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**IDAPA 39  
TITLE 03  
Chapter 42**

**39.03.42 - RULES GOVERNING USE OF STATE RIGHT-OF-WAY**

**000. LEGAL AUTHORITY.**

The Idaho Transportation Board adopts this rule under the authority of Sections 40-310 and 40-312, Idaho Code.  
(12-26-90)

**001. TITLE AND SCOPE.**

This rule regulates access to Idaho's state highway system and other non-highway uses of the right-of-way.  
(12-26-90)

**002. -- 099. (RESERVED).**

**100. GENERAL.**

01. Maintenance of Approach. Once the new roadway approach has been constructed by the permittee to an acceptable standard, unless otherwise provided, the Department will maintain the approach as follows:  
(12-26-90)

a. Paved public approach - State maintains to the right-of-way line. (12-26-90)

b. Paved private approach - State maintains to end of radii, permittee maintains beyond the radii.  
(12-26-90)

c. Gravel public approach - State installs an asphalt wedge sufficient to protect the roadway pavement edge (three (3) to six (6) feet back from the edge of road for the width of the approach). It is desirable to pave the approach to the right-of-way line when the road is reconstructed. The State maintains to the right-of-way line.  
(12-26-90)

d. Gravel private approach - State may install an asphalt wedge sufficient to protect the roadway pavement edge (three (3) to six (6) feet back from the edge of road for the width of the approach). The permittee maintains beyond the wedge.  
(12-26-90)

02. Safety Requirements. The safe, efficient passage and protection of vehicles and pedestrians during any work within the right-of-way covered by permit is very important and shall be the responsibility of the permittee. During the progress of the work, barricades, signs and other traffic control devices shall be erected and maintained by the permittee in conformance with the current "Manual on Uniform Traffic Control Devices."  
(12-26-90)

**101. -- 199. (RESERVED).**

**200. APPLICATIONS AND PERMITS.**

01. Required. To help preserve the highways as constructed and provide responsible growth where allowed, any person or agency planning to access the highway or use highway right-of-way for any purpose other than travel, shall obtain an approved "Application and Permit to Use Right-of-Way."  
(12-26-90)

02. Applicant to be Informed. Applicant shall be informed of Department policies and regulations concerning encroachments and shall pay for any changes or adjustments of highway features or fixtures brought about by actions, operations or requirements caused by the applicant.  
(12-26-90)

03. Work Prior to Approval. No work of any nature shall be performed on highway right-of-way until an approved permit has been issued. In an emergency, approval may be given by the District Engineer or his delegated representative in advance of processing the permit.  
(12-26-90)

04. Department Held Harmless. In accepting this permit, the permittee, its successors and assigns,

agree to hold the Department harmless from any liability caused by the installation, construction, maintenance or operation of the approach(es). (12-26-90)

05. Headquarters' Coordination. The Traffic Section is responsible for coordinating the processing of applications in the Boise Headquarters. (12-26-90)

06. Prior Approved Access Control. Approach permits on projects for which access control was approved prior to October 18, 1978, require exchange deeds to be executed by either the Idaho Transportation Board or Department Director in accordance with Board policy B-03-01. (12-26-90)

**201. -- 299. (RESERVED).**

**300. ENCROACHMENTS.**

No signs, billboards or structures other than those authorized and installed by the Idaho Transportation Department, or those which the government entity deems necessary for the regulating, warning and guiding of traffic shall be permitted within, or to overhang, the right-of-way of any State highway, except in accordance with these provisions: (12-26-90)

01. Encroachment Exceptions. Signs or marquees extending over the sidewalk and right-of-way may be installed on a permit basis, in curbed sections subject to the following restrictions: (12-26-90)

a. No sign or marquee shall be permitted to project over the roadway nor to extend beyond a vertical line located eighteen (18) inches outside the curb face. Signs extending over the sidewalk area shall have no part thereof less than twelve (12) feet above sidewalk or ground level. Marquees extending over the sidewalk area shall have no part thereof less than eight (8) feet above sidewalk or ground level. (12-26-90)

b. Displays or signs overhanging the right-of-way may be authorized on a permit basis outside of a curbed area when the display is supported by the building and does not extend more than twelve (12) inches into the right-of-way. (12-26-90)

c. All signs and marquees shall conform to the local building and/or sign code except that minimum clearance requirements as herein specified shall be met. Signs and marquees should be maintained in a neat appearing and structurally safe condition at all times. Existing signs or marquees suspended or projected over any portion of State highway right-of-way which constitute a hazard shall be immediately repaired or removed. (12-26-90)

d. Signs or displays shall not be permitted which resemble, hide, or because of their color, interfere with the effectiveness of traffic signals and other traffic control devices. Illuminated signs or displays containing red, yellow, or green lights are not permitted to overhang the right-of-way. (Section 49-805, Idaho Code) (12-26-90)

e. A permit may be issued for installation of temporary decorations or banners over a State highway, if they do not interfere with the visibility and effectiveness of traffic control devices. (12-26-90)

