

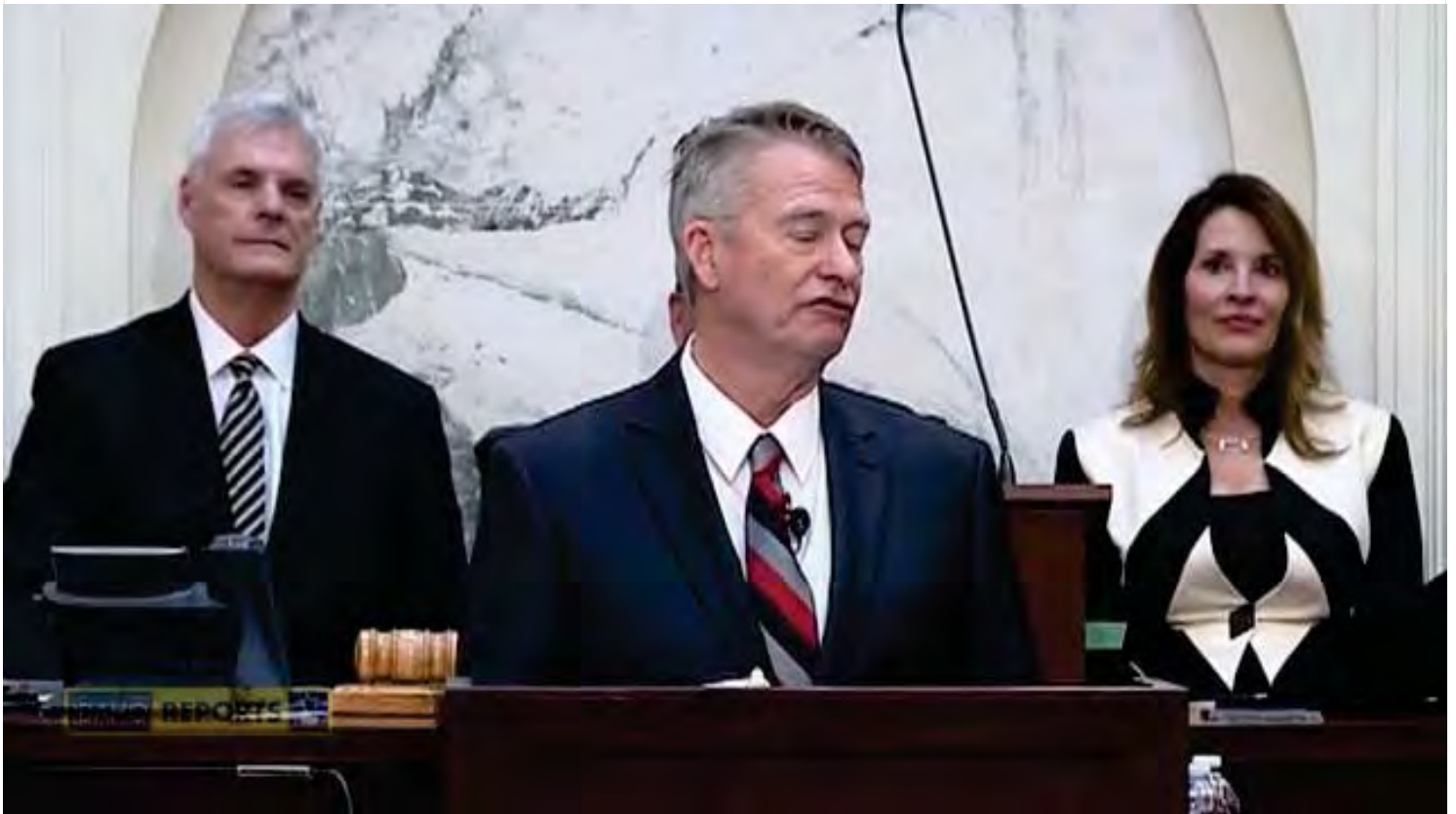


STATE POLITICS

## Gov. Little takes first steps to eliminate 'excessive regulations in all levels of government'

BY CYNTHIA SEWELL

JANUARY 31, 2019 04:59 PM, UPDATED JANUARY 31, 2019 06:04 PM



On Monday, January 7, Gov. Brad Little gave his first State of the State Address focusing on education, health care, public safety, transportation and more. BY IDAHO PUBLIC TELEVISION

Idaho Gov. [Brad Little](#) has officially issued the first two executive orders of his tenure.

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“As most know, excessive regulations in all levels of government can impose high costs on businesses, inhibit job growth and impede the private sector,” Little said during a signing press conference on Thursday.

The [Idaho Administrative Code](#) has 736 chapters with 8,278 pages detailing more than 72,000 regulations, Little said.

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To reduce and streamline these changes, one of his executive orders, the [Red Tape Reduction Act](#), requires all state agencies to revoke two regulations for every new one it wants to implement, forcing agencies to overhaul regulations and remove any outdated and unnecessary rules.

The other executive order, the [Licensing Freedom Act of 2019](#), requires a comprehensive review of and overhaul of the state’s [professional licensing system](#), which comprises 442 different license types administered by 60 state agencies, boards or commissions.

This order requires “sunrise and sunset processes,” meaning a thorough review to determine if a new law is necessary and if existing ones need to be retired, to evaluate future occupational licensing laws to ensure they are necessary and review all existing licensing rules.

“Every year we will review no fewer than five license types to determine whether continuation of those regulatory programs is in the public’s interest,” he said. Little will work with the Legislature to decide which licenses get reviewed annually.

“Onerous and outdated regulations in state government present barriers to independence and prosperity for Idahoans,” Little said. “The two executive orders I signed today help simplify Idaho state government and make it more accountable.”

[Little announced his intent to issue these two orders](#) in his inaugural [State of the State speech](#) Jan. 7. He said during the speech his third executive order would pertain to addressing the opioid crisis.

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# Progress advances on Governor Little's rule consolidation executive order

Monday February 25, 2019

Boise, Idaho – Less than one month after Governor Brad Little implemented the "Red Tape Reduction Act" through [Executive Order 2019-02](#), progress is taking place to simplify and scale back Idaho's administrative rules.

All State of Idaho agencies with authority to issue administrative rules are required by Governor Little's executive order to identify at least two existing rules to be repealed or significantly simplified for every one rule they propose.

The Idaho Transportation Department (ITD) announced in an internal newsletter earlier this month it is enthusiastically embracing Governor Little's executive order that aims to reduce regulatory burdens on Idaho citizens and businesses.

"ITD is already getting in the spirit of the new executive order to reduce the burden on Idahoans by consolidating 22 administrative rules down to just eight and 17 annual DMV (Division of Motor Vehicles) permits down to eight as well," the ITD newsletter stated.

The House and Senate Transportation Committees already approved the ITD rule package this session. Governor Little's executive order implements new processes for administrative rulemaking after April 2019.

"The eagerness shown by the Idaho Transportation Department for streamlining regulations moving forward demonstrates the collaborative nature of my executive order," Governor Little said. "We're working closely with the agencies to better serve all Idahoans through safe and effective regulation."

The executive order also requires agencies to designate an existing employee as a Rules Review Officer to undertake a critical and comprehensive review of their administrative rules and identify costly, ineffective, or outdated regulations.

More than half of all agencies with rulemaking authority have identified their Rules Review Officer, and all of them will be in place by March 1.

In addition, the Division of Financial Management just wrapped up its first training session for agency Rules Review Officers last Friday, and additional trainings will continue throughout March and April.

Idaho's administrative code includes 736 chapters and 8,278 pages of regulations and at least 72,000 total restrictions. The three most regulated areas in Idaho are economic development with 3,018 pages of regulations, natural resources with 1,815 pages of regulations, and health and human services with 1,666 pages of regulations.

In just 20 years, from 1998 to 2018, the number of restrictions in Idaho administrative code grew more than 32 percent and added nearly 2,000 pages.

Additional information on growth in the Idaho administrative code is shown in the table below.

Metric	1998 Total	2018 Total	Percent Change (1998 to 2018)	Average Annual Growth
Chapters	647	736	13.8%	4.45 chapters
Pages	6,288	8,278	31.6%	99.5 pages
Restrictions	54,755	72,697	32.8%	897 restrictions

Executive Order 2019-02 also requires agencies to submit a business/competitiveness impact statement that identifies the impact any proposed rule will have on individuals and small businesses. The Division of Financial Management will provide Governor Little an annual report on outlining the progress made in eliminating burdensome regulations and streamlining state government.

# House Republicans Demand A Bigger Say In Idaho Rule Making Process

By [JAMES DAWSON \(/PEOPLE/JAMES-DAWSON\)](#) • APR 11, 2019

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(//www.boisestatepublicradio.org/sites/idaho/files/styles/x\_large/public/jason\_monks\_mike\_moyle.jpg)

House Majority Leader Mike Moyle (R-Star), right, talks with the Assistant Majority Leader Jason Monks (R-Nampa).

House Republicans are dialing up the tension at the Idaho Capitol after a late-session attempt to overhaul how state agencies' rules are approved.



Listen

4:06

*Click 'play' to hear the audio version of this story.*

While the term “administrative rules” might make a person’s eyes gloss over, these rules are ubiquitous in state government. They include everything from what curriculum is taught in public schools to the fees you’re charged when you enter a state park.

Thousands of pages of these rules expire every year unless lawmakers reauthorize them – and that might just happen come July.

That’s because House Republicans Wednesday tweaked a bill that would renew the administrative code in order to give them more power in approving some new rules. They tried running a bill earlier this year to do just that, but the Senate refused to take it up.

“We didn’t take that position lightly then and with the passage of time our resolve has not changed,” said House Speaker Scott Bedke (R-Oakley).

When new rules are proposed, some of them only need to be approved by either the House or the Senate. Bedke and others in his caucus want both chambers to have a say.

“This is a way for the legislature to reclaim its rightful lawmaking powers,” said House Majority Leader Mike Moyle (R-Star).

The Senate quickly, and unanimously, rejected the bill amended earlier in the day by the House.

Senate Majority Leader Chuck Winder (R-Boise) says changing this rulemaking process well past the legislature’s target date to adjourn isn’t going to happen.

Instead, he says he’d be open to putting together a working group to study the issue.

“[Rule making is] constitutionally provided for – something that is pretty unique – and I think we need to protect it and guard it and do it right,” Winder says.

If these rules expire, the governor’s office can renew them temporarily, but they’d still need a thumbs up from the legislature to become permanent.

It could open Pandora's box where all existing rules, like last year's new science standards to teach Idaho public school students about climate change, could be eliminated next January since temporary rules need both House and Senate approval.

The potential cost to taxpayers could also be significant if every rule is allowed to expire.

Rules have to be printed in the Administrative Bulletin for public notice. Dennis Stevenson, the state Administrative Rules Coordinator says that could cost nearly \$400,000 based on the current per-page rate his office charges state agencies.

Stevenson thinks it would take his staff of three people two to three weeks of full-time work to properly convert existing rules into temporary ones.

Idaho lawmakers typically have to review about 200 new rules each year, he says, but reauthorizing the entire administrative code book would be a massive undertaking.

The Senate is expected to draft a new bill Thursday morning to reauthorize the existing rules, but it's unclear how much headway it will make in the House.

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## Legislature's inaction on agency regs may be its greatest accomplishment

By [Wayne Hoffman](#)

April 12, 2019

The most monumental thing the 2019 Idaho Legislature did is what it didn't do: The Legislature didn't reauthorize thousands of pages of agency regulations. Those regulations, euphemistically called administrative rules, will expire this summer. The regulations cover every aspect of Idaho life, from public education to professional licenses. There's a rule for just about everything, and those rules have the full force of law.

The Legislature's decision to do nothing is more or less the product of a spat between the House and the Senate, but the end result is still fantastic. Gov. Brad Little's administration will need to reinstate each regulation, one program at a time, hopefully leaving a lot on the cutting room floor. (As a side note, I think some regulations can't or shouldn't be reinstated immediately because they don't constitute emergencies, as defined by state law.)

The reinstatement, or better still, elimination, of regulations could be Little's chance to shine, offering his administration a chance to leave a mark on Idaho's regulatory landscape. Little has often complained that Idaho has too many regulations. He's regularly indicated that his administration would like to trim the "musts," "shalls," "shall nots," and other regulatory mandates on Idahoans, much of which has been a cumulative result many years of more additions than subtractions from Idaho's administrative code. So far, Little has signaled his seriousness about the endeavor. He's hired Alex Adams, formerly a regulation-cutter at the Board of Pharmacy, to run the governor's budget office, the Division of Financial Management. Little, with the blessing of the Legislature, has given Adams control over administrative rules.

But deciding the final disposition of each and every agency regulation may be more than Little had in mind. There's more to Idaho regulations than rules about how many doors a pharmacy has or the specific training needed to become a licensed cosmetologist. For example, one regulation added in 2018 allows Idahoans to defy science and opt for a different gender on their birth certificate. Another requires Idaho high school seniors to get a meningococcal vaccine in order to attend public school. Additionally, Idaho's administrative rules contain the much-maligned (for good reason) Common Core education standards. Little can now do more than just rein in the administrative state. He has a chance to discontinue a plethora of bad public policies.



Furthermore, Idaho's unique process means the Little administration's decisions regarding each reauthorized regulation would be subjected to a House and Senate vote to be reinstated. That's one reason conservatives in the Idaho House of Representatives are beaming. Many existing rules—including the aforementioned Common Core rules, immunization requirements, and birth certificate regs—have been shielded from scrutiny because they required only the blessing of a single committee or committee chairman. Throughout the years, much of the Legislature has been cut out of the decision-making process.

Now, all existing regulations will have to pass through several filters to remain in place: Little's, the House's and the Senate's. Through that process, Idahoans should expect to see a reduction in agency regulations and the elimination of policies that have no business being on the books in Idaho. In that way, the best thing from the 2019 legislative session is yet to come.

## About the Author: [Wayne Hoffman](#)

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Wayne Hoffman is one of Idaho's leading experts on public policy, the Idaho Legislature and the practice of journalism. Hoffman has spent 25 years writing about government and politicians. He writes a weekly column, found in newspapers and on websites throughout Idaho, and is often invited to speak on complex issues including taxation, health care, free markets and education.

Throughout his years in the news business, Wayne won numerous awards for investigative and political journalism. During his years of covering the state legislature, governor's office and state agencies, Wayne often exposed government waste, failed government programs and politicians whose voting records were inconsistent with their rhetoric. After leaving the news business in 2005, Wayne became the special assistant to the director of the state Department of Agriculture. In 2006, he managed the communications efforts of several successful political campaigns and became the communications director for Congressman Bill Sali. Wayne lives in Nampa with his two children. Wayne has been at the helm of Idaho Freedom Foundation since the organization launched in January 2009. Email: [Wayne@IdahoFreedom.org](mailto:Wayne@IdahoFreedom.org)

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## Idaho legislative session drags on

Administrative rules dispute ensures tie for third-longest session in the state's history

By William L. Spence, for the Daily News Apr 11, 2019

The Idaho Legislature spent eight hours approving five bills Wednesday and will be back for more today.

The House and Senate could have completed their work and adjourned for the year. However, they're engaged in a virulent form of their traditional end-of-session trench warfare.

The ongoing dispute — which has to do with the procedure for approving administrative rules — ensures that the 2019 legislative session will reach the 95-day mark, tying it for the third-longest session in state history. If lawmakers are still in session Friday, they'll have third place all to themselves.

The two chambers have spent much of the year negotiating, debating and disagreeing about high-profile issues like Medicaid restrictions and limitations on the ballot initiative process. Now that those issues have been decided, they're fighting over administrative rules.

Idaho is one of the few states that give lawmakers the authority to review and reject executive branch rules and regulations.

The process typically occupies the first two or three weeks of any legislative session.

Currently, temporary rules become permanent once they're approved by either the House or Senate. They're only rejected if both chambers agree.

House Republicans, who tend to be more skeptical about regulations to begin with, find this process objectionable.

They want to flip the requirement, so rules only become permanent if they're accepted by both chambers.

House Majority Leader Mike Moyle, R-Star, sponsored legislation to that effect earlier this session.

It passed the House 53-16.

"Once a rule is approved, it has the effect of law," Moyle said. "To (repeal) a rule takes the House and Senate.

But to approve a rule only takes one body; that gives an advantage to the executive branch that I think is wrong."

The Senate refused to consider Moyle's bill.

"Based on the history of how (the House) has dealt with rules in the past, we're afraid a few House members will get mad at one rule and end up killing a whole docket," said Senate Majority Leader Chuck Winder, R-Boise.

The dispute occupied virtually the entire day Wednesday.

After discussing the issue in caucus meetings the entire morning, the House amended a separate administrative rules bill, adding all the language from Moyle's bill to it.

The Senate then promptly killed the amended bill.

The dispute may or may not continue today.

The Senate still has a trio of budget bills left on its calendar; collectively they provide \$6.4 million for a plan to relocate a portion of the Idaho state treasurer's staff and build more office space for House lawmakers.

The House still has to decide whether to accept the Senate amendments to a hemp transportation bill, or kill the measure altogether. It also needs to act on a trailer bill that funds a previously approved measure adding restrictions and conditions to the expanded Medicaid program.

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# Idaho Legislature: 95 days, 320 laws, 2 vetoes. Here's what happened — and didn't — in 2019



Cynthia Sewell, Idaho Statesman

Idaho

🕒 Published at 9:48 am, April 12, 2019

🕒 Updated at 9:50 am, April 12, 2019



Ken Wilcox, Flickr

BOISE ([Idaho Statesman](#)) — Clocking in at 95 days, the final gavels of the 2019 Idaho legislative session went down Thursday afternoon.

It's the third longest session this century — the 2003 session lasted 118 days, while the 2009 session ended after 117 days. The shortest session was 2002, which lasted a scant 68 days.

Part of the reason for such a lengthy session was the complicated nature of some of Idaho's most controversial bills: Medicaid expansion sideboards, citizen initiative restrictions and hemp legalization. Weeks of public hearings, posturing and arguing resulted in new sideboards attached to Medicaid expansion, vetoed voter initiative restrictions and hemp legalization dying on the final day of the session.

**Then came the House's administrative rules bill...**

The session's final two days brought a new drama when the House hijacked a routine "housekeeping" bill that must be passed each session to keep the state's existing 8,200 pages of administrative rules in place for another year.

The House amended this routine bill by tacking on a bill the House had passed, but the Senate had refused to take up.

Under current law, all new administrative rules must be approved by one chamber and the governor. The stalled bill, HB 100 sponsored by House Majority Leader Mike Moyle, required both chambers and the governor to approve all administrative rules, which is the same requirement to pass a bill into law. Moyle argued that since the rules have the same force and effect as law, they should be under the same enactment requirements as laws.

The Senate took umbrage when the House amended this bill to become the must-pass bill renewing the rules through July 1, 2020. The Senate decided to toss that bill and start over.

After some tense moments, terse words and tactical moves with other bills that fund Medicaid expansion and would have provided new offices for House members, the two sides reached an impasse. The Senate killed three bills that would have provided House members new remodeled Capitol offices and would have allowed the state to re-purchase a bank building adjacent to the Capitol Mall it sold about two years ago. The Senate also unanimously passed a new clean version of the rules adoption bill, renewing administrative rules through July 1, 2020.

"This is the way we have adopted rules historically," Sen. Todd Lakey, R-Nampa, told the Senate on Thursday. The Senate then sent the bill to House for consideration.

Without any discussion, the House sent the bill to a committee to die and said it was done for the session, leaving a bill required to keep state government running in a drawer.

So what does this mean for the thousands of states rules in effect now?

Alex Adams, Idaho Division of Financial Management administrator, told the Statesman on Thursday that all the existing rules and new ones approved this session are already in effect until June 30, 2019.

"The governor has executive authority to minimize the impact on state agencies," Adams said. "So rest assured, all administrative rules will have full force and effect of law through the legislature next year."

Adams said all existing rules will be reprinted as temporary rules to keep them in effect.

"Confidence in state government is something that is really important to Gov. Little," Adams said. "We just want to give the confidence to the people of Idaho that there will be no disruption in the existing rules."

## What happened, and didn't happen

Idaho's 65th Legislature, comprising 84 Republicans and 21 Democrats, [introduced 589 pieces of legislation this session](#), of which [320 became law](#).

Here are some highlights:

## Passed

**Medicaid sideboards:** Idaho voters enacted Medicaid expansion via ballot initiative in November. After weeks of intense debate, the [Legislature passed a bill adding controversial sideboards to the Medicaid expansion law](#). Almost all public testimony opposed the sideboards, including the inclusion of work requirements, and some Republicans broke with their party to vote against the measures. Little said he was displeased with parts of the bill but signed it into law anyway. Idaho must get federal approval for the sideboards before they can take effect.

The sideboards law:

- Requires people on expanded Medicaid to work, study, volunteer and/or do job training at least 20 hours a week and prove compliance every six months.
- Penalizes people who don't comply with the work rules. They will lose Medicaid coverage; or, if that's deemed illegal, they'll have a copay for medical care.
- Requires patients to get care through one organization. For family planning like birth control pills, patients can only go outside that organization if they have a referral.
- Enrolls people who are just above poverty level in private health insurance, unless they opt in to Medicaid.
- Says the Legislature can decide whether to keep or kill expansion if the federal government's share of funding drops below 90%.

Amid public outcry to veto the bill, [Gov. Little chose to sign it](#) but included a letter indicating some problems with the legislation that need to be addressed.

**Stadiums and municipal buildings:** HB 217, which serves as a reform on how [Idaho cities can spend their urban-renewal money](#), passed despite opposition from groups that include the city of Boise. The new law requires a public vote if the cost of a municipal building or a major remodel exceeds \$1 million and is funded by at least 51% non-federal public money that includes any amount of urban-renewal money. Previous legislation required a vote only if more than 51% of the cost was to be funded with urban-renewal money.

**Conceal carry in cities for 18- to 20-year-olds:** In 2016, Idaho passed a constitutional carry bill which allows someone age 18 or older to, without a permit, conceal carry firearms anywhere in the state. That came with an exception: 18- to 20-year-olds could not conceal carry a handgun within city limits. [Under HB 206](#), which passed the House and Senate on party-line votes, [that exception goes away](#).

## Vetoed

**Voter initiatives:** In office just three months, Idaho's new Republican governor [hailed out his veto stamp and rejected two bills](#) that added more hurdles to the ballot initiative and referendum process. The bills would have made Idaho's process the strictest among the 26 states that allow initiatives.

[The two bills](#) met with [overwhelming public outcry](#) and threats of lawsuits, forcing Little to make his first major decision as governor.

After Little vetoed the bills April 5, some House members quickly cleaved sections of the bills into [four new bills](#) and hastily printed them April 8. With the clock running out to hold public hearings on the bills and pushback that the move was an attempt to circumvent a veto, just one of those bills, requiring a fiscal statement, passed the House on Wednesday, but the Senate took no action on it.

## Failed

**Hemp:** The Legislature took hemp on a wild ride this session, starting with the House's near-unanimous passage of [HB 122, which would legalize hemp in line with 2018 federal Farm Bill](#). The House then shelved that bill after the Senate returned it with law-enforcement-requested amendments. The House then passed a new bill, HB 300, that would allow interstate transport of hemp with a permit issued by the Department of Agriculture. [The House shelved that bill](#), too, after the Senate returned it with amendments calling for the state to create a hemp plan by Nov. 1. [So what does this mean for hemp in Idaho?](#) It remains illegal to grow, possess or transport the product if it contains any amount of THC.

**Child marriage:** [Current Idaho law](#) does not have a minimum age to get married — 16- and 17-year-olds just need parental consent to marry. A child under age 16 can marry if a judge also consents. [A bi-partisan bill proposed setting the minimum age](#) to marry at 16. The House voted 28-39 to kill HB 98.

## Left in the drawer

As a courtesy, nearly every bill gets printed, but whether it gets a hearing is up to each committee chairman or chairwoman. Some bills never get an initial hearing, others get a hearing and get passed by one chamber, but the other chamber takes no action on it. In effect, these bills are put in a drawer and never see the light of day again.

## Bills ending up in a drawer this session include:

**Mandatory minimums:** A bi-partisan bill to remove the word “mandatory” from minimum sentencing requirements for certain drug trafficking crimes passed the House, but Senate Judiciary and Rules Chairman Todd Lakey, R-Nampa, stated he will not hold a hearing on the bill because it is bad policy.

**Idaho is “too great for hate” license plate:** While both the House and the Senate enthusiastically passed a bill creating a pet-friendly license plate, the same enthusiasm was not shown for a license plate featuring the phrase “too great for hate.” The bi-partisan Senate bill — which had several Senate co-sponsors including Senate Pro Tempore Brent Hill, R-Rexburg, and Senate Majority Leader Chuck Winder, R-Boise — passed the Senate in a 32-3 vote. But when SB 1775 arrived at the House, Transportation Committee Chairman Rep. Joe Palmer, R-Meridian, would not give the bill a hearing.

**Conceal carry in schools:** Anyone with an enhanced concealed carry permit could bring weapons onto public school grounds without permission from or notifying school administrators under HB 203 proposed by Rep. Chad Christensen, R-Ammon. House State Affairs Committee Chairman Steve Harris, R-Meridian, did not schedule the bill for a hearing.

**First-time pot offenders:** A person convicted of misdemeanor marijuana possession in Idaho would be able to ask a court to change the conviction to an infraction if it is a person's first offense and if the amount of marijuana in possession is a half-ounce or less. That proposal was brought under a bi-



partisan bill by Reps. John Gannon, D-Boise, and Bryan Zollinger, R-Idaho Falls. House Judiciary and Rules Chairman Thomas Dayley, R-Boise, did not schedule a hearing for HB 140.

## On the horizon for Idaho lawmakers

Occasionally when lawmakers want to bring forth a bill that might be controversial or complex, they introduce the bill knowing it will not get a hearing or go anywhere during the session. Once the bill gets printed and, and therefore becomes publicly available, lawmakers spend the interim time between sessions getting stakeholder input and re-drafting the bill to bring back next session for action.

**Here are some bills introduced this session with intent of being brought back next session ready for action:**

**Medicaid expansion funding:** State officials estimate it will cost the state \$40 million annually to implement Medicaid expansion. Hospitals would help pay for this under two proposed bills: HB 298 calls for removing the sales tax exemption on most hospitals, raising an estimated \$24.5 million annually; HB 299 would increase the annual assessment hospitals pay on inpatient and outpatient services, generating up to \$20 million annually. Money from these two proposals would go into a dedicated Medicaid expansion fund.

**Highway districts:** Idaho has 63 highway taxing districts and 44 counties. Of those highway districts, just one encompasses an entire county, the Ada County Highway District. The other 43 counties each have multiple highway districts or a highway district spanning more than one county. HB 292, introduced by House Majority Leader Mike Moyle, R-Star, would consolidate highway districts to have each county served by one countywide highway district.

**First-time homebuyers:** One of the first programs Gov. Brad Little wants to implement, which is similar to existing Idaho tax-advantaged savings accounts for health care and educational purposes, Idaho's first-time homebuyer savings accounts would encourage individuals to save for their first home by offering a pre-tax savings account for the eventual down-payment on a home, or other eligible home costs associated with closing on their first home in Idaho. Under HB 271, the allowable tax deduction for an individual account holder is \$3,000 per year and for a married couple is \$6,000 per year.

The 2020 Idaho Legislature convenes Jan. 6.

*This article was originally [published in the Idaho Statesman](#). It is used here with permission.*

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## LEGISLATURE'S INACTION ON AGENCY REGS MAY BE ITS GREATEST ACCOMPLISHMENT

Wayne Hoffman • 04/12/2019

The most monumental thing the 2019 Idaho Legislature did is what it didn't do: The Legislature didn't reauthorize thousands of pages of agency regulations. Those regulations, euphemistically called administrative rules, will expire this summer. The regulations cover every aspect of Idaho life, from public education to professional licenses. There's a rule for just about everything, and those rules have the full force of law.

The Legislature's decision to do nothing is more or less the product of a spat between the House and the Senate, but the end result is still fantastic. Gov. Brad Little's administration will need to reinstate each regulation, one program at a time, hopefully leaving a lot on the cutting room floor. (As a side note, I think some regulations can't or shouldn't be reinstated immediately because they don't constitute emergencies, as defined by state law.)



(<http://idahoednews-wpengine.netdna-ssl.com/wp-content/uploads/2018/07/Wayne-Hoffman.jpg>).

Wayne Hoffman

The reinstatement, or better still, elimination, of regulations could be Little's chance to shine, offering his administration a chance to leave a mark on Idaho's regulatory landscape. Little has often complained that Idaho has too many regulations. He's regularly indicated that his administration would like to trim the "musts," "shalls," "shall nots," and other regulatory mandates on Idahoans, much of which has been a cumulative result many years of more additions than subtractions from Idaho's administrative code. So far, Little has signaled his seriousness about the endeavor. He's hired Alex Adams, formerly a regulation-cutter at the Board of Pharmacy, to run the governor's budget office, the Division of Financial Management. Little, with the blessing of the Legislature, has given Adams control over administrative rules.

But deciding the final disposition of each and every agency regulation may be more than Little had in mind. There's more to Idaho regulations than rules about how many doors a pharmacy has or the specific training needed to become a licensed cosmetologist. For example, one regulation added in 2018 allows Idahoans to defy science and opt for a different gender on their birth certificate. Another requires Idaho high school seniors to get a meningococcal vaccine in order to attend public school. Additionally, Idaho's administrative rules contain the much-maligned (for good reason) Common Core education standards. Little can now do more than just rein in the administrative state. He has a chance to discontinue a plethora of bad public policies.

Furthermore, Idaho's unique process means the Little administration's decisions regarding each reauthorized regulation would be subjected to a House and Senate vote to be reinstated. That's one reason conservatives in the Idaho House of Representatives are beaming. Many existing rules—including the aforementioned Common Core rules, immunization requirements, and birth certificate regs—have been shielded from scrutiny because they required only the blessing of a single committee or committee chairman. Throughout the years, much of the Legislature has been cut out of the decision-making process.

Now, all existing regulations will have to pass through several filters to remain in place: Little's, the House's and the Senate's. Through that process, Idahoans should expect to see a reduction in agency regulations and the elimination of policies that have no business being on the books in Idaho. In that way, the best thing from the 2019 legislative session is yet to come.

***Written by Wayne Hoffman, president of the Idaho Freedom Foundation.***

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## Legislative Notebook: Medicaid and sine die

By NATHAN BROWN nbrown@postregister.com Apr 14, 2019



BOISE — Last week, the 14th of the 2019 legislative session, state officials and lawmakers:

### **Passed the Medicaid budget**

The debate over Medicaid expansion, one of the defining issues of the 2019 legislative session, reached a conclusion for the session on Tuesday when Gov. Brad Little signed Senate Bill 1204.

Little wrote in his transmittal letter he supports the part of the bill that would give people making between 100 and 138 of the poverty level the option of getting insurance through the state exchange rather than Medicaid, if the Centers for Medicare and Medicaid Services approves a waiver. However, he also wrote he had concerns about the work requirements, and urged lawmakers to revisit them next year.

A few hours later the House passed the Medicaid budget, which it had been holding for weeks pending the resolution of the debate, putting many House Republicans who wanted more robust restrictions on Medicaid expansion at odds with those in the Senate who favored fewer changes to the program. On Thursday, one of the last bills to pass this session was a \$2.6 million funding bill — \$784,100 in state money, the rest federal — to pay for the work requirements and federal waiver applications.

Now the Department of Health and Welfare will spend the next few months getting ready to implement expansion. Open enrollment starts Nov. 1, and coverage will kick in on Jan. 1, 2020.

## **Adjourned sine die**

After 95 days, the Legislature adjourned for the year at 4:20 p.m. Thursday, tying for the third-longest session in the state's history.

In the end, the GOP leadership didn't get everything it wanted. Most notably, legislation to raise the threshold to get an initiative on the ballot was vetoed by Little last week, and a last-minute attempt to pass at least part of it despite his veto didn't get far. However, at a post-adjournment news conference, House Republicans pointed to several bright spots, including raising teacher pay and funding for early childhood literacy programs, Medicaid expansion and a couple of water-use-related bills.

"Despite some of the high-centering that you saw here at the very end, this was a very productive legislation session," said House Speaker Scott Bedke, R-Oakley.

The Democrats had a different take. Assistant Minority Leader Rep. Ilana Rubel, D-Boise, said Republican lawmakers consistently ignored overwhelming public opposition to their Medicaid and initiative bills and listened to a handful of lobbyists instead. She praised the thousands of people who pushed back.

"I hope the Republican supermajority learned this session that they could serve the state better by working across the aisle and listening more to citizens," Rubel said. "They do not serve the state when they abuse their supermajority power by ramming special interest agendas down our throats. I hope we never see another session that is so marked by secrecy, backroom deals and disregard of the people's wishes."

## **This week**

Now that the session is over, Little plans to travel the state this week. Superintendent of Public Instruction Sherri Ybarra's post-session tour of the state, which was scheduled to start earlier this month but had to be delayed because of the session, will start in late April, including a stop at the Hilton Garden Inn in Idaho Falls on May 1.

One thing worth watching over the coming months is that the state will, at some point, apply to CMS to implement the waivers for work requirements and other changes in Senate Bill 1204. It also will be worth paying attention in late June/early July to any fallout from the administrative rules standoff. Lawmakers adjourned without passing, as they have in past years, a bill to keep Idaho's administrative rules in place for another year. House Republicans had been pushing to require both chambers of the Legislature, rather than one, to sign off on any new rules, but the Senate never took up the House proposal. This means the rules will all expire after June 30, and would have to be re-proposed as temporary rules and reviewed by the Legislature again in 2020.

Seeing as the session's over, this will be my last weekly column for a while. Thank you for reading.

### **Quotes of the week**

"The Medicaid budget is kind of like Pac-Man, it seems to be gobbling up everything in its path. Education, transportation, things that are essential functions of government."

— *Rep. Bryan Zollinger, R-Idaho Falls.*

"I cannot remember a session that did more damage to the faith of people in their government, or that was so consistently marked by the Republican majority's total disregard for the will of the people of Idaho."

— *Assistant Minority Leader Rep. Ilana Rubel, D-Boise.*

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Reporter Nathan Brown can be reached at 208-542-6757. Follow him on Twitter: @NateBrownNews.

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**The 2019 legislative session: What didn't get done?**

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Nathan Brown

Reporter, government and politics

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## Opinion column: Legislature's inaction on agency regs may be its greatest accomplishment

Wayne Hoffman Apr 16, 2019



Wayne Hoffman

Wayne Hoffman

The most monumental thing the 2019 Idaho Legislature did is what it didn't do: The Legislature didn't reauthorize thousands of pages of agency regulations. Those regulations, euphemistically called administrative rules, will expire this summer. The regulations cover every aspect of Idaho life, from public education to professional licenses. There's a rule for just about everything, and those rules have the full force of law.



The Legislature's decision to do nothing is more or less the product of a spat between the House and the Senate, but the end result is still fantastic. Gov. Brad Little's administration will need to reinstate each regulation, one program at a time, hopefully leaving a lot on the cutting room floor. (As a side note, I think some regulations can't or shouldn't be reinstated immediately because they don't constitute emergencies, as defined by state law.)

The reinstatement, or better still, elimination, of regulations could be Little's chance to shine, offering his administration a chance to leave a mark on Idaho's regulatory landscape. Little has often complained that Idaho has too many regulations. He's regularly indicated that his administration would like to trim the "musts," "shalls," "shall nots," and other regulatory mandates on Idahoans, much of which has been a cumulative result many years of more additions than subtractions from Idaho's administrative code. So far, Little has signaled his seriousness about the endeavor. He's hired Alex Adams, formerly a regulation-cutter at the Board of Pharmacy, to run the governor's budget office, the Division of Financial Management. Little, with the blessing of the Legislature, has given Adams control over administrative rules.

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Now, all existing regulations will have to pass through several filters to remain in place: Little's, the House's and the Senate's. Through that process, Idahoans should expect to see a reduction in agency regulations and the elimination of policies that have no business being on the books in Idaho. In that way, the best thing from the 2019 legislative session is yet to come.

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Wayne Hoffman is the president of the Idaho Freedom Foundation. Email him at [wayne@idahofreedom.net](mailto:wayne@idahofreedom.net).



(<https://www.nfib.com>)

## 2019 Idaho Legislative Wrap-Up

**Date:** April 16, 2019

### Something extraordinary happened

**State Director Suzanne Budge reports from Boise on the small-business agenda at the conclusion of the 2019 session of the Idaho Legislature**

#### Quick Takeaways

- **Medicaid expansion**—the only major issue that passed in 2019.
- **Initiative reform**—discussed, debated, voted on, and finally vetoed by Gov. Brad Little, the only vetoes of the 2019 session (S1159 and H296)
- **Hemp transportation and legalization**—no hemp-related bill passed in 2019
- **Public school education funding formula rewrite**—after three years of study, evaluation, and reorganization, only a “first steps” bill passed to measure key components of the new model.
- **State agency administrative rules**—gone, all of them. Killed by the House in the last minutes of the session.

What a difference a year makes.

Last year, in the 2018 legislative session, it was a big year for tax relief, small business, and economic growth. The major outcome was a huge overhaul of the federal and state tax codes, and businesses saw cuts in income, corporate, and unemployment taxes.

We were still sorting that all out as the 2019 legislature came to town in January. Little did we know that the big issues of 2018 would not even be on the table in 2019, as legislative activity focused almost completely on a few dominant themes, led from beginning to end by Medicaid expansion.

#### The Nuclear Option

The big bombshell, which no one saw coming before it happened, came in the last moment before adjournment, when the House voted to send S1205 to the Ways and Means Committee. This effectively killed all rules (and I mean ALL rules – all existing rules, all new rules reviewed in 2019, all fee rules – all rules in the state) some 8,200 pages.

Conservatives laud the action as lifting a great burden from the citizens of Idaho, and that may be part of the effect, but now Governor Little must decide

what to do next because the administrative rules – which provide detail and guidance –interpret the laws passed by the Legislature.

If the statutes don't have adequate detail, the rules spell it out. And rules have the same force and effect of law. Now all rules are in limbo. This is unprecedented and will be interesting to watch. Governor Little signed two executive orders in his first month on the job with the objective of streamlining government and reducing red tape at the state level. Now, he has the very real opportunity to do so, and the Legislature handed it to him on a platter. Be careful what you wish for, the saying goes, but for NFIB members, this may be the biggest gift of all from the 2019 session.

#### **Before the Bombshell**

For the first time in many years, NFIB members saw very few issues – good or bad – that impacted them directly. Not that it was a calm, quiet year – quite the contrary – it's just that we dodged bullets for a change. Local option, minimum wage, transportation...all were discussed, but none progressed. The good news, no harm was done, and the Legislature has now gone home ... finally, after battling to a stand-still on everything but Medicaid expansion policy and budgeting ... oh, yes, and after wiping out all agency rules.

For 2019, we had a new governor, new administration, 14 new committee chairmen, and 24 new legislators – a steep learning curve all around. And legislators came to Boise facing some very big issues. Medicaid expansion was the top priority from the get-go, and the session began and ended with that as the key topic of discussion. Although a few other issues rose to the top – Initiative reform, public school funding, and hemp legalization — in the end, every other major issue that was raised ended up in the ditch by the time the final gavel fell, on Day 95, April 11, 2019 – nearly three weeks later than anticipated.

#### **Overview of General Fund Revenue and Appropriations**

- For Fiscal Year 2020, the state of Idaho's General Fund Total Appropriations equals \$3.910 billion, a 7.1 percent increase over FY2019.
- Net revenues for FY 2020 as of 4/11/19 equaled \$4,012 billion by legislative action, 7 percent more than FY2019.
- Total Revenues and estimated beginning cash equaled \$4,146 by legislative action.
- Ending balance for FY 2020 equaled \$173,791,100.
- Revenues as of March 2019 were \$75 million below projections.

#### **Other Issues of Interest in 2019**

- **Urban renewal districts**—local projects (H217). Passed and signed by the governor, this law restricts local governments from using URDs to fund big projects without a vote of the people.

- **Underground petroleum storage tanks**—no more stringent than federal EPA (H26).
- **Minimum wage**—several proposals (H50, 54, and 55), none advanced.
- **Wireless devices while driving**—did not advance (H77 / S1064).
- **Streamlined sales tax H259**—passed and is now law.
- **Short-term health insurance plans**—H275 passed and is now law.
- **Pharmacy benefit managers S1068**—passed the House but died in a Senate committee
- **Ballot initiative revisions S1159, H296, H303, 304, 305, 306**—Drew Governor Little’s first two vetoes, and the rest died earlier in the process
- **Regulation freedom amendment SJM102**—Urging Congress to amend the Constitution was adopted

#### By the Numbers

- 2019 Idaho Legislature Adjourns Sine Die on 95th Legislative Day, Thursday, April 11, which marked a close to the First Regular Session of the 65th Idaho Legislature.
- The adjournment was 15 days later than 2018’s and 2017’ ends.
- 1,047 bills were prepared, this compares to 995 in 2018 and 1,024 in 2017.
- 320 bills passed both houses and 298 (as of 4/5) were signed by the governor.
- 13 bills became law without the governor’s signature.
- Two bills were vetoed. For the previous session, the bill count was 355 passed, 340 signed, 13 became law without signature, two were vetoed.
- 36 Resolutions/Memorials were adopted in 2019, compared to 51 in 2018 and 49 in 2017.

#### Interim Committees Approved for the Coming Year

The Legislative Council met March 26 and approved six interim committees that will meet between the 2019 and 2020 legislative sessions. They are:

- Natural Resources Interim Committee
- Criminal Justice Reinvestment Oversight Committee
- Campaign Finance Reform Interim Committee
- Study of Occupational Licensing and Certification Laws/Regulatory Reform Committee

- Pacific Fisheries Legislative Task Force
- An interim committee to study the costs associated with Medicaid expansion

#### **NFIB Day at the Capitol**

Lawmakers joined NFIB members February 27 for their annual legislative reception, hosted jointly by NFIB and the Idaho Retailers Association. We were pleased that our members used this opportunity to once again meet with lawmakers, and members of the administration, including key staff from Governor Little's office.



(<https://www.nfib.com/assets/Idaho-State-Capitol.jpg>)

**In the end, every other major issue that was raised ended up in the ditch by the time the final gavel fell, on Day 95, April 11, 2019 – nearly three weeks later than anticipated.**

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# Idaho governor has unfettered chance to cut state rules

By KEITH RIDLER April 17, 2019



BOISE, Idaho (AP) — Idaho’s governor now has sweeping authority to eliminate thousands of state-approved rules without



oversight.

That's because the state Legislature, which is controlled by Gov. Brad Little's fellow Republicans, failed to pass a bill approving 8,200 pages containing 736 chapters of rules and regulations that touch on just about every aspect of daily life in Idaho.

The measure died when the legislative session concluded last week amid open acrimony between the chambers.

The rules Little is now reviewing include such things as protecting consumers, homeowners, the environment and school





...ing licenses  
and seasons to  
licensing for  
health care  
professionals  
and  
construction  
contractors.  
They are  
mostly  
products of the  
state's obscure  
but important  
negotiated  
rulemaking  
process that  
involves public  
participation.

All of those  
rules expire on  
July 1 — except  
the ones Little  
chooses to keep  
on a temporary  
basis until the  
Legislature can  
consider them  
early next year.

“This is an  
unusual  
situation,” said  
Jaclyn Kettler, a  
Boise State  
University  
political  
scientist. “It  
does open up a  
pretty big



Idaho contrasts with other states, like Wisconsin, where the GOP-controlled Legislature sought to limit the powers of the Democratic governor.

