

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 Transportation Department:

IDAPA 39.02.03 - Rules Governing Vehicle Dealer's Principal Place of Business - Proposed Rule
(Docket No. 39-0203-1402);

IDAPA 39.03.10 - Rules Governing when an Overlegal Permit is Required - Temporary and Proposed
Rule (Docket No. 39-0310-1401);

IDAPA 39.03.50 - Rules Governing Safety Rest Areas - Proposed Rule (Docket No. 39-0350-1401).

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

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 Transportation Department

IDAPA 39.02.03 - Rules Governing Vehicle Dealer's Principal Place of Business - Proposed Rule (Docket No. 39-0203-1402)

IDAPA 39.03.10 - Rules Governing when an Overlegal Permit is Required - Temporary and Proposed Rule (Docket No. 39-0310-1401)

IDAPA 39.03.50 - Rules Governing Safety Rest Areas - Proposed Rule (Docket No. 39-0350-1401)

1. IDAPA 39.02.03 - Rules Governing Vehicle Dealer's Principal Place of Business

The Idaho Transportation Department submits notice of proposed rule at IDAPA 39.02.03 - Rules Governing Vehicle Dealer's Principal Place of Business. According to the department, the rule will add specificity to Section 49-117(15), Idaho Code, regarding principal place of business requirements, to define the term "reasonable times" for the purpose of customers being able to contact a dealer. The department notes that the change adds a section for "declared business hours" and requires retail dealers to be open twenty hours a week, of which part must be Monday to Friday from 8:00 a.m. to 5:00 p.m., and requires wholesale dealers to be open four hours a week, part of which must be Monday to Friday 8:00 a.m. to 5:00 p.m. According to the department, the rule also adds specific information regarding the Idaho Consumer Asset Recovery Fund (ICAR) to identify how the ICAR fee will be set. The department notes that changes provide that all dealers, unless otherwise exempt, will pay into the fund. The department states that negotiated rulemaking was not conducted because the Dealer Advisory Board agrees with the proposed changes.

We were contacted by the Office of Administrative Rules inquiring as to whether we believed the rule actually represented a fee rule. We contacted the Division of Financial Management which signed off on the Proposed Administrative Rules Form as a non-fee rule. Pursuant to our discussion with DFM, as well as our review, it appears that the proposed rule does not actually set a fee, and therefore is not a "fee rule," but refers to the fact that the Idaho Consumer Asset Recovery Board shall annually set a fee that will be posted on the department's web site. According to the department, when the fund was created in legislation passed during the 2013 Legislative Session, the Legislature didn't want fee changes associated with this fund coming before them every year and that is why the board was given authority to set the fee. Section 49-1608C(2), Idaho Code, authorizes the board to establish the fee. In the event the Legislature desires to review the fee each year, the statute could be amended. The rulemaking appears to be authorized pursuant to Section 49-201(1), Idaho Code.

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

2. IDAPA 39.03.10 - Rules Governing when an Overlegal Permit is Required

The Idaho Transportation Department submits notice of temporary and proposed rule at IDAPA 39.03.10 - Rules Governing when an Overlegal Permit is Required. According to the department, the rule allows industry to haul a motorized vehicle on a trailer behind a self-propelled vocational vehicle for the sole purpose of using the hauled motorized vehicle for the return trip after the delivery of the self-propelled vocational vehicle. The department notes that the rule currently only allows towing of the motorized vehicle on its own axles. The department states that the temporary rule justification is that this will allow for another option to safely transport a motorized vehicle.

The department states that negotiated rulemaking was not conducted because changes to the rules were necessary to allow industry to haul a motorized vehicle on a trailer as provided. The rulemaking appears to be authorized pursuant to Section 40-312, Idaho Code.

3. IDAPA 39.03.50 - Rules Governing Safety Rest Areas

The Idaho Transportation Department submits notice of proposed rule at IDAPA 39.03.50 - Rules Governing Safety Rest Areas. According to the department, the rulemaking implements the provisions of SB 1441 passed during the 2008 Legislative Session relating to the regulation of firearms by the State of Idaho. The department notes that rule changes banning the discharge of firearms and fireworks in rest areas were rejected last year by the Legislature. The department states that this rule change clearly defines the terms "soliciting" and "fireworks," as requested by the Legislature. The department indicates that the rule also increases occupancy of time limits for rest areas to comply with federal law.