02. Encroachment Removal. Any person maintaining an encroachment of any kind upon State highway right-of-way shall be served, according to law, with a notice to remove the same. If the encroachment is not removed within ten (10) days after the service of such notice, the Department shall institute appropriate legal action to have it removed. (12-26-90)

**301. -- 399. (RESERVED).**

**400. PROHIBITIONS.**

01. Prohibited Uses. The use of the highway right-of-way or any portion thereof for any of the following uses or purposes shall be prohibited: (12-26-90)

a. Mobile stores, mobile lunch wagons or any other business of like nature when such vehicles stop to offer for sale or sell their wares on any portion of any State highway right-of-way. (12-26-90)

b. Fruit, vegetable, produce or lunch stands or any other business, temporary or permanent, offering for sale or selling any item or product, including motor fuels, or service or attempting to serve vehicles standing or parked on State highways. (12-26-90)

c. The storage of any substance or material, including but not limited to logs, lumber, supplies or aggregates. (12-26-90)

d. Any private sign, advertising display, structure or political poster, provided that political posters on utility poles shall be governed by Section 18-7029, Idaho Code. (12-26-90)

02. Modification of Rule. The District Engineer of any district with the approval of the State Highway Administrator may modify this rule for emergency, temporary installations which are in the interest of road operational emergency needs of benefit to the highway user. (12-26-90)

03. Board Jurisdiction. The Board, by and through the State Highway Administrator, may consummate agreements with cities and villages whereby they may exercise their police powers on those matters within their jurisdiction. (12-26-90)

**401. -- 499. (RESERVED).**

**500. GENERAL REGULATIONS FOR APPROACHES.**

01. Applicable Standards. The location, design and construction of all new approaches shall comply with the Idaho Transportation Department's standards. Information regarding applicable standards is available at Transportation Department Headquarters and all Highway District offices. (12-26-90)

02. Approach Locations. Approaches shall be located where they do not create undue interference with or hazard to the free movement of normal highway or pedestrian traffic and so that areas of congestion shall not be created on the highway. (12-26-90)

03. Approach Changes. The Department reserves the right to make any changes, additions, repairs or relocations to any approach or its appurtenances within the highway right-of-way, necessary relocation, reconstruction, widening, or maintenance of the highway and/or to provide proper protection of life and property on, or adjacent to, the highway. (12-26-90)

04. Denial of Approach Application. Failure to comply with these requirements may be sufficient cause for the Department to deny an approach application, prohibit specific approach usage, or remove an existing approach. (12-26-90)

**501. DESIGN PRINCIPLES FOR APPROACHES.**

01. Base and Surfacing. (12-26-90)

a. It shall be the responsibility of the permittee to supply, place and properly compact the approach fill and base material. All base material shall consist of sand-gravel, or sand and rock mixtures containing sufficient granular fines to fill the voids between the larger gravel and stone, and to permit compaction. (12-26-90)

b. In areas without curb and gutter, the approach base and surfacing shall consist of an adequate depth of granular material. When deemed necessary by the Department, for maintenance or operational purposes, the property owner shall be required to furnish and place asphalt surfacing. (12-26-90)

c. In curb and gutter areas, approaches shall be paved to the back edge of the sidewalk or right-of-way line whichever is the least. (12-26-90)

02. Drainage. All approaches shall either drain away from the traveled way or have sufficient crown to cause all drainage to run to the sides of the approach rather than drain onto the highway, except in areas having curb and gutter. Generally, approaches in areas having curb and gutter should be graded so that adjacent private properties

would not drain to the highway unless existing storm drain system capacity is demonstrated to be adequate within current design criteria. Culverts and drop inlets shall be installed where required and shall be the type and size specified by the Department. Where the border area is regraded and/or landscaped, it shall have sufficient slope, culverts, and drop inlets for adequate drainage. (12-26-90)

**502. GEOMETRIC RESTRICTIONS FOR APPROACHES.**

01. Number of Approaches. The number of approaches provided shall be the minimum number required to adequately serve the needs of the property. Normally not more than two (2) approaches should be provided to any single property tract or business establishment frontage. (12-26-90)

02. Width. An approach shall be wide enough to properly serve the anticipated type and volume of traffic. This width shall be within the following specified limits, except that approaches in speed zones over thirty-five (35) mph shall be a twenty (20) foot minimum. Minimum widths should normally be avoided. (12-26-90)

- a. Residential: twelve (12) foot minimum to thirty (30) foot maximum. (12-26-90)
- b. Farmyard, Field: twelve (12) foot minimum to fifteen (15) foot maximum. (12-26-90)
- c. Commercial (one (1) way): fifteen (15) foot minimum to thirty (30) foot maximum. (12-26-90)
- d. Commercial (two (2) way): twenty-five (25) foot minimum to forty (40) foot maximum. (12-26-90)

03. Corner Clearance. (12-26-90)

a. Approaches should be located as far as possible from intersection: to preserve visibility at the intersection; to allow a vehicle leaving an approach to enter the desired traffic lane before entering the intersection; to permit a vehicle crossing the intersection to enter the approach in an orderly, safe manner with a minimum of interference to through traffic; and to facilitate the installation of traffic signs, signals and lighting where required. (12-26-90)

b. Minimum recommended corner clearances are as follows: (12-26-90)