Little said residents can trust him to be fair.

“I’m not looking at this as an opportunity to do mischief,”

Little said during a public appearance Tuesday. “I do not want to exacerbate this thing. This was not our deal. We did not do this.”

Little has made clear his desire to cut regulations in Idaho, issuing an executive order in January requiring state



Alex Adams,  
administrator  
of the Idaho  
Division of  
Financial  
Management —  
or Little's  
budget chief —  
has the job of  
going through  
the 8,200  
pages.

He said among  
the rules he  
intends not to  
renew is an  
antiquated  
entry that's  
emblematic of  
the kind he's  
looking for. It's  
a 1961 rule  
requiring that  
the State  
Department of  
Agriculture's  
deputy state  
veterinarian  
"be attired in  
neat, clean and  
correct clothing  
when  
performing  
official work."

"We are  
working closely  
with the (state)  
agencies,"  
Adams said  
Wednesday.



not supported  
by the  
agencies.”

Idaho publishes  
online the  
Administrative  
Bulletin that’s  
updated with  
rules. It’s likely  
that rules that  
are allowed to  
expire will be  
made apparent  
to the public in  
some way,  
Adams said.

A big unknown  
is what happens  
when the  
Legislature  
meets again in  
January.  
Usually, the  
first several  
weeks are used  
to approve new  
rules. Now,  
lawmakers  
might have to  
consider all  
8,200 pages —  
or whatever is  
left when  
Adams finishes  
his work.

“This is kind of  
uncharted



Senate Majority Leader Chuck Winder said he was concerned the Legislature might be abdicating its authority to Little when the House and Senate were unable to pass the administrative rules bill.

Part of the discussion about that bill between the Senate and House was a letter, requested by Republican House Speaker Scott Bedke, from the Idaho attorney general's office looking at the constitutionality of how the two chambers approve administrative rules, which are put forward by the executive branch.



Associated Press, the attorney general's office concludes that the Legislature's current procedure for approving administrative rules is "extra-constitutional" because it sends the bill to the governor for his signature. All the Legislature needs to do, the attorney general's office said, is have the House and Senate agree to the new rules without approval from the governor.

It's not clear how that's going to play out next session. Winder said the Senate and House will have a working group this year figure out how to proceed.

Senate will find some way to speed up the process of reviewing the thousands of rules before the Legislature meets again.

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## Little on Medicaid 'sideboards,' administrative rules dispute, the road ahead...

Posted by Betsy Apr 17, 2019



Idaho Gov. Brad Little speaks at a press conference on his first 100 days in office on April 17, 2019 at the Idaho state Capitol.

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Savannah Cardon/Idaho Press

Here's some more of the news from Gov. Brad Little's press conference today, his first since the close of this year's contentious Idaho legislative session:

Asked why he signed the Medicaid expansion "sideboards" bill despite expressing numerous concerns about the bill, including that it could result in a costly court challenge, Little said, "It obviously wasn't as warm and fuzzy as some people would have liked to have it been, but there were



some good things in there," reports Idaho Press reporter Savannah Cardon. "The raw expansion of Medicaid wouldn't have addressed the IMD waiver, which everybody was in favor of. As far as the work requirement ... we still have to submit a waiver and we have to get through that process. ... If the waiver's not granted, there's some co-pays there and we'll see if the co-pays work. But that's not as black and white as it might look."

"I did say in that transmittal letter that now in the interim and particularly when we get back, that's when we're going to know," Little said. "We're going to know what waivers were granted, we're going to know what's taking place in other states, we're going to know what Health and Human Services is pitching for in these other states. I was really strongly encouraging the Legislature to be prepared early on in the next session to address any of the deficiencies as a result of that bill."

AP reporter Keith Ridler writes, "Not noted among large signs at the news conference listing achievements was one of his most significant actions — vetoing legislation making it much tougher to get an initiative or referendum on the ballot."

Boise State Public Radio reporter James Dawson reports that Little said the state won't have a special session on the administrative rules issue; amid a House-Senate spat, lawmakers this year didn't approve what's usually called the "drop-dead bill" to formalize the action of committees in both houses on administrative rules that they review during the first three weeks of the session. As a result, thousands of administrative rules will expire July 1, though the administration can reinstate them as temporary rules. They'd also then all go back to the Legislature for review next January, potentially leading to a much longer than usual legislative session.

Here is Ridler's full report on the administrative rules issue and Little's approach to it:

*By Keith Ridler*

BOISE, Idaho (AP) — Idahoans can trust him to do the right thing, Republican Gov Brad Little said, after the Legislature handed him sweeping authority to eliminate thousands of state-approved rules without public participation or lawmaker oversight.

"I'm not looking at this as an opportunity to do mischief," Little said during a public appearance Tuesday. "I do not want to exacerbate this thing. This was not our deal. We did not do this."

The Legislative session concluded last week amid open acrimony, with the House and Senate killing legislation important to the other chamber. Among the carnage was a bill approving 8,200 pages containing 736 chapters of rules and regulations that touch on just about every aspect of daily life in Idaho.

That means all those rules expire on July 1 — except the ones Little chooses to keep on a temporary basis until the Legislature can consider them early next year.

"This is an unusual situation," said Jaclyn Kettler, a Boise State University political scientist. "It does open up a pretty big opportunity for Gov. Little."

Little has made clear his desire to cut regulations in Idaho, issuing an executive order in January requiring state agencies cut two rules for every new one.

The rules he's now reviewing include such things as protecting consumers, homeowners, the environment and school children. They range from hunting and fishing licenses and seasons to licensing for health care professionals and construction contractors. They are mostly products of the state's obscure but important negotiated rulemaking process that involves public participation.

Alex Adams, administrator of the Idaho Division of Financial Management — or Little's budget chief — has the job of going through the 8,200 pages.

He said among the rules he intends not to renew is an antiquated entry that's emblematic of the kind he's looking for. It's a 1961 rule requiring that the State Department of Agriculture's deputy state veterinarian "be attired in neat, clean and correct clothing when performing official work."

"We are working closely with the (state) agencies," Adams said Wednesday. "We would not make any decision that is not supported by the agencies."

Adams said the result when the July 1 deadline arrives will be "that no Idahoan should notice a difference. It will be business as usual with some minor cleanup of things."

Idaho publishes online the Administrative Bulletin that's updated with rules. It's likely that rules that are allowed to expire will be made apparent to the public in some way, Adams said.

A big unknown is what happens when the Legislature meets again in January. Usually, the first several weeks are used to approve new rules. Now, lawmakers might have to consider all 8,200 pages — or whatever is left when Adams finishes his work.

"This is kind of uncharted territory," he said.

Republican Senate Majority Leader Chuck Winder said he was concerned the Legislature might be abdicating its authority to Little when the House and Senate were unable to pass the administrative rules bill.

Part of the discussion about that bill between the Senate and House was a letter, requested by Republican House Speaker Scott Bedke, from the Idaho attorney general's office looking at the constitutionality of how the two chambers approve administrative rules, which are put forward by the executive branch.

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It's also not clear if the House and Senate will find some way to speed up the process of reviewing the thousands of rules before the Legislature meets again.

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One of those lawmakers is Republican Rep. Judy Boyle, who chairs the House's Agricultural Affairs Committee. Committees consider new rules — and perhaps next session all the rules — in meetings that take public comments. In general, she would like to see fewer regulations.

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*Betsy Z. Russell is the Boise bureau chief and state capitol reporter for the Idaho Press and Adams Publishing Group. Follow her on Twitter at @BetsyZRussell.*

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BetsyRussell



POLITICS & GOVERNMENT

## Idaho governor has unfettered chance to cut state rules

BY KEITH RIDLER

APRIL 17, 2019 12:42 PM, UPDATED APRIL 17, 2019 02:52 PM



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Idahoans can trust him to do the right thing, Republican Gov Brad Little said, after the Legislature handed him sweeping authority to eliminate thousands of state-approved rules without public participation or lawmaker oversight.

“I’m not looking at this as an opportunity to do mischief,” Little said during a public appearance Tuesday. “I do not want to exacerbate this thing. This was not our deal. We did not do this.”

The Legislative session concluded last week amid open acrimony, with the House and Senate killing legislation important to the other chamber. Among the carnage was a bill approving 8,200 pages containing 736 chapters of rules and regulations that touch on just about every aspect of daily life in Idaho.

That means all those rules expire on July 1 — except the ones Little chooses to keep on a temporary basis until the Legislature can consider them early next year.

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Little has made clear his desire to cut regulations in Idaho, issuing an executive order in January requiring state agencies cut two rules for every new one.

The rules he’s now reviewing include such things as protecting consumers, homeowners, the environment and school children. They range from hunting and fishing licenses and seasons to licensing for health care professionals and construction contractors. They are mostly products of the state’s obscure but important negotiated rulemaking process that involves public participation.

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He said among the rules he intends not to renew is an antiquated entry that’s emblematic of the

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state veterinarian “be attired in neat, clean and correct clothing when performing official work.”

“We are working closely with the (state) agencies,” Adams said Wednesday. “We would not make any decision that is not supported by the agencies.”

Adams said the result when the July 1 deadline arrives will be “that no Idahoan should notice a difference. It will be business as usual with some minor cleanup of things.”

Idaho publishes online the Administrative Bulletin that’s updated with rules. It’s likely that rules that are allowed to expire will be made apparent to the public in some way, Adams said.

A big unknown is what happens when the Legislature meets again in January. Usually, the first several weeks are used to approve new rules. Now, lawmakers might have to consider all 8,200 pages — or whatever is left when Adams finishes his work.

“This is kind of uncharted territory,” he said.

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# Idaho governor has unfettered chance to cut state rules

By **KEITH RIDLER** Associated Press | **APRIL 17, 2019 — 6:00PM**

BOISE, Idaho — Idaho's governor now has sweeping authority to eliminate thousands of state-approved rules without public participation or lawmaker oversight.

That's because the state Legislature, which is controlled by Gov. Brad Little's fellow Republicans, failed to pass a bill approving 8,200 pages containing 736 chapters of rules and regulations that touch on just about every aspect of daily life in Idaho.

The measure died when the legislative session concluded last week amid open acrimony between the chambers.

The rules Little is now reviewing include such things as protecting consumers, homeowners, the environment and school children. They range from hunting and fishing licenses and seasons to licensing for health care professionals and construction contractors. They are mostly products of the state's obscure but important negotiated rulemaking process that involves public participation.

All of those rules expire on July 1 — except the ones Little chooses to keep on a temporary basis until the Legislature can consider them early next year.

"This is an unusual situation," said Jaclyn Kettler, a Boise State University political scientist. "It does open up a pretty big opportunity for Gov. Little."

The situation in Idaho contrasts with other states, like Wisconsin, where the GOP-controlled Legislature sought to limit the powers of the Democratic governor.

Little said residents can trust him to be fair.

"I'm not looking at this as an opportunity to do mischief," Little said during a public appearance Tuesday. "I do not want to exacerbate this thing. This was not our deal. We did not do this."

Little has made clear his desire to cut regulations in Idaho, issuing an executive order in January requiring state agencies cut two rules for every new one.

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FILE - In this Jan. 3, 2019 photo, Idaho Gov.-elect Brad Little answers a reporter's question at the state Capitol building in Boise, Idaho. Republican Gov. Brad Little says Idahoans can trust him to do the right thing after the Legislature handed him sweeping authority to eliminate thousands of state-approved rules going back decades that touch on just about every aspect of daily life. Little on Tuesday said he doesn't view the unusual power handed the executive branch the same as an opportunity to do mischief. (AP Photo/Otto Kitsinger, File)

# Idaho governor has unfettered chance to cut state rules

APRIL 17, 2019 - 6:55 PM

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# Idaho governor has unfettered chance to cut state rules

**AP** By [The Associated Press \(https://wtop.com/author/the-associated-press/\)](https://wtop.com/author/the-associated-press/)  
April 17, 2019 4:29 pm



FILE - In this Jan. 3, 2019 photo, Idaho Gov.-elect Brad Little answers a reporter's question at the State Capitol building in Boise, Idaho. Republican Gov. Brad Little says Idahoans can trust him to do the right thing after the Legislature handed him sweeping authority to eliminate thousands of...

BOISE, Idaho (AP) — Idahoans can trust him to do the right thing, Republican Gov Brad Little said, after the Legislature handed him sweeping authority to eliminate thousands of state-approved rules without public participation or lawmaker oversight.

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# Legislative Inaction Means Idaho Governor Brad Little Can Renew Or Toss Thousands Of State Rules

By MATT GUILHEM • APR 18, 2019

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*Idaho Governor Brad Little will get to wade through 736 chapters of state rules spanning more than 8,000 pages and decide which to renew and which to let fade.*

CREDIT DARIN OSWALD / IDAHO STATESMAN

When the legislature adjourned last week, lawmakers left without approving a bill that renews thousands of rules governing the lives of Idaho citizens. Due to their inaction, the governor will now get to pick which rules stay and which ones go.



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1:31

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The bill the legislature left on the table was a fairly uncontroversial piece of legislation that approves 736 chapters of rules spanning more than 8,000 pages. Because they failed to act, Governor Brad Little will get to choose which of the regulations to renew and which to let expire.

“It is a unique opportunity that gives him a little bit more power and direct influence to see what rules and regulations he wants on the books,” says Jaclyn Kettler, a political science professor at Boise State.

She says the acrimony that characterized the legislature’s decision not to re-up the rules was indicative of how the session wound down.

“The last few weeks of the session I was constantly going, ‘Yeah, I never would’ve predicted this would’ve been an issue,’” Kettler says slightly mystified. “It was just kind of a bizarre session all around.”

As things stand, all 736 chapters of rules expire July 1. Only the items Little chooses to save will be temporarily renewed until the legislature reconvenes next year to make the final decision.

“We do know, from Governor Little’s executive order early on in the session, that there is some desire to reduce the number of regulations,” says Kettler. “So this is one opportunity to kind of review some of those on the books.”

Just what will happen when the legislature convenes next January and how they’ll handle approving the rules renewed by the governor is something of mystery lawmakers are still trying to figure out.

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## LITTLE WILL TEMPORARILY REINSTATE AGENCY RULES

Clark Corbin • 04/18/2019



A top aide to Gov. Brad Little is promising no delay in government services as Little's staff works to temporarily reauthorize thousands of pages worth of agency rules this summer.

The Legislature created confusion when it adjourned the session April 11 (<https://www.idahoednews.org/news/the-2019-legislative-session-adjourns/>) without passing the traditional bill to formalize its work to approve agency rules.

Alex Adams, Little's administrator of the Division of Financial Management, confirmed the Legislature's inaction would result in all agency rules expiring on July 1 if Little doesn't intervene.

But Adams said that won't happen. Little plans to reauthorize the rules, individual docket by docket.

"What that process looks like is the republishing of temporary and proposed rules, concurrently, prior to expiration on July 1," Adams said Wednesday.

Rules are important because they carry the full force and effect of law. When the 2019 legislative session began in January, there were about 8,200 pages worth of rules.

Rules affect the lives of everyday Idahoans in numerous ways, especially in education circles. Academic standards were enacted via agency rule, as were some graduation requirements, state fees, immunization guidelines and Medicaid and Health and Welfare rules.

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Adams suggested Little may not reauthorize all 8,200 pages of rules and may look to remove "some low-hanging fruit," such as outdated or duplicative rules.

But educators, students and their parents should not worry, he said.

“Education is not one of those topics under discussion (for removing rules),” Adams said.

“People should rest assured the rules will continue with the full force and effect of law,” Adams said. “Idahoans would not notice a difference in their daily lives, and there will be no disruption in state services.”

There was so much confusion over the future of agency rules that officials from the State Board of Education and Administrative Rules Coordinator Dennis Stevenson declined to comment on the situation this week, saying they were awaiting guidance from Little’s office.

During a news conference Wednesday, Little stressed that he will not call a special legislative session to force lawmakers to act on rules.

“The standard for a special session is if something absolutely, necessarily needs to take place in the state,” Little said.

Regarding the Legislature’s inaction on the rules bills, Senate Bills 1205 (<https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2019/legislation/S1205.pdf>) and 1215, Little conceded that “we didn’t ask for this,” and “it was not my first choice.” But he did tell reporters he has the authority to reissue rules on a temporary basis.

Adams said the reauthorization process is already underway. He also sought to clear up a few points:

- All of the rules the Legislature approved this year took effect upon adjournment of the session April 11. Those rules would expire July 1, if Little doesn’t intervene. But Little will intervene.
- Additionally, all of the existing rules — even the ones on the books for years — would also be set to expire if Little didn’t intervene.
- As part of public notice requirements, the state will need to publish legal notice of the rulemaking process in the Administrative Bulletin. Adams said “it is conceivable this could be an 8,200-page publication.”
- Idaho does have an electronic bulletin, so the cost of providing public notice “isn’t as high as people thought,” Adams said. However, the state intends to comply with the Administrative Procedures Act, and there is a requirement that legal notification will need to occur in Idaho newspapers.
- By Little publishing the rules as “temporary and proposed” concurrently, all the rules will come back to the 2020 Legislature for review as pending rules. Because they will be treated as pending rules, both chambers of the Legislature would not need to approve them, only one. However, both chambers of the Legislature will need to sign off on pending fee rules, which are treated a little differently.

“We will do everything we can to ensure it is smooth and seamless and business as usual,” Adams said.

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## Gov. Brad Little reflects on his first 100 days

By SAVANNAH CARDON [scardon@idahopress.com](mailto:scardon@idahopress.com) Apr 18, 2019



Idaho Gov. Brad Little speaks at a press conference on his first 100 days in office on April 17, 2019 at the Idaho state Capitol.

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Savannah Cardon/Idaho Press

BOISE — As Idaho Gov. Brad Little reflected on his first 100 days in office, he said there are just two words that come to mind: fast and rewarding.

“It doesn’t seem like it’s been 100 days because we’ve been quite busy,” Little said. “I’m very satisfied.”

Little on Wednesday held a news conference as he celebrated his 100th day in office, where he lauded the legislation he signed during the 2019 legislative session, which wrapped up last week. He pointed to the state's recent achievements, focusing on public education, Medicaid expansion and occupational licensing.

“We made great advances since January to improve the lives of Idahoans while maintaining a conservative budget,” Little said in a press release. “I will continue to work hard in the next four years to make Idaho the place where our children and grandchildren want to stay.”

Some accomplishments included increasing starting teacher pay to \$40,000 over the next two years, doubling funding for literacy programs to improve students' reading abilities and increasing Opportunity Scholarships for students looking toward college.

“Obviously education was a big part of what I talked about early on,” Little said. “Our success is there and I'm very thankful for the help from the Legislature, from all the people over the state.”

In late January, Little signed two executive orders — the Licensing Freedom Act and the Red Tape Reduction Act — aimed at simplifying and reducing state occupational licensing rules and regulations. He also signed a bill making it easier for those with ties to the military to obtain occupational licenses in Idaho.

Little drew attention to the full funding of Medicaid expansion, which won support from 60.6 percent of Idaho voters in November.

“We implemented Medicaid with the funding that was necessary, and time will tell between now and January about where that is,” Little said. “I'm optimistic we can work through all those issues, but there's going to be some work to do.”

However, there were still several topics that drew significant debate in the state Capitol this session, including the bill that would have made it much harder to qualify initiatives or referendums for the Idaho ballot — which Little didn't mention, though it brought his first veto — Medicaid expansion, hemp and the Legislature's decision against extending the state's administrative rules another year.

## **MEDICAID**

In the final week of the Legislature, Little signed into law the much-amended Medicaid expansion “sideboards” bill, adding restrictions to Medicaid expansion including mandatory work requirements and more. In his signing letter, he pointed out major objections, stating he strongly encourages the Legislature to “revisit the key tenets of this bill in the interim and early next legislative session to address these issues.”

“I was really strongly encouraging the Legislature to be prepared early on in the next session to address any of the deficiencies as a result of that bill,” Little said.

When asked about his letter, Little said, “It obviously wasn’t as warm and fuzzy as some people would have liked to have it been, but there were some good things in there. The raw expansion of Medicaid wouldn’t have addressed the IMD (Institution for Mental Disease) waiver, which everybody was in favor of. As far as the work requirement ... we still have to submit a waiver and we have to get through that process.”

Little said Medicaid, for most people, shouldn’t be a “final resting place.” Instead, he said it should be an opportunity for people to have affordable health care, “where they can move on to a smaller employer, or move onto individual insurance.”

## **RULES**

Lawmakers ended the year without passing the “drop-dead bill” codifying the administrative rules legislators reviewed earlier this year, which they normally do each year. Now, thousands of pages of administrative rules will expire on July 1 of this year. The governor can reinstate them as temporary rules, and that means the Legislature would have to review them come next January, which could make for a long session.

Little said he doesn’t anticipate there being a special session over the the rules issue, because he can reissue the rules on a temporary basis, and the standard for a special session is if something “absolutely necessary needs to take place in the state,” he said.

Though Little said this wasn’t his first choice to let the rules expire, he emphasized the state has a pathway moving forward. He earlier told the Associated Press that his administration will review all the rules, with an eye to phasing out those no longer needed, including some longstanding, archaic rules that simply are out of date.

"The people that live in the rules field ... some of them might think it's Draconian, but we've already mapped out a pathway to where life will go on, the rules will be implemented, rules will be promulgated, we can go on," Little said. "This is not the end of the world."

## HEMP

Despite several efforts to make industrial hemp legal across the state, bringing Idaho in line with the 2018 federal Farm Bill signed by President Trump in December, the Legislature wasn't successful in passing any hemp-related laws this session.

One amended bill would have allowed the Idaho State Police and the Idaho Department of Agriculture to implement the federal government's rules and processes for regulating hemp, which Little said would have been his "preferred method."

"I don't want there to be a mechanism to where people can bring recreational marijuana in here ... I'm not against hemp," Little said. "My position with hemp all along is I don't want to hemp to be camouflage for recreational marijuana."

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*Savannah Cardon is the Caldwell reporter for the Idaho Press. Follow her on Twitter, @savannahcardon, or reach her at 208-465-8172.*



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NEWS



# Idaho governor has unfettered chance to cut state rules

**Posted:** 2:44 AM, Apr 18, 2019 **Updated:** 2:44 AM, Apr 18, 2019

**By:** Associated Press



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BOISE, Idaho — Idaho's governor now has sweeping authority to eliminate thousands of state-approved rules without public participation or lawmaker oversight.

That's because the state Legislature, which is controlled by Gov. Brad Little's fellow Republicans, failed to pass a bill approving 8,200 pages containing 736 chapters of rules and regulations that touch on just about every aspect of daily life in Idaho.

The measure died when the legislative session concluded last week amid open acrimony between the chambers.

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The rules Little is now reviewing include such things as protecting consumers, homeowners, the environment and school children. They range from hunting and fishing licenses and seasons to licensing for health care professionals and construction contractors. They are mostly products of the state's obscure but important negotiated rulemaking process that involves public participation.

All of those rules expire on July 1 — except the ones Little chooses to keep on :

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"This is an unusual situation," said Jaclyn Kettler, a Boise State University political scientist. "It does open up a pretty big opportunity for Gov. Little."

The situation in Idaho contrasts with other states, like Wisconsin, where the GOP-controlled Legislature sought to limit the powers of the Democratic governor.

Little said residents can trust him to be fair.

"I'm not looking at this as an opportunity to do mischief," Little said during a public appearance Tuesday. "I do not want to exacerbate this thing. This was not our deal. We did not do this."

Little has made clear his desire to cut regulations in Idaho, issuing an executive order in January requiring state agencies cut two rules for every new one.

Alex Adams, administrator of the Idaho Division of Financial Management — or Little's budget chief — has the job of going through the 8,200 pages.

He said among the rules he intends not to renew is an antiquated entry that's emblematic of the kind he's looking for. It's a 1961 rule requiring that the State Department of Agriculture's deputy state veterinarian "be attired in neat, clean and correct clothing when performing official work."

"We are working closely with the (state) agencies," Adams said Wednesday. "We would not make any decision that is not supported by the agencies."

Idaho publishes online the Administrative Bulletin that's updated with rules. It's likely that rules that are allowed to expire will be made apparent to the public in some way, Adams said.

A big unknown is what happens when the Legislature meets again in January.

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"This is kind of uncharted territory," he said.

Republican Senate Majority Leader Chuck Winder said he was concerned the Legislature might be abdicating its authority to Little when the House and Senate were unable to pass the administrative rules bill.

Part of the discussion about that bill between the Senate and House was a letter, requested by Republican House Speaker Scott Bedke, from the Idaho attorney general's office looking at the constitutionality of how the two chambers approve administrative rules, which are put forward by the executive branch.

In the April 11 letter obtained by The Associated Press, the attorney general's office concludes that the Legislature's current procedure for approving administrative rules is "extra-constitutional" because it sends the bill to the governor for his signature. All the Legislature needs to do, the attorney general's office said, is have the House and Senate agree to the new rules without approval from the governor.

It's not clear how that's going to play out next session. Winder said the Senate and House will have a working group this year figure out how to proceed.

It's also not clear if the House and Senate will find some way to speed up the process of reviewing the thousands of rules before the Legislature meets again.

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Home > Idaho > Inaction On Regulations A Great Accomplishment

# Inaction On Regulations A Great Accomplishment

GOVERNOR LITTLE HAS A CHANCE TO DISCONTINUE A PLETHORA OF BAD PUBLIC POLICIES.

April 19, 2019 Idaho, Legislative Updates 0



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# Legislature's Inaction On Agency Regs May Be Its Greatest Accomplishment

By **Wayne Hoffman**



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The most monumental thing the 2019 Idaho Legislature did is what it didn't do: The Legislature didn't reauthorize thousands of pages of agency regulations. Those regulations, euphemistically called administrative rules, will expire this summer. The regulations cover every aspect of Idaho life, from public education to professional licenses. There's a rule for just about everything, and those rules have the full force of law.

The Legislature's decision to do nothing is more or less the product of a spat between the House and the Senate, but the end result is still fantastic. Gov. Brad Little's administration will need to reinstate each regulation, one program at a time, hopefully leaving a lot on the cutting room floor. (As a side note, I think some regulations can't or shouldn't be reinstated immediately because they don't constitute emergencies, as defined by state law.)

The reinstatement, or better still, elimination, of regulations could be Little's chance to shine, offering his administration a chance to leave a mark on Idaho's regulatory landscape. Little has often complained that



Idaho Gov. Brad Little



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Idaho has too many regulations. He's regularly indicated that his administration would like to trim the "musts," "shalls," "shall nots," and other regulatory mandates on Idahoans, much of which has been a cumulative result many years of more additions than subtractions from Idaho's administrative code.

So far, Little has signaled his seriousness about the endeavor. He's hired Alex Adams, formerly a regulation-cutter at the Board of Pharmacy, to run the governor's budget office, the Division of Financial Management. Little, with the blessing of the Legislature, has given Adams control over administrative rules.

But deciding the final disposition of each and every agency regulation may be more than Little had in mind. There's more to Idaho regulations than rules about how many doors a pharmacy has or the specific training needed to become a licensed cosmetologist. For example, one regulation added in 2018 allows Idahoans to defy science and opt for a different gender on their birth certificate. Another requires Idaho high school seniors to get a meningococcal vaccine in order to attend public school. Additionally, Idaho's administrative rules contain the much-maligned (for good reason) Common Core education standards. Little can now do more than just rein in the administrative state. He has a chance to discontinue a plethora of bad public policies.

Furthermore, Idaho's unique process means the Little administration's decisions regarding each reauthorized regulation would be subjected to a House and Senate vote to be reinstated. That's one reason conservatives in

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the Idaho House of Representatives are beaming. Many existing rules—including the aforementioned Common Core rules, immunization requirements, and birth certificate regs—have been shielded from scrutiny because they required only the blessing of a single committee or committee chairman. Throughout the years, much of the Legislature has been cut out of the decision-making process.

Now, all existing regulations will have to pass through several filters to remain in place: Little's, the House's and the Senate's. Through that process, Idahoans should expect to see a reduction in agency regulations and the elimination of policies that have no business being on the books in Idaho. In that way, the best thing from the 2019 legislative session is yet to come.

*Wayne Hoffman is president of the **Idaho Freedom Foundation**.*

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## Little outlines his plan for administrative rules, after Legislature dropped ball...

Posted by Betsy Apr 23, 2019



Idaho state Capitol

BETSY Z. RUSSELL/Idaho Press

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After the Idaho Legislature adjourned this year without passing its annual "drop-dead bill" to extend administrative rules -- meaning more than 8,000 pages of state agency administrative rules will expire July 1 unless the executive branch reinstates them -- Gov. Brad Little today released an outline of his plan for keeping the rules in effect. Here is his full announcement:

"Governor Brad Little began laying out his plan today to ensure existing administrative rules remain in effect following the Idaho Legislature's decision not to reauthorize the rules during the 2019 legislative session.

"The efficient operation of state government is a priority of mine, and the people of Idaho expect it," Governor Little said. "I have directed my administration to exercise necessary executive authority to minimize the impact on state agencies – and the public most importantly – as we work to address this unique circumstance."

"The Idaho Administrative Code has the full force of law. At the beginning of the year, it included 736 chapters and 8,278 pages of regulations and at least 72,000 total restrictions. The Idaho Legislature in the past has reauthorized all existing rules at the end of the legislative session but did not do so this year. As a result, Governor Little must use executive administrative action to ensure rules remain in effect after July 1, 2019.

"The majority of existing rules will be reauthorized before July 1. Agencies will re-publish the rules as 'temporary and proposed rules' concurrently in a special edition of the Idaho Administrative Bulletin in June 2019. Agencies will accept written comments in accordance with state law. All rules reauthorized through this process are subject to legislative review during the 2020 legislative session.

"Governor Little's administration will use the unique opportunity to allow some chapters of Idaho Administrative Code that are clearly outdated and irrelevant to expire on July 1, 2019. An agency must notify the Division of Financial Management (DFM) if it identifies a rule that could be eliminated. DFM will solicit public comment on any proposed rule elimination. Governor Little ultimately will make the decision before July 1 whether to let a rule expire.

"I did not ask for this and did not want this," Governor Little said. "However, I will use all authority I have to ensure our state government continues to operate smoothly and the administrative rules remain in effect without interruption."

"Any new rules or significant modifications to existing rules must go through the normal rulemaking process, which traditionally involves a months-long process of negotiated, proposed, and pending rule stages with specific requirements for public comment."

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*Betsy Z. Russell is the Boise bureau chief and state capitol reporter for the Idaho Press and Adams Publishing Group. Follow her on Twitter at @BetsyZRussell.*

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BetsyRussell



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## Governor Little outlines process to keep administrative rules in effect

*Tuesday April 23, 2019*

Boise, Idaho – Governor Brad Little began laying out his plan today to ensure existing administrative rules remain in effect following the Idaho Legislature’s decision not to reauthorize the rules during the 2019 legislative session.

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ver: 3.2.55 | last updated: April 23, 2019 at 10:24 am

## LITTLE ADDS DETAILS TO PLAN FOR REAUTHORIZING AGENCY RULES

Clark Corbin • 04/24/2019



Gov. Brad Little will decide before July 1 which state agency rules he will reauthorize, and which ones he will allow to expire.

Little's staff Tuesday offered additional details on his plan to reauthorize administrative rules (<https://www.idahoednews.org/news/little-will-temporarily-reinstate-agency-rules/>).

Rules are important because they carry the force of law and affect Idahoans in numerous ways. Public school academic standards, immunization rules for children, Medicaid guidelines, state fees and much more all are found in administrative rule.

Little is intervening in order to prevent waves of chaos and uncertainty, which would likely ensue if thousands of rules were allowed to expire.

"The efficient operation of state government is a priority of mine, and the people of Idaho expect it," Little said in a news release. "I have directed my administration to exercise necessary executive authority to minimize the impact on state agencies – and the public most importantly – as we work to address this unique circumstance."

The Legislature forced Little to act when it adjourned the 2019 legislative session (<https://www.idahoednews.org/news/the-2019-legislative-session-adjourns/>) on April 11, and failed to reauthorize any existing state rules. Traditionally, the Legislature reauthorizes all existing rules at the end of each session. But this year the House and Senate fought over rules.

In the fight, the House sought more control over the rulemaking process while the Senate favored the status quo. As it stands, many administrative rules can be approved by either body of the Legislature. The House wanted both chambers to sign off.

The Legislature's inaction will create an extra burden for the first-year governor, his staff and state agencies. There were 8,278 pages of administrative rules at the beginning of the legislative session.

"I did not ask for this and did not want this," Little said. "However, I will use all authority I have to ensure our state government continues to operate smoothly and the administrative rules remain in effect without interruption."

According to the news release, "the majority of existing rules will be reauthorized before July 1." In order to do that, agencies and Little will need to republish thousands of pages worth of rules in the June 2019 Administrative Bulletin, in order to provide public notice. Agencies will also accept public comment on the rules.

Little will seek to reauthorize the rules as "temporary and proposed rules" concurrently. Then all of the reauthorized rules will go back to the 2020 Legislature for review. Because they will be republished as "temporary and proposed rules," many rules will need only the blessing of one legislative chamber. Fee rules, on the other hand, would need both chambers to sign off.

Normally, the Legislature reviews only new rules or modifications of existing rules each year. Because of the way the situation has played out, the 2020 Legislature will have the ability to review all rules, even ones that have been on the books for years.

Because this is new territory, it is difficult to predict what will happen once the 2020 Legislature takes hold of rules. But given the House's push for additional oversight, it seems likely the Legislature will expend significant energy scrutinizing rules.

But Little will get to act first. Little and his staff plan to allow some rules to expire on July 1. They are requiring state agencies to identify "outdated and irrelevant" rules that could be eliminated.

Last week (<https://www.idahoednews.org/news/little-will-temporarily-reinstate-agency-rules/>), Division of Financial Management Administrator Alex Adams said education rules are "not one of those topics under discussion" for elimination.

"People should rest assured the rules will continue with the full force and effect of law," Adams told Idaho Education News last week.

While the arcane battle over rules dominated the contentious close of the 2019 legislative session, the topic did not come up Tuesday at Little's inaugural "Capital for a Day" event in his hometown of Emmett (<https://www.idahoednews.org/news/little-symbolically-takes-government-to-his-hometown/>).

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# Laws, Rules, Legislation, and Policy Memos

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Rules of Administrative Procedure of the Idaho Industrial Commission

Rules of Appellate Practice and Procedure Under the Idaho Employment Security Law (Rev: 9/13)

## IDAHO INDUSTRIAL COMMISSION RULES REAUTHORIZATION GUIDANCE

The Idaho Legislature did not renew the existing administrative rules at the end of the 2019 Legislative session. In April, the Governor's Office directed the Industrial Commission to take the necessary steps to minimize the impact of the rules expiring.

In January, the Governor signed the Red Tape Reduction Act, requiring agencies to cut down on rule sections to make the chapters as simple as possible. To meet the direction of the Governor, the Commission will bring forward rule chapter revisions for when the rules expire on July 1st. These revisions will follow a special process put in place by the Division of Financial Management for final approval by the Governor's Office. **All changes are strictly to consolidate information per the Red Tape Reduction Act. There will be no substantive changes.**

# State rules in limbo

The legislature adjourned for the first time without approving administrative rules, leaving them in the hands of Gov. Little

· MAY 2, 2019

**By Lyndsie Kiebert**

Reader Staff

At the end of each legislative session, Idaho lawmakers sign what's commonly referred to as the "going home" bill.

The bill approves existing administrative rules and puts them into effect from the upcoming July to the next July. Currently, only one of the bodies in the statehouse has to give the OK and the rules are passed — something the House took issue with this year. After sending an amended bill to the Senate — requiring both bodies approve the rules — and receiving a clean bill back, the going home bill went unsigned.



*Gov. Brad Little in Boise. Photo courtesy Idaho Education News.*

It's something Rep. Heather Scott, R-Blanchard, pointed to as a notable moment from the session while speaking at a Bonner County Republican Women, Inc. meeting April 16.

"(The Senate) sent back a clean bill ... and we basically adjourned without passing the going home bill, which is huge," Scott said. "It's unprecedented."

The legislature's inaction leaves administrative rules in the hands of Idaho's executive branch, and places a cherry on top of what lawmakers and political analysts across the state are calling a bizarre session. Now, it's up to Gov. Brad Little and his staff to sort through the more than 8,000 pages of administrative rules and maybe make some calls on which should remain active and which the state can go without. Boise State Public Radio

defined rules as “everything from what curriculum is taught in public schools to the fees you’re charged when you enter a state park.”

Little’s office released a statement April 23 addressing the unique turn of events.

“I did not ask for this and did not want this,” Little said. “However, I will use all authority I have to ensure our state government continues to operate smoothly and the administrative rules remain in effect without interruption.”

Little has already made a move to cut down on the cumbersome amount of administrative rules across all state agencies, passing an executive order in January called the “Red Tape Reduction Act.” The act requires that for every new rule an agency proposes, they cut or drastically simplify two more.

According to the governor’s office, the three most regulated areas in Idaho are economic development with 3,018 pages of rules, natural resources with 1,815 pages and health and human services with 1,666 pages.

Now, with the entirety of the rules at the executive branch’s disposal, more changes are sure to come.

“The efficient operation of state government is a priority of mine, and the people of Idaho expect it,” Little said regarding the current rules situation. “I have directed my administration to exercise necessary executive authority to minimize the impact on state agencies — and the public most importantly — as we work to address this unique circumstance.”

The statement goes on to explain the process for letting rules expire, noting Little’s office “will use the unique opportunity to allow some chapters of Idaho Administrative Code that are clearly outdated and irrelevant to expire on July 1, 2019. An agency must notify the Division of Financial Management (DFM) if it identifies a rule that could be eliminated. DFM will solicit public comment on any proposed rule elimination. Governor Little ultimately will make the decision before July 1 whether to let a rule expire.”

Alex Adams — DFM administrator, Little’s budget chief and the man responsible for the fine-toothed combing of the rules — told the *Idaho Statesman* that once he’s done, “no



Idahoan should notice a difference. It will be business as usual with some minor cleanup of things.”

Once amended, the rules will be posted online. Moving forward, it’s unclear whether the House and Senate will review all of the rules. If one thing is certain, it’s that nothing like this has happened in Idaho before.

“I just hope Idaho citizens understand that this is a reset on rules,” Rep. Judy Boyle, R-Midvale, told the *Statesman*. “Idaho citizens have a great opportunity if they just take it.”

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# Idaho agencies race to reauthorize administrative rules

By KEITH RIDLER May 8, 2019

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BOISE, Idaho (AP) — State agencies are racing to beat a Friday deadline to keep alive thousands of administrative rules after the House of Representatives killed a bill reauthorizing them last month.

Republican Gov. Brad Little directed state agencies to submit temporary and pending rules by Friday to be vetted by the Division of Financial Management before publication in a special Idaho Administrative



A 21-day public comment period follows before the rules can attain temporary status and remain in effect. Some agencies are also planning to hold public hearings beyond the 21 days.

“We look forward to robust engagement this fall,” said Alex Adams, administrator of the Division of Financial Management.

Many state agencies are well into the process, and on Wednesday the Oil and Gas Conservation



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## Idaho Rep. Judy Boyle says unique hemp would provide opportunities

Independent-Enterprise May 8, 2019



Idaho Rep. Judy Boyle, R-Midvale, of District 9.

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### EDITOR'S NOTE

*District 9 Rep. Judy Boyle, R-Midvale, chairwoman of the Agriculture Committee and member of two other House committees, provided written answers to questions from the Independent-Enterprise.*

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**As Agriculture Committee chairwoman, what's your view of the hemp legalization bill that didn't quite make it over the finish line in this session? What particular problems should be solved before that passes?**

As the House Agriculture Chairman, I arranged for our committee to have two years of informational hearings to educate legislators and the public on hemp. We learned, unlike marijuana, hemp cannot get people high with its federal definition of .03 or less THC, of the many products made with hemp (including building supplies and CBD oil), and the various opportunities for Idaho farmers to enter this new market. The original House bill 122 both legalized hemp in Idaho and would have allowed farmers to begin growing hemp in the spring of 2020, giving enough lead time to become familiar with this unique and often difficult crop. Unfortunately, the Senate completely rewrote the bill to allow control and veto power of an ag commodity by the Idaho State Police by inserting ISP into the Ag section of Idaho Code and did not legalize hemp. Over 30 House sponsors, including myself, withdrew our support from the bill and it failed. H300 attempted to allow for interstate transportation but again the Senate rewrote the bill and placed this ag commodity and a proposed state hemp plan completely into the ISP section of Idaho Code and did not legalize hemp. Again, the House did not concur and the bill failed.

The 2018 Farm Bill did legalize hemp production and directed USDA to write federal regulations which states must follow and USDA to write a federal plan coordinated with the US Attorney General which states can adopt. States can develop their own state plans but those must follow federal regulations, can be more restrictive than the federal plan, and be signed off by the top state law enforcement officer. In Idaho, a state plan would again give veto power to ISP. The federal regulations and plan will be completed by Fall 2019 which states can then choose to adopt which would be less expensive and take less time than developing a state plan. Also, the state Board of Pharmacy is required to concur with all new federal changes to the restricted drug list within 30 days which will also be late Fall 2019, thus making hemp legal in Idaho.

**Did the Agriculture Committee grapple with any other difficult issues this session?**

Yes, the Potato commission rules which had divided the industry for several years and potato contracting to ensure fair treatment for growers.

**Pending administrative rules in Agriculture appear to touch upon a wide range of concerns, everything from sheep and goats to raw milk, to trichomoniasis in cattle. Does it worry you that the Legislature went home without adopting the rules, leaving the task to the governor?**

I have full confidence that the Governor and his staff will take a hard look at all the rules. There are currently over 8,200 pages and 736 chapters of rules which carry the same force and effect of law. The Governor said early on that he wants to eliminate two rules for each current rule. Some rules are obsolete, redundant, unnecessary, or just do not work in the manner intended. The germane legislative committees usually spend the first four to six weeks reviewing new agency rules but seldom have the time to review old ones unless they are brought to our attention by a constituent. Citizens will have an opportunity to review all the remaining rules when the June Administrative Bulletin is published. That can be found on the legislative, Governor, and specific agency websites, local papers, and libraries. I hope citizens will take this opportunity to review rules affecting their businesses and personal lives and bring any needed changes to our attention.

**You and fellow Dist. 9 Rep. Ryan Kerby were among only 12 representatives to vote against the depredation payments revision, S1151. What were your own chief reasons for opposing it, and do you feel the state needs to be directing more funds to compensate producers' losses inflicted by wildlife?**

S1151 limits depredation payments to landowners who suffer property damage due to wildlife. Property owners already must pay a "deductible" of \$750.00 for damage and now the remaining payment will be limited. Idaho's elk herds have learned there is safety from predators and easier living on the private lands. In many areas, the damage is occurring year around instead of just the winter to fields, crops, and irrigation equipment. Damage to pivots, bedded fields, and crops should not be on the backs of property owners. One field of onions condemned due to elk manure can many times over exceed the new limit. S1151 is not a solution for property owners and neither are late winter depredation hunts. I am working on a better solution for both wildlife and landowners.

