

STATE BOARD OF LAND COMMISSIONERS

June 15, 2021
Regular Agenda

Subject

Omnibus Rulemaking – Adoption of Temporary Fee Rules

Question Presented

Shall the Land Board rescind the existing temporary fee rules with an effective date of July 1, 2021, set forth in Attachment 1, and adopt as temporary rules all of the Department's administrative fee rules, as set forth in Attachment 2, to become effective on July 1, 2021?

Background

Executive administrative action is required to ensure the fee rules under IDAPA 20, Rules of the Idaho Department of Lands (Department), remain in effect.

The fee rules currently in effect are the temporary rules conditionally adopted by the Land Board in February 2020 and published in a special edition of the Administrative Bulletin in April 2020 (Attachment 1). The existing temporary fee rules became effective on March 20, 2020 (*sine die*) and will continue in effect until the end of the 2021 legislative session.

The Land Board adopted omnibus pending fee rules on October 20, 2020, which included negotiated changes to IDAPA 20.03.02, *Rules Governing Mined Land Reclamation* as required by the 2019 amendments to Title 47, Chapter 15, Idaho Code. The pending fee rules were submitted to the 2021 Idaho Legislature for review (Attachment 2). The House Resources and Conservation Committee and the Senate Resources and Environment Committee approved the omnibus pending fee rules under docket 20-0000-2000F. To become final rules, the pending fee rules require approval by a concurrent resolution of the Idaho Legislature.

Although the Land Board conditionally adopted temporary fee rules in February 2021 to become effective upon adjournment of the legislature (Attachment 3), the adjournment of the 2021 legislative session could be as late as December 31.

Discussion

To ensure the continuity of administrative fee rules, the governor and his staff have directed all state agencies to adopt temporary fee rules with an effective date of July 1, 2021, and to rescind the existing temporary fee rules with the same effective date of July 1, 2021 (Attachment 4).

The majority of the 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 rulemaking notice includes rules of the Oil and Gas Commission and Scaling Board because those rules are listed in IDAPA 20, the Department's administrative rules. However, the Department is not asking the Land Board to adopt the Oil and Gas Commission or Scaling Board rules.

Recommendation

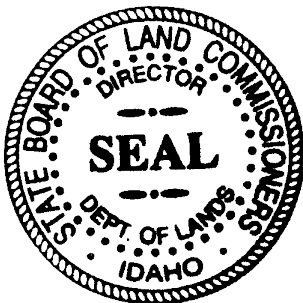
Rescind the existing temporary fee rules with an effective date of July 1, 2021, set forth in Attachment 1, and adopt as temporary rules all of the Department's administrative fee rules, as set forth in Attachment 2, to become effective on July 1, 2021.

Board Action

A motion was made by Attorney General Wasden that the Land Board adopt the Department recommendation that is rescind the existing temporary fee rules with an effective date of July 1, 2021, set forth in Attachment 1, and adopt as temporary rules all of the Department's administrative fee rules, as set forth in Attachment 2, to become effective on July 1, 2021. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

Attachments

1. April 15, 2020, Notice of Omnibus Rulemaking – Adoption of Temporary Fee Rules
2. November 18, 2020, Notice of Omnibus Rulemaking – Adoption of Pending Fee Rules
3. February 16, 2021, Approved Board Memo: Omnibus Rulemaking – Adoption of Temporary Fee Rules
4. May 20, 2021, DFM Memo: Current Status of Administrative Rules and What Agencies Need to Do



IDAPA 20 – IDAHO DEPARTMENT OF LANDS

DOCKET NO. 20-0000-2000F (FEE RULE)

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rules being adopted through this omnibus rulemaking is the adjournment date of the second regular session of the 65th Idaho State Legislature - March 20, 2020.

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 38-132 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 temporary rules:

This temporary rulemaking adopts the following chapters under IDAPA 20:

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*

The **Idaho Board of Scaling Practices** adopts the following temporary rule under IDAPA 20.06:

- 20.06.01, *Rules of the Idaho Board of Scaling Practices*

The **Oil and Gas Conservation Commission** adopts the following temporary rule under IDAPA 20.07:

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

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), 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 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 fees or charges being imposed or increased is justified and necessary to avoid immediate danger and the fees 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, 58-127, 58-304, 58-601, 58-603, and 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. 20-0000-2000F

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING FEE RULES

EFFECTIVE DATE: These rules have been adopted by the agency, the Idaho State Board of Land Commissioners, the Idaho Oil and Gas Conservation Commission (as to IDAPA 20.07.02), and the Idaho Board of Scaling Practices (as to IDAPA 20.06.01), and are now pending review by the 2021 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, these pending rules will not become final and effective until they have been approved by concurrent resolution of the legislature because of the fee being imposed or increased through these rulemakings. The pending fee rules become final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted pending rules. 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, 13, 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 a concise explanatory statement of the reasons for adopting the pending fee rules and a statement of any change between the text of the proposed fee rules and the text of the pending fee rules with an explanation of the reasons for the change.

