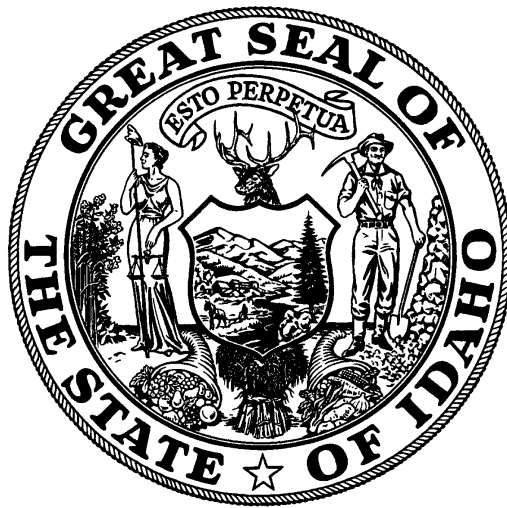


PENDING FEE RULES

COMMITTEE RULES

REVIEW BOOK

Submitted for Review Before
Senate Resources &
Environment Committee
65th Idaho Legislature
First Regular Session – 2019



Prepared by:

*Office of the Administrative Rules Coordinator
Department of Administration*

January 2019

SENATE RESOURCES & ENVIRONMENT COMMITTEE

ADMINISTRATIVE RULES REVIEW

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IDAPA 26 – DEPARTMENT OF PARKS AND RECREATION

26.01.10 – RULES GOVERNING THE ADMINISTRATION OF TEMPORARY PERMITS ON LANDS OWNED BY THE IDAHO DEPARTMENT OF PARKS AND RECREATION

DOCKET NO. 26-0110-1701

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2019 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 67-4210 and 67-4223, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending fee rule and a statement of any change between the text of the proposed rule and the text of the pending fee rule with an explanation of the reasons for the change:

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 145–147](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Sections 67-4210 and 67-4233, Idaho Code.

The pending fee rule modifies the current rule to allow the department to charge processing fees comparable to associated costs and to be compensated at a reasonable rate based upon Fair Market Value of the site if it was held in a fee simple state. The rule change would increase Application and Modification fees from \$200 to \$300 and Assignment and Renewal fees from \$25 to \$300 per transaction as well as change the current permit compensation fee from \$50 per acre to the Fair Market Value per acre with a minimum permit fee of \$300.

FISCAL IMPACT: 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:

The only negative fiscal impact is the cost of promulgating the rule changes. The positive fiscal impacts are the additional revenues generated to cover the cost of processing applications and modifications as well as assignments and renewals per transaction plus the additional revenue generated from charging Fair Market Value per acre for the property with an established minimum fee. The change should generate approximately an additional \$10,000/year.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Keith Hobbs, Operations Administrator, (208) 514-2450.

Dated this 23rd day of August, 2018.

Keith Hobbs
Operations Division Administrator
Idaho Department of Parks and Recreation
5657 Warm Springs Avenue
P.O. Box 83720
Boise, ID, 83720-0065
(208) 514-2450

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 67-4210 and 67-4223, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

PUBLIC HEARING
Monday, July 23, 2018 – 5:30 pm to 6:30 pm

Idaho Dept. of Parks & Recreation
(Panhandle Room)
2885 Kathleen Ave.
Coeur d’Alene, ID 83815

The hearing site 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 nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Proposed rule modifies the current rule to allow the department to charge processing fees comparable to associated costs and to be compensated at a reasonable rate based upon Fair Market Value of the site as if it were held in a fee simple state.

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

The rule change would increase Application and Modification fees from \$200 to \$300 and Assignment and Renewal fees from \$25 to \$300 per transaction as well as change the current permit compensation fee from \$50 per acre to the Fair Market Value per acre with a minimum permit fee of \$300.

FISCAL IMPACT: 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 as a result of this rulemaking:

The only negative fiscal impact is the cost of promulgating the rule changes. The positive fiscal impacts are the additional revenues generated to cover the cost of processing applications and modifications as well as assignments and renewals per transaction plus the additional revenue generated from charging Fair Market Value per acre for the property with an established minimum fee. The change should generate an additional \$2,000–\$3,000/year.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the October 4, 2017 Idaho Administrative Bulletin, [Volume 17-10, page 389](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Not Applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Keith Hobbs, Operations Administrator, (208) 514-2450. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 25, 2018.

DATED this 5th day of June, 2018.

