



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

BRAD LITTLE
Governor

ALEX J. ADAMS
Administrator

April 23, 2019

MEMORANDUM

**TO: Executive Branch Agency/Department Heads
Rules Review Officers**

FROM: Alex J. Adams 

SUBJECT: Process to Reauthorize Rules Beyond July 1

The Idaho Legislature did not reauthorize all existing administrative rules as they have done in the past. This will require executive administrative action to ensure existing rules remain in effect in FY20. Governor Little, his staff, DFM, and the Attorney General's Office have been working diligently to assess and plan how to address this unique circumstance. The following lays out the first phase of the Governor's plan to accomplish this process.

The Governor has directed DFM and all state executive agencies to exercise necessary executive authority to minimize the impact on state agencies, and the public most importantly. The efficient operation of state government is a priority to Governor Little, and the people of Idaho expect it.

DFM will begin the process of re-publishing existing rules by IDAPA chapter, using the engrossed rules updated for 2019 legislative action. Rules will be published as both temporary and proposed rules concurrently in a special edition of the Idaho Administrative Bulletin in June 2019. The temporary rules will have an effective date of June 30, 2019 to ensure there is no gap with the expiring rules.

Given that many agencies have already identified IDAPA rules they intend to eliminate as part of the Red Tape Reduction Act, agencies have two pathways to move forward:

1. Allow Rule to Expire

If an agency intends to eliminate a rule, the rule will expire by default on July 1, 2019. No ARRF is needed and no legislative review of the chapter will occur during the 2020 session. DFM will count the elimination of the chapter toward the "bank" agencies are accumulating under the Red Tape Reduction Act. Agencies must submit an email to Adam Latham (Adam.Latham@dfm.idaho.gov) identifying the rules they intend to let expire no later than **May 10, 2019**. Agencies should include a brief explanation of why they are proposing to eliminate the rules. The Governor's office will review each rule that an agency proposes to let expire and the Governor will make the final decision whether to promulgate each rule as temporary and proposed.

2. Re-Authorize Rule by July 1, 2019

If an agency intends to re-authorize a rule, several action steps will be necessary to publish the temporary and proposed rules in the June 2019 Bulletin:

- Agencies must submit a completed Notice of Omnibus Rulemaking form and separately a Notice of Omnibus Fee Rulemaking form to DFM no later than **May 10, 2019**.

- a. Templates for each Notice are enclosed.
 - b. One of each Notice is needed per agency.
 - c. Please submit completed Notices to Adam Latham (Adam.Latham@dfm.idaho.gov)
 - d. If rulemaking authority is vested in a board or commission – not agency staff – the board or commission must convene to properly authorize the Notice. This is required by law. Please work closely with your attorney to ensure the Notice is properly authorized.
 - e. No ARRF will be required.
- It is crucial that each agency carefully and thoroughly complete each Notice and closely follow the requirements of the Idaho Administrative Procedure Act, Chapter 52, Title 67, Idaho Code.
 - Questions regarding the Notice and the process should be directed to Alex Adams (Alex.Adams@dfm.idaho.gov; 208-334-3900).
 - Agencies must post each Notice published in the Bulletin onto, or be accessible from, the home page of the agency's website so that interested parties can view it online (§67-5221(3)). This will need to occur in June on or around when the special Bulletin publishes.
 - Agencies must accept written comments on the proposed rules for 21 days pursuant to 67-5222. If comments are received or an oral comment is requested, please contact Adam Latham (Adam.Latham@dfm.idaho.gov) for additional information prior to scheduling the hearing.
 - All rules re-authorized through this process will be subject to legislative review during the 2020 Idaho Legislature, as is the case each year.
 - Each agency must keep all records of this rulemaking process for at least two (2) years pursuant to Idaho Code § 67-5225. Please ensure the record is thorough and complete.

Frequently Asked Questions

Can agencies add rules concurrently with the publication of the re-authorized chapter?

- No, agencies must go through the traditional ARRF process for any new or added rules.
- Only rule expiration can be accomplished via the procedure set out above.

Can agencies add, modify or eliminate rules apart from the re-authorized chapter?

- Yes, agencies will still be permitted to submit ARRFs for new rules or modified rules through the traditional process in 2019.
- When an ARRF is approved by DFM and the Governor's Office, agencies can move forward with publishing in the Bulletin. These rulemaking actions are considered separate, legal rulemaking actions from the re-publishing of the existing rules as temporary and proposed. As such, they will be reviewed by the 2020 Legislature, and those that take effect will be engrossed into the existing rule chapters upon *sine die* in 2020.