

Dear Senators VICK, Heider, Stennett, and  
Representatives GIBBS, Lickley, Rubel:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the  
Idaho Department of Water Resources:

IDAPA 37.02.03 - Water Supply Bank Rules (ZBR Chapter Rewrite, Fee Rule) - Proposed Rule  
(Docket No. 37-0203-2201).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the  
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research  
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative  
Services. The final date to call a meeting on the enclosed rules is no later than 11/18/2022. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 12/16/2022.

The germane joint subcommittee may request a statement of economic impact with respect to a  
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,  
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has  
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the  
memorandum attached below.



**Terri Kondeff**  
Director

# Legislative Services Office

## Idaho State Legislature

*Serving Idaho's Citizen Legislature*

### MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Resources & Conservation Committee  
**FROM:** Deputy Division Manager - Katharine Gerrity  
**DATE:** November 01, 2022  
**SUBJECT:** Idaho Department of Water Resources

IDAPA 37.02.03 - Water Supply Bank Rules (ZBR Chapter Rewrite, Fee Rule) - Proposed Rule (Docket No. 37-0203-2201)

#### Summary and Stated Reasons for the Rule

The Idaho Department of Water Resources submits notice of proposed rule at IDAPA 37.02.03 - Water Supply Bank Rules. This is a chapter rewrite and a fee rule. According to the department, it is rewriting the chapter as part of the 5-year agency review of rules pursuant to Executive Order. The department states that changes to the rule come through a combination of a removal of obsolete provisions, removal of unnecessary provisions, and modifications to existing rules regulating the processing of water supply bank leases and rentals. The department notes that the Water Resource Board is authorized by statute to generate revenue through the operation of water supply bank and rental pools and to collect "lease" and "rental" fees in association with water supply bank and rental pool transactions. The department adds that the proposed rule does not change current water supply bank and rental pool fees.

#### Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was conducted. There is no fiscal impact as a result of this rulemaking.

#### Statutory Authority

The rulemaking appears to be authorized pursuant to Sections 42-1762, 42-1734, and 42-1805, Idaho Code.

cc: Idaho Department of Water Resources  
Megan Jenkins

#### \*\*\* PLEASE NOTE \*\*\*

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

Paul Headlee, Deputy Director    Kristin Ford, Manager    Keith Bybee, Manager    April Renfro, Manager    Glenn Harris, Manager  
Legislative Services Office    Research & Legislation    Budget & Policy Analysis    Legislative Audits    Information Technology

Statehouse, P.O. Box 83720  
Boise, Idaho 83720-0054

Tel: 208-334-2475  
legislature.idaho.gov

**IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES /  
IDAHO WATER RESOURCE BOARD**

**37.02.03 – WATER SUPPLY BANK RULES**

**DOCKET NO. 37-0203-2201 (ZBR CHAPTER REWRITE, FEE RULE)**

**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized pursuant to §§ 42-1762, 42-1734(19), and 42-1805(8), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2022.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rule.

The Idaho Department of Water Resources (IDWR) and the Idaho Water Resource Board (IWRB) (the “Agencies”) initiated this rulemaking in compliance with [Executive Order No. 2020-01, Zero-Based Regulation \(ZBR\)](#) (EO 2020-01), issued by Governor Little on January 16, 2020. Pursuant to EO 2020-01, each rule chapter effective on June 30, 2020, must be reviewed by the promulgating agency over a five-year period. This review is being conducted according to a schedule established by the Division of Financial Management, Office of the Governor (DFM), posted at [https://adminrules.idaho.gov/forms\\_menu.html](https://adminrules.idaho.gov/forms_menu.html). This rule chapter was scheduled for review in 2022.

