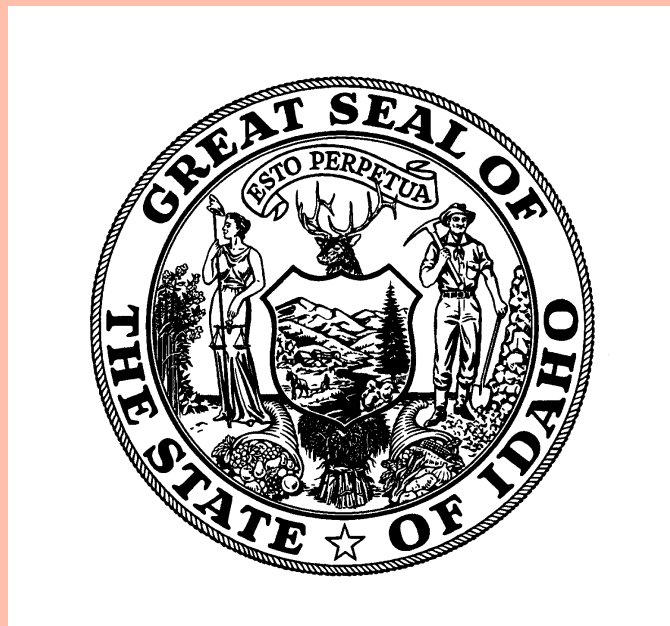


TEMPORARY RULES COMMITTEE RULES REVIEW BOOK

**Submitted for Review Before
Senate Judiciary & Rules Committee
66th Idaho Legislature
First Regular Session – 2021**



Prepared by:

*Office of the Administrative Rules Coordinator
Department of Administration*

January 2021



State of Idaho
DIVISION OF FINANCIAL MANAGEMENT
Executive Office of the Governor

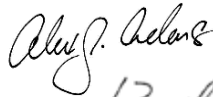

BRAD LITTLE
Governor

ALEX J. ADAMS
Administrator

January 11, 2021

MEMORANDUM

TO: Members of the 2021 Idaho State Legislature

FROM: Alex J. Adams, Administrator 
Bradley A. Hunt, Rules Coordinator 

SUBJECT: Overview of Executive Agency Rulemaking in 2020

Background. Governor Little initiated a rules moratorium for calendar year 2020 and thus the volume of rulemaking is down substantially relative to most years. Most rules published in the Legislative Rules Review book are simply re-published because the 2020 Legislature adjourned *sine die* without passing a concurrent resolution approving any pending fee rules as specified in Section 67-5224, Idaho Code. The necessary fee rules were re-published in the following special bulletins:

- [April 15](#) – Temporary Fee Rules
- [September 16](#) – Proposed Fee Rules
- [November 18](#) – Pending Fee Rules

Changes in Existing Fee Rules. Since all fee rules expired upon sine die, there is no existing rule available to amend. Therefore, only a clean version of the rule chapter is able to be presented to the Legislature in January 2021. In some cases, fee rules were modified based on public comment, or to implement Executive Order [2020-13](#), among other reasons. Given the unprecedented volume, all edits are incorporated within a single docket and presented as a clean fee rule chapter. There are several ways that legislators may view previous rules for comparison purposes:

- An [archive of any rule](#) since 1996 is available on the DFM website. This allows legislators to see the evolution of a rule over time.
- The Legislative Services Office analyzes all proposed rules. You can find their analysis of proposed rules which, in some cases, may discuss changes to rules between sine die and the proposed rules. These may be found on the [Legislature's website](#).
- Changes made between the proposed and pending rule stages were noted in the [November 18th](#) bulletin where applicable.

Process for Approving/Extending Rules. Below, you will find a brief description on legislative actions and outcomes regarding the rules review process and contents of the Legislative Rules Review Books:

- Pending Fee Rules must be affirmatively approved by both bodies via adoption of concurrent resolution to become final.
- Temporary Rules must be affirmatively approved by both bodies via adoption of concurrent resolution to be extended.
- Pending Rules become final and effective sine die unless rejected, in whole or in part, via concurrent resolution adopted by both bodies.
 - Pending rules may be approved, in whole or in part, or rejected if determined to be inconsistent with legislative intent of the governing statute.
 - If rejected, new or amended language must be identified at a numerical or alphabetical designation within the rule and specified in the concurrent resolution.
- A link to LSO's proposed rule analysis is provided at the beginning of each docket and includes any required supporting documentation (e.g. Cost Benefit Analysis (CBA), Incorporation By Reference Synopsis (IBRS)) as part of the analysis.
- All 2021 review books can be accessed on the DFM website [here](#).