**Was there any issue, either resolved or unresolved this legislative session, which you thought was highly important but which didn't get much public attention?**

There are always more issues than can be resolved in a three month session which is why there are interim committees, working groups, task forces, and regular committees meeting through the summer and fall. Some examples are continuing work towards a new school funding formula, study where federalism is and is not working between the state and federal government, long term transportation funding, and develop mechanisms for an Idaho hemp industry. Governor Little appointed me to represent the House in a new Regional Government Efficiency Working Group headed by Lt Governor McGeachin. Our 18 month charge is to travel the state to identify inefficiencies at regional state agency offices and recommend improvements in customer service. I am also serving as chairman of the Western Legislative Forestry Task Force to study forestry issues on federal land in the West. Idaho has 62% federal lands which the management of affects our economy, tax base, livelihoods, watersheds, air quality, recreation, wildlife, health and safety. Idaho needs to take an active role in these lands.

**As a long-serving member of the Legislature, are you satisfied that Idaho government has its spending priorities right? If not, in which areas would you propose reducing funding and where would you like to see those resources go instead?**

Each year there are new or different issues which require funding. We do our best to find money and solutions just as citizens and businesses must do with their budgets. Legislators have their own priorities but realize there are limited dollars to do what is best of the entire state.

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## Idaho agencies race to reauthorize administrative rules

By:

[AP](https://www.localnews8.com/meet-the-team/ap/56826985) (https://www.localnews8.com/meet-the-team/ap/56826985) ✉ (mailto:1557544@kifi.example.org)

**Posted:** May 08, 2019 02:34 PM MDT

**Updated:** May 08, 2019 02:34 PM MDT

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The Idaho Department of Environmental Quality has been given until May 16 because that's when its board meets.

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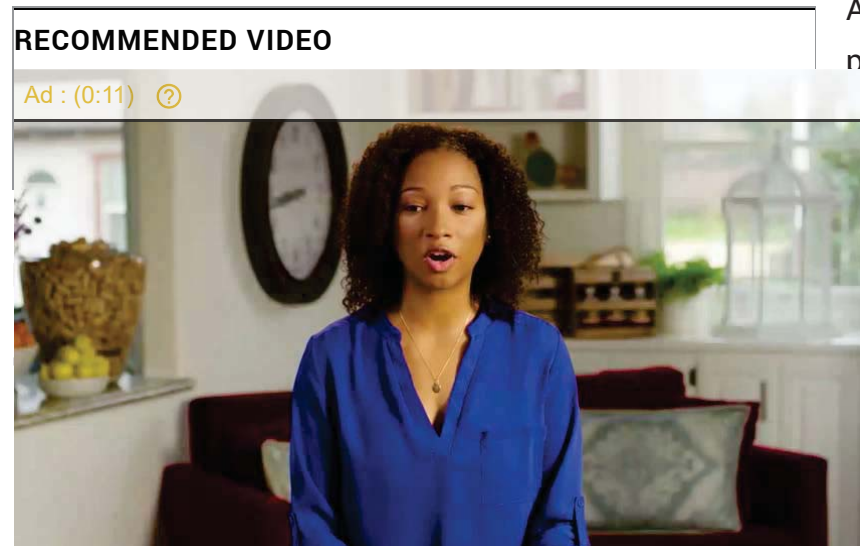
**NEW HAVEN REGISTER**<https://www.nhregister.com/news/article/Idaho-agencies-race-to-reauthorize-administrative-13829592.php>

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Keith Ridler, Associated Press Updated 6:08 pm EDT, Wednesday, May 8, 2019

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<https://www.sfgate.com/news/article/Idaho-agencies-race-to-reauthorize-administrative-13829592.php>

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## RECOMMENDED VIDEO



public hearings beyond the 10 days.

"We look forward to robust public engagement this fall," said the division's director.

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By Associated Press, Wire Service Content May 8, 2019

**BY KEITH RIDLER**, Associated Press

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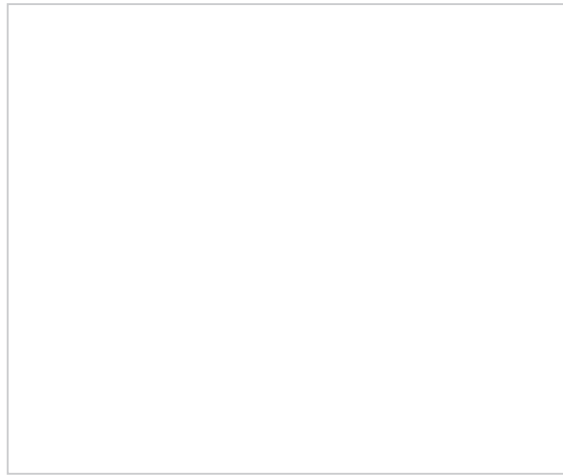
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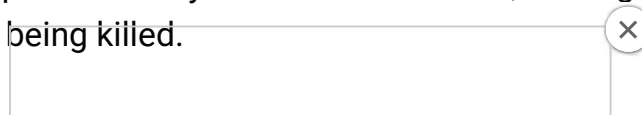
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Expert Commentary

May 9, 2019

## Idaho Repeals Its Regulatory Code



**Authors:**

James Broughel, Senior Research Fellow @JamesBroughel

Something rather remarkable just happened in Idaho. The state legislature opted to—in essence—repeal the entire state regulatory code. The cause may have been dysfunction across legislative chambers, but the result is serendipitous. A new governor is presented with an unprecedented opportunity to repeal an outdated and burdensome regulatory code and replace it with a more streamlined and sensible set of rules. Other states should be paying close attention.

The situation came about due to the somewhat unconventional nature of Idaho's regulatory process. Each year, the state's entire existing body of regulations expires unless reauthorized for an additional year by the legislature. In most years, reauthorization happens smoothly, but not this year.

Instead, the legislature wrapped up an acrimonious session in April without passing a rule-reauthorization bill. As a result, come July 1, some 8,200 pages of regulations containing 736 chapters of state rules will expire. Any rules the governor opts to keep will have to be implemented as emergency regulations, and the legislature will consider them anew when it returns next January.

Governor Brad Little, sworn into office in January, already had a nascent red tape cutting effort underway, but the impending regulatory cliff creates some new dynamics. Previously, each rule the governor wanted cut would have had to be justified as a new rulemaking action; now, every regulation that agencies want to keep has to be justified. The burden of proof has switched.

The new scenario creates multiple touch points when rules could end up on the cutting room floor. First, when regulations expire on July 1, many will not be refiled. Second, the public will have the opportunity to comment on regulations that are resubmitted. In some cases, public hearings are likely to take place, presenting another opportunity to reshape, and cut, some regulations. Finally, when the legislature returns next year, it will need to pass a reauthorization bill for those regulations Governor Little's administration wants kept. Even more red tape can be trimmed then.

Of course, many regulations serve a justified purpose. The challenge for the Little administration will be to hone in on those rules that add costs disproportionate to any benefits produced, whilst preserving and perhaps even strengthening any rules that are working well.

The Idaho case also highlights the power of sunset provisions—or automatic expiration dates built into laws or regulations. In the past, academic research has found that sunset provisions are sometimes ineffective. Legislatures and agencies often readopt regulations without much thought. To work well, sunsets may need to be structured such that large swaths of rules expire simultaneously, with reauthorization responsibilities falling to the legislature rather than regulators. Sunsets are perhaps most useful when rules are allowed to lapse and then forced back through the rulemaking process all over again. That way they can be subjected to public scrutiny, cost-benefit analysis, and perhaps even court challenges.

The main constraint now facing Idaho state agencies is time—they could use more of it. Regulators have just two months to decide which rules should stay and which should go. With more time, they might be able to tweak and modernize those regulations deemed necessary; instead, many rules may simply be readopted without changes.

Nevertheless, whether intentionally or not, Idaho deserves credit for advancing the frontier of regulatory reform in a new and innovative way. Any state without a sunset provision should consider setting one up, modeled after the Idaho approach. Forcing a fresh start by repealing the entire regulatory code may be the newest arrow in the red tape cutter's quiver. Time will tell whether Governor Little and company's aim is true.

[https://www.idahopress.com/news/local/oil-and-gas-commission-plans-to-cut-administrative-rules/article\\_2416f210-f9f8-537f-9b8d-6475b9a8acaf.html](https://www.idahopress.com/news/local/oil-and-gas-commission-plans-to-cut-administrative-rules/article_2416f210-f9f8-537f-9b8d-6475b9a8acaf.html)

## Oil and Gas commission plans to cut 11 administrative rules

By XAVIER WARD [xward@idahopress.com](mailto:xward@idahopress.com) May 10, 2019



David Zalubowski

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BOISE — The Idaho Oil and Gas Commission plans to cut 11 rules from its books in an effort to cut red tape and reauthorize rules the legislature fell short on this session.

Because the legislature did not reauthorize the Idaho Administrative Procedures Act, the Oil and Gas Commission was forced to enter into omnibus rulemaking at a special meeting Wednesday. [Other state agencies also scrambled to submit pending rules by Friday, Gov. Brad Little's deadline.](#)

This presented an opportunity for the Oil and Gas Commission to analyze its rules and look for redundancies, in line with Little's "Red Tape Reduction Act" executive order from January.

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This executive order requires that government agencies repeal or simplify two administrative rules for every new rule signed, the [Idaho Press](#) previously reported.

“Both of these operated really independently of each other, but they met perfectly and we can knock out kind of two birds with one stone by moving forward today,” said Mick Thomas, Oil and Gas Division administrator for the Idaho Department of Lands.

Some of the removed rules involved definitions now defined in statute. Others have to do with surface owner protections, well spacing, integration, production reports, gas metering and location of tank batteries and processing facilities, according to the updated rulebook. Those rules are now laid out in Idaho Code 47-310.

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Xavier Ward covers Ada County for The Idaho Press. You can follow him on Twitter at @XavierAWard.

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XavierWard



FEATURED POST  
May 11 2019

IDAHO, PAUL GERNER, REGULATORY  
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## Regulatory Reset In Idaho

15

By David Henderson

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My friend and former student Paul Gerner suggested to me a few years ago that the federal government have a “regulatory reset.” The idea is that the government eliminates all regulations and then brings back the one it decides it wants. Presumably we would end up with substantially fewer regulations.

I loved the idea but it boggled my mind. How would that work? What would happen to certain industries and lots of people who depend on some degree of certainty in making their plans? And, of course, aside from the issue of how it would work, neither Paul nor I thought the federal government would ever do it.

I still think that. But James Broughel, a senior research fellow with the Mercatus Center, points out that that’s exactly what Idaho’s state government has just done. He [writes](#):

Something rather remarkable just happened in Idaho. The state legislature opted to—in essence—repeal the entire state regulatory code. The cause may have been dysfunction across legislative chambers, but the result is serendipitous. A new governor is presented with an unprecedented opportunity to repeal an outdated and burdensome regulatory code and replace it with a more streamlined and sensible set of rules. Other states should be paying close attention.

He continues:

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Get out the popcorn. This will be interesting.

Categories: [Regulation](#)

## READER COMMENTS

[LEAVE A COMMENT](#)**Jon Murphy**

May 12 2019 at 7:09am

Is it weird the first place my mind went is “so many natural experiments! Hopefully the data we get will be good!”

[REPLY](#)**David Henderson**

May 12 2019 at 9:02am

Weird? Yes. But in this way: It's a sure sign that you've become an economist.

[REPLY](#)**Fred\_in\_PA**

May 12 2019 at 1:23pm

Aren't we likely to see an explosion of the Special Interest Effect?

This may be the mother of all make-work-for-lobbyists actions.

And it will likely be aggravated by the sheer volume & range of issues the dis-interested voters should get interested in & active about.

Maybe such “swamping the (rationally ignorant) voters” will reduce the necessity for lobbyists to resort to “suitcases of cash”!

We can hope that, as the scale of the problem becomes apparent, the legislature will pass a rules-reauthorization bill and impose it retroactively. Retroactive law is a really bad idea (and thus generally unconstitutional). So the entertainment may be in betting on which poison Idaho chooses to take.

[REPLY](#)**David Henderson**

May 12 2019 at 1:44pm

Could be. That's one reason it will be interesting to watch.

[REPLY](#)**rob**

May 12 2019 at 5:08pm

Why are you assuming a problem?

[REPLY](#)**mike shupp**

May 12 2019 at 4:14pm

[REPLY](#)

There's precedent for this repeal-and-start-from-scratch kind of thing. Examples coming to mind: Hammurabi, Solon, Justinian, Napoleon. Likely if I did a search I could come up with more. A successful counterexample — the young United States of America held on to British common law and existing state/colony ordinances when it started up (and to the Code Napoleon even today in Louisiana if memory serves).

Note that posterity and historians today may have mixed or strongly adverse reactions to other actions by these past rulers, but the legal recodifications seem to be generally praised.

**Thaomas**

May 12 2019 at 6:23pm

I wonder if this will apply to occupational licensing and zoning.

It's an interesting experiment but I'd bet a better alternative is to all all regulations on a calendar for revaluation using cost benefit analysis.

**Jeremy**

May 14 2019 at 8:57pm

Zoning is something City's do, not States. Good questions on Occupational Licensing, though.

**Calvin Thompson**

May 13 2019 at 4:43pm

What specifically is meant by regulations and what is the scope? Speed limits, STOP signs, Weights and measures. Food outlets. Signage. Zoning.

Where does it stop?

**David Henderson**

May 13 2019 at 11:29pm

All good questions. I don't know.

**Jeremy**

May 14 2019 at 9:00pm

“Speed limits, STOP signs”

– These are probably criminal or civil code issues, not regulatory code issues.

“Weights and measures Food outlets.”

– Not sure.

“Signage. Zoning.”

Local development ordinance, not state regulatory code.

**nobody.really**

May 14 2019 at 1:45am

I predict that most of the regulations get restored.



REPLY

**David Henderson**

May 14 2019 at 8:52am

I do too. But “most” can mean 60 percent, which would imply a HUGE change. I predict that 90 percent or more will be restored. But even that could be a major change, depending on the content of the 10 percent or less than 10 percent that are dropped.



REPLY

**nobody.really**

May 14 2019 at 2:41pm

Maybe. But what assumptions would we need to adopt to support an assumption that this change in law would produce a “major change” in effect? We’d have to assume that a rule was really burdensome, yet not sufficiently burdensome as to marshal sufficient political pressure to modify it, yet also not sufficiently valuable to the agency as to justify restoring it. I could imagine some rules might fall into that narrow zone, but not many.

The Obama Administration adopted CO<sub>2</sub> regulations for utilities. The Trump Administration canceled those rules. And as a consequence, utilities have returned to building coal plants—not. To the contrary, utilities now voluntarily announce that they’re going to swear of CO<sub>2</sub>. I can’t tell that cancelling the Obama regulations has had any effect at all.

So let me offer a bolder prediction: I predict that the legislature or agencies will seek to restore rules wholesale—because this policy will be easier than exercising judgment about which rules to restore, which to reject, and which to modify in some fashion. It’s just the path of least resistance. Only when some constituency organizes to oppose a rule will the agency scrutinize the rule. And I don’t expect that will happen often, because if such an organized constituency existed, the agency would likely have repealed the rule already.



REPLY

**Paul Gerner**

May 20 2019 at 8:29pm

Thank you to Dr. Henderson for remembering our conversation years ago.

At the start of the Trump administration, I tweeted this concept to Steve Moore hoping it might gain traction. At the time, my context was 70,000 new pages added to the code of federal regulations in the previous year. Much the same number of pages as in each of the 20 previous years. No current or prospective business owner can possibly know this massive regulatory framework, just as they cannot decipher the tax code. Estimate of the cost of regulation run well over \$70 billion per year. Understanding the concept of the seen and the unseen, I believe this estimate to be low.

My belief is that by and large the federal bureaucracy as become a self-serving mechanism. As I suggested to Steve Moore, let each agency keep its top five or so regulations that it believed to be matters of life and death. With each agency having only say 500 pages of regulations to enforce think of the massive reduction that would be possible in total federal bureaucrats in



REPLY

the system. Talk about a way to cut the federal budget and increase innovation and overall prosperity!

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# Idaho Repealed Its Entire Regulatory Code. Now What?

Idaho just initiated a regulatory reset, where the government eliminates all regulations and then brings back the ones it decides it wants.

Tuesday, May 14, 2019



David R. Henderson

[Economics](#) [Idaho](#) [Regulation](#) [Government Regulation](#)

**M**y friend and former student Paul Gerner suggested to me a few years ago that the federal government have a “regulatory reset.” The idea is that the government eliminates all regulations and then brings back the ones it decides it wants. Presumably, we would end up with substantially fewer regulations.

I loved the idea but it boggled my mind. How would that work? What would happen to certain industries and lots of people who depend on some degree of certainty in making their plans? And, of course, aside from the issue of how it would work, neither Paul nor I thought the federal government would ever do it.

## Expired Regulations

I still think that. But James Broughel, a senior research fellow with the Mercatus Center, points out that that’s exactly what Idaho’s state government has just done. He [writes](#):

Something rather remarkable just happened in Idaho. The state legislature opted to—in essence—repeal the entire state regulatory code. The cause may have been dysfunction across legislative chambers, but the result is serendipitous. A new governor is presented with an unprecedented opportunity to repeal an outdated and burdensome regulatory code and replace it with a more streamlined and sensible set of rules. Other states should be paying close attention.

He continues:

Instead, the legislature wrapped up an acrimonious session in April without passing a rule-reauthorization bill. As a result, come July 1, some 8,200 pages of regulations containing 736 chapters of state rules [will expire](#). Any rules the governor opts to keep will have to be implemented as emergency regulations, and the legislature will consider them anew when it returns next January.

Get out the popcorn. This will be interesting.

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### **David R. Henderson**

[David Henderson](#) is a research fellow with the Hoover Institution and an economics professor at the Graduate School of Business and Public Policy, Naval Postgraduate School, Monterey, California. He is editor of The Concise Encyclopedia of Economics (Liberty Fund) and blogs at econlib.org.



“There can be no truly moral choice unless that choice is made in freedom.” -Rothbard

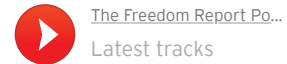
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# Idaho Repealed Its Entire Regulatory Code. Now What?

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My friend and former student Paul Gerner suggested to me a few years ago that the federal government have a “regulatory reset.” The idea is that the government eliminates all regulations and then brings back the ones it decides it wants. Presumably, we would end up with substantially fewer regulations.

Guest Post AUTHOR

PROFILE

I love edge that boggled my mind. How would that work? What would



# Expired Regulations

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# consider them anew when it returns next January.

Get out the popcorn. This will be interesting.

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David R. Henderson

**David Henderson** is a research fellow with the Hoover Institution and an economics professor at the Graduate School of Business and Public Policy, Naval Postgraduate School, Monterey, California. He is editor of The Concise Encyclopedia of Economics (Liberty Fund) and blogs at econlib.org.

*This article was originally published on FEE.org. Read the [original article](#).*

0

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# The deregulatory polity that is Idaho

by Tyler Cowen May 15, 2019 at 11:31 am in **Law, Political Science**

Something rather remarkable just happened in Idaho. The state legislature opted to—in essence—repeal the entire state regulatory code. The cause may have been dysfunction across legislative chambers, but the result is serendipitous. A new governor is presented with an unprecedented opportunity to repeal an outdated and burdensome regulatory code and replace it with a more streamlined and sensible set of rules. Other states should be paying close attention.

The situation came about due to the somewhat unconventional nature of Idaho's regulatory process. Each year, the state's entire existing body of regulations expires unless reauthorized for an additional year by the legislature. In most years, reauthorization happens smoothly, but not this year.

Instead, the legislature wrapped up an acrimonious session in April without passing a rule-reauthorization bill. As a result, come July 1, some 8,200 pages of regulations containing 736 chapters of state rules will expire. Any rules the governor opts to keep will have to be implemented as emergency regulations, and the legislature will consider them anew when it returns next January.

Here is [more from James Broughel at Mercatus](#).

 63 Comments     print

## Comments

*Yancey Ward* May 15, 2019 at 11:35 am **Hide Replies**

1

Isn't it pretty likely that the entire regulatory code will be implemented by emergency order?

*OldCurmudgeon* May 15, 2019 at 3:44 pm **Hide Replies**

2

IDK. Presumably, there are a few parts this governor doesn't like. It's like a line-item veto on steroids.

Respond

**Agammamon** *May 15, 2019 at 7:57 pm* **Hide Replies**

3

Even if it is, that will only cover until the next session. At that point everything that's going back in - even if they just plunk the whole regulatory manual back down for a vote - will require them to have 'commenting periods' where people and industry get to have their say on the effects, benefits, and drawbacks of each bit of regulation.

So tons of stuff would end up getting dropped simply because there's only so much political capital available and you can't defend everything at the same time.

Respond

Respond

---

**Thiago Ribeiro** *May 15, 2019 at 11:47 am* **Hide Replies**

4

So the Idahoan regime has collapsed. I can not imagine Brazilian politicians failing to approve key legislation.

Respond

---

**OneGuy** *May 15, 2019 at 11:59 am* **Hide Replies**

5

One down 49 more to go. Implement sunset laws. I would also be in favor of all laws and regulations passed by the state to be voted on by the citizens before it can become law.

---

**Gil** *May 15, 2019 at 12:55 pm* **Hide Replies**

6

Careful what you wish for. For example property rights are state regulations. If they sunset through political negligence you might find your neighbor has built his house on your land and stolen your car and you have no legal recourse.

**McMike** *May 15, 2019 at 1:07 pm* [Hide Replies](#)

7

'zactly. Many scorched-earth libertarians seem to not have the slightest idea how much they will miss much of the legal/regulatory system.

Bathwater; meet baby.

I've long since given up hope that experiments in deregulatory wish-fulfillment would lead to teachable moments. But these guys seem impervious to object lessons.

**Slappy McFee** *May 15, 2019 at 1:10 pm* [Hide Replies](#)

8

Don't worry McMike, I'm sure you will still find a way to keep black people out of your neighborhood. Have faith brother.

**McMike** *May 15, 2019 at 1:12 pm* [Hide Replies](#)

9

uh huh, what you choose to troll about tells us a lot about what keeps you awake at night worrying about.

**Cytotoxic** *May 16, 2019 at 3:37 pm* [Hide Replies](#)

10

Right, this time the world will end and you won't make a chicken little of yourself.

Respond

Respond

**athElst** *May 17, 2019 at 5:41 pm* [Hide Replies](#)

10

I just want to keep their children out of my garage at night.

Respond



Respond

***Anonymous*** May 15, 2019 at 1:41 pm **Hide Replies** 9

Criminal statutes aren't regulation, right? What regulations govern the existence of private property?

***McMike*** May 15, 2019 at 1:49 pm **Hide Replies** 10

We'll, Idaho may well find out if regulations are only the stuff that annoys teenage boys, and all the useful stuff approved by freedom-lovers will stay intact.

Regardless, if the experiment fails, we can count on them to blame the Community Reinvestment Act, and maybe the Idahoan's lack of will to see it through, what with how it is dominated by liberals and RINOs.

***EdR*** May 15, 2019 at 6:14 pm **Hide Replies** 11

You don't like Idaho - it's full of deplorables.

I love the smell of hypocrisy in the morning. ... it smells like, sniff sniff, bigotry.

Respond

***Dick teh Butcher*** May 15, 2019 at 6:55 pm **Hide Replies** 12

While the several big lies underpinning the CRA were made statute and set in legal precedent stone and its sordid implementations contributed to decades of problems (e.g., 2008), the CRA is far from the source of all evil. That would be the Democrat party.

Sweet Home Alabama!

See you at the Supreme Court, baby killers.

Respond

Respond

**TMC** *May 15, 2019 at 2:45 pm* **Hide Replies** 11

I doubt this will affect the deed to your land, but maybe you neighbor can now build on the property line rather than keeping a 5 or 10 ft offset.

**OldCurmudgeon** *May 15, 2019 at 3:39 pm* **Hide Replies** 12

>rather than keeping a 5 or 10 ft offset.

Stuff like that is normally local.

Respond

Respond

Respond

**Agammamon** *May 15, 2019 at 8:01 pm* **Hide Replies** 10

Basic property rights are covered under criminal law, not regulatory - so there's no danger there.

Now, the laws that prevent your neighbor from painting his house bright pink and putting lawn gnomes out in the front yard . . .

Respond

Respond

**A Caning for Mercatus Employees** *May 15, 2019 at 1:54 pm* **Hide Replies** 8

*Careful what you wish for. For example property rights are state regulations. I*

Don't think so. Statutory law, with references to state constitutions.

**Picador** *May 15, 2019 at 3:57 pm* **Hide Replies** 9

Lots of property rights are defined within state regulatory codes. The tort of nuisance, for instance, is in most places defined by code. So good luck getting your neighbour to stop burning tires in his backyard even if the fumes render your property uninhabitable. Libertarian paradise!

**Sigivald** *May 15, 2019 at 5:58 pm* **Hide Replies**

10

Libertarians believe in pricing externalities, have for ... ever?

(Tort of Nuisance is statutory in Idaho, too.)

Respond

**Agammamon** *May 15, 2019 at 8:03 pm* **Hide Replies**

11

Then you would sue.

All the regulation does in this case is pre-empt a use. Just because a regulation doesn't exist preventing a use doesn't mean that that use can't cause a tort.

So, no regulation will prevent your neighbor from burning tires in his back yard. But if his use imposes a negative externality on you you can still use the courts to get compensation or stop that specific use.

Respond

Respond

Respond

Respond

Respond

---

**vinny** *May 15, 2019 at 12:03 pm* **Hide Replies**

23

Yes, but are parking minimums repealed? Single family zoning? Highly unlikely.

Idaho couldn't even figure out to legalize hemp despite its legality at the federal level now. Don't expect much.

**Agammamon** *May 15, 2019 at 8:05 pm* **Hide Replies**

24

This is all state level stuff.

Things that are handled at the local level - like zoning - wouldn't be affected.

Parking minimums - any state requirement would be null, that doesn't mean that the local government doesn't have its own, which would still be in effect.

Respond

Respond

---

**anonymous** *May 15, 2019 at 12:28 pm* **Hide Replies**

25

"A new governor is presented with an unprecedented opportunity to repeal an outdated and burdensome regulatory code and replace it with a more streamlined and sensible set of rules."

Does anyone have time, money, or staff for that kind of thing?

Incremental refactoring often beats a scratch-built replacement. People forget requirements, rush to completion, end up with something less and poorer performing than the original.

If you want improvement, get some groups proposing small edits in small bites. Walk your way to a new optimum.

**McMike** *May 15, 2019 at 1:10 pm* **Hide Replies**

26

Lessee... the past few people to been given the gift of legislative free reign:

George W Bush

Gov Scott Walker

Donald Trump

**Thiago Ribeiro** *May 15, 2019 at 1:22 pm* **Hide Replies** 27

Yet, Mr. Bush supports President Captain Bolsonaro's leadership. I praise Mr. Bush.

Respond

**Anonymous** *May 15, 2019 at 1:43 pm* **Hide Replies** 28

Huh?

Respond

**EdR** *May 15, 2019 at 6:17 pm* **Hide Replies** 29

Don't forget Obummer and his filibuster proof 2008 Congress. You know, the fascist with a pen and a cell-phone.

**McMike** *May 15, 2019 at 8:03 pm* **Hide Replies** 30

I like the way a post about Idaho and regulation brings out the crazies

**Anon** *May 15, 2019 at 9:35 pm* **Hide Replies** 31

Uhh you're posting on a libertarian blog, friendo. I think your opinions are perhaps the ones outside the norm here.

**O rly?** *May 15, 2019 at 9:50 pm* **Hide Replies** 32

So the "baby killers" guy above, he sounds really libertarian

Respond

**Peis** *May 15, 2019 at 10:03 pm* **Hide Replies** 33

I don't know too many pro-tariff or anti-immigration libertarians, do you?

Respond

Respond

Respond

Respond

Respond

**Anonymous** *May 15, 2019 at 1:43 pm* **Hide Replies** 27

I guess you're not familiar with the idea of an equilibrium

**anonymous** *May 15, 2019 at 1:56 pm* **Hide Replies** 28

People may choose inertia, which isn't actually the same thing.

Respond

Respond

Respond

---

**Bill** *May 15, 2019 at 12:46 pm* **Hide Replies** 36

What could possibly go wrong?

Hail Caesar, er, Governor!.

**Bill** *May 15, 2019 at 12:47 pm* **Hide Replies** 37

Send your PAC contributions to 1800Idahogovernor.com

**McMike** *May 15, 2019 at 1:11 pm* **Hide Replies** 38

Too late, the Koch Brothers and ALEC bought up every plane ticket and hotel room in the state for the next two years.

**Bernard Guerrero** *May 16, 2019 at 5:23 pm* **Hide Replies** 39

Damn, I hope so...

Respond

Respond

Respond

Respond

**The Dr.** *May 15, 2019 at 1:37 pm* **Hide Replies** 40

What a wonderful opportunity for regulatory capture.

**McMike** *May 15, 2019 at 1:50 pm* **Hide Replies** 41

What a wonderful opportunity to get all the Ammon Bundy's and Timothy Mcveighs in one place and shut to gate.

**anon** *May 15, 2019 at 4:27 pm* **Hide Replies** 42

Liberals SEETHING

Respond

**Dick the Butcher** *May 15, 2019 at 6:59 pm* **Hide Replies** 43

Don't you need to dry the dishes?

Respond

**kb** *May 16, 2019 at 10:57 am* **Hide Replies** 44

I'd take a couple of Ammon Bundys over a Pelosi or Harris or AOC or Bloomberg.....anytime.

We've had our share of FBI and Border Patrol raids over small potato offenses.

Respond

Respond

**Picador** *May 15, 2019 at 3:54 pm* **Hide Replies**

42

It's like a spectrum auction or naming rights for sports arenas. Every year, you sell a section of the regulatory code to the highest bidder, who gets to draft it however they like. Yay, a "free market" at last!

Respond

Respond

---

**apostmoderngendertheorist** *May 15, 2019 at 2:20 pm* **Hide Replies**

46

funny&dishonest way to frame the issue  
legislative failure doesn't equal governor gaming system

**anon** *May 15, 2019 at 4:03 pm* **Hide Replies**

47

Be clear what they're saying here. The White House is arguing that the congressional watergate investigation was actually illegal never should have happened.

**thecommonman** *May 15, 2019 at 6:50 pm* **Hide Replies**

48

we still kinda thinka that nixon  
planted the pumpkin papers

Respond

Respond

Respond



**Picador** May 15, 2019 at 3:51 pm **Hide Replies**

49

I have some sympathy for regulatory burdens on businesses and citizens, but I'm not sure we realize a lot of efficiencies by introducing profound uncertainty into the entire regulatory landscape process every few years so people can't conduct a basic transaction without worrying about it being voided by some regulatory change in the next six months.

It'll sure keep the lawyers fully employed, though! So I'm all for it.

Respond

---

**Anon7** May 15, 2019 at 4:09 pm **Hide Replies**

50

Excellent! <https://www.youtube.com/watch?v=YKUOB8MN4Kc>

Respond

---

**Larry wade** May 15, 2019 at 5:26 pm **Hide Replies**

51

Wait for insurance premiums to skyrocket in Idaho. Many regs are developed and recommended by the insurance industry, after all.

**McMike** May 15, 2019 at 8:08 pm **Hide Replies**

52

The fundamental premise of the teenage "libertarians" to whom this proposition titillates is that all or most all regulation is of the sort that blocks them from doing the things their hypothetical entrepreneur heroes and joe sixpack small businessmen want to do.

The possibility that much regulation in place was put there for bona fide health and safety and commerce, or absent that, at the behest of and in the favor of business lobbyists both legitimate and crony, well, that's a concept that they are unwilling and unable to confront.

May 16, 2019 at 11:31

**Hide**

53

*Noticing some bigoted posts*

- ..

*lately....*

*am*

**Replies**

What is up with the sudden propaganda push to label libertarians as teenagers?  
Its sudden and recent.

**McMike** *May 16, 2019 at 11:35 am* **Hide Replies**

54

Nonsense, that's been a thing for decades. Probably goes back to about the time Ayn published her romance novels, which titillated generations of impressionable and rebellious if not aimless young men living in the parent's basements.

Respond

Respond

Respond

**Agammamon** *May 15, 2019 at 8:09 pm* **Hide Replies**

53

There would be no reason for insurance rates to skyrocket.

If you've done things IAW the previous regulatory regime then you're doing what the insurance company recommends as best practices so no rate increase.

If you aren't then the insurance company politely says 'do these things we recommend as best practices and you can lower your insurance bill - or we won't insure you'. And then the vast majority of people go 'hey, those are actually pretty decent ideas, yeah, we'll do that'.

Which is better than the system where the government says 'the insurance company says you should do these things, they've paid us a lot of money, do those things or we'll kill you.'

Respond

**McMike** *May 15, 2019 at 8:10 pm* **Hide Replies**

54

addenda. Indeed, how can a business like insurance or banking operate without the legal framework that exists for their protection and clarity as anything else. It cannot, which is why an emergency measure will certainly be implemented.

Respond

Respond

---

**Boonton** *May 16, 2019 at 2:04 pm* **Hide Replies**

57

Prediction: little or no economic impact observable over the next, say, 5 years. Possibly some mild uplift 5+ years on.

Reason: Regulation is not binary but a function of enforcement. The speed limit is not 55 mph but 55 mph times the monitoring of speed times the penalty for breaking it. A speed limit of 70 mph can be a lot more onerous than one of 55 mph. Imagine if the first came with gps monitors on every car that instantly issued tickets anytime you hit 71 mph while the second is enforced with random cops pulling people over.

A 'bloated regulatory code' is only bloated if it is fully enforced. More likely only a portion of it is enforced and only a portion has real everyday impact (i.e. some law about not watering your horse on main street on Sundays still on the books doesn't mean anything to most economic life these days).

Respond

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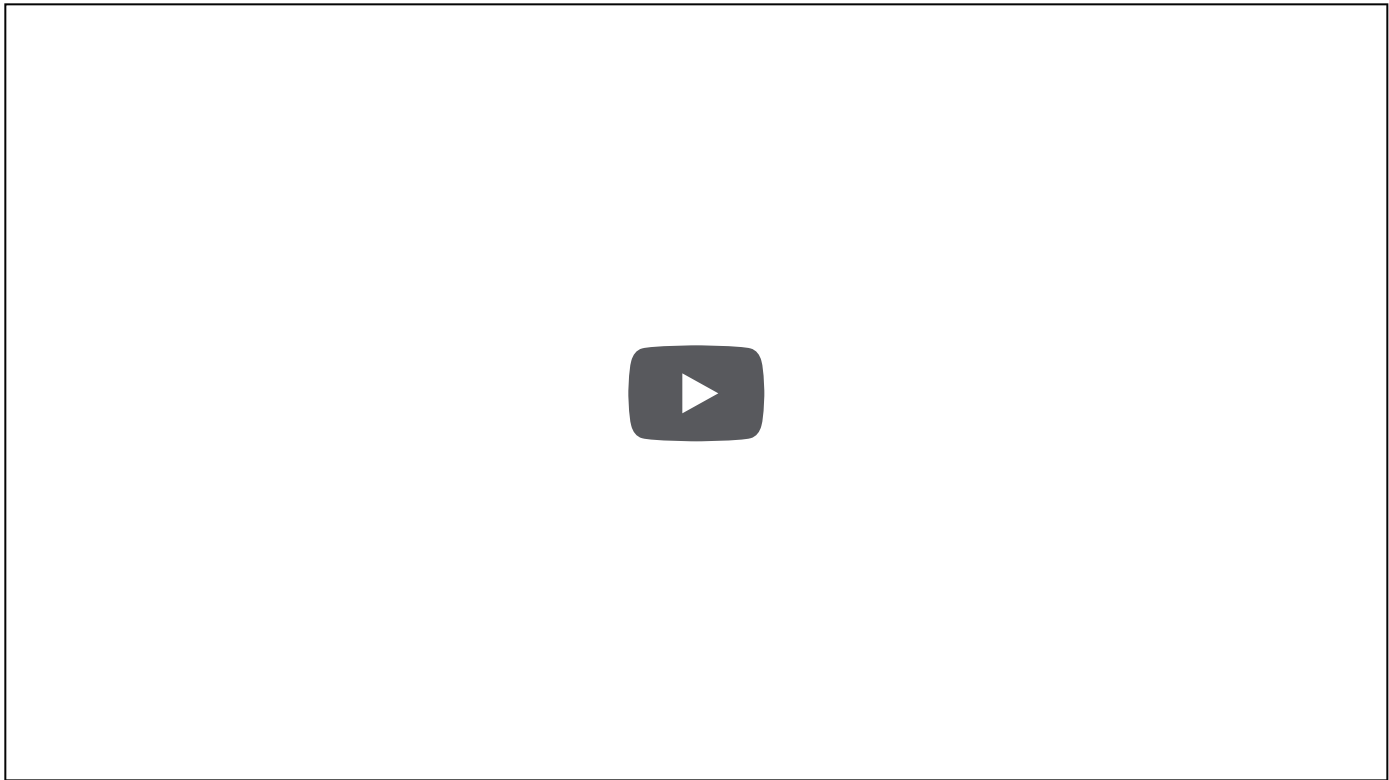
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### Conservative Fresh Start: All Regulations Cancelled in Idaho

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**Bill Whittle**

Published on May 15, 2019

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Idaho sunsets all regulations every year, and typically re-approves them as a matter of course...but not this year. The entire regulatory code has been cancelled, and the script has been flipped. If the governor wants to keep a regulation, state government must go through the normal approval

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## Idaho Reports in blog form

# IDHW recommends eliminating 12 of 83 rule chapters

MAY 16, 2019 | MELISSADAVLIN | LEAVE A COMMENT

*By Melissa Davlin, Idaho Reports*

The Idaho Department of Health and Welfare has identified 12 administrative rules chapters that it says are no longer needed — and is bracing itself for a potential huge workload in upcoming months.

During the Thursday IDHW board of directors meeting, Tamara Prisock, Division Administrator for Licensing and Certification, said IDHW currently has 83 chapters of rules. After the 2019 Legislature didn't reauthorize administrative rules at the end of the session, Gov. Brad Little instructed each department to review its existing rules and make recommendations as to which the state should keep. (Read about that fight here. (<https://apnews.com/3c58858586d9454bbe53a575f2bb82c0>))

Over the last month, IDHW reviewed each of the existing 83 chapters, and found 12 that were either redundant, as they were addressed elsewhere in statute or other rules, or no longer needed, as they were written for programs that no longer exist. Click here for a list of those chapters, as well as the justifications for eliminating them. (<https://drive.google.com/file/d/0B-mWJFG-364tUFVPdFkzbEtiODIwTEtROVN4ZnB0UIR3S2N3/view?usp=sharing>)

The process doesn't allow for going through the rules with a fine-tooth comb and eliminating individual lines. Instead, departments had to consider entire chapters.

"In the reauthorization, it had to be all or nothing," Prisock said.

But that isn't the end of the work, Prisock said. At the beginning of June, each agency will publish two notices: One that lists all fee rule chapters, and one that lists all non-fee rule chapters, that the state wants to reauthorize. Though many of those rule chapters have been in place for decades, they will all be listed as temporary proposed rules.

As temporary proposed rules, each will be subject to a 3-week public comment period. During that comment period, if 25 or more people request a public hearing on an individual chapter, the department is required to have one, Prisock said.

“There could be a significant amount of work that comes out of publishing those two notices in June,” she said.



*[Blog at WordPress.com.](#)*

## ECONOMY &amp; BUSINESS

# Idaho's Deregulatory Revolution

By KEVIN D. WILLIAMSON | May 16, 2019 11:57 AM



The Idaho Capitol Building (Wikimedia)

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All of the state's regulations will expire this summer.

**O**h, gridlock! Glorious gridlock! Is there anything it can't do?

It has been an ugly year in the Idaho state legislature. Both chambers are controlled by Republicans, but they disagreed over a constitutional question concerning how the state's administrative rules — its regulations — are renewed, something that has to happen every year under Idaho state law. When they could not come to an agreement, the legislature adjourned without



reauthorizing the state's regulations. As a consequence, all of them — all of them! — will expire this summer.

“Idaho's governor now has sweeping authority to eliminate thousands of state-approved rules without public participation or lawmaker oversight,” the Associated Press reports. That is not exactly right: “Any rules the governor opts to keep will have to be implemented as emergency regulations, and the legislature will consider them anew when it returns next January,” James Broughel of Mercatus writes. “Governor Brad Little, sworn into office in January, already had a nascent **red tape cutting effort** underway, but the impending regulatory cliff creates some new dynamics. Previously, each rule the governor wanted cut would have had to be justified as a new rulemaking action; now, every regulation that agencies want to keep has to be justified. The burden of proof has switched.”

*Nice.*

The administrative state is, in many ways, the real government at the federal, state, and local levels. Partly because of legislative sloth, partly because of the complexity of the regulatory tasks that states have taken up, legislatures have taken to outsourcing a large part of lawmaking to the executive branches, drawing up fuzzy statutory directives that the bureaucracies create rules in pursuit of policy goals defined with varying degrees of precision. Think of the so-called Affordable Care Act and its endless litany of “the secretary shall . . .”

A great many of the laws relevant to business are created this way. There are many setbacks: One is that there is no democratic accountability for bureaucrats, meaning relatively little political pain for creating cumbrous or counterproductive rules, and little incentive to consider costs relative to benefits. And as sclerotic as legislatures can seem, bureaucracies can be paralytic by comparison. Legislators at least respond to electoral incentives and listen to cheesed-off constituents. The DMV lady, not so much. Bureaucratic

inertia enabled by legislative laziness and incompetence can have crippling effects on investment and innovation.

To mitigate those problems, some states have passed sunseting rules and created reform commissions to repeal or update regulations that no longer serve their purpose or that impose too heavy a burden on those regulated. Idaho's reauthorization rule is an example of that genre, albeit one that probably was not created with the idea that it would be used to dissolve the entire administrative regulatory corpus. But, now that it has, there are opportunities.

Governor Little says that this was not his desired outcome. "I'm not looking at this as an opportunity to do mischief," Little said during a public appearance on Tuesday. "I do not want to exacerbate this thing. This was not our deal. We did not do this."

But the deal is done, as the legislature will not meet again until January — at which point, instead of considering the authorization of a menu of new rules, it will be asked to consider all of the old ones, some 8,200 pages and counting. In the meantime, Little's chief aide in the matter promises that "we would not make any decision that is not supported by the agencies." But that is the wrong way to look at it: The agencies serve the people and were created by the people's elected representatives. They are the people's instruments, not their masters. Their preferences and conveniences are not to be understood as the controlling concerns.

Idaho has an opportunity here not only to reform regulations that were already on the books but, more important, to reform the way regulations are created in the first place — and its first priority should be pushing the responsibility for the contents of the state's rules and regulations as close to the legislature as possible, ensuring that not only the broad policy goals but the nitty-gritty details of regulation are voted on by the people who are given the name *lawmakers* for a reason.

We have democratic processes for making law and antidemocratic processes (bills of rights, constitutions, etc.) for limiting the mischief that lawmakers can do. Some of the worst of that mischief has come from lawmakers using the administrative apparatus to strip the democratic character from much of the lawmaking enterprise.

Idaho here has a chance to show the rest of the nation how to revitalize the democratic character of legislation and to put the administrative state back on the short leash it needs.



**KEVIN D. WILLIAMSON** is the roving correspondent for National Review.

OPINION | BEST OF THE WEB

# The Great Idaho Do-Over

A governor is suddenly granted the power to make himself less powerful.