The department states that negotiated rulemaking was not conducted. The rulemaking appears to be authorized pursuant to Section 40-312, Idaho Code.

cc: Idaho Transportation Department
Lori Garza

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.02.03 - RULES GOVERNING VEHICLE DEALER'S PRINCIPAL PLACE OF BUSINESS

DOCKET NO. 39-0203-1402

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 Section 40-201 (1), 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:

This rule would add specificity to further define Section 49-117 (15), Idaho Code, regarding principal place of business requirements, to define the term "reasonable times" for the purpose of customers being able to contact a dealer. The proposed change adds a section for "declared business hours" and requires retail dealers to be open 20 hours a week, of which part must be Monday to Friday 8:00 am to 5:00 pm, and 4 hours a week for wholesale dealers, part of which must be Monday to Friday 8:00 am to 5:00 pm.

This rule also adds specific information regarding the Idaho Consumer Asset Recovery Fund (ICAR), which passed in House Bill 167 in the 2013 legislative session, to identify how the ICAR fee will be set and by whom. It further specifies when a fee change will go into effect. Changes provide that all dealers, unless otherwise exempt will pay into the fund. The sections for liability insurance and surety bond requirements have just been moved to another heading under the rule to be more logical and specify that a surety bond is needed for the first 3 years unless otherwise provided by code, as also contained in House Bill 167.

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:

This rulemaking imposes no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Dealer Advisory Board, which represents dealers in the state, agrees with the proposed amendments and additional comments from dealers are unlikely to be received.

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: There are no materials incorporated by reference into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Amy Smith, Motor Vehicle Manager, 208-334-8860.

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

DATED this 22nd Day of August, 2014.

Lori Garza, Program Specialist
Office of Governmental Affairs

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0203-1402
(Only those Sections being amended are shown.)

010. DEFINITIONS.

01. Vehicle Dealer File System. Books, records and files, necessary to conduct the business of a vehicle dealership. In accordance with the Vehicle Dealer Act, records shall be securely kept by the dealership in such order that they can be readily inspected by a Department Investigator. Such records and files may be kept electronically, as long as such records can be verified by the dealership as true and correct copies of the original records. Physical records or files retained by the dealership may be stored at an off-site location. The dealership must notify the department 30 days in advance of the address of the off-site location prior to moving such records. Records or files stored off-site must be made available to the department within 3 business days upon request. The files and records shall contain but are not limited to: (3-29-12)

- a.** Physical or electronic sales invoices for current and two (2) preceding years; (3-29-12)
- b.** Physical or electronic copies of purchase orders for vehicles purchased for current and two (2) preceding years; (3-29-12)
- c.** Physical or electronic copies of title application forms accessible in numerical order; (3-29-12)
- d.** Written or electronic records of vehicles bearing new or used dealers' number plates and their use by a manufacturer, vehicle dealer, or full-time licensed salespersons searchable by date, time or plate number; (3-29-12)
- e.** Written or electronic records for loaner plates searchable by date, time or plate number; (3-29-12)
- ~~**f.** A valid bond in the amount required by Section 49-1608, Idaho Code; (12-26-90)~~
- ~~**g.** Copies or electronic records of Wholesale Dealer Forms records showing, all transactions, as applicable searchable by date or name of consignee; (3-29-12)~~
- ~~**h.** Physical or electronic odometer disclosure records for non-exempt vehicles; and (3-29-12)~~
- ~~**i.** Physical or electronic records of consignment agreements, as specified in Section 49-1636, Idaho Code. (3-29-12)~~
- ~~**j.** A valid liability insurance policy as required by Section 49-1608A, Idaho Code. (3-29-12)~~
- ~~**k.** All electronic records must be created in a secure manner to prevent such records from being altered. Electronic copies of records must be legible, complete, and an accurate reproduction of the original business record. (3-29-12)~~
- ~~**l.** All electronic copies of records shall be supplemented with a back-up copy of the electronic records, either retained on-site or an off-site location, which permits the business record to be retrieved within three (3) business days. (3-29-12)~~

m.k. Any device, server, network device, or any internal or external storage medium which stores the electronic records must have security access controls and physical security measures to protect the records from unauthorized access, viewing, or alteration. (3-29-12)

#l. Any dealer storing electronic or physical records that contain personal information shall ensure that disposal of any records shall be completed in a secure manner, by shredding, erasing, or otherwise modifying the personal information to make it unreadable or undecipherable through any means. (3-29-12)

