

12/28/2021 Draft 1 Proposed 47-3 Revisions Comments

NOTE: SNAKE RIVER OIL AND GAS (OPERATORS) RECOMMENDED STATUTORY CHANGES ARE TOO VOLUMINOUS TO INSERT INTO THIS SPREADSHEET. IDL RECOMMENDS CONSIDERING THEIR RECOMMENDATION DOCUMENT SEPARATELY FOR EASE OF EVALUATION

Statute Title	Code Section	Comment	Response	
Definitions	47-310	Insert definitions for API, AAPL, and any other recognized industry standard referred to in the Code	Definitions for API and AAPL have been added.	
		47-310(3), (14), (15), & (17): To avoid any confusion, insert a typical API range.	Additional definitions built into 47-310(3) and (14).	
		47-310 (6) Provide a definition of "arms-length transaction" to ensure there is a clear standard of fairness to avoid price fixing, collusion, and market manipulation between parties and ensure tax payers and mineral interest owners are fairly compensated.	Definitions added.	
		47-310(6): The term "arms length" is not one I've seen used in the industry; use "third-party" or insert a definition for "arms length".		
		47-310(11): Remove "The costs of marketing, transporting and processing oil and gas produced shall be borne entirely by the producer, and such cost shall not reduce the severance tax directly or indirectly."	Department recommends this is left in the text.	
		47-310(32): Ad the term "underground waste" to the definition of waste related to gas, as the term is already in the definition of waste related to oil. The change is made for consistency.	Defer to the Commission for guidance. Current definition is very descriptive of waste without using the actual term.	
Oil and Gas Conservation Commission Created	47-314(1)(b)	47-314 Should provide guidance and clear legislative intent to require members of the Oil & Gas Conservation Commission are appointed to reflect a broad range of public interests by recruiting professionals who have backgrounds in public land & natural resources management, air & water quality management, and environmental & public health management.	This definition will be discussed by the Commission at the January 5th meeting.	
		Under 47-314 "OIL AND GAS CONSERVATION COMMISSION CREATED-POWERS- LIMIT ON LOCAL RESTRICTIONS- ATTORNEY GENERAL" (b) The draft text states "The members appointed by the governor shall serve at the pleasure of the governor and shall be knowledgeable in oil and gas matters." This is a proposed change from "The members appointed by the governor shall serve at the pleasure of the governor and shall have a college degree in geosciences or engineering and at least ten (10) years of experience in the oil and gas industry." While the current text may make it more difficult to find qualified people to serve as a commissioner, it does ensure that each commissioner will be highly qualified to perform their duties and make well-informed decisions regarding gas and oil in Idaho. The City of Fruitland believes the proposed new text stating "Shall be knowledgeable in oil and gas matters" is incredibly vague and ambiguous. What constitutes "Knowledgeable in oil and gas matters"? This wording leaves it up to a very broad interpretation and the possibility of under-qualified people serving as commissioners. We ask the commission to consider a more defined description of what traits or background a qualified potential commissioner should possess to be considered for the appointment. We hope you will take our comments into consideration moving forward with any revisions to the current code. (Stuart Grimes, City Administrator, City of Fruitland ID)		
	47-314	47-314: Based on the current and expected future oil and gas activity levels, my recommendation would be to decrease the number of Commissioners to 3; in addition, the inability to find qualified people within the state has been problematic.		To ensure the best diversity and skill sets are available the Department recommends maintaining a Commission of five members.
	47-314(1)(b)	47-314(b): Consider removing the specified term. In reality, people either step away or are asked to resign. Has anyone, in recent years, ever not been re-appointed if they are willing to continue serving?		This structure is consistent with similar Commissions and Boards in Idaho and provides for a high level of transparency and accountability. I don't recommend changes.
	47-314(1)(b)	47-314(b)(2): Consider extending the terms of the Chair & Vice Chair. With only quarterly meetings, annual election is too frequent.		This can be discussed by the Commission at the January 5th meeting.

