

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER RAPER
COMMISSIONER ANDERSON
COMMISSION SECRETARY
COMMISSION STAFF

FROM: STEPHEN GOODSON, POLICY ADVISOR

DATE: MAY 3, 2019 *Rul-u-19-01*

SUBJECT: NOTICE OF OMNIBUS RULEMAKING – TEMPORARY AND
PROPOSED RULEMAKING FOR IDAPA 31, RULES OF THE PUBLIC
UTILITIES COMMISSION

BACKGROUND

In 1990, the Legislature adopted Idaho Code § 67-5292 which states in part:

67-5292. EXPIRATION OF ADMINISTRATIVE RULES. (1)
Notwithstanding any other provision of this chapter to the contrary, every rule adopted and becoming effective after June 30, 1990, shall automatically expire on July 1 of the following year unless the rule is extended by statute. Extended rules shall then continue to expire annually on July 1 of each succeeding year unless extended by statute in each such succeeding year.

The Idaho Legislature did not reauthorize all existing administrative rules as they have done in the past. This requires executive administrative action to ensure existing rules remain in effect in FY20.

Governor Little directed the Division of Financial Management (DFM) and all state agencies with Idaho Administrative Procedure Act (IDAPA) rules to exercise necessary executive authority to minimize the impact on state agencies, and the public most importantly.

If the Commission does not reauthorize an existing rule, it will expire July 1, 2019 and would not have to go through legislative review. At the direction of the Commission, Staff has reviewed all existing rules of the Commission. If any of these rules are adopted they will be re-published as both temporary and proposed. Any rule that is re-authorized is subject to legislative review in January.

STAFF RECOMMENDATION

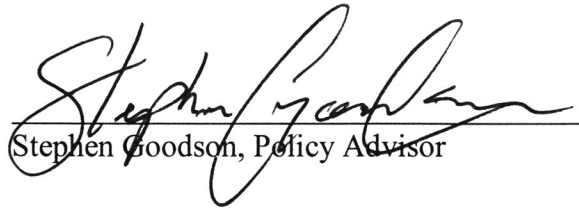
Staff recommends the following IDAPA rule(s) be re-authorized:

- 31.01.01, Rules of Procedure of the Idaho Public Utilities Commission
- 31.11.01, Safety and Accident Reporting Rules for Utilities Regulated by the Idaho Public Utilities Commission
- 31.12.01, Systems of Accounts for Public Utilities Regulated by the Idaho Public Utilities Commission
- 31.21.01, Customer Relations Rules for Gas, Electric and Water Public Utilities (the Utility Customer Relations Rules)
- 31.26.01, Master-Metering Rules for Electric Utilities
- 31.31.01, Gas Service Rules
- 31.36.01, Policies and Presumptions for Small Water Companies
- 31.41.01, Customer Relations Rules for Telephone Corporations Providing Services in Idaho Subject to Customer Service Regulation by the Idaho Public Utilities Commission (The Telephone Customer Relations Rules)
- 31.46.01, Universal Service Fund Rules
- 31.46.02, Rules for Telecommunications Relay Services (TRS)
- 31.51.01, Operator Service and Pay Telephone Rules
- 31.61.01, Rules for the Measurement of Stray Current or Voltage (Stray Voltage Rules)
- 31.71.01, Railroad Clearance Rules
- 31.71.03, Railroad Safety and Accident Reporting Rules
- 31.81.01, Energy Consumption Reporting Rules

Staff recommends that IDAPA rule 31.51.02, Automatic Dialing and Announcement Devices (ADADs) Rules be eliminated.

COMMISSION DECISION

Does the Commission wish to approve Staff's recommendations? Does the Commission wish to submit the corresponding Notices of Omnibus Rulemaking to DFM?



Stephen Goodson, Policy Advisor



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

BRAD LITTLE
Governor

ALEX J. ADAMS
Administrator

April 23, 2019

MEMORANDUM

TO: Executive Branch Agency/Department Heads
Rules Review Officers

FROM: Alex J. Adams *Alex J. Adams*

SUBJECT: Process to Reauthorize Rules Beyond July 1

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

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

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

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

1. Allow Rule to Expire

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

2. Re-Authorize Rule by July 1, 2019

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

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

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

Frequently Asked Questions

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

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

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

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

**IDAPA 31
TITLE 51
CHAPTER 02**

31.51.02 – AUTOMATIC DIALING AND ANNOUNCEMENT DEVICES (ADADS) RULES

Eliminate Rule Set. The Automatic Dialing and Announcement Devices Rules are antiquated and no longer relevant. The Federal Communications Commission (FCC) has rules contained within its 47 CFR 64.1200 Subpart L – Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising Rules which supersede this rule set and accomplish the same end goal. The FCC is also better positioned technically and financially able to address complaints in this area than the State Commission.