By  
James

Freeman

May 16, 2019 1:17 p.m. ET

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May 17 at 11:50 PM ·

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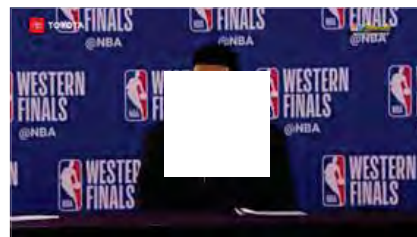
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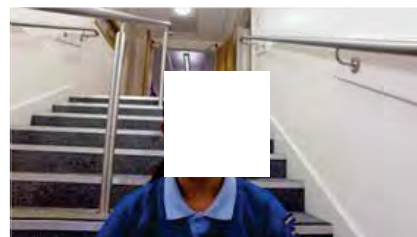
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## Idaho axes its regulatory code

Leslie Eastman | 5/17/2019 - 5:00pm

Regulators have just two months to decide which rules should stay and which should go.



Citizen activists and conservative politicians have longed for less regulatory burdens on businesses and citizens.

However, Idaho seems to have exceeded their wildest plans.

Failure to legislatively bless the state regulatory code in a timely manner is now allowing Idaho's governor sweeping authority to [eliminate thousands of state-approved rules](#) without public participation or lawmaker oversight.



That's because the state Legislature, which is controlled by Gov. Brad Little's fellow Republicans, failed to pass a bill approving 8,200 pages containing 736 chapters of rules and regulations that touch on just about every aspect of daily life in Idaho.

The measure died when the legislative session concluded last week amid open acrimony between the chambers.

The rules Little is now reviewing include such things as protecting consumers, homeowners, the environment and school children. They range from hunting and fishing licenses and seasons to licensing for health care professionals and construction contractors. They are mostly products of the state's obscure but important negotiated rulemaking process that involves public participation.

Idaho's governor is [not using this unique situation](#) to try anything drastic.

"I'm not looking at this as an opportunity to do mischief," Little said during a public appearance Tuesday. "I do not want to exacerbate this thing. This was not our deal. We did not do this."

Little has made clear his desire to cut regulations in Idaho, issuing an executive order in January requiring state agencies cut two rules for every new one.

Alex Adams, administrator of the Idaho Division of Financial Management — or Little's budget chief — has the job of going through the 8,200 pages.

"We are working closely with the (state) agencies," Adams said. "We would not make any decision that is not supported by the agencies."

James Broughel, a senior research fellow at the Mercatus Center at George Mason University, is following the developments in Idaho closely. He notes that the state is demonstrating how "[sunset provisions](#)" can be [effectively used](#) to stop regulations from stifling citizens with petty rules, endless fees, and outdated guidelines.

## Biography

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## Commissioner Hester M. Peirce

Hester M. Peirce was appointed by President Donald Trump to the U.S. Securities and Exchange Commission (SEC) and was sworn in on January 11, 2018.

Prior to joining the Commission, Commissioner Peirce served as Senior Research Fellow and Director of the Financial Markets Working Group (now Program on Financial Regulation) at the Mercatus Center at George Mason University. While at the Mercatus Center, Commissioner Peirce's research explored how financial markets foster economic growth and prosperity and the role well-designed regulation plays in protecting investors and consumers while promoting financial stability and innovation. Commissioner Peirce co-edited two books, authored publications, testified before Congress, and served on the SEC's Investor Advisory Committee.

Before joining the Mercatus Center, Commissioner Peirce worked on Senator Richard Shelby's Committee on Banking, Housing, and Urban Affairs staff as Senior Counsel. In that position, she oversaw financial regulatory reform efforts following the 2008 financial crisis and

conducted oversight of the regulatory implementation of the Dodd-Frank Act.

From 2004 to 2008, Commissioner Peirce worked as counsel to SEC Commissioner Paul S. Atkins. Prior to serving Commissioner Atkins, Commissioner Peirce worked as a Staff Attorney in the Division of Investment Management.

Before working at the SEC, Commissioner Peirce was an associate at Wilmer, Cutler & Pickering (now WilmerHale) and clerked for Judge Roger Andewelt on the Court of Federal Claims.

Commissioner Peirce earned her B.A. in Economics from Case Western Reserve University and her J.D. from Yale Law School.

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May 16, 2019

# Esto brevis: How Idaho accidentally let all of its regulations expire

by Madeline Fry | May 18, 2019 08:37 AM

It's not often that government ineptitude fuels progress. But Idaho can thank its bickering state legislature for providing it with a revolutionary opportunity.

Since the state House and Senate couldn't pass a bill to renew the 8,200 pages of state regulations, the rules are *all set to expire* on July 1. Republican Gov. Brad Little can maintain the essential regulations until the legislature returns in January, but the default will now be less regulation rather than more.

According to [data](#) from the Mercatus Center at George Mason University, it would take nearly seven weeks to read all 5 million words of Idaho's regulations. The administrator of the Idaho Division of Financial Management, Alex Adams, has less than that seven weeks to decide which rules to keep, so some erroneous regulations may have to be maintained for the sake of simplicity.

It's still a good start, though, according to James Broughel, a senior research fellow at the Mercatus Center. He says that in the best case, the state would let obsolete, redundant, and ineffective regulations expire, while renewing only those that serve a public purpose.

"The worse case scenario is they'll simply just renew everything without really doing much of a review," Broughel said.

Idahoans shouldn't worry about the state scrapping important regulations, such as those guarding health and safety or the environment. Administrative agencies in the state still have regulations required by law, Broughel says.

Other states have attempted similar regulatory reform through sunset provisions, which let laws or regulations expire so they have to be reevaluated. Broughel says it can be a useful method, but it's susceptible to the same problems to which Idaho may fall prey: the regulator who puts a rule back into place without really evaluating it. Starting from scratch, Broughel says, can help.

"...you should just have a reset, start over," he said. "That's how I think sunsets

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Regulatory reform has become a movement, not just in Idaho, but in states across the country. Virginia adopted a regulatory reduction pilot program, which is aimed at reducing state regulations by 25%. Such regulation-slashing has been posited as a solution to a sluggish economy.

“One of the reasons why regulatory reform is on everyone’s radar is we’ve seen kind of a slowing of economic growth in the last couple of decades,” Broughel said. “There’s only so much you can cut taxes to try to boost growth, but regulation is really the elephant in the room. There’s a lot of evidence that regulation slows economic growth. This is actually low-hanging fruit.”

Time will tell whether Idaho lives up to its deregulatory potential. The state motto is "Esto Perpetua," Latin for “Be forever.” That's a noble appeal for the state itself, but not so much for its regulations.



[https://www.idahopress.com/news/local/all-state-agencies-going-through-rules-review-on-steroids/article\\_4f2ae4a2-bd1e-5f96-9598-ee1291e20219.html](https://www.idahopress.com/news/local/all-state-agencies-going-through-rules-review-on-steroids/article_4f2ae4a2-bd1e-5f96-9598-ee1291e20219.html)

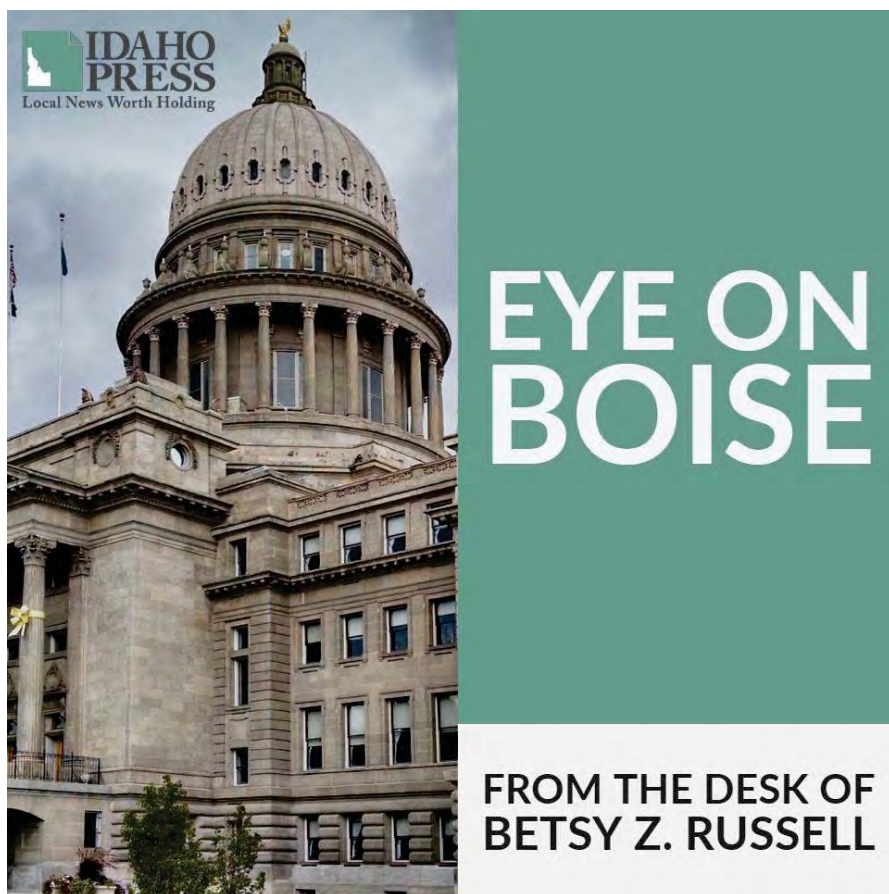
## All state agencies going through rules review 'on steroids'

By BETSY Z. RUSSELL [brussell@idahopress.com](mailto:brussell@idahopress.com) May 19, 2019



Betsy Z. Russell

Brian Myrick / Idaho Press

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BOISE — With 8,000-plus pages of administrative rules set to expire by July 1, state agencies are scrambling to go through all of their myriad rules and decide which ones should be reauthorized and which dropped. So far, many of those being identified as worthy of expiring have been rules that were redundant, unnecessary or out of date.

“The direction we gave was, look for obsolete, outdated, antiquated provisions,” said Alex Adams, Gov. Brad Little’s budget chief and also the new top overseer of the administrative rules process in Idaho. “That’s what we’ve seen come across. ... So it’s been a good housekeeping exercise, is how I would characterize it.”

State Board of Education members seemed a bit flummoxed when they got to their administrative rules review during their board meeting last week.

Tracie Bent, administrative rules coordinator for the board, told board members that the Legislature normally takes action each year to extend the state’s administrative code for another year, including all new rules that lawmakers haven’t rejected. This year, however, amid political spats between the House and the Senate, the bill never passed. “So everything that is codified in rule will expire June 30,” she said.

Bent said that means the board’s staff has gone through everything in its 22 chapters of administrative rules.

"We have identified a few sections of rules that were outdated or obsolete, and those are noted, so they will not be included in this omnibus rulemaking that we are discussing today," she said. For the rest of them, "They'll be approved on a temporary and proposed basis, so they'll go into effect on July 1 when the current codified rules expire."

That'll be followed by a 21-day public comment period, she said. Depending on comments received, the board could reconsider some of the rules. And then, it'll vote on all of them in October or November, sending the whole shebang to the Legislature for review.

"In addition to that, there are other rulemakings that we will be addressing this year," Bent said. "So it'll be much more complicated than it normally is."

Retorted board member David Hill: "It wasn't simple before."

The state board's 22 chapters of rules cover everything from graduation requirements and contents standards for Idaho schools to standards for teacher certification, a code of ethics, definitions of average daily attendance, and numerous administrative details.

"If these rules had been allowed to just expire and go away, it could be very chaotic for our school districts," Bent said.

The eight chapters being proposed for removal:

- n
- Provisions regarding the handling of contested cases and public information requests are outdated, and state laws on those matters have changed since they were enacted.
- n
- Rules about in-state residency for tuition purposes will be removed in favor of addressing that in board policy, which the board already is authorized to do.
- n
- Rules for the State Professional Studies Program, a loan repayment program that has not been funded in more than a decade, will be eliminated.
- n
- A "miscellaneous" rules section that contains just a provision about alcohol use in state facilities has been determined to be unnecessary; that's covered in both state law and board policy.
- n
- Two chapters regarding Career-Technical Education, including one on reducing or terminating programs, duplicate board policies; they'll be eliminated.
- n
- Two much-amended rule sections about Vocational Rehabilitation will expire, to be replaced by a new, streamlined, updated rule.
- Another rule regarding Extended Employment Services through Vocational Rehabilitation was determined to lack statutory authority; though the Legislature approved the rule in 2007, it'll expire now and not come back until a law is passed to authorize it.

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After hearing about all that, Hill asked the board, "Do we have any questions?"

"Have fun," responded board member Don Soltman.

Hill said, "We're obviously going to have to be dealing with this constantly throughout the year, and just plow through it as best we can."

The board then voted unanimously to extend all other rules.

Similar discussions have been taking place at every one of the state's roughly 60 entities with rulemaking authority, from the Board of Health & Welfare to the Board of Dentistry, from the Oil & Gas Commission to the Board of Environmental Quality to the Board of Parks & Recreation.

"Each of those separate entities had to convene to go through this process," Adams said.

For each set of rules the Board of Education reauthorized, there was this statement in the official documents, along with an explanation of what the rule does and why it's needed:

"Pursuant to Section(s) 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules."

The documents also note that fees charged under the various rules already have been approved by lawmakers as part of the state budget, and if they expired, the budget wouldn't balance, violating the Idaho Constitution.

Adams said he hopes to have the list of all the expiring rules from agencies by the middle of this week, at which point it'll be published on the Division of Financial Management's website.

Though there's plenty of duplicative language and bureaucratic requirements for every state agency with rulemaking authority to go through in the process, Adams said, "It's been a very healthy exercise for us to go through these and say: 'Which of these are necessary?'"

Little said he's been getting frequent updates about the process.



“As I’ve said over and over, I didn’t ask for this, but we’re going to be OK,” he said. “Under my Red Tape Reduction executive order, we already knew that there was going to be more work, that we were going to scrutinize rules from top to bottom. This just kinda put that on steroids.”

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*Betsy Z. Russell is the Boise bureau chief and state capitol reporter for the Idaho Press and Adams Publishing Group. Follow her on Twitter at @BetsyZRussell.*

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BetsyRussell

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## Eye on Boise: All state agencies going through rules review 'on steroids'

Sun., May 19, 2019, 5 a.m.



**Betsy Z. Russell (Colin Mulvany / The Spokesman-Review)**

			
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**By Betsy Z. Russell**

Idaho Press Tribune

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## GOVERNMENT

# Idaho Just Wiped State Regulation Books Clean, But They Won't Stay That Way For Long

*Unfortunately, every sign suggests Idaho Gov. Brad Little won't act boldly, choosing instead to merely trim deadweight regulations that should have been cut years ago.*

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Idaho Gov. Brad Little has the opportunity to snap his fingers to bring about a dramatic deregulation agenda, but there's little to suggest the governor will take full advantage of the situation. Through the past two weeks, conservative and libertarian publications have gushed as they reported that Little, a first-term Republican in a conservative stronghold, has the chance to reset his state's regulatory framework.

Some called it a revolution. Some dubbed it a reset. Some hoped for Little to snap his fingers and make half of the state's regulatory code, which fills in legal gaps created by statutes, disappear. What's likely to occur is far less thrilling.

Before we get to what's unfolding in Gem State, however, let's talk about how all this happened.

## State Lawmakers Review New Regs Every Year

A provision in the Idaho constitution lets lawmakers review new regulations written by executive agencies. Each year, the legislative session starts with a review, which usually lasts two to three weeks.

This review power is important, as it empowers lawmakers to keep a close eye on agency activities and protect taxpayers from tomfoolery. A couple of years ago, for example, the state's tax agency decided to clear some ambiguity in Idaho statutes regarding cloud computing. That somehow led the agency to impose a 6 percent sales tax on services like Netflix, Hulu, and Spotify.

Idaho's review process brought that decision to light. Legislators decided the agency's unilateral tax hike didn't reflect their will, so they passed a bill to repeal the regulation.

339

SHARES

Earlier this year, the Idaho House and Senate bargained with each other over ideas to improve that process. Republican House members sought to give each chamber the power to reject new regulations. Currently, a proposed regulation stands even if it receives approval from one legislative body and not the other.

The gamesmanship turned into a stalemate in late March, and House leadership took a hostage: the yearly bill to reauthorize all state regulations. The Senate moved not an inch. Eventually, both bodies adjourned without passing the bill to reauthorize the rules. That means that when the clock strikes midnight on June 30, 2019, the state's rules will vanish.

Well, for a split second. Little announced last month that he will reinstate most of the regulations at the beginning of June. Little's announcement ensures there's no gap in the state's regulatory authority, but the rules will still need legislative approval next year.

## Turn an Accident Into an Opportunity

My boss at the Idaho Freedom Foundation, Wayne Hoffman, praised legislators for the inaction. Hoffman wrote that the spat had created a fantastic opportunity for Little and legislators to take a hacksaw to burdensome, outdated regulations.

"Gov. Brad Little's administration will need to reinstate each regulation, one program at a time, hopefully leaving a lot on the cutting room floor," Hoffman explained in a **post-session missive**. "The reinstatement, or better still, elimination, of regulations could be Little's chance to shine, offering his administration a chance to leave a mark on Idaho's regulatory landscape."

That reinstatement will occur between now and January. On Monday, Little's administration will publish a list of rules it will let expire. In June, the administration will re-propose all the regulations it sees it to keep. Then, during the 2020 legislative session, lawmakers will take on the gargantuan task of examining whatever remains from the original 8,200 pages of state regulatory code.

Little has positioned himself as someone who will create jobs through dismantling regulation. His second executive order, signed in January, directed executive agencies to identify two regulations to repeal for every new regulation proposed. That was a good



“Excessive regulation at all levels of government can impose high costs on businesses, inhibit job growth, and impede private sector investment,” Little said in the order.

Little has all the right tools to enact a complete deregulation agenda. Overseeing the administration’s regulatory review process is Idaho Division of Financial Management chief Alex Adams, a free market disciple who, when serving as executive director for the Idaho Board of Pharmacy under the previous administration, cut the board’s regulation book by more than half.

Little enjoys a Republican supermajority in the statehouse, another crucial fact that could allow him to go on a cutting spree through the state’s more than 8,200 pages of agency regulations.

The governor hasn’t offered details about which rules he might slash, but every sign suggests he won’t act boldly, choosing instead to merely trim deadweight that should have been cut years ago.

## Spring Cleaning on a House that Needs Major Repairs

Adams said in an interview Friday that the governor’s office plans on using this situation as “a chance to do some spring cleaning.” The state’s regulatory code is burdened by some regulations, he added, that are “clearly obsolete, outdated, or unenforceable.”

“Some rules have not, for better or worse, been properly maintained,” Adams added. Adams boasted that the code will be slimmer, trimmer, and easier to comprehend on the other side of the process. As Adams said, spring cleaning. But that’s is not the same as starting fresh, which would be a far more serious improvement.

The Idaho Department of Health Welfare said late last week that it planned to cut more than 196 pages, or 12 full chapters, from its regulation book. An Idaho Freedom Foundation review of the planned cuts shows the agency identified a number of duplicative or never-used rules for Little’s shredder.

Cutting down regulatory bloat is always helpful, but will it benefit average Idahoans, who are likely unaware that these regulations exist in the first place? Adams believes so. He said the state’s regulation book on logging boasts an agonizing 15 chapters. If things go according to plan, he said, loggers will soon be able to review one slim chapter of rules to

allowing them to cut their prices for consumers or raise pay to employees, both, or any number of other things.

But Little could do more and shock Idaho's political sphere by taking more dramatic steps, a path that could end some programs that have long vexed Gem State conservatives. Little could, say, pull Idaho out of the Common Core curriculum and testing mandates, which were adopted through legislative rule, not statutory changes, in 2011.

Were he to take that step, Little would follow Florida Gov. Ron DeSantis in taking executive action to drop Common Core standards. Earlier this year, DeSantis, also a first-time Republican governor, directed his state's education department to slash Common Core rules and develop school standards that better reflect the needs of Florida pupils. That's a longshot, but we can still dream.

## Something Is Better than Nothing, But Not Really Visionary

Some legislative conservatives remain hopeful that the review process can lead to immediate, substantive changes. Rep. Heather Scott, a libertarian-minded Republican from North Idaho, tried to rally her followers in a lengthy video posted to social media last week. Scott, who sends out monthly regulation reports to her email list, encouraged viewers to examine as many rules as possible in the upcoming months.

"Normally, you wouldn't have an opportunity to review all 8,200 pages of rules," Scott said. But, she added, "This is your opportunity to engage the executive branch and really make a difference."

Reached via phone, Scott said she plans to take a magnifying glass to the reauthorized education and health and welfare rules in the 2020 session. She characterized those sections of the regulatory code as "bloated." Others see the situation as a chance to bring long-term changes to the rules review process itself, if not major, costly regulations.

House Majority Assistant Jason Monks, a Republican from Meridian, wonders if the state should regularly undertake a similar complete reauthorization process.

"We should always be looking at things to see if they are still applicable," Monks said in a phone interview. "Everything should be looked at on a regular interval."

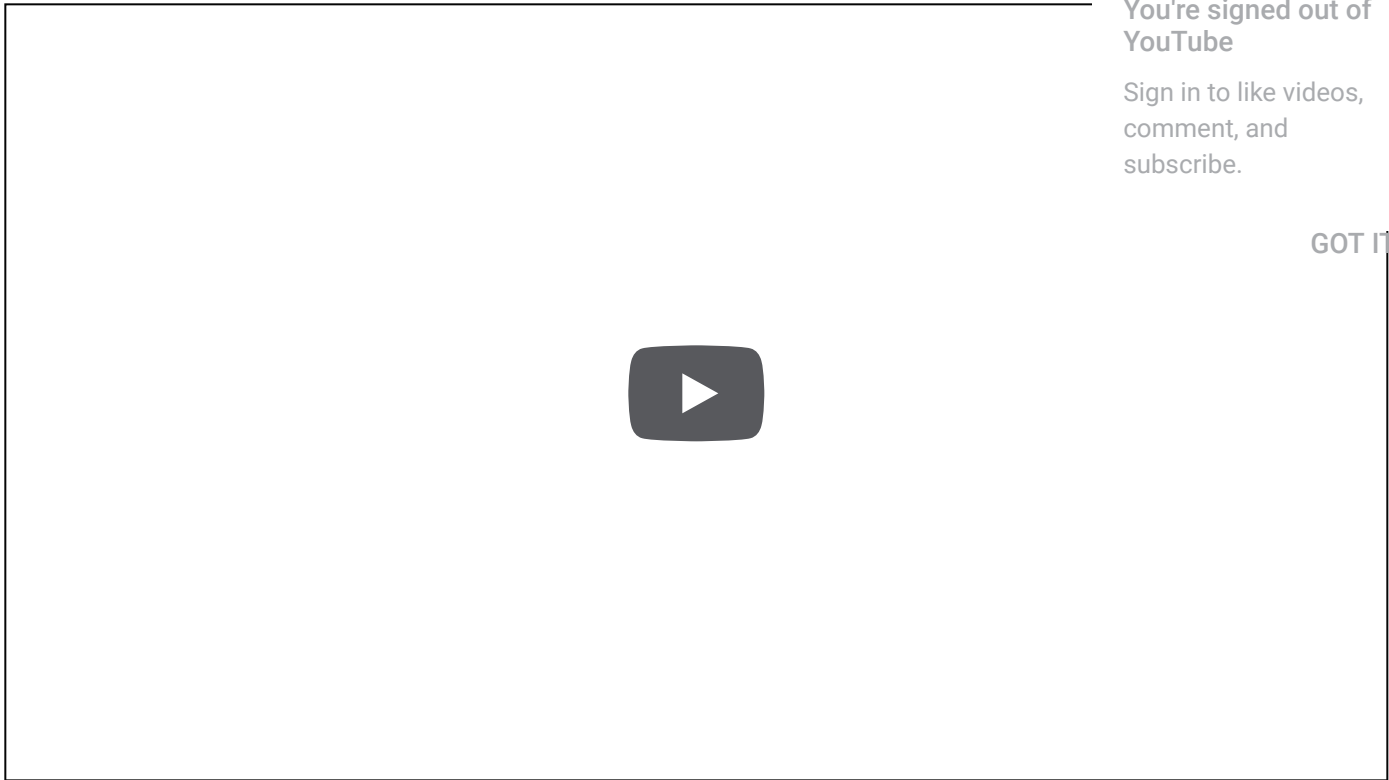
Monks, a small business owner serving his third term, doesn't think this undertaking will deliver anything close to revolutionary changes. Instead, he hopes that House members and senators will find a path forward to give each legislative body the power to reject rules moving forward. That, he believes, will increase legislative oversight of executive agencies, which will eventually lead to better outcomes for all Idahoans.

"Will it change the world?" he asked rhetorically. "No. But it will make our rules better."

*Dustin Hurst is communication director for the Idaho Freedom Foundation. Before joining the Idaho Freedom Foundation, Dustin worked for Watchdog.org, a nationally recognized good journalism organization. His work there was featured or recognized by Fox News, Human Events, Reason.com, TownHall.com, Public Sector Inc. HotAir, and The Daily Caller, among others.*

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# Administrative Rules and Regulations.

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**Kootenai County Republicans**

Published on May 20, 2019

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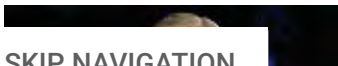
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## Idaho state lands agency reviews administrative rules

May 21, 2019

*TownNews.com Content Exchange*

BOISE, Idaho (AP) — Idaho's top elected officials have directed the state agency responsible for administering regulations on 3,800 square miles (9,800 square kilometers) of state land to carry out a process to make sure those regulations don't expire.

Republican Idaho Gov. Brad Little and the rest of the Idaho Land Board on Tuesday voted 5-0 to direct the Idaho Department of Lands to proceed with temporary and proposed rulemaking.

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The Idaho Legislature's failure to renew administrative rules before it adjourned in April means all state administrative rules expire at midnight on June 30.

The Idaho Department of Lands says it has gone through its administrative rules and identified rules to cut and others to reauthorize for temporary status.

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The agency says the Idaho Attorney General's office has reviewed those decisions.

## Governor proposes cuts to Idaho administrative rules

by By KEITH RIDLER Associated Press | @ | May 21, 2019 12:43 pm

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BOISE, Idaho (AP) — Republican Idaho Gov. Brad Little is taking public comments on his plan to cut or simplify regulations in what he says are a third of all chapters in the state's administrative rules book.

Little on Tuesday released what he proposes to retain and cut in the Idaho Administrative Code, and is taking public comments through June 11.

The Idaho Legislature's failure to renew administrative rules before it adjourned in April means all state administrative rules expire at midnight on June 30.

That gives Little sweeping authority to eliminate thousands of state-approved rules by not using his executive powers to create temporary rules.

Little has made clear his desire to cut regulations in Idaho, issuing an executive order in January requiring state agencies cut two rules for every new one.

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## Governor proposes to cut, simplify one-third of rule chapters and invites comment

by CBS 2 Staff  
Tuesday, May 21st 2019

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*Governor Brad Little is accepting public comment through June 11 on the administrative rules identified for elimination or simplification after the Idaho Legislature's decision not to reauthorize Idaho's Administrative Code during the 2019 legislative session. (Axel Quartarone Photo)*



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decision not to reauthorize Idaho's Administrative Code during the 2019 legislative session.

The Idaho Administrative Code has the full force of law.



At the beginning of the year, it included 736 chapters and 8,278 pages of regulations and at least 72,000 total restrictions.

The Idaho Legislature in the past has reauthorized all existing rules at the end of the legislative session but did not do so this year.

As a result, Governor Little directed his administration to exercise executive authority to ensure rules necessary to protect the public remain in effect after July 1, 2019.

Governor Little's administration used the unique opportunity to identify rules that are clearly outdated and irrelevant for expiration on July 1, 2019.

Executive branch agencies hosted more than 40 public meetings to review rules and identify rules to eliminate.

Agencies had already been comprehensively reviewing the rules they administer to identify areas where rules could be streamlined, scaled back, or eliminated as part of carrying out the Red Tape Reduction Act and the Licensing Freedom Act of 2019.

Governor Little's unprecedented efforts have led to the identification of 139 full chapters of rules proposed for expiration – totaling 19 percent of all rule chapters.

An additional 79 chapters contain individual rule subparts proposed for expiration, and 31 chapters were rewritten to be significantly simplified.

All told, more than 34 percent of all rule chapters are proposed for expiration or simplification.

A list of all rules and their proposed status is posted on the Division of Financial Management (DFM) web site at this link: <https://dfm.idaho.gov/fy-2020-rules-reauthorization-summary.pdf>

Idahoans may submit public comments about the rules proposed for expiration by e-mailing [RulesReview@dfm.idaho.gov](mailto:RulesReview@dfm.idaho.gov) by 5 p.m. MST on June 11.

Governor Little ultimately will make the decision whether to let a rule expire, weighing the public input received before June 11 in his decision.

"This effort is transforming Idaho's Administrative Code into a set of regulations that are simpler and more user-friendly for the public. I want to thank my agency directors and their staff for fast-tracking the rules review process that I started with my executive orders earlier this year," Governor Little said. "Identifying one-third of rule chapters to cut or simplify in four weeks is no small feat, and the hard work within my administration helps to improve transparency and invigorates public confidence in state government."

Rules deemed necessary to protect the public will be reauthorized. Agencies will re-publish the rules as "temporary and proposed rules" concurrently in a special edition of the Idaho Administrative Bulletin in June 2019.

Agencies will accept written comments and host public hearings on rules to be reauthorized, in accordance with state law.

All rules reauthorized through this process are subject to legislative review during the 2020 legislative session.

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proposed, and pending rule stages with specific requirements for public comment.

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AP

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The Idaho Legislature's failure to renew administrative rules before it adjourned in April means all state administrative rules expire at midnight on June 30.

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The Idaho Department of Lands says it has gone through its administrative rules and identified rules to cut and others to reauthorize for temporary status.

The agency says the Idaho Attorney General's office has reviewed those decisions.

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BREAKING

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### Little Administration proposes elimination of 139 chapters of rules

By BETSY Z. RUSSELL [brussell@idahopress.com](mailto:brussell@idahopress.com) May 22, 2019



Gov. Brad Little in his office at the state capitol, Wednesday, April 24, 2019.

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Brian Myrick

BOISE — After more than 40 public meetings hosted by state agencies since the end of this year's legislative session April 11, Gov. Brad Little announced Tuesday that 139 full chapters of state administrative rules have been proposed for expiration as of June 30, 19% of Idaho's entire administrative code.

In addition, sections within another 79 chapters are being proposed for expiration, and 31 chapters are being rewritten to be “significantly simplified.” All in all, more than 34% of Idaho’s administrative rule chapters are proposed for expiration or simplification.

“An opportunity arose, and the good people who work for the state of Idaho rose to the occasion and addressed all of that,” Little told the Idaho Press on Tuesday afternoon.



In a news release, he said, “This effort is transforming Idaho’s Administrative Code into a set of regulations that are simpler and more user-friendly for the public. I want to thank my agency directors and their staff for fast-tracking the rules review process that I started with my executive orders earlier this year. Identifying one-third of rule chapters to cut or simplify in four weeks is no small feat, and the hard work within my administration helps to improve transparency and invigorates public confidence in state government.”

The governor noted that agencies already had begun reviewing administrative rules under two executive orders he issued earlier, the Red Tape Reduction Act and the Licensing Freedom Act of 2019. When the state Legislature failed to pass the annual bill to reauthorize all existing administrative rules by the end of this year’s legislative session, all were up to automatically expire June 30 unless the administration reauthorized them; rules that were deemed still needed are being reauthorized as of July 1.

All reauthorized rules then go back to the Legislature for review during its session that starts in January; the entire administrative code currently stretches for 8,278 pages and includes 736 chapters and at least 72,000 individual rules.

The rules proposed for expiration are posted on the state Division of Financial management website, [dfm.idaho.gov](http://dfm.idaho.gov), in a 48-page document that includes links to all rules proposed for reauthorization; all proposed for expiration; and all proposed for revision or simplification.

Unlike the others, the rules that are proposed for expiration won’t got through the state’s formal public comment and hearing process, so the Little Administration is accepting public comments on them through June 11. After reviewing the comments, the governor himself will decide whether to let those rules expire.

The expiring rules, which start on page 14 of the 48-page document, cover everything from rules for how the Idaho Commission on Aging should administer an older workers program that was eliminated in 1998; to rules that merely duplicate state statutes regarding behavioral health community crisis centers; to a rule regarding paper forms for health insurance claims that now are handled electronically.

A few make substantive changes: One being eliminated from the Department of Insurance, for example, eliminates annual re-certification requirements for fire code officials, which was deemed “an unnecessary regulatory burden.” The administration noted that the State Fire Marshal is only required by law to provide training, not certification.

Another rule being eliminated, from the State Athletic Commission, requires female combatants in boxing, kickboxing, martial arts or mixed martial arts to have two uniforms “in contrasting colors, each uniform consisting of a body shirt, blouse, and shorts.” The administration determined, “Market forces and industry practices address this issue.” The same rationale was given for eliminating a rule requiring a manager to manage no more than three combatants in any one program without written permission from the commission.

Other rules were identified as simply outdated. One 1993 rule, for example, placed restrictions on the creation of new credit unions that overlap the field of membership of an existing credit union. That’s no longer considered grounds for denying an application to charter a credit union, the administration found, noting, “The notion of overlapping fields of membership has little current utility.”

A rule regarding the official seal of the Board of Registration for Professional Geologists is up for elimination because, “The seal of the board has not been used in more than a decade and does not need to be defined in the administrative rules.”

“I said I wasn’t going to do any mischief,” Little said Tuesday afternoon. He said he’s impressed with the number of rules his administration was able to identify for pruning.

Little said the public comment period will allow problems with any of the rule eliminations to be identified before he makes the final call.

“There might be some downside, but in this period of time, we can unwind some of those,” he said.

*Betsy Z. Russell is the Boise bureau chief and state capitol reporter for the Idaho Press and Adams Publishing Group. Follow her on Twitter at @BetsyZRussell.*

## See the full list

The Little Administration has posted the full list of rules proposed to be eliminated, along with those to be revised and those to be reauthorized, online at this link:

<https://dfm.idaho.gov/fy-2020-rules-reauthorization-summary.pdf>



BREAKING

## FUGITIVE ARRESTED AFTER CAR LEAVES ROADWAY, JUMPS CANAL AND LANDS IN HOME'S FRONT YARD

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By KEITH RIDLER Associated Press May 21, 2019 Updated May 21, 2019

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Lawmakers fought over the administrative rules process and ultimately failed to renew them before adjourning in April. That means all rules expire at midnight on June 30.

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"We didn't ask for this but it was a golden opportunity," Little said Tuesday. "I know a lot of very dedicated people all over the state have been doing a lot of work in a very constrained time period."

Little has made clear his intent to cut regulations, issuing three executive orders this year all having to do with limiting or reducing government. They include requiring state agencies to cut two rules for every new one, making it easier to obtain occupational licenses, and forming a committee to find ways to cut inefficiencies in state government.

Little has previously said he's not looking at the rule cutting as an opportunity to do mischief. And he could have let the rules expire without making the cuts available to the public ahead of the deadline. Instead, he chose a public process.

"It's something he felt very strongly about," said Alex Adams, administrator of the Division of Financial Management. "He campaigned on confidence in state government. Part of why we're posting it for public comment is to make sure we didn't miss anything. There really isn't a script for how to handle this because this is the first time this has happened in state history."

Adams was expected to discuss proposed rules changes at a news conference on Wednesday. Most of the rules being altered or eliminated have either become obsolete, been supplanted by statute or court orders, or been consolidated in some way, he said Tuesday.

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There will be additional opportunities to comment. A special Idaho Administrative Bulletin will be published online on June 19. A 21-day public comment period follows before the rules can attain temporary status and remain in effect.

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## Idaho state lands agency reviews administrative rules

May 21, 2019

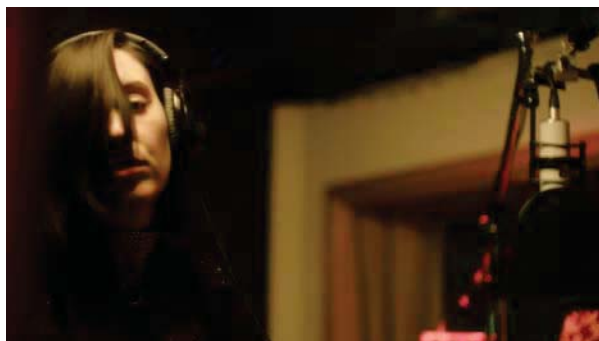
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**RELATED: [Idaho agencies race to reauthorize administrative rules](#)**

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## IDOC moves to shield more types of records from public disclosure

By TOMMY SIMMONS Idaho Press May 21, 2019



Idaho State Correctional Institution, Tuesday, June 26, 2018.

Brian Myrick / Idaho Press

BOISE — The Idaho Board of Correction on Monday approved multiple proposed changes to what information it is required to provide to the public upon request.

The board also changed how residents can argue disputes about those requests.

Among the records board members said they wanted to protect from public disclosure are those relating to security cameras within prisons, citing public safety concerns. While they did not move to exempt security camera footage itself, they did discuss it.

“I don’t know of any other states where they would share camera footage as part of a records request,” said Bree Derrick, chief of staff for the Idaho Department of Correction. “I can’t think of one offhand.”

Security camera footage from Idaho prisons has been important in past cases.

In a 2010 case, for example, security camera footage obtained from the Idaho State Correctional Center showed guards watched as an inmate was attacked and did nothing.

While board members did not move to make such footage exempt, they did move to protect a great deal of other information from public inspection, including such details as the location and number of security cameras within prisons, and specific details about the facilities' construction. They also moved to protect specific information about inmates and visitors, including information about who visits inmates, phone records, emails, video games, e-cards and information about inmates' banking accounts.

It was necessary to protect that information, board members said, for the sake of security.

"I certainly understand the aspect of security," board member Dodds Hayden said about the details on security cameras.

Josh Tewalt, director of the Idaho Department of Correction, also touched on security when talking about the board's decision during a break in the meeting.





Josh Tewalt

Association of State Correctional Administrators

“Our job, also, is about inmate safety, and that includes protecting inmates from other inmates,” he said.

The move to tighten restrictions on what information is available to the public comes after the Idaho Legislature failed to pass a bill that would have extended 8,200 pages of existing rules and regulations for multiple agencies throughout Idaho. That’s forcing all existing rules to be reviewed

and reauthorized, and Gov. Brad Little has instructed agencies to look for rules to let expire, including obsolete rules and rules that duplicate other rules or statutes.

However, the department's proposed new rule exempting security camera information and building information appears to duplicate an existing statutory exemption in the Idaho Public Records Act for "critical infrastructure" information whose release could jeopardize public safety. The existing exemption specifically includes telecommunications systems.

The board's recommendation goes to Little; if approved, the new rules would be up for legislative review in January.

The Idaho Department of Correction is empowered by state law to use administrative rules to create public records exemptions only when it finds that specific interests including public safety and security "clearly" outweigh the public interest in disclosure.

Tewalt said there has been no consistency in how the department has handled certain requests for information. That information was given out on a case-by-case basis. The action board members took Monday was meant to create a more uniform approach, he said.

"We're not trying to have some crazy departure in policy," he said.

In addition to that, board members also approved a change in the way the board can negotiate disputes related to public records. In the past, an informal mediation process has existed for the department to work with a person requesting records department officials felt they could not release. With board members opting to remove that specific carve-out from the rules, however, the only option a person has if they want to dispute the department's withholding of records is to take the department to court.

Tewalt said the department will still work toward an agreement with people before the dispute gets to that point, though.

"That wasn't intended to deny you recourse," he said. "I don't know that we need to have that spelled out in the rule, to have an informal resolution process."

Asked about government transparency, Tewalt said the board had a "public weighing process" Monday morning in deciding on the rules. He said the board can revisit the issue if need be later on.

"We're not trying to pull a curtain over it," he said. "We're trying to get some consistency in how we handle these requests."

Ad



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TUESDAY MAY 21, 2019 06:08 PM

# Governor proposes cuts to Idaho administrative rules

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WRITTEN BY BY KEITH RIDLER, ASSOCIATED PRESS

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## Governor proposes cuts to Idaho administrative rules

UPDATED: Tue., May 21, 2019, 10:12 p.m.



The dome of the Idaho Statehouse looms over the snowcovered foothills in Idaho's capitol city of Boise in this undated photo. (TROY MABEN / Associated Press)

			
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By Keith Ridler



BOISE – Gov. Brad Little announced Tuesday that he’s taking public comments on his plan to cut or simplify regulations in what he says are a third of all chapters in the state’s administrative rules book.

There are about 8,200 pages of administrative rules containing 736 chapters that touch on just about every aspect of life. They include such things as protecting consumers, homeowners, the environment and school children. They range from hunting and fishing licenses and seasons to licensing for health care professionals and construction contractors.

The Republican released what he proposes to retain and cut in the Idaho Administrative Code on the state’s Division of Financial Management website. Public comments are being taken through June 11.

Lawmakers fought over the administrative rules process and ultimately failed to renew them before adjourning in April. That means all rules expire at midnight on June 30.

Little now has sweeping authority to eliminate thousands of rules by not using his executive powers to create temporary ones.

“We didn’t ask for this but it was a golden opportunity,” Little said Tuesday. “I know a lot of very dedicated people all over the state have been doing a lot of work in a very constrained time period.”

Little has made clear his intent to cut regulations, issuing three executive orders this year all having to do with limiting or reducing government. They include requiring state agencies to cut two rules for every new one, making it easier to obtain occupational licenses, and forming a committee to find ways to cut inefficiencies in state government.

Little has previously said he’s not looking at the rule cutting as an opportunity to do mischief. And he could have let the rules expire without making the cuts available to the public ahead of the deadline. Instead, he chose a public process.

“It’s something he felt very strongly about,” said Alex Adams, administrator of the Division of Financial Management. “He campaigned on confidence in state government. Part of why we’re posting it for public comment is to make sure we didn’t miss anything. There really isn’t a script for how to handle this because this is the first time this has happened in state history.”

Adams was expected to discuss proposed rules changes at a news conference on Wednesday. Most of the rules being altered or eliminated have either become obsolete, been supplanted by statute or court orders, or been consolidated in some way, he said Tuesday.

“Our goal was to ensure that it was just simpler and easier for Idahoans,” Adams said.

There will be additional opportunities to comment. A special Idaho Administrative Bulletin will be published online on June 19. A 21-day public comment period follows before the rules can attain temporary status and remain in effect.

In addition, some agencies are also planning to hold public hearings beyond the 21 days.

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**Tags:** administrative rules, Gov. Brad Little, idaho administration code, Idaho government, news, public comment, republican



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## NATIONAL POLITICS

# Idaho state lands agency reviews administrative rules

THE ASSOCIATED PRESS

MAY 21, 2019 10:42 AM, UPDATED MAY 21, 2019 10:43 AM

*BOISE, IDAHO*

Idaho's top elected officials have directed the state agency responsible for administering regulations on 3,800 square miles (9,800 square kilometers) of state land to carry out a process to make sure those regulations don't expire.

Republican Idaho Gov. Brad Little and the rest of the Idaho Land Board on Tuesday voted 5-0 to direct the Idaho Department of Lands to proceed with temporary and proposed rulemaking.

The Idaho Legislature's failure to renew administrative rules before it adjourned in April means all state administrative rules expire at midnight on June 30.

The Idaho Department of Lands says it has gone through its administrative rules and identified rules to cut and others to reauthorize for temporary status.

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The agency says the Idaho Attorney General's office has reviewed those decisions.

