

Zero-Based Regulation Prospective Analysis

Agency Name: Idaho Department of Lands

Rule Docket Number: 20-0308-2501

1. What is the specific Idaho statutory legal authority for this proposed rule?

Statute Section (include direct link)	Is the authority mandatory or discretionary?
Title 58, Chapter 1, <i>et seq</i> https://legislature.idaho.gov/statutesrules/idstat/title58/t58ch1/	Discretionary
Title 58, Chapter 6, <i>et seq</i> https://legislature.idaho.gov/statutesrules/idstat/Title58/T58CH6/	Discretionary

2. Define the specific problem that the proposed rule is attempting to solve? Can the problem be addressed by non-regulatory measures?

IDAPA 20.03.08 sets procedures for easements and other rights-of-ways on lands within the jurisdiction of the State Board of Land Commissioners. The rule establishes policy; fees and compensation for easements; guidelines and duration of temporary permits; amendments to existing easements; emergency work; cooperative use and reciprocal easement agreements; assignments of easements; abandonment, relinquishment, and termination of easements; procedure; and easements on state land under sale contract.

The general intent of this rule change is to:

- align the (20.03.08.020.07) Limit of Director's Discretion with the delegated authority levels as approved by the Land Board, from time to time.
- Better define and eliminate outdated definitions and terms, such as changing "easement application" to "right-of-way application" and create flexibility for digital submission of materials.
- Reduce the cumbersome and costly contents currently required within IDAPA for easement applications.
- Adjust ROW duration periods for temporary permits to align with longer-term rights-of way activities. Extending permit duration reduces re-issue frequency related to expiring permits.

Extending the duration of temporary permits improves customer service and produces a substantial savings for IDL staff and its rights-of-way customers.

- The proposed changes seek to comply with Executive Order 2020-01 and will streamline the processing of rights-of-ways
- Review and revise “Consideration” table to ensure consistency with the market.

3. How have other jurisdictions approached the problem this proposed rule intends to address?

a. Is this proposed rule related to any existing federal law? NO

Federal citation	Summary of Law (include direct link)	How is the proposed Idaho rule more stringent? (if applicable)

b. How does this proposed rule compare to other state laws?

State	Summary of Law (include direct link)	How is the proposed Idaho rule more stringent? (if applicable)
Washington		
Oregon		
Nevada		
Utah		
Wyoming		
Montana		
Alaska		
South Dakota		

The findings indicate most western states have similar or more stringent right of way applications, compared to Idaho’ current and proposed rules.

Arizona has a similar method to the proposed rule change regarding Idaho having the option to charge for a portion of the value created by an easement.

The analysis only compared the notable changes to the current 20.03.08 IDAPA Rules. There was not a state-by-state comparative analysis of each state’s right of way program or policies and procedures.

Addressing the commensurate portion of the value created by the right of way, as determined by the Director and supported by specific data such as an appraisal. The following contains information on cost benefit analysis, and comparable methodology of other entities.

To address the cost-benefit of adding the rule “*A commensurate portion of the value created by the right of way, as determined by the Director and supported by specific data such as an appraisal,*” when analyzing the **administrative costs**, there will be modest additions to staff time to order an appraisal and review an appraisal. There could be substantially higher **potential revenue gains** due to a report’s conclusions identifying value created by an easement and whatever the appraisal or study or Director determines reasonable for the grantor to charge for the easement. Below is a framework, informed by how other entities (e.g., BLM, USFS, state land departments like Arizona, Washington, and Montana) implement value-based right-of-way compensation.

◆ BENEFITS (Revenue Potential)

1. **Increased Compensation for High-Value Uses**
 - For rights-of-way (ROWs) that support high-revenue development property, charging a percentage of created value could yield significantly more than flat rates or fee schedules.
 - **Example:** Arizona State Land Department sometimes uses a value-capture model that results in 2–5× more revenue than a simple fee-for-area model.
2. **Equity and Market Alignment**
 - Ensures the State receives a fair return for trust beneficiaries based on actual market impact, consistent with the constitutional mandate to maximize long-term returns.
 - Helps avoid undervaluing corridors that create substantial benefit.
3. **Deters Speculative or Wasteful Applications**
 - By tying compensation to value creation, the State may discourage speculative applications or underutilization of ROWs.
4. Having this option better aligns with **market-based returns** and the fiduciary duty to trust beneficiaries, while retaining the Department’s **efficiency and administrative simplicity**.