000. LEGAL AUTHORITY (RULE 0).

These rules are adopted under the general legal authority of the Public Utilities Law, Chapters 1 through 7, Title 61, Idaho Code, and the Telecommunications Act of 1988, Chapter 6, Title 62, Idaho Code, and the specific authority of Sections 61-301, 61-302, 61-303, 61-315, 61-503, 61-507, 61-520, 62-606, 62-612, and 62-616, Idaho Code, with regard to service. (7-1-93)

001. TITLE AND SCOPE (RULE 1).

This title of this chapter is “Automatic Dialing and Announcement Devices (ADADS) Rules.” It covers all use of automatic dialing and announcement devices to or from local exchanges in Idaho. (7-1-93)

002. WRITTEN INTERPRETATIONS – AGENCY GUIDELINES (RULE 2).

For rulemakings conducted before July 1, 1993, written interpretations to these rules in the form of explanatory comments accompanying the order of proposed rulemaking and review of comments submitted in the order adopting these rules are maintained in the files of the Secretary of the Idaho Public Utilities Commission and are available from the office of the Commission Secretary. The Commission Secretary may be contacted in writing at the Idaho Public Utilities Commission, PO Box 83720, Boise, Idaho 83720-0074, or may be reached by telephone at (208) 334-0300. For rulemakings conducted after July 1, 1993, written interpretations to these rules in the form of explanatory comments accompanying the notice of proposed rulemaking that originally proposed the rules and review of comments submitted in the rulemaking decision adopting these rules are published in the issues of the Idaho Administrative Bulletin proposing or adopting the rules. (7-1-93)

003. ADMINISTRATIVE APPEALS (RULE 3).

There are no administrative appeals under these rules. (7-1-93)

004. PUBLIC RECORDS ACT COMPLIANCE (RULE 4).

All requests for waivers of these rules are public records subject to inspection, examination and copying under the Public Records Act. All informal complaints concerning compliance with these rules are investigatory records exempt from disclosure under the Public Records Act. All formal complaints concerning compliance with these rules are public records subject to inspection, examination and copying under the Public Records Act. (7-1-93)

005. DEFINITION (RULE 5).

01. Automatic Dialing and Announcement Devices (ADADS). “Automatic dialing and announcement devices (ADADS)” are devices programmed automatically to dial customers and to provide an unsolicited message. Nothing in these rules applies to requested or contracted automatic announcements for return calls, notification-of-termination-of-service warnings from telephone companies, or security, paging or alarm systems subscribed to by a customer. (7-1-93)

006. CITATION (RULE 6).

The official citation of these rules is IDAPA 31.51.02.000 et seq. For example, this rule is cited as IDAPA

31.51.02.006. In documents submitted to the Commission or issued by the Commission, these rules may be cited by their short title of Automatic Dialing and Announcement Devices Rules (ADAD) and the parenthetical rule number. For example, this rule may be cited as ADAD 6. (7-1-93)

007. EFFECTIVE DATE – HISTORY OF RULES (RULE 7).

The Commission adopted predecessors to these rules in 1985. They were most recently codified at IDAPA 31.D.6. They were readopted and reformatted by rulemaking decision in docket number 31-5102-9301, effective July 1, 1993. The history of rulemaking proceedings preceding the initiation of the publishing of the Idaho Administrative Bulletin and the Idaho Administrative Code is available from the Commission Secretary. (7-1-93)

008. -- 100.

(RESERVED)

**AUTOMATIC DIALING AND ANNOUNCEMENT DEVICES (ADADS)
RULES 101 THROUGH 200**

101. DISENGAGEMENT OF ADADS (RULE 101).

ADADs that do not automatically disengage the called party's line when the called party hangs up the receiver are absolutely prohibited, except when the called party has previously consented to receive the ADAD calls and to allow the line to be engaged in this manner. (7-1-93)

102. PROHIBITIONS ON CERTAIN USES OF ADADS (RULE 102).

01. Hours of Prohibition. ADADs are prohibited from making unsolicited calls before 9:00 a.m. or after 9:00 p.m. in the called party's local time. (7-1-93)