[LINK: LSO Rules Analysis Memo and Cost Benefit Analysis \(CBA\)](#)

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 26-0110-1701

010. DEFINITIONS.

- ~~01.~~ **01.** **Assignment.** The Department-approved transfer of a valid permit from a current Grantee to a new Grantee. (7-1-93)()
- ~~02.~~ **02.** **Board.** The Idaho Park and Recreation Board or such representative as may be designated by the board. (7-1-93)
- ~~03.~~ **03.** **Department and IDPR.** The Idaho Department of Parks and Recreation. (7-1-93)
- ~~04.~~ **04.** **Director.** The Director of the Idaho Department of Parks and Recreation or such representative as may be designated by the Director. (7-1-93)
- ~~05.~~ **05.** **Grantee.** The party to whom a temporary permit is granted and their assigns and successors in interest. (7-1-93)
- ~~06.~~ **06.** **Grantor.** The State of Idaho and its assigns and successors in interest. (7-1-93)
- ~~07.~~ **07.** **Park Manager.** The person responsible for administering and supervising a specific state park area, or department owned land not yet a state park, as designated by the Director of the Idaho Department of Parks and Recreation. (7-1-93)
- ~~08.~~ **08.** **Person.** An individual, partnership, association, or corporation qualified to do business in the state of Idaho, and any federal, state, county or local unit of government. (7-1-93)
- ~~09.~~ **09.** **Temporary Permit.** An instrument authorizing a temporary use of IDPR owned land for the construction, operation and maintenance of specific typically linear elements including but not limited to power and telephone lines, roadways, driveways, sewer lines, natural gas lines and water lines. (7-1-93)

011. -- 049. (RESERVED)

050. POLICY.

- 01. Issuing Authority.** Temporary permits are issued by the Director in lieu of easements, and shall be required for all associated activities on or over IDPR owned land. (7-1-93)()
- 02. Discretion.** The Board retains absolute discretion to grant or withhold a temporary permit on land which it owns. (7-1-93)
- 03. Consent Required.** Temporary permits, their amendment, renewal and assignment and all subsequent actions are not valid without the written consent of the Director. (7-1-93)

04. Modifications. Temporary permits and subsequent modifications, assignments and renewals require a formal application, and payment of a processing fee to reimburse the ~~agency~~ **Department** for staff time devoted to processing the request. (7-1-93)()

05. Purpose Compatible. The purpose for which the temporary permit is sought must not interfere with the existing or anticipated values, objectives, or operation of Department-owned lands. (7-1-93)

06. Compensation. An appropriate compensation for use of Department-owned lands, as set out in Section 150 of this chapter, shall be paid to the IDPR in cash or in the form of offsetting benefits to be determined by the Director. (7-1-93)

07. Control. At all times the control of gates, roads and park lands shall be retained by the State. The permit granted shall be for the Grantee's use only, shall be revocable for cause, shall be issued for a specific period of time, not to exceed ten (10) years, but usually five (5) years or less, and shall automatically expire if not used for a period of one (1) year. (7-1-93)

051. -- 099. (RESERVED)

100. PROCESSING FEES.

01. Issuance or Modification. The processing fee for a new temporary permit, or modification of an existing temporary permit, is ~~one~~ **three** hundred dollars (~~\$1~~**300**), which must be received from all applicants before processing can proceed. The processing fees are designed to offset processing costs and are nonrefundable. (7-1-93)()

02. Assignment or Renewal. The processing fee for assignment or renewal of an existing temporary permit is ~~twenty-five~~ **three hundred** dollars (~~\$25~~**300**), and must be received before processing can proceed. The processing fees are designed to offset processing costs and are nonrefundable. (7-1-93)()

101. -- 149. (RESERVED)

150. COMPENSATION.

01. Payable in Advance. Cash compensation for the entire term of the temporary permit shall be collected from the applicant prior to issuance. (7-1-93)

02. ~~Cost per Acre~~ **Permit Rate.** ~~Cash compensation for a temporary permit shall be charged at a rate of fifty dollars (\$50) per acre of IDPR land utilized per year or any portion thereof, and shall be specified in the temporary permit. The cash compensation rate for a temporary permit shall be set so as to provide the Department a reasonable return based upon the fair market value (FMV) of the permit site as if it was held in fee simple estate. Cash compensation is calculated as a percentage of the FMV of the permit site as determined by the Department in consultation with real estate professionals. In the event permit applicant disputes the FMV established by the Department, the Department may hire a certified appraiser to establish the FMV of the permit site. Permit applicant will pay for the cost of the appraisal. The minimum cash compensation for a temporary permit shall be three hundred dollars (\$300).~~ Temporary permits of less than one (1) year in duration will not be prorated. (7-1-93)()

03. Noncash Compensation. Offsetting (non-cash) compensation for a temporary permit may be approved on an individual basis by the Director, and the terms of the agreement shall be outlined in the temporary permit. (7-1-93)

04. Nonrefundable. Compensation to IDPR for a temporary permit is non-refundable, except as set out in Subsection 200.08 of this chapter. (7-1-93)