

STATE BOARD OF LAND COMMISSIONERS

February 18, 2020

Regular Agenda

Subject

Omnibus Rulemaking – Adoption of Temporary Rules

Question Presented

Shall the Board adopt conditional temporary rules, to become effective only if the temporary rule adopted by the Land Board on July 16, 2019, and the proposed rules adopted by the Land Board as pending rules on October 17, 2019, are not otherwise approved or rejected by the 2020 Idaho Legislature and/or not extended pursuant to the Idaho Administrative Procedure Act?

Background

All existing administrative rules in Idaho expire each year on July 1 unless reauthorized by the legislature. The legislature adjourned the 2019 session without reauthorizing all previously approved and codified administrative rules. Executive administrative action was required to ensure existing rules stayed in effect.

The governor and his staff, in coordination with the Office of the Attorney General, directed all state agencies to republish rules concurrently, as both temporary and proposed. The Land Board adopted omnibus temporary rules, effective June 30, 2019, and adopted those omnibus rules as pending on October 17, 2019.

Further, the Department undertook negotiated rulemaking regarding IDAPA 20.03.02, Rules Governing Mined Land Reclamation, and the Land Board adopted those rules as temporary on July 16, 2019, pursuant to Idaho Code § 47-1518(f). They will expire at the end of the 2020 legislative session unless extended by the Legislature.

The Department also undertook negotiated rulemaking regarding IDAPA 20.03.03, Rules Governing Administration of the Reclamation Fund and IDAPA 20.03.04, Rules Governing the Regulation of Beds, Waters and Airspace Over Navigable Lakes in the State of Idaho. The amended proposed rules for IDAPA 20.03.03, and the proposed rules for IDAPA 20.03.04, were adopted as pending rules by the Land Board on October 17, 2019. The rules will become final and effective if approved by the 2020 Idaho Legislature.

To address this unique circumstance of rules potentially expiring at adjournment of the 2020 legislative session, the governor and his staff have directed all state agencies to adopt omnibus temporary rules in preparation for post-*sine die* (Attachment 1).

Discussion

To ensure the continuity of administrative rules following the adjournment of the 2020 legislative session, all agencies are required to submit an omnibus *Notice of Adoption of Temporary Rule* to the Division of Financial Management (DFM) by February 21, 2020 (Attachment 2).

The attached draft notices list all previously approved rules under IDAPA 20, rules of the Idaho Department of Lands. The majority of the 19 rule chapters under IDAPA 20 are under the authority of the Land Board. IDAPA 20 also includes rules pertaining to the conservation of oil and natural gas in the state of Idaho, authorized by the Idaho Oil and Gas Conservation Commission (Oil and Gas Commission) and rules of the Idaho Board of Scaling Practices (Scaling Board). The Oil and Gas Commission and Scaling Board are holding meetings on February 18, 2020 to consider whether to adopt a conditional temporary rule.

These rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. The rules of the Department serve the public interest by ensuring landowners, royalty owners, producers, and the public realize and enjoy the greatest good from the state's vital natural resources like oil, natural gas, and minerals. The rules also serve the public interest by regulating forestland management practices to maintain and enhance benefits such as job creation, tax generation, and distributions to endowment beneficiaries, and by conserving resources such as forest tree species, soil, air, water, and wildlife habitat.

If approved by the Land Board and other approving authorities, the Department will submit the notices of adoption of temporary rule to DFM. The rulemaking notices include rules of the Oil and Gas Commission and Scaling Board, because those rules are listed in IDAPA 20, the Department of Land's agency rules. However, the Department is not asking the Land Board to adopt the Oil and Gas Commission or Scaling Board rules.

Recommendation

Adopt as conditional temporary rules all of the Department's temporary and pending rules, as set forth in Attachment 2. The rules will become effective only if the temporary and pending rules are not otherwise approved or rejected by the 2020 Idaho Legislature and/or not extended pursuant to the Idaho Administrative Procedure Act.

Board Action

A motion was made by Attorney General Wasden to adopt the rules identified in Attachment 2 of the Department's memo as temporary rules to be effective *sine die* of the 2020 session of the Idaho Legislature. This approval and adoption is conditional and will only become effective if the rules previously adopted by this Board as final rules and currently pending before the Idaho Legislature are not otherwise effective upon *sine die* pursuant to Idaho Code § 67-5291 and § 67-5292. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

Attachments

1. January 31, 2020 Memo from DFM: Preparing Administrative Rules for Post-*Sine Die*
2. Notices of Omnibus Rulemaking – Adoption of Temporary Rule





