

## Summary of IDAPA 39.03.41 Proposed Rule Changes

### Background

The current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), referred to as the 11<sup>th</sup> Edition, contains 1161 pages with a significant amount of new material that was not included in previous editions. Because of the significance of the changes in the 11<sup>th</sup> Edition, the Idaho Transportation Department (ITD) decided the rulemaking required to adopt the manual (as described below) presented a good opportunity to complete a comprehensive review and address some of the conflicts and ambiguities that exist between the MUTCD and Idaho law and practice that had not previously been included in the rule. I was hired by ITD to do the review, identify conflicts with Idaho Code requiring MUTCD revisions and/or exceptions, propose the appropriate rule revisions, and prepare this report.

### MUTCD Overview

The MUTCD is incorporated by reference in 23 Code of Federal Regulations (CFR), Part 655, Subpart F and is therefore recognized as the national standard for all traffic control devices installed on any street, highway, bikeway, or site roadway open to public travel. The MUTCD applies to all facilities except roadways within private gated properties where access to the general public is restricted at all times; grade crossings of privately-owned roadways with railroads; and parking areas, including the driving aisles within those parking areas, that are either publicly or privately owned.

The MUTCD is developed by the Federal Highway Administration (FHWA) with recommendations from the National Committee on Uniform Traffic Control Devices (NCUTCD). The NCUTCD has 21 sponsoring organizations with 41 voting members representing those sponsors. There are 8 technical committees comprised of over 300 members from cities, states, counties, academia, industry, and user groups. Idaho has 2 members on the NCUTCD: Stephen Lewis, a professional engineer and consultant with Michael Baker International, and Ryan Lancaster, Standards and Work Zone Safety Engineer with ITD.

All States have officially adopted the National MUTCD either in its entirety, with supplemental provisions, or as a separate published document. The National MUTCD has also been adopted by the National Park Service, the U.S. Forest Service, the U.S. Military Command, the Bureau of Indian Affairs, the Bureau of Land Management, and the U.S. Fish and Wildlife Service.

States or other Federal agencies that have their own MUTCDs or Supplements must revise them to be in substantial conformance with changes to the National MUTCD within 2 years of the effective date of the Final Rule for the changes. The effective date for this latest edition of the MUTCD is January 18, 2024.

Substantial conformance means that the State MUTCD or supplement shall conform as a minimum to the standard statements included in the National MUTCD, and that “the guidance statements contained in the National MUTCD shall also be in the State Manual or supplement unless the reason for not including it is satisfactorily explained based on engineering judgment, specific conflicting State law, or a documented engineering study.” Also, legal precedents have determined that State Supplements and State MUTCDs can be more prescriptive than the national MUTCD. This means that a State can make a national MUTCD “should” condition a “shall” condition in that State, can allow in that State only one of several national MUTCD optional designs for a particular device, or can prohibit the use in that State of a particular optional device. However, State Supplements and State MUTCDs cannot omit or change a national MUTCD “shall” to a “should” or change a “should” to a “may.” In cases where a State MUTCD or supplement cannot conform to standard statements in the National MUTCD because of the requirements of a specific State law that was in effect prior to January 16, 2007 (the date the definition of substantial

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conformance was added to the CFR), FHWA can grant exceptions if they determine based on documentation received from the State that the non-conformance does not create a safety concern. The FHWA reviews each State Supplement and State MUTCD and makes determinations as to substantial conformance.

### **Idaho State Law and Rule**

Idaho Code 49-201(3) requires the Idaho Transportation Board to adopt a manual for a uniform system of traffic-control devices for use upon highways within the state that correlates with and, so far as possible, conforms to the most recent edition of the manual on uniform traffic control devices for streets and highways endorsed by the federal highway administrator, which is the MUTCD. The mechanism the Board uses to adopt the manual is IDAPA Rule 39.03.41 – Rules Governing Traffic Control Devices.

The previous version of the MUTCD was referred to as the 2009 Edition and became effective on January 15, 2010. The 2009 Edition of the MUTCD was first adopted by rule on March 29, 2012. Two amending revisions were subsequently issued, and both became effective on June 13, 2012. The 2009 Edition, including both revisions, totaled 862 pages, and was adopted by Idaho in IDAPA Rule 39.03.41 on April 4, 2013. A third MUTCD 2009 Edition revision, which included new provisions for maintaining minimum levels of retroreflectivity for pavement markings, was dated July 2022, but was never adopted by rule in Idaho because of the anticipated release of an entirely new manual.