Contact Information. If questions arise during the rules review process, please do not hesitate to contact the Rules Coordinator, Brad Hunt: Brad.Hunt@dfm.idaho.gov; 208-854-3096.

SENATE JUDICIARY & RULES COMMITTEE

ADMINISTRATIVE RULES REVIEW

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IDAPA 50 – COMMISSION OF PARDONS AND PAROLE
50.01.01 – RULES OF THE COMMISSION OF PARDONS AND PAROLE
DOCKET NO. 50-0101-2101
NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is November 19, 2020.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 20-223; 20-210A(3), 20-223(1)-(5); 20-224(2); Section 20-240A(4); and Section 20-240B(5), Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

This is to revise language to be consistent with a recent Supreme Court ruling. Persons convicted of vehicular manslaughter or driving under the influence will be required to wait 15 years after pleading guilty or being found guilty to apply for a pardon.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This will revise language to be consistent with a recent Supreme Court Ruling. This temporary rule will require persons convicted of vehicular manslaughter or driving under the influence to wait 15 years after pleading guilty or being found guilty to apply for a pardon.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Mary Schoeler (208) 334-2520.

Dated this 2nd Day of December, 2020.

Ashley Dowell
Executive Director
Commission of Pardons and Parole
3056 Elder Street
Boise, ID 83705
Phone: (208) 334-2520

FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 50-0101-2101

010. DEFINITIONS.

- 01. Absconder.** An offender who has fled supervision, whose whereabouts are unknown, and for whom a warrant for a violation of supervision has been issued or requested. (3-21-18)
- 02. Case Manager.** For purposes of reference, the case manager is an Idaho Department of Correction employee who is involved with assisting offenders regarding their problems, needs, and adjustments. Such case manager may have the title of psycho-social rehabilitation specialist, counselor, social worker, psych-tech, or clinician. (3-20-20)
- 03. Commission.** The Idaho Commission of Pardons and Parole. (4-11-15)
- 04. Commission Warrant.** Warrant of arrest for alleged parole violation issued by the Executive Director or a Commissioner. This warrant is a non-bondable warrant. (3-23-98)
- 05. Commissioner.** A member of the Commission who is appointed by the Governor to carry out decision-making functions regarding parole, parole revocations, pardons, commutations, remission of fines, and firearm rights restoration. (3-21-18)
- 06. Commutation.** Clemency powers pursuant to Article IV, Section 7 of the Idaho Constitution and Sections 20-240A and 20-233, Idaho Code granted to the Commission, or to the Commission with the approval of the Governor, ~~or both~~ as required by law, which allow for a sentence to be modified, including a final discharge from the remaining period of parole. (~~3-20-20~~)(11-19-20)T
- 07. Concurrent Sentence.** Sentence served at the same time as another. (3-23-98)
- 08. Conditions of Parole.** Conditions under which an offender is released to parole supervision. (4-11-15)
- 09. Confidential.** Privileged from disclosure. (3-23-98)
- 10. Consecutive Sentence.** Sentence served upon completion of another sentence or before beginning another sentence. (3-23-98)
- 11. Decision.** A determination arrived at after consideration, a conclusion. (3-23-98)
- 12. Detainer.** A document authorizing the detention of an offender in custody for a new felony crime or parole violation. Offender may be housed in a county jail or a correctional institution in state or out of state. (4-11-15)
- 13. Determinate Sentence.** Fixed portion of the sentence. During this time period an offender is not eligible for release on parole. (4-11-15)
- 14. Dispositional Hearing.** A hearing held before the Commissioners to render a decision whether to reinstate, modify, or revoke parole. (3-20-20)
- 15. DOR.** Disciplinary Offense Report. A report describing rule violations, behavioral issues, or both, committed by an offender while incarcerated. (4-11-15)
- 16. Escape.** Flight from confinement. (3-23-98)

