



Negotiated Rulemaking Summary

IDAPA 20.07.02 — Rules Governing Conservation of Oil and Natural Gas in the State of Idaho

Docket No. 20-0702-2401

IDAPA 20.07.02 defines and clarifies the procedures for regulating oil and gas exploration and development activities on public and private lands in the state. These rules are required for the Oil and Gas Conservation Commission to fulfill their duty to prevent waste, protect correlative rights, and prevent pollution of fresh water supplies during the exploration and production of oil and gas resources.

Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled for a comprehensive review in 2024 with the goal of simplifying the rules for increased clarity and ease of use. The Idaho Department of Lands (Department) administers these rules under the authority of Title 47, Chapter 3, Idaho Code. Negotiated rulemaking for these rules was approved by the Oil and Gas Conservation Commission on November 14, 2023. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the Idaho Administrative Bulletin on April 3, 2024.

Stakeholder Outreach

The Department's outreach for negotiated rulemaking included the following:

- Published the Notice of Negotiated Rulemaking in the Idaho Administrative Bulletin
- Created a rulemaking webpage <https://ogcc.idaho.gov/rulemaking/docket-20-0702-2401-oil-gas/>
- Sent out a media release about the rulemaking
- Posted meeting information on social media
- Posted rulemaking notices to Townhall Idaho Department of Lands
- Emailed over 1,000 people when each of the three draft texts were posted

Negotiated Rulemaking public meetings

- Thursday, April 11, 2024 in Boise, Idaho
 - Three in-person attendees and ten attendees via Zoom
- Monday, April 15, 2024 in Fruitland, Idaho



Rules Governing Conservation of Oil and Natural Gas in the State of Idaho
Docket No. 20-0702-2401
 Negotiated Rulemaking Summary

- Seven in-person attendees and four attendees via Zoom
- Monday, April 29, 2024 in Boise, Idaho Department of Lands
 - Four in-person attendees and five attendees via Zoom

Members of the public participated in the Department’s negotiated rulemaking process by attending the meetings and submitting written comments. Key information considered by the Department included applicable statute and information provided by the public and the Department’s legal counsel during the negotiation process. In addition, the Department solicited information from the Interstate Oil and Gas Compact Commission, Idaho Department of Environmental Quality, and Idaho Department of Water Resources.

Written Comments

Two written comments were received, both from public citizens which are posted for public review.

Concluding Negotiated Rulemaking

The Department concluded the negotiated rulemaking process on May 31, 2024 and will submit a Notice of Proposed Rulemaking for publication in the August 2024 Administrative Bulletin.

Key documents from the rulemaking record, which includes rule drafts, written public comments and documents distributed during the negotiated rulemaking process, are available at <https://ogcc.idaho.gov/rulemaking/docket-20-0702-2401-oil-gas/> The entire rulemaking record is available for review upon request to the Department.

In developing the draft rule, the Department considered all comments received during the negotiated rulemaking process. Following are comments that were not incorporated into the draft rule and the Department’s response to those comments:

Commenter	Comment	Response
Multiple	<u>20.07.02.040 Public Comment:</u> “15 days is already problematic for the public to be both informed and to formulate a response to anything; making it 10 days is like making it none. That extra 5 days is nothing for the industry; for a private commenter (whose jobs - aren't- to do with gas & oil industry or administration), it's a major difference. Please	Public comment period is now defined in Idaho Code § 47-316(1)(c) as ten (10) days. Reductions from fifteen days to ten days aligns Rule with statutory requirements. Revision remains.



Rules Governing Conservation of Oil and Natural Gas in the State of Idaho
Docket No. 20-0702-2401
 Negotiated Rulemaking Summary

	do NOT reduce any public commenting or notification period!"	
Sherry Gordon	<u>20.07.02.100.02.g</u> : "It is absurd that only 6"+ diameter trees cut without permission would be compensated for to landowners. The author of this may have been thinking of woodlots, but in any other situation, any living tree that was purposefully planted by a landowner would cost big bucks to replace; they should all be compensated. (You could call it up to 1" in diameter. Many pricey nursery trees are that small.)"	Permits for seismic operations do not grant any access rights to owners, operators, or contractors conducting seismic operations. Surface use is governed through a separate agreement or lease between the owner, operator, or contractor and the private landowner. These private parties are free to agree to terms of access, including limitations on disruptions to vegetation or landscaping. This rule is intended to set a minimum standard for tree removal and compensation but does not prevent the parties from agreeing to more restrictive standards.
Idaho Conservation League	<u>20.07.02.200.05</u> : The commentor suggested that deleting this section created a concern that removing them may make the reasons more discretionary lead to non-enforcement, or that there might be a question regarding the reason for a denial at a later date if not specified in the Rule.	<p>a. Application fee was not submitted - this is addressed in Idaho Code § 47-316(1) and IDAPA 20.07.02.200.02</p> <p>b. Application is incomplete - this is addressed in IDAPA 20.07.02.200.04</p> <p>c. Failure to post required bonds - this is addressed in IDAPA 20.07.02.220</p> <p>d. Proposed well will result in a waste of oil or gas, a violation of correlative rights, or the pollution of freshwater supplies. - this is addressed in Idaho Code § 47-315 and Idaho Code § 47-316(1)(b) Department policy is to provide the reason for denial in a letter, citing the appropriate Statue or Rule as noted above.</p> <p>The enumerated listing of reasons for which a permit may be denied were removed because those requirements were already provided for in rule or statute. Added language to 20.07.02.200.01 to clarify that permits may be suspended or revoked, and applications denied, for failure to comply with these rules, the Act, or orders of the Commission or Department.</p>
Idaho Conservation League	<u>20.07.02.210.03</u> : The commentor suggested that deleting this section created a concern that removing them may make the reasons more	<p>a. Application does not contain the information in Subsection 210.01 of these rules - self explanatory</p> <p>b. Application fee was not submitted - this is addressed in Idaho Code</p>



