

IDAHO OIL AND GAS CONSERVATION COMMISSION
August 5, 2020
Information Agenda

SUBJECT

Omnibus Rulemaking – Proposed Rule for IDAPA 20.07.02 – *Rules Governing Conservation of Oil and Natural Gas in the State of Idaho*

BACKGROUND

On February 18, 2020, the Oil and Gas Conservation Commission (Commission) adopted without amendments the temporary rules in IDAPA 20.07.02 that were previously submitted to the 2020 Idaho Legislature. These rules were to be effective sine die of the 2020 legislative session in the event that the Legislature did not approve the existing administrative rules. The Idaho Legislature adjourned the 2020 legislative session without approving all previously existing administrative rules.

IDAPA 20.07.02 therefore became effective as a temporary rule on March 20, 2020 (sine die) and will continue in effect to the end of the 2021 legislative session. For IDAPA 20.07.02 to become a final rule again, the Administrative Procedure Act (Title 67, Chapter 52, Idaho Code) requires publication of a proposed rule in the Administrative Bulletin and a 21-day public comment period.

All agencies were directed to submit an omnibus *Notice of Proposed Rulemaking* to the Division of Financial Management (DFM) by August 19, 2020 (Attachment 1).

DISCUSSION

The Idaho Department of Lands (Department) is updating the Commission on the current status of this rulemaking. The next step is to publish IDAPA 20.07.02 as a proposed rule pursuant to the Idaho Administrative Procedure Act. The Department has not made any changes to the rule that was approved by the Commission on February 18, 2020.

The draft notice (Attachment 2) will list previously approved rules of the Idaho Department of Lands, including IDAPA 20.07.02 – *Rules Governing Conservation of Oil and Natural Gas in the State of Idaho*. These rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens.

The Department will submit an appropriate *Notice of Proposed Rulemaking* to be published in a special edition of the Idaho Administrative Bulletin in September 2020. After the 21-day public comment period on the proposed rule, the Department will return to the Commission with a recommendation on adoption of a pending rule. A pending rule would become final and effective after approval by the 2021 Legislature. A timeline for the IDAPA 20.07.02 rulemaking is included as attachment 3.

ATTACHMENTS

1. Guidance for 2020 Temporary Fee Rules to go Proposed in a September Special Bulletin
2. Draft Notice of Omnibus Rulemaking – Proposed Fee Rulemaking
3. IDAPA 20.07.02 - Rulemaking Timeline

From: [Colby Cameron](#)
To: [Colby Cameron](#)
Cc: [DFM Admin Rules](#)
Subject: Guidance for 2020 Temporary Fee Rules to go Proposed in a September Special Bulletin
Date: Thursday, July 30, 2020 12:35:20 PM
Attachments: [2020-07-27 Proposed Bulletin Notice Template for Agencies - Fee Rule.docx](#)
[CBA Template 2020 Proposed Fee Rules.docx](#)
Importance: High

Guidance for 2020 Temporary Fee Rules to go Proposed in a September Special Bulletin

As detailed in the March 22nd DFM memo to all the agency directors, all fee rule chapters of the Idaho Administrative Code are currently temporary. The Governor has directed DFM to work with all state executive agencies to take those fee rules proposed, and later pending, and submit them for 2021 legislative review as an omnibus fee rulemaking.

DFM will begin the process of re-publishing existing fee rules by IDAPA chapter, using the current temporary rules. The fee rules will be published as proposed rules in a special edition of the Idaho Administrative Bulletin in September 2020. It is important to know that all fee rules are in effect as temporary and will continue to have the full force and effect of law.

For preparation of the omnibus proposed fee rules:

- Your agency may consider the temporary fee rules approved in February as effective as of *sine die* and continue to use them and make them available on your website.
- DFM will publish notices of proposed fee rulemaking for each agency in the September special bulletin.

Agencies must submit a completed Notice of Proposed Omnibus Fee Rulemaking form to DFM no later than close of business - 5PM Mountain Time, Wednesday **August 19, 2020.**

- a. A Template for the Notice of Proposed Rulemaking is enclosed.
 - b. One Notice is needed per agency head ONLY if you previously published an Omnibus Temporary Fee rule in the April 15, 2020, Special Edition Bulletin reauthorizing fee chapters.
 - c. Please submit completed Notices to adminrules@dfm.idaho.gov.
 - d. If rulemaking authority is vested in a board or commission – not agency staff – please follow your normal process for advancing the fee rulemaking to a proposed rule.
 - e. No ARRF will be required.
 - f. Pursuant to Section 67-5223, Idaho Code, a Cost Benefit Analysis (CBA) will be required. If fees are not changing, simply fill out the CBA template showing fees, their statutory authority for them, and a very brief description of estimated costs to citizens and agency.
- 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 Colby Cameron (colby.cameron@dfm.idaho.gov; 208-854-3052).