17. **Executive Session.** Any meeting or part of a meeting of the Commission that is closed to the public for deliberation on certain matters, as set forth in Section 20-213A, Idaho Code. (4-11-15)
18. **File or Case Review.** Review of central file, Commission file, and/or additional information submitted, without testimony or interview of offender or parolee. (4-11-15)
19. **Full Term Release Date.** The date an offender completes the term of sentence. (3-20-20)
20. **Hearing.** The opportunity to be interviewed by the Commission, a Commissioner, or other designated Commission staff. (4-11-15)
21. **Hearing Officer.** An impartial person employed by the Commission and selected by the Executive Director to conduct an interview and take testimony from an offender regarding offender's history, criminal record, social history, present condition of offender, and offense. (4-11-15)
22. **Hearing Session.** A series of hearings conducted by the Commission. (3-23-98)
23. **Indeterminate Sentence.** Portion of sentence following the determinate sentence, during which time an offender is eligible for release on parole. (4-11-15)
24. **Member or Members.** A member of the Commission, Commissioner, or Commissioners. (3-21-18)
25. **NCIC.** National Crime Information Center. (3-23-98)
26. **Non-Technical Violation.** Violation of parole by absconding or the commission of, and conviction for, a felony or misdemeanor offense. (3-20-20)
27. **Offender.** A person under the legal care, custody, supervision, or authority of the board of correction, including a person within or outside Idaho pursuant to agreement with another state or contractor. (3-20-20)
28. **On-Site Parole Violation Hearing.** Parole violation hearing to determine guilt or innocence of the alleged parole violator, which must be held reasonably near the site of the alleged violation(s). (3-21-18)
29. **Open Parole Date.** Tentative parole granted without setting an actual tentative release date and subject to release by Commission authorization; offender's parole eligibility date has passed when a tentative parole date is granted. A tentative parole date will become an open parole date if the tentative parole date passes without the offender being released to an acceptable plan on the specific date. (4-11-15)
30. **Pardon.** Clemency powers pursuant to Article IV, Section 7 of the Idaho Constitution and Section 20-240A, Idaho Code granted to the Commission or to the Commission with the approval of the Governor that as required by law, which allows for sparing the applicant to be released from the consequences of conviction of a crime from punishment for a crime, removing any other effects, penalties, or disabilities that the conviction carries or stem from that conviction, and restoring the applicant's civil rights. ~~(3-21-18)~~(11-19-20)T
31. **Parole.** Conditional release from a penal institution under a contractual agreement between the Commission of Pardons and Parole and offender. Parole is not a right, but is a matter of grace. (4-11-15)
32. **Parole Eligibility Date.** The earliest date that an offender may be eligible for parole release, which coincides with the date that the indeterminate portion of the offender's sentence begins. In the event there are multiple sentences, the sentence having the latest indeterminate begin date will be used as the offender's parole eligibility date. (4-11-15)
33. **Parole Hearing Interview.** An interview conducted by a hearing officer for the purpose of gathering information and testimony from the offender regarding the offender's history, criminal record, social

history, present condition, instant offense, and other factors, when the offender is scheduled for a forthcoming parole consideration hearing. (4-11-15)

34. Parole Violation Hearing. A fact-finding hearing conducted by a hearing officer to determine a parolee's guilt or innocence of alleged violations of parole. The hearings are conducted for both technical and non-technical violations, and may be held on-site, or at a location as determined by the Executive Director or the hearing officer. (3-21-18)

35. Parolee. Offender being supervised on parole. (4-11-15)

36. Preliminary Hearing. A hearing conducted by an objective representative of the supervising authority or an individual appointed by the Executive Director to determine if there is probable cause to believe the alleged violations of the parole contract occurred. (3-21-18)

37. Risk Assessment. Validated tool developed to determine risk of recidivating based on offender criminogenic needs. (4-11-15)

38. Self-Initiated Parole Reconsideration (SIPR). A process in which an offender may request reconsideration of the last decision of the Commission. (3-20-20)

39. Session. See "Hearing Session." (4-11-15)

40. Supervising Authority. The agency responsible for community supervision of parolees which is Idaho Department of Correction. (3-21-18)

41. Technical Violation. Violation of parole by not conforming to conditions of parole, but not to include absconding or a new criminal conviction. (3-8-16)

(BREAK IN CONTINUITY OF SECTIONS)

450. COMMUTATIONS ~~PURSUANT TO SECTIONS 20-233 AND 20-240, IDAHO CODE.~~

A Commutation ~~is a process whereby clemency may be considered and granted~~ **may be considered for a person convicted of any misdemeanor or felony crime** to modify a sentence imposed by the sentencing jurisdiction. (3-21-18)(11-19-20)T

