

STATE BOARD OF LAND COMMISSIONERS

May 18, 2021
Regular Agenda

Subject

Omnibus Rulemaking – Adoption of Temporary Non-Fee Rules

Question Presented

Shall the Land Board adopt conditional temporary non-fee rules, to become effective on July 1, 2021, only if the existing rules are 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. In the event the Idaho Legislature does not reauthorize the existing non-fee administrative rules, the governor and his staff have directed all state agencies to adopt conditional temporary rules (Attachment 1).

Executive administrative action is required to minimize the impact on the public and ensure existing non-fee rules remain in effect. The Land Board has already taken action to ensure the continuity of administrative fee rules.

Discussion

All agencies are required to submit an omnibus *Notice of Adoption of Temporary Rules* to the Division of Financial Management (DFM) by June 4, 2021. The attached draft notice lists the three chapters of existing non-fee rules under IDAPA 20, rules of the Idaho Department of Lands (Attachment 2). These rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens.

If approved by the Land Board, the Department will submit the notice of adoption of temporary rules to DFM for publication in a special edition of the Idaho Administrative Bulletin. The temporary rules will have an effective date of July 1, 2021.

Recommendation

Adopt as conditional temporary rules all of the Department's non-fee administrative rules, as set forth in Attachment 2. The rules will become effective on July 1, 2021, only if the existing rules are not extended pursuant to the Idaho Administrative Procedure Act.

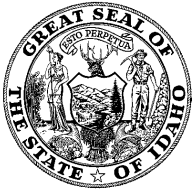
Board Action

A motion was made by Attorney General Wasden, who mentioned this is a matter that the Land Board has faced before, that the Land Board adopt as conditional temporary rules all of the Department's non-fee administrative rules, as set forth in Attachment 2. The rules will become effective on July 1, 2021, only if the existing rules are not extended pursuant to the Idaho Administrative Procedure Act. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

Attachments

1. April 27, 2021 Memo from DFM: Process to Reauthorize Non-Fee Rules Beyond July 1
2. Notice of Omnibus Rulemaking – Adoption of Temporary Rules (draft)





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

BRAD LITTLE
Governor

ALEX J. ADAMS
Administrator

April 27, 2021

MEMORANDUM

TO: Rules Review Officers/Agency Rules Contacts

FROM: Alex J. Adams 

SUBJECT: Process to Reauthorize Non-Fee Rules Beyond July 1

In the event the Idaho Legislature does not reauthorize the existing non-fee administrative rules as set forth in Section 67-5292, Idaho Code, this will require executive administrative action to ensure existing rules remain in effect in FY22. The following lays out the Governor's plan to accomplish this process. **This memo only applies to the reauthorization of the Non-Fee Rules.**

The Governor has directed DFM and all state executive agencies to exercise necessary executive authority to minimize the impact on state agencies, and the public most importantly. The efficient operation of state government is a priority to Governor Little, and the people of Idaho expect it.

Fee Rules: State agencies/Boards/Commissions have already taken action to ensure the Fee rules will remain in effect. The Fee rules have been adopted as temporary rules and will become effective upon sine die of the 2021 Legislative Session. The Fee rules will be published in a future administrative bulletin on or around July 21, 2021. Therefore, no additional action is necessary from agencies on fee rules.

Non-Fee Rules: DFM will begin the process of re-publishing existing non-fee rules by IDAPA chapter, using the engrossed rules updated for 2021 legislative action. Rules will be published in a special edition of the Idaho Administrative Bulletin on or around July 21, 2021. The temporary rules will have an effective date of July 1, 2021, to ensure there is no gap with the expiring rules.

1. Agencies must submit a completed Notice of Adoption of Temporary Rule form to DFM by June 4th, 2021.

- A template for adoption of Temporary Rule Notice is enclosed for the non-fee rules.
- Rules should be adopted as currently codified along with any amendments submitted to the 2021 Legislature with the following conditions.
- DFM has limited capacity to make edits at the proof stage given the volume and timing. Depending on the extensiveness of edits, we may be able to adopt edits of the following nature:
 - Technical corrections or minor edits necessitated by legislative action.
 - Specific changes directed during legislative review that would have otherwise taken effect under the Administrative Procedures Act.
 - COVID-19 changes that have been vetted in public (telephonic) meetings.
 - **Allow Rule to Expire -** If an agency intends to eliminate a rule, the rule will expire by default on June 30th, 2021. No ARRF is needed and no legislative review of the chapter will occur during the 2022 session.

- Please reach out to DFM at your earliest convenience if you have changes to make to your temporary rules.
- Plan to submit such minor edits at the proof stage on the official documents provided by DFM.
- The non-fee temporary rulemaking will be published as 1 **single** omnibus docket for each agency.
- No ARRF will be required.
- **Please submit completed Temporary Notices to adminrules@dfm.idaho.gov by June 4th, 2021.**

2. If rulemaking authority is vested in a board or commission – not agency staff – the board or commission must convene to properly authorize the rulemaking action. 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 June 4th 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.

Therefore, we are adopting this temporary rule to be effective upon July 1, 2021. 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. 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).

4. 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.

Looking Ahead: Proposed and Pending 2021 Omnibus Rulemaking / Zero-Based Rulemaking

We have an immediate focus on ensuring necessary non-fee rules continue in full force and effect starting July 1. Later this week, we will share additional information on the process for other rulemaking efforts, including the kickoff of zero-based rulemaking.

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

DOCKET NO. 20-0000-2100

NOTICE OF OMNIBUS RULEMAKING - ADOPTION OF TEMPORARY RULES

EFFECTIVE DATE: The effective date of the temporary rules being adopted through this omnibus rulemaking as listed in the descriptive summary of this notice is July 1, 2021.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given this agency has adopted temporary rules. 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 the temporary rules:

This temporary rulemaking 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)(a), (b), and (c), Idaho Code, the Governor has found that temporary adoption of the rules is appropriate for the following reasons:

These temporary rules are necessary to protect Idaho's natural resources, 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 Scott Phillips at (208) 334-0294.

DATED this 4th day of June, 2021.

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