

Dear Senators HAMMOND, Brackett, Werk, and
Representatives PALMER, Ellsworth, Ringo:

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

IDAPA 39.04.02 - Rules Pertaining To The Rules Governing Marking of Hazards to Air Flight
(Docket No. 39-0402-1201).

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 10/09/2012. 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 11/06/2012.

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 334-4845, or send a written request to the address on the
memorandum attached below.



Jeff Youtz
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 - Eric Milstead

DATE: September 19, 2012

SUBJECT: Idaho Transportation Department

IDAPA 39.04.02 - Rules Pertaining To The Rules Governing Marking of Hazards to Air Flight (Docket No. 39-0402-1201)

The Idaho Transportation Department has submitted temporary and proposed rulemaking at IDAPA 39.04.02 - Rules Governing Marking of Hazards to Air Flight. The temporary and proposed rule implements the provisions of House Bill 511, as amended, which was passed and approved during the 2012 Legislative Session. The provisions of that legislation governed the marking of certain towers (guyed-towers) that may pose hazards to air flight. The temporary and proposed rule provides definitions of such towers and also provides for a number of requirements relating to ensuring that such towers are visible to pilots.

The agency notes that negotiated rulemaking was not used because the new rule provisions are required by recently passed legislation.

The temporary and proposed rule appears authorized pursuant to Section 21-519, Idaho Code.

cc: Idaho Transportation Department
Linda L. Emry, Rules Coordinator, and John DeThomas

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT
39.04.02 - RULES GOVERNING MARKING OF HAZARDS TO AIR FLIGHT
DOCKET NO. 39-0402-1201
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2012.

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 rule-making procedures have been initiated. The action is authorized pursuant to Section 21-519, 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 September 19, 2012.

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 rule-making:

This rule has been updated to comply with house Bill 511, as amended, from the 2012 Session. It establishes standards for lighting and marking of guyed towers above 50 feet in height, not regulated by the Federal Aviation Administration, to ensure the safety of pilots. The rulemaking also adds definitions for key terms, updates and clarifies existing requirements, and adds new requirements associated with the dimensions, design, color, and lighting of guyed towers along with deadlines for implementation established in the bill. It also identifies exemptions for power poles or structures owned and operated by an electric supplier as defined in Section 61-332A(4), Idaho Code, any structure with the primary purpose of supporting telecommunications equipment, and the military.

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

Compliance with House Bill 511, as amended, 2012 Session.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There is no fee or charge imposed or increased in 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:

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 other than some minor updates, changes to this rule are related to compliance with House Bill 511 from the 2012 session.

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.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact John DeThomas, Aeronautics Division Administrator, 208-334-8788.

Anyone may submit written comments regarding the proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before September 26, 2012.

DATED this 3rd day of August, 2012.

Linda L. Emry
Office of Governmental Affairs
Idaho Transportation Department

linda.emry@itd.idaho.gov
Phone - 208-334-8810 / FAX - 208-332-4107
3311 W State St, PO Box 7129, Boise ID 83707-1129

**THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT
OF DOCKET NO. 39-0402-1201**

000. LEGAL AUTHORITY.

This rule is adopted Under the authority of Section 21-519, *Idaho Code, the Idaho Transportation Board adopts this rule.* ~~(11-28-90)~~(7-1-12)T

001. TITLE AND SCOPE.

01. Title. This rule shall be known as IDAPA 39.04.02 “Rules Governing Marking of Hazards to Air Flight,” IDAPA 39, Title 04, Chapter 02. (4-11-06)

02. Scope. This rule establishes the requirements for marking of hazards to air flight through the airspace of and over the state of Idaho in order to protect and ensure the general public safety, and the safety of persons operating, using or traveling in aircraft pursuant to Section 21-515 through 21-517, Idaho Code. ~~(4-11-06)~~(7-1-12)T

(BREAK IN CONTINUITY OF SECTIONS)

005. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS -- PHONE NUMBERS.