### **Rule Review Process**

I reviewed the entire 11<sup>th</sup> Edition of the MUTCD and compared it with the 2009 Edition, including revisions. Where there were differences, I checked Idaho Code to see if any of the new content conflicted with state law, or in some cases, aligned more closely with state law than the previous edition. The ITD Traffic Manual served as a good reference to highlight some of the key areas where the MUTCD had previously conflicted with state law and ITD practice. The existing rule was also reviewed in detail to determine how it would need to be modified to adopt the new edition. The materials available on the MUTCD web site, pertinent FHWA resources, and comments from NCUTCD technical committees were also reviewed and considered.

Several meetings, both in person and via Microsoft Teams, were held with ITD staff during the review process, including an all-day session to review the draft of the proposed rule.

The proposed rule is not solely additions to the existing rule. Some deletions were made where the content is adequately covered in the new MUTCD or the current ITD Traffic Manual or could be addressed through revisions to the Traffic Manual. Key areas of the proposed rule that are either continued from the existing rule or are new additions or deletions are listed below.

- (1) Photo enforcement, high-occupancy vehicle lanes, light rail transit, priced managed lanes, and toll facilities. None of these are used in Idaho, but each topic has significant content in the MUTCD that is not pertinent to Idaho, so the proposed rule now specifically states that.
- (2) Idaho law specifically requires drivers to “yield to,” not “stop for” pedestrians in an uncontrolled crosswalk. This has been addressed in previous versions of the rule and has been included in the proposed rule with some minor changes for clarification and to update wording used in the new MUTCD.
- (3) Truck restrictions and requirements. Idaho has specific definitions for trucks that relate to speed limits, weight limits and length restrictions. Because the signs that pertain to each of these limits are regulatory signs unique to Idaho, they are included in the proposed rule.

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(4) Work zone and school zone speeding. Speeding is the only violation addressed in Idaho law for enhanced penalties in work zones and school zones, and there are specific requirements to enforce the violations. Although the existing rule included the signing to accomplish this, the changes in the proposed rule add further clarification and guidance.

(5) Chains Recommended When Icy and Open Range signs. These warning signs are Idaho-specific signs that are not found in the MUTCD and are included in the proposed rule for the first time.

(6) Slow Vehicle Turn-Outs. A Slow Vehicle Turn-Out sign that is used in Idaho but not in the MUTCD was added to the proposed rule. However, most of the “slow vehicle” section from the previous rule was removed from the proposed rule because it is already adequately addressed, either in the new edition of the MUTCD or in the ITD Traffic Manual.

(7) Memorial signing. Since the existing rule was adopted, the Idaho legislature designated two additional routes that need to be added to the proposed rule. However, twelve paragraphs of this section from the previous rule were removed from the proposed rule because they are already adequately addressed, either in the new edition of the MUTCD or in the ITD Traffic Manual.

(8) Logos and TODS Policies. The two sections in the previous rule that referenced ITD’s Logos and TODS policies were removed from the proposed rule because they are already adequately addressed, either in the new edition of the MUTCD or in the ITD Traffic Manual.

(9) The “Idaho stop law” for bicyclists. In simple terms, Idaho law allows bicyclists to respond to a red traffic signal the same as other vehicles respond to a STOP sign; and to respond to a STOP sign the same as other vehicles must respond to a YIELD sign. This conflicts with MUTCD “Standard” statements and therefore must be addressed in the proposed rule. This requires changes to Chapters 2, 4 and 9 of the MUTCD.

(10) School zone signing. School zone signing is not standardized or consistent in Idaho. During research for the proposed rulemaking, I discovered at least five different signing combinations used, and more than one was not in compliance with the existing rule. In particular, the phrase “when children are present” is ambiguous and hard to enforce, especially without supplemental signing referring to specific days of the week and/or hours of the day. Because Idaho Code 49-658 specifically cites the “when children are present” plaque, the proposed rule now includes that plaque, but addresses in some detail the preferred hierarchy for school zone signs and the need to include days of the week and/or times of day plaques when using the “when children are present” plaque.

(11) Corrections to Known Errors. From the time the 11<sup>th</sup> Edition of the MUTCD became available for use, FHWA has been compiling and verifying a list of known errors. This is a typical part of the process. Many of the errors are of a typographical or grammatical nature, and none of these were addressed in the proposed rulemaking. However, some of the known errors are substantive, and could result in ambiguity and confusion if not addressed, so these corrections have been included in the proposed rulemaking. Examples of these are incorrect references to specific signs and incorrect section references.