

Dear Senators OKUNIEWICZ, Den Hartog, Rabe, and  
Representatives PALMER, Mitchell, Gannon:

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 and Claims to the  
Idaho Consumer Asset Recovery Fund (ZBR Chapter Rewrite) - Proposed Rule (Docket  
No. 39-0203-2401).

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 12/02/2024. 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 12/30/2024.

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 334-4854, or send a written request to the address on the  
memorandum attached below.



**Terri Kondeff**  
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:** Division Manager - Matt Drake  
**DATE:** November 12, 2024  
**SUBJECT:** Idaho Transportation Department

IDAPA 39.02.03 - Rules Governing Vehicle Dealer's Principal Place of Business and Claims to the Idaho Consumer Asset Recovery Fund (ZBR Chapter Rewrite) - Proposed Rule (Docket No. 39-0203-2401)

### Summary and Stated Reasons for the Rule

The Idaho Transportation Department submits Notice of Rulemaking regarding the Rules Governing Vehicle Dealer's Principal Place of Business and Claims to the Idaho Consumer Asset Recovery Fund.

The Department states that the rulemaking is in the nature of a ZBR rewrite to simplify and clarify language without making substantive changes.

### Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was conducted. There is no anticipated fiscal impact.

### Statutory Authority

The proposed rule appears to be within the statutory authority granted to the Department in Sections 49-201 and 49-1608F, Idaho Code.

cc: Idaho Transportation Department  
Brendan Floyd

### \*\*\* PLEASE NOTE \*\*\*

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

Paul Headlee, Deputy Director    Matt Drake, Manager    Keith Bybee, Manager    April Renfro, Manager    Norma Clark, Manager  
Legislative Services Office    Research & Legislation    Budget & Policy Analysis    Legislative Audits    Information Technology

Statehouse, P.O. Box 83720  
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## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.02.03 – RULES GOVERNING VEHICLE DEALER’S PRINCIPAL PLACE OF BUSINESS AND CLAIMS TO THE IDAHO CONSUMER ASSET RECOVERY FUND

#### DOCKET NO. 39-0203-2401 (ZBR CHAPTER REWRITE)

#### 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 49-201(1) and 49-1608F(9), 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 16, 2024.

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 clarifies terms used in the statutory definition of “principal place of business” and provides for definitions and processes for payment of claims from the Idaho Consumer Asset Recovery Fund. This rule was reviewed in accordance with the agency’s Zero-Based Regulation review schedule. The proposed edits clarify several provisions and are non-substantive in nature.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: 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 resulting from this rulemaking: N/A.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 1, 2024, Idaho Administrative Bulletin, [Vol. 24-5, pages 236-237](#).

**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: N/A.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Brendan Floyd at 208-334-8474.

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 23, 2024.

DATED this 30th day of August, 2024.

Brendan Floyd  
Policy Specialist  
Idaho Transportation Department  
11331 W. Chinden Blvd.  
Boise, ID 83714  
208-334-8474  
[Brendan.floyd@itd.idaho.gov](mailto:Brendan.floyd@itd.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0203-2401**  
**(ZBR Chapter Rewrite)**

**39.02.03 – RULES GOVERNING VEHICLE DEALER'S PRINCIPAL PLACE OF BUSINESS**  
**AND CLAIMS TO THE IDAHO CONSUMER ASSET RECOVERY FUND**

**000. LEGAL AUTHORITY.**

This rule is adopted under the authority of Sections 49-201(1), and 49-1608F(9) Idaho Code ~~and the Vehicle Dealer Act, Chapter 16, Title 49, Idaho Code.~~ (3-31-22)(    )

**001. ~~TITLE AND SCOPE~~ PURPOSE.**

**01. ~~Title.~~ Title.** This rule will be titled IDAPA 39.02.03, "Rules Governing Vehicle Dealer's Principal Place of Business and Claims to the Idaho Consumer Asset Recovery Fund." (3-31-22)

**02. ~~Scope.~~ Scope.** This rule clarifies terms used in the definition of "principal place of business" and ~~provisions regarding these terms and~~ prescribes procedures for the payment of claims from the Idaho Consumer Asset Recovery Fund. (3-31-22)(    )

**002. -- 009. (RESERVED)**

**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, r~~ Records ~~shall~~ will 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~~ will 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~~ will be made available to the department within 3 business days upon request. The files and records ~~shall~~ will contain but are not limited to: (3-31-22)(    )

- a. Physical or electronic sales invoices for current and two (2) preceding years; (3-31-22)
- b. Physical or electronic copies of purchase orders for vehicles purchased for current and two (2) preceding years; (3-31-22)
- c. Physical or electronic copies of title application forms accessible in numerical order; (3-31-22)
- 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; (3-31-22)
- e. Written or electronic records for loaner plates searchable by date, time or plate number; (3-31-22)
- f. Copies or electronic records of Wholesale Dealer Forms records showing, all transactions, as applicable searchable by date or name of consignee; (3-31-22)
- g. Physical or electronic odometer disclosure records for non-exempt vehicles; and (3-31-22)
- h. Physical or electronic records of consignment agreements, as specified in Section 49-1636, Idaho Code. (3-31-22)

i. All electronic records ~~must~~ will be created in a secure manner to prevent such records from being altered. Electronic copies of records ~~must~~ will be legible, complete, and an accurate reproduction of the original business record. (3-31-22)(    )

j. All electronic copies of records ~~shall~~ will 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.~~ (3-31-22)(    )

k. Any device, server, network device, or any internal or external storage medium which stores the electronic records ~~must~~ will have security access controls and physical security measures to protect the records from unauthorized access, viewing, or alteration. (3-31-22)(    )

l. Any dealer storing electronic or physical records that contain personal information ~~shall~~ will ensure that disposal of any records be completed in a secure manner, by shredding, erasing, or otherwise modifying the personal information to make it unreadable or undecipherable through any means. (3-31-22)(    )