These pending fee rules adopt and re-publish the following existing rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 20, Rules of the Idaho Department of Lands:

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* (as noted below);
- 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*;

The Idaho Board of Scaling Practices adopts the following pending fee rule under IDAPA 20.06:

- 20.06.01, *Rules of the Idaho Board of Scaling Practices*

The Oil and Gas Conservation Commission adopts the following pending fee rule under IDAPA 20.07:

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

These pending fee rules adopt and publish changes to IDAPA 20.03.02, Rules Governing Mined Land Reclamation. The previously approved and codified chapter of IDAPA 20.03.02 has been amended through the negotiated rulemaking process to incorporate changes required by the passing of HB141 during the 2019 legislative session. Following are the changes to the previously codified rule: including surface impacts of underground mines, setting fees for reclamation plans, incorporating water treatment and post-closure activities in reclamation plans as

needed, requiring that all reclamation tasks in a plan be completed and covered by financial assurance, estimating actual cost of reclamation and post-closure activities, expanding the types of financial assurance, and reviewing every plan at least once every five years. Also, compliance with [Executive Orders 2019-02](#) and [2020-01](#) required additional changes, and rulemaking by the Department of Environmental Quality on the Ore Processing by Cyanidation Rules (IDAPA 58.01.13) required parallel changes to IDAPA 20.03.02.

The original text of the proposed rules was published in the September 16, 2020 Idaho Administrative Bulletin (Special Edition), [Vol. 20-9SE, pages 985-1192](#). The text of the pending rule for IDAPA 20.03.02, Rules Governing Mined Land Reclamation, has been amended in accordance with Section 67-5227, Idaho Code; changes were made to the proposed rule in order to provide more clarity, further implement [Executive Order 2020-01](#), correct errors, respond to comments, and ensure continuity with IDAPA 58.01.13. This pending rule is being adopted to fully implement the changes required by HB141. These rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho, to give mine operators in Idaho more choices in providing financial assurance, and to update Idaho's mining regulations.

FEE SUMMARY: Following is the fee summary for IDAPA 20.03.02, Rules Governing Mined Land Reclamation:

HB 141 passed during the 2019 legislative session and authorized application fees for reclamation plans. Fees were implemented through a temporary rule prior to August 1, 2019 as required by HB 141. The temporary rule was extended to allow time for more negotiation toward a proposed rule. The base fees in the 2019 temporary rule have not changed, but the pending rule allows additional application fees to be charged if an application processed under Section 069 of the rules is incomplete and increases the length of the review past 20 hours of staff time. For applications processed under Section 070 of the rules, a cost recovery agreement may be entered into instead of submitting the base application fee. The proposed fees reflect cost recovery for IDL administrative costs associated with the review and approval of new plans and amended existing plans that are reviewed within the required five-year period. The proposed fees align with fees charged by other mineral-producing states in the western United States for reclamation plan review, approval, and amendments. The fees are estimated to generate annual revenue of approximately \$27,000 and will be placed into a dedicated account authorized under Idaho Code § 47-1513(f)(1). These funds are expected to offset additional IDL expenses anticipated with implementation of the five-year plan review process and increase in plan inspections now required under Idaho Code § 47-15.

For the following rule chapters, this rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature.