	47-314(b)(5)	47-314(b)(5): With the IDL director no longer being a Commission member, it seems odd that the position appoints the Secretary; will the Secretary always be the Administrator? If so, the definitions/role can be combined.	The appointment of the Secretary by the Director maintains the administrative connection to IDL and supports administrative work by IDL for the Commission. This is needed since the Commission does not have any dedicated staff.
	47-314(b)	The Commission should have a balanced representation that includes the interests of both small and large mineral interest owners, the environmental and/or conservation communities, the real estate industry, and municipal interests.	The make up of the commission will be discussed at the January 5th meeting.
	47-314(10)(b)	47-314(10)(b) Add "including oil and gas facilities necessary to extraction;"	Facilities are addressed in 47-314(10)(b).
Authority of the Commission	47-315	47-315: Revise the mission of the commission and department to regulate oil and gas development in a manner that protects public health and safety, clean air and water, and broader public interests. Eliminate blanket bonds unless they are tied to projected site-specific costs of reclamation and ongoing monitoring. Bonds should be evaluated annually to adjust for factors that contribute to reclamation and monitoring costs, including the consumer price index, number of wells, well depth, location or proximity to residential developments, the size of the surface disturbance, and expansion/growth of facilities/infrastructure.	The mission of the commission will be discussed at the January 5th meeting.
	47-315(7)	Remove the term condensate.	The Department recommends this is left in the text. The definition of Condensate in 47-310(3) has been expanded and clarified.
	47-315(2)	47-315(2) Add "In the event of a conflict, the duty to prevent waste is paramount." to the end of the paragraph.	This wording is currently included in 47-315(1).
	47-315(e)	47-315(e) Ensure bonds stay in place over the life of the well and transfer with owners of the well. Authorize the creation of a statewide reclamation fund paid by developers to reclaim oil and gas drilling operations and fund ongoing tests, including air & water quality monitoring, to ensure the integrity of the plugged well.	The administration of bonds is addressed in IDAP 20.07.02.220.
Permit to drill or treat a well	47-316(3)(i)	Add "or fieldwide spacing order" after unit.	Fieldwide spacing orders are addressed in 47-316(3)(j).
	47-316(3)(j)	Change to read "Application to establish or amend an individual spacing unit or fieldwide spacing order"	Individual spacing orders are address in 47-316(3)(i).
	47-316(3)	47-316(3): Consider moving the fees to an Appendix or other document that would still require public comment but not mandate a change to the Code in the event fees are updated.	Fees are required to be included as part of Statute or Rule. Currently they are in Idaho Code 47-3.
Drilling Locations	47-317	Retitle the section from Drilling Units to Well Spacing	
	47-317(1)	Reword the latter part of section 1 "issue an order establishing <u>spacing</u> units on a statewide basis,"	
	47-317(2)	Reword section two to read: "(2) An order establishing a spacing unit or units shall specify the size, shape and location of the units, which shall be such as will, in the opinion of the department, result in the efficient and economical development of the pool as a whole. Any unit established by the department shall be geographic. The geographic boundaries of the unit shall be described in accordance with the public land survey system. Except where circumstances, geologic or otherwise, affecting the orderly development of a pool reasonably require, or as provided in paragraph (b) of this subsection, the size of the spacing units shall not be smaller than the PA GE 10 maximum area that can be efficiently and economically drained by one (1) well; provided: (a) If, at the time of a hearing to establish spacing units, there is not sufficient evidence from which to determine the area that can be efficiently and economically drained by one (1) well, the department shall make an order establishing temporary spacing units for the orderly development of the pool, pending the obtaining of the information required to determine what the permanent spacing should be. (b) Where the federal agency administering federal minerals that would otherwise be included in a spacing unit has not leased or has failed to offer such federal minerals for lease auction for at least six(6) months, such federal minerals may be excluded from the unit upon application or upon the department's own determination."	
Well spacing	47-318	The Commission should consider a more orderly process with clearly stated standards as to when and how spacing units will be established.	

	47-318 & 47-319	47-318 & 47-319: The wording in these two sections must be clear as to when well spacing and integration are required by the department	
Setbacks	47-319	47-319 Setbacks should be updated to reflect the growing body of peer-reviewed research that indicates higher levels of harmful air pollution near oil and gas production and has traced oil and gas production as the source of that increased pollution. This research finds a correlation between disease rates and proximity to oil and gas facilities. The setbacks should be scientifically defensible, reflect the population growth trends in the Treasure Valley, err toward mitigating conflicts that arise between residential use/development and natural resource extraction, and be determined on case-by-case basis taking into account wind patterns, geographical features, and site-specific on-the-ground data	Air quality is regulated by the Idaho Department of Environmental Quality.
Integration	47-320	The proposed changes to Idaho Code Section 47-320 constitute nothing more than an attempt to allow the oil industry to determine what terms for nonconsenting working interest owners and compelled lessees will be considered "just and reasonable." . . . The IOGCA needs to make serious effort to protect the property interests of Idahoans, Idaho's environment, its agricultural or recreational industries, or any industry other than oil and gas . . . The Commission needs to consult with CAIA and the mineral interests owners that CAIA represents. CAIA encourages IOGCC to reject the majority of these recommended changes in draft 1. and instead seek actual stakeholder input.	Getting the input of stakeholders is the purpose of this process. We have three public comment periods during which parties can provide written and oral recommendations pertaining to these changes. We encourage each of the stakeholders discussed in CAIA's letter to provide comment during this process. Specific wording for relevant sections is especially welcome.
	47-320	The just and reasonable clause should meet the highest possible standards for due process.	
	47-320(3)(a)	47-320(3)(a): Other states & precedents need to be reviewed regarding if the regulatory agency actually approves JOA's. My recollection is that regulatory agencies require proof of an executed JOA but don't approve the JOA itself.	Currently, the terms of a JOA are only reviewed and approved as part of the terms of an Integration. This is done because one option for integration of a mineral interest owner is to become a working interest owner in a proposed unit. Beyond the integration process, the Department does not approve the terms of a JOA.
	47-320(8)	47-320(8): This is another area where we need to look at industry precedents/other states to assess the length of an integration order term.	
Reporting requirements	47-324(e) & (f)	47-324(e) & (f): These two sections seem to be making the distinction between a transporter and a refiner; consider using these terms versus "purchaser" and "end purchaser". Also, "end purchaser" is included in the definitions (47-310) but "purchaser" is not; consistency is needed.	
Powers of Commission	47-329	47-314, 47-315, & 47-329: These sections seem related; consider moving 47-329 to be immediately after 47-315.	47-329 is placed after 47-328 because it relates to the authority of the Commission. 47-314 and 315 relate to the creation of the Commission. The Commission can discuss placement at the January 5th meeting.
Use of surface land by owner or operator	47-334	Strengthen the requirements for surface use agreements by the addition of a standards or a definition of what constitutes a "good faith negotiation." These agreements should be extended to cover any all damages including wells and groundwater sources and not restricted to lost agricultural income and lost value of improvements. In cases when the developer and the surface estate owner cannot come to an agreement, the statute should allow for a hearing if necessary to determine surface bond amount. In the absence of an agreement, the surface use bond should be increased to a minimum of \$10,000 per well. A bond should be in effect for the entire lifetime of the well to insure against failure and damages even after the well has been plugged and abandoned.	The plugging and abandonment of a well constitutes end of life.