

Review of Provisional Rulemaking – (FMC 5.3 – July 14, 2023)

Section 1 – Background: This Financial Management Circular (FMC) establishes the procedures to implement IC 4-22-2-37.1. IC 4-22-2-37.1(b) requires an agency demonstrate to the Governor’s satisfaction that the provisional rulemaking procedures are necessary, and obtain written authorization, before the rulemaking can proceed.

Section 2 – Procedure for Requesting Governor’s Authorization: To receive authorization from the Governor, the agency head shall submit a request in writing to OMB via e-mail, sent to sbarules@gov.in.gov with the phrase “Provisional Rulemaking” in the subject line, which includes copies of the information required by this FMC. The agency head shall submit this request before submitting the provisional rule to the Legislative Services Agency (LSA) for a document control number under IC 4-22-2-37.1(c). OMB will provide a copy of the agency’s submission to the Governor’s Office and coordinate with that office to expedite its review and authorization of the proposed rulemaking.

Section 3 – Required Information: In order to facilitate review of proposed rules, the agency’s request shall include the following information:


- a) A copy of the proposed rule;
- b) A statement justifying the need for a provisional rule;
- c) An indication whether the proposed rule includes a new or increased fee, fine, or civil penalty;
- d) Any comments received from regulated entities or interested parties regarding the proposed rule; and
- e) Contact information (name, phone number, email address) for an agency staff member who can answer substantive questions about the proposed rule and the underlying policy area.

The statement justifying the use of provisional rulemaking should include the following information:

- 1) An explanation of the circumstances justifying the use of provisional rulemaking, including:
 - i) For category (b)(1), a description of the specific imminent and substantial peril, an estimate of the potential impact, which parts of the State are impacted, and which segments of the population are impacted;
 - ii) For category (b)(2), the agency program impacted, the federal agency responsible for the funding, the amount of potential federal funds that may be lost, the reasons for the potential loss of funds, the specific provision of federal law, policy, or agreement that is the basis for the potential loss of funds, and any audit findings or letters from the respective federal agency discussing the issue and/or potential loss of funds;

- iii) For category (b)(3), the agency program impacted, the estimated amount of the deficit, the reasons for the deficit, and any audit findings or letters from oversight bodies discussing the underlying issue and/or potential deficit;
 - iv) For category (b)(4), the agency program impacted, the nature of the potential violation, the specific provision of law, agreement, or program term that is the basis for the potential violation, the reasons for the potential violation, and any audit findings or letters from any oversight bodies discussing the issue and/or potential violation;
 - v) For category (b)(5), a description of the factors listed in IC 8-1-2-113, including the nature of emergency judged by the commission, the cause of the emergency, the potential injury at issue, an estimate of the potential impact of the injury, which parts of the state are impacted, and which segments of the population or businesses are impacted;
 - vi) For category (b)(6), a description of the specific imminent and substantial peril, an estimate of the potential impact, which parts of the State are impacted, and which species of animals or industries are impacted; or
 - vii) For category (b)(7), a description of the specific invasive threat, an estimate of the potential impact, which parts of the State are impacted, and which species of plants are impacted;
- 2) An explanation of when the agency first became aware of the circumstances justifying the use of provisional rulemaking discussed in subsection (a);
 - 3) The expected duration of the circumstances justifying the use of provisional rulemaking discussed in subsection (a);
 - 4) How the proposed rulemaking addresses or mitigates the circumstances justifying the use of provisional rulemaking discussed in subsection (a);
 - 5) Any additional changes included in the proposed rule not directly required to address or mitigate the circumstances justifying the use of provisional rulemaking discussed in subsection (a), and the rationale for why they should be included in a provisional rule; and
 - 6) If the agency anticipates that regular rulemaking will be necessary on the subject and, if so, when the agency reasonably anticipates that regular rulemaking will be completed.

Section 4 – Authorization: If approved, the Governor will issue an authorization in writing that can be provided to the Indiana Register. An agency may not file a provisional rule under IC 4-22-2-37.1 with the Indiana Register until it has obtained this authorization.


 Zachary Q. Jackson, Director
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