

Dear Senators DEN HARTOG, Woodward, Nelson, and  
Representatives PALMER, DeMordaunt, Gannon:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of  
the Idaho Transportation Department:

IDAPA 39.03.43 - Rules Governing Utilities on State Highway Right-of-Way - Proposed Rule  
(Docket No. 39-0343-2201).

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 10/13/2022. 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 11/10/2022.

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:** Senior Legislative Drafting Attorney - Matt Drake

**DATE:** September 23, 2022

**SUBJECT:** Idaho Transportation Department

IDAPA 39.03.43 - Rules Governing Utilities on State Highway Right-of-Way - Proposed Rule (Docket No. 39-0343-2201)

#### **Summary and Stated Reasons for the Rule**

The proposed rule addresses the Utility Accommodation Policy (UAP) incorporated by reference into IDAPA 39.03.43 - Rules Governing Utilities on State Highway Right-of-Way. The UAP is the Department's official policy for governing the occupancy of state highway rights-of-way with respect to utility facilities. The Department states that the UAP is being updated to make it consistent with the provisions of House Bill 640 of 2022, which created the Idaho Broadband Dig Once and Right-of-Way Act. Two new sections are being added to the UAP. One new section addresses broadband infrastructure and the other new section addresses wireless communications.

#### **Negotiated Rulemaking / Fiscal Impact**

Negotiated rulemaking was conducted. There is no fiscal impact.

#### **Statutory Authority**

The rulemaking appears to be authorized pursuant to Sections 40-312, 49-201, and 67-5229, Idaho Code.

cc: Idaho Transportation Department  
Ramon Hobdey-Sanchez

#### **\*\*\* 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    Kristin Ford, Manager    Keith Bybee, Manager    April Renfro, Manager    Glenn Harris, Manager  
Legislative Services Office    Research & Legislation    Budget & Policy Analysis    Legislative Audits    Information Technology

Statehouse, P.O. Box 83720  
Boise, Idaho 83720-0054

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## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### 39.03.43 – RULES GOVERNING UTILITIES ON STATE HIGHWAY RIGHT-OF-WAY

DOCKET NO. 39-0343-2201

#### 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 40-312, 49-201 and 67-5229, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

<b>Tuesday, September 20, 2022 3:30 p.m. to 5:00 p.m. (MT)</b>
<i>In-person participation is available at:</i> <b>ITD Headquarters @ Idaho Chinden Campus 11311 Chinden Boulevard, Building 8 Boise, ID 83714 (Enter through the westside of Bldg. 8: American Falls Conference Room)</b>
<i>Phone or virtual participation via Webex is available at:</i> <b><a href="#">Join WebEx Meeting</a> Meeting Number (Access Code): 2457 599 5480 Meeting Password: 1234</b>
<i>Join by phone at: 1-415-655-0003 (USA Toll)</i>

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:

Per the Idaho Legislature's passage of [HB640aaS-2022](#), which created the Idaho Broadband Dig Once and Right-of-Way Act, the Idaho Transportation Department (ITD) is working through the rulemaking process to update the policies and procedures impacted by this new law.

ITD incorporates by reference the 2022 edition of the Utility Accommodation Policy (UAP) in IDAPA Title 39: [39.03.43 – Rules Governing Utilities on State Highway Right-of-Way](#). Although the UAP referenced in IDAPA 39.03.43 addresses all utilities, the focus of this rulemaking is to update portions of the UAP that directly relate to fixed broadband permitting, accommodation, criteria, standards and policy.

ITD continues its efforts to address utility accommodation of fixed broadband facilities seeking access to the state's ROW, while also meeting federal requirements and supporting Governor Little's initiative to improve broadband access in Idaho.

**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 as a result of 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 June 1, 2022, Idaho Administrative Bulletin, on pages [517-518 of Vol.22-6](#) and in the July 6, 2022, Idaho Administrative Bulletin, on pages [249-251 of Vol.22-7](#).

**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:

The Department's Utility Accommodation Policy (UAP) was incorporated by reference in 1990 with only several updates since then, the most recent in 2022. This is the official policy for governing occupancy of state highway rights-of-way by utility facilities. This policy applies to the maintenance of existing utilities, new utility installations and existing utility installations to be retained or adjusted as a result of highway construction or reconstruction, as well as the relocation of utility facilities that are found to constitute a hazard to the traveling public on all rights-of-way under the jurisdiction of the ITD.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, please contact Robert Beachler, Planning Broadband Program Manager, at (208) 772-1216. Materials pertaining to this rulemaking, including rule drafts, can be found on the Idaho Transportation Department's website at the following web address: <https://itd.idaho.gov/rulemaking/>.

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 September 28, 2022.

DATED this 5th Day of August, 2022.

Ramón S. Hobdey-Sánchez, J.D.  
Office of Governmental Affairs  
Idaho Transportation Department  
11331 W. Chinden Blvd., Bldg. 8  
Boise, ID 83714  
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**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0343-2201**  
**(Only Those Sections With Amendments Are Shown.)**

**003. INCORPORATION BY REFERENCE.**

The Idaho Transportation Department incorporates by reference the 202~~23~~ Edition of the "Utility Accommodation Policy." This publication is available for public review on the Department's website at <http://itd.idaho.gov>.  
~~(3-21-22)~~( )

## **INCORPORATION BY REFERENCE SYNOPSIS**

In compliance with Section 67-5223(4), Idaho Code, the following is a synopsis of the differences between the materials previously incorporated by reference in this rule that are currently of full force and effect and newly revised or amended versions of these same materials that are being proposed for incorporation by reference under this rulemaking.

**The following agency of the state of Idaho has prepared this synopsis as part of the proposed rulemaking for the chapter cited here under the docket number specified:**

### **IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT**

#### **39.03.43 – RULES GOVERNING UTILITIES ON STATE HIGHWAY RIGHT-OF-WAY**

##### **Proposed Rulemaking – DOCKET NO. 39-0343-2201**

Per the Idaho Legislature’s passage of [HB640aaS-2022](#), which created the Idaho Broadband Dig Once and Right-of-Way Act, ITD is working through the rulemaking process to update the policies and procedures impacted by this new law. In IDAPA Title 39, [39.03.43 – Rules Governing Utilities on State Highway Right-of-Way](#), the Department *incorporates by reference* the 2022 Edition of the “Utility Accommodation Policy” (UAP).

The difference between the 2022 version of the Department’s Utility Accommodation Policy (UAP) and the proposed 2023 version is that there are 2 new sections in the UAP. See Sections 7 (Broadband Infrastructure) and 8 (Wireless communications).