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**IDAPA 11
TITLE 13
CHAPTER 01**

11.13.01 - THE MOTOR CARRIER RULES

000. LEGAL AUTHORITY.

These rules are promulgated pursuant to the authority granted to the Idaho State Police pursuant to Section 67-2901A, Idaho Code. (4-5-00)

001. TITLE AND SCOPE.

01. Title. The title of these rules is IDAPA 11.13.01, "The Motor Carrier Rules". (4-5-00)

02. Scope. These rules apply to intrastate motor carriers under the jurisdiction of the Idaho State Police and, when provided in the rule, to interstate or foreign carriers providing transportation of persons or property over highways of the state of Idaho by motor vehicles in the furtherance of their business or for hire. These rules should be construed in connection with applicable state laws, not preempted by federal laws, both of which govern the interpretation of these rules. (4-5-00)

002. WRITTEN INTERPRETATIONS--AGENCY GUIDELINES.

The Idaho State Police Safety Program Manager is authorized to make and give informal interpretations of the terms and definitions found in the Idaho Code, this Department's rules applicable to motor carriers and other filings relating to motor carriers maintained by the Department pursuant to law. In addition, written interpretations to these rules are available and maintained in the files of the Safety Program Manager. The Safety Program Manager may be contacted in writing at the Idaho State Police, PO Box 700, Meridian, Idaho 83680-0700, or may be reached by telephone at (208) 884-7220. For future rulemakings written interpretations in the form of explanatory comments accompanying the notice of proposed rulemaking that originally proposed the rules and review of comments submitted in the rulemaking decision adopting these rules are published in the issues of the Idaho Administrative Bulletin proposing or adopting the rules. The Department reserves to itself the authority to issue formal declaratory orders construing these items. (4-5-00)

003. ADMINISTRATIVE APPEALS.

All administrative appeals under the Motor Carrier Rules are conducted under IDAPA 04.11.01 et seq, "Idaho Rules of Administrative Procedure of the Attorney General". (4-5-00)

004. PUBLIC RECORD ACT COMPLIANCE.

All materials in motor carrier files, except those that are investigatory records under Section 9-340(22), Idaho Code, are public records available for inspection, examination and copying. Investigatory records are not public records, but may be examined or disclosed by the object of the investigation pursuant to Section 9-335, Idaho Code. (4-5-00)

005. DEFINITIONS.

Whenever any term used in these rules is defined or referred to in the Idaho Code, that term takes its statutory definition in these rules. (4-5-00)

01. Commercial Motor Vehicle (CMV). Means a motor vehicle that has any of the following three (3) characteristics: (4-5-00)

a. A gross vehicle weight (GVW), gross vehicle weight rating (GVWR), gross combination weight (GCW), or gross combination weight rating (GCWR) of four thousand five hundred thirty-seven kilograms (4,537 kg.), which is equal to ten thousand one pounds (10,001 lbs.), or more. (4-5-00)

b. Regardless of weight, designed or used to transport sixteen (16) or more passengers, including a driver. (4-5-00)

c. Regardless of weight, used in transportation of hazardous materials and is required to be placarded under the HMRs (49 CFR Part 172, Subpart F). (4-5-00)