With this Notice, the Agencies propose a new chapter of water supply bank rules. The new chapter is approximately 7% shorter than the existing water supply bank rule chapter due to both internal agency analysis and external stakeholder negotiation, commentary, and editing. Changes to the rule come through a combination of (a) removal of obsolete provisions (such as outdated “order of consideration” processes), (b) removal of unnecessary provisions (such as definitions for “year” and “person”), and (c) modifications to existing rules regulating the processing of water supply bank leases and rentals.

Pursuant to the ZBR process, this Notice represents the promulgation of a new rule chapter. As a result, the proposed rule does not contain strike-out/underline text in legislative format. The old rule has been repealed and replaced in its entirety. However, the development of the proposed rule text through two publicly-released preliminary rule draft iterations may be viewed at: <https://idwr.idaho.gov/legal-actions/rules/idwr-rulemaking-2022-2023/>. At the same website, the Agencies also developed and published rulemaking support documents, which provide the Agencies’ recommendations on rulemaking, rulemaking analysis, and responses to substantive comments received through the negotiated rulemaking process.

Citizens of the state of Idaho, water users, governmental agencies, and environmental groups may be interested in commenting on the proposed rule text. After consideration of public comments received in response to this Proposed Rule, the Agencies will present the final rule text to the Idaho Legislature in the late fall of 2022.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed:

Idaho Code §§ 42-1761, 42-1762, and 42-1765 authorizes the Idaho Water Resource Board to generate revenue through the operation of water supply bank and rental pools and to collect “lease” and “rental” fees in association with water supply bank and rental pool transactions. This Proposed Rule does not change current water supply bank and rental pool fees.

**FISCAL IMPACT STATEMENT:** 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: N/A.

**NEGOTIATED RULEMAKING:** Pursuant to § 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the March 2, 2022, Idaho Administrative Bulletin, [Vol. 22-3, pages 24-25](#).

**INCORPORATION BY REFERENCE:** Pursuant to § 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: N/A.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on questions concerning this proposed rulemaking, contact Mathew Weaver at [mathew.weaver@idwr.idaho.gov](mailto:mathew.weaver@idwr.idaho.gov), (208) 287-4800.

Anyone can submit written comments regarding this proposed rule by mail to the address below or by email sent to [rulesinfo@idwr.idaho.gov](mailto:rulesinfo@idwr.idaho.gov). The Department will consider all written comments received by the undersigned on or before October 26, 2022.

Dated this 2nd day of September 2022

Gary Spackman, Director  
Idaho Department of Water Resources  
322 E. Front Street  
PO Box 83720  
Boise, ID 83720-0098  
Phone: (208) 287-4800

**THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 37-0203-2201**  
**(Zero Based Regulation (ZBR) Chapter Rewrite)**

**37.02.03 – WATER SUPPLY BANK RULES**

**000. LEGAL AUTHORITY.**

Section 42-1762, Idaho Code. ( )

**001. SCOPE.**

These rules govern the Board’s operation and management of a Water Supply Bank as provided for in Sections 42-1761 to 42-1766, Idaho Code. These rules are to be used by the Board in considering the purchase, sale, lease or rental of natural flow or stored water, the use of any funds generated therefrom, and the appointment of local committees to facilitate the lease and rental of water from a rental pool. ( )

**002. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Board.** The Idaho Water Resource Board. ( )

**02. Board's Water Supply Bank.** The water exchange market operated directly by the Board to facilitate marketing of water rights. ( )

**03. Director.** The Director of the Idaho Department of Water Resources. ( )

**04. Department.** The Idaho Department of Water Resources. ( )

**05. Lease.** To convey by contract a water right to the Board’s water supply bank or stored water to a rental pool operated by a local committee. ( )

**06. Local Committee.** A committee designated by the Board to facilitate marketing of stored water by

operating a rental pool pursuant to Section 42-1765, Idaho Code. ( )

**07. Natural Flow.** Water or the right to use water that exists in a spring, stream, river, or aquifer at a certain time and which is not the result of the storage of water flowing at a previous time. ( )

