

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 39.02.60 - Rules Pertaining To The Rules Governing License Plate Provisions (Docket  
No. 39-0260-1301);

IDAPA 39.03.50 - Rules Pertaining To The Rules Governing Safety Rest Areas (Docket No.  
39-0350-1301);

IDAPA 39.04.02 - Rules Pertaining To The Rules Governing Marking of Hazards to Air Flight  
(Docket No. 39-0402-1301);

IDAPA 39.04.04 - Rules Pertaining To The Rules Governing Idaho Airport Aid Program (Docket  
No. 39-0404-1301).

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 11/21/2013. 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 12/20/2013.

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:** Deputy Division Manager - Eric Milstead

**DATE:** November 1, 2013

**SUBJECT:** Idaho Transportation Department

IDAPA 39.02.60 - Rules Pertaining To The Rules Governing License Plate Provisions (Docket No. 39-0260-1301)

IDAPA 39.03.50 - Rules Pertaining To The Rules Governing Safety Rest Areas (Docket No. 39-0350-1301)

IDAPA 39.04.02 - Rules Pertaining To The Rules Governing Marking of Hazards to Air Flight (Docket No. 39-0402-1301)

IDAPA 39.04.04 - Rules Pertaining To The Rules Governing Idaho Airport Aid Program (Docket No. 39-0404-1301)

1. IDAPA 39.02.60 - Rules Pertaining To The Rules Governing License Plate Provisions (Docket No. 39-0260-1301).

The Idaho Department of Transportation submits notice of temporary and proposed rulemaking at IDAPA 39.02.60 -- Rules Governing License Plate Provisions. The temporary and proposed rule implements the provisions of House Bill 169, passed by the 2013 Legislature, which governs the application for and approval of specialty license plates. The temporary and proposed rule reflects a number of revisions, including:

Provisions providing for and governing special license plate pre-qualification (Section 155);

Specific specialty plate requirements, including requirements for a declaration of a responsible individual; a program application approval process; submission by the Department of applications to the chairmen of the germane committees; an annual report compiled by the Department for use by specialty plate program sponsors; and an appeal of Departmental application denials. (See Sections 155.03 through 155.07.)

While the substantive provisions of the temporary and proposed rule appears to be consistent with recently passed legislation, we note the following items that the Department may consider:

In Section 155.02. the final clause of the sentence includes the word "be" which appears to be unnecessary.

In section 155.03.c., it appears that the reference to Federal Income Tax status is incomplete. The statute upon which the temporary and proposed rule is based, (section 49-402D, Idaho Code) specifically requires that if the applicant is a nonprofit agency, the applicant must submit evidence to the Department that the applicant

has "501 (c) (3)" federal income tax status. The temporary and proposed rule references only "501 (c)" status and, to be consistent with statute, should likely reference "501 (c) (3)."

In Sections 155.05. and 155.06. the committee names should be corrected to read as the "Senate Transportation Committee" and the "House of Representatives Transportation and Defense Committee."

The Department notes that negotiated rulemaking was not conducted because the temporary and proposed rule is based on recently passed legislation.

The effective date of the temporary rule was July 1, 2013.

The Department's temporary and proposed rule appears to be authorized pursuant to sections 67-5226 and 49-201, Idaho Code.

2. IDAPA 39.03.50 - Rules Pertaining To The Rules Governing Safety Rest Areas (Docket No. 39-0350-1301).

The Idaho Department of Transportation submits notice of proposed rulemaking at IDAPA 39.03.50 -- Rules Governing Safety Rest Areas. The proposed rule includes a number of new provisions. Several are administrative in nature. For example, see Sections 001 through 006, which provide for written interpretations of the rule, administrative appeals, incorporation by reference, office hours and mailing addresses and public records act compliance.

Revisions that are more substantive in nature include new provisions governing public behavior and activity in safety rest areas. For example, Section 200.04 prohibits begging, panhandling and hitchhiking; Section 200.05 prohibits offering any merchandise or service for sexual gratification or monetary gain; Section 200.06 prohibits the discharging fireworks or other incendiary devices; Section 300.01. prohibits camping or occupying a rest area for any purpose other than resting from the fatigue of travel. Other provisions govern the rates of speed and operation of vehicles in the rest stop and the activities of pets on the grounds.

The Department states that negotiated rulemaking was not conducted because the revisions do not lend themselves to negotiation.

The Department's proposed rule appears to be authorized pursuant to section 40-312, Idaho Code.

3. IDAPA 39.04.02 - Rules Pertaining To The Rules Governing Marking of Hazards to Air Flight (Docket No. 39-0402-1301)

The Idaho Department of Transportation submits notice of temporary and proposed rulemaking at IDAPA 39.04.02 -- Rules Governing Marking of Hazards to Air Flight. The temporary and proposed rule includes one revision. That revision reflects changes in statute made during the 2013 legislative session via House Bill 216 (Guyed Towers) and Senate Bill 1065 (Amateur Radio Towers). The temporary and proposed rule provides that certain provisions governing "guyed towers" shall not apply to: (1) certain facilities used by a federal power marketing agency; nor to (2) citizens band radio towers and all other amateur radio towers. (See Section 100.02.g.)

The Department states that negotiated rulemaking was not conducted because the changes reflect changes in recent legislation.

The effective date of the temporary rule was July 1, 2013.

The Department's temporary and proposed rule appears to be authorized pursuant to section 21-519, Idaho Code.

4. IDAPA 39.04.04 - Rules Pertaining To The Rules Governing Idaho Airport Aid Program (Docket No. 39-0404-1301)

The Idaho Department of Transportation submits notice of proposed rulemaking at IDAPA 39.04.04 -- Rules Governing Idaho Airport Aid Program. The proposed rule includes revisions dealing with two principal topics: the rule includes two new definitional provisions--"airport service area population" and "adjusted service area population." (Section 010.01. and .02). The second principal topic area governs Program Criteria and Limitations and specifically revises provisions governing matching percentages of costs for program participants. (Section 300.02.) There is also a clarifying revision to Section 300.04. which provides for public funds protection.

We note only that the revisions to Section 300.02.a. and b. appear to include an extra word--"that" -- which should probably be removed.

The Department states that negotiated rulemaking was not conducted because the revisions provide for uniform methodology relating to prioritizing projects and for uniform allocation of grant program funding. The Department states that the revisions do not lend themselves to negotiation.

The Department's rule appears to be authorized pursuant to section 21-111, Idaho Code.

cc: Idaho Transportation Department  
Lori Garza, Chris Fisher, Cathy Ford and Bill Statham