



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

BRAD LITTLE
Governor

ALEX J. ADAMS
Administrator

February 4, 2021

MEMORANDUM

**TO: Executive Branch Agency/Department Heads
Rules Review Officers**

FROM: Alex J. Adams

Handwritten signature of Alex J. Adams in black ink.

SUBJECT: Preparing Administrative Fee Rules for Post-Sine Die

In order to ensure the continuity of administrative rules following the adjournment of the 2021 Legislative session, this memo outlines the process that agencies will need to complete prior to **March 4, 2021**. While each agency must take these steps now, these temporary fee rules are conditional and will only become effective at *sine die* if the pending fee 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 March 4th.
 - A template Notice is enclosed for fee rules only.
 - Rules should be adopted as submitted to the 2021 Legislature.
 - a. The Fee Rules expire upon Sine Die if not approved by the legislature via concurrent resolution of both the Senate and House Floor.
 - b. The Non-Fee Rules that became final rules after the 2020 legislative session, expire on June 30th, 2021, if the legislature does not extend them pursuant to the Idaho Administrative Procedure Act, section 67-5292, Idaho Code. Guidance will be forthcoming to re-adopt non-fee rule chapters if they are allowed to expire. Non-fee rules will be addressed by DFM after *sine die*.
 - No ARRF will be required.
 - Please submit completed Notices to adminrule@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 of Temporary Fee Rulemaking to DFM prior to the March 4 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.

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/these temporary fee rule(s) to be effective upon *sine die* of the 2021 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 the fee 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 fee 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). Robust opportunity for public input on the fee rules occurred during 2020 rulemaking. The 2020 temporary fee rules were acted upon in open public meetings/hearings that allowed public comment throughout the rulemaking process.
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.