**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 from fifty (50) feet.~~ 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. (3-31-22)(    )

**03. Telephone.** A ~~business~~ phone that has a publicly published business number ~~and listing in a local telephone directory~~ in the name of the dealership. Business phones ~~shall~~ will 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.~~ (3-31-22)(    )

011. -- 099. (RESERVED)

## 100. GENERAL PROVISIONS.

**01. Physical or Electronic Records System Inspection.** A vehicle dealer ~~shall~~ will 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. (3-31-22)(    )

**02. Dealer 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:~~ (3-31-22)(    )

a. The fee ~~must~~ will be clearly identified as a "TITLE FEE"; (3-31-22)(    )

b. The fee ~~must~~ will be shown as the exact amount required by law; (3-31-22)(    )

c. Any documentation fees charged ~~must~~ will 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. (3-31-22)(    )

~~**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;~~ (3-31-22)

**043. Idaho Consumer Asset Recovery (ICAR) Fund.** (3-31-22)

a. All licensed dealers will 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. (3-31-22)

b. The ICAR fund fee will be set by the ICAR Board annually to be effective the following January 1.

Such fee ~~shall~~ will be posted on the Department web site and all applicable forms for dealer licensing. (3-31-22)

~~05. Liability Insurance. A valid liability insurance policy as required by Section 49-1608A, Idaho Code.~~ (3-31-22)

~~064. Declared Business Hours. All licensed dealers shall declare in writing to the Department the regular business hours that their dealerships are open and when they are available to be contacted by the Department or their customers. All wholesale dealers shall declare in writing to the department the regular hours that their dealerships are open and when they are available to be contacted by the department or their customers.~~ (3-31-22)( )

~~075. Vehicle Dealer License Suspension. Any dealer not meeting the requirements of the Vehicle Dealer Act Title 49, Idaho Code shall will~~ be subject to suspension of an existing dealer license or refusal by the Department to issue a new dealer license. (3-31-22)( )

- a. The Department's agent will give written notice of deficiencies to the dealer or applicant. (3-31-22)
- b. At its discretion the Department may give the licensed dealership a reasonable amount of time to comply. (3-31-22)
- c. Upon compliance, the license will be reinstated or issued. (3-31-22)

101. -- 199. (RESERVED)

## 200. IDAHO CONSUMER ASSET RECOVERY FUND CONTROL BOARD ADMINISTRATION.

01. Quorum. A majority of the members of the Idaho Consumer Asset Recovery Control (ICAR) Board established pursuant to Section 49-1608C, Idaho Code, constitutes a quorum. A quorum is required for voting on any ICAR claims. The ICAR Board chairman presides over ICAR Board meetings. The ICAR Board operates in compliance with Idaho open meeting laws. (3-31-22)

02. Voting. All members of the ICAR Board constituting the quorum are entitled to vote in consideration of any payment of a claim pursuant to Section 49-1608F, Idaho Code. (3-31-22)

03. Actual Loss or Damages. As provided for in Section 49-1608E, Idaho Code, "actual loss or damages", means: The total cost to the purchaser, as set forth in a final judgement, of the loss directly resulting in a violation, by a dealer, of the provisions of Title 48, Chapter ~~5~~ 6 or Title 49, Chapter 5 or Section 49-1418, Idaho Code; including such things as repairs, inspections and loss of resale value. The term includes the attorney fees and costs in bringing suit against the dealer, and includes pre-judgement, but not post-judgement interest. "Actual Loss or Damages" ~~shall will~~ not include such things as treble damages, expectation damages nor consequential damages resulting from dealer fraud. (3-31-22)( )

04. Complete and Complaint Claims. All ICAR claims will be initiated by filing the complete claim with the Idaho Transportation Department DMV Administrator. When a proper ICAR claim has been received, staff will review the claim for completeness and compliance with these rules and the provisions of Title 49, Chapter 16, Idaho Code. If the claim is complete and in compliance with statute and these rules, the ICAR Board will send notification per Section 49-1608F(5), Idaho Code, to the subject vehicle dealer with a demand that the dealer satisfy the judgement within thirty (30) days. (3-31-22)

a. Should the dealer fail to satisfy the judgment within thirty (30) days of notice from the ICAR Board, staff will provide the ICAR Board and the claimant a staff-recommended amount of the claim. If the claimant agrees with the staff-recommended payment amount, the ICAR Board will issue a final order either adopting or rejecting the staff recommended claim payment amount. (3-31-22)

b. Should the claimant disagree with the proposed amount to be paid on the claim, the claimant may request an administrative hearing under the provisions of Title 67, Chapter 52, Idaho Code, within 10 business days

of receipt of notification. The department will appoint a qualified hearing officer to hear the claim, take testimony and review evidence; and issue findings of fact, conclusions of law and provide a recommended order. (3-31-22)

**c.** Upon receipt of the recommended order from the hearing officer, the ICAR Board will issue a final order either adopting or rejecting the hearing officer's recommendation of the claim payment amount. (3-31-22)

**d.** Final orders of the ICAR Board may be subject to judicial review under the provision of Title 67, Chapter 52, Idaho Code. (3-31-22)

**201. -- 299. (RESERVED)**

**~~300. PENALTIES:~~**

~~A dealer violating this rule is subject to license suspension for a period not to exceed six (6) months. (3-31-22)~~

**~~301. -- 999. (RESERVED)~~**