01. Street and Mailing Address. The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of P O Box 7129, Boise, ID 83707-1129. The Division of Aeronautics offices are physically located at 3483 Rickenbacker Street, Boise, ID ~~83707-1129~~. ~~(4-11-06)~~(7-1-12)T

02. Office Hours. Daily office hours are 8 a.m. to 5 p.m. except Saturday, Sunday and state holidays. (4-11-06)

03. Telephone and FAX Numbers. The Aeronautics offices may be contacted during office hours at 208-334-8775 or by fax at 208-334-8789. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

007. -- ~~009~~. (RESERVED)

010. DEFINITIONS.

01. Guyed Tower. A tower that is supported in whole or in part by guy wires and ground anchors or other means of support besides the superstructure of the tower itself, towers used for military purposes excepted. ~~(7-1-12)T~~

02. Height. The distance measured from the original grade at the base of the tower to the highest point of the tower. (7-1-12)T

03. Temporary or Permanent Guyed Tower. A guyed tower erected and standing for any period of time whatsoever. (7-1-12)T

04. Marking. Shall include illuminating, painting, lighting, or designating in a manner to be approved by the department. (7-1-12)T

011. -- 099. (RESERVED)

100. REQUIREMENTS.

01. Hazardous Structures. Any structure which obstructs the airspace more than two hundred (200) feet above the ground or water level, or at any height near an established airport as defined by Section 21-101(c), Idaho Code, when determined by the ~~Transportation Board or the Aeronautics Division Administrator acting in behalf of the Board,~~ Department to be an aviation hazard or a potential aviation hazard, as defined in Section 21-101(n), Idaho Code, to the safe flight of aircraft shall be plainly marked, illuminated, painted, lighted, or designated in a manner approved by the Board Department. ~~(4-11-06)~~(7-1-12)T

02. Guyed Towers. Any temporary or permanent guyed tower fifty (50) feet or more in height that is located outside the boundaries of an incorporated city or town on land that is primarily rural or undeveloped or used for agricultural purposes, or that is primarily desert, and where such guyed tower's appearance is not otherwise governed by state or federal law, rule or regulation, shall be lighted, marked and painted or otherwise constructed to be visible in clear air during daylight hours from a distance of not less than two thousand (2,000) feet. (7-1-12)T

a. Guyed towers shall be painted in seven (7) equal alternating bands of aviation orange and white. Such alternating bands shall begin with orange at the top of the tower and end with orange at the base. (7-1-12)T

b. Guyed towers shall have one flashing obstruction light at the top of the tower. Such light shall meet the technical requirements of medium intensity flashing white obstruction light systems as specified in Federal Aviation Administration Advisory Circular AC 70/7460-1K. (7-1-12)T

c. For guyed towers the surface area under the footprint of the tower and six (6) feet beyond the outer tower anchors shall have a contrasting appearance with any surrounding vegetation. (7-1-12)T

d. Guyed towers shall have two (2) marker balls, having a minimum diameter of twenty (20) inches attached to and evenly spaced on each of the outside guy wires. Said spheres to be of the split-sheet, clamp-on type which are to be alternated in two (2) contrasting solid colors of gloss yellow and international orange, and may be constructed of recommended light-weight materials such as fiberglass, aluminum, or foam. (7-1-12)T

e. Guyed towers shall have a seven (7) foot long safety sleeve colored to contrast with background vegetation at each anchor point and shall extend from the anchor point along each guy wire attached to the anchor point. (7-1-12)T

f. Any guyed tower that was erected prior to July 1, 2012 shall be marked as required by the provisions of Section 100 before July 1, 2013. Any guyed tower that is erected on or after July 1, 2012 shall be marked as required by the provisions of Section 100 at the time it is erected. (7-1-12)T

g. The provisions of this Subsection 100.02, shall not apply to power poles or structures owned and operated by an electric supplier as defined in Section 61-332A(4), Idaho Code, or any structure, the primary purpose of which, is to support telecommunications equipment. (7-1-12)T

023. Lines, Wires, and Cables. Power lines, communication lines, wires, or cable more than two hundred (200) feet above the terrain crossing canyons, rivers, navigable bodies of water, terrain undulations, or guy

structures or any height where such wire, cable or obstruction cross navigable bodies of water near established seaplane bases, if determined by the Board Department to be a hazard to air navigation, shall be marked at two hundred (200) feet intervals of spacing by sphere-type markers having a minimum diameter of thirty-six (36) inches. Said sphere to be of the split-sheet, clamp-on type which are to be alternated in three (3) contrasting solid colors of gloss white, gloss yellow, and international orange and may be constructed of recommended light-weight materials such as fiberglass, aluminum, or foam. ~~(4-11-06)~~(7-1-12)T

034. Spans Between Support Piers. Long spans that exceed lengths of one-half (1/2) mile between support piers, each pier shall be marked with flashing strobe or beacon lights of a type and brilliance acceptable to the Board Department if such is deemed pertinent to safety and recognition of obstructions. ~~(4-11-06)~~(7-1-12)T

045. Construction. Any construction sponsor is required to submit a notice to the Aeronautics Division Administrator if his construction ~~exceeds~~ meets one (1) or more of the following conditions: ~~(1-2-93)~~(7-1-12)T

a. ~~Greater than two hundred (200) feet in height.~~ If the proposed object ~~would~~ will be more than two hundred (200) feet above ground level at its location. ~~(4-11-06)~~(7-1-12)T

b. ~~Near an established airport or seaplane base.~~ If the proposed object ~~would~~ will be within twenty thousand (20,000) feet of an airport (*) or seaplane base with a runway of more than three thousand two hundred (3,200) feet in length; and ~~would exceed~~ will penetrate an imaginary surface that is one (1) foot in height for each one hundred (100) feet (100:1) horizontally from the nearest point of the nearest runway.

