



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.”