



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

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MEMORANDUM

TO: Senators BRACKETT, Crabtree, Buckner-Webb and,
Representatives PALMER, Shepherd, Wintrow

FROM: Matt Drake - Legislative Drafting Attorney

DATE: November 04, 2020

SUBJECT: Temporary Rule

IDAPA 39.03.42 - Rules Governing Highway Right-of-Way Encroachments on State Rights-of-Way -
Adoption of Temporary Rule - Docket No. 39-0342-2001

IDAPA 39.03.43 - Rules Governing Utilities on State Highway Right-of-Way - Adoption of Temporary
Rule - Docket No. 39-0343-2001

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Matt Drake at the Legislative Services Office at (208) 334-4845. Thank you.

Attachment: Temporary Rule

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IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

**39.03.42 – RULES GOVERNING HIGHWAY RIGHT-OF-WAY
ENCROACHMENTS ON STATE RIGHTS-OF-WAY**

DOCKET NO. 39-0342-2001

NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is October 15, 2020.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 40-310, 40-311, 40-312, 40-313, 49-201 and 49-221, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

This temporary rulemaking reinstates the administrative appeals language that was mistakenly removed. This rulemaking corrects that technical error.

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

The administrative appeals section that was inadvertently deleted is a key piece of the Department's customer service and provides permit applicants the ability to appeal Department decisions regarding access/encroachment permits.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, please contact Ramón Hobdey-Sánchez at (208) 334-8810.

Dated this 8th Day of October, 2020.

Ramón S. Hobdey-Sánchez, J.D.
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THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 39-0342-2001
(Only Those Sections With Amendments Are Shown.)

002. ADMINISTRATIVE APPEAL.

01. Commencement. Applicants may appeal denied permits, or permits granted with conditions that the applicant believes to be unreasonable, in writing to the Department's District Engineer within thirty (30) days of receipt of written notification of the denial or grant of the permit. The appeal process commences on the date the Department's District office receives written notification of appeal from the applicant. (10-15-20)T

02. Process Hold. If at any time during the appeal process it is determined that insufficient documentation was submitted with the appeal, all parties shall be notified that the appeal process is placed on hold until the necessary documentation is supplied. (10-15-20)T

03. Appeal Process. The District will have thirty (30) working days to review the appeal. If the District Engineer does not rule on the appeal within the thirty (30) day period, the denial of the permit shall be deemed overturned and the permit shall be issued, or the contested permit conditions stricken. Notice of the decision of the District Engineer shall be issued by certified mail within seven (7) days of the ruling. Otherwise, if the District Engineer does not overturn the original denial or strike the contested provisions from the permit, upon receipt of a written request from the applicant within twenty-one (21) days of the date of the denial of the appeal, it shall be forwarded to the Department's legal section to initiate an appeal to the Idaho Transportation Board. The appeal will be processed in accordance with the Idaho Administrative Procedure Act and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (10-15-20)T

002~~3~~. -- 009. (RESERVED)

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT
39.03.43 – RULES GOVERNING UTILITIES ON STATE HIGHWAY RIGHT-OF-WAY
DOCKET NO. 39-0343-2001
NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is October 15, 2020.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 40-312, 49-201 and 67-5229 Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

This temporary rulemaking reinstates the administrative appeals language that was mistakenly removed. This rulemaking corrects that technical error.

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

The administrative appeals section that was inadvertently deleted identifies the authority Department customers and partners use for the appeals process under this chapter.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, please contact Ramón Hobdey-Sánchez at (208) 334-8810.

Dated this 8th Day of October, 2020.

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THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 39-0343-2001
(Only Those Sections With Amendments Are Shown.)

002. ADMINISTRATIVE APPEALS.

Administrative appeals under this chapter shall be governed by Section 2.4 “Administrative Appeal” of the “Utility Accommodation Policy” incorporated by reference. (10-15-20)T

003. INCORPORATION BY REFERENCE.

The Idaho Transportation Department incorporates by reference the July 2003 Edition of “Utility Accommodation Policy.” This publication is available for public inspection and copying at the Office of the Utilities/Railroad Engineer at the Idaho Transportation Department central office, or the District offices, or the Idaho Transportation Department Website at <http://itd.idaho.gov>. (3-30-07)

004. -- 999. (RESERVED)