# LEGISLATIVE RULES REVIEW

Three Groups of Rules to Be Reviewed During the 2020 Legislative Session and the Actions Taken by the Legislature

<table>
<thead>
<tr>
<th>Type of Rule</th>
<th>Status</th>
<th>Action That Can Be Taken</th>
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<tbody>
<tr>
<td><strong>Group 1 - Pending Rules (Yellow)</strong></td>
<td>Not in Effect</td>
<td>Can be rejected in whole or in part. If the Legislature takes no action, rule goes into effect after the adjournment of the 2020 session. Must be rejected by concurrent resolution.</td>
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<td><strong>Group 2 – Pending Fee Rules (Green)</strong></td>
<td>Not in Effect</td>
<td>Must be affirmatively approved by concurrent resolution. If the Legislature takes no action, rules never become final and effective. (Approved by an omnibus concurrent resolution approving all fee rules. Expects out rejected rules.)</td>
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<tr>
<td>Pending rules adopted during calendar year 2019 that impose a fee or a charge or that increase an existing fee or charge.</td>
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<tr>
<td><strong>Group 3 – Temporary Rules (Salmon)</strong></td>
<td>Temporarily in Effect</td>
<td>Expire upon the conclusion of the 2020 session unless the Legislature extends by concurrent resolution. (Approved by an omnibus concurrent resolution approving all temporary rules. Expects out rejected rules.)</td>
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<tr>
<td>Temporary (emergency) rules approved by the Governor that went into effect prior to session (most during calendar year 2019) without legislative review or public input. These can include fee increases also.</td>
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1. LSO receives and reviews proposed rules (I.C. section 67-5223(1)).

(a) LSO is required to analyze proposed rules that are submitted for publication in the Administrative Bulletin. Each individual analysis is made available to the germane committee chair and vice chair and to the members of the germane joint subcommittee. A memorandum is provided with the analysis along with a copy of the proposed rule.

(b) The memorandum addresses:
   (1) The changes the proposed rule seeks to make;
   (2) Whether these changes are substantive or housekeeping;
   (3) Any trends in agency rule writing (i.e., use of written interpretations);
   (4) Whether the agency has statutory authority to promulgate the rule.

(c) The memo is a public record and is posted on line on the legislative web site under the link titled “Rules Reviewed During Interim.” An email notification is sent to the agency, the chair and vice chair of the germane committee and the members of the joint subcommittee directing them to the posted analysis. Anyone can access this analysis.

(d) Upon notice of the intended agency action and after receipt of the proposed rule analysis for LSO, the germane joint subcommittee:
   (1) May request and hold a meeting with the agency after giving oral or written notice to LSO within 14 days of receipt of analysis. Meeting must be held within 42 days of receipt of analysis.
   (2) Issue an objection to the rule that is sent to the agency with a concise statement of the reasons for the objection.
   (3) Prepare a report for the germane committee on all rules transmitted to it outlining any objections to the proposed rules filed with the agency or stating that there were no objections to the rule.

(e) Temporary rules are not reviewed by LSO, however, LSO receives a copy of the temporary rule at the time it is submitted for publication. (I.C. section 67-5226(5)).

2. Upon commencement of the legislative session, the germane committees begin reviewing pending, pending fee, and temporary rules.

(a) Section 67-5291, Idaho Code states…the standing committees of the legislature MAY review temporary, pending and final rules which have been published in the bulletin or in the administrative code. However, more recent changes to the APA have resulted in a more standardized, formal review process. Pending fee rules require affirmative approval by concurrent resolution to become final and effective. Similarly, a temporary rule requires affirmative approval by concurrent resolution to remain in effect beyond the end of the session. If the pending fee rules or temporary are not
reviewed, they die at the end of the session. Conversely, all non-fee pending rules would be final and effective at the end of the session.

(b) Committee chairs are free to implement procedures to expedite the rule review process, including the use of the consent calendar for non-controversial rules.

(c) Rule dockets may be approved or rejected (rejected in whole or in part).

1. A pending rule goes into effect unless a concurrent resolution rejecting the pending rule (or any part) is adopted by both Houses. (I.C. section 67-5224(5)).
2. A pending fee rule does not become final and effective until affirmatively approved by the legislature by concurrent resolution. (I.C. section 67-5224(5)(c)).
3. A temporary rule (including a temporary fee rule) must be extended by concurrent resolution adopted by both Houses in order to remain in effect after the adjournment conclusion legislative session. (I.C. section 67-5226(3))
4. A rulemaking done by proclamation is subject to review and approval. It is being reviewed as a final rule because it is already in effect but is subject to the same legislative action as a pending rule.

(d) Committees may review rules that have been previously adopted and codified as part of the Administrative Code. They need not be in the promulgation process to be subject to review. They are not, however, submitted for formal review. Only those rules undergoing change are submitted for review and approval. Review of final rules would require of the approval leadership to bring the rule before the committees.

3. Once the germane committee has completed review of the rules dockets that have been submitted to it, a rules report is prepared by the committee and sent to leadership.

(a) Rule review reports are due in writing to the Pro Tem and the Speaker. This is usually by the first week of February.

(b) Letter reports should detail:
1. Whether the germane committee has rejected, in whole or in part, any rule docket;
2. The type of rule rejected (pending, fee, or temporary);
3. If a rule docket has been rejected in whole, the docket number of rejected docket; and
4. If a rule docket has been rejected in part, the docket number and the IDAPA number of each rule subdivision that is being rejected.

4. Based upon the germane committee report, LSO will prepare the appropriate concurrent resolution.

(a) A separate concurrent resolution will be prepared for each pending rule docket which is rejected in whole or in part. The concurrent resolution for a rejected pending rule docket may be first introduced in either the Senate or the House.
(b) An omnibus concurrent resolution adopting all non-rejected pending fee rules and listing the individual rejected pending fee rules by IDAPA and docket number will be prepared. Traditionally, the omnibus concurrent resolution approving and rejecting pending fee rules is introduced in the Senate.

(c) An omnibus concurrent resolution adopting all non-rejected temporary rules and listing the individual rejected temporary rules by IDAPA and docket number will be prepared. Traditionally, the omnibus concurrent resolution approving and rejecting temporary rules is introduced in the Senate.

5. All rules expire on July 1st unless approved and extended by statute. (I.C. section 67-5292.)