- 02. Department.** Means the Idaho State Police. (4-5-00)
- 03. Highway.** Means the public roads, highways, and streets of the State. (4-5-00)
- 04. Interstate Carrier.** Means any person who or which owns or operates any motor vehicle in the state of Idaho or on the highways of the state of Idaho, in commerce between the States, or between the States and a foreign Nation, used or maintained for the transportation of persons or property. (4-5-00)
- 05. Motor Carrier.** Means an individual, partnership, corporation or other legal entity engaged in the transportation by motor vehicle of persons or property in the furtherance of a business or for hire. (4-5-00)
- 06. Motor Vehicle.** Means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highway in the transportation of passengers and/or property, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails. (4-5-00)
- 07. Person.** Means any individual, firm, copartnership, corporation, company, association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof. (4-5-00)
- 08. Transportation.** Includes all vehicles operated by, for, or in the interest of any motor carrier irrespective of ownership or contact, express or implied, together with all services, facilities and property furnished, operated or controlled by any such carrier or carriers and used in the transportation of passengers and/or property in commerce in the state of Idaho. (4-5-00)
- 006. CITATION.**
The official citation of these rules is IDAPA 11.13.01.000 et seq. For example, this rule is cited as IDAPA 11.13.01.006. (4-5-00)
- 007. FORMS.**
The Idaho State Police Safety Program Manager is authorized to produce and distribute forms and reports to carry out these rules. (4-5-00)
- 008. (RESERVED).**
- 009. CODE OF FEDERAL REGULATIONS, FEDERAL REGISTER.**
The Code of Federal Regulations (CFR) is referred to in Sections 012, 018 and 019. Federal Regulations are adopted by reference in Sections 018 and 019. The annual volumes of the CFRs may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Amendments to the annual volumes are published in the Federal Register, pending their incorporation in the next annual volumes. The CFRs are also available for inspection and copying at the office of the Idaho State Police and the Idaho State Law Library. Whenever a federal regulation is adopted by reference in these rules, subsequent recom compilations are also adopted by reference, but subsequent amendments are not. (4-5-00)
- 010. RELIEF FROM REGULATIONS.**
The Department may issue a declaration of emergency relieving intrastate carriers from the requirements of 49 CFR Parts 390 through 399 adopted by reference in Section 019 following the declaration of an emergency. The maximum duration of the declaration of emergency, the particular rules in 49 CFR Parts 390 through 399 from which the carrier is relieved from complying, and all other aspects relief from regulation shall be the same as provided in those Federal regulations. (4-5-00)
- 011. (RESERVED).**
- 012. SAFETY FITNESS PROCEDURES.**
- 01. Purpose And Scope.** (4-5-00)
- a.** The purpose of Section 012 is to establish procedures to determine the safety fitness of motor carriers, assign safety ratings, take remedial action when required and prohibit motor carriers receiving a safety rating

- of “unsatisfactory” from operating a commercial motor vehicle: (4-5-00)
- i. To provide transportation of hazardous materials for which vehicle placarding is required in accordance with 49 CFR Part 172, subpart F; or (4-5-00)
 - ii. To transport more than fifteen (15) passengers, including the driver. (4-5-00)
- b.** All provisions of Section 012 apply to all motor carriers subject to the requirement of this subchapter. (4-5-00)
- 02. Definitions.** The following definitions apply to Section 012. (4-5-00)
- a.** Applicable safety regulations or requirements. Means 49 CFR subtitle, chapter III, subchapter B- Federal Motor Carrier Safety Regulations; and 49 CFR subtitle B, chapter I, subchapter C- Hazardous Materials Regulations. The annual volumes of the CFRs may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Amendments to the annual volumes are published in the Federal Register, pending their incorporation in the next annual volumes. The CFRs are also available for inspection and copying at the office of the Idaho State Police and the Idaho State Law Library. Whenever a federal regulation is adopted by reference in these rules, subsequent recom compilations are also adopted by reference, but subsequent amendments are not. (4-5-00)
 - b.** Preventable accident on the part of a motor carrier. Means an accident that: (4-5-00)
 - i. Involved a commercial motor vehicle, and (4-5-00)
 - ii. Could have been averted but for an act, or failure to act, by the motor carrier or the driver. (4-5-00)
 - c.** Reviews. For the purposes of Section 012: (4-5-00)
 - i. Compliance review. Means an onsite examination of motor carrier operations, which may be at the carrier’s place of business, including driver’s hours of service, vehicle maintenance and inspection, driver qualifications, commercial driver’s license requirements, financial responsibility, accidents, hazardous materials, and such other related safety and transportation records to determine safety fitness. (4-5-00)
 - (1) A compliance review may be conducted in response to a request to change a safety rating, to investigate potential violations of safety regulations by motor carriers, or to investigate complaints or other evidence of safety violations. (4-5-00)
 - (2) A compliance review may result in the initiation of an enforcement action. (4-5-00)
 - ii. Safety management controls. Means the systems, policies programs, practices, and procedures used by a motor carrier to ensure compliance with applicable safety and hazardous materials regulations which ensure the safe movement of products and passengers through the transportation system, and to reduce the risk of highway accidents and hazardous materials incidents resulting in fatalities, injuries, and property damage. (4-5-00)
 - d.** Safety ratings. Means, for the purposes of this Section 012: (4-5-00)
 - i. Satisfactory safety rating. Means that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in Subsection 012.03 of this rule. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier. (4-5-00)
 - ii. Conditional safety rating. Means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in occurrences listed in Subsection 012.03 of this rule. (4-5-00)