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By **Associated Press, Wire Service Content** May 21, 2019

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# Governor proposes cuts to Idaho administrative rules

By KEITH RIDLER - *Associated Press* - Tuesday, May 21, 2019

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# Idaho Repeals Its Entire Regulatory Code

[Blog/Regulation](#)

Posted May 22, 2019 by Martin Armstrong

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Believe it or not, sometimes there is a glimmer of hope. The glimmer came in Idaho and stunned governments around the world. Idaho's state legislature just opted to repeal the **entire** state regulatory code. The greatest problem with regulation is that it remains there forever. There are so many laws that everyone breaks every day unknowingly because the books are cluttered with antiquated regulations. The new governor is now presented with an amazing opportunity to repeal an outdated and burdensome regulatory code and replace it with a more streamlined and sensible set of rules. Other states should be paying close attention. Even the flak Trump got over revising NAFTA was a classic example of outdated rules. NAFTA predated the explosion of the internet. With online commerce skyrocketing, it was omitted from NAFTA.

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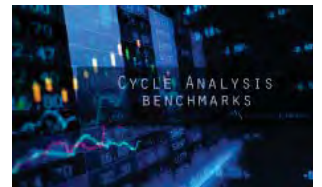
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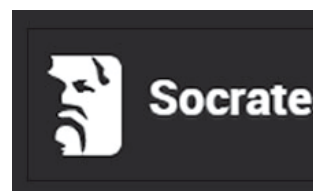
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May 22, 2019

# Rules, Golden Rules, and More Rules

*We are closely watching mining regulations. Read below and Take Action!*

Every year, after the Idaho Legislative Session ends, state agencies kickoff the rule-making process to update the Idaho Administrative Code to reflect any statutory changes made during the session.

## First...What are Administrative Rules?

**Administrative rules** are agency regulations that have the full force and effect of law. These **rules** elaborate upon, or provide implementation guidance for a law or policy. Idaho is one of a few states that requires the legislature to consider and approve agency rules. Currently, the Idaho Administrative Code includes 8,278 pages, (<https://adminrules.idaho.gov/rules/current/index.html>) that *governs every from plumbing codes to nail salons to dairy farms to potato diseases to crow hunting*. The Idaho State Dept. of Agriculture has 79 rules alone.

Usually, they only have to deal with updates because the Legislature extends all existing permanent rules from one year to the next. **This year, the process looks different** because, for the first time, the Legislature (and specifically the Idaho House of Representatives) did not pass the standard Rules Extension Bill. So, Governor Little responded (<https://gov.idaho.gov/pressrelease/governor-little-outlines-process-to-keep-administrative-rules-in-effect/>) and now must implement all rules as temporary rules prior to July 1, and to promulgate permanent rules for consideration by the Legislature in 2020.

The cumbersome process has led to confusion ([https://www.idahopress.com/news/local/all-state-agencies-going-through-rules-review-on-steroids/article\\_4f2ae4a2-bd1e-5f96-9598-ee1291e20219.html](https://www.idahopress.com/news/local/all-state-agencies-going-through-rules-review-on-steroids/article_4f2ae4a2-bd1e-5f96-9598-ee1291e20219.html)) as every agency board and commission (i.e. Idaho Water Resource Board, Board of Environmental Quality, Land Board, Fish and Game Commission, Board of Education, etc.) must approve temporary rules this spring and permanent rules this fall. To boot, all rules must be noticed in the local newspaper of record in each state, leading to significant publication costs.

## But Wait, There's More

In addition to the existing rules, agencies are also revising existing rules in response to legislative changes, or in response to petitions from industry, businesses or others. In particular, there are a couple of rule-making efforts underway that deal with **mining regulations that we are watching closely.**

## Rules for Mining Cleanup

During the 2019 Legislative Session, House Bill 141 amended reclamation requirements that govern how mines are required to cleanup (<https://www.idahoconservation.org/issues/idaho-state-legislature/legislative-tracking/hb-141-mining-and-reclamation-bonding-2019/>) their mining operations. In particular, it established procedures for how mining companies can bond for reclamation costs. These bonds provide a form of insurance in the event that a mining company makes off with valuable ore, then declares bankruptcy and skips town. Unfortunately, this is an all-too-familiar story in the mining industry (<https://earthworks.org/media-releases/widespread-failure-to-predict-water-pollution-cleanup-costs-at-montana-mines/>). In Idaho, one need look no further than the ASARCO bankruptcy that left taxpayers paying the tab for cleanup at the Triumph Mine (<https://www.idahostatesman.com/news/politics-government/state-politics/article224796475.html>) near Ketchum.

Unfortunately, the legislation allowed for the use of “Corporate Guarantees” which allow mining companies to use the value of their own companies as collateral in case they aren’t able to pay the costs of cleanup. The fact is, **when mining companies go bankrupt their collateral value is worthless, leaving taxpayers to cover the costs.** That’s why the EPA Inspector General noted in 2017, in the instance of self-insurance or Corporate Guarantees “a company may default on its obligation to pay...EPA – and ultimately, the taxpayers- could be left with billions of dollars in clean up costs.” That’s why federal agencies don’t accept corporate guarantees anymore.

ICL is participating in the Idaho Department of Lands negotiated rule-making process that requires consideration for public input. Among other things, **ICL will be asking that more secure forms of surety bonds be required for mining cleanup. And if Corporate Guarantees are allowed, they must be properly conditioned to minimize risks to taxpayers, and the environment.**

All comments, background documents and info on meetings are available on the IDL Mining Reclamation Rule-making website. (<https://www.idl.idaho.gov/rulemaking/20.03.02-2019/index.html>)

**Take Action and Speak Up on This Rule Today!** (<https://p2a.co/XUvbBrr>)

## Rules for Cyanide Mines

In addition to the rules for reclamation of mined areas, the Idaho Mining Association petitioned the Idaho Department of Environmental Quality for changes to the rules governing mines that utilize cyanide. Cyanide is a toxic chemical (<https://earthworks.org/issues/cyanide/>) used to process large amounts of ore to remove small quantities of gold.

Because of the toxicity of cyanide, and due to the fact that **virtually all cyanide leach mines have experienced toxic spills, ruptures or releases,** special rules were put in place in 2005. Those rules require leach pads, processing ponds and tailings impoundments to have a double liner with a leak detection system and specifications to protect surface and ground water. Since 2005, no applications have been submitted to construct a mine that uses cyanidation processes.

In response to the petition from the Idaho Mining Association, the DEQ is considering performance-based rules, instead of more detailed specifications.

ICL is also participating in the DEQ negotiated rule-making process (<https://www.deq.idaho.gov/laws-rules-etc/deq-rulemakings/docket-no-58-0113-1901/>). **We will be asking DEQ to maintain strong protections that minimize the risks to the environment.**



## What Else is Coming?

Other rules will be open for public comment in June that cover water quality, air quality, mining, fish & game and education. Among them are the K-12 science standards that were approved in 2018 (<https://www.idahoednews.org/news/unabridged-official-senate-oks-science-standards/>) after a 3-year battle. **We'll be watching each of these closely and encouraging members and supporters to weigh in with their views.**

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Jonathan Oppenheimer

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*Take action! (<https://p2a.co/XUvbBrr>) Mining companies should not be allowed to leave taxpayers with the responsibility of cleaning up their mess.*

TOP ↑

# LITTLE PLANS TO CUT OR SIMPLIFY ONE THIRD OF ADMINISTRATIVE RULES

Clark Corbin • 05/21/2019



Gov. Brad Little plans to cut or simplify about one third of all existing administrative rules as he moves forward with his plan for reauthorizing rules this summer, his staff announced Tuesday.

Details of Little's plan to cut and simplify rules are the latest development in a saga (<https://www.idahoednews.org/news/little-will-temporarily-reinstate-agency-rules/>) that has played out since the 2019 legislative session adjourned (<https://www.idahoednews.org/news/the-2019-legislative-session-adjourns/>) in April. Because the Legislature did not reauthorize rules this year, all of them — thousands of pages worth — would be set to expire on July 1 if Little doesn't intervene.

Rules are important in Idaho because they carry the force of law, and so many of them affect Idahoans' lives. K-12 academic standards, state fees, immunization rules, health and welfare guidelines and more all take the form of administrative rule.

Little already announced that he plans to reauthorize rules (<https://www.idahoednews.org/news/rules-reauthorization-process-underway/>) in an effort to keep the government running and avoid disruptions in services. At the same time, he called on state agencies to identify outdated, repetitive or unnecessary rules that could be targeted for expiration.

"This effort is transforming Idaho's Administrative Code into a set of regulations that are simpler and more user-friendly for the public. I want to thank my agency directors and their staff for fast-tracking the rules review process that I started with my executive orders earlier this year," Little said in a written statement.

"Identifying one third of rule chapters to cut or simplify in four weeks is no small feat, and the hard work within my administration helps to improve transparency and invigorates public confidence in state government."

During a briefing with reporters Wednesday at the Statehouse, Division of Financial Management administrator Alex Adams estimated it will cost the state \$40,000 to publish legal notice of the rules reauthorization in Idaho newspapers. Adams said

that the cost to taxpayers would have been the same if Little had instead called a special legislative session to address the situation.

Little's staff will also publish the reauthorized rules as "temporary and proposed rules" in a special edition of the Administrative Bulletin, scheduled to be published June 19.

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Little isn't targeting sweeping changes to education rules. But State Board of Education officials have identified eight rules (<https://www.idahoednews.org/news/eight-is-more-than-enough-state-board-puts-dated-rules-on-the-chopping-block/>) for the chopping block.

A list of rules and their status, including rules targeted for expiration or rewriting is available online here (<https://dfm.idaho.gov/fy-2020-rules-reauthorization-summary.pdf>). Idaho residents have until June 11 to comment on any rule. To comment, Idahoans may send an email to [rulesreview@dfm.idaho.gov](mailto:rulesreview@dfm.idaho.gov) (<mailto:rulesreview@dfm.idaho.gov>).

Little said he will weigh that feedback before making a final decision prior to July 1.

Here's how it breaks down.

- At the beginning of the 2019 legislative session, there were 8,278 pages of rules, spanning 736 different chapters, according to Little's office. That's more than 72,000 total restrictions.  
Little plans to allow 19 percent of all rule chapters – 139 full chapters out of 736 – to expire on July 1.
- Additionally, he plans to allow rule subparts from an additional 79 chapters to expire.
- Finally, he plans to rewrite and simplify 31 chapters of rules.
- That brings the total percentage of rules that are proposed to expire or be simplified to more than 34 percent of all rules.

Although the number of rules and chapters might give the impression reauthorizing rules was a burden for Little's office and state agencies, Adams said many officials viewed it as an opportunity to cut red tape.

"This transformation makes it better for the public," Adams said. "It makes it simpler for the average Idahoan to navigate rules and, frankly, it will be 20 percent lighter so it will be easier to read through and figure out how it applies."

During the 2020 session, legislators will be able to review every rule that Little reauthorizes. Other than fee rules, most rules only need to be ratified by one legislative chamber, not both.

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[https://www.idahostatejournal.com/news/local/little-administration-proposes-elimination-of-chapters-of-rules/article\\_232080c0-b85c-5035-b58f-54c892bea4b2.html](https://www.idahostatejournal.com/news/local/little-administration-proposes-elimination-of-chapters-of-rules/article_232080c0-b85c-5035-b58f-54c892bea4b2.html)

## Little Administration proposes elimination of 139 chapters of rules

By BETSY Z. RUSSELL [brussell@idahopress.com](mailto:brussell@idahopress.com) May 22, 2019



Gov. Brad Little in his office at the state Capitol, Wednesday, April 24, 2019. "My goal is to have everybody's wages going up, based on market conditions," Little said.

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Brian Myrick

BOISE — After more than 40 public meetings hosted by state agencies since the end of this year's legislative session April 11, Gov. Brad Little announced Tuesday that 139 full chapters of state administrative rules have been proposed for expiration as of June 30, 19% of Idaho's entire administrative code.

In addition, sections within another 79 chapters are being proposed for expiration, and 31 chapters are being rewritten to be “significantly simplified.” All in all, more than 34% of Idaho’s administrative rule chapters are proposed for expiration or simplification.

“An opportunity arose, and the good people who work for the state of Idaho rose to the occasion and addressed all of that,” Little told the Idaho Press on Tuesday afternoon.



In a news release, he said, “This effort is transforming Idaho’s Administrative Code into a set of regulations that are simpler and more user-friendly for the public. I want to thank my agency directors and their staff for fast-tracking the rules review process that I started with my executive orders earlier this year. Identifying one-third of rule chapters to cut or simplify in four weeks is no small feat, and the hard work within my administration helps to improve transparency and invigorates public confidence in state government.”

The governor noted that agencies already had begun reviewing administrative rules under two executive orders he issued earlier, the Red Tape Reduction Act and the Licensing Freedom Act of 2019. When the state Legislature failed to pass the annual bill to reauthorize all existing administrative rules by the end of this year’s legislative session, all were up to automatically expire June 30 unless the administration reauthorized them; rules that were deemed still needed are being reauthorized as of July 1.

All reauthorized rules then go back to the Legislature for review during its session that starts in January; the entire administrative code currently stretches for 8,278 pages and includes 736 chapters and at least 72,000 individual rules.

The rules proposed for expiration are posted on the state Division of Financial management website, [dfm.idaho.gov](http://dfm.idaho.gov), in a 48-page document that includes links to all rules proposed for reauthorization; all proposed for expiration; and all proposed for revision or simplification.

Unlike the others, the rules that are proposed for expiration won’t got through the state’s formal public comment and hearing process, so the Little Administration is accepting public comments on them through June 11. After reviewing the comments, the governor himself will decide whether to let those rules expire.

The expiring rules, which start on page 14 of the 48-page document, cover everything from rules for how the Idaho Commission on Aging should administer an older workers program that was eliminated in 1998; to rules that merely duplicate state statutes regarding behavioral health community crisis centers; to a rule regarding paper forms for health insurance claims that now are handled electronically.

A few make substantive changes: One being eliminated from the Department of Insurance, for example, eliminates annual re-certification requirements for fire code officials, which was deemed “an unnecessary regulatory burden.” The administration noted that the State Fire Marshal is only required by law to provide training, not certification.

Another rule being eliminated, from the State Athletic Commission, requires female combatants in boxing, kickboxing, martial arts or mixed martial arts to have two uniforms “in contrasting colors, each uniform consisting of a body shirt, blouse, and shorts.” The administration determined, “Market forces and industry practices address this issue.” The same rationale was given for eliminating a rule requiring a manager to manage no more than three combatants in any one program without written permission from the commission.

Other rules were identified as simply outdated. One 1993 rule, for example, placed restrictions on the creation of new credit unions that overlap the field of membership of an existing credit union. That’s no longer considered grounds for denying an application to charter a credit union, the administration found, noting, “The notion of overlapping fields of membership has little current utility.”

A rule regarding the official seal of the Board of Registration for Professional Geologists is up for elimination because, “The seal of the board has not been used in more than a decade and does not need to be defined in the administrative rules.”

“I said I wasn’t going to do any mischief,” Little said Tuesday afternoon. He said he’s impressed with the number of rules his administration was able to identify for pruning.

Little said the public comment period will allow problems with any of the rule eliminations to be identified before he makes the final call.

“There might be some downside, but in this period of time, we can unwind some of those,” he said.

*Betsy Z. Russell is the Boise bureau chief and state capitol reporter for the Idaho Press and Adams Publishing Group. Follow her on Twitter at @BetsyZRussell.*

## See the full list

The Little Administration has posted the full list of rules proposed to be eliminated, along with those to be revised and those to be reauthorized, online at this link:

<https://dfm.idaho.gov/fy-2020-rules-reauthorization-summary.pdf>

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# Governor Little invites public comments on administrative rules that could be cut and simplified

Governor seeks public comments on rule elimination

Posted: 6:18 AM, May 22, 2019 Updated: 6:18 AM, May 22, 2019



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BOISE, Ida. — Governor Brad Little is seeking public comment now on administrative rules identified for elimination or simplification after the Idaho Legislature's decision to reauthorize Idaho's Administrative Code during the 2019 legislative session.

The Idaho Administrative Code has the full force of law. At the beginning of the year included 736 chapters, 8,278 pages of regulations and at least 72,000 total restrictions. In the past, state legislators reauthorized all existing rules at the end of the legislative session but did not do so this year. Governor Little then directed his administration to exercise executive authority to ensure rules necessary to protect the public remain in effect at July 1, 2019.

Governor Little's administration used the unique opportunity to identify rules that are outdated and irrelevant for expiration on July 1, 2019. Executive branch agencies held more than 40 public meetings to review rules and identify rules to eliminate.

Agencies had already been comprehensively reviewing the rules they administer to identify areas where rules could be streamlined, scaled back, or eliminated as part of carrying out the Red Tape Reduction Act and the Licensing Freedom Act of 2019. Both acts result from executive orders Governor Little issued within his first few months in office to reduce regulatory burdens on Idaho citizens and businesses.

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significantly simplified. Right now, more than 34 percent of all rule chapters are pro for expiration or simplification.

A list of all rules and their proposed status is posted on the Division of Financial Management (DFM) web site. You can view them [here](#) . Idahoans may submit public comments about the rules proposed for expiration by e-mailing [RulesReview@dfm.idaho.gov](mailto:RulesReview@dfm.idaho.gov) by 5 p.m. MST on June 11.

Governor Little ultimately will make the decision whether to let a rule expire, weigh public input received before June 11 in his decision.

“This effort is transforming Idaho’s Administrative Code into a set of regulations that are simpler and more user-friendly for the public. I want to thank my agency directors and their staff for fast-tracking the rules review process that I started with my executive order earlier this year,” Governor Little said. “Identifying one-third of rule chapters to cut and simplify in four weeks is no small feat, and the hard work within my administration is intended to improve transparency and invigorates public confidence in state government.”

Rules deemed necessary to protect the public will be reauthorized. Agencies will re-post the rules as “temporary and proposed rules” concurrently in a special edition of the Idaho Administrative Bulletin in June 2019. Agencies will accept written comments and hold public hearings on rules to be reauthorized, in accordance with state law.

All rules reauthorized through this process are subject to legislative review during the next legislative session. Any new rules or significant modifications to existing rules must go through the normal rule-making process, which traditionally involves a months-long process of negotiated, proposed, and pending rule stages with specific requirements for public comment.

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## Governor proposes cuts to Idaho administrative rules

KEITH RIDLER Associated Press May 22, 2019

99¢ FOR THE FIRST MONTH



Inside of the Idaho Capitol building Jan. 11, 2916, in Boise.

BOISE — Gov. Brad Little announced Tuesday that he's taking public comments on his plan to simplify regulations in what he says are a third of all chapters in the state's administrative rule book.

There are about 8,200 pages of administrative rules containing 736 chapters that touch on just about every aspect of life. They include such things as protecting consumers, homeowners, the environment and school children. They range from hunting and fishing licenses and seasonal licensing for health care professionals and construction contractors.

The Republican released what he proposes to retain and cut in the Idaho Administrative Code on the state's Division of Financial Management website. Public comments are being taken through June 11.

Lawmakers fought over the administrative rules process and ultimately failed to renew the process when adjourning in April. That means all rules expire at midnight on June 30.

Little now has sweeping authority to eliminate thousands of rules by not using his executive powers to create temporary ones.

"We didn't ask for this but it was a golden opportunity," Little said Tuesday. "I know a lot of dedicated people all over the state have been doing a lot of work in a very constrained time."

Little has made clear his intent to cut regulations, issuing three executive orders this year aimed at doing so with limiting or reducing government. They include requiring state agencies to cut two-thirds of the way for every new one, making it easier to obtain occupational licenses, and forming a committee to find ways to cut inefficiencies in state government.

Little has previously said he's not looking at the rule cutting as an opportunity to do mischief. He could have let the rules expire without making the cuts available to the public ahead of the deadline. Instead, he chose a public process.

"It's something he felt very strongly about," said Alex Adams, administrator of the Division of Financial Management. "He campaigned on confidence in state government. Part of why we're posting it for public comment is to make sure we didn't miss anything. There really isn't a precedent for how to handle this because this is the first time this has happened in state history."

Adams was expected to discuss proposed rules changes at a news conference on Wednesday. Some of the rules being altered or eliminated have either become obsolete, been supplanted by state court orders, or been consolidated in some way, he said Tuesday.

"Our goal was to ensure that it was just simpler and easier for Idahoans," Adams said.

There will be additional opportunities to comment. A special Idaho Administrative Bulletin is published online on June 19. A 21-day public comment period follows before the rules can be rescinded or have temporary status and remain in effect.

In addition, some agencies are also planning to hold public hearings beyond the 21 days.

# Rewriting Idaho's rules

Rockies Today for Wednesday, May 22



Mountain West News

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## Gov. Little given sweeping authority over state code

The Idaho Legislature's failure to renew administrative rules before it adjourned in April means all state administrative rules expire come July 1. Gov. Brad Little now has sweeping authority to eliminate or rewrite those rules. On Tuesday, Little announced his plan to cut or simplify roughly a third of the chapters in the state's 8,278-page administrative code.

Little Administration proposes elimination of 139 chapters of rules

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*BOISE—After more than 40 public meetings hosted by state agencies since the end of this year's legislative session April 11, Gov. Brad Little announced Tuesday that 139 full chapters of state administrative rules have been proposed for expiration as of June 30, 19% of Idaho's entire administrative code.*

*In addition, sections within another 79 chapters are being proposed for expiration, and 31 chapters are being rewritten to be "significantly simplified." All in all, more than 34% of Idaho's administrative rule chapters are proposed for expiration or simplification.*

*“An opportunity arose, and the good people who work for the state of Idaho rose to the occasion and addressed all of that,” Little told the Idaho Press on Tuesday afternoon.*

*In a news release, he said, “This effort is transforming Idaho’s Administrative Code into a set of regulations that are simpler and more user-friendly for the public. I want to thank my agency directors and their staff for fast-tracking the rules review process that I started with my executive orders earlier this year. Identifying one-third of rule chapters to cut or simplify in four weeks is no small feat, and the hard work within my administration helps to improve transparency and invigorates public confidence in state government.”*

*The governor noted that agencies already had begun reviewing administrative rules under two executive orders he issued earlier, the Red Tape Reduction Act and the Licensing Freedom Act of 2019. When the state Legislature failed to pass the annual bill to reauthorize all existing administrative rules by the end of this year’s legislative session, all were up to automatically expire June 30 unless the administration reauthorized them; rules that were deemed still needed are being reauthorized as of July 1.*

*All reauthorized rules then go back to the Legislature for review during its session that starts in January; the entire administrative code currently stretches for 8,278 pages and includes 736 chapters and at least 72,000 individual rules.*

*The rules proposed for expiration are posted on the state [Division of Financial management website, dfm.idaho.gov](#), in a 48-page document that includes links to all rules proposed for reauthorization; all proposed for expiration; and all proposed for revision or simplification.*

More from the AP:

Governor proposes cuts to Idaho administrative rules



Gov. Brad Little is taking public comments on his plan to cut or simplify regulations in what he say...

[www.spokesman.com](http://www.spokesman.com)



*Little has made clear his intent to cut regulations, issuing three executive orders this year all having to do with limiting or reducing government. They include requiring state agencies to cut two rules for every new one, making it easier to obtain occupational licenses, and forming a committee to find ways to cut inefficiencies in state government.*

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*"It's something he felt very strongly about," said Alex Adams, administrator of the Division of Financial Management. "He campaigned on confidence in state government. Part of why we're posting it for public comment is to make sure we didn't miss anything. There really isn't a script for how to handle this because this is the first time this has happened in state history."*



The dome of the Idaho Statehouse looms over the snowcovered foothills in Idaho's capital city of Boise in this undated photo. Photo: Troy Maben / Associated Press



The Mercatus Center, a free-market think tank based at George Mason University, described the situation as “an unprecedented opportunity to repeal an outdated and burdensome regulatory code and replace it with a more streamlined and sensible set of rules”:

### Idaho Repeals Its Regulatory Code

Something rather remarkable just happened in Idaho. The state legislature opted to—in essence—...

[www.mercatus.org](http://www.mercatus.org)



*The main constraint now facing Idaho state agencies is time—they could use more of it. Regulators have just two months to decide which rules should stay and which should go. With more time, they might be able to tweak and modernize those regulations deemed necessary; instead, many rules may simply be readopted without changes.*

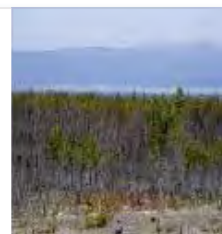
*Nevertheless, whether intentionally or not, Idaho deserves credit for advancing the frontier of regulatory reform in a new and innovative way. Any state without a sunset provision should consider setting one up, modeled after the Idaho approach. Forcing a fresh start by repealing the entire regulatory code may be the newest arrow in the red tape cutter's quiver. Time will tell whether Governor Little and company's aim is true.*

## Study: More frequent fires hinder forest recovery

A study conducted in the Greater Yellowstone Ecosystem found that short breaks between wildfires makes it tough for trees to regrow, and the region's forests could change significantly if recovering forests burn more often—something the study's author says may happen in a warming world.

### Study: Short-interval fire hampers Yellowstone forest recovery

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## Governor Proposes Cuts to Idaho Administrative Rules

Republican Idaho Gov. Brad Little is taking public comments on his plan to cut or simplify regulations in what he says are a third of all chapters in the state's administrative rules book.

By **Associated Press, Wire Service Content** May 21, 2019

**BY KEITH RIDLER, Associated Press**

BOISE, Idaho (AP) — Republican [Idaho](#) Gov. Brad Little is taking public comments on his plan to cut or simplify regulations in what he says are a third of all chapters in the state's administrative rules book.

Little on Tuesday released what he proposes to retain and cut in the Idaho Administrative Code, and is taking public comments through June 11.

The Idaho Legislature's failure to renew administrative rules before it adjourned in April means all state administrative rules expire at midnight on June 30.

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That gives Little sweeping authority to eliminate thousands of state-approved rules by not using his executive powers to create temporary rules.

Little has made clear his desire to cut regulations in Idaho, issuing an executive order in January requiring state agencies cut two rules for every new one.

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**Tags: Idaho**



# Spring Cleaning for the Regulatory State

By [Adam Thierer](#)

THURSDAY, MAY 23, 2019

ECONOMIC EDUCATION

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Spring is in full blossom, and many of us are in the midst of our annual house-cleaning ritual. A regular deep clean makes good sense because it makes our living spaces more orderly and gets rid of the gunk and grime that has amassed over the past year.

Unfortunately, governments almost never engage in their own spring-cleaning exercise. Statutes and regulations continue to accumulate, layer by layer, until they suffocate not only economic opportunity, but also the effective administration of government itself. Luckily, some states have realized this and have taken steps to help address this problem.

## Mountains of Regulations

First, here are some hard facts about regulatory accumulation:

- Red tape grows: Since the first edition of his annual publication [Ten Thousand Commandments](#) in 1993, Wayne Crews has documented how federal agencies have issued 101,380 rules. [Other reports](#) find agency staffing levels jumped from 57,109 to 277,163 employees from 1960 to 2017, while [agency budgets swelled](#) in real terms from \$3 billion in 1960 to \$58 billion in 2017 (2009\$).
- Nothing ever gets cleaned up: A [Deloitte survey of U.S. Code](#) reveals that 68 percent of federal regulations have never been updated and that 17 percent have only been updated once. If a company never updated its business model, it would fail eventually. But governments get away with doing the same thing without any fear of failure. “If it were a country, U.S. regulation would be the world’s eighth-largest economy, ranking behind India and ahead of Italy,” Crews notes.
- The burden of regulatory accumulation is getting worse: “The estimate for regulatory compliance and economic effects of federal intervention is \$1.9 trillion annually,” Crews finds, which is equal to 10 percent of the U.S. gross domestic product for 2017. When federal spending is added to regulatory costs are added to federal spending, Crews finds, the burden equals \$4.173 trillion, or 30 percent of the entire economy. [Mercatus Center research](#) has found that “economic growth in the United States has, on average, been

slowed by 0.8 percent per year since 1980 owing to the cumulative effects of regulation.” This means that “the US economy would have been about 25 percent larger than it actually was as of 2012” if regulation had been held to roughly the same aggregate level it stood at in 1980.

In sum, [the evidence shows](#) that the red tape is growing without constraint, hindering entrepreneurship and innovation, deterring new investment, raising costs to consumers, limiting worker opportunities/wages, and undermining economic growth.

Regulations accumulate in this fashion because the administrative state is on [autopilot](#). Legislatures pass broad statutes delegating ambiguous authority to agencies. Bureaucrats are then free to roll the regulatory snowball down the hill until it has become so big that its momentum cannot be stopped.

### **The Death of Common Sense**

Policy makers enact new rules with the best of intentions, of course, but we should not assume that the untrammelled growth of the regulatory state produces positive results. There is no free lunch, after all. Every regulation is a restriction on [opportunities for experimentation](#) with new and potentially better ways of doing things. Sometimes such restrictions make sense because regulations can pass a reasonable cost-benefit test. It would be foolish to assume that all regulations on the books do.

Spring cleaning for the regulatory state, therefore, should be viewed as an exercise in “good governance.” The goal is not to get rid of all regulations. The goal is to make sure that rules are reasonable and cost-effective so that the public can actually understand the law and get the highest value out of their government institutions.

Philip K. Howard, founder and chair of the nonprofit coalition Common Good and the author of *The Death of Common Sense*, has written extensively about how regulatory accumulation has become a chronic problem. “Too much law,” [he argues](#), “can have similar effects as too little law.” “People slow down, they become defensive, they don’t initiate projects because they are surrounded by legal risks and bureaucratic hurdles,” Howard notes. “They tiptoe through the day looking over their shoulders rather than driving forward on the power of their instincts. Instead of trial and error, they focus on avoiding error.”

In such an environment, risk-taking and entrepreneurialism are more challenging and [economic dynamism suffers](#). But regulatory accumulation also hurts the quality of government institutions and policies, which become [fundamentally incomprehensible or illogical](#). “Society can’t function when stuck in a heap of accumulated mandates of past generations,” Howard concludes. This is why an occasional regulatory house cleaning is essential to unleash economic opportunity and improve the functioning of our democratic institutions.

### **Regulatory House Cleaning Begins**

Reforms to address this problem are finally happening. In a series of new essays, my colleague James Broughel has documented how several states — including [Idaho, Ohio, Virginia, and New Jersey](#) — are undertaking serious efforts to get regulatory accumulation under control. They are utilizing a variety of mechanisms, including “regulatory reduction pilot programs” and “red tape review commissions.” Recently, Idaho actually initiated a [sunset of its entire regulatory code](#) and will now try to figure out how to clean up its [8,200 pages of regulations containing 736 chapters of state rules](#).

Meanwhile, other states are undertaking serious reform in one of the worst forms of regulatory accumulation: occupational licenses. The Federal Trade Commission [notes](#) that roughly 30 percent of American jobs require a license today, up from less than 5 percent in the 1950s. [Research by economist Morris Kleiner](#) and others

finds that “restrictions from occupational licensing can result in up to 2.85 million fewer jobs nationwide, with an annual cost to consumers of \$203 billion.” And many of the rules do not even serve their intended purpose. A [major 2015 Obama administration report](#) on the costs of occupational licensing concluded that “most research does not find that licensing improves quality or public health and safety.”

[Arizona](#), [West Virginia](#), and [Nebraska](#) are among the leaders in reforming occupational-licensing regimes using a variety of approaches. In some cases, the reforms sunset licensing rules for specific professions altogether. Other proposals grant workers reciprocity to use a license they obtained in another state. Finally, some states have proposed letting most professions operate without any license at all but then requiring all, but then require them to make it clear to consumers that they are unlicensed.

### **The Need for a Fresh Look**

Sunsets are not silver-bullet solutions, and the recent experience with sunseting and “de-licensing” requirements at the state level [has been mixed](#) because many legislatures ignore or circumvent requirements. Nonetheless, sunsets can still help prompt much-needed discussions about which rules make sense and which ones no longer do.

Sunsets can be forward-looking, too. I have proposed that when policy makers craft new laws, especially for fast-paced tech sectors, they should incorporate a clause that what we might think of as “[the Sunsetting Imperative](#).” It would demand that any existing or newly imposed technology regulation should include a provision sunseting the law or regulation within two years. Reforms like these are also sometimes referred to as “temporary legislation” or “fresh look” requirements. Policy makers can always reenact rules that are still relevant and needed.

By forcing [a periodic spring cleaning](#), sunsets and fresh-look requirements can help stem the tide of regulatory accumulation and ensure that only those policies

that serve a pressing need remain on the books. There is no good reason for governments not to clean up their messes on occasion, just like the rest of us have to.

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### **Adam Thierer**

Adam Thierer is Research Fellow at the American Institute for Economic Research and a Senior Research Fellow at the Mercatus Center at George Mason University.

VIEW COMMENTS

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# Harvard Law School Forum on Corporate Governance and Financial Regulation

## Sunsets, Russets, and Rule Resets

Posted by Hester M. Peirce, U.S. Securities and Exchange Commission, on Thursday, May 23, 2019

**Tags:** [Accounting](#), [Audits](#), [Internal control](#), [Sarbanes–Oxley Act](#), [SEC](#), [SEC rulemaking](#), [Securities enforcement](#), [Securities regulation](#), [Small firms](#), [SOX Section 404](#)

**More from:** [Hester Peirce](#), [U.S. Securities and Exchange Commission](#)

**Editor's Note:** [Hester M. Peirce](#) is a Commissioner at the U.S. Securities and Exchange Commission. This post is based on her recent remarks at the CARE Conference, available [here](#). The views expressed in this post are those of Ms. Peirce and do not necessarily reflect those of the Securities and Exchange Commission or its staff.

Thank you, Peter [Easton] for that kind introduction. I appreciate the chance to be with you at today's conference to discuss Hot Topics at the Securities and Exchange Commission. It is a small population of people who would describe anything the SEC does as hot, but I suspect there are more than a few in this room who might be a part of that unusual crowd. Given that we share an interest in these issues, I hope that we can keep the conversation as interactive as possible, but I will start with a few observations about SEC rulemaking and the SEC's agenda. Before I begin, I must give the standard disclaimer that the views that I represent are my own and do not necessarily represent those of the Securities and Exchange Commission or my fellow Commissioners.

I talk frequently about my home state of Ohio. In the ensuing conversations, I have learned that people from the coasts do not know a lot about the middle of the country. "Ohio? That's the state that grows all the potatoes, right?" My response usually goes something like: "No, actually, that's Idaho, which is about 1600 miles away from my beloved Buckeye state." Were someone to make that mistake today, I might respond with a bit more enthusiasm: "Actually, you are thinking of Idaho, which does have lots of potatoes, but doesn't have any regulations." That would be a *slight* exaggeration. Last month, Idaho's legislature did not reauthorize the rules on the state books, which meant, absent emergency action to retain them, they would all expire in July. [1] Idaho's rules sunset every year unless they are reauthorized. Usually they are. This year, they were not. Most rules likely will remain on the books through a temporary workaround, but the governor announced that he would "use the unique opportunity to allow some chapters of Idaho Administrative Code that are clearly outdated and irrelevant to expire on July 1, 2019." [2]

Even though Idaho will celebrate July 4<sup>th</sup> with most of its rules intact, watching from afar the state's regulatory introspection has caused me to do some thinking about the SEC's rules. The SEC has been around for 85 years. We are not as old as Idaho, but we are not young either. In that long life, we have managed to accumulate a lot of regulations. I wonder what our rulebook would look like if we had a process in place that did not automatically carry over rules from one year to the next. My guess is that we would have fewer and simpler rules in place of the complex tangle we have now.

Simplicity is important, but elusive. To quote the Marquis de Lafayette, who allegedly once slept here—or at least near here, [3] "laws must be clear, precise and uniform." [4] We strive for clarity, precision, and uniformity, but one concern that I commonly hear from the entities we regulate is just how difficult it is to divine what our rules require. The prospect of facing an enforcement action because you did not understand what the rules were keeps many compliance officers, accountants, and in-house lawyers up at night. Our corner of the law is highly complex, not only because our rules interact with one another in interesting ways, but because the markets they regulate also are intricate, intertwined, and ever-changing. To make matters worse, knowing the letter of the law is not enough; our rules come to life through guidance from the Commission or the SEC's staff and judicial decisions, so the regulatory lawyer—already tired from reading through the rulebook—must be on the lookout for relevant guidance and case law.

We do not have a simple set of rules, but perhaps flexibility of application is an unintended benefit of all this complexity? Not really, but maybe there is some hope for progress on the flexibility front. Idaho has a unique opportunity to jettison a lot of outdated rules in one fell swoop; getting rid of antiquated rules at the SEC involves more procedural hurdles, but we can develop a culture of revisiting our rules periodically. In some recent rulemakings, for example, we have explicitly committed to collecting data and revisiting the rules or particular aspects of them based on what the data say. [5]

We also can do a better job of encouraging our examinations and enforcement staff, who have deep knowledge about what is going on in the industry, to flag for our rulemaking divisions rules that are in need of updating. Enforcement attorneys, for example, have frontline knowledge about how our transfer agent rules need to be updated and strengthened to better protect investors from fraud, and our compliance examiners routinely in the course of their work see the need for updates to our advertising and custody rules. If the only recognition staff receives is linked to enforcement actions, enforcement lawyers and compliance examiners are unlikely to be part of the agency's broader effort of identifying rules that need to be modernized. We need, therefore, to reward staff whose insights inform our rulemaking priorities, rather than simply counting the number of completed enforcement actions their work generates.

As we write rules, we need to be thinking of ways we can inject some flexibility into the obligations we impose to make them better able to change with the times. If we avoid baking particular technology into rules when we write them, they will accommodate changing technology. I have urged caution, for example, in mandating that firms use particular record-keeping technology or particular data-tagging technology. We can set objectives that different firms can achieve in different ways. For example, I have argued for greater flexibility to allow financial professionals and funds to deliver information to retail customers in whatever way works best for each firm's customer base. We can allow companies to grow into their regulatory obligations by building relief for small entities into our rules, something that our new Small Business Capital Formation Advocate and new Small Business Advisory Committee are likely to urge us to do.

Last week, we started the process of updating and making more flexible one rule that has proved—since it was first adopted—to be quite costly. Section 404(b) of the Sarbanes-Oxley Act requires public companies to have their internal controls audited by an independent auditor. Specifically, we proposed to allow certain small, low-revenue companies to opt out of the auditor attestation requirement. [6] Contrary to some reports, these companies will still undergo the normal financial statement audit, and managers will still be required to conduct an assessment of the companies' internal controls. We simply made optional the additional safeguard of having an independent auditor attest to those internal controls.

We want to hear feedback about whether such a change lines up with investors' weighing of the costs and benefits of such an attestation. On the one hand, having an auditor look at a company's internal controls provides a measure of comfort that the company is not squandering precious investor capital. On the other hand, the costs of auditor attestation are especially difficult to stomach and likely not as meaningfully protective for investors in a company that is not producing revenues and is therefore reliant on outside capital to cover all expenses. Many small companies and their investors have expressed concern about the diversion of desperately scarce resources to the 404(b) audit. In fact, at a meeting a few days before we announced our proposal, a small company CFO told us that auditor attestation would add 20 to 33 percent to his independent auditor bill. [7]

Although the proposal is a positive step from the perspective of making our rules more flexible, we missed an opportunity to make our rules simple. In 2007, the SEC introduced the concept of the Smaller Reporting Company or "SRC." [8] Such companies are eligible for scaled disclosure and, pursuant to our 2007 rulemaking, were automatically exempt from 404(b) attestation requirements. At the time, the Commission noted the benefit to smaller companies of aligning these categories and therefore simplifying the process. Almost one year ago, we adopted amendments to our definition of SRCs, to expand the pool of companies eligible for scaled disclosure. [9] We did not, however, make complementary changes to the 404(b) exemption. I voted in favor of those amendments, but with reservations about their limited scope because they did not deal with the auditor attestation piece, which I understood to be a major concern for many companies and investors. [10] Last week, we proposed amending our definition of accelerated filers, and again I supported the proposed amendments, but again with reservations about their scope. Had we proposed to re-align the non-accelerated filer and SRC definitions, not only would all SRCs be able to opt out of the attestation requirement, but we would restore some much-needed simplicity to the regulatory framework for small companies. Indeed, it is hard to explain in words, even when supplemented with pictures, which companies are eligible for which relief and for how long.

As I suggested at last week's open meeting, GPS developers may find mapping regulatory obligations a bigger challenge than mapping highways.

A regulatory GPS would be of little value without international functionality. Another rule proposal we issued last week illustrates the challenges of regulating in a global market. This second proposal relates to the security-based swap markets. [11] This proposal is part of our effort to finalize rules mandated by Dodd-Frank. Since the passage of Dodd-Frank, the rulemaking resources of the SEC have been stretched to capacity, but the staff, under Chairman Clayton's leadership, is making great progress toward completing the rulemaking. One of the challenges of building a new regulatory framework for the security-based swap market in the United States is that our domestic market is only part of a larger global market that developed mostly free of the burdens of potentially conflicting national regulatory requirements. Moreover, participants in the market, both at home and abroad, are almost exclusively sophisticated, institutional players. As a result, we and other regulators have had to work hard to determine where our rules should end and those of our regulatory counterparts overseas should begin. Last week's proposal is an attempt to lay out a workable framework that allows us an appropriate level of oversight of these large markets without imposing duplicative or conflicting regulation on global firms attempting to serve a global, sophisticated clientele. The proposal included guidance about how our rules would apply to transactions in which involvement by U.S. personnel is limited, two potential ways for modifying the way we count transactions toward our *de minimis* registration threshold, and certain accommodations to reflect some points of conflict between our rules and those of our foreign counterparts. This may sound like a stretch to a room full of accountants, but resolving cross-border issues related to the swaps markets is a hot topic at the SEC, and we are looking forward to receiving comments.

International accounting and auditing issues are top of mind at the SEC too. Our Chief Accountant, Wes Bricker, has, of course, been spearheading efforts in these areas, including through his leadership at the international Monitoring Group. [12] The Monitoring Group brings together members committed to audit quality. Wes is an excellent ambassador with a keen interest in ensuring that financial reporting responsibilities remain with their rightful owners and financial statements retain their integrity.

While international harmonization is important, sometimes one jurisdiction's early action in an area helps other jurisdictions to think about how they address the same area. The question of compensation for research is one such area. The European Union's Markets in Financial Information Directive, or MiFID II, required the unbundling of brokerage and research fees. The apparent result has been a marked drop in the coverage of small companies. [13] To resolve concerns about how compliance with MiFID II would affect the provision of research in the United States, the SEC staff issued time-limited no-action relief when MiFID II went into effect. [14] As the expiration date of that relief looms, we are assessing how to proceed, and the European experience will help inform that assessment.

So too in other areas we can learn from what our foreign counterparts do. For example, we can look to Bermuda's experience with digital asset regulation to assess potential regulatory approaches to this emerging asset class. [15] The Bermuda Monetary Authority recently released draft guidance for crypto custodial services. [16] This proposed code of practice addresses such difficulties as how to store private keys for hot and cold storage while preserving necessary liquidity, what safeguards should be in place to prevent unauthorized access, and how to frame internal audit of same transactions to ensure their integrity. [17]

Not only can we learn from other regulators, but we can learn from academics like you. I was very interested to see the paper by Shiva Rajgopal, who is presenting on the next panel. [18] That paper identifies the misalignment between academic accounting research and real world problems and suggests some potential reasons for the mismatch. I hope that you get to the bottom of the issue in your discussion. Good research can help us identify and settle on solutions for difficult problems. I have noticed, however, that it is often hard to align the needs of policymakers and the research agendas of academics. This problem is not limited to accounting, but includes other disciplines like economics and law. In that vein, I appreciate your willingness to talk about an issue that has profound implications for you; it is no small sacrifice to change the course of one's research agenda, when so many pressures in your profession counsel against doing so.