02. Vehicle Dealer Sign Requirements. An exterior sign permanently affixed to the land or building, with clearly visible letters, visible to major avenue of traffic meeting local building or zoning codes with the trade name of the dealership clearly visible is required. Wholesale dealer signs may be painted on the window of the office next to the entrance door of sufficient size to be easily read by prospective customers. A suggested retail sign size is twenty-four (24) square feet, with a minimum of four (4) inch letters. (3-29-12)

03. Telephone. A business phone which has a published business number, and listing in a local telephone directory in the name of the dealership. Business phones shall be answered during declared business hours, in the name of the licensed dealer. The telephone may be answered in person, by an answering machine, or at a remote location in person. (3-29-12)

011. -- 099. (RESERVED)

100. GENERAL PROVISIONS.

01. Physical or Electronic Records System Inspection. A vehicle dealer shall make available all books, records and files maintained at the dealership location for immediate inspection for cause or complaint, or within three (3) business days if records are stored at an approved off-site location for random compliance review by a peace officer or authorized agent of the Department. (3-29-12)

02. Title Fee Disclosure. A dealer may reflect the payment of a state-required title fee as specified by Section 49-202(2)(b), Idaho Code, however: (7-2-92)

a. The fee must be clearly identified as a "TITLE FEE"; (7-2-92)

b. The fee must be shown as the exact amount required by law; (7-2-92)

c. Any documentation fees charged must be clearly listed separately from other fees and identified to the customer as dealer document preparation fees that are subject to sales tax as part of the purchase price of the vehicle. (7-2-92)

03. Surety Bond. A valid bond in the amount required by Section 49-1608D, Idaho Code, for three (3) years after initially licensed, unless otherwise provided by code; ()

04. Idaho Consumer Asset Recovery (ICAR) Fund. ()

a. All licensed dealers shall pay the annual fee as set by the Idaho Consumer Asset Recovery (ICAR) Board as required by Section 49-1608C, Idaho Code, unless otherwise provided by code. ()

b. The ICAR fund fee shall be set by the ICAR Board annually to be effective the following January 1. Such fee shall be posted on the Department web site and all applicable forms for dealer licensing. ()

05. Liability Insurance. A valid liability insurance policy as required by Section 49-1608A, Idaho Code. ()

06. Declared Business Hours. ()

a. All licensed dealers shall declare in writing to the Department their dealerships' regular business hours when they are open and available to be contacted by the Department or their customers. These regular business

hours shall be no less than twenty (20) hours per week, part of which must be during Monday through Friday 8:00 am to 5:00 pm. ()

b. Wholesale dealers are required to declare in writing to the Department at least four (4) business hours per week that they are open, part of which must be during Monday through Friday 8:00 am to 5:00 pm, when customers or the department can contact the dealer. ()

037. Vehicle Dealer License Suspension. Any dealer not meeting the requirements of the Vehicle Dealer Act shall be subject to suspension of an existing dealer license or refusal by the Department to issue a new dealer license. (7-2-92)

- a. The Department's agent shall give written notice of deficiencies to the dealer or applicant. (12-26-90)
- b. At its discretion the Department may give the licensed dealership a reasonable amount of time to comply. (12-26-90)
- c. Upon compliance, the license shall be reinstated or issued. (12-26-90)

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.10 - RULES GOVERNING WHEN AN OVERLEGAL PERMIT IS REQUIRED

DOCKET NO. 39-0310-1401

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2014.

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 Sections 49-1001, 49-1002, or 49-1010, Idaho Code, adopted under Sections 40-312, and 49-1004, 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 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 rule allows industry to haul a motorized vehicle on a trailer behind the self-propelled vocational vehicle for the sole purpose of using the hauled motorized vehicle for the return trip after the delivery of the self-propelled vocational vehicle. The rule currently only allows towing of the motorized vehicle on its own axles.

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

This rule allows industry to haul a motorized vehicle on a trailer behind the self-propelled vocational vehicle for the sole purpose of using the hauled motorized vehicle for the return trip after the delivery of the self-propelled vocational vehicle. This will allow for another option to safely transport the motorized vehicle.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

There are no fees being imposed or increased by this rulemaking.

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:

This rulemaking imposes no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because change to this rules were necessary to allow industry to haul a motorized vehicle on a trailer behind a self-propelled vocational vehicle for the sole purpose of using the hauled motorized vehicle for the return trip after the delivery of the self-propelled vocational vehicle.

