

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2020-02

TRANSPARENCY IN AGENCY GUIDANCE DOCUMENTS

WHEREAS, state agencies often rely on final orders as precedent or issue agency guidance documents in the form of written interpretations, policy statements, manuals, and letters to help clarify existing statutes or regulations; and

WHEREAS, while agency guidance documents are intended to be agency interpretations of law, they sometimes carry the implicit threat of enforcement action or otherwise can create confusion for Idahoans; and

WHEREAS, state agencies may only enforce duly enacted statutes, executive orders, or lawfully promulgated rules, unless as otherwise authorized by law or as incorporated into a contract; and

WHEREAS, section 67-5250, Idaho Code, requires each agency to make final orders and agency guidance documents available for public inspection.

NOW, THEREFORE, I, Brad Little, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution and laws of this state, do hereby order that:

- 1. Each guidance document issued by an agency must:
 - a. Clearly state that it is not new law but is an agency interpretation of existing law, except as authorized by law or as incorporated into a contract; and*
 - b. Provide a point of contact so that members of the public may seek additional information or provide input on the agency guidance document.**
- 2. By July 1, 2020, any agency guidance document that an agency intends to continue must be posted on the agency's website on a single webpage, organized by subject, and with a direct link to the agency guidance document.*
- 3. By December 31, 2020, any written final orders that an agency intends to rely upon as precedent must be posted on the agency's website on a single webpage, organized by subject, and with a direct link to the final order.*
- 4. Coinciding with the deadlines above, each agency must prepare and deliver a report to the Division of Financial Management detailing what final order(s) and or agency guidance document(s), if any, the agency uses, and stating the purpose of each guidance document.*
- 5. For the purposes of this Executive Order, "agency guidance" means all written documents, other than statutes, rules, orders, and pre-decisional material, that are intended to guide agency actions affecting the rights or interests of persons outside the agency. "Agency guidance" includes memoranda, manuals, policy statements, interpretations of law or rules, and other material that are of general applicability, whether prepared by the agency alone or jointly with other persons.*
- 6. For purposes of this Executive Order, a "final order" has the meaning assigned to it in the Idaho Administrative Procedure Act, Chapter 52, Title 67, Idaho Code.*



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho in Boise on this 16th day of January in the year of our Lord two thousand and twenty and of the Independence of the United States of America the two hundred forty-fourth and of the Statehood of Idaho the one hundred thirtieth.

BRAD LITTLE GOVERNOR

LAWRENCE DENNEY SECRETARY OF STATE