* To qualify, an airport as defined in Section 21-101(c), Idaho Code, must be listed in the Idaho Airport Facilities Directory, or in the Airport /Facility Directory published by the US-DOT, National Charting Office or operated by a public entity. ~~(4-11-06)~~(7-1-12)T

c. If the proposed object ~~would~~ will be within ten thousand (10,000) feet of an airport having no runway more than three thousand two hundred (3,200) feet in length; and ~~would exceed~~ will penetrate an imaginary surface that is one (1) foot in height for each fifty (50) feet (50:1) horizontally from the nearest runway. ~~(11-28-90)~~(7-1-12)T

d. ~~Near a Heliport.~~ If the proposed object ~~would~~ will be within five thousand (5,000) feet of a heliport listed in the "Airport Facilities Directory" or operated by a public entity; and ~~would exceed~~ will penetrate an imaginary surface that is one (1) foot in height for each twenty-five (25) feet (25:1), horizontally from the nearest landing and take-off area of that heliport. ~~(4-11-06)~~(7-1-12)T

e. ~~Highways and Railroads.~~ If the proposed object is a traverse way which ~~would~~ will exceed at least one (1) of the standards listed in Subsections 100.045.a. through 100.045.c. above, after its height is adjusted upward seventeen (17) feet for an Interstate Highway, fifteen (15) feet for any other public roadway, ten (10) feet (or the height of the highest mobile objects that would normally traverse the road) for a private road, twenty-three (23) feet for a railroad, or an amount equal to the height of the highest mobile objects that would traverse a waterway or any other thoroughfare not previously mentioned. ~~(11-28-90)~~(7-1-12)T

056. Notice Submittal. The notice required under Subsection 100.04 of this rule must be submitted: (1-2-93))

a. At least thirty (30) days before the construction or alteration is to begin; or the application for construction permit is to be filed. (11-28-90)

b. Immediately by telephone or other expeditious means, with written notification submitted within five (5) days thereafter, if immediate construction or alteration is required as in cases involving public services, health, or safety. (1-2-93))

067. Notice of Proposed Construction. A notice of proposed construction or alteration is required so that the State Transportation Board Department may: ~~(11-28-90)~~(7-1-12)T

a. Depict obstructions on aeronautical charts. (11-28-90)

- b. ~~Recommend~~ **Identify** appropriate markings as required by Section 21-515, Idaho Code. ~~(11-28-90)~~(7-1-12)T
- c. Be made aware of potential aeronautical hazards in order to minimize their danger to the flying public. (11-28-90)
- d. Protect the lives and property of persons in the air and on the ground. (11-28-90)

078. Submittal of Notice. ~~Written~~ **Notice** ~~must be given in writing~~ of intended construction or alteration ~~must be submitted by mail or hand-delivered~~ to the Aeronautics Division Administrator, ~~3483 Rickenbacker Street, Boise, ID 83705~~ using the contact information in Section 005 of this rule. ~~(1-2-93)~~(7-1-12)T

09. Intent. It is the intent that the resultant markings required in this rule be compatible with FAA policies and directives in order to maintain consistency of object marking and lighting. (7-1-12)T

101. -- 199. (RESERVED)

200. EXCEPTIONS.

No person is required to notify the Aeronautics Division Administrator for any of the following construction or alteration: ~~(1-2-93)~~(7-1-12)T

01. Shielded. Any object that would be shielded by existing structures of a permanent and substantial character or by natural terrain or topographic features of equal or greater height, and would be located in the congested area of a city, town, or settlement where it is evident beyond all reasonable doubt that the structure so shielded will not adversely affect safety in air navigation. (1-2-93)

02. Antennas. Any antenna structure of twenty (20) feet or less in height except one that would increase the height of another antenna structure. (11-28-90)

03. Air Navigation. Any air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device of a type approved by the Aeronautics Division Administrator, the location and height of which is fixed by its functional purpose. ~~(1-2-93)~~(7-1-12)T