State of Idaho
DIVISION OF FINANCIAL MANAGEMENT
Executive Office of the Governor

BRAD LITTLE
Governor

ALEX J. ADAMS
Administrator

January 31, 2020

MEMORANDUM

TO: Executive Branch Agency/Department Heads
Rules Review Officers

FROM: Alex J. Adams

SUBJECT: **Preparing Administrative Rules for Post-*Sine Die***

In order to ensure the continuity of administrative rules following the adjournment of the 2020 Legislative session, this memo outlines the process that agencies will need to complete prior to **February 21st**. While each agency must take these steps now, these temporary rules are conditional and will only become effective at *sine die* if the pending rules are not otherwise approved or rejected by the Legislature and/or not extended pursuant to the Idaho Administrative Procedure Act, including sections 67-5291 and 67-5292, Idaho Code.

1. Agencies must submit a completed Notice of Adoption of Temporary Rule form to DFM by February 21.
 - A template Notice is enclosed for both fee and non-fee rules.
 - Rules should be adopted as submitted to the 2020 Legislature with the following conditions:
 - a. If your agency had an omnibus docket and separate rulemaking actions, they will be combined by DFM into a **single** omnibus docket.
 - No ARRF will be required.
 - Please submit completed Notices to Adam Latham (Adam.Latham@dfm.idaho.gov)
2. If rulemaking authority is vested in a board or commission – not agency staff – the board or commission must convene to properly authorize the Notice. This is required by law. Please work closely with your attorney to ensure the Notice is properly authorized.
 - The meeting must be scheduled in a timeframe to submit a completed Notice to DFM prior to the February 21 deadline.
 - The motion should be made as follows:

“Pursuant to Section 67-5226, Idaho Code, the Governor has found that temporary adoption of this rule is appropriate to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens.

These rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws.

The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

(Include if a fee rule) The Governor has also found that the fee(s) or charge(s) being imposed or increased is/are justified and necessary to avoid immediate danger to the agency/department/board/commission's budget, to the state budget, to necessary state functions and services, and to avoid immediate danger of a potential violation of Idaho's constitutional requirement that it balance its budget.

Therefore, we are adopting this temporary rule to be effective upon *sine die* of the 2020 session of the Idaho Legislature. The approval is conditional and will only become effective if the rules are not otherwise approved or rejected by the Legislature and/or not extended pursuant to the Idaho Administrative Procedure Act, including sections 67-5291 and 67-5292, Idaho Code.”

3. DFM will publish those notices of temporary rulemaking at or shortly after *sine die* with the rules having an effective date as of *sine die*.
4. For these temporary rules only, agencies do not have to accept written comments pursuant to 67-5222(a) as its requirement and deadline applies to “publication of the notice of *proposed* rulemaking in the bulletin” (emphasis added). Of course, these are the same rules that each agency accepted public comments on and held over 150 public hearings on during the summer and fall of 2019.
5. Each agency must keep all records of this rulemaking process for at least two (2) years pursuant to Idaho Code § 67-5225. Please ensure the record is thorough and complete.

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

DOCKET NO. 20-0000-2000F

NOTICE OF OMNIBUS RULEMAKING - ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rules being adopted through this omnibus rulemaking is upon the adjournment date of the second regular session of the 65th Idaho State Legislature (sine die).

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 38-132 and 38-402, Idaho Code;
- Title 38, Chapter 12, including Section 38-1208, Idaho Code;
- Title 47, Chapters 3, 7, 8, 15, 16 and 18, including Sections 47-314(8), 47-315(8), 47-328(1), 47-710, 47-714, and 47-1316, Idaho Code;
- Title 58, Chapters 1, 3, 6, 12 and 13, including Sections 58-104, 58-105, 58-127, and 58-304 through 58-312, Idaho Code;
- Title 67, Chapter 52, Idaho Code;
- Article IX, Sections 7 and 8 of the Idaho Constitution; and
- The Equal Footing Doctrine (Idaho Admission Act of July 3, 1890, 26 Stat. 215, Chapter 656).