01. Petition. A petition must be submitted to initiate the process. Only forms approved by the Commission will be accepted and must be completed correctly per the instructions on the form. (3-20-20)

a. The petition must contain the reason a modification of sentence is requested and the precise modification which is requested, such as the following. (3-23-98)

i. Change a consecutive sentence to concurrent. (3-23-98)

ii. Reduce the maximum length of sentence. (3-23-98)

iii. Reduce the minimum fixed term of a sentence. (3-30-01)

iv. Change a fixed sentence to indeterminate. (3-23-98)

v. Change a sentence in any other manner not described. (3-23-98)

b. The Commission may consider one (1) application from any one (1) person in any twelve (12) month period from the date of denial. (3-20-20)

c. Petitions may be considered at any time by the Commission but are usually scheduled for

consideration in the quarterly sessions in January, April, July, and October. (3-21-18)

d. Petitions must be received no later than the first day of the month prior to the next designated quarterly hearing session for which the offender is applying. (3-21-18)

e. Review or deliberation on the petition by the Commission will be conducted in executive session. (3-23-98)

f. Any petition may be continued for additional information or for further consideration. (3-23-98)

g. The petitioner will be sent written notice of the decision. (3-23-98)

h. The petition is limited to no more than six (6) pages; the petition will not be considered if the document exceeds this number. (3-21-18)

i. An alleged parole violator is not eligible to file a petition until the violation has been adjudicated. ~~(3-21-18)~~(11-19-20)T

j. The Commission will not consider a commutation for early discharge from parole in any case until the parolee has served at least one (1) year on parole as outlined in Section 20-233, Idaho Code. (3-20-20)

k. The Commission will not consider an early discharge for a parolee who has a sex crime or violent crime until one-third (1/3) of the remaining time from the parole release date to full term release date has been served on parole; or until ten (10) years have been served on parole on a life sentence for any crime. (3-20-20)

l. A parole officer, parole officer designee, or parole officer supervisor can petition the Commission to consider an early discharge upon reaching the timelines established in this section. (3-20-20)

m. If the parolee is permanently incapacitated or terminally ill, the Commission may consider and grant an early discharge from parole after one (1) year for any crime. (3-20-20)

02. Commutation Hearing. The scheduling of a hearing is at the complete discretion of the Commission; if a commutation hearing is scheduled, the Commission will determine the date of the hearing. (3-21-18)

a. Notice of a commutation hearing will be published in a newspaper of general circulation at Boise, Idaho, at least once a week for four (4) consecutive weeks immediately prior to the hearing. (3-23-98)

b. A copy of the notice of publication will be mailed to the prosecuting attorney of the county from which the petitioner was committed. (3-23-98)

c. Victims of the offender will be notified in writing when a hearing is scheduled. (3-20-20)

d. ~~All rules of procedure governing hearings will apply to a commutation hearing.~~ Written notice of the hearing date, time, and location will be sent to the applicant at the address given on the application or as otherwise requested. The Commission may make such appearance mandatory, make a final decision based upon the information available, or continue the hearing to a later date in order for the applicant to attend. ~~(3-23-98)~~(11-19-20)T

e. The applicant will be given written notice of the decision and such notice will be sent to the last known address. (11-19-20)T

ef. The decision and supporting documents regarding a commutation will be filed with the Secretary of State and the executive director will provide all notice that a commutation is granted consistent with Section 20-240B, Idaho Code. ~~(3-21-18)~~(11-19-20)T

03. Death Sentence. (3-23-98)

- a. An individual file of each offender under sentence of death may be maintained in the Commission office. (4-11-15)
- b. At any time, the Commission may review a file, information, or interview an offender without activating the commutation process. (4-11-15)
- c. Commutation petitions must be initiated by the petitioner or his legal counsel. Legal counsel must provide verification that he has been retained by the petitioner or his family to prepare and submit the petition. (3-20-20)
- d. The Commission may elect to receive and consider a petition for a death penalty modification at any time. (3-23-98)

(BREAK IN CONTINUITY OF SECTIONS)

550. PARDON ~~PURSUANT TO SECTION 20-240, IDAHO CODE.~~

A pardon may be considered for a person ~~having been~~ convicted of any misdemeanor or felony crime. A pardon does not expunge or remove the crime from the applicant's criminal history. ~~(3-21-18)~~ (11-19-20)T