02. Calling Certain Numbers Prohibited. ADADs are prohibited from calling public safety numbers (e.g., police, fire and emergency services). Except as allowed by Rule 5, ADADs are prohibited from unsolicited calling to unlisted, unpublished or inward WATS numbers. ADADs are prohibited from calling more than one (1) number held by a given party. (7-1-93)

103. CHARGES FOR ADADS (RULE 103).

ADADs must pay measured or message business service rates when either is available or flat rates reflecting their intensive use of the telephone network when measured and message services are not available. (7-1-93)

104. CUSTOMERS OPERATING ADADS (RULE 104).

All customers operating ADADs must notify the telephone company(ies) providing local services to the exchanges in which they originate and terminate their calls and estimate how intensively the ADAD is expected to use local access lines. (7-1-93)

105. -- 999.

(RESERVED)

**IDAPA 31 – IDAHO PUBLIC UTILITIES COMMISSION
DOCKET NO. 31-0000-1900**

**NOTICE OF OMNIBUS RULEMAKING - TEMPORARY AND PROPOSED
RULEMAKING**

EFFECTIVE DATE: The effective date of the temporary rule(s) 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. These rules are adopted under the general legal authority of the Public Utilities Law, Chapters 1 through 7, Title 61, Idaho Code. Chapters 8 through 10, 13, 15 through 17, Title 61, Idaho Code; Chapters 3 and 4, Title 62, Idaho Code; the Telecommunications Act of 1988, as amended, Chapter 6, Title 62; Chapters 12 and 13, Title 62, Idaho Code; and the Public Records Act, Chapter 1, Title 74, Idaho Code; and the particular authority of Sections 56-904, 61-110, 61-111, 61-129, 61-301 through 61-309, 61-315, 61-501 through 61-505, 61-508, 61-510, 61-512, 61-515 through 61-517, 61-520, 61-523, 61-524, 61-538, 61-541, 61-601 through 61-607, 61-610 through 61-619, 61-621 through 61-626, 61-803 through 61-806, 61-902 through 61-905, 61-909, 61-1003 through 61-1005, 61-1007, 61-1305, 61-1306, 61-1603 through 61-1607, 61-1703 through 61-1709, 62-301 through 62-308, 62-424, 62-602 through 62-616A, 62-619, 62-622, 62-622A, 62-1201 through 62-1207, 62-1303, 62-1304, 63-3029I, 67-6528, and 74-107(13), 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 31, rules of the *Idaho Public Utilities Commission*:

IDAPA 31

- [31.01.01, Rules of Procedure of the Idaho Public Utilities Commission](#)
 - [31.11.01, Safety and Accident Reporting Rules for Utilities Regulated by the Idaho Public Utilities Commission](#)
 - [31.12.01, Systems of Accounts for Public Utilities Regulated by the Idaho Public Utilities Commission](#)
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- [31.21.01, Customer Relations Rules for Gas, Electric and Water Public Utilities \(the Utility Customer Relations Rules\)](#)
- [31.26.01, Master-Metering Rules for Electric Utilities](#)
- [31.31.01, Gas Service Rules](#)
- [31.36.01, Policies and Presumptions for Small Water Companies](#)
- [31.41.01, Customer Relations Rules for Telephone Corporations Providing Services in Idaho Subject to Customer Service Regulation by the Idaho Public Utilities Commission \(The Telephone Customer Relations Rules\)](#)
- [31.46.01, Universal Service Fund Rules](#)
- [31.46.02, Rules for Telecommunications Relay Services \(TRS\)](#)
- [31.51.01, Operator Service and Pay Telephone Rules](#)
- [31.61.01, Rules for the Measurement of Stray Current or Voltage \(Stray Voltage Rules\)](#)
- [31.71.01, Railroad Clearance Rules](#)
- [31.71.03, Railroad Safety and Accident Reporting Rules](#)
- [31.81.01, Energy Consumption Reporting Rules](#)

TEMPORARY RULE JUSTIFICATION: 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 Public Utilities Commission is required to regulate public utilities that provide electric, gas, telephone, water, and rail service. The utilities typically hold monopoly franchises that obligate them to serve all members of the public in a defined service territory. These rules help ensure the utilities safely and reliably serve their customers using just, reasonable, and nondiscriminatory rates and practices

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 Stephen Goodson at (208) 334-0323.

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 May 10, 2019.

Stephen Goodson
Policy Advisor
Idaho Public Utilities Commission
472 W. Washington Street
P.O. Box 83720
Boise, Idaho 83702
(208) 334-0323 Office
(208) 334-4045 Fax