- Agencies must post a link to our website <https://adminrules.idaho.gov/> for 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 September 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 presentation i.e. public hearing is requested within 14 days of publication, please contact Colby Cameron (colby.cameron@dfm.idaho.gov;) for additional information prior to scheduling the hearing.
- The agency can choose to be proactive and schedule a public hearing in the notice of proposed fee rulemaking that you submit. Determination of whether a public hearing should be preemptively scheduled or not is up to each agency to decide individually.
- All rules re-authorized through this process will be subject to legislative review during the 2021 Idaho Legislature, as is the case each year.
- Each agency must keep all records of this rulemaking process for at least two (2) years after the rule is final and effective pursuant to Idaho Code § 67-5225. Please ensure the record is thorough and complete.
- You will receive a proof of the rules from DFM before the comprehensive bulletin is published. The proofs will be sent to the agency's RRO for review and approval, likely in late August/early September.
- In the DFM Proof you will see clean rule text, not the legislative format. The temporary fee rules are new rules; they were not previously a final rule.
- DFM has limited capacity to make edits at the proof stage if they are minor and technical in nature.

Executive Order 2020-13

If you have a rule change related to EO 2020-13 and fee rules/parts of fee rules that were suspended in response to the current health pandemic, you should permanently affix those rule changes as part of this process. An ARRF will not be required to make the changes. If you have changes related to EO 2020-13 please reach out to Colby Cameron (colby.cameron@dfm.idaho.gov; 208-854-3052) right away.

For Current and Ongoing 2020 negotiated rule making involving Fee Rule chapters:

If you are currently negotiating a fee rule chapter, the best process approach will be to take all the fee rules chapters proposed together in this one special Bulletin. If you have any questions about current rule makings reach out to Colby Cameron (colby.cameron@dfm.idaho.gov; 208-854-3052) right away.

Thank you for your ongoing efforts to proactively ensure Idaho's administrative rules are in effect! DFM will remain in touch regarding any next steps on the temporary then proposed then pending fee rules as we get closer to the 2021 Legislative session.

Please don't hesitate to reach out with any questions.

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 and meet the parameters of the Zero Based Regulation Executive Order 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 fee chapters?

- Yes, agencies will still be permitted to submit ARRFs to modify non-fee rules through the traditional process if they have an exemption to the 2020 moratorium on rule making.

A template for the Notice of Proposed Rule Making and the Cost Benefit Analysis (CBA) are attached this email

Colby Cameron

Bureau Chief for Regulatory and Legislative Affairs | Division of Financial Management

Phone: 208-854-3052

Email: colby.cameron@dfm.idaho.gov

**IDAPA 20 – IDAHO DEPARTMENT OF LANDS
DOCKET NO. 20-0000-2000F (FEE RULE)**

NOTICE OF OMNIBUS RULEMAKING - PROPOSED FEE RULEMAKING

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to

- Sections 38-132 and 38-402, Idaho Code;
- Title 38, Chapter 12, including Section 38-1208, Idaho Code;
- Title 47, Chapters 3, 7, 8, 15, 16 and 18, including Sections 47-314(8), 47-315(8), 47-328(1), 47-710, 47-714, and 47-1316, Idaho Code;
- Title 58, Chapters 1, 3, 6, 12 and 13, including Sections 58-104, 58-105, 58-127, and 58-304 through 58-312, Idaho Code;
- Title 67, Chapter 52, Idaho Code;
- Article IX, Sections 7 and 8 of the Idaho Constitution; and
- The Equal Footing Doctrine (Idaho Admission Act of July 3, 1890, 26 Stat. 215, Chapter 656).

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

Public hearing(s) concerning this rulemaking will be held as follows:

DATE – TIME - LOCATION

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of the purpose of the proposed rulemaking:

(Descriptive summary for IDAPA 20.03.02, Rules Governing Mined Land Reclamation is being drafted.)

This proposed rulemaking re-publishes the following existing temporary rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 20, rules of the Idaho Department of Lands:

IDAPA 20

- 20.02.14, Rules for Selling Forest Products on State-Owned Endowment Lands
- 20.03.01, Rules Governing Dredge and Placer Mining Operations in Idaho
- 20.03.03, Rules Governing Administration of the Reclamation Fund
- 20.03.04, Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho
- 20.03.05, Riverbed Mineral Leasing in Idaho
- 20.03.08, Easements on State Owned Lands
- 20.03.09, Easements on State Owned Submerged Lands and Formerly Submerged Lands
- 20.03.13, Administration of Cottage Site Leases on State Lands
- 20.03.14, Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases
- 20.03.15, Rules Governing Geothermal Leasing on Idaho State Lands
- 20.03.16, Rules Governing Oil and Gas Leasing on Idaho State Lands
- 20.03.17, Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands
- 20.04.02, Rules Pertaining to the Idaho Forestry Act and Fire Hazard Reduction Laws
- 20.06.01, Rules of the Idaho Board of Scaling Practices
 - In this proposed rulemaking, the Idaho Board of Scaling Practices re-publishes the existing

- temporary rule previously submitted to and reviewed by the Idaho Legislature.
- 20.07.02, Rules Governing Conservation of Oil and Natural Gas in the State of Idaho
 - In this proposed rulemaking, the Oil and Gas Conservation Commission re-publishes the existing temporary rule previously submitted to and reviewed by the 2020 Idaho Legislature.