Rules Governing Conservation of Oil and Natural Gas in the State of Idaho
Docket No. 20-0702-2401
 Negotiated Rulemaking Summary

	<p>discretionary lead to non-enforcement, or that there might be a question regarding the reason for a denial at a later date if not specified in the Rule.</p>	<p>§ 47-316(1) and IDAPA 20.07.02.200.02 c. Proposed well will result in a waste of oil or gas, a violation of correlative rights, or the pollution of freshwater supplies. - this is addressed in Idaho Code § 47-315 and Idaho Code § 47-316(1)(b). Department policy is to provide the reason for denial in a letter, citing the appropriate Statute or Rule as noted above. Same comment as above and the language inserted into 200.01 covers all permits and applications issued under Subchapter C, including well treatment applications.</p>
<p>Sherry Gordon</p>	<p><u>20.07.02.220</u>: "These Individual well surety bond rates are abysmally low for what they eventually must cover; and the Blanket bonds are therefore even more outrageously low... which requires the taxpayers of Idaho to fill in whatever is required. It has nothing to do with the gas&oil company, except insofar as the surety insurance company decides that the company is a poor risk for the bond; it has everything to do with the reality of what it is, at some point, going to take to plug/reclaim a well and they will all hit that wall at some time or another in our collective futures. These projected prices are already far out of alignment with actual costs and the costs of wages, materials (think cement !), equipment/operation costs, etc. keep going up and up."</p>	<p>In addition to the default bonding requirements listed in the rule, subsection .220.04 allows the Department to impose additional bonding requirements if the circumstances suggest that the proposed well poses a liability risk in excess of that normally expected. For instance, an exceptionally deep well may be subject to additional bonding requirements based on the increased costs of plugging and remediation expected. Comparison of benchmark states financial assurance requirements from the Interstate Oil & Gas Compact Commission 2016 report, "State Financial Assurance Requirements" and updated amounts from states websites indicates that Idaho falls somewhere in the middle with the ability to increase bonding as appropriate.</p>
<p>Marc Haws</p>	<p><u>20.07.02.220</u>: Should the procedure for calling in a bond be included in the Administrative Rule?</p>	<p>In most cases the bond request follows a court order, so the procedure may fall outside agency guidance.</p>



Rules Governing Conservation of Oil and Natural Gas in the State of Idaho
Docket No. 20-0702-2401
 Negotiated Rulemaking Summary

Sherry Gordon	<u>20.07.02.302</u> : “Accidents and Fire Local emergency services should be notified of all drilling activities!, and be given a copy of the gas & oil company's required emergency response plan. A mere suggestion that the company "coordinates with" them is entirely too wimpy.”	Coordination with local first responders is already occurring. Rules also require the operator to make the emergency response plan available at the well for use and inspection. Emergency responders will have access to this plan.
JoAnn Higby	<u>20.07.02.500</u> : “You asked me at the Fruitland meeting what I would like to see in the way of extensions in the rules. After some thought, I would suggest any extension be limited to no more than the initial stated time frame in the rule...ie 24 month rule would allow for application for a maximum of one 24 month extension.”	A 24-month limit on an extension might be too burdensome on an operator, in particular if there were a legal issue preventing them from producing or otherwise performing operations on a well. Setting the extension at ten years allows for extenuating circumstances. This does not preclude the Department from setting a lesser amount of time or denying the extension altogether. Proposed ten-year limit remains.
JoAnn Higby	<u>20.07.02.501</u> : “You asked me at the Fruitland meeting what I would like to see in the way of extensions in the rules. After some thought, I would suggest any extension be limited to no more than the initial stated time frame in the rule...ie 24 month rule would allow for application for a maximum of one 24 month extension.”	A 24-month limit on an extension might be too burdensome on an operator, in particular if there were a legal issue preventing them from producing or otherwise performing operations on a well. Setting the extension at six years allows for extenuating circumstances. This does not preclude the Department from setting a lesser amount of time or denying the extension altogether. Proposed six-year limit remains.
Sherry Gordon	<u>20.07.02.502.03</u> : “Why on earth would you "require" written notification in 502.02 and then say here that only verbal notification is required? that's ridiculous. You need a paper trail, period, not person-to-person verbal MIS(perhaps)communication.”	Verbal notification is permitted for operations that the department is not required to witness. Plugging a well that is currently actively drilling is conducted with the drilling rig which is on site, so it is in everyone's best interests, including the public, to commence plugging operations as soon as possible. 502.04 through 502.06 describe the plugging requirements and subsequent plugging report to be filed within thirty (30) days which is sufficient for the record. No changes.



Rules Governing Conservation of Oil and Natural Gas in the State of Idaho
Docket No. 20-0702-2401
Negotiated Rulemaking Summary

The following conclusions were reached during and/or as a result of the negotiated rulemaking process:

Section Number	Proposed Rule Verbiage	Discussion and Key Information Considered
20.07.02.010.038	Added language "and cemented in place" to the definition to clarify that the cement is the seal.	The original definition suggests that the surface casing itself is the seal that protects freshwater zones.
20.07.02.211.03	"No doubt you wish to use "MIT" in place of "mechanical integrity test" here, since you're doing such with other acronyms in the Definitions."	Revision made, along with other instances of replacing "mechanical integrity test" with "MIT."