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. This charge is being imposed pursuant to Sections 58-104, 58-105 and 58-127, Idaho Code.
- 20.03.01 – Application fee, amendment fee, assignment fee, and inspection fee for all dredge and placer permits in the state of Idaho. This fee is being imposed pursuant to Sections 47-1316 and 47-1317, Idaho Code.
- 20.03.03 – Annual payment for Reclamation Fund participation. This charge is being imposed pursuant to Section 47-1803, Idaho Code.
- 20.03.04 – Application fees for encroachment permits and assignments and deposits toward the cost of newspaper publication. This fee is being imposed pursuant to Sections 58-127 and 58-1307, Idaho Code.
- 20.03.05 – Fees for applications, advertising applications, and approval of assignments for riverbed mineral leases and exploration locations. This fee is being imposed pursuant to Section 47-710, Idaho Code.
- 20.03.08 – Application fee, easement consideration fee, appraisal costs, and assignment fee for easements on state-owned lands. This fee is being imposed pursuant to Sections 58-127, 58-601, and 58-603, Idaho Code.
- 20.03.09 – Administrative fee, appraisal costs, and assignment fee for easements on state-owned submerged lands and formerly submerged lands. This fee is being imposed pursuant to Sections 58-104, 58-127 and 58-603, Idaho Code.
- 20.03.13 – Annual rental payment paid to the endowment for which the property is held. This charge is being imposed pursuant to Section 58-304, Idaho Code.

- 20.03.14 – Lease application fee, full lease assignment fee, partial lease assignment fee, mortgage agreement fee, sublease fee, rental payment, late rental payment fee, minimum lease fee, and lease payment extension request fee on state endowment trust lands. This fee or charge is being imposed pursuant to Section 58-304, Idaho Code.
- 20.03.15 – Application fee, assignment fee, late payment fee, royalty payments, and annual rental payment for geothermal leases on state-owned lands. This fee or charge is being imposed pursuant to Sections 47-1605 and 58-127, Idaho Code.
- 20.03.16 – Exploration permit fee, nomination fee, processing fee, royalty payments, and annual rental payment for oil and gas leases on endowment lands. This fee or charge is being imposed pursuant to Sections 47-805 and 58-127, Idaho Code.
- 20.03.17 – Application fee, rental rate, and assignment fee for leases on state-owned submerged lands and formerly submerged lands. This fee is being imposed pursuant to Sections 58-104, 58-127 and 58-304, Idaho Code.
- 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. This fee or charge is being imposed pursuant to Sections 38-122 and 38-404, Idaho Code.
- 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. This fee is being imposed pursuant to Section 38-1209, Idaho Code.
- 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. This fee or charge is being imposed pursuant to Sections 47-315(5)(e) and 47-316, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the fees charged under IDAPA 20.03.02 are expected to cover the additional costs imposed by HB141, and none of the other rule chapters have changed their fees.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Scott Phillips at (208) 334-0294.

Dated this 18th day of November, 2020.

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STATE BOARD OF LAND COMMISSIONERS

February 16, 2021

Regular Agenda

Subject

Omnibus Rulemaking – Adoption of Temporary Fee Rules

Question Presented

Shall the Land Board adopt conditional temporary fee rules, to become effective only if the pending fee rules are not otherwise approved or rejected by the 2021 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 Land Board adopted omnibus pending fee rules on October 17, 2019, which were submitted to the 2020 Idaho Legislature for review under docket number 20-0000-1900F. The 2020 Idaho Legislature did not pass a concurrent resolution approving any pending fee rules; however, the Land Board had conditionally adopted temporary fee rules on February 18, 2020. This proactive action taken to conditionally re-approve fee rules upon *sine die* ensured they remained in effect as temporary rules.

The temporary rules will expire at the end of the 2021 legislative session. The Land Board adopted omnibus pending fee rules on October 20, 2020, which were submitted to the 2021 Idaho Legislature for review under docket number 20-0000-2000F. The pending fee rules will become final rules if approved by a concurrent resolution.

Discussion

To ensure the continuity of administrative fee rules following adjournment of the 2021 legislative session, the governor and his staff have directed all state agencies to adopt omnibus temporary fee rules in preparation for post-*sine die* (Attachment 1). All agencies are required to submit an omnibus *Notice of Adoption of Temporary Fee Rules* to the Division of Financial Management (DFM) by March 4, 2021.

The attached draft notice lists previously approved fee rules under IDAPA 20, rules of the Idaho Department of Lands (Attachment 2). The majority of the rule chapters under IDAPA 20 are under the authority of the Land Board, and 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).

