

Dear Senators McGEE, Hammond & Werk, and
Representatives JoAn WOOD, Hart & Mary Lou Shepherd:

The Legislative Services Office, Research and Legislation, has received the enclosed
rules of the Idaho Transportation Dept.:

IDAPA 39.03.17 - Rules Governing Permits for Manufactured Homes, Modular

Buildings & Office Trailers (Docket #39-0317-0901);

39.03.18 - Rules Governing Overlegal Permits for Relocation of Buildings

Or Houses (Docket \$39-0318-0901).

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 9-10-09. 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 10-8-09.

_____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 334-2475, or send a written request to the address or FAX number indicated on the memorandum enclosed.

MEMORANDUM

TO: Rules Review Subcommittees of the Senate Transportation Committee and the House Transportation and Defense Committee

FROM: Research & Legislation Staff - Eric Milstead

DATE: August 21, 2009

SUBJECT: Temporary and Proposed Rules of the Idaho Transportation Department

1. IDAPA 39.03.17 - Rules Governing Permits for Manufactured Homes, Modular Buildings, and Office Trailers (Docket No. 39-0317-0901)

The Idaho Transportation Department submits notice of temporary and proposed rulemaking at IDAPA 39.03.17 - Rules Governing Permits for Manufactured Homes, Modular Buildings, and Office Trailers. The temporary and proposed rule provides that upon the submission of a written request to the Department and subsequent Departmental approval of such written request, a manufactured house larger than what is currently authorized, may be transported. The temporary and proposed rule provides that a “traffic control plan” may also be required with the submission.

We have only a couple of comments on the temporary and proposed rule. In Rules 200.03 and 300.02, the temporary and proposed rule states:

“All movements with a base width in excess of sixteen (16) feet and an overall width in excess of eighteen (18) feet must submit a written request for movement of these units prior to being manufactured...”

We note two matters regarding the above quoted language: 1) It appears that the language requires the written request be submitted by “All movements...” Perhaps this language is well understood in the profession at issue, but it strikes us as somewhat odd that a “movement” is required to submit a request. 2) The language quoted above also uses the term “must” in a situation where it may be more appropriate to use the term “shall”.

The temporary rule took effect July 1, 2009. The proposed rule appears to be authorized pursuant to section 40-312, Idaho Code.

2. IDAPA 39.03.18 - Rules Governing Overlegal Permits for Relocation of Buildings or Houses (Docket No. 39-0318-0901)

The Idaho Transportation Department submits notice of temporary and proposed rulemaking at IDAPA 39.03.18- Rules Governing Overlegal Permits for Relocation of Buildings or Houses. The temporary and proposed rule provides updated contact information and revises one substantive provision, Rule 100.01 by deleting the mandatory term “shall” and replacing it with the discretionary term “may”. This change is consistent with the provisions of the temporary and proposed rule discussed in the preceding docket of this memorandum.

The department notes that negotiated rulemaking was not used because the temporary and proposed rule is in response to industry request and will confer a benefit by providing for reduced restrictions. The temporary rule became effective July 1, 2009.

The proposed rule appears to be authorized pursuant to Section 40-312, Idaho Code.

cc: Idaho Transportation Department
Linda Emery

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

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

DOCKET NO. 39-0317-0901

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

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

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

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

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

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

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

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

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

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

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

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

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

DATED this 3rd day of July, 2009.

Linda L. Emry, Administrative Rules Coordinator
Office of Governmental Affairs
Idaho Transportation Department

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

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 39-0317-0901

000. LEGAL AUTHORITY.

This rule, governing the movement of manufactured homes, modular buildings, and office trailers in excess of the sizes allowed by Sections 49-1004 and 49-1010, Idaho Code, is adopted under the authority of Sections ~~40-312 and 49-1004~~, Idaho Code. ~~(8-25-94)~~(7-1-09)T

(BREAK IN CONTINUITY OF SECTIONS)

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

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

02. Office Hours. Daily office hours are 7:00 a.m. to 5:00 p.m. except Saturday, Sunday and state holidays. ~~(4-11-06)~~(7-1-09)T

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

(BREAK IN CONTINUITY OF SECTIONS)

200. MANUFACTURED HOMES AND OFFICE TRAILERS BEING TOWED.

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

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

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

**** Determination of manufactured home or office trailer width shall be exclusive of such appurtenances as clearance lights, door handles, window fasteners, door and window trim, moldings and load securement devices up to but not in excess of three (3) inches on each side of load.** ~~(3-23-98)~~(7-1-09)T

04. Eaves. No restrictions on eaves as long as the eighteen (18) feet maximum overall width limitation is not exceeded, or for those movements approved by the department on a case-by-case basis. ~~(4-11-06)~~(7-1-09)T

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

06. Running Gear Assembly -- General. The entire system (frame, drawbar, and coupling

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

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

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

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

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

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

(BREAK IN CONTINUITY OF SECTIONS)

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

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

02. Width. Not in excess of sixteen (16) feet at the base and eighteen (18) feet overall, except on a case-by-case basis as approved by the department. All movements with a base width in excess of sixteen (16) feet and an overall width in excess of eighteen (18) feet must submit a written request for movement of these units prior to being manufactured and a traffic control plan may also be required with the submission. Prior approval for the movement must be granted before an overlegal permit is issued. ~~(3-23-98)~~(7-1-09)T

03. Eaves. No restrictions on eaves as long as the eighteen (18) foot maximum overall width limitation is not exceeded, or for those movements approved by the department on a case-by-case basis. ~~(4-11-06)~~(7-1-09)T

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

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

DOCKET NO. 39-0318-0901

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

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

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

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

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

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

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

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

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

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

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

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

DATED this 3rd day of July, 2009.

Linda L. Emry, Administrative Rules Coordinator
Office of Governmental Affairs
Idaho Transportation Department

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

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 39-0318-0901

000. LEGAL AUTHORITY.

This rule, governing the movement of vehicles or loads which are in excess of the sizes or weights allowed by 49-1001, 49-1002, 49-1004, or 49-1010, is adopted under the authority of Sections 40-312 ~~and 49-1004~~, Idaho Code.
(10-2-89)(7-1-09)T

(BREAK IN CONTINUITY OF SECTIONS)

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for this chapter. (7-1-09)T

003. ADMINISTRATIVE APPEALS.

Administrative appeals under this chapter shall be governed by the rules of administrative procedure of the attorney general, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (7-1-09)T

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter. (7-1-09)T

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

01. Street and Mailing Address. The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of PO Box 7129, Boise, ID 83707-1129. (7-1-09)T

02. Office Hours. Daily office hours are 7:30 a.m. to 5 p.m. except Saturday, Sunday and state holidays. (7-1-09)T

03. Telephone and Fax Numbers. The central office may be contacted during office hours by phone at 208-334-8420 or by fax at 334-8419. (7-1-09)T

006. PUBLIC RECORDS ACT COMPLIANCE.

All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. (7-1-09)T

0029. -- 009. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

100. GENERAL REQUIREMENTS.

01. Buildings Exceeding Sixteen Feet Wide. Overlegal permits for the transportation of buildings or houses having a basic width in excess of sixteen (16) feet shall be limited to the relocation of previously used buildings. The transportation of new, centrally manufactured houses, buildings, building sections, mobile or modular homes, etc., ~~shall~~ may be denied overlegal permits if the width at the base is in excess of sixteen (16) feet.
(4-5-00)(7-1-09)T

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