



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.