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

Through this temporary rule, the Idaho Department of Lands adopts the following chapters under IDAPA 20:

- 20.02.14, Rules for Selling Forest Products on State-Owned Endowment Lands
- 20.03.01, Rules Governing Dredge and Placer Mining Operations in Idaho
- 20.03.02, Rules Governing Mined Land Reclamation
- 20.03.03, Rules Governing Administration of the Reclamation Fund
- 20.03.04, Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho
- 20.03.05, Riverbed Mineral Leasing in Idaho
- 20.03.08, Easements on State Owned Lands
- 20.03.09, Easements on State Owned Submerged Lands and Formerly Submerged Lands
- 20.03.13, Administration of Cottage Site Leases on State Lands
- 20.03.14, Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases
- 20.03.15, Rules Governing Geothermal Leasing on Idaho State Lands
- 20.03.16, Rules Governing Oil and Gas Leasing on Idaho State Lands
- 20.03.17, Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands
- 20.04.02, Rules Pertaining to the Idaho Forestry Act and Fire Hazard Reduction Laws

Through this temporary rule, the Idaho Board of Scaling Practices adopts the following chapter under IDAPA 20:

- 20.06.01, Rules of the Idaho Board of Scaling Practices

Through this temporary rule, the Oil and Gas Conservation Commission adopts the following chapter under IDAPA 20:

- 20.07.02, Rules Governing Conservation of Oil and Natural Gas in the State of Idaho

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These temporary rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

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

The fees or charges, authorized in Sections 38-122, 38-404, 38-1209, 47-315(5)(e), 47-316, 47-710, 47-1506(g), 47-1508(f), 47-1316, 47-1803, 58-104, 58-105 and 58-127, 58-304, 58-601, 58-603, 58-1307, Idaho Code, are part of the agency's 2020 budget that relies upon the existence of these fees or charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these temporary rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget.

The following is a specific description of the fees or charges:

- 20.02.14 – Stumpage payments and associated bonding for removal of state timber from endowment land pursuant to timber sales.
- 20.03.01 – Application fee, amendment fee, assignment fee, and inspection fee for all dredge and placer permits in the state of Idaho.
- 20.03.02 – Application fee for permanent closure plans and assignment fee for reclamation plans and permanent closure plans.
- 20.03.03 – Annual payment for Reclamation Fund participation.
- 20.03.04 – Application fees for encroachment permits and deposits toward the cost of newspaper publication.
- 20.03.05 – Fees for applications, advertising applications, exploration locations, and approval of assignments for riverbed mineral leasing.
- 20.03.08 – Application fee, easement consideration fee, appraisal costs, and assignment fee for easements on state-owned lands.
- 20.03.09 – Administrative fee, appraisal costs, and assignment fee for easements on state-owned submerged lands and formerly submerged lands.
- 20.03.13 – Annual rental payment paid to the endowment for which the property is held.
- 20.03.14 – Lease application fee, full lease assignment fee, partial lease assignment fee, mortgage agreement fee, sublease fee, late rental payment fee, minimum lease fee, and lease payment extension request fee on state endowment trust lands.
- 20.03.15 – Application fee, assignment fee, and late payment fee for geothermal leases on state-owned lands.
- 20.03.16 – Exploration location permit fee, nomination fee, and processing fee for oil and gas leases on endowment lands.
- 20.03.17 – Application fee, rental rate, and assignment fee for leases on state-owned submerged lands and formerly submerged lands.
- 20.04.02 – Fee imposed upon the harvest and sale of forest products to establish hazard management performance bonds for the abatement of fire hazard created by a timber harvest operation, and fees imposed upon contractors for transferring fire suppression cost liability back to the State.
- 20.06.01 – Scaling assessment fee paid to a dedicated scaling account for all scaled timber harvested within the state of Idaho; administrative fees for registration, renewal, and transfer of log brands; fees for testing and issuance of a temporary scaling permit, specialty scaling license, and standard scaling license; fee to renew a specialty or standard scaling license; and fee for a requested check scale involving a scaling dispute.
- 20.07.02 – Bonding for oil and gas activities in Idaho and application fees for seismic operations; permit to drill, deepen or plug back; multiple zone completions; well treatment; pits and directional deviated wells.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Amy Johnson at (208) 334-0255 or rulemaking@idl.idaho.gov.

DATED this 21st day of February, 2020.

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IDAPA 20 – IDAHO DEPARTMENT OF LANDS

DOCKET NO. 20-0000-2000

NOTICE OF OMNIBUS RULEMAKING - ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rules being adopted through this omnibus rulemaking is upon the adjournment date of the second regular session of the 65th Idaho State Legislature (sine die).

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 38-115, 38-132, 38-402, 38-1304, 58-104, 58-105, and 67-5201 et seq., Idaho Code.

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

This temporary rule adopts the following chapters under IDAPA 20:

- 20.01.01, Rules of Practice and Procedure Before the State Board of Land Commissioners
- 20.02.01, Rules Pertaining to the Idaho Forest Practices Act
- 20.04.01, Rules Pertaining to Forest Fire Protection

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

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These temporary rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

FEE SUMMARY: This rulemaking does not impose a fee or charge.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Amy Johnson at (208) 334-0255 or rulemaking@idl.idaho.gov.

DATED this 21st day of February, 2020.

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