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
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.
Office of Governmental Affairs
Idaho Transportation Department
3311 W. State St.
Boise, ID 83707-1129
Phone: (208) 334-8810
ramon.hobdey-sanchez@itd.idaho.gov
(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)

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)

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)

0023. -- 009. (RESERVED)
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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(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)

0023. 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)

0024. -- 999. (RESERVED)