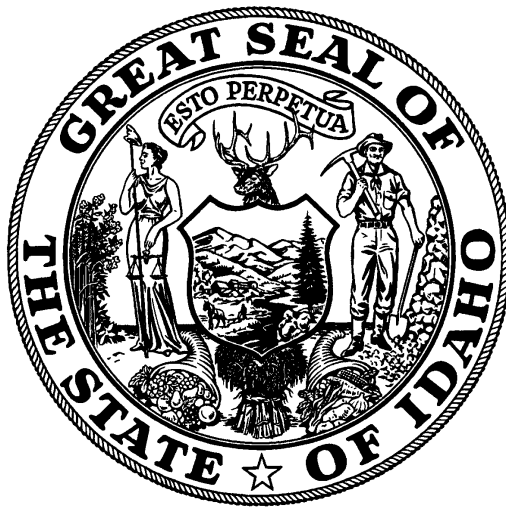


PENDING FEE RULES

COMMITTEE RULES

REVIEW BOOK

Submitted for Review Before
**House Resources &
Conservation Committee**
64th Idaho Legislature
First Regular Session -- 2017



Prepared by:

*Office of the Administrative Rules Coordinator
Department of Administration*

January 2017

HOUSE RESOURCES & CONSERVATION COMMITTEE

ADMINISTRATIVE RULES REVIEW

Table of Contents

2017 Legislative Session

IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME
13.01.02 – Rules Governing Hunter Education and Mentored Hunting
Docket No. 13-0102-16013

IDAPA 20 – IDAHO DEPARTMENT OF LANDS
20.03.16 – Rules Governing Oil and Gas Leasing on Idaho State Lands
Docket No. 20-0316-16017

IDAPA 13 – IDAHO DEPARTMENT OF FISH AND GAME

13.01.02 – RULES GOVERNING HUNTER EDUCATION AND MENTORED HUNTING

DOCKET NO. 13-0102-1601

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Sections 36-103, 36-104, and 36-412, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending fee rule and a statement of any change between the text of the proposed rule and the text of the pending fee rule with an explanation of the reasons for the change:

The rules implement a mandatory trapping education program for trappers who purchased their first trapping license on or after July 1, 2011, broadens the description of mandatory education, establishes fees for mandatory hunter, archery, and trapping education, integrates reference to existing archery education pursuant to Sections 36-411 and 36-412, Idaho Code, and deletes an obsolete rule about practical handling and shooting of firearms requirement for hunter education certification.

There are no changes to the pending fee rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 5, 2016 Idaho Administrative Bulletin, [Vol. 16-10, pages 375 to 377](#).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Pursuant to Section 36-412, Idaho Code, the fee charged to each student enrolling in Hunter Education, Archery Education, or Trapper Education Program will be eight dollars (\$8.00).

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:

There will be no negative fiscal impact on the state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Brenda Beckley, (208) 287-2884.

DATED this 21st day of November, 2016.

Sharon W. Kiefer, Deputy Director
Idaho Dept. of Fish and Game
600 S. Walnut Street
P.O. Box 25
Boise, Idaho 83707
Tel: (208) 334-3771
Fax: (208) 334-4885

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 36-103, 36-104, and 36-412, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2016.

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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The rules implement a mandatory trapping education program for trappers who purchased their first trapping license on or after July 1, 2011, broadens the description of mandatory education, establishes fees for mandatory hunter, archery, and trapping education, integrates reference to existing archery education pursuant to Sections 36-411 and 36-412, Idaho Code, and deletes an obsolete rule about practical handling and shooting of firearms requirement for hunter education certification.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Pursuant to Section 36-412, Idaho Code, the fee charged to each student enrolling in Hunter Education, Archery Education, or Trapper Education Program will be eight dollars (\$8.00).

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 resulting from this rulemaking: There will be no negative fiscal impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because consensus was not achieved for similar rules for trapping education negotiated in 2015 so affected interests were not likely to reach consensus in 2016.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Brenda Beckley, (208) 287-2884. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 17th day of August, 2016.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 13-0102-1601

IDAPA 13
TITLE 01
CHAPTER 02

13.01.02 - RULES GOVERNING ~~HUNTER~~ **MANDATORY** EDUCATION AND MENTORED HUNTING

000. LEGAL AUTHORITY.

The Idaho Fish and Game Commission is authorized under Sections 36-103, 36-104(b) and 36-412, Idaho Code, to adopt rules concerning education programs in hunting, trapping, and archery. The Idaho Fish and Game Commission is authorized to adopt rules concerning a mentored hunting program under Idaho Code Section 36-1508(b).

~~(4-4-13)~~()

001. TITLE AND SCOPE.

01. **Title.** These rules shall be cited in full as IDAPA 13.01.02.000, et seq., Rules of the Idaho Fish and Game Commission, IDAPA 13.01.02, "Rules Governing ~~Hunter~~ **Mandatory** Education and Mentored Hunting."

~~(4-4-13)~~()

02. **Scope.** These rules establish criteria for education programs in hunting, trapping, and archery, and for mentored hunting.

~~(4-4-13)~~()

(BREAK IN CONTINUITY OF SECTIONS)

100. HUNTER ~~AND ARCHERY~~ EDUCATION.

01. **Mandatory Hunter ~~and