**08. Person.** Any individual, partnership, corporation, association, governmental subdivision, or public or private organization or entity of any character. ( )

**09. Rent.** To convey by contract a water right or stored water from the Board's water supply bank or rental pool. ( )

**10. Rental Pool.** A market operated by a local committee for exchange of stored water. ( )

**11. Stored Water.** Water made available by detention in surface reservoirs or storage space in a surface reservoir. ( )

**12. Water Right.** The legal right to divert and use or to protect in place the public waters of the state of Idaho, including any storage entitlement, where such right is evidenced by a decree, a permit or license issued by the Department. ( )

**13. Water Supply Bank.** The water exchange market operated by the Board pursuant to Sections 42-1761 through 42-1766, Idaho Code, and these rules and is a general term which includes the Board's water supply bank and rental pools. ( )

**011. -- 024. (RESERVED)**

**025. ACQUISITION OF WATER RIGHTS FOR THE BOARD'S WATER SUPPLY BANK.**

**01. General.** The Board may purchase, lease, accept as a gift or otherwise obtain rights to natural flow or stored water and credit them to the Board's water supply bank. These water rights may then be divided or combined into more marketable blocks, if there is no injury to other right holders or enlargement of use of the water rights, and the change is in the local public interest. Any person proposing to sell or lease water rights, or to amend an existing lease contract, or to make water available through the water supply bank for the purposes of Section 42-1763B, Idaho Code, shall file a completed application with the Director on forms established by the Department and include additional information required by the Board or Director to evaluate the proposed transaction. The completed application shall state the period a water right is offered for lease, or the period that storage water will be released for fish migration purposes in accordance with Section 42-1763B, Idaho Code, and the payment terms, if any, requested by the applicant. ( )

**02. Application.** Submitted with the completed application shall be: ( )

**a.** Evidence that the water right has been recorded through a court decree or a permit or license issued by the Department. If the right is included in an ongoing adjudication, a copy of the claim is required; ( )

**b.** Proof that the applicant currently owns the water right or has the owner's authorization to submit the application. If the right to the use of the water, or the use of the diversion works or irrigation system is represented by shares of stock in a company or corporation, or if such works or system is owned or managed by an irrigation district, the written consent of such company, corporation, or irrigation district to the proposed sale or lease must accompany the application; ( )

**c.** Information that the water right has not been lost through forfeiture as defined in Section 42-222(2), Idaho Code, or through abandonment; ( )

**d.** Evidence demonstrating the relative availability of water to satisfy the water right; and ( )

**e.** A lease application filing fee of two hundred fifty dollars (\$250) per water right up to a maximum total of five hundred dollars (\$500.00) for overlapping water rights which have a common place of use or common

diversion rate or diversion volume. ( )

**03. Inadequate Application.** If an application is not complete, the Director will correspond with the applicant to obtain the needed information. Failure to submit the requested information within thirty (30) days will be cause for the Director to void the application. ( )

**04. Criteria.** The board will consider the following in determining whether to accept a water right into its water supply bank: ( )

**a.** Whether the applicant is the current owner, title holder, or contract water user of the water right offered to the Board's water supply bank or has authority to act on behalf of the owner; ( )

**b.** Whether all necessary consents have been filed with the Board; ( )

**c.** Whether the information available to the Board indicates that the water right may have been abandoned or forfeited; ( )

**d.** Whether the offering price or requested rental rate is reasonable; ( )

**e.** Whether acquisition of the water right will be contrary to the State Water Plan; ( )

**f.** Whether the application is in the local public interest as defined in Section 42-202B, Idaho Code; ( )

**g.** The likelihood of selling or renting the water right from the Board's water supply bank; and ( )

**i.** Other factors as determined by the Board. ( )

**05. Resolution of Board.** The Board may by resolution accept an application to sell or lease water rights to the Board's water supply bank, or otherwise make water available through the water supply bank. An application to lease together with the resolution accepting it becomes a lease. Water rights associated with a lease are placed into the Board's water supply bank upon adoption of the resolution. A resolution accepting an application to sell water rights to the Board's water supply bank will provide authority for the chairman of the Board to enter an agreement to purchase the water rights. The resolution may include conditions of approval, including but not limited to, the following: ( )