iii. Unsatisfactory safety rating. Means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in Subsection 012.03 of this rule. (4-5-00)

iv. Unrated carrier. Means that a safety rating has not been assigned to the motor carrier. (4-5-00)

03. Safety Fitness Standard. The satisfactory safety rating is based on the degree of compliance with the safety fitness standard for motor carriers. To meet the safety fitness standard, the motor carrier shall demonstrate that it has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with: (4-5-00)

a. Commercial driver's license standards violations. (4-5-00)

b. Inadequate levels of financial responsibility. (4-5-00)

c. The use of unqualified drivers. (4-5-00)

d. Improper use and driving of motor vehicles. (4-5-00)

e. Unsafe vehicles operating on the highways. (4-5-00)

f. Failure to maintain accident register and copies of accident reports. (4-5-00)

g. The use of fatigued drivers. (4-5-00)

h. Inadequate inspection, repair, and maintenance of vehicles. (4-5-00)

i. Transportation of hazardous materials, driving and parking rule violations. (4-5-00)

j. Violation of hazardous materials regulations. (4-5-00)

k. Motor vehicle accidents and hazardous materials incidents. (4-5-00)

04. Factors to be Considered in Determining a Safety Rating. The factors to be considered in determining the safety fitness and assigning a safety rating include information from safety reviews, compliance reviews and any other data. The factors may include all or some of the following: (4-5-00)

a. Adequacy of safety management controls. The adequacy of controls may be questioned if their degree of formalization or automation is found to be substantially below the norm for similar carriers. Violations, accidents or incidents substantially above the norm for similar carriers will be strong evidence that management controls are either inadequate or not functioning properly. (4-5-00)

b. Frequency and severity of regulatory violations. (4-5-00)

c. Frequency and severity of driver/vehicle regulatory violations identified in roadside inspections. (4-5-00)

d. Number and frequency of out-of-service driver/vehicle violations. (4-5-00)

e. Increase or decrease in similar types of regulatory violations discovered during safety or compliance reviews. (4-5-00)

f. Frequency of accidents; hazardous materials incidents; accident rate per million miles; preventable accident rate per million miles; and other accident indicators; and whether these accident and incident indicators have improved or deteriorated over time. (4-5-00)

g. The number and severity of violations of state safety rules, regulations, standards, and orders

applicable to commercial motor vehicles and motor carrier safety that are compatible with Federal rules, regulations, standards and orders. (4-5-00)

05. Determination of Safety Fitness. Following a compliance review of a motor carrier operation, the Idaho State Police Safety Program Manager, using the factors prescribed in Subsection 012.04 of this rule, shall determine whether the present operations of the motor carrier are consistent with the safety fitness standards set forth in Subsection 012.03 of this rule. (4-5-00)

06. Notification of a Safety Fitness Rating. Following a compliance review, the Idaho State Police Safety Program Manager will determine the safety fitness of a motor carrier and notify the motor carrier and the Department in writing. Notification will include a list of those items for which immediate corrective actions must be taken. (4-5-00)

07. Motor Carrier Certification. Upon notification of violations cited in the compliance review and recommendations made to correct violations a motor carrier shall certify to the Idaho State Police Safety Program Manager, within thirty (30) days, whether all corrective actions identified by the safety review have been taken. Certification required by this subsection must be made to the Idaho State Police Safety Program Manager. Failure to certify or falsely certifying under Section 012 of this Chapter will be considered a reporting violation under Section 67-2901B(3), Idaho Code. (4-5-00)

013. -- 017. (RESERVED).