FEE SUMMARY: (*Fee summary for IDAPA 20.03.02, Rules Governing Mined Land Reclamation is being drafted: Application fee for permanent closure plans and assignment fee for reclamation plans and permanent closure plans.*)

For the following rule chapters, this rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously submitted to and reviewed by the Idaho Legislature.

The following is a specific description of the fees or charges:

- 20.02.14 – Stumpage payments and associated bonding for removal of state timber from endowment land pursuant to timber sales.
- 20.03.01 – Application fee, amendment fee, assignment fee, and inspection fee for all dredge and placer permits in the state of Idaho.
- 20.03.03 – Annual payment for Reclamation Fund participation.
- 20.03.04 – Application fees for encroachment permits and assignments and deposits toward the cost of newspaper publication.
- 20.03.05 – Fees for applications, advertising applications, exploration locations, and approval of assignments for riverbed mineral leasing.
- 20.03.08 – Application fee, easement consideration fee, appraisal costs, and assignment fee for easements on state-owned lands.
- 20.03.09 – Administrative fee, appraisal costs, and assignment fee for easements on state-owned submerged lands and formerly submerged lands.
- 20.03.13 – Annual rental payment paid to the endowment for which the property is held.
- 20.03.14 – Lease application fee, full lease assignment fee, partial lease assignment fee, mortgage agreement fee, sublease fee, late rental payment fee, minimum lease fee, and lease payment extension request fee on state endowment trust lands.
- 20.03.15 – Application fee, assignment fee, and late payment fee for geothermal leases on state-owned lands.
- 20.03.16 – Exploration location permit fee, nomination fee, and processing fee for oil and gas leases on endowment lands.
- 20.03.17 – Application fee, rental rate, and assignment fee for leases on state-owned submerged lands and formerly submerged lands.
- 20.04.02 – Fee imposed upon the harvest and sale of forest products to establish hazard management performance bonds for the abatement of fire hazard created by a timber harvest operation, and fees imposed upon contractors for transferring fire suppression cost liability back to the State.
- 20.06.01 – Scaling assessment fee paid to a dedicated scaling account for all scaled timber harvested within the state of Idaho; administrative fees for registration, renewal, and transfer of log brands; fees for testing and issuance of a temporary scaling permit, specialty scaling license, and standard scaling license; fee to renew a specialty or standard scaling license; and fee for a requested check scale involving a scaling dispute.
- 20.07.02 – Bonding for oil and gas activities in Idaho and application fees for seismic operations; permit to drill, deepen or plug back; multiple zone completions; well treatment; pits and directional deviated wells.

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 FY2021 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: (*Negotiated rulemaking summary for IDAPA 20.03.02, Rules Governing Mined Land Reclamation is being drafted.*) Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking for the other

rule chapters was not feasible 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 proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Amy Johnson at (208) 334-0255 or rulemaking@idl.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 August 19, 2020.

Dustin Miller
Director
Idaho Department of Lands
300 N. 6th St, Suite 103
P.O. Box 83720
Boise, Idaho 83720-0050
Phone: (208) 334-0242
Fax: (208) 334-3698
rulemaking@idl.idaho.gov



Omnibus Rulemaking Timeline*

*Subject to change

IDAPA 20.07.02 Rules Governing Conservation of Oil and Natural Gas in the State of Idaho	
To be presented before the 2021 Legislative Session	
DATE	ACTION
January-March 2020	Docket No. 20-0000-1900F Omnibus Pending Rule presented during 2020 Legislative Session
February 18, 2020	Presented to OGCC and approved – <i>Adoption of Temporary Rule for IDAPA 20.07.02 Rules Governing Conservation of Oil and Natural Gas in the State of Idaho</i> (Docket No. 20-0000-2000F)
March 20, 2020	Temporary rules became effective
April 15, 2020	Notice of Adoption of Temporary Rule published in special edition of the Administrative Bulletin, Volume 20-4SE
August 5, 2020	Present to OGCC – <i>Proposed Rule for IDAPA 20.07.02 Rules Governing Conservation of Oil and Natural Gas in the State of Idaho</i>
September 16, 2020	Notice of Proposed Rulemaking will publish in September special edition of the Administrative Bulletin
September 30, 2020	Fourteen-day period for receiving request for a public hearing ends
October 7, 2020	Deadline for written comments on proposed rule
TBD	Present to OGCC – <i>Adoption of Pending Rule for IDAPA 20.07.02 Rules Governing Conservation of Oil and Natural Gas in the State of Idaho</i>
2021	Legislative review of pending fee rules

Division Administrator: Mick Thomas