**a.** A condition providing the length of time the water right will be retained in the Board's water supply bank; ( )

**b.** A condition describing the terms for payment to the owner of the water right and the sale or rental price from the Board's water supply bank; and ( )

**c.** Other conditions as the Board determines appropriate, including a condition recognizing that water is available through the water supply bank pursuant to the provisions of Section 42-1763B, Idaho Code, for purposes of fish migration. ( )

**06. Placement of Water Right.** Effect of placement of a water right into the Board's water supply bank. ( )

**a.** Upon acceptance of a water right into the Board's water supply bank, the owner of the water right is not authorized to continue the diversion and use of the right while it is in the Board's water supply bank. ( )

**b.** A water right which has been accepted shall remain in the Board's water supply bank for the period designated by the Board unless removed by resolution of the Board. ( )

**c.** The owner of the water right shall remain responsible to take actions required to claim the water right in an adjudication or other legal action concerning the water right and to pay taxes, fees, or assessments related

to the water right. ( )

**d.** The forfeiture provisions of Section 42-222(2), Idaho Code are tolled during the time the water right is in the Board's water supply bank, pursuant to the provisions of Section 42-1764, Idaho Code. ( )

**026. -- 029. (RESERVED)**

**030. SALE OR RENTAL OF WATER RIGHTS FROM THE BOARD'S WATER SUPPLY BANK.**

**01. General.** The Board may in its discretion initiate the process to sell or rent water rights from the Board's water supply bank. An application to rent, or to amend an existing rental, shall be on forms established by the Director and shall include such additional information as required by the Board or Director to evaluate the proposed rental. The sale or rental price shall be the price, if any, as determined by the Board. ( )

**02. Application.** Submitted with the completed application shall be: ( )

**a.** Evidence of authority or permission to use water at the proposed place of use, to divert water at the proposed point of diversion, and to deliver water through the proposed conveyance system, including a canal, lateral, or ditch, for delivery of water; ( )

**b.** The proposed beneficial use of water and the quantity of water to be diverted during the rental, including the number of acres to be irrigated if the application is for irrigation; ( )

**c.** A map of sufficient scale to show the proposed points of diversion and proposed places of use, including the number of acres to be irrigated if the application is for irrigation; and ( )

**d.** If the rental application proposes to change the nature of use of a specific water right, evidence sufficient to establish historical consumptive use, as defined in Section 42-202B, Idaho Code, of the right proposed to be rented. ( )

**03. Inadequate Application.** If an application is not complete, the Director will correspond with the applicant to obtain the needed information. Failure to submit the requested information within thirty (30) days will be cause for the Director to void the application. ( )

**04. Notice.** The Director may give notice of an intended rental as he deems necessary, provided that prior to approving any application for purchase, or for rental for a period of more than five (5) years, he shall give notice as required in Section 42-222(1), Idaho Code. ( )

**05. Consideration.** All applications received on or prior to November 1 of the calendar year prior to the proposed rental start date will be considered as having been received at the same time. Applications received after November 1 may be considered only if sufficient water remains in the Board's water supply bank. ( )

**06. Application Evaluation Criteria.** ( )

**a.** The Director will evaluate applications using the following: ( )

**i.** Whether the proposal would constitute an enlargement of the water right; ( )

**ii.** Whether the water will be put to a beneficial use; ( )

**iii.** Whether the water supply available from applicable rights in the Board's water supply bank is sufficient for the use intended; ( )