01. General. An application for a pardon may not be considered until a period of time has elapsed since the applicant's discharge from custody as defined below. (3-23-98)

a. Applications for pardon for non-violent and non-sex crimes may be submitted for consideration no sooner than five (5) years after the satisfaction of the sentence on the crime for which they are requesting a pardon. (3-20-20)

b. Applications for pardon for violent or sex crimes or other crimes against a person may be submitted for consideration no sooner than ten (10) years after the satisfaction of the sentence on the crime for which they are requesting a pardon. (3-20-20)

c. In addition to the provisions of (a) and (b), applications for pardon for vehicular manslaughter pursuant to Section 18-4006(3)(b), Idaho Code, or driving under the influence, including any violation of Sections 18-8004, 18-8004C, 18-8005 or 18-8006, Idaho Code, may be submitted for consideration no sooner than fifteen (15) years after that date which the applicant pled guilty to or was found guilty of such a crime. (11-19-20)T

~~d.~~ A pardon application will not be considered while an offender is incarcerated or on supervision. (3-20-20)

~~e.~~ The Commission will determine whether a hearing will be granted and the applicant will be advised notified of the decision in writing. (3-21-18)

02. Application. A pardon application can be obtained from the Commission office or on the Commission website. (4-11-15)

a. The application must be completed and returned to the Commission office. (3-23-98)

i. The completed application must include the reasons why the pardon is requested. (3-23-98)

ii. The applicant may attach letters of recommendation or other documents to support the request. (3-23-98)

iii. The applicant must include copies of all court judgments and conviction documents, as well as police reports for each crime for which a pardon is requested. (3-21-18)

iv. A pardon may be requested only once during a twelve-month (12) period from the date of denial

unless otherwise stated by the Commission. (3-20-20)

v. An application may not be considered if there is significant law enforcement contact since sentence or discharge. (3-21-18)

b. Upon receipt of the completed application and required documentation, eligible applications will be reviewed by the Commission. The Commission may request an investigation of the applicant by Commission staff. The report will contain the following: (3-21-18)

i. A criminal records check will be conducted to include any law enforcement contact since the release from supervision or incarceration. (3-20-20)

ii. The applicant's employment history since discharge from supervision or incarceration. (3-21-18)

iii. The applicant's willingness to fulfill the obligations of a law-abiding citizen, including family information, community involvement, volunteer service, hobbies, and related interests. (3-21-18)

iv. The applicant's employment and education status, including any professional or vocational achievements, training, and any additional information as deemed necessary or appropriate. (3-21-18)

v. Confirmation that all restitution and fines as ordered by the sentencing court are paid. (3-21-18)

vi. An interview with the applicant may be conducted and a summary of the interview provided. Said interview may be conducted in person or by electronic means. (3-21-18)

03. Hearing. The scheduling of a hearing is at the complete discretion of the Commission. If a pardon hearing is scheduled, the Commission will determine the date of the hearing. (4-11-15)

a. Notice of a pardon hearing shall be published in a newspaper of general circulation at least once a week for four (4) consecutive weeks immediately prior to the hearing. (3-23-98)

b. A copy of the publication will be mailed to the prosecuting attorney of the county from which the petitioner was sentenced. (3-23-98)

c. Victims of the offender will be notified in writing when a hearing is scheduled. (3-20-20)

d. Written notice of the hearing date, time, and location will be sent to the applicant at the address given on the application or as otherwise requested. ~~(3-23-98)~~

~~i.~~ The Commission may make such appearance mandatory, make a final decision based upon the information available, or continue the hearing to a later date in order for the applicant to attend. ~~(3-20-20)~~ (11-19-20)T

~~ii.~~ Upon request, the Commission may decide whether to continue the hearing to a later date in order for the applicant to attend. ~~(3-20-20)~~

~~e.~~ All rules of procedure governing hearings will apply at a pardon hearing. ~~(3-23-98)~~

~~f.~~ The applicant will be given written notice of the decision and such notice will be sent to the last known address. (3-23-98)

~~g.~~ The granting of a pardon does not expunge the crime from the applicant's criminal history. ~~(3-21-18)~~

f. The decision and supporting documents regarding a pardon will be filed with the Secretary of State and the executive director will provide all notice that a pardon is granted consistent with Section 20-240B, Idaho Code. (11-19-20)T