

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2020-01

ZERO-BASED REGULATION

WHEREAS, excessive regulation at all levels of government can impose high costs on businesses, inhibit job growth, and impede private sector investment; and

WHEREAS, Governor Little issued Executive Order No. 2019-02, the Red Tape Reduction Act, with a goal of identifying and eliminating costly, ineffective, and outdated regulations; and

WHEREAS, the Governor's efforts to eliminate regulations were augmented by the expiration of all administrative rules in 2019 pursuant to Section 67-5292, Idaho Code, creating an impetus for quicker action by state agencies; and

WHEREAS, this effort changed the dynamic for agencies. Previously, each rule the agency wanted to eliminate had to be justified as a new rulemaking action; however, in 2019, every regulation that agencies wanted to keep had to be justified, changing the burden of proof and combating bureaucratic inertia; and

WHEREAS, Idaho state agencies did a tremendous job of embracing this opportunity, holding more than 150 public meetings and making significant progress toward regulatory reform; and

WHEREAS, the new process proved to be successful, leading to historic regulatory reform with 75-percent of all rules cut or simplified in less than one year. The effort led to the elimination of 250 rule chapters, 1,804 pages of regulations, and close to 31,000 restrictions. For every new rule chapter added, 83 were eliminated, and Idaho become the least regulated state in the country; and

WHEREAS, the collaboration between the executive and legislative branches was unprecedented and enabled this success; and

WHEREAS, the proven success of this new process should be institutionalized to prevent the accumulation of costly, ineffective, and outdated regulations over time; and

WHEREAS, there is an opportunity to pair this process with a more thorough retrospective review of the cost and benefit of each rule, if agencies are provided adequate lead time; and

WHEREAS, given the volume of rulemaking in 2019, there is a need to provide businesses with certainty in the regulatory environment.

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. Executive Order No. 2019-02, the Red Tape Reduction Act, is hereby repealed and replaced with the Zero-Based Regulation process specified in this Executive Order.*

Ongoing Review Process for Existing Rules

- 2. Each rule chapter effective on June 30, 2020, shall be reviewed by the agency that promulgated the rule according to a schedule established by the Division of Financial Management (DFM) as follows:*
 - a. All rule chapters, excluding those issued by Constitutional officers, shall be reviewed and, if applicable, be promulgated as specified in this Executive Order no later than sine die in 2026;*
 - b. The agency review schedule shall be staggered across agencies and within agencies if the agency has five (5) or more rule chapters. DFM shall ensure the volume of rules that are reviewed by the agencies*

- in any given year is such that the public can engage and provide meaningful input in any individual rulemaking, with approximately twenty percent (20-percent) of rule chapters subject to review each year; and*
- c. The agency review schedule shall be posted on the website of the office of administrative rules coordinator no later than October 1, 2020, and a date for agency review shall be published on the cover sheet of each individual rule chapter.*
 - 3. Prior to the agency review date established by DFM, each agency must publish a notice of proposed rulemaking in accordance with the provisions of the Idaho Administrative Procedure Act, Chapter 52, Title 67, Idaho Code to repeal the existing rule chapter. The agency must finalize the chapter repeal as a pending rule for legislative review during the legislative session that coincides with the agency review date.*
 - 4. An agency wishing to renew a rule chapter beyond the agency review date must promulgate a new rule in accordance with the provisions of the Idaho Administrative Procedure Act, Chapter 52, Title 67, Idaho Code:*
 - a. The agency must perform a retrospective analysis of the rule chapter to determine whether the benefits the rule intended to achieve are being realized, whether those benefits justify the costs of the rule, and whether there are less restrictive alternatives to accomplish the benefits. This analysis should be guided by the legislative intent articulated in the statute or act giving the agency the authority to promulgate the rule.*
 - i. DFM shall develop a standardized process for the required retrospective analysis. Any such forms shall be posted on the website of the office of administrative rules coordinator no later than October 1, 2020.*
 - ii. Agencies should start the new rulemaking from a zero-base, and not seek to simply reauthorize their existing rule chapter without a critical and comprehensive review. Agencies must use the retrospective analysis to guide which regulations, if any, should be re-promulgated in order to carry out the legislative intent articulated in the statute or act giving the agency the authority to promulgate the rule.*
 - b. The agency must publish a notice of intent to promulgate rules and hold, at a minimum, two public hearings that are designed to maximize public participation in the rulemaking process. A copy of the retrospective analysis must be published on the agency's website prior to the public hearings.*
 - c. The new rule chapter that the agency finalizes must reduce the overall regulatory burden, or remain neutral, as compared to the previous rule chapter. Process for New or Amended Rules*
 - 5. For the current year, there is a moratorium on rulemaking in order to create a more stable regulatory environment and provide businesses with certainty following the significant rulemaking volume undertaken in 2019. State agencies shall not conduct any new rulemaking action from the date of this Executive Order through December 31, 2020, unless all the following conditions apply or unless waived by the Office of the Governor:*
 - a. The rulemaking is narrowly-tailored to achieve one or more of the following objectives:*
 - i. To reduce or remove a regulatory burden;*
 - ii. To remove obsolete, outdated, or unnecessary regulations;*
 - iii. To advance the objectives of the Licensing Freedom Act;*
 - iv. To comply with a new statutory requirement or court order; or*
 - v. To prevent a substantiated and well-documented threat to public health, peace, or safety.*
 - b. At least one existing rule is repealed or significantly simplified in conjunction with the new or amended rule so that the net regulatory burden is decreased or neutral. Upon approval from the Office of the Governor, this condition will not apply if the rulemaking is mandated by new federal or state law or by court order;*
 - c. At least one public hearing is conducted;*
 - d. The agency completes a prospective analysis of the new or amended rule, using a standardized form developed by DFM.*
 - i. Any such forms shall be posted on the website of the office of administrative rules coordinator no later than June 1, 2020.*
 - ii. A copy of the prospective analysis must be published on the agency's website prior to the negotiated rulemaking session.*

6. *All proposed amendments to an existing chapter must be contained within a single rulemaking docket.*
7. *If the new rulemaking action results in a new chapter, it shall be reviewed by sine die five (5) years from when the rule becomes final.*
 - a. *The rules coordinator shall publish the agency review date on the cover sheet of each individual rule chapter.*
8. *Temporary rules shall be limited to those that are intended to avoid an immediate danger or are required to meet a specific deadline specified in statute or a court order.*
9. *Beginning January 1, 2021, state agencies shall, to the extent practicable, only amend rules in conjunction with the renewal of a rule chapter as specified in item 4 of this Executive Order.*

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

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BRAD LITTLE GOVERNOR

LAWRENCE DENNEY

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LAWRENCE DENNEY SECRETARY OF STATE