 387, 388 and 390 through 399, and the law and rules of the state of Idaho (except Part 391.11(b)(1) for intrastate carriers).

(3-30-07)

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

(3-30-07)

**02. Obligation of Familiarity With Rules.** All interstate and foreign carriers and all intrastate carriers subject to these Rules at IDAPA 11.13.01, "The Motor Carrier Rules," Section 019 must obtain copies of the federal regulations adopted by reference in Subsection 019.01 and make them available to their drivers and other personnel affected by the regulations. Failure to be familiar with these federal regulations adopted by reference is a violation of this Subsection 019.02 for any carrier subject to those regulations. The federal regulations adopted by reference

address the following subject matter: (4-5-00)

- a. Part 356. Motor Carrier Routing Regulations. (3-29-10)
- b. Part 365. Rules Governing Application for Operating Authority. (3-29-10)
- c. Part 382. Controlled Substance and Alcohol Use and Testing. (4-5-00)
- d. Part 383. Commercial Driver's License Standards; Requirements and Penalties. (4-5-00)
- e. Part 385. Safety Fitness Procedures. (3-29-10)

f. Part 386.71-84. Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings. ( )

- ~~f~~g. Part 387. Minimum Levels of Financial Responsibility. (3-29-10)
- ~~g~~h. Part 388. Cooperative Agreements with States. (4-5-00)
- ~~h~~i. Part 390. Federal Motor Carrier Safety Regulations: General. (4-5-00)
- ~~i~~j. Part 391. Qualifications of Drivers. (4-5-00)
- ~~j~~k. Part 392. Driving of Commercial Motor Vehicles. (3-29-10)
- ~~k~~l. Part 393. Parts and Accessories Necessary for Safe Operation. (4-5-00)
- ~~l~~m. Part 395. Hours of Service of Drivers. (4-5-00)
- ~~m~~n. Part 396. Inspection, Repair and Maintenance. (4-5-00)
- ~~n~~o. Part 397. Transportation of Hazardous Materials; Driving and Parking Rules. (4-5-00)
- ~~o~~p. Part 398. Transportation of Migrant Workers. (4-5-00)
- ~~p~~q. Part 399. Employee Safety and Health Standards. (4-5-00)

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

**04. Version of Federal Regulations Adopted.** The federal regulations adopted by reference in this Section 019 are those contained in the compilation of 49 CFR Parts 356, 365, 382, 383, 385, 387, 388, 390 through 399 published in the Code of Federal Regulations volumes dated March 1, 2012. (4-4-13)

**05. Availability of Incorporated Documents.** The 49 CFRs can be found on the Federal Motor Carrier Safety Administration website at [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov) or copies may be viewed at the office of the Idaho State Police. (3-29-10)

**IDAPA 11 - IDAHO STATE POLICE  
ISP COMMERCIAL VEHICLE SAFETY**

**11.13.01 - THE MOTOR CARRIER RULES**

**DOCKET NO. 11-1301-1402**

**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 67-2901 and 49-901, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

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:

On October 1, 2012, the Federal MAP-21 legislation went into effect. The legislation provides additional exemptions from the Federal Motor Carrier Safety Regulations (FMCSR) for interstate operations of "covered farm" vehicles and vehicles engaged in the "transportation of agricultural commodities and farm supplies."

The rule extends the hours of service exemption for farm and agricultural commodity, retail and wholesale distribution points from 100 to 150 air miles. Covered farm vehicles are exempted from most of the FMCSRs within 150 air mile radius of the farm or ranch, if the gross vehicle weight rating (GVWR) of the vehicle is over 26,001 pounds. If the GVWR of the vehicle is 26,001 pounds or less the vehicle is exempt, regardless of the distance from the farm or ranch. Covered farm vehicles are only required to comply with FMCSRs, 49 CFR Parts 385, 390, 391 (except Subpart E: Physical Qualifications & Examinations), 392 and 393.

States are required to adopt these regulations by reference to maintain compliance with the Federal Motor Carrier Safety Administration and remain eligible for grant funding and highway funds.

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

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

Adoption of these rules will not affect general or dedicated funds. If the rules are not adopted Idaho could sustain a reduction in federal grant funding as well as have a negative impact on dedicated funding.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because states are required to adopt these rules by reference to remain in compliance with the Federal Motor Carrier Safety Administration (FMCSA). The rules were adopted by FMCSA in compliance with the federal law and are published in the Federal Register and the Code of Federal Regulations.

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DATED this 29th Day of August, 2014.

Colonel Ralph W. Powell, Director  
Idaho State Police  
700 S. Stratford Dr., Meridian, ID 83642  
(208) 884-7003/(208) 884-7090

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-0301-1402  
(Only those Sections being amended are shown.)**

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

**b.** Intrastate carriers operating commercial motor vehicles transporting property with a GVW, GVWR, GCW or GCWR greater than ten thousand (10,000) pounds and up to twenty-six thousand (26,000) pounds, subject to the authority of the Idaho State Police, must comply with 49 CFR Part 390 Subpart A, Part 391.15, Parts 392, 393, and Part 396.1, 396.3(a), (a)(1), and (a)(2), and 396.5 through 396.9 and the law and rules of the state of Idaho. All intrastate carriers transporting placardable quantities of hazardous material under 49 CFR Part 172, Subpart F and passengers, meeting the definition of a commercial motor vehicle, must comply with 49 CFR Parts 356, 365, 382, 383, 385, 387, 388 and 390 through 399, and the law and rules of the state of Idaho (except Part 391.11(b)(1) for intrastate carriers). (3-30-07)

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**a.** Part 356. Motor Carrier Routing Regulations. (3-29-10)

**b.** Part 365. Rules Governing Application for Operating Authority. (3-29-10)



- c. Part 382. Controlled Substance and Alcohol Use and Testing. (4-5-00)
- d. Part 383. Commercial Driver's License Standards; Requirements and Penalties. (4-5-00)
- e. Part 385. Safety Fitness Procedures. (3-29-10)
- f. Part 387. Minimum Levels of Financial Responsibility. (3-29-10)
- g. Part 388. Cooperative Agreements with States. (4-5-00)
- h. Part 390. Federal Motor Carrier Safety Regulations: General. (4-5-00)
- i. Part 391. Qualifications of Drivers. (4-5-00)
- j. Part 392. Driving of Commercial Motor Vehicles. (3-29-10)
- k. Part 393. Parts and Accessories Necessary for Safe Operation. (4-5-00)
- l. Part 395. Hours of Service of Drivers. (4-5-00)
- m. Part 396. Inspection, Repair and Maintenance. (4-5-00)
- n. Part 397. Transportation of Hazardous Materials; Driving and Parking Rules. (4-5-00)
- o. Part 398. Transportation of Migrant Workers. (4-5-00)
- p. Part 399. Employee Safety and Health Standards. (4-5-00)

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

**04. Version of Federal Regulations Adopted.** The federal regulations adopted by reference in this Section 019 are those contained in the compilation of 49 CFR Parts 356, 365, 382, 383, 385, 387, 388, 390 through 399 published in the Code of Federal Regulations volumes dated March ~~31~~ 20~~12~~14. ~~(4-4-13)~~( )

**05. Availability of Incorporated Documents.** The 49 CFRs can be found on the Federal Motor Carrier Safety Administration website at [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov) or copies may be viewed at the office of the Idaho State Police. (3-29-10)