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**IDAPA 39
TITLE 02
Chapter 05**

39.02.05 - RULES GOVERNING LIEN FILING - CONSTRUCTIVE NOTICE

000. LEGAL AUTHORITY.

This rule is adopted under the authority of Sections 49-201, 49-501, 49-507, and 49-510, Idaho Code and the Vehicle Title Act, Chapter 5, Title 49, Idaho Code. (9-14-92)

001. TITLE AND SCOPE.

This rule clarifies the process by which an applicant can establish the date of lien creation and how the department will enter the date and time of the filing of a lien on a certificate of title. (9-14-92)

002. -- 009. (RESERVED).

010. DEFINITIONS.

01. Date of Lien Creation. The date upon which a security agreement, contract, or other appropriate document is executed creating a security interest or lien in a secured party. (9-14-92)

02. Notarized Transaction. A transaction wherein the underlying document creating the security interest is acknowledged or verified before a notary public as evidenced by a certificate of acknowledgment or verification. The Department shall also regard a transaction as a "Notarized Transaction" if the owner or purchaser and the secured party execute a notarized statement that a security interest has been created. The statement must also specifically identify the date and time of its creation and the vehicle by make, model, model year, and vehicle identification number (VIN). (9-14-92)

011. -- 099. (RESERVED).

100. GENERAL PROVISIONS.

01. Date and Time of Lien Creation Filing. All title applications submitted to the Department or its agent for filing shall include the date and time of creation of any lien or security interest in the vehicle. The notarized underlying documents creating the lien or security interest shall not be submitted unless requested by the Department or its agent. (9-14-92)

02. Lien Filing Requirements, Filed Within Thirty (30) Days. If the title application is filed with the Department or its agent within thirty (30) days of the creation of the lien, and a lien creation date and time is shown on the documents, then that date and time shall be endorsed upon the certificate of title as the date of filing, except: (9-14-92)

a. If the application or underlying documentation does not indicate the hour of creation of the lien, then it will be presumed to be nine-o'clock (9:00) a.m. as of the date of the creation of the lien. (9-14-92)

b. If no date of lien creation is shown on the document, then the date and time of receipt will be endorsed upon the certificate of title as the date of filing. (9-14-92)

03. Lien Filing Requirements, Not Filed Within Thirty (30) Days. If the title application is not filed with the Department or its agent within thirty (30) days of the creation of the lien, then the date and hour of the filing shall be endorsed upon the certificate of title as the date of perfection. (9-14-92)

04. Out of State Transfer. If a lien was previously recorded on an out-of-state title, and the title is being surrendered to Idaho for issuance of a new certificate of title and the lien is still in effect, the Department will honor the previously recorded time and date shown on the out-of-state title, provided that at least one of the previous owners' names will remain on the new Idaho title. Additionally, if an out-of-state title is received without a recorded date and time, the Department will assume that the issue date was the date of recording and the time will be nine-o'clock (9:00) a.m. (9-14-92)

05. Name Change Only. If a name change is being requested on a title containing a recorded lien, and the lien is not being released, the original recorded time and date will be retained for the lien filing, provided that the new title will retain the name of the same lienholder and at least one (1) of the previous owners. (9-14-92)

06. Taxable Transfer of Ownership. In the case of a taxable transfer of ownership, where the lien was not released, and the new title will have the same lienholder, a new recorded time and date will be assigned to the lien, unless the lienholder has specified that the new owners have assumed the lien. (9-14-92)

07. Lien Assumptions. If a lienholder specifies that a contract has been assumed by a new owner, and the new owner has assumed the terms of the previous lien, the original time and date will be retained on the new certificate of title. (9-14-92)

101. -- 199. (RESERVED).

200. EFFECTIVE DATE.

The provisions concerning lien creation dates pertain to vehicles sold with a lien created on or after July 1, 1992. (9-14-92)

201. -- 999. (RESERVED).