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: There are no materials incorporated by reference into this rule.

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, (208) 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 October 22, 2014.

DATED this 22nd Day of August, 2014.

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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 39-0310-1401
(Only those Sections being amended are shown.)**

400. OVERLEGAL PERMITS FOR SELF PROPELLED VEHICLES.

Permitted overweight/oversize self propelled vocational vehicles (such as cranes, loaders, motor graders, drills) may haul or tow any motorized vehicle provided that the motorized vehicle or combination of vehicles being towed (trailer & motorized vehicle) does not exceed eight thousand (8,000) pounds ~~or less when such~~ and the motorized vehicle is used solely for return trip after delivery of the permitted vehicle. ~~(4-2-08)~~(9-1-14)T

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.50 - RULES GOVERNING SAFETY REST AREAS

DOCKET NO. 39-0350-1401

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 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 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:

This rulemaking implements the provisions of Senate Bill 1441 and amends the current rest area rule. The 2014 Legislature rejected last year's proposed rule changes to 39.03.50, as well as final rule 200.05, which banned the discharge of firearms/fireworks. This proposed rule more clearly defines "soliciting" and "fireworks," as requested by the legislature. Passage of this rule would reinstate the ban on fireworks at rest areas. This rule also increases occupancy of time limits for rest areas to comply with federal law.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

There are no fees being imposed or increased by this rulemaking.

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:

There is no fiscal impact to the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rule must be amended so the rule changes do not lend themselves to negotiation.

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:

There are no materials incorporated by reference into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cathy Ford, Program Administrator, (208)334-8416.

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

DATED this 22nd Day of August, 2014.

Lori Garza, Program Specialist
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0350-1401
(Only those Sections being amended are shown.)

200. PUBLIC BEHAVIOR AND TREATMENT OF PUBLIC PROPERTY.

The following acts are prohibited: (12-26-90)

01. Behavior. Indulging in boisterous, abusive, threatening, or indecent conduct or creating unnecessary noise which interferes with the reasonable use of the area by other visitors. (12-26-90)

02. Treatment of Natural Features or Plants. Destroying, defacing, cutting, sampling, or removing any natural feature or plant. (12-26-90)

03. Treatment of Public Property. Damaging by defacing, plugging, breaking, or removing any facility, fixture, sign or marker provided for use of the public. (12-26-90)

04. Soliciting. Selling or offering for sale any merchandise or service other than emergency services for disabled vehicles such as towing, vehicle repairs, fire response vehicles, ambulance or medical response/transport, or vending machines permitted under the provisions of federal law or federal rule and Section 67-5411, Idaho Code. ~~(12-26-90)~~()

05. Noise Producing Devices. Operating or using any audio devices, including radio, television and musical instrument, and other noise producing devices, such as electrical generator plants and equipment driven by motors or engines, in such a manner and at such times so as to disturb other persons. (12-26-90)

06. Fireworks/Incendiary Devices. Discharging fireworks or any other incendiary device. Fireworks are considered any combustible or explosive substance but do not include any automotive safety flares or any other emergency or safety device. ()

201. -- 299. (RESERVED)

300. OCCUPANCY OF DEVELOPED REST AREAS.

The following acts are prohibited: (12-26-90)

01. Camping/Occupancy of Site. Camping or occupying a rest area for any purpose other than rest and relaxation from the fatigue of travel. (3-6-14)

02. Assembling. Assembling or attracting groups of people except for public service functions by civic, fraternal or religious organizations as approved by the Department. (12-26-90)

03. Time Limits. Remaining in a rest area for a period of time longer than that established by the Idaho Transportation Department. Occupancy of the rest areas on interstate highways is limited to ~~eight~~ ten (810) consecutive hours. Occupancy of rest areas on other routes of the State Highway System is limited to sixteen (16) consecutive hours. ~~(12-26-90)~~()

04. Fires. Building fires outside the confines of a stove, grill or fireplace. (3-6-14)

05. Failure to Clean. Failing to clean the space occupied before departing. (3-6-14)

06. Animals. (12-26-90)

a. Bringing a dog, cat or other animal into a rest area unless it is a certified service animal or crated, caged, leashed or otherwise under physical restrictive control at all times. (3-6-14)

b. Permitting a dog, cat or other animal to exercise and/or defecate in areas outside of specifically designated pet areas. (3-6-14)