With Curb and Gutter	Minimum	Desirable
Entering Side of Intersection	Corner Radius + twenty (20) ft minimum	Corner Radius + forty (40) ft to sixty (60)ft
Exit Side of Intersection	Corner Radius + ten (10) ft minimum	
Without Curb and Gutter	Minimum	Desirable
Entering Side of Intersection	Corner Radius + forty (40) ft minimum	
Exit Side of Intersection	Corner Radius + twenty (20) ft minimum	Corner Radius + twenty (20) ft to forty (40) ft

04. Conduits Under the Roadway. (12-26-90)

a. Conduits crossing under the highways carrying water, sewage, chemicals, electrical wire, communications cables, etc., shall be installed by jacking, driving or boring unless trenching can be justified. Justification would only be poor soil conditions, such as rock or boulders, inadequate room for a boring pit, or too many conflicts (gas lines, multiple telephone conduits, etc.). Where gravel or boulders prevent boring or jacking on the first try, at least two (2) other attempts should be made at different locations before contacting the District about an alternate installation method. Normally conduit up through twenty-four (24) inches outside diameter should be installed without trenching. (12-26-90)

b. The permittee is required to submit for approval details on casing, bulkhead and placement, vertical

and horizontal sketches showing dimensions of the pit and shoring, method of installing the conduit, dewatering, void filling, and traffic control devices. Sluicing or jetting shall not be allowed. (12-26-90)

- c. Conduits under freeways shall not be installed by cutting through the pavement. (12-26-90)

**503. APPROACHES FOR NEW DEVELOPMENTS.**

Before an approach permit is granted, a traffic impact study shall be required of all new developments which will generate over one hundred (100) cars per hour (total two (2) way) during the peak hour or a lesser volume if requested by the Department. The developer shall provide and pay for the study and the Department will review the study. (12-26-90)

**504. SUBSTANDARD APPROACHES.**

If a substandard approach is constructed, the permittee shall be given one (1) month to upgrade the approach to the prescribed standards on the permit or have a plan of action approved by the District Engineer with a completion date. Permits for approaches not upgraded to the prescribed standards shall be revoked and action taken to remove the approach. Unapproved approaches may be removed by the District and legal action initiated to collect the removal cost. (Section 40-120, Idaho Code) The above one (1) month requirement may be reduced if a hazardous situation is created by a permittee or party and immediate corrective work is ordered by the District Engineer when time is of the essence. (12-26-90)

**505. -- 599. (RESERVED).**

**600. APPLICATION FEES.**

01. Fee Administration. Fees for applications for permits shall be based on the Idaho Transportation Department's cost to produce the permit and administer the program. Fees for permits are not refundable in the event of denial of the permit by the Transportation Board or in the event the permittee fails to construct the approach. (12-26-90)

02. Availability of Fee Schedule. A current schedule of fees is available at the Idaho Transportation Department Headquarters Office or any Highway District Office. (12-26-90)

03. Studies. In addition to the application fee, the Department may require payment of the estimated cost of any studies or appraisals when, (12-26-90)

a. Large development plans must be reviewed and/or extensive Department time is expended on a traffic study or review; or (12-26-90)

b. Appraisals must be made to determine the fee to be paid the Department in a controlled access section if an additional approach is authorized. These fees may be charged at the discretion of the District Engineer. Estimated costs would include wages (loaded rate), travel, subsistence and other expenses incurred. The intent is to recover only Department costs. (12-26-90)

04. Inspection Fees. Inspection fees may be charged at the discretion of the District Engineer when substantial inspection time will be required. The fee would include wages, travel, subsistence and other expenses incurred. The intent is to recover only Department costs. When the inspection fee is to be assessed, it shall be stipulated under the application's special provisions. (12-26-90)

05. Performance Bond. A performance bond may be required of an applicant at the discretion of the District Engineer. The purpose of this bond is to guarantee completion of the work in accordance with the requirements of the permit. The bond amount would be large enough to cover costs to correct potential damage to the highway system the permittee might cause. The bond must be executed by a surety company authorized to conduct business in Idaho. (12-26-90)

06. Waivers. Permit fees shall be waived for: (12-26-90)

- a. Approaches resulting from right-of-way negotiations; (12-26-90)

- b. Future approaches shown on construction plans; (12-26-90)
- c. Agricultural uses of the right-of-way as included in the right-of-way agreement; and (12-26-90)
- d. Approaches and other uses where direct benefit to the Department is gained. (12-26-90)

**601. -- 699. (RESERVED).**

**700. APPEAL PROCESS.**

Applicants denied permits by the District Engineer, may appeal to the State Highway Administrator. If further arbitration is required, the Department Director will be consulted and, if necessary, the appeal may be presented to the Idaho Transportation Board for final decision. (12-26-90)

**701. -- 999. (RESERVED).**