018. TRANSPORTATION OF HAZARDOUS MATERIALS, SUBSTANCES, AND WASTES.

01. Adoption of Federal Regulations. Adoption of Federal Regulations 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 are hereby adopted by reference. All interstate and foreign carriers and all intrastate carriers subject to the safety authority of the Idaho State Police while operating in Idaho that transport hazardous materials, substances or wastes listed in, defined by or regulated by 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 must comply with 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 applicable to motor carriers and their shippers, and the laws and rules of the state of Idaho. The annual volumes of the CFRs may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Amendments to the annual volumes are published in the Federal Register, pending their incorporation in the next annual volumes. The CFRs are also available for inspection and copying at the office of the Idaho State Police and the Idaho State Law Library. Whenever any of these federal regulations exempt intrastate carriers from any of their requirements, this Rule at IDAPA 11.13.01, "The Motor Carrier Rules," Section 018, removes that exemption and subjects intrastate carriers to the same requirements. The Department asserts its authority under this Rule, IDAPA 11.13.01, "The Motor Carrier Rules," Section 018, to the maximum extent allowed by Section 67-2901A, Idaho Code, Public Laws 89-670 and 89-170 (see 49 U.S.C. 502(c)(3)), 49 CFR Part 388. (4-5-00)

02. Obligation of Familiarity With Rules. All interstate and foreign carriers and all intrastate carriers subject to this Rule at IDAPA 11.13.01, "The Motor Carrier Rules," Section 018, that transport hazardous materials, substances or wastes listed in, defined by or regulated by 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 must obtain copies of these federal regulations and make them available to their drivers and other personnel handling hazardous materials, substances or wastes and must familiarize their drivers and other personnel handling hazardous materials, substances or wastes with any regulation pertaining to the particular material, substance or waste that is transported. The annual volumes of the CFRs may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Amendments to the annual volumes are published in the Federal Register, pending their incorporation in the next annual volumes. The CFRs are also available for inspection and copying at the office of the Idaho State Police and the Idaho State Law Library. Failure to be familiar with these federal regulations adopted by reference is a violation of Section 018 of this Chapter for any carrier transporting such cargoes. The federal regulations adopted by reference in this Section 018 have the following subject matter:

- a. Part 107. Hazardous Materials Program Procedures. (4-5-00)
- b. Part 171. General Information, Regulations and Definitions. (4-5-00)

- c. Part 172. Hazardous Materials Tables and Hazardous Materials Communications Regulations. (4-5-00)
- d. Part 173. Shippers-General Requirements for Shipments and Packaging. (4-5-00)
- e. Parts 174-176. (Not adopted regulations for railroads, aircraft and vessels). (4-5-00)
- f. Part 177. Carriage by Public Highway. (4-5-00)
- g. Part 178. Shipping Container Specifications. (4-5-00)
- h. Part 179. (Not adopted regulations for rail tanker cars). (4-5-00)
- i. Part 180. Continuing Qualification and Maintenance of Packaging. (4-5-00)

03. Recognition of Federal Waivers. Whenever a carrier has applied to a federal agency and been granted a waiver of the packaging requirements of the federal regulations adopted in Subsection 018.01, the federal waiver will also be recognized under these rules. The Department will not administer a program to duplicate consideration or approval of federal waivers on the state level. (4-5-00)

04. Hazardous Materials. As used in this Section 018, means a substance or material, including a hazardous substance, listed by the U.S. Department of Transportation in the "Hazardous Materials Table" (49 CFR 172.101), which has been determined to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce. Hazardous materials listed include: (4-5-00)

