

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

Division of Highways

39.03.43 – Rules Governing Utilities on State Highway Right-of-Way

Who does this rule apply to?

The rule applies to ITD and their management of utility facility installations within the State Highway rights-of-way.

- Utility companies; and
- Local jurisdictions

What is the purpose of this rule?

This rule provides the structure/process by which ITD may allow utility installations, relocations and adjustments of facilities within the State Highway rights-of-way. It addresses the responsibility of costs for such installations, relocations and adjustments and requirements of the utility companies. The rule includes reference to the Utility Accommodation Policy, which is the guidance document for ITD's processes. Additionally, it authorizes ITD Board powers of exception in unique situations of financial hardship.

What is the legal authority for the agency to promulgate this rule?

This rule implements the following statutes passed by the Idaho Legislature:

Highways and Bridges -

Idaho Transportation Board:

- [40-312, Idaho Code](#) – Powers and Duties — Rules and Regulations

State Government and State Affairs -

Idaho Administrative Procedure Act:

- [67-5229, Idaho Code](#) – Incorporation by Reference

Who do I contact for more information on this rule?

Idaho Transportation Department

Monday – Friday 8:00 am to 5:00 pm

P.O. Box 7129

Boise, ID 83707-1129

3311 West State Street

Phone: (208) 334-8000

itd.idaho.gov

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39.03.43 – RULES GOVERNING UTILITIES ON STATE HIGHWAY RIGHT-OF-WAY

000. LEGAL AUTHORITY.

Under authority of Sections 40-312(3) and 67-5229, Idaho Code, the Idaho Transportation Board adopts this rule. (3-21-22)

001. SCOPE.

The purpose of the policy is to regulate the location, design and methods for installing, relocating, adjusting and maintaining utilities on State highway right-of-way (ROW) when such use and occupancy is legal, in the public interest and will not adversely affect the highway or its users. The policy applies to new utility installations, to existing utility installations to be retained, relocated, maintained or adjusted because of highway construction or reconstruction, and to the relocation of utility facilities which are found to constitute a definite hazard to the traveling public. (3-21-22)

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. (3-21-22)

003. INCORPORATION BY REFERENCE.

The Idaho Transportation Department incorporates by reference the 2023 Edition of the “Utility Accommodation Policy.” This publication is available for public review on the Department’s website at <http://itd.idaho.gov>. (4-6-23)

004. SMALL WIRELESS FACILITIES.

01. Definitions. (3-21-22)

a. Small Wireless Facilities (SWF). (3-21-22)

i. The facilities: (3-21-22)

(1) Are mounted on structures fifty (50) feet or less in height including their antennas as defined in 47 C.F.R. § 1.1320(d); or (3-21-22)

(2) Are mounted on structures no more than ten percent (10%) taller than other adjacent structures; or (3-21-22)

(3) Do not extend existing structures on which they are located to a height of more than fifty (50) feet or by more than ten percent (10%), whichever is greater. (3-21-22)

ii. Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of an antenna in 47 C.F.R § 1.1320(d)), is no more than three (3) cubic feet in volume; (3-21-22)

iii. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than twenty-eight (28) cubic feet in volume; (3-21-22)

iv. The facilities do not require antenna structure registration under 47 C.F.R § 17.4; (3-21-22)

v. The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and (3-21-22)

vi. The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. §1.1307(b). (3-21-22)

02. Small Wireless Facility Fees. (3-21-22)

a. Federal Communications Commission (FCC). Per the Declaratory Ruling and Third Report and Order, WT Docket No. 17-79, WC Docket No. 17-84, FCC 18-133, (Sept. 26, 2018), the fee schedule is as follows: (3-21-22)

i. Five hundred dollars (\$500) for non-recurring fees, including a single up-front application that includes up to five (5) SWFs, with an additional one hundred dollars (\$100) for each SWF beyond five (5); or (3-21-22)

ii. One thousand dollars (\$1,000) for non-recurring fees for a new pole (i.e. not a collocation) intended to support one (1) or more SWF; and (3-21-22)

iii. Two hundred seventy dollars (\$270) per SWF per year for all recurring fees, including any possible ROW access fee or fee for attachment to structures in the ROW. (3-21-22)

005. – 999. (RESERVED)