Given the value that research can have for our research agenda, we are always eager to hear ideas about how we can work more productively with academics. I am pleased that our new Chief Economist, S.P. Kothari—a former professor of accounting and finance, in addition to being former Deputy Dean of the MIT Sloan School of Management—brings with him to the Commission an understanding of the value of research that is aimed at addressing real world problems with

solutions that take account of how the world works. You will hear more tomorrow from my colleague Commissioner Jackson about academic research at the Commission, so let me close by saying that I welcome your assistance in helping us to think through issues on our regulatory agenda and to identify issues that should be on our agenda.

Thank you for your gracious attention. The SEC is not Idaho, where every rule is potentially on the chopping block, but there is much on the SEC's rulemaking agenda. I would be happy to discuss any of these hot topics with you.

## Endnotes

<sup>1</sup> Press Release, Brad Little, Governor of Idaho, Governor Little Outlines Process to Keep Administrative Rules in Effect (Apr. 23, 2019), available [here](#).

[\(go back\)](#)

<sup>2</sup> *Id.*

[\(go back\)](#)

<sup>3</sup> See, History of Our Virginia Resort, Lansdowne Resort and Spa, <https://www.lansdowneresort.com/virginia-resort-about/history>.

[\(go back\)](#)

<sup>4</sup> Marquis de Lafayette, Address to the French National Assembly Regarding the Rights of Men and Citizens (July 11, 1789).

[\(go back\)](#)

<sup>5</sup> See, e.g., Transaction Fee Pilot for NMS Stocks, SEC Release No. 34-84875 (Dec. 19, 2018), <https://www.sec.gov/rules/final/2018/34-84875.pdf>; Investment Company Reporting Modernization, SEC Release No. 33-10442 (Dec. 8, 2017), <https://www.sec.gov/rules/final/2017/33-10442.pdf>.

[\(go back\)](#)

<sup>6</sup> See Amendments to the Accelerated Filer and Large Accelerated Filer Definitions, SEC Release No. 34-85814 (May 9, 2019), available [here](#).

[\(go back\)](#)

<sup>7</sup> Small Business Roundtable, SEC, 26:20, 1:05:00 (May 6, 2019), available [here](#).

[\(go back\)](#)

<sup>8</sup> See Smaller Reporting Regulatory Relief and Simplification, SEC Release No. 33-8876 (Dec. 19, 2007), <https://www.sec.gov/rules/final/2007/33-8876.pdf>.

[\(go back\)](#)

<sup>9</sup> See Smaller Reporting Company Definition, SEC Release No. 33-10513 (June 28, 2018), <https://www.sec.gov/rules/final/2018/33-10513.pdf>.

[\(go back\)](#)

<sup>10</sup> Hester M. Peirce, Commissioner, SEC, Statement at Open Meeting on Amendments to Smaller Reporting Company Definition (June 28, 2018), available [here](#).

[\(go back\)](#)


<sup>11</sup> See Proposed Rule Amendments and Guidance Addressing Cross-Border Application of Certain Security-Based Swap Requirements, SEC Release No. 34-85823 (May 10, 2019), <https://www.sec.gov/rules/proposed/2019/34-85823.pdf>.


[\(go back\)](#)

<sup>12</sup> For a recent overview of his work, see Wesley Bricker, Chief Accountant, SEC, Remarks Before the 2019 Baruch College Financial Reporting Conference: Aiming Toward the Future (May 2, 2019), <https://www.sec.gov/news/speech/speech-bricker-050219>.  
([go back](#))


<sup>13</sup> See *MiFID: One Year On*, CFA Institute 14 (2019), available [here](#) (finding that 47% of buy-side respondents and 53% of sell-side respondents reported a decrease in coverage of small- and mid-cap stocks).  
([go back](#))

<sup>14</sup> Press Release, SEC, SEC Announces Measures to Facilitate Cross-Border Implementation of the European Union's MiFID II's Research Provisions (Oct. 26, 2017), <https://www.sec.gov/news/press-release/2017-200-0>.  
([go back](#))

<sup>15</sup> Digital Asset Business Act 2018 (Berm.), available [here](#) .  
([go back](#))

<sup>16</sup> Digital Asset Custody Code of Practice (Draft), Berm. Monetary Auth. (Dec. 2018), available [here](#) .  
([go back](#))

<sup>17</sup> Press Release, Berm. Monetary Auth., BMA Publishes Digital Asset Code of Practice for Consultation (Dec. 18, 2018), available [here](#).  
([go back](#))

<sup>18</sup> Shiva Rajgopal, Integrating Practice Into Accounting Research (May 2, 2019), available [here](#) .  
([go back](#))

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SEARCH

## Politics

### Press release: Little seeks input on cutting and simplifying regulations

#### Details



Written by **Press release**

Category: [politics](#) (/politics)

Published: 27 May 2019

Gov. Brad Little is accepting public comment through June 11 on administrative rules identified for elimination or simplification after the Idaho Legislature's decision not to reauthorize Idaho's Administrative Code during the 2019 legislative session.

The Idaho Administrative Code has the full force of law. At the beginning of the year, it included 736 chapters and 8,278 pages of regulations and at least 72,000 total restrictions.

The Idaho Legislature in the past has reauthorized all existing rules at the end of the legislative session but did not do so this year. As a result, Little directed his administration to exercise executive authority to ensure rules necessary to protect the public remain in effect after July 1, 2019.

Little's administration used the unique opportunity to identify rules that are clearly outdated and irrelevant for expiration on July 1, 2019. Executive branch agencies hosted more than 40 public meetings to review rules and identify rules to eliminate.

Agencies had already been comprehensively reviewing the rules they administer to identify areas where rules could be streamlined, scaled back, or eliminated as part of carrying out the Red Tape Reduction Act and the Licensing Freedom Act of 2019. Both acts resulted from executive orders Little issued within the first few months as governor to reduce regulatory burdens on Idaho citizens and businesses.

Little's efforts have led to the identification of 139 full chapters of rules proposed for expiration – totaling 19 percent of all rule chapters. An additional 79 chapters contain individual rule subparts proposed for expiration, and 31 chapters were rewritten to be significantly simplified.

All told, more than 34 percent of all rule chapters are proposed for expiration or simplification.

A list of all rules and their proposed status is posted on the Division of Financial Management (DFM) web site at this link: <https://dfm.idaho.gov/fy-2020-rules-reauthorization-summary.pdf> (<https://dfm.idaho.gov/fy-2020-rules-reauthorization-summary.pdf>)

Idahoans may submit public comments about the rules proposed for expiration by e-mailing [RulesReview@dfm.idaho.gov](mailto:RulesReview@dfm.idaho.gov) (<mailto:RulesReview@dfm.idaho.gov>) by 5 p.m. MST on June 11.

Little ultimately will make the decision whether to let a rule expire, weighing the public input received before June 11 in his decision.

"This effort is transforming Idaho's Administrative Code into a set of regulations that are simpler and more user-friendly for the public. I want to thank my agency directors and their staff for fast-tracking the rules review process that I started with my executive orders earlier this year," Little said. "Identifying one-third of rule chapters to cut or simplify in four weeks is no small feat, and the hard work within my administration helps to improve transparency and invigorates public confidence in state government."

Rules deemed necessary to protect the public will be reauthorized. Agencies will re-publish the rules as "temporary and proposed rules" concurrently in a special edition of the Idaho Administrative Bulletin in June 2019. Agencies will accept written comments and host public hearings on rules to be reauthorized, in accordance with state law.

All rules reauthorized through this process are subject to legislative review during the 2020 legislative session.

Any new rules or significant modifications to existing rules must go through the normal rulemaking process, which traditionally involves a months-long process of negotiated, proposed, and pending rule stages with specific requirements for public comment.

# We are headed into uncharted territory

June 2, 2019

By Representative Heather Scott  
Idaho First Legislative District

The following is part of my continued efforts to engage as many of you as possible in making your voices heard in Idaho government. An important and rare opportunity has come about that allows you to provide comments to expose and fix some of your issues and concerns with government. It's best understood by looking at it in two phases.

As you may already know:

- The Idaho Administrative Code currently includes 736 chapters and 8,278 pages of rules and regulations for Idaho citizens to follow.
- The Idaho Administrative Code has the full force of law.
- Each year the Idaho Legislature must re-authorize all existing rules for them to take effect for that year. This year we didn't re-authorize them because of opposing views between the House and Senate.
- As a result of this rare action, the Executive Branch was forced to re-propose all existing rules under the administrative code in order for these rules to stay in effect into 2019.
- Governor Little proposed and directed his executive staff to attempt to cut and simplify one-third of all the chapters of rules before they are re-proposed. This is great news! He has invited the public to comment on any rules and/or regulations that you, the governed, would like to see simplified or expired.



You can view the Governor's press release by [clicking here](#).

**Phase 1:** June 2 through June 11 -- Review and comment on rules that are being simplified or will expire. To review the rules, [click here](#).

The Executive Branch will be accepting public comment through June 11 on the administrative rules identified for simplification or expiration. Don't be overwhelmed! Only look at rules that interest you.

Departments of interest include the following: Agriculture, Building Safety, Health and Welfare, Fish and Game, Parks and Recreation, Tax Commission, Transportation, Environmental Quality, Insurance, Pardons and Parole, Liquor, Lands, and many more. Details on each rule in question can be found by clicking on the link next to the topic.

- Pages 2-13 list rules that are to be reauthorized in full.
- Pages 14-23 list rules that will be allowed to expire.
- Pages 24-46 list rules where individual pieces or subparts will expire
- Pages 47-48 list rule chapters that have been re-written and simplified.

For Phase 1, Idahoans may submit public comments about any rules proposed for expiration by e-mailing [RulesReview@dfm.idaho.gov](mailto:RulesReview@dfm.idaho.gov) by 5 p.m. MST Tuesday, June 11.

While we can be hopeful these rules and regulations will be properly reduced, it is our job as citizens to keep an eye on our government and take full advantage of our ability to interact and participate. This is an important opportunity to have real impact in Idaho government. A rule that the executive branch simplifies may still be complex and burdensome. We will get the government we allow, so please take the time to look at these

changes. Send comments to: [RulesReview@dfm.idaho.gov](mailto:RulesReview@dfm.idaho.gov)

**Phase 2:** Review, comment or call for public hearings on the remainder of the rules which will be released on June 19. You will have the ability to comment or call for public hearings on the thousands of pages that will be re-proposed.

Confused? [Click here](#) for a video to get up to speed on what is happening with the Administrative Rules in Idaho. A second video will be released in a few days.

To learn more, email me at [HScott@House.Idaho.Gov](mailto:HScott@House.Idaho.Gov) or call (208) 920-3120.

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ECONOMY COMMENTARY

# Idaho's Spring Cleaning for Regulations an Idea Worth Replicating

Phil Haunschild / June 04, 2019

 COMMENTARY BY

Phil Haunschild

Phil Haunschild, a resident of Boise, Idaho, has written commentary for that state's major newspapers as well as publications such as The Federalist and National Review Online. Imagine if government rules had an expiration date.

What if, each decade, every state law, regulation, or administrative rule ended by default unless lawmakers took specific action to keep it on the books?

Idaho just did that — but not on purpose.

The Idaho Legislature's inaction in April allowed more than 8,000 pages of administrative rules to expire.

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The liberal Left continue to push their radical agenda against American values. The good news is there is a solution. Find out more >>

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Tensions were high as the Legislature concluded its business, and animosity between the House and Senate led to the demise of multiple consequential bills. One of those bills was the “drop dead” bill, the nickname for the bill reauthorizing the rules.

Idaho is the only state where the legislature must affirmatively reauthorize all administrative rules every year. At the conclusion of the legislative session each year, both chambers have quietly passed the drop-dead bill.

For years, it has been common consensus that if the thousands of pages of rules were set to expire at 11:59 p.m. June 30, as the statute outlines, the state might devolve into a state of anarchy.

But the Legislature didn't pass that bill this year, and it doesn't look like anarchy is around the corner.

Gov. Brad Little and his staff took the initiative to identify many of the rules that should automatically face the chopping block.

All the rest were to go through the public process as new temporary rules, giving anyone the opportunity to participate in a 21-day public comment period.

Executive branch agencies were required to open their doors to the public and listen to their comments and concerns about any state rule. The legislature will review each rule to decide whether to re-approve it come January.

This process works directly in tandem with the Republican governor's push to reduce government meddling. Little's executive order early this year—dubbed the Red Tape Reduction Act—directed agencies to cut two regulations for every new one implemented.

Although state agencies previously were directed to seek out regulations they might cut, each agency now has the responsibility to defend the regulations it wants to keep. Rather than seeking out arguments for why an outdated rule must be repealed, agencies must come up with arguments for why these rules should remain.

Idaho is setting an ideal standard here.

If our state could cut dozens of administrative rules in less than a month, what could other states do with even more time?

The rules facing the chopping block in Idaho are those that are clearly, even laughably, outdated. There's no reason other state governments, or even the federal government, couldn't follow suit.

And it's not just inconsequential matters that are regulated and restricted by administrative bloat. Yes, Idaho has ridiculous rules that govern toy duck races and the paper used for bingo cards. But administrative rules also were used to adopt Common Core as state policy, to establish the parameters and benefits for welfare programs such as Medicaid and food stamps, and to adopt countless other major policies.

Often, when officials sneak bad policies into state rules, they slide into the background and the public forgets they're there.

Putting all rules on a regular reset would bring them back into the public discourse. If policymakers in each state had to defend reauthorization of their rules every five or 10 years, the most unpopular, outdated, and burdensome ones no doubt would face public scrutiny and likely get repealed.

In Idaho, a Great Depression-era state law outlawing below-cost sales—such as Black Friday deals or entry-pricing that Uber, Doordash, and other start-ups use to build customer loyalty—wasn't repealed until 2018.

For nearly a century, it was easier to leave the law on the books and forget about it than to go through the process of public hearings to repeal it, even though the rule obviously was harmful.

Certainly, thousands of such rules and laws across the nation are similarly ripe for repeal. A 10-year regulatory reset could make that happen.

Idaho's recent foray down this path provides an example for other states. Although this came about accidentally, it probably will be nothing but a positive for Idahoans.

With an established process and proper planning, any state could do the same. Not only would this foster a modern and fresh government system, it would promote public participation in government by giving citizens regular intervals to speak up with reasoned arguments for what they want.

Our republic certainly could use more of that..

### Dear Readers:

With the recent conservative victories related to tax cuts, the Supreme Court, and other major issues, it is easy to become complacent.

However, **the liberal Left is not backing down.** They are rallying supporters to advance their agenda, moving this nation further from the vision of our founding fathers.

If we are to continue to bring this nation back to our founding principles of limited government and fiscal conservatism, **we need to come together as a group of likeminded conservatives.**



**EVENT:** East Idaho Home and Garden Show

**WHEN:** June 6 & 7 Noon - 8:00 pm

**WHERE:** Waterfront at Snake River Landing, Idaho Falls

**HOW MUCH:** \$3 (12 and under free) Senior Citizens get in FREE on Thursday June 6 Noon - 5:00 pm.

**Free Tickets at our Title Sponsors: Washington Federal & Camping World**

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## Gov. Little, go big on regulatory reset

By AARON TOLSON | Republican columnist 8 hrs ago

Gov. Brad Little, the time for bold, brave action is now. You have the opportunity to change the state for the better in immediate, dramatic fashion. Please, take full advantage of what the Legislature has given you.

Earlier this year, after a legislative spat between the Idaho House and Senate, the Legislature declined to re-authorize a bill that would have re-enacted all state agency regulations for fiscal year 2020, which begins July 1. That inaction means when the clock strikes midnight on June 30, 2019, all 8,200

pages of Idaho's state agency regulations expire.

Now, governor, you have a choice to make. You've said there will be no "mischief" during this review process. I agree, any sort of shenanigans wouldn't help the Idahoans who have to live under these regulations, which likely number in the hundreds of thousands.

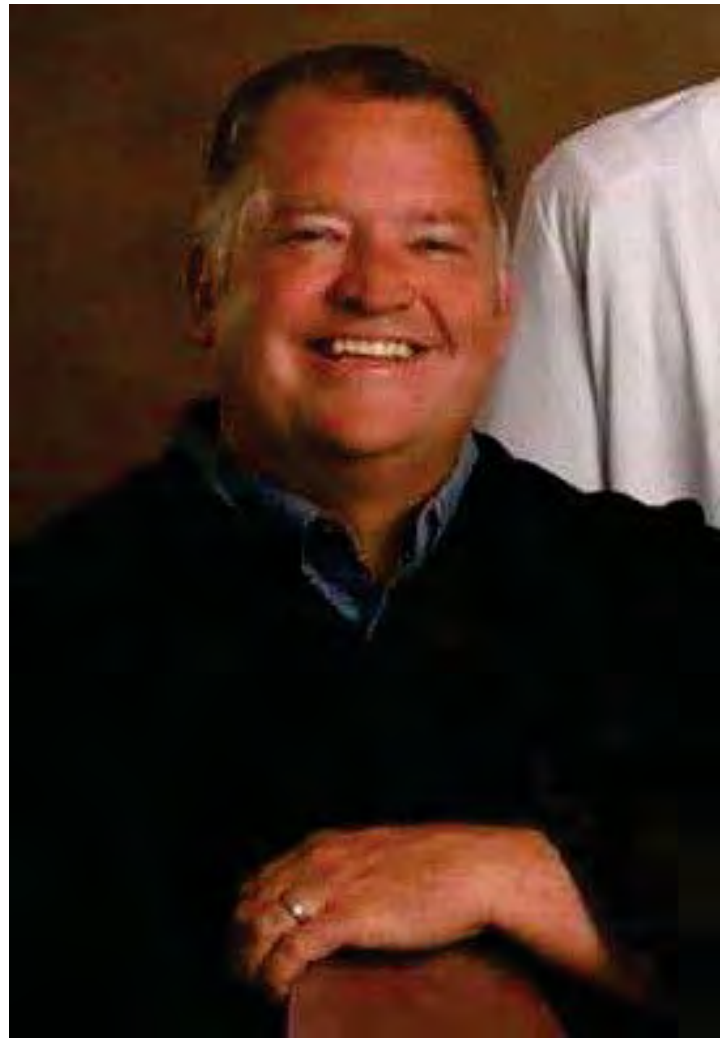
While not tolerating mischief, I urge you to take bold, dramatic action to free Idahoans from onerous rules that hamper economic growth. You've cast yourself as an aggressive reformer of occupational licensure rules and laws that burden small businesses and entrepreneurs and conservatives applaud you for that.

This opportunity, which some are calling a regulatory reset, invites your administration to go a few steps further than what you had previously planned for your first term. Where? One option would allow you to drastically reshape and improve the Idaho education system, to the benefit of student learning.

In 2011, the state unwisely adopted Common Core regulations, which have since been shown to be less than effective in solving the woes that plague our education system. A handful of states never implemented the federal education standards and a few more have withdrawn from them. Most recently, Florida Gov. Rick DeSantis, also a first-term Republican executive, directed his state education machinery to repeal its Common Core standards.

Wouldn't it be sweet to make Idaho the next state to leave Common Core? Wouldn't it be incredible to let Idaho educators and parents rewrite the state's education standards based on the needs of Idaho students? Truly, that'd be a marvelous development that could change the lives of innumerable Idaho pupils for decades to come. There exist myriad other possibilities. I, along with other conservatives, implore you to find job-killing regulations and throw them in the shredder.

You should also work with state lawmakers to make this review process, wherein every regulation is placed under the magnifying glass, more of a regular occurrence. Bloated regulations need to be trimmed from time to time, and I urge you and lawmakers to build something into state code that



Aaron Tolson

allows officials to do this every five years. That way all parties involved can have adequate time to prepare for the next reset.

Again, I implore you to take bold action now. You can cement your reformer status during your first year in office — if you slash the regulations that hurt Idaho families and small businesses.

---

Aaron Tolson is a member of the Bonneville County Republican Central Committee serving as state committeeman.

MORE INFORMATION



**Loans drive higher tuition**



July 2, 2019

Posts published in "Day: June 7, 2019"



## Toward an ongoing edit

JUNE 7, 2019



**RANDY  
STAPILUS**  
Columns

I've edited books, but nothing quite like the editing project now underway at the Idaho Statehouse.

It's such a large effort that the suggestion here is that it be made permanent and ongoing.

The subject of this review is Idaho's state administrative rules, a great mass of material - more than 8,200 densely-packed pages - which has been built up over time. It's a large code, smaller than the state statutes (that is, the state law) but bigger than any one person is ever going to want to read.

For the last few decades the Idaho Legislature has been making a practice of reviewing the rules each year, and any not getting the legislative sign-off then

expire. Usually (only a small number), rules controversial or maybe flawed for some reason, are denied approval. This year, owing to an end-of-session dispute between the state Senate and House, the legislature failed to take any action.

In theory, that means all those rules and regulations - a huge amount of Idaho's administrative law, prospectively - might go away. Before you start cheering that idea, remember that the rules do all sorts of things. They don't only impose onerous restrictions on businesses, as the political trope goes; true, some do, but many simply define terms, outline how specifically agencies are supposed to comply with law, protect people's safety, and much more. In effect, they make it possible for the state to do its work correctly. An instant vanishing of all those rules could mean - no exaggeration - mass chaos.

There was available a legal work-around, and Governor Brad Little took advantage of that, and then smartly went further, preparing some proverbial lemonade in the process.

The quick fix was to re-propose all those rules through his own action, for legislative re-review in 2020. That keeps the ship afloat.

The second action was to use the legal hiatus period as an opening for reviewing all the state rules, to see what could usefully be simplified or repealed. (Public comment on this is being accepted through June 11.) His office said that, after consulting with the state agencies, quite a few pages of rules could change with "the identification of 139 full chapters of rules proposed for expiration - totaling 19 percent of all rule chapters. An additional 79 chapters contain individual rule subparts proposed for expiration, and 31 chapters were rewritten to be significantly simplified. All told, more than 34 percent of all rule chapters are proposed for expiration or simplification."

That's not surprising, because administrative rules, like many other government actions, tend to accumulate, grow on top of each other gradually over time, as long as there's no strong impetus to review or cut out any of the old stuff past its sell-by date (or maybe never worked out to begin with).

Somewhere in the governmental regulatory process there should be a standing procedure - and yes, another agency or board - whose job it is to review, section by section, the standing material and see whether it needs an edit, deletion, or maybe an update or clarification. There's no comprehensive standing procedure for that, ordinarily. The effort this year through the governor's office, a worthy start, is about as good it's gotten.

So: A suggestion that the best way to keep regulation from growing mindlessly is to assign someone to the task, on an ongoing basis, of intelligently reviewing and editing it. This is not a job the legislature realistically could handle. But it's one the legislature might logically think about funding next time around.

After that, they could get started on the state statutes.





Which was the most surprising Idaho primary outcome?

- 1st US House District - Republican
- Governor - Republican
- Governor - Democratic
- Lieutenant Governor - Republican



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- [Bond](#)
- [books](#)
- [BookWorks](#)
- [Briefings](#)
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[Digests](#)  
[events](#)  
[First Take](#)  
[Frazier](#)  
[Hardy](#)  
[Harris](#)  
[Idaho](#)  
[Idaho column](#)  
[Johnson](#)  
[Jones](#)  
[Jorgensen](#)  
[Malloy](#)  
[Manning](#)  
[Mansfield](#)  
[McKee](#)  
[Mendiola](#)  
[Menzel](#)  
[Northwest](#)  
[notes](#)  
[Oregon](#)  
[Oregon column](#)  
[Peterson](#)  
[Political Words](#)  
[Rainey](#)  
[Reading](#)  
[review](#)  
[Richardson](#)  
[Schmidt](#)  
[Stapilus](#)  
[Strickland](#)  
[Trahant](#)  
[Trump](#)  
[Uncategorized](#)  
[video](#)  
[Washington](#)  
[Washington column](#)  
[Watkins](#)  
[Weatherby](#)  
[website](#)  
[West of the Cascades](#)



#### TAG CLOUD

[Bernie Sanders](#) [Boise](#) [budget](#) [Butch Otter](#) [Chris Gregoire](#) [congress](#) [Donald Trump](#) [economy](#)  
[education](#) [Eugene](#) [governor](#) [health care](#) [Hillary Clinton](#) [Idaho](#) [Idaho Legislature](#) [Jeb Bush](#)  
[legislature](#) [Lisa Brown](#) [mike simpson](#) [newspapers](#) [obama](#) [Obamacare](#) [Oregon](#) [Oregon Legislature](#)  
[portland](#) [rain](#) [Republicans](#) [Ron Wyden](#) [salem](#) [Sam Adams](#) [same-sex marriage](#) [Seattle](#) [Seattle Post-intelligencer](#)  
[Seattle Times](#) [Spokane](#) [stimulus](#) [Supreme Court](#) [Tacoma](#) [taxes](#) [Ted Cruz](#) [Walt Minnick](#) [Washington](#)  
[Washington legislature](#) [Washington state](#) [wilderness](#)

#### ARCHIVES

[July 2019](#) (2)  
[June 2019](#) (28)  
[May 2019](#) (32)  
[April 2019](#) (27)  
[March 2019](#) (27)  
[February 2019](#) (28)  
[January 2019](#) (36)  
[December 2018](#) (31)  
[November 2018](#) (35)  
[October 2018](#) (32)  
[September 2018](#) (34)  
[August 2018](#) (31)  
[July 2018](#) (35)  
[June 2018](#) (30)  
[May 2018](#) (30)  
[April 2018](#) (32)

[March 2018](#) (37)  
[February 2018](#) (34)  
[January 2018](#) (43)  
[December 2017](#) (44)  
[November 2017](#) (45)  
[October 2017](#) (30)  
[September 2017](#) (28)  
[August 2017](#) (31)  
[July 2017](#) (33)  
[June 2017](#) (35)  
[May 2017](#) (33)  
[April 2017](#) (34)  
[March 2017](#) (31)  
[February 2017](#) (35)  
[January 2017](#) (28)  
[December 2016](#) (25)  
[November 2016](#) (34)  
[October 2016](#) (54)  
[September 2016](#) (51)  
[August 2016](#) (52)  
[July 2016](#) (25)  
[June 2016](#) (23)  
[May 2016](#) (26)  
[April 2016](#) (27)  
[March 2016](#) (35)  
[February 2016](#) (44)  
[January 2016](#) (45)  
[December 2015](#) (46)  
[November 2015](#) (46)  
[October 2015](#) (47)  
[September 2015](#) (52)  
[August 2015](#) (50)  
[July 2015](#) (58)  
[June 2015](#) (61)  
[May 2015](#) (61)  
[April 2015](#) (64)  
[March 2015](#) (68)  
[February 2015](#) (62)  
[January 2015](#) (73)  
[December 2014](#) (62)  
[November 2014](#) (63)

[October 2014](#) (68)  
[September 2014](#) (69)  
[August 2014](#) (65)  
[July 2014](#) (63)  
[June 2014](#) (64)  
[May 2014](#) (69)  
[April 2014](#) (63)  
[March 2014](#) (74)  
[February 2014](#) (57)  
[January 2014](#) (55)  
[December 2013](#) (24)  
[November 2013](#) (22)  
[October 2013](#) (29)  
[September 2013](#) (27)  
[August 2013](#) (30)  
[July 2013](#) (25)  
[June 2013](#) (29)  
[May 2013](#) (50)  
[April 2013](#) (50)  
[March 2013](#) (51)  
[February 2013](#) (52)  
[January 2013](#) (57)  
[December 2012](#) (45)  
[November 2012](#) (45)  
[October 2012](#) (33)  
[September 2012](#) (28)  
[August 2012](#) (25)  
[July 2012](#) (26)  
[June 2012](#) (26)  
[May 2012](#) (33)  
[April 2012](#) (26)  
[March 2012](#) (32)  
[February 2012](#) (29)  
[January 2012](#) (39)  
[December 2011](#) (24)  
[November 2011](#) (29)  
[October 2011](#) (35)  
[September 2011](#) (34)  
[August 2011](#) (23)  
[July 2011](#) (28)  
[June 2011](#) (35)

[May 2011](#) (35)  
[April 2011](#) (35)  
[March 2011](#) (53)  
[February 2011](#) (40)  
[January 2011](#) (47)  
[December 2010](#) (31)  
[November 2010](#) (32)  
[October 2010](#) (37)  
[September 2010](#) (32)  
[August 2010](#) (30)  
[July 2010](#) (41)  
[June 2010](#) (40)  
[May 2010](#) (41)  
[April 2010](#) (32)  
[March 2010](#) (39)  
[February 2010](#) (35)  
[January 2010](#) (40)  
[December 2009](#) (44)  
[November 2009](#) (40)  
[October 2009](#) (37)  
[September 2009](#) (34)  
[August 2009](#) (37)  
[July 2009](#) (44)  
[June 2009](#) (45)  
[May 2009](#) (44)  
[April 2009](#) (49)  
[March 2009](#) (49)  
[February 2009](#) (50)  
[January 2009](#) (52)  
[December 2008](#) (52)  
[November 2008](#) (48)  
[October 2008](#) (50)  
[September 2008](#) (50)  
[August 2008](#) (46)  
[July 2008](#) (37)  
[June 2008](#) (44)  
[May 2008](#) (52)  
[April 2008](#) (48)  
[March 2008](#) (60)  
[February 2008](#) (60)  
[January 2008](#) (61)

[December 2007](#) (61)  
[November 2007](#) (60)  
[October 2007](#) (61)  
[September 2007](#) (58)  
[August 2007](#) (62)  
[July 2007](#) (61)  
[June 2007](#) (61)  
[May 2007](#) (61)  
[April 2007](#) (60)  
[March 2007](#) (63)  
[February 2007](#) (55)  
[January 2007](#) (61)  
[December 2006](#) (52)  
[November 2006](#) (53)  
[October 2006](#) (60)  
[September 2006](#) (52)  
[August 2006](#) (54)  
[July 2006](#) (50)  
[June 2006](#) (50)  
[May 2006](#) (52)  
[April 2006](#) (51)  
[March 2006](#) (56)  
[February 2006](#) (39)  
[January 2006](#) (50)  
[December 2005](#) (34)  
[November 2005](#) (34)

## JUNE 2019

S	M	T	W	T	F	S
						<a href="#">1</a>
<a href="#">2</a>	<a href="#">3</a>	<a href="#">4</a>	<a href="#">5</a>	<a href="#">6</a>	<a href="#">7</a>	<a href="#">8</a>
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STATEMENT

*“the freedom of Speech may be taken away – and, dumb & silent we may be led, like sheep, to the Slaughter.”* **George Washington, 1783**

*“We can have democracy in this country, or we can have great wealth concentrated in the hands of a few, but we can’t have both.”* **Louis D. Brandeis**

*Losing a shared vocabulary for the world’s problems, for the way we relate to one another and for current events may be the greatest threat to American society.* **Aaron Hanlon, 2018**

*The test of a first-rate intelligence is the ability to hold two opposed ideas in the mind at the same time, and still retain the ability to function.* **F. Scott Fitzgerald**

*Gandhi’s Seven Sins: Wealth without work; Pleasure without conscience; Knowledge without character; Commerce without morality; Science without humanity; Worship without sacrifice; Politics without principle*

*if you can create an honorable livelihood, where you take your skills and use them and you earn a living from it, it gives you a sense of freedom and allows you to balance your life the way you want.* “**Anita Roddick**

*For what shall it profit a man, if he shall gain the whole world, and lose his own soul?* **Mark 8:36 KJB**

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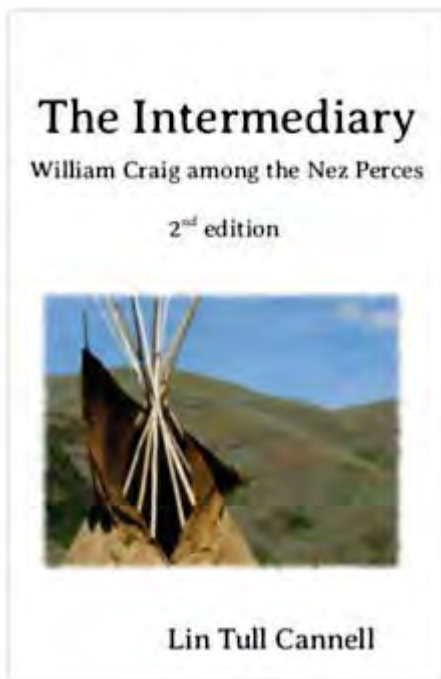
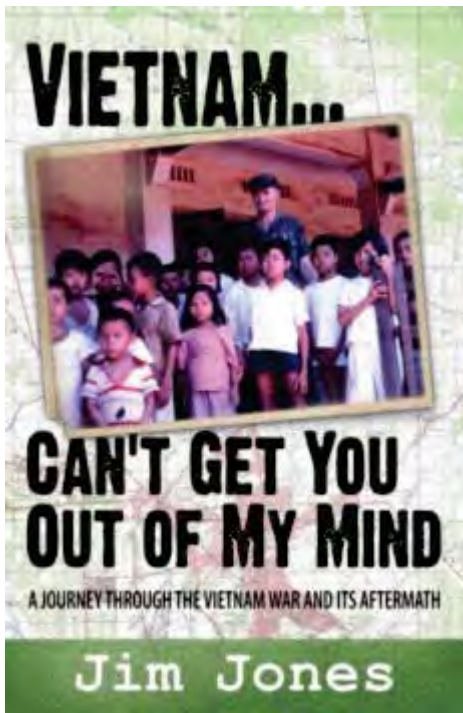


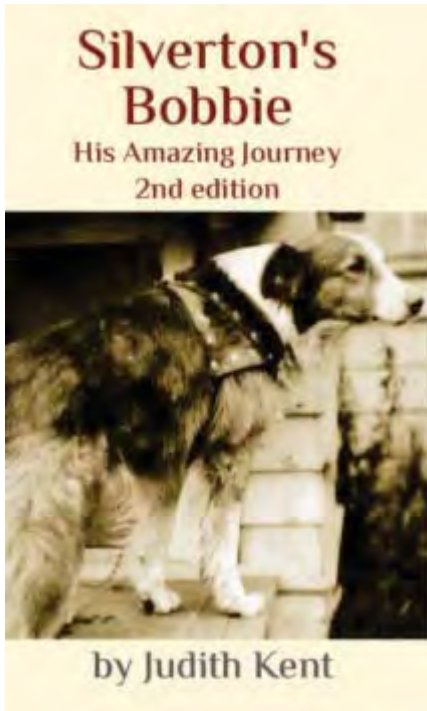
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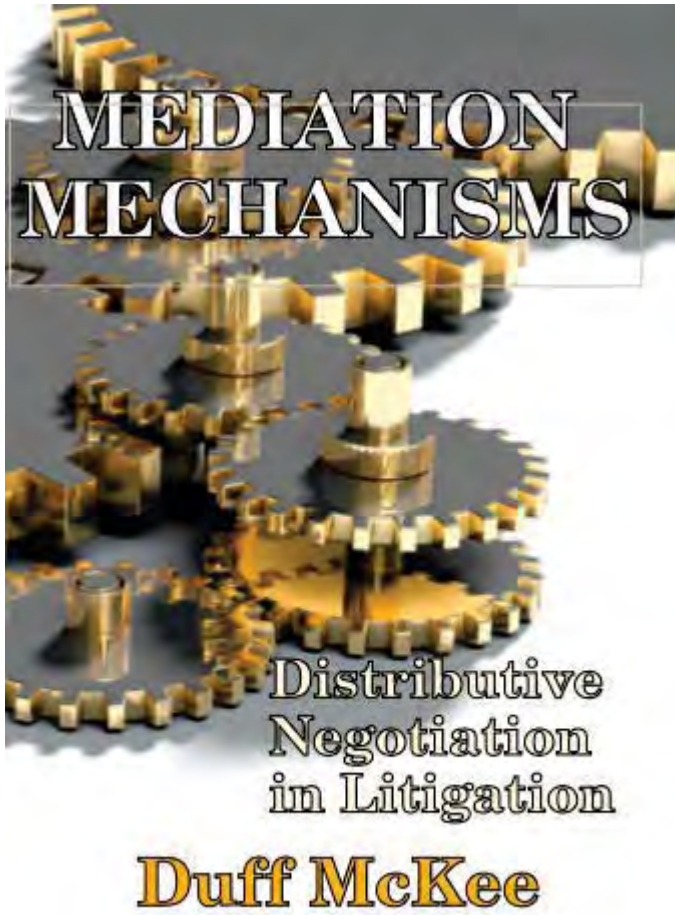


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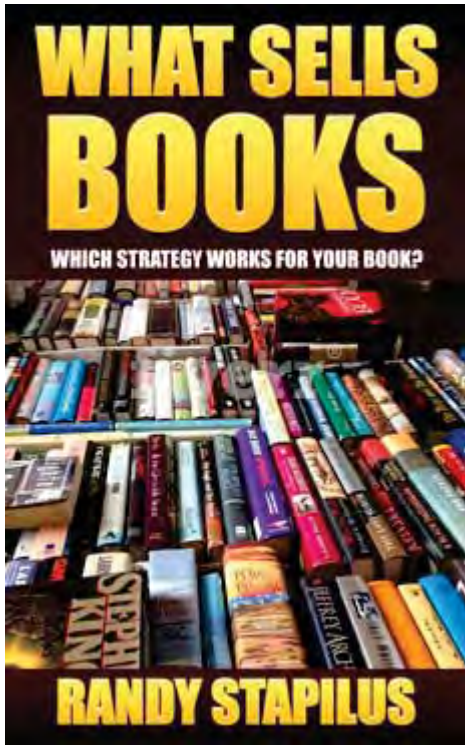


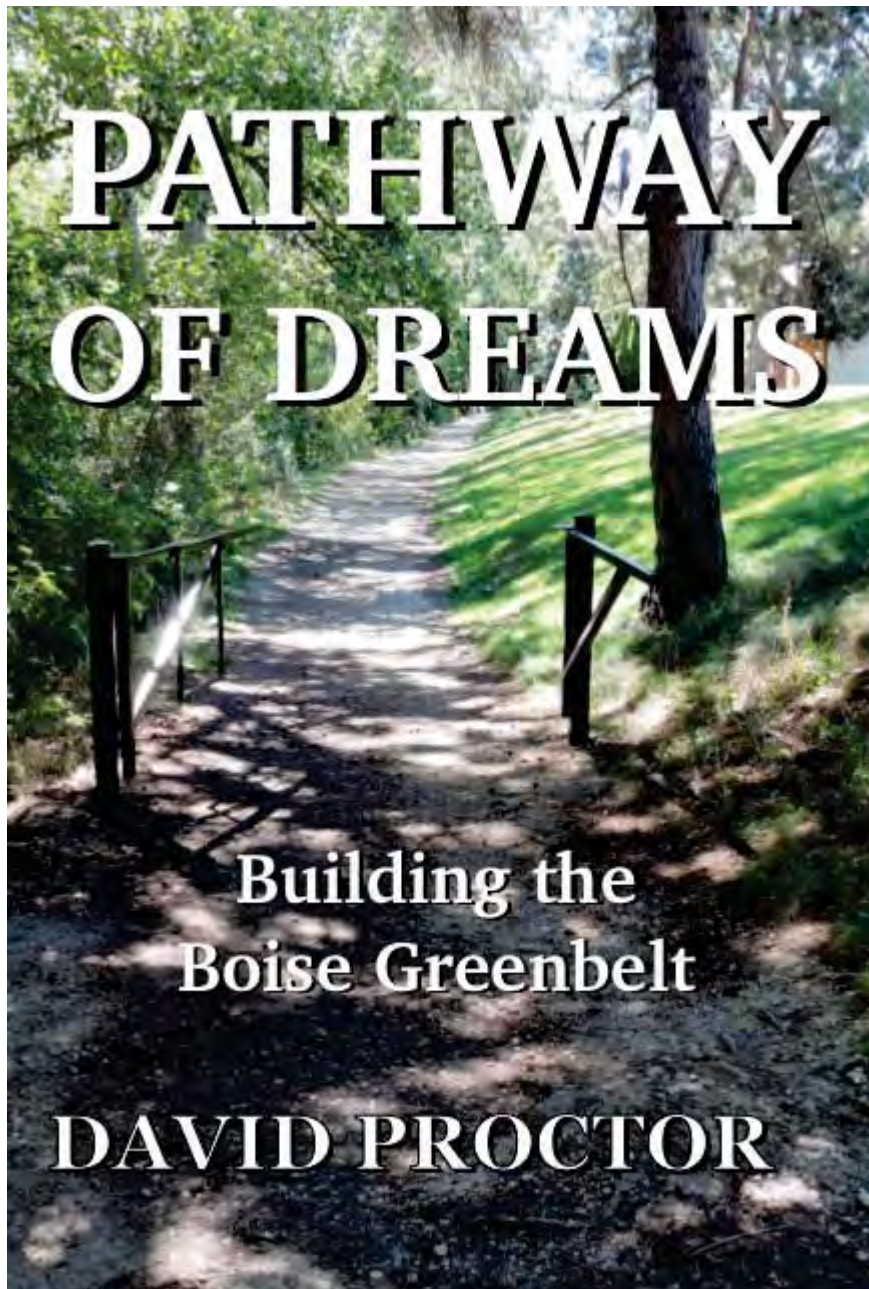
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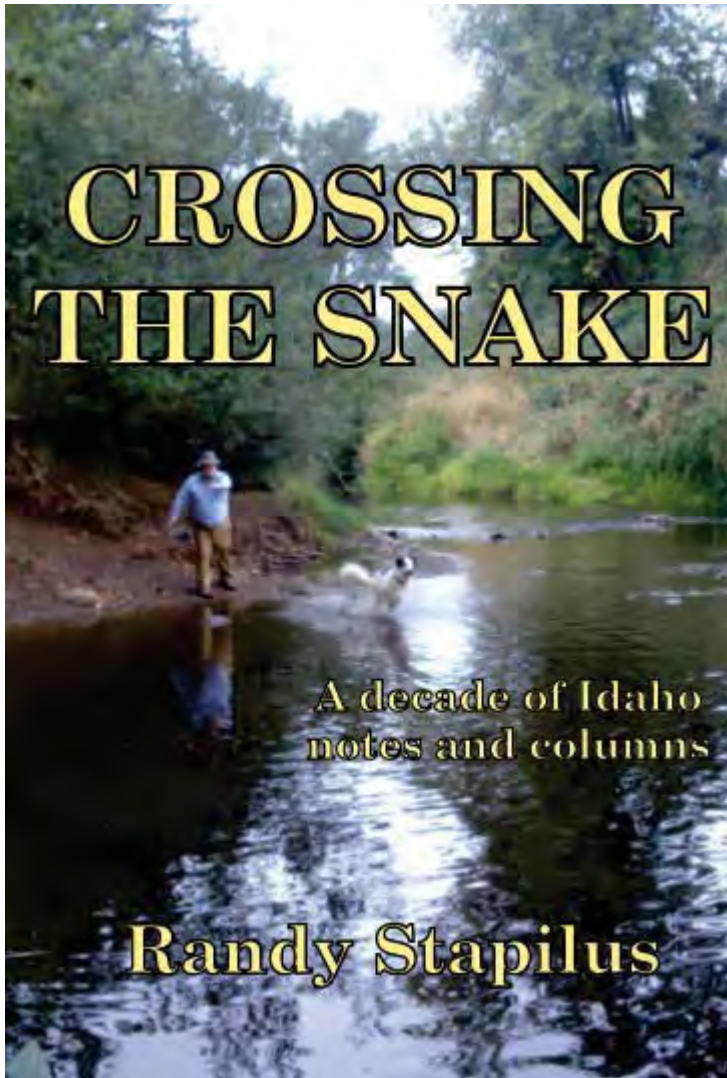
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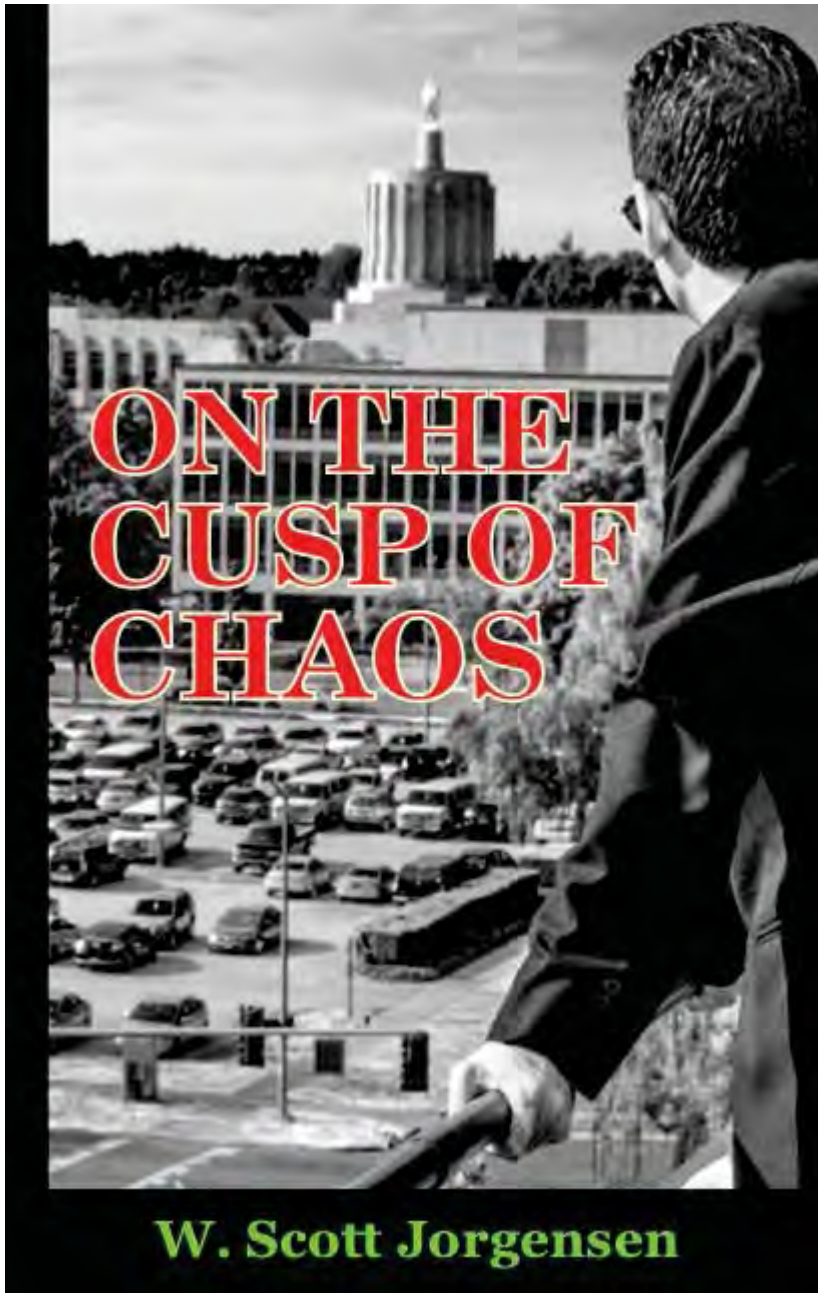


