



Eric Milstead  
Director

# Legislative Services Office

## Idaho State Legislature

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### 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.

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## **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