◆ COSTS (Implementation Challenges)

1. **Appraisal and Valuation Costs**
 - The Department forecasts no substantial changes to the use of or necessity of appraisals or valuation studies, and forecasts little to no increase in administrative time when ordering and reviewing such reports. Modest additional time would be incurred depending on the complexity of reports.
 - The Department traditionally and currently employs a staff appraiser so no new position is necessary for administrative review and ordering reports.
 - Determining “value created” would need to be determined by an appraisal or report.

2. Processing Time

- No changes are anticipated for processing. There may be increases to the quantity of temporary permits due to the proposed rule change of lengthening the lifespan of permits, out to 20 years, where 5 year durations are the norm.
- Permits are a more efficient right-of-way instrument and require substantially less time and costs to process, both of applicants and Department.
- Transparent criteria and published guidance would be essential.

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1. **Use Comparable Models:** Examples of other valuation methods and standards, such as the BLM's linear ROW fee schedule, based on land value, use type, and use intensity which balances fairness and administrative ease. Higher intensity uses cost more.

Arizona State Land Department sometimes uses a value-capture model

(ASLD) sometimes employs a **value-based or value-capture model** in certain cases, especially for **commercial items, rights-of-way**, and partial **land dispositions**. Their approach aligns with their trust obligation to maximize revenue for beneficiaries (mainly K–12 schools), similar to Idaho's Endowment lands.

1. Commercial Rights-of-Way & Term Grants / Leases

ASLD commonly uses **appraised value** and **market comparables** to set fees—not a flat schedule. When a ROW significantly enhances the value of adjoining land or generates substantial income (e.g., utility corridors, pipelines, renewable energy sites), ASLD may charge:

- **One-time payments** based on **percent of project value**
- **Annual rents** indexed to CPI or **percentage of gross revenue** (especially for renewable energy)
- **Bonus bids** at auction for competitive rights

This is a form of **value capture**—the State captures part of the private value created by granting access to public trust land.

When state land is sold or leased in areas benefiting from state-provided ROWs or infrastructure, ASLD may appraise land **post-entitlement** or post-infrastructure to reflect its true market value. This is an indirect form of value capture.

- c. **If the Idaho proposed rule has a more stringent requirement than the federal government or the reviewed states, describe the evidence base or unique circumstances that justifies the enhanced requirement:**

The Department's current and proposed rules are substantially less stringent, and more efficient in regards to processing, requirements and customer service, when compared to federal land management agencies. The proposed rules will allow the State Land Board more flexibility on r-o-w issuances (grants).

4. What evidence is there that the rule, as proposed, will solve the problem?

There are not glaring problems to be solved within current rules. The proposed rules will increase efficiencies and create greater latitude and options for the Department. Most notably, increasing the duration of temporary permits from the 5-year norm to as long as 20-years, creates a substantial improvement for both customers and the Department.

5. What is the anticipated impact of the proposed rule on various stakeholders? Include how you will involve stakeholders in the negotiated rulemaking process?

Category	Potential Impact
Fiscal impact to the state General Fund, any dedicated fund, or federal fund	This change may result in increased compensation for certain types of rights of ways, which would result in a positive fiscal impact to endowment distributions. Issuing 5 and 10 year term permits synchronizes interval frequency resulting in reduced expenditure of Department resources while improving processing efficiencies.
Impact to Idaho businesses, with special consideration for small businesses	This change may result in fewer required application submission fees paid by applicants.
Impact to any local government in Idaho	SAME beneficial points as the above item.

#6 What cumulative regulatory volume does this proposed rule add?

Category	Impact
Net change in word count	-313
Net change in restrictive word count	-4

Table on file.

#7 Should this rule chapter remain as a rule chapter or be moved to statute as suggested in Section 67- 5292, Idaho Code? Yes, remain as a rule chapter.

Category	Impact
What is the cost of publishing this rule chapter annually? (Multiply the number of pages x \$56)	This rule is seven (7) pages. 7 pages @ \$56 per page equates to a total of \$392
How frequently has this rule chapter been substantively updated over the past 5 years? (Exclude republishing triggered solely by recent sunset dates)	This rule has not been substantively updated in the past 5 years.

What is the benefit of having all related requirements in a single location in Idaho Code?	This rule is a part of the Idaho Administrative Procedures Act (IDAPA) and is not located in Idaho Code.
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