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Chris Carlson

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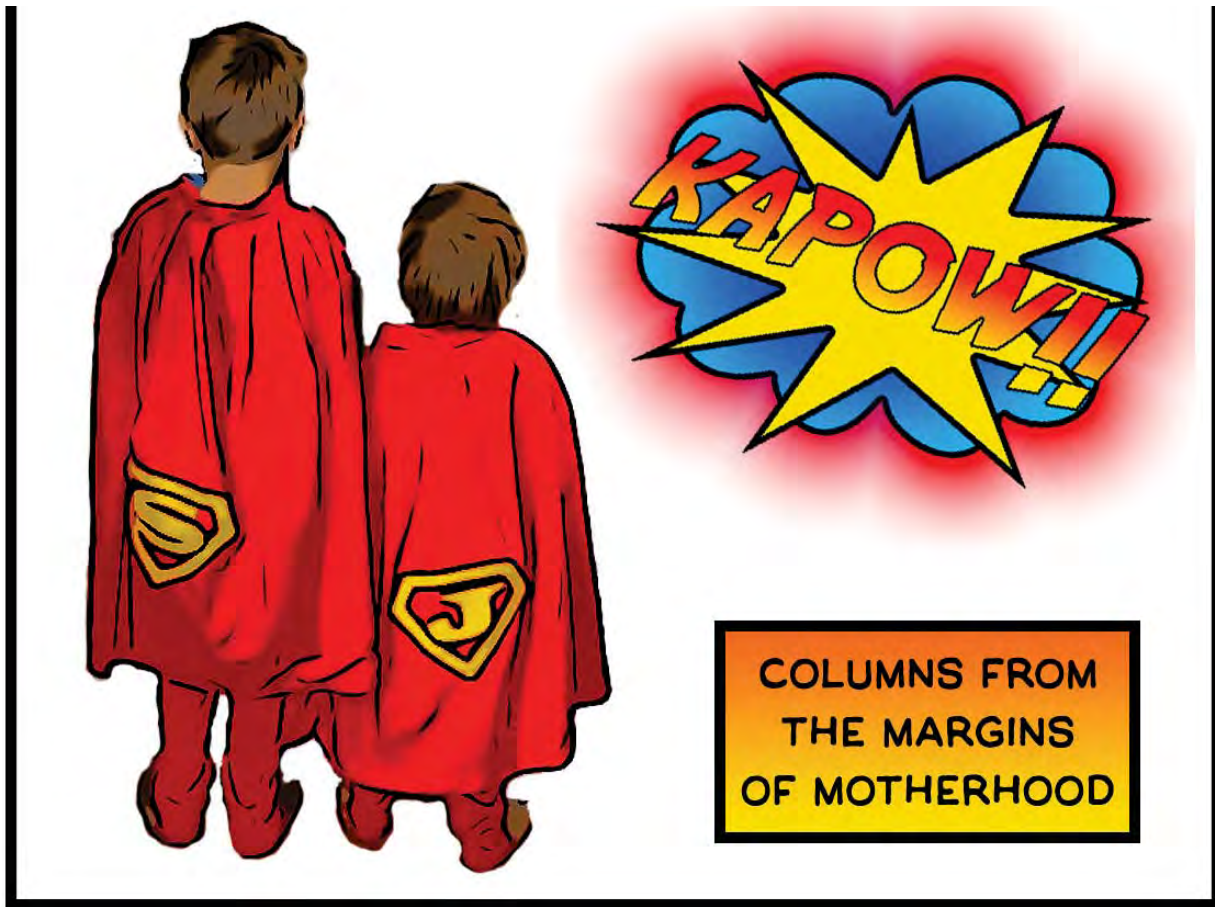
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Randy Stapilus

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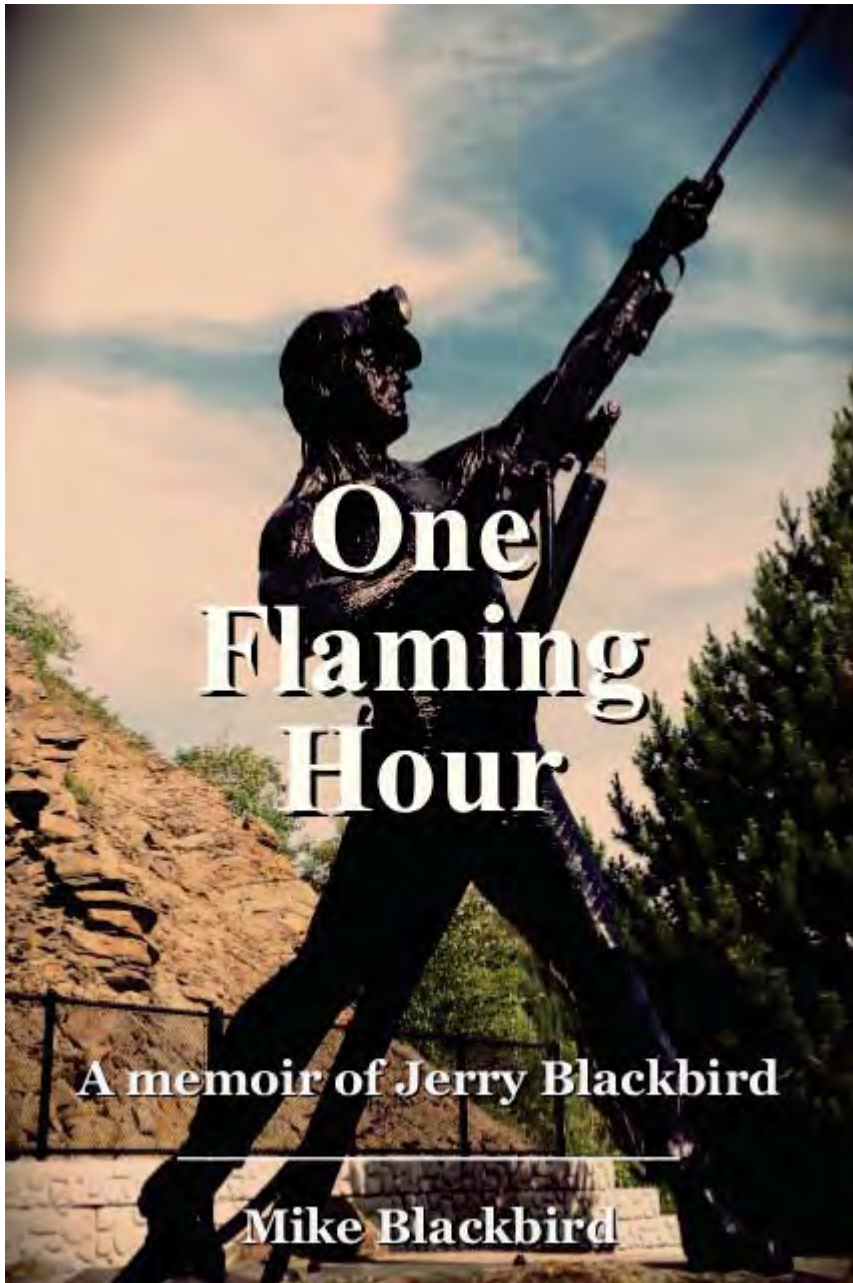
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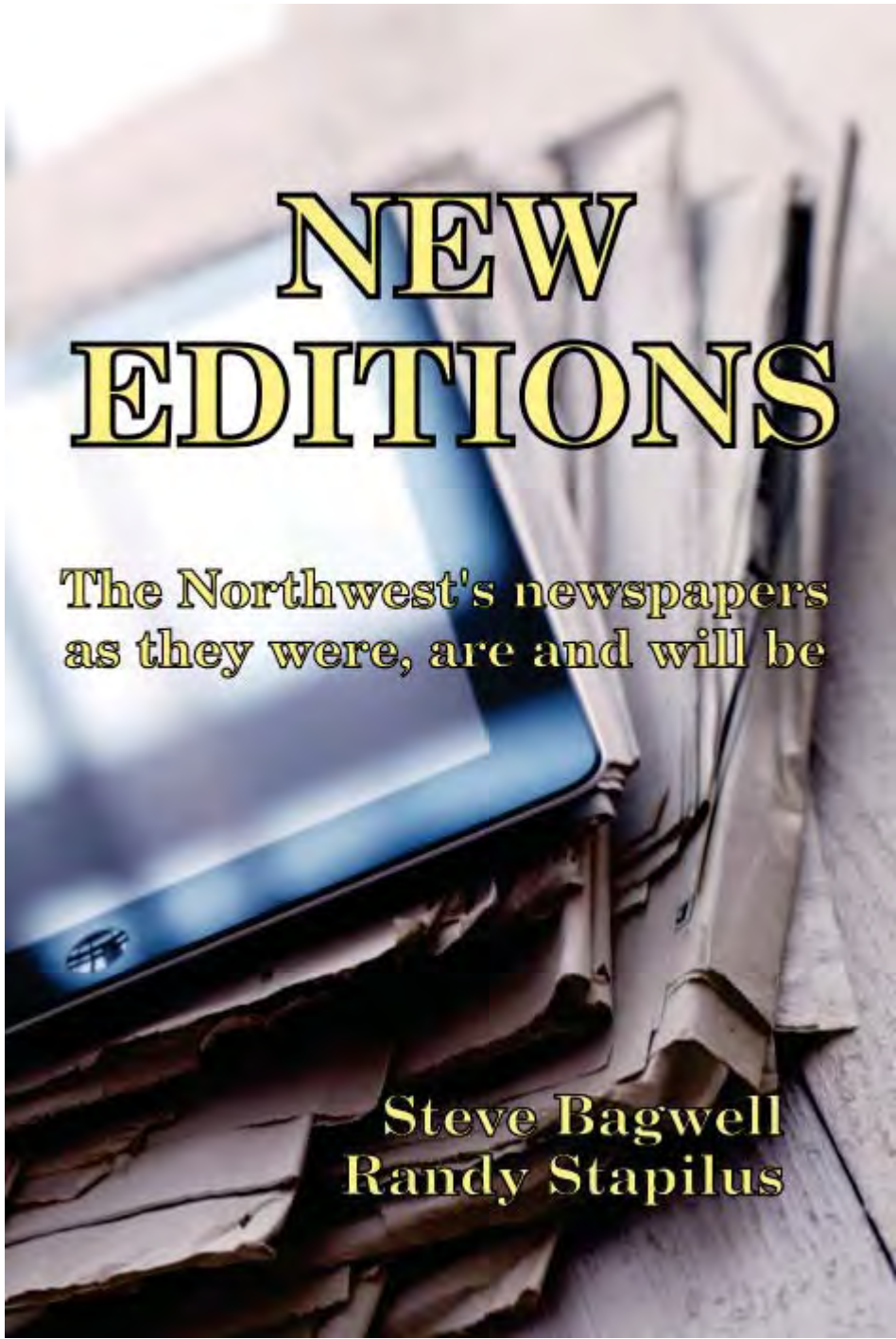
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## Why stop pruning Idaho regulations this year?

Commentary Randy Stapilus Jun 8, 2019




Randy Stapilus

I've edited books, but nothing quite like the editing project now underway at the Idaho Statehouse.

It's such a large effort that the suggestion here is that it be made permanent and ongoing.

The subject of this review is Idaho's state administrative rules, a great mass of material — more than 8,200 densely-packed pages — which has been built up over time. It's a large code, smaller than the state statutes (that is, the state law) but bigger than any one person is ever going to want to read.



For the past few decades the Idaho Legislature has been making a practice of reviewing the rules each year, and any not getting the legislative sign-off then expire. Usually (only a small number), rules controversial or maybe flawed for some reason, are denied approval. This year, owing to an end-of-session dispute between the state Senate and House, the Legislature failed to take any action.

In theory, that means all those rules and regulations — a huge amount of Idaho’s administrative law, prospectively — might go away. Before you start cheering that idea, remember that the rules do all sorts of things. They don’t only impose onerous restrictions on businesses, as the political trope goes; true, some do, but many simply define terms, outline how specifically agencies are supposed to comply with law, protect people’s safety and much more. In effect, they make it possible for the state to do its work correctly. An instant vanishing of all those rules could mean — no exaggeration — mass chaos.

There was available a legal work-around, and Gov. Brad Little took advantage of that, and then smartly went further, preparing some proverbial lemonade in the process.

The quick fix was to re-propose all those rules through his own action, for legislative re-review in 2020. That keeps the ship afloat.

The second action was to use the legal hiatus period as an opening for reviewing all the state rules, to see what could usefully be simplified or repealed. (Public comment on this is being accepted through Tuesday.) His office said that, after consulting with the state agencies, quite a few pages of rules could change with “the identification of 139 full chapters of rules proposed for expiration —

totaling 19 percent of all rule chapters. An additional 79 chapters contain individual rule subparts proposed for expiration, and 31 chapters were rewritten to be significantly simplified. All told, more than 34 percent of all rule chapters are proposed for expiration or simplification.”

That’s not surprising, because administrative rules, like many other government actions, tend to accumulate, grow on top of each other gradually over time, as long as there’s no strong impetus to review or cut out any of the old stuff past its sell-by date (or maybe never worked out to begin with).

Somewhere in the governmental regulatory process there should be a standing procedure — and yes, another agency or board — whose job it is to review, section by section, the standing material and see whether it needs an edit, deletion or, maybe, an update or clarification. There’s no comprehensive standing procedure for that, ordinarily. The effort this year through the governor’s office, a worthy start, is about as good as it’s gotten.

So: A suggestion that the best way to keep regulation from growing mindlessly is to assign someone to the task, on an ongoing basis, of intelligently reviewing and editing it. This is not a job the Legislature realistically could handle. But it’s one the Legislature might logically think about funding next time around.

After that, they could get started on the state statutes.

*Stapilus is a former Idaho newspaper reporter and editor who blogs at [www.ridenbaugh.com](http://www.ridenbaugh.com). His email address is [stapilus@ridenbaugh.com](mailto:stapilus@ridenbaugh.com).*

# Make Sure Rules and Regulations Pass the Smell Test

By Ross Marchand <<https://catalyst.independent.org/author/ross-marchand/>> |

June 11, 2019

Economy & Jobs | Articles

It was the shot heard around the world... at least, the world of regulatory policy nerds. As the result of a stalemate between Idaho's House and Senate, the legislature declined to re-authorize <<https://www.mercatus.org/bridge/commentary/idaho-repeals-its-regulatory-code>> Idaho's regulatory code for fiscal year 2020. As a result, the entire regulatory code for the state will be axed. Idaho Freedom Foundation's Wayne Hoffman explains <<https://idahofreedom.org/legislatures-inaction-on-agency-regs-may-be-its-greatest-accomplishment/>>, "Gov. Brad Little's administration will need to reinstate each regulation, one program at a time, hopefully leaving a lot on the cutting room floor." Idaho's bold, and maybe accidental,

experiment with regulatory reform should inspire other states to not only follow the Gem State's example, but also think critically about how regulations are proposed and considered.

The entire Idaho government will have a massive task on its hands as Gov. Little "re-proposes" the rules that he sees fit and the Legislature considers and examines the rules that the governor has decided to keep. One proven way to analyze regulations on their merits is the good old cost-benefit analysis, which federal regulators must use for national regulations (deemed to be "economically significant" or having an annual impact of at least \$100 million <https://fas.org/sgp/crs/misc/r41974.pdf> on the economy).

From the Environmental Protection Agency to the Department of Labor, federal agencies create regulatory impact analyses that try to measure how proposed rules' costs and benefits stack up. These estimates usually contain significant flaws, owing to the proposing agency's bias and the predominance of pro-regulation lawyers in shaping the process. For example, when the Occupational Health and Safety Administration proposed new rules limiting workers' exposure to silica dust, their regulatory analysis relied on

<https://economics21.org/html/president-trump-should-reexamine-silica-rule-2543.html>

mortality data from forty years ago and failed to account for improving respirator technology. At the very least, though, these cost-benefit analyses are a good way to start a dialogue on the types of problems and unintended consequences that could arise as the result of regulations. Organizations such as the Mercatus Center regularly

monitor <https://www.mercatus.org/publication/evaluating-regulatory-impact-analysis-regulatory-report-card> the quality of these reports, putting pressure on agencies to improve and show their work.

Unfortunately, states and localities are not nearly as thorough in identifying the costs and benefits of their rules and regulations. These governments often have the wackiest rules, ranging from outdated “Blue Laws” to onerous occupational licensing restrictions. For example, Texas doesn’t allow <https://www.texastribune.org/2019/04/16/texas-alcohol-regulations-explained/> liquor stores or car dealerships to be open on Sundays. Surely, this has some unintended consequences such as forcing residents to skip work in order to visit these businesses on other days of the week. Texas doesn’t require rulemaking bodies to examine impacts of regulations on the citizenry/private sector; bureaucrats must only examine <https://files.texaspolicy.com/uploads/2018/08/16093225/2009-04-pb05-regtransparency-khw.pdf> the fiscal implications on the state and local governments’ finances.

A 2013 report from the Pew Charitable Trusts finds that [https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pcs\\_assets/2013/pewresultsfirst50state](https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pcs_assets/2013/pewresultsfirst50state) while most states are conducting at least some cost-benefit analysis, the practice is not consistent or rigorous enough to make much of a difference. Then-director of the Idaho Legislative Services Office Jeff Youtz noted that, “We can’t take two months and conduct a comprehensive cost-benefit analysis. It’s not a choice, but a reality of the resources I have available.” State resources are improving <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2019/06/lost-decade-casts-a>

post-recession-shadow-on-state-finances>, but hiring dedicated regulatory research personnel has still proven difficult. If states spent less money like subsidizing cities' misguided "green" initiatives and broadband boondoggles, they'd have the resources to hire a few more economists and analysts.

At the federal, state, and local levels, overregulation has households and businesses struggling to keep their heads above water against a tsunami of compliance costs. States such as Idaho have the right idea in rethinking their codes entirely and adding dedicated cost-benefit analysis can expedite the reform process. Idaho doesn't have to be an isolated case. With the right reforms, citizens across the fifty states can enjoy a better policy process that keep costs low and innovation high.

## Comments



## TRENDING



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## **Lots of comments on state rules, but few objections to letting many expire**

By BETSY Z. RUSSELL [brussell@idahopress.com](mailto:brussell@idahopress.com) Jun 12, 2019



Alex Adams, Gov. Brad Little's budget chief and head of administrative rules, at his office near the state Capitol on Wednesday, June 12, 2019.

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BETSY Z. RUSSELL/Idaho Press

BOISE — Idaho received 49 public comments on Gov. Brad Little's proposal to allow 139 full chapters of state administrative code, plus parts of 79 more chapters, to expire this month, but only a handful of the commenters objected to letting any of those rules expire.

"On 99 percent of what's expiring, there was no public outcry, there was no comment," said Alex Adams, Little's budget chief and head of administrative rules. That's after 40 state agencies held public meetings on the proposed expiring rules, he noted. "I think it showed that the system worked."

There were comments submitted opposing the expiration of three rules: One on water releases at the Mackay Dam; another on a long-unfunded Soil and Water Conservation program; and a third on psychologists. The governor's staff is still studying the psychology change, after receiving that comment late Tuesday just before the deadline, but after much back-and-forth, it's decided not to let the water rule expire, but to go ahead with the soil conservation one.

The water rule would have done away with a requirement for minimum releases of 50 cubic feet per second at the Mackay Dam in the Big Lost River Basin. Both a water and fishery consultant from the area and Trout Unlimited objected.

“From Trout Unlimited’s perspective, the potential loss of the 50 cfs target at the 2B gauge imperils a highly prized recreational fishery in the Big Lost River,” wrote Peter Anderson, Idaho water project staff counsel for the organization. The Soil and Water Conservation program rule was for a program that hasn’t been funded in nine years, and one of Idaho’s soil and water conservation districts expressed concern that the rule is well-written, and should be brought back if it ever is funded again.

Adams said that would be easy to do; all past rules are now archived and available online. “You can do an emergency rule, start to finish, in 48 hours,” he said. “Should funding ever be restored, we stand ready to assist the Soil and Water Conservation Commission with a temporary rule.”

In all, Little is proposing either doing away with or simplifying more than 34 percent of Idaho’s administrative code. The move comes after state lawmakers this year failed to pass the routine legislation at the end of the session that reauthorizes all existing rules; that forced all of them to be reviewed, and they’ll go back to the Legislature again when it meets in January.

Twenty-two of the commenters called for doing away with additional state administrative rules, some targeting broad subject areas and others citing specific rules sections, from raw milk regulations, child immunizations, and day care regulations to sex offender registry rules, barber licensing, and asset rules for food stamp recipients.

Three of those were financial planners who called for eliminating a specific financial planning rule regarding advertising and social media posts by certain types of state-licensed financial planners that they said Idaho alone imposes.

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Two called for doing away with a requirement that long-term care homes in Idaho with more than 90 residents have registered nurses available 24 hours a day, saying the national standard is just eight hours. Two archery enthusiasts called for dumping three specific rules about their sport that they said are burdensome.

Four people wrote in to praise the entire effort of examining state rules; one wrote to oppose it.

Other commenters raised objections about government and regulations in general.

“When in doubt, cross it out,” wrote one.

One commenter proposed creating a new rule, regarding lead in ammunition. Four proposed significant amendments to specific existing rules, including retired U.S. Navy Capt. Robert Bjelland, also a Coast Guard master and retired sheriff's deputy, who submitted a detailed, 12-page analysis of Idaho's safe boating rules and recommended specific changes to correct outdated language and bring the rules into compliance with current federal and state statutes.

"That guy was pretty impressive," Adams said. "I've already sent it to Parks & Rec. ... I know their rules officer has reached out to that gentleman to say, 'Thank you so much for doing all that background research for us,' and to extend an invitation to an upcoming meeting."

State law doesn't actually require that public comments be taken on rules that are simply being allowed to expire, but Adams said Little wanted to do so for the sake of transparency. All the rules being reauthorized are subject to 21-day comment periods after they're published on June 19, along with possible public hearings prior to legislative hearings.

All 8,000 pages of rules being reauthorized will be published online and ads will run in newspapers in every Idaho county about the process. After weighing public input, agencies will finalize those rules by Nov. 20 for submission to the Legislature.

Said Adams, "Our hope is that citizens continue to engage in the process."

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*Betsy Z. Russell is the Boise bureau chief and state capitol reporter for the Idaho Press and Adams Publishing Group. Follow her on Twitter at @BetsyZRussell.*

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BetsyRussell



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Our Views

## We want YOU (to submit your public comments)

By Rep. Sally Toone Jun 14, 2019

You were the real hero of the 2019 legislative session. You came to the statehouse more times than I can count armed with facts, personal stories and courage to fight the legislation that would hurt your communities. We could not have passed good Idaho-centered legislation or stopped damaging bills without your persistent involvement. And we need you to do it again. We need you to submit public comments to protect thousands of rules that govern your life to protect some of the huge gains we have made in the past several years.

With outcry against Medicaid expansion restrictions, gerrymandering and changes to the ballot initiative process, some of the other terrible majority legislative decisions went unnoticed. One of those bad decisions happened right before the end of the legislative session. Every year, the Legislature is obligated by constitutional amendment to pass a bill that renews thousands of rules by reauthorizing the Idaho Administrative Code, which governs our everyday lives. However, during this session, none of the rules were renewed due to disagreements between the House and the Senate.

Gov. Brad Little will have to choose which regulations get renewed and which will expire before they all expire on July 1. Due to the rare circumstances of the rules renewal, the governor will reauthorize any rules deemed necessary to protect the public. Numerous agencies will then publish those rules as “temporary and proposed rules” in a special edition of the Idaho Administrative Bulletin sometime in June. Here’s where you come in. All these agencies are required, by law, to accept written comments and host public hearings on rules that need to be reauthorized. We need you to show up to these hearings and write Idaho’s agencies about the importance of preserving the existing rules.



You might be wondering what these rules are and how they affect you. After all, there are thousands of pages to go through. Just to give you an idea of the breadth of rules that are currently under review, here's some of the departments that are currently reviewing rules: Health and Welfare, Agriculture, Fish and Game, Parks and Recreation, Tax Commission, Pardons and Parole, Liquor, Lands, Environmental Quality, Transportation and the list goes on.

Don't be overwhelmed! Focus on one area and figure out what is important to you. For example, we will be fighting hard to protect the rule that Rep. Ilana Rubel worked hard to pass during the last legislative session. The rule allows deaf or hard-of-hearing children to get hearing aids through Medicaid. The process will start on June 19, when you can comment or call for a public hearing on the rules that are being re-proposed. We strongly encourage you to participate in helping us to preserve the rights that your family, friends and neighbors benefit from.

While you're doing that, we also urge you to submit public comments to the Idaho Department of Insurance on clean Medicaid expansion. As you know, the Legislature passed a bill that will put numerous restrictions on Medicaid expansion. However, the Idaho Department of Insurance will be taking comments through June 29 that will be submitted to the federal government when the state asks for approval of the barriers to coverage proposed in the Legislature. You can let the federal government know that you don't want the Legislature to deny your fellow Idahoans health care by emailing [DOI.Reform@doi.idaho.gov](mailto:DOI.Reform@doi.idaho.gov) or by going to [closethegapidaho.org](http://closethegapidaho.org) and using its email tool.


By law, the state is required to consider your public comments on Medicaid expansion. In states like Kentucky and Arkansas, public comments influenced a judge's decision to block restrictions to their own Medicaid expansion programs. The overwhelming opposition to coverage barriers, and the fact that those concerns were essentially ignored, played a key role in the judge's decision to rule against restrictions.

Your voice matters and, in this case, it can make a huge difference. We need you to help us protect the laws that reflect the will of the people.

---

*Sally Toone, D-Gooding, represents District 26 in the Idaho House of Representatives.*

# Guest Opinion



You were the real hero of the 2019 legislative session. You came to the statehouse more times than I can count armed with facts, personal stories, and courage to fight the legislation that would hurt your communities. We could not have passed good Idaho centered legislation or stopped damaging bills without your persistent involvement. And we need you to do it again. We need you to submit public comments to protect thousands of rules that govern your life to protect some of the huge gains we have made in the past several years.

Between outcry against Medicaid Expansion restrictions, gerrymandering, and changes to the ballot initiative process, some of the other terrible Majority legislative decisions went unnoticed. One of those bad decisions happened right before the end of the legislative session. Every year, the legislature is obligated by constitutional amendment to pass a bill that renews thousands of rules by reauthorizing the Idaho Administrative Code that govern our everyday lives. However, during this session, none of the rules were renewed due to disagreements between the House and the Senate.

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By law, the state is required to consider your public comments on Medicaid Expansion. In states like Kentucky and Arkansas, public comments influenced a judge's decision to block restrictions to their own Medicaid Expansion programs. The overwhelming opposition to coverage barriers, and the fact those concerns were essentially ignored, played a key role in the judge's decision to rule against restrictions.

Your voice matters and, in this case, it can make a huge difference. We need you to help us protect the laws that reflect the will of the people.

## IDAPA 29 – IDAHO POTATO COMMISSION

DOCKET NO. 29-0000-1900

### NOTICE OF OMNIBUS RULEMAKING – TEMPORARY AND PROPOSED RULEMAKING

**EFFECTIVE DATE:** The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 22-1205 and 22-1207, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 29, rules of the Idaho Potato Commission (IPC).

#### **IDAPA 29**

- 29.01.01, *Rules of Procedure of the Idaho Potato Commission - updated and streamlined to include rules that were previously in 29.01.01 and 29.01.02, while deferring to the rules of procedure of the Attorney General when possible.*

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. Without these rules in place, the IPC cannot bring administrative proceedings to protect the IPC's trademarks and certification marks and undertake necessary enforcement actions relating to the infringement of these marks; we will not have any requirements for packaging and container branding and not be able to offer the industry guidance or outline how to protect the Idaho brand; and we will not have a written explanation of the methodology by which IPC taxes are assessed and collected.

**FEE SUMMARY:** This rulemaking does not impose a fee or charge.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Patrick Kole at (208) 514-4208 or [Patrick.Kole@potato.idaho.gov](mailto:Patrick.Kole@potato.idaho.gov).

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th of June, 2019.

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**IDAPA 29  
TITLE 01  
CHAPTER 01**

**IDAPA 29 – IDAHO POTATO COMMISSION**

**29.01.01 – RULES OF THE IDAHO POTATO COMMISSION**

**000. LEGAL AUTHORITY.**

These rules are adopted under the general legal authority of the Idaho Potato Commission Law, Chapter 12, Title 22, Idaho Code. (6-30-19)T

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is IDAPA 29.01.01, “Rules of the Idaho Potato Commission.” (6-30-19)T

**02. Scope.** These rules govern payment of taxes to the Idaho Potato Commission (the Commission); records required to be kept by growers, dealers, handlers, shippers, processors, container manufacturers, and out-of-state repackers of Idaho® potatoes; use of Certification Marks and Trademarks owned or administered by the Commission; branding of individual potatoes, state brand grade and packing requirements, reporting, labeling and revocation, and additional labeling requirements. These rules govern all procedure before the Idaho Potato Commission (the Commission). (6-30-19)T

**002. WRITTEN INTERPRETATIONS – AGENCY GUIDELINES.**

Written interpretations to these rules, if any, are available from the office of the Commission Secretary. (6-30-19)T

**003. ADMINISTRATIVE PROCEEDINGS AND APPEALS.**

Administrative proceedings and appeals are administered by the Commission in accordance with the “Idaho Rules of Administrative Procedure of the Attorney General.” IDAPA 04.11.01, Subchapter B - Contested Cases, Sections 100 through 800, which for the purpose of Section 22-1201 et seq., Idaho Code, shall be known as Rules of Practice and Procedure of the Idaho Potato Commission Governing Contested Cases. Whenever these rules address the same subject matter as IDAPA 04.11.01, the specific provisions of these rules govern. There are no provisions for administrative appeals within the Commission under these rules of procedure, except that under Sections 202 and 203 a presiding officer may in the presiding officer's discretion refer a ruling on evidence or a motion to the full Commission. (6-30-19)T

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference into these rules. (6-30-19)T

**005. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.**

The principal office of the Commission is in Eagle, Idaho. This office is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The Commission's telephone number is (208) 334-2350. The Commission's FAX number is (208) 334-2274. The Commission's mailing address: Idaho Potato Commission, Post Office Box 1670, Eagle, Idaho 83616. The street address of the Commission is: 661 S. Rivershore Lane, Suite 230, Eagle, Idaho 83616. All documents filed in all proceedings must be filed with the Commission at one (1) of these addresses. (6-30-19)T

**006. PUBLIC RECORDS ACT COMPLIANCE.**

Except as otherwise provided by law, all materials filed with the Commission pursuant to these rules and all materials issued by the Commission pursuant to these rules are public documents subject to inspection, examination and copying. (6-30-19)T

**007. -- 010. (RESERVED)**

**010. DEFINITIONS.**

The terms defined in Section 22-1204, Idaho Code, apply to this chapter. In addition, the following terms are defined

as follows:

(6-30-19)T

**01. Primary Channel of Trade.** Potatoes are deemed to be delivered for shipment into the primary channel of trade when any such potatoes are sold or delivered for shipment, or delivered for canning and/or processing into by-products. (6-30-19)T

**011. -- 099. (RESERVED)**

**100. GENERAL.**

**01. Potato Tax.** All potatoes grown in Idaho, no matter how grown (i.e. by conventional, organic, or other methods) and no matter what variety (i.e. russet, red, yellow, specialty, or other variety) are subject to the potato tax imposed by Section 22-1211, Idaho Code. (6-30-19)T

**02. Potato Tax Base Rate and Additional Tax.** A base tax of four cents (\$0.04) per hundredweight is imposed by statute on all potatoes grown in Idaho. In addition, an additional tax of eleven cents (\$0.11) per hundredweight may be imposed upon a determination by at least two-thirds (2/3) of commission members that the anticipated expenditures for the fiscal year following the year in which the determination is made will exceed the anticipated tax revenues to be collected from the four cents (\$0.04) base tax rate. (6-30-19)T

**03. Potato Tax Due Date and Responsible Party.** The potato tax is due when potatoes are first handled in the primary channels of trade and must be paid not later than the fifteenth day of the next month. The first person selling or otherwise delivering potatoes into primary channels of trade is responsible for and must pay the full potato tax. However, if the first person is a dealer or shipper handling potatoes grown by another, he may charge back to the person he acquired the potatoes from sixty percent (60%) of the potato tax. The charge back does not reduce the first person's tax liability due to the commission. (6-30-19)T

**04. Growers', Dealers', Handlers', Shippers', Processors', Container Manufacturers', and Out-of-State Repackers' Records.** Idaho Potato Commission Tax Report Forms - Audits - Inspections. (6-30-19)T

**a.** Every dealer or handler including out-of-state repackers shall keep a complete and accurate record of all potatoes handled in the primary channels of trade. Such record shall be in such form as the Commission's Executive Director, duly authorized agent, representative or employee shall prescribe. (6-30-19)T

**b.** In addition to such other information that the Executive Director, duly authorized agent, representative or employee requires, each grower, dealer, handler, shipper, processor, container manufacturer, and out-of-state repacker shall keep records that segregates purchases and sales of Idaho® potatoes by calendar month; records of inventories of Idaho® potatoes by calendar month; and records of inventories of containers bearing the registered Certification Marks of the Commission by calendar month. Such records shall be preserved for a minimum period of two (2) years and shall be open to inspection at any time upon written or oral request or demand by the Commission or its duly authorized agents, representatives, or employees. (6-30-19)T

**c.** The Commission's duly authorized agent, representative or employee may enter upon the premises of any grower, dealer, handler, out-of-state repacker, container manufacturer, processor or any other license agreement holder of Idaho® potatoes and examine or cause to be examined any books, papers, records, ledgers, purchase journals, sales journals, electronically and/or magnetically recorded data, computers and computer records or memoranda bearing upon the amount of taxes payable or the correct usage of any Idaho Trade or Certification Mark, and to secure any other information directly or indirectly concerned with the enforcement of Chapter 12, Title 22, Idaho Code, all rules adopted pursuant thereto and all licensing agreements entered into with the Commission. The Commission's duly authorized agents, representatives or employees may also inspect and take samples of any potatoes, potato products or containers from the premises used by a grower, dealer, handler, shipper, processor, container manufacturer, or out-of-state repacker. Regular audits shall be routinely performed by the Commission or its duly authorized agents, representatives, or employees to assure adherence with these rules. In addition, compliance audits may take place at any time. For further requirements see Section 22-1212, Idaho Code. (6-30-19)T

**05. Calculation of Tax Due.** All first handlers of Idaho® Grown potatoes shall pay the total tax due on all potatoes handled by them on a net weight basis. Net weight shall be determined by subtracting from the gross

scale weight the dirt, rock, other foreign material only, and potatoes that are not used for human consumption. The amount of tax due is the tax rate currently imposed pursuant to Section 100.03 multiplied by the net hundredweight (cwt). The following diagram illustrates the manner in which the formula is to be applied:

Gross Scale Weight	Less	Dirt, rock, other foreign material, and potatoes not used for human consumption	=	Net CWT (Hundred-weight) upon which tax is due	X	Tax Rate	=	Tax Amount Due
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(6-30-19)T

**06. Tax Reports to Be Made by Growers, Dealers, Handlers, Shippers and Processors.** A report on a form approved by the Commission, showing total weight handled for a given period of time and the Idaho Potato Commission tax due are to be sent to the Idaho Potato Commission office with the tax payment. These reports are to be made on forms furnished by the Commission and shall show such other information as the Commission may require.

(6-30-19)T

**101. INTERSTATE COMMERCE NOT AFFECTED.**

These rules shall not apply to interstate commerce except to the extent that the Constitution and laws of the United States permit them to apply to interstate commerce.

(6-30-19)T

**102. CERTIFICATION MARKS FOR IDAHO® POTATO CONTAINERS.**

**01. Containers.** All potatoes grown in Idaho and packed or repacked in containers in or outside of the state of Idaho shall be in containers printed, labeled or stenciled in a plain and legible manner with one (1) of the Commission’s registered Certification Marks, and a “GROWN IN IDAHO®” Certification Mark. An exact reproduction of the Commission’s Certification Marks appears in appendix A. Certification Marks may not be stamped on any Idaho® potato container without a temporary written variance. No container may use a “Check Off” box format for state of origin. All containers must use Idaho specific approved produce code identification numbers, where the same have been obtained and approved. No container of Idaho® potatoes or potato products may be manufactured or used without prior written approval of the Commission or its employee. No Seal, Trademark, Certification Mark, brand, or similar device used to promote potatoes not grown in Idaho can be placed on a container.

(6-30-19)T

**a.** Upon written application, the Idaho Potato Commission may grant a variance from these rules for special purpose shipments for charity, certified seed, experimentation and processing. If a variance is granted, the applicant shall comply with all terms and conditions of such variance. If applicable, the application shall be accompanied by a valid Certificate of Privilege issued by the Idaho and Eastern Oregon Potato Committee, and the applicant shall furnish copies of all of the reports required by the Idaho and Eastern Oregon Potato Committee to the Idaho Potato Commission.

(6-30-19)T

**02. Marks.** No person, firm or corporation packing or repacking potatoes or potato products outside of the state of Idaho shall use any of the Commission’s Certification Marks on any containers of potatoes or potato products packed or repacked outside the state of Idaho unless they have first executed an agreement for the use of the Certification Marks with the Idaho Potato Commission, and unless they are actually packing or repacking in such containers of Idaho grown potatoes or potato products made from Idaho grown potatoes.

(6-30-19)T

**03. Agreement.** No person, including without limitation manufacturers, container manufacturers, growers, shippers, processors and repackers, shall use or reproduce any of the Commission’s Certification Marks on any container without first executing an agreement for the use of the marks with the Idaho Potato Commission.

(6-30-19)T

**04. Recognition.** Whenever the “GROWN IN IDAHO®,” “IDAHO®,” or other Certification Marks are used, recognition must be given that the marks are registered under the appropriate Federal statute. This recognition must be: by printing a legible capital “R” inside a circle ®, immediately after the word “IDAHO” or where designated by a duly authorized employee of the Commission.