If approved by the Land Board and other approving authorities, the Department will submit the notice of adoption of temporary fee rules to DFM. The rulemaking notice includes 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

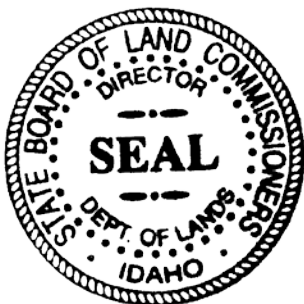
Adopt as conditional temporary rules all of the Department's administrative fee rules, as set forth in Attachment 2. The rules will become effective only if the pending fee rules are not otherwise approved or rejected by the 2021 Idaho Legislature and/or not extended pursuant to the Idaho Administrative Procedure Act.

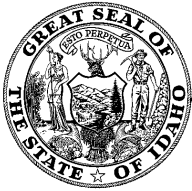
Board Action

A motion was made by Attorney General Wasden that the Land Board adopt the Department recommendation that is that the Land Board adopt as conditional temporary rules all of the Department's administrative fee rules, as set forth in Attachment 2. The rules will become effective only if the pending fee rules are not otherwise approved or rejected by the 2021 Idaho Legislature and/or 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. February 4, 2021 Memo from DFM: Preparing Administrative Fee Rules for Post-*Sine Die*
2. Notice of Omnibus Rulemaking – Adoption of Temporary Fee Rules (draft)





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

BRAD LITTLE
Governor

ALEX J. ADAMS
Administrator

May 20, 2021

MEMORANDUM

TO: Executive Branch Agency/Department Heads
Rules Review Officers

FROM: Alex J. Adams 

SUBJECT: Current Status of Administrative Rules and What Agencies Need to Do

As you all know by now, the Senate adjourned *sine die* on May 12th and the House recessed subject to the call of the Speaker, no later than December 31st.

The Attorney General's office noted that this scenario is unique and without precedent in Idaho. This action places the state's administrative rules in a precarious state.

Naturally, many of you have reached out with questions about the current status of administrative rules, and this memo intends to summarize the FAQs and the action agencies need to take.

1. Have the rule changes we presented to the Legislature taken effect?

No, the rule changes presented to the 2021 legislature have not taken effect. Rule changes would traditionally take effect upon *sine die* (if properly acted on by the legislature), which could be as late as December 31st.

2. Are our administrative rules still in effect?

Yes, all *existing* state administrative rules remain in full force and effect as of today.

- Existing non-fee rules will expire on June 30th due to legislative inaction.
- All current temporary rules (which includes all existing fee rules) will expire upon *sine die*, which could be as late as December 31st.

Thus, while all administrative rules continue in full force and effect today, this starts to change on June 30th, first for the non-fee rules. As a result, executive administrative action is needed to ensure existing rules remain in effect.

Rest assured, Governor Little is committed to ensuring continuity of the services citizens expect. To minimize confusion and guard against the uncertainty of a future *sine die* date that could provide some major practical impediments to re-promulgation of rules at the end of the year, here's the plan:

- Agencies will rescind all current temporary state administrative rules, including fee chapters presented to the 2021 legislature, effective July 1, 2021.
- We will then republish all necessary rules with an effective date of July 1, 2021 with the changes presented to the 2021 legislature. This will make all changes in effect as of July 1 and ensure the continuity of all state administrative rules through the end of the 2022 legislature.

- A special bulletin will publish on July 21, 2021, that will include each of these temporary rules with an effective date of July 1st.

3. What action does our agency need to take to ensure the continuity of our rules?

Luckily, agencies have already taken action to prepare for this event (see DFM memos from February 4 and April 27). Here's the next steps:

- You will receive a proof of your administrative rules on or around **June 10th**. The proof will be based on the feedback you submitted to DFM pursuant to the prior memos. The proof will be structured to carry out the aforementioned plan of rescinding current rules and replacing with the new temporary rules.
- You will need to review the proof and apprise DFM of any necessary changes. Please work closely with your legal counsel if your agency/board/commission needs to take formal action on the proof. In discussing this with your counsel, please note if your previous motion was for the temporary rule to take effect on *sine die* or July 1. If the former, additional action may be necessary. A sample motion you may make is attached as **Appendix A**.
- All proofs must be returned to DFM no later than COB on **June 22nd**. If your legal counsel determines that board/commission approval is necessary, please proactively schedule your public meeting for the week of June 14th. Given the volume of rules DFM is dealing with, no exceptions will be made to the June 22nd deadline. Any response not received by this date will be presumed to mean the agency is letting the rule expire as of June 30th.

Appendix A. Sample Motion.

“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. We are also rescinding our existing temporary rule with an effective date of July 1, 2021.”