- a. Radioactive materials; (4-5-00)
- b. Explosives, poisons; (4-5-00)
- c. Flammable liquids; (4-5-00)
- d. Flammable solids or flammable gases; (4-5-00)
- e. Combustible liquids; (4-5-00)
- f. Compressed gases; (4-5-00)
- g. Blasting agents; (4-5-00)
- h. Oxidizers; (4-5-00)
- i. Corrosives; (4-5-00)
- j. Severely irritating materials; or (4-5-00)
- k. Materials with combinations of these properties. (4-5-00)

05. Hazardous Substances. As used in this Section 018, means a material, its mixtures or solutions, that is listed in the Appendix to 49 CFR 172.101 and that is in a quantity in one (1) package that equals or exceeds the reportable quantity (RQ) listed in the Appendix to 49 CFR 172.101. (4-5-00)

06. Hazardous Waste. As used in this Section 018, means any material that is subject to the Hazardous Waste Manifest requirements of the U.S. Environmental Protection Agency. See 40 CFR Part 262. (4-5-00)

07. Version of Federal Regulations Adopted. The federal regulations adopted by reference in this Section 018 are those contained in the compilations of 40 CFR Part 262 published in the Code of Federal Regulations volume dated July 1, 1998, and as subsequently recompiled, and those contained in the compilations of 49 CFR Parts

107, 171, 172, 173, 177, 178 and 180 published in the Code of Federal Regulations volume dated October 1, 1998, and as subsequently recompiled, and all amendments to these rules appearing in the Federal Registers. The annual volumes of the CFRs may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Amendments to the annual volumes are published in the Federal Register, pending their incorporation in the next annual volumes. The CFRs are also available for inspection and copying at the office of the Idaho State Police and the Idaho State Law Library. (4-5-00)

019. CARRIER SAFETY REQUIREMENTS.

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. All interstate and foreign carriers and all intrastate carriers 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). 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. 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 this 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. (3-20-04)

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. Authority to Serve a Particular Section - Construction. (3-20-04)
- b. Part 365. How to Apply for Operating Authority. (3-20-04)
- 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 Standards. (4-5-00)
- f. Part 387. Financial Responsibility. (3-20-04)
- 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 Motor Vehicles. (4-5-00)
- 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 Subsection 019 are those contained in the compilation of 49 CFR Parts 356, 365, 382, 383, 385, 387, 388, 390 through 394, and 396 through 399 published in the Code of Federal Regulations volumes dated October 1, 2002, and Parts 393 and 395 published in the Code of Federal Regulations volumes dated January 4, 2004. (3-20-04)

05. Availability of Incorporated Documents. The 49 CFR's can be found at www.fmcsa.dot.gov or copies may be viewed at the central office of the Idaho State Police. (3-20-04)

020. -- 029. (RESERVED).

030. INTERSTATE AND FOREIGN COMMERCE.

Applicability of Rules. The following rules apply to motor carriers when engaged in interstate or foreign commerce in Idaho: (4-5-00)

01. IDAPA 11.13.01, "The Motor Carrier Rules," Section 018. Transportation Of Hazardous Materials, Substances, And Wastes. (4-5-00)

02. IDAPA 11.13.01, "The Motor Carrier Rules," Section 019. Motor Carrier Safety Requirements. (4-5-00)

031. OBEDIENCE AND COMPLIANCE WITH RULES AND REGULATIONS, FORCE OF LAW.

01. Proof of Compliance Required. Whenever requested by an employee of this Department whose duties include enforcement of any of these rules and regulations, all motor carriers and their agents or employees are required to demonstrate proof of compliance with these rules at IDAPA 11.13.01, "The Motor Carrier Rules". (4-5-00)

02. Sanctions. The failure of any motor carrier to obey and comply with these rules at IDAPA 11.13.01, "The Motor Carrier Rules," is just and sufficient cause for imposition of the sanctions authorized by Title 67, Chapter 29, Idaho Code. (4-5-00)

03. Force of Law. These rules at IDAPA 11.13.01, "The Motor Carrier Rules," have the force and effect of law and violations of them may be subject to punishment as a misdemeanor, as provided by Section 67-2901A of the Idaho Code. (4-5-00)

032. -- 999. (RESERVED).

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