(6-30-19)T

**05. No Certification Mark.** No Certification Mark shall be incorporated into any private label, brand or seal but shall be portrayed without embellishment as shown in appendix A. (6-30-19)T

**06. Not Incorporated.** The word “IDAHO®,” shall not be incorporated into any private label, brand or seal unless such label, brand or seal was registered with the U.S. Patent Office prior to January 1, 1966. (6-30-19)T

**07. Size.** A Certification Mark shall be used on the front of a one hundred (100) pound sack type container, it shall not be less than five (5) inches in diameter or width and shall not be placed closer than two (2) inches from the bottom of said container. Any Certification Mark used on the rear of a one hundred (100) pound sack type container, it shall not be less than twelve (12) inches in diameter or width. The marks may also be used on both the front and back of one hundred (100) pound sack type containers, if placed as indicated and in the sizes indicated. (6-30-19)T

**08. Limitation of Use.** On fifty (50) pound sack type containers, a Certification Mark shall be used as on the one hundred (100) pound containers, but in proportionate sizes. (6-30-19)T

**09. Other Type Containers.** On all sack type containers of less than fifty (50) pounds, a Certification Mark shall appear plainly visible on the front of the containers; and it shall be in relative proportion to brands, labels, or other printed matter thereon, but not less than two and one quarter (2 1/4) inches in diameter or width. (6-30-19)T

**10. Box Type Containers.** (6-30-19)T

**a.** On all box type containers in which U.S. No. 1 grade Idaho® Potatoes will be packed, a Certification Mark shall be located on the front and back panels of the container and shall be not less than a width measurement of three and one half (3 1/2) inches and a length measurement of five and one half (5 1/2) inches so placed as to be plainly visible. Unless an approved product traceability sticker is used, the top one and three quarters (1 3/4) inches of the carton shall contain no preprinting on all four (4) sides of the container. The container shall be packed with an approved box bottom bearing Idaho® Potato Certification Marks as specified by the commission. (6-30-19)T

**b.** On all box type containers in which number two (2) grade Idaho® Potatoes will be packed, packing is permitted only when the following requirements are met: (6-30-19)T

**i.** The container must be manufactured in a kraft, or non-colored cardboard material and may either be of a single or double piece construction that uses a box bottom bearing Idaho® Potato Certification Marks as specified by the commission; (6-30-19)T

**ii.** The rectangular “Grown in Idaho®” certification mark shall be placed on each side and end panel of the container, with a width measurement of three and one-half (3 1/2) inches and length measurement of five and one-half (5 1/2) inches. The mark shall be located as shown in Appendix B; (6-30-19)T

**iii.** The certification mark “Idaho® Potatoes” shall be printed on all four (4) sides of the container in one (1) inch lettering in the locations shown in Appendix B; (6-30-19)T

**iv.** The words “U.S. NO. 2” shall be printed on all four (4) sides of the container in one (1) inch lettering in the locations shown in Appendix B and on one (1) of the top flaps of the container; (6-30-19)T

**v.** The top one and three quarters (1 3/4) inches of the carton shall contain no preprinting on all four (4) sides of the container; (6-30-19)T

**vi.** One (1) of the elongated top flaps shall contain the “Grown in Idaho®” certification mark with a width of three and one-half (3 1/2) inches and length of five and one-half (5 1/2) inches, together with the certification mark “Idaho® Potatoes” in one (1) inch height and the words “U.S. NO. 2” in one (1) inch height; (6-30-19)T

vii. Product code identification numbers on containers bearing the certification marks shall use Idaho specific codes where the same have been obtained and approved; and (6-30-19)T

viii. All other requirements regarding container packaging set forth in these rules and the license agreements of the Idaho Potato Commission apply to the use of this type of container. (6-30-19)T

**11. Tote Bin Type.** On all tote bin type containers, Certification Marks must be used on the front of said container but may be used elsewhere and shall not be less than twelve (12) inches in diameter or width. (6-30-19)T

**12. Identity of Commodity.** All containers bearing the marks shall specify the identity of the commodity contained therein and the name and place of business of the manufacturer, packer, licensee, or distributor of the commodity. Containers which do not comply with the rules of the Idaho Potato Commission shall not be used by any grower, dealer, handler, shipper, processor, or out-of-state repacker for any potatoes or potato products subject to these rules. (6-30-19)T

**13. Words Printed.** All potatoes grown in Idaho and packed or repacked in Idaho shall have the words "PACKED IN IDAHO" printed on the container. (6-30-19)T

**14. Sack Type Containers -- Fifty Pounds or Over.** On all sack type containers for fifty (50) pounds or over the words "PACKED IN IDAHO" shall be located on the front lower half of the container but not closer than six (6) inches to the bottom thereof. (6-30-19)T

**15. Sack Type Containers -- Less Than Fifty Pounds.** On all sack type containers containing less than fifty (50) pounds of potatoes the words "PACKED IN IDAHO" may be placed anywhere on the container but shall be so placed as to be plainly visible. (6-30-19)T

**16. Location of Words.** On all box type containers the words "PACKED IN IDAHO" may be located on the ends, sides or top of the container but shall be so placed as to be plainly visible. (6-30-19)T

**17. Colors.** All marks when used and the words "PACKED IN IDAHO" shall be in color or colors in contrast with the color of the container. (6-30-19)T

**18. Use.** Only in connection with potatoes and potato products grown within the state of Idaho may growers, handlers, shippers, processors, and packers use the name "IDAHO®" in any mark, label or stencil applied to containers for such produce and products. The growers, dealers, handlers, shippers, processors, and packers of potatoes within the state of Idaho are not precluded from processing, packing, and shipping potatoes grown outside the state of Idaho so long as such potatoes are not misrepresented or misbranded as Idaho® Potatoes. (6-30-19)T

**19. Compulsory Printing.** Printing of the mark "GROWN IN IDAHO®" and the words "PACKED IN IDAHO" is compulsory on all potato containers printed or contracted for after December 1, 1964. (6-30-19)T

**20. Idahos.** The word "IDAHOS" shall not be used on any container for potatoes, potato products nor on any other printing or advertising material or correspondence used to identify or promote Idaho potatoes. (6-30-19)T

**21. Exemption.** Only shipments of certified seed potatoes to destinations outside of the state of Idaho are exempt from this rule. (6-30-19)T

**22. Other Rules.** Other rules on containers, grade, and size are covered under Title 22, Chapter 9, Idaho Code, and applicable marketing orders. (6-30-19)T

**103. BRANDING, AND GRADE AND PACKAGING REQUIREMENTS OF STATE BRAND.**

**01. Branding or Marking of Individual IDAHO® Potatoes.** (6-30-19)T

a. Idaho® potatoes are considered to be branded when they are individually marked or identified as



such. The methods of branding shall include: marking of individual potatoes by ink, heat, light, labeling, stickering, or puncturing and such other methods as may from time to time be authorized by the Idaho Potato Commission.

(6-30-19)T

**b.** The certification mark “Idaho®” shall be one (1) inch in length and one-quarter (1/4) inch in height unless prior Idaho Potato Commission written approval is secured and granted for any variance.

(6-30-19)T

**c.** The purchase or the leasing or use of branding machines shall be entirely voluntary.

(6-30-19)T

**d.** There shall be no limitations on the size and type of containers in which branded potatoes may be packed as long as they meet the licensing requirements of Section 102.

(6-30-19)T

**e.** Grade for branding shall be U.S. No. 1 or better (as defined in the U.S. Standards effective March 27, 1991) and not less than two (2) inches in diameter or four (4) ounces in weight.

(6-30-19)T

**f.** Only Certification Marks owned or administered by the Idaho Potato Commission may be branded on potatoes grown in Idaho unless prior Idaho Potato Commission approval in writing is secured and granted for the use of additional words or designs.

(6-30-19)T

**g.** The operation of branding the word “Idaho®” upon potatoes shall be carried on only by licensees of the Idaho Potato Commission, and only upon such terms and conditions that will insure that only Idaho grown potatoes are branded as such.

(6-30-19)T

**h.** All varieties of potatoes grown in Idaho may be so branded.

(6-30-19)T

**i.** No person, firm, or corporation may brand the word “Idaho®” on potatoes or sell machinery for the purpose of branding potatoes with any of the Idaho certification marks unless granted the right to do so by written agreement with the Idaho Potato Commission.

(6-30-19)T

**j.** Branded potatoes must use Idaho specific, approved produce code identification numbers, where the same have been obtained and approved.

(6-30-19)T

**k.** On all branded potatoes using a standard size sticker, the Certification Mark “Idaho® Potatoes” shall be printed in eight (8) point type and the Certification Mark “Grown in Idaho®” shall be printed with a minimum height of eight point one hundred twenty-nine (8.129) mm and minimum width of five point thirty-seven (5.37) mm.

(6-30-19)T

**02. State Brand Grade and Packaging Requirements.** Idaho® potatoes shall meet all requirements of U.S. Extra No. 1 as defined in the U.S. Standards for Grades of Potatoes, March 27, 1991, with the following additions or exceptions:

(6-30-19)T

**a.** Mature.

(6-30-19)T

**b.** Fairly well shaped. Defined as excluding the lower limits of such classification.

(6-30-19)T

**c.** Appearance as related to russetting. Defined: at least seventy five percent (75%) of the surface of the individual potato shall be moderately netted which means the netting will be solid net-like in appearance.

(6-30-19)T

**d.** Size shall be two and one eighth (2-1/8) inches in diameter and four (4) ounces minimum, eleven (11) ounces maximum. Each lot shall meet the specifications of Size A as defined in 51.1545, Table 1(2) of the Standards.

(6-30-19)T

**e.** Tolerances for grade defects are defined in 51.1546(a)(2), for U.S. No. 1.

(6-30-19)T

**f.** All other tolerances and definitions of the Standards apply.

(6-30-19)T

**03. Packaging. (6-30-19)T**

**a.** Container Requirement: Maximum size not to exceed twenty (20) pounds. (6-30-19)T

**b.** Miscellaneous Requirements: Use of the state brand packaging shall be entirely voluntary. Potatoes grown only in Idaho may be packed in state branded containers. State branded containers shall be packed only in Idaho. All varieties of potatoes grown in Idaho may be packed in state branded containers. The Commission shall require a written agreement between the Idaho Potato Commission and Idaho packers for the use of the state brand. All state branded containers shall be Federal-State inspected. (6-30-19)T

**c.** The grade used in state brand containers shall be as defined in Subsection 103.03 and “Idaho State Code 22-908” and “Federal-State Inspected” shall be printed in three-eighths (3/8) inch or larger letters, on front of each container. (6-30-19)T

**d.** If individually branded Idaho® potatoes are packaged in state brand packaging they must meet grade requirements as defined in Subsection 103.03. (6-30-19)T

**104. REPORTING, LABELING, AND REVOCATION.**

**01. Reporting of Fresh Shipments of Potatoes. (6-30-19)T**

**a.** Effective July 1, 1976, growers, dealers, handlers, and shippers of Idaho® potatoes are required to report shipments of all fresh Idaho grown potatoes giving information as to weight, packaging, and type of receiver. Reporting forms will be furnished for this information by the Idaho Potato Commission. All information received will be kept in strictest confidence as to individual shipments. (6-30-19)T

**b.** The purpose of this information is to provide the Idaho Potato Commission with information concerning fresh potato sales in geographical marketing areas receiving Idaho® grown potatoes to enable it to design and evaluate advertising and marketing programs. (6-30-19)T

**02. Labeling Containers of Fresh Idaho® Potatoes to Indicate the Variety Packed Therein. (6-30-19)T**

**a.** All potatoes grown in Idaho that are packed or repacked in containers in Idaho, or packed or repacked in containers outside of Idaho under an out-of-state packer license agreement, shall be packed or repacked in containers that are printed, marked, labeled or stenciled in a plain and legible manner that identifies the variety packed therein. (6-30-19)T

**b.** No container may contain more than one (1) variety of potato, except as provided by written variance for non-russet variety potatoes. (6-30-19)T

**c.** Any mark, label, or stencil required by this rule shall be conspicuously placed on the container and printed in a color contrasting with the background and shall be of a size determined as follows: (6-30-19)T

**i.** For bags and other containers holding one hundred (100) pounds of potatoes or more, the letters of the label shall be at least one (1) inch high; (6-30-19)T

**ii.** For bags and other containers holding fifty (50) pounds or more of potatoes, but less than one hundred (100) pounds, the letters of the label shall be at least three-fourths (3/4) of an inch high; (6-30-19)T

**iii.** For bags or other containers holding less than fifty (50) pounds of potatoes, the letters on the label shall be five-eighths (5/8) of an inch high. (6-30-19)T

**iv.** For containers holding less than five (5) potatoes, the letter on the label shall be in a size that is plainly visible and approved in writing by a duly authorized Commission employee. (6-30-19)T

**d.** Any person seeking authorization to comply with this rule in a manner other than that specified

herein shall submit a written request to the Commission for approval of an alternate method of compliance, which alternative method shall be in substantial compliance with these standards and which request shall describe in detail the proposed alternate method of compliance. The Executive Director of the Commission or a duly authorized employee shall have the authority and responsibility to review such requests and rule whether they should be allowed, said determination to be based upon a finding that such alternate method has nor has not been shown to comply with the purpose and meet the standards of this rule; provided, any interested person may request in writing that the Commission grant a de novo review of said request at a subsequent regular meeting deemed convenient and appropriate by the Commission, which request the Commission may in its discretion, either grant or deny.(6-30-19)T

**e.** No potatoes grown in Idaho and packed or repacked in containers in Idaho, or packed or repacked outside of Idaho under an out-of-state packer license agreement, shall carry or be printed, labeled, or identified with the GROWN IN IDAHO® or IDAHO® marks unless this rule is fully complied with as respects said potatoes. (6-30-19)T

**f.** All persons growing potatoes in Idaho or packing or repacking in containers in Idaho, or packing or repacking outside of Idaho under an out-of-state license agreement, shall have the affirmative duty to avoid and refrain from ambiguous or misleading practices, acts or representations and to eliminate the same in marketing or handling Idaho® potatoes if such practice does or is likely to mislead any purchaser or consumer regarding the quality and variety of Idaho® potatoes purchased by such buyer or consumer. (6-30-19)T

**03. Revocation of Right to Use Marks. (6-30-19)T**

**a.** The Commission shall have the power to revoke the right of any person, firm, or corporation to use any of the Commission's Certification Marks or Trademarks if such person, firm, or corporation fails to pay any advertising tax assessed against it, license fees, or royalties, or fails to comply with any of these rules or applicable law. (6-30-19)T

**b.** Revocation of the right to use the Certification Marks or Trademarks shall not occur without reasonable notice of at least twenty (20) days and an opportunity for a hearing pursuant to Section 67-5242, Idaho Code. However, where the Executive Director determines that expedited action is necessary, he may: (6-30-19)T

**i.** Issue an order immediately suspending the right to use any of the Commission's Certification Marks or Trademarks pending a hearing, which hearing shall be held within twenty (20) days from the Executive Director's order; or (6-30-19)T

**ii.** Issue an order conditioning the right to use any of the Commission's Certification Marks or Trademarks pending a hearing, which hearing shall be held within twenty (20) days from the Executive Director's order; or (6-30-19)T

**iii.** Issue an order directing that the user of the Commission's Certification Marks or Trademarks show cause why the right to use the marks should not be suspended or conditioned further. (6-30-19)T

**105. ADDITIONAL LABELING REQUIREMENTS, POTATOES.**

**01. Disclosure of Geographic Growing Area of Origin upon Potato Containers.** All persons doing business in the state of Idaho are required to disclose the growing area of origin upon all potato containers in accordance with this rule and Section 22-1207, Idaho Code. For purposes of these rules, doing business in the state of Idaho means the doing of any of the acts which would subject a person to the jurisdiction of the courts of this state or defined in Section 5-514, Idaho Code. (6-30-19)T

**02. Compliance for Idaho Grown Potatoes.** For potatoes "Grown in Idaho®," this rule is complied with by meeting the requirements of Section 102. (6-30-19)T

**03. Compliance for Private Brands or Labels That Reference Idaho Locations.** Private brands or labels of containers that reference an Idaho location, geographical feature, or otherwise attempt to imply directly or indirectly that a container of potatoes contains potatoes grown in Idaho when in fact such is not the case are prohibited. (6-30-19)T

**04. Compliance for Private Brands or Labels That Do Not Reference Idaho Locations.** Private brands or labels that do not reference an Idaho location, geographical feature, or otherwise attempt to imply directly or indirectly that a container of potatoes contains potatoes grown in Idaho when in fact such is not the case, but only have an Idaho address on the container, are permitted when approved by the commission or its designee. This rule is complied with by private brands or labels that: (6-30-19)T

**a.** Meet the requirements of Subsection 104.02.c.; (6-30-19)T

**b.** State the geographical state of origin of the potatoes followed by the word “potatoes”; and (6-30-19)T

**c.** The lettering size of the Idaho address on the container does not exceed one-half (1/2) inch for containers fifty (50) pounds or greater and one-quarter (1/4) inch for containers less than fifty (50) pounds. For example, for potatoes grown in the state of Washington, the phrase “Washington potatoes” would comply with these rules. The use of the words “Grown in” preceding the state of origin is prohibited. (6-30-19)T

**106. ADDITIONAL REQUIREMENTS FOR USE OF TRADEMARKS.**

**01. Marks.** No person is permitted to use any trademark owned or administered by the Commission unless authorized to do so pursuant to a license agreement entered into with the Commission. (6-30-19)T

**02. Agreement.** Trademarks owned or administered by the Commission may be licensed for use as permitted under federal and state law and as authorized by the Commission. (6-30-19)T

**03. Royalty Fees.** In addition to license fees, the Commission may set royalty fees for the use of trademarks. (6-30-19)T

**04. Reproductions.** Exact reproductions of the trademarks owned or administered by the Commission are set forth in Appendix C of these rules. (6-30-19)T

**107. -- 199. (RESERVED)**

**Subchapter A - Rules of Procedure**  
**(Sections 200 through 204)**

**200. INFORMAL FILES MAY BE INVESTIGATIVE RECORDS.**

Files created by the Commission and its staff in response to informal inquiries or complaints are investigatory records within the meaning of Sections 74-101(6) and 74-107(16), Idaho Code, are generally exempt from disclosure according to the standards of Sections 74-101 through 74-108, Idaho Code, but are available under Section 74-113, Idaho Code, to the customer, applicant, licensee, etc., that are the subjects of the investigation. (6-30-19)T

**201. SUBPOENAS.**

**01. Issuance of Subpoenas.** Upon a motion in writing, or upon a Commissioner’s own initiative without motion, any Commissioner or the Commission’s Secretary may issue subpoenas: (6-30-19)T

**a.** Requiring the attendance of a witness from any place in Idaho; (6-30-19)T

**b.** The production of documents from any place in Idaho; or (6-30-19)T

**c.** The production of any books, accounts, papers, or records of a licensee kept within or without Idaho to any designated place of deposition, hearing, or investigation for the purpose of taking testimony or examining documents before the Commission, a Commissioner or hearing examiner. (6-30-19)T

**02. Witness or Travel Fees.** A party’s motion to issue a subpoena must be accompanied by a statement that the party will tender to the subpoenaed person all fees required by statute and rules if the subpoena is issued.

(6-30-19)T

**03. Motions to Quash.** The Commission upon motion to quash made promptly, and in any event, before the time to comply with the subpoena, may: (6-30-19)T

**a.** Quash the subpoena; or (6-30-19)T

**b.** Condition denial of the motion to quash upon reasonable terms. (6-30-19)T

**202. RULINGS AT HEARINGS.**

The presiding officer rules on motions presented at hearing. The presiding officer's rulings may be reviewed by the full Commission in determining the matter on its merits. In extraordinary circumstances, the presiding officer may refer or defer these matters to the full Commission for determination. (6-30-19)T

**203. OBJECTIONS -- OFFERS OF PROOF.**






Grounds for objection to the admission or exclusion of evidence must be stated briefly at the time the evidence is offered. Formal exceptions to rulings admitting or excluding evidence are unnecessary and need not be taken. An offer of proof for the record consists of a statement of the substance of the excluded evidence. When a party objects to the admission of evidence, the presiding officer will rule on the objection or the presiding officer may receive the evidence subject to the later ruling by the full Commission or refer to the matter to the full Commission. (6-30-19)T

**204. -- 999. (RESERVED)**

APPENDIX A



APPENDIX B

<p>COMPANY NAME HERE</p> <p>Company or farm logo may be placed on this major flap. Size is not limited. Other items may also be placed on this flap.</p> 	<p>IDAHO POTATOES U.S. NO. 2</p> <p>1-inch type 1 1/2-inch type</p> <p>BAR CODE PLACEMENT ONLY</p>	<p>Placed left or activates line to be placed at least 1/8 inch from bottom score and at least 1/8 inch from left score (reading left to right) on major panel. It is not limited to one line but can not exceed beyond the word "Potatoes."</p>
<p>Grown in Idaho® seal is a minimum of 2 1/4 inches wide and must be placed on one major flap in two locations, with the text "Idaho® Potatoes" and "U.S. No. 2" located between both seals. This area is also used for placement of sprout hypoclause (in box).</p>	<p>IDAHO POTATOES U.S. NO. 2</p> <p>PRODUCE OF U.S.A. NET WT. - 5 LBS. (2.27 kg)</p> 	<p>Grown in Idaho® seal must be 2 1/4 inches wide with placement at left on major panels and at right on minor panels. Reading left to right, seal must be 1/8 inch from bottom score and at least 1/8 inch from side score.</p>
<p>IDAHO POTATOES U.S. NO. 2</p>  	<p>IDAHO POTATOES U.S. NO. 2</p>  <p>BAR CODE PLACEMENT ONLY</p>	<p>Company or farm logo may be placed under "No. 2". Minimum logo size is 2 1/4 inches wide.</p>

APPENDIX C







[Home](#) / [Press Releases](#) / Idaho administrative rules republished

## Idaho administrative rules republished

*Wednesday June 19, 2019*

Boise, Idaho – The Idaho administrative rules identified for reauthorization were published in the Idaho Administrative Bulletin today at <https://adminrules.idaho.gov/bulletin/2019/06SE.pdf>.

Under the Idaho Administrative Procedures Act, all administrative rules automatically sunset on July 1 unless extended by the Idaho Legislature. The Legislature traditionally passes a “going-home” bill that extends all administrative rules until July 1 of the subsequent year. This is the first year the Legislature did not pass the “going-home” bill. As a result, all rules are scheduled to expire on July 1, 2019.

Governor Little tasked his administration with reauthorizing necessary rules as “temporary and proposed” rules prior to July 1 so there is no negative impact on public health, safety, and welfare. The public can provide comments on reauthorized rules as outlined in each docket published in the bulletin.

Governor Little viewed the situation as an opportunity to reset Idaho’s regulations. Since April, state agencies hosted more than 40 public meetings to identify which rules to reauthorize or allow to expire. The Division of Financial Management publicly posted the list of rules identified for expiration and solicited public input. Nearly all public comments received suggested additional rules to cut.

Agencies mobilized quickly because they already had begun a rules-review process to comply with Governor Little’s executive order establishing the Red Tape Reduction Act, which he issued during his first few weeks in office.

###

NEWS MEDIA CONTACT: Marissa Morrison, Press Secretary

208-943-1686 or [marissa.morrison@gov.idaho.gov](mailto:marissa.morrison@gov.idaho.gov)

ver: 3.2.61 | last updated: June 19, 2019 at 10:00 am

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## Administrative rules slated to be kept published online

By NATHAN BROWN nbrown@postregister.com Jun 19, 2019



Little

The 81 percent of Idaho's administrative rules that are up for reauthorization were published online Wednesday.

The state has 8,278 pages and 736 chapters of administrative rules detailing how agencies implement the state's myriad statutes. Many of them are fairly mundane or technical, but some of them deal with how agencies approach controversial subjects such as vaccinations and school curriculum. While the Legislature typically passes a bill at the end of the session extending all of the rules until July 1 of the next year, this year it didn't, due to a disagreement between the House and Senate over a House proposal to require both chambers of the Legislature rather than just one to approve any new rules. As a result, all the rules will expire July 1.

Gov. Brad Little's office reviewed the rules and decided to ax 139 chapters of rules, get rid of sections within another 79 chapters, rewrite and simplify 31 chapters and extend the rest as-is as temporary proposed rules. The Legislature will take them up when it reconvenes in 2020 and decide whether to reauthorize them. Overall more than 34 percent of the rules are being either eliminated or simplified.

While not reauthorizing the rules was a result of gridlock rather than planning, many conservatives have welcomed the situation as an opportunity to get rid of unnecessary regulations. The rather unusual situation has drawn favorable attention from right-leaning opinion writers both in Idaho and in some national publications.

"The Legislature's decision to do nothing is more or less the product of a spat between the House and the Senate, but the end result is still fantastic," Idaho Freedom Foundation President Wayne Hoffman wrote in a column in April. "Gov. Brad Little's administration will need to reinstate each regulation, one program at a time, hopefully leaving a lot on the cutting room floor."

"Oh, gridlock! Glorious gridlock!" National Review's Kevin Williamson started a May column about what happened. "Is there anything it can't do?"

"Bold action could not only make Idaho the undisputed champion of economic competitiveness within the U.S., but inspire other states as well," James Freeman wrote in the Wall Street Journal.

While the total cost for the process isn't yet available, publishing all the rules is expected to cost \$25,000, said Little's press secretary Marissa Hyer. After lawmakers adjourned for the year in April after an often-acrimonious and longer-than-usual session, Democrats pointed to the impasse as an example of the Republican caucus' dysfunction.

"It is unfortunate but perhaps fitting that we are leaving the building today on one final note of failure by the majority party," Assistant Minority Leader Rep. Ilana Rubel, R-Boise, said at a news conference shortly after adjournment.

Little has made cutting red tape and reducing regulations one of his signature issues, pushing for easing occupational licensing requirements and signing an executive order earlier this year requiring state agencies to identify for elimination or simplification two existing rules for every new one they propose. Little's office said in a news release Wednesday he viewed the expiration of the rules as "an opportunity to reset Idaho's regulations."

"Since April, state agencies hosted more than 40 public meetings to identify which rules to reauthorize or allow to expire," Little's office said. "The Division of Financial Management publicly posted the list of rules identified for expiration and solicited public input. Nearly all public comments received suggested additional rules to cut."

You can review the rules online and see how to leave public comment on them at [adminrules.idaho.gov/bulletin/2019/06SE.pdf](https://adminrules.idaho.gov/bulletin/2019/06SE.pdf).

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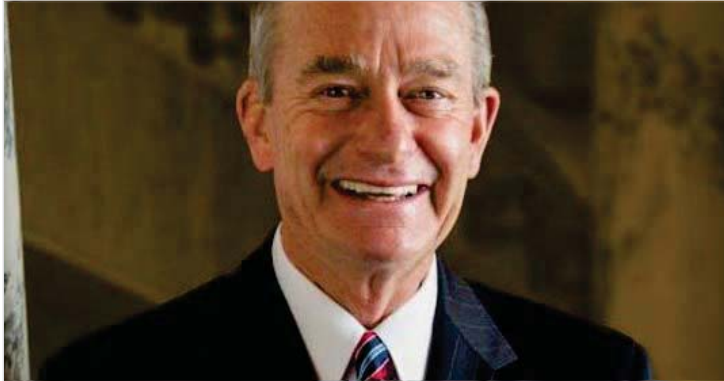
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**Idaho State Journal**

June 20 at 2:00 PM ·

The 81% of Idaho's administrative rules that are up for reauthorization were published online Wednesday.



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## Administrative rules slated to be kept published online

By NATHAN BROWN [nbrown@postregister.com](mailto:nbrown@postregister.com) Jun 20, 2019



Little

The 81% of Idaho's administrative rules that are up for reauthorization were published online Wednesday.

The state has 8,278 pages and 736 chapters of administrative rules detailing how agencies implement the state's myriad statutes. Many of them are fairly mundane or technical, but some of them deal with how agencies approach controversial subjects such as vaccinations and school curriculum.

While the Legislature typically passes a bill at the end of the session extending all of the rules until July 1 of the next year, this year it didn't, due to a disagreement between the House and Senate over a House proposal to require both chambers of the Legislature rather than just one to approve any new rules. As a result, all the rules will expire July 1.

Gov. Brad Little's office reviewed the rules and decided to ax 139 chapters of rules, get rid of sections within another 79 chapters, rewrite and simplify 31 chapters and extend the rest as-is as temporary proposed rules. The Legislature will take them up when it reconvenes in 2020 and decide whether to reauthorize them. Overall, more than 34 percent of the rules are being either eliminated or simplified.

While not reauthorizing the rules was a result of gridlock rather than planning, many conservatives have welcomed the situation as an opportunity to get rid of unnecessary regulations. The rather unusual situation has drawn favorable attention from right-leaning opinion writers both in Idaho and in some national publications.

"The Legislature's decision to do nothing is more or less the product of a spat between the House and the Senate, but the end result is still fantastic," Idaho Freedom Foundation President Wayne Hoffman wrote in a column in April. "Gov. Brad Little's administration will need to reinstate each regulation, one program at a time, hopefully leaving a lot on the cutting room floor."

"Oh, gridlock! Glorious gridlock!" National Review's Kevin Williamson started a May column about what happened. "Is there anything it can't do?"

"Bold action could not only make Idaho the undisputed champion of economic competitiveness within the U.S., but inspire other states as well," James Freeman wrote in the Wall Street Journal.

While the total cost for the process isn't yet available, publishing all the rules is expected to cost \$25,000, said Little's press secretary Marissa Hyer. After lawmakers adjourned for the year in April after an often-acrimonious and longer-than-usual session, Democrats pointed to the impasse as an example of the Republican caucus' dysfunction.

"It is unfortunate but perhaps fitting that we are leaving the building today on one final note of failure by the majority party," Assistant Minority Leader Rep. Ilana Rubel, R-Boise, said at a news conference shortly after adjournment.

Little has made cutting red tape and reducing regulations one of his signature issues, pushing for easing occupational licensing requirements and signing an executive order earlier this year requiring state agencies to identify for elimination or simplification two existing rules for every new one they propose. Little's office said in a news release Wednesday he viewed the expiration of the rules as "an opportunity to reset Idaho's regulations."

"Since April, state agencies hosted more than 40 public meetings to identify which rules to reauthorize or allow to expire," Little's office said. "The Division of Financial Management publicly posted the list of rules identified for expiration and solicited public input. Nearly all public comments received suggested additional rules to cut."

---

Reporter Nathan Brown can be reached at 208-542-6757. Follow him on Twitter: @NateBrownNews.

## See the rules

You can review the rules online and see how to leave public comment on them at [adminrules.idaho.gov/bulletin/2019/06SE.pdf](https://adminrules.idaho.gov/bulletin/2019/06SE.pdf).



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## Majority of Idaho administrative rules slated to be kept published online

📅 June 21, 2019 📍 Government (<http://www.koze.com/category/government/>), Idaho (<http://www.koze.com/category/idaho/>), Legislature (<http://www.koze.com/category/legislature/>), News (<http://www.koze.com/category/news/>)



The 81 percent of Idaho's administrative rules that are up for reauthorization were published online this week.

The state has some 8,300 pages and 736 chapters of administrative rules detailing how agencies implement the state's myriad statutes. Many of them are fairly mundane or technical, but some deal with how agencies approach controversial subjects such as vaccinations and school curriculum.

While the Legislature typically passes a bill at the end of the session extending all of the rules until July 1st of the next year, lawmakers did not do it this year, due to a disagreement between the House and Senate over a House proposal to require both chambers of the Legislature rather than just

one to approve any new rules. As a result, all the rules will expire a week from Monday.

Governor Brad Little's office reviewed the rules and decided to ax 139 chapters of rules, get rid of sections within another 79 chapters, rewrite and simplify 31 chapters, and extend the rest as-is as temporary proposed rules. The Legislature will take them up when it reconvenes in 2020 and decide whether to reauthorize them.

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Little has made cutting red tape and reducing regulations one of his signature issues, pushing for easing occupational licensing requirements and signing an executive order earlier this year requiring state agencies to identify for elimination or simplification two existing rules for every new one they propose. (Post Register)

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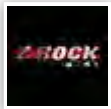


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## Politics

### Guest opinion: How Idaho made the largest regulatory cuts in state history

#### Details



Written by Gov. Brad Little

Category: [politics](#) (/politics)

Published: 23 June 2019

When I took office as Idaho's 33rd Governor in January, I was determined to follow through on my promise to reduce regulatory burdens on Idaho citizens and businesses.

Six months later, we have cut or simplified 40 percent of Idaho regulations! Idaho's work is setting an example for other states and the federal government to follow.

How did we do it? Through a combination of efforts, some planned and one unexpected event.

Within my first few weeks in office, I issued two executive orders aimed at scaling back Idaho's Administrative Code – the Red Tape Reduction Act and Licensing Freedom Act of 2019. Those executive orders are on my web site here: <https://gov.idaho.gov/executive-orders/>

The agencies within my administration already had begun their examination of rules to cut back when the Idaho Legislature in April chose not to pass routine legislation reauthorizing Idaho's administrative code. The Legislature's decision put the onus on me to choose which rules should stay and which rules should go by July 1.

In response to the situation, I used my executive authority to direct agencies in my administration to expedite the regulatory reduction efforts already set in motion by my earlier executive orders.

The agencies collectively held more than 40 public meetings, and I opened a public comment period welcoming feedback from Idahoans on rules identified for expiration or reauthorization.

All told, our work resulted in the elimination of 20 percent of all rule chapters. Another 20 percent of all rule chapters were significantly simplified.

For example, the Idaho Department of Insurance eliminated 17 chapters of rules and renumbered all remaining chapters to better group the health insurance, title insurance, and life insurance rules together. The Idaho Division of Building Safety had 16 separate rule chapters on logging safety. They were consolidated into a one-stop shop rule, simplifying compliance and eliminating 7,000 words in the process.

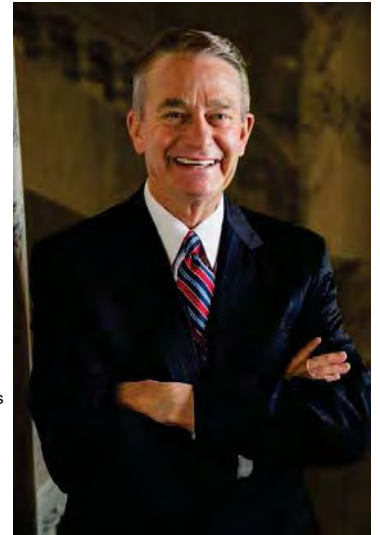
There was a good deal of silliness that made its way into our laws over time. We eliminated a rule from 1961 establishing the state's deputy veterinarian "must be attired in neat, clean and correct clothing" and "at all times have proper behavior, be alert, animated, agreeable and have pleasant manners." I am sure our state deputy veterinarian will be glad to know he won't be breaking the law from now on if he comes to work with an untucked shirt!

The Legislature's unexpected decision was not something I asked for and didn't necessarily want at first.

However, the work over the past six months has undeniably transformed Idaho's administrative code into a set of rules that are easier for Idahoans to understand and navigate.

When I took office, Idaho had 736 chapters and 8,200 pages of rules. Our efforts in a few short months cut 900 pages of regulations.

We took advantage of an opportunity to turn government on its head: working with citizens in an open, transparent process, we envisioned the entire administrative code gone and decided what should stay.



I am very proud of the agencies within my administration for sharing my enthusiasm to clean up and simplify our laws. I hope other states and the federal government look to Idaho for what can be accomplished with some boldness and creativity.

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**Bloomberg  
Tax****Daily Tax Report: State**

## **Idaho Governor Announces Republication of Administrative Rules**

Posted June 24, 2019, 3:00 PM

The Idaho Governor June 19 announced that state administrative rules identified for reauthorization were published in the Idaho Administrative Bulletin. Under the Idaho Administrative Procedures Act, all administrative rules automatically sunset on July 1 unless extended by the Idaho Legislature. The governor tasked his administration with reauthorizing necessary rules as “temporary and proposed” rules prior to July 1. The public can provide comments on reauthorized rules as outlined in each docket published in the bulletin. The governor initiated steps to...

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## Public supported state cuts in rules, regulations

Jun 26, 2019

The Idaho administrative rules identified for reauthorization were published in the Idaho Administrative Bulletin today at <https://adminrules.idaho.gov/bulletin/2019/06SE.pdf>.

Under the Idaho Administrative Procedures Act, all administrative rules automatically sunset on July 1 unless extended by the Idaho Legislature. The Legislature traditionally passes a “going-home” bill that extends all administrative rules until July 1 of the subsequent year. This is the first year the Legislature did not pass the “going-home” bill. As a result, all rules are scheduled to expire on July 1, 2019.

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# Altered Idaho code republished

· JUNE 28, 2019

**By Lyndsie Kiebert**

Reader Staff

Idaho Governor Brad Little is all about keeping it simple.

He's made it his mission to wield scissors to bureaucratic red tape, and when faced with reviewing all 8,200 pages of Idaho Administrative Code, he and his team "cut or simplified" 40 percent of the state's regulations, according to a statement from Little last week.

At the end of each legislative session, Idaho lawmakers sign what's commonly referred to as the "going home" bill, keeping Idaho's rules in effect through the following year. That is, until the 2019 session, when a disagreement between the legislative bodies left the bill unsigned, leaving it to the governor's office to make sure all code didn't expire July 1.

Little and his team, along with all of the state's rulemaking agencies, then had the chance to comb through the code themselves, something the governor said "was not something I asked for and didn't necessarily want at first." Now, however, the governor sees it as an opportunity to transform Idaho code "into a set of rules that are easier for Idahoans to understand and navigate."

Little's office "allowed rules that were obsolete, unnecessary, or unenforceable to expire." One such rule, which Little said exemplified the "silliness that made its way into our laws over time," stated that the state's deputy veterinarian "must be attired in neat, clean and correct clothing" and "at all times have proper behavior, be alert, animated, agreeable and have pleasant manners."

"I am sure our state deputy veterinarian will be glad to know he won't be breaking the law from now on if he comes to work with an untucked shirt!" Little wrote in a statement June 19 outlining just how he and his team went about cutting nearly 900 pages of regulations.

To review the proposed compilation of more succinct rules, visit [adminrules.idaho.gov](http://adminrules.idaho.gov) and look under the "Bulletin" tab for the document published June 19. Each section gives

guidelines and deadlines for public comment depending on the department to which those rules pertain.

"It is really that simple to make a difference," said Rep. Heather Scott, R-Blanchard, in a call-to-action email Monday. "Complaining and getting angry with government will not fix government; only involvement and civil communication will."

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OPINION | REVIEW & OUTLOOK

# Idaho Quits Worrying About Snails

A spring cleaning of the state regulatory code has killed 900 pages.

By The Editorial Board

June 28, 2019 7:06 pm ET

If there were a competition to find the nation's most useless regulation, Idaho would have strong

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## The ultimate red tape cutting party

By Rep. JULIANNE YOUNG | Guest columnist Jul 6, 2019

Many politicians have campaigned on promises to slash regulations. Far too often, these have been empty promises. However, this year the Idaho House initiated the ultimate red-tape-cutting party. The governor's office appears to have embraced the invitation. Now, you are invited to help oversee their efforts and make sure our bureaucratic agencies get it right.

Just how big is the project? Well, the current administrative code consists of 736 chapters, or 8,278 pages, which place at least 72,000 total restrictions on Idahoans. On May 21, Gov. Little issued a press release indicating that the executive branch intends to cut and simplify one-third of the administrative law chapters currently on the books. This is a good start. The executive branch must take public comment on these cuts, as well as on rules which are proposed to be left as is and on those which are proposed to be significantly changed or added to. This executive review process will take place in three phases:

- Phase 1: the executive branch published a list of rules proposed to be cut or simplified and took comment on these. This phase concluded on June 11. Rules which are proposed to be cut or simplified may be found at <https://dfm.idaho.gov/fy-2020-rules-reauthorization-summary.pdf>.

- Phase 2: began June 19, when the executive branch published the rules they intend to reauthorize at [this link](#). These will be open for public review through July 10.

- Phase 3: new rules or rules that agencies intend to modify significantly will be posted for public review.



Rep. Julianne Young

Rules from the following departments are up for public review: Agriculture, Juvenile Corrections, Building Safety, Education, Labor, the Board of Professional Engineers and Land Surveyors, the Idaho State Police, Health and Welfare, Insurance, the Board of Medicine, Parks and Recreation, Environmental Quality, Transportation, the Public Defense Commission and more.

While these agencies do a great job in many ways, they naturally represent their own perspective and interests in crafting rules. A public review process by those who must live with these rules is vital. These rules impact everyone but no one person needs to review every proposed change. Just review those that are of interest to you. Practical experience with these regulations makes all the difference. We will get the very best rules if those who have that experience, or who are directly affected by the proposed changes, take the time to review the changes and give feedback. Email comments to [RulesReview@dfm.idaho.gov](mailto:RulesReview@dfm.idaho.gov). Feel free to also share comments or concerns with me at [jyoung@house.idaho.gov](mailto:jyoung@house.idaho.gov), and I will be happy to help with any follow-up that is needed.

Once the rules which are proposed have been reviewed and finalized by the executive branch, the final drafts of these rules will be submitted for review by the legislature in January when the legislative session begins. If you have concerns which are not adequately addressed by the executive agencies, you will want to bring them to the legislative committees in the House and the Senate which will review them next January.

This once-in-a-lifetime opportunity to simplify and reduce regulations on a massive scale will not be likely to come again any time soon and will not last forever. Please take this opportunity to review rules that interest you and help Idaho cut the red tape.

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Julianne Young is a Republican House member from Blackfoot.

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## Governor proposes cuts to Idaho administrative rules

By KEITH RIDLER Associated Press May 21, 2019 Updated May 21, 2019

*TownNews.com Content Exchange*

BOISE, Idaho (AP) — Gov. Brad Little announced Tuesday that he's taking public comments on his plan to cut or simplify regulations in what he says are a third of all chapters in the state's administrative rules book.

There are about 8,200 pages of administrative rules containing 736 chapters that touch on just about every aspect of life. They include such things as protecting consumers, homeowners, the environment and school children. They range from hunting and fishing licenses and seasons to licensing for health care professionals and construction contractors.

The Republican released what he proposes to retain and cut in the Idaho Administrative Code on the state's Division of Financial Management website . Public comments are being taken through June 11.



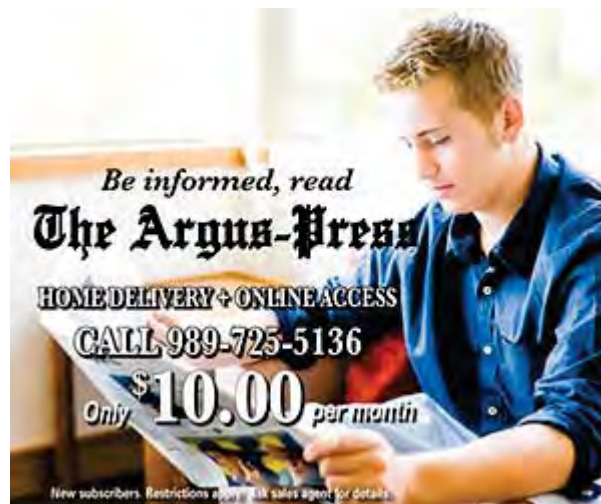
Lawmakers fought over the administrative rules process and ultimately failed to renew them before adjourning in April. That means all rules expire at midnight on June 30.

Little now has sweeping authority to eliminate thousands of rules by not using his executive powers to create temporary ones.

"We didn't ask for this but it was a golden opportunity," Little said Tuesday. "I know a lot of very dedicated people all over the state have been doing a lot of work in a very constrained time period."

Little has made clear his intent to cut regulations, issuing three executive orders this year all having to do with limiting or reducing government. They include requiring state agencies to cut two rules for every new one, making it easier to obtain occupational licenses, and forming a committee to find ways to cut inefficiencies in state government.

Little has previously said he's not looking at the rule cutting as an opportunity to do mischief. And he could have let the rules expire without making the cuts available to the public ahead of the deadline. Instead, he chose a public process.



"It's something he felt very strongly about," said Alex Adams, administrator of the Division of Financial Management. "He campaigned on confidence in state government. Part of why we're posting it for public comment is to make sure we didn't miss anything. There really isn't a script for how to handle this because this is the first time this has happened in state history."

Adams was expected to discuss proposed rules changes at a news conference on Wednesday. Most of the rules being altered or eliminated have either become obsolete, been supplanted by statute or court orders, or been consolidated in some way, he said Tuesday.

"Our goal was to ensure that it was just simpler and easier for Idahoans," Adams said.

There will be additional opportunities to comment. A special Idaho Administrative Bulletin will be published online on June 19. A 21-day public comment period follows before the rules can attain temporary status and remain in effect.

In addition, some agencies are also planning to hold public hearings beyond the 21 days.