**iv.** Whether the proposal is in the local public interest; and ( )

**v.** Other factors as determined by the Director or the Board. ( )

**b.** The Department may request additional information from a lessor or rental applicant as needed to evaluate the proposed rental relative to the criteria stated in this section. If the information requested from a lessor is not received within thirty (30) days, the Department may consider a different lease to satisfy the proposed rental. If the information requested from a rental applicant is not received within thirty (30) days, the Director may void the rental application. ( )

**c.** For applications submitted pursuant to Section 42-1763B, Idaho Code, the Director will only make an evaluation as to whether the proposed use of water will cause injury to other water rights. ( )

**d.** The Director may defer the evaluation of potential injury to other water rights conditioned upon the right of any affected water right holder to petition the Director pursuant to Section 42-1766, Idaho Code, to revoke or modify the rental approval upon a showing of injury. ( )

**e.** The Director shall consider in determining whether to approve a rental of water for use outside of the state of Idaho those factors enumerated in Section 42-401(3), Idaho Code, except that this evaluation is not required for applications submitted pursuant to Section 42-1763B, Idaho Code. ( )

**07. Authorized to Rent.** The Director is authorized to rent water rights offered by the Board from the Board's water supply bank for a period up to five (5) years, but shall submit applications for purchase, or rental for a period of more than five (5) years to the Board for action. The Director will advise the Board on applications which require Board approval under Rule Subsection 025.06. The Director will advise whether he can approve the application in whole or in part or with conditions to comply with Section 42-1763, Idaho Code. ( )

**08. Board Review.** The Board will review applications for purchase, or which propose the rental of water rights for a duration of more than five (5) years, and may approve, approve with conditions, or reject the applications as the Board determines to best meet the purposes of Section 42-1761, Idaho Code and promote the interest of the people of the state of Idaho. ( )

**031. -- 034. (RESERVED)**

**035. HANDLING OF MONEY ASSOCIATED WITH THE BOARD'S WATER SUPPLY BANK.**

Fees collected pursuant to Rules 025 and 030 from the acquisition, sale, or rental of water rights for or from the Board's water supply bank do not apply to rental pools described in Rule 040 and will be handled as follows: ( )

**01. Credited Amount.** Ten percent (10%) of the gross amount received from the sale or rental of a water right from the Board's water supply bank and the entire lease application fee received pursuant to Rule 025 shall be credited to the Water Administration Account created by Section 42-238a, Idaho Code, or to the federal grant fund if the payment is received from a federal agency, for administrative costs of operating the Water Supply Bank. ( )

**02. Excess Funds.** Any funds in excess of the amount needed to compensate the owner of the water right in accordance with the resolution accepting the water right into the Board's water supply bank and the administrative charge of Rule Subsection 035.01.a shall be credited to the Water Management Account created by Section 42-1760, Idaho Code, for use by the Board. ( )

**036. -- 039. (RESERVED)**

**040. APPOINTMENT OF LOCAL RENTAL POOL COMMITTEES.**

**01. Board Meetings for Committee Appointments.** The Board may at any regular or special meeting consider appointing an entity to serve as a local committee to facilitate the lease and rental of stored water. At least ten (10) days prior to the meeting, the entity seeking appointment shall provide to the Director information concerning the organization of the entity, a listing of its officers, a copy of its bylaws and procedures, if applicable, a copy of the proposed local committee procedures, pursuant to which the local committee would facilitate the lease and rental of stored water, together with a copy of each general lease and rental form proposed to be used by the local committee. The local committee procedures must be approved by the Board and provide for the following: ( )



- a. Determination of priority among competing applicants to lease stored water to the rental pool and to rent stored water from the rental pool; ( )
- b. Determination of the reimbursement schedule for those leasing stored water into the rental pool; ( )
- c. Determination of the rental price charge to those renting stored water from the rental pool; ( )
- d. Determination of the administrative charge to be assessed by the local committee; ( )
- e. Allocation of stored water leased to the bank but not rented; ( )
- f. Notification of the Department and the watermaster of any rentals where stored water will be moved from the place of use authorized by the permit, license, or decree establishing the stored water right; ( )
- g. Submittal of applications to rent water from the rental pool for more than five (5) years to the Board for review and approval as a condition of approval by the local committee; ( )
- h. Prevention of injury to other water rights; ( )
- i. Protection of the local public interest, except for applications submitted pursuant to Section 42-1763B, Idaho Code; ( )
- j. Consistency with the conservation of water resources within the state of Idaho, except for applications submitted pursuant to Section 42-1763B, Idaho Code; and ( )
- k. Management of rental pool funds as public funds pursuant to the Public Depository Law, Chapter 1, Title 57, Idaho Code. ( )

**02. Local Committee Procedures.** The local committee procedures shall provide that a surcharge of ten percent (10%) of the rental fee charged per acre foot of stored water rented from the rental pool shall be assessed and credited to the revolving development account and the water management account established in Sections 42-1752 and 42-1760, Idaho Code, in such proportion as the Board in its discretion shall determine. Such moneys, together with moneys accruing to or earned thereon, shall be set aside, and made available until expended, to be used by the Board for the purposes of Section 42-1761, Idaho Code, unless the surcharge is prohibited by statute, compact or inter-governmental agreement. ( )

**03. Review by Director.** The Director will review the local committee procedures and submit them along with the Director's recommendation to the Board. The lease and rental form must receive the Director's approval. The Board may designate the applying entity as the local committee for a period not to exceed five (5) years. A Certificate of Appointment will be issued by the Board. The Board may extend the appointment for additional periods up to five (5) years, upon written request of the local committee. The Board may revoke a designation upon request of the local committee, or after a hearing pursuant to the promulgated Rules of Practice and Procedure of the Board, if the Board determines that the local committee is no longer serving a necessary purpose or is not abiding by its own approved procedures, these rules or applicable statutes. ( )

**04. Annual Report.** The local committee shall report annually on the activity of the rental pool on forms provided by the Board. ( )

**05. Submission of Amendments to Procedures to Board.** Amendments to the approved procedures of an appointed local committee which change the amount charged for the rental of stored water shall be submitted to the Board by April 1st of any year. The amendment will be considered approved by the Board unless specifically disapproved at the first regular Board meeting following the amendment action of the local committee. The Board may, upon good cause being determined by the Board, specifically approve of amendments submitted after April 1 of any year. ( )

**041. -- 999. (RESERVED)**

## PROPOSED RULE COST/BENEFIT ANALYSIS

Section 67-5223(3), Idaho Code, requires the preparation of an economic impact statement for all proposed rules imposing or increasing fees or charges. This cost/benefit analysis, which must be filed with the proposed rule, must include the reasonably estimated costs to the agency to implement the rule and the reasonably estimated costs to be borne by citizens, or the private sector, or both.

**Department or Agency:** Idaho Department of Water Resources

**Agency Contact:** Mathew Weaver

**Phone:** 208.287.4800

**Date:** September 12, 2022

**IDAPA, Chapter and Title Number and Chapter Name:**

IDAPA 37.02.03 Water Supply Bank Rules

**Fee Rule Status:**  Proposed  Temporary

**Rulemaking Docket Number:** 37-0203-2201

### **STATEMENT OF ECONOMIC IMPACT:**

IDAPA 37.02.03 governs the Idaho Water Resource Board's ("IWRB") operation and management of the water supply bank authorized by statute. The purpose of the water supply bank is to encourage the highest beneficial use of water; provide a source of adequate water supplies to benefit new and supplemental water users; and provide a source of funding for improving water user facilities and efficiencies. It also establishes lease and rental fees that are used to carry out the program which are credited to IWRB's revolving development and water management accounts. This chapter was adopted under the legal authority of Section 42-1762, Idaho Code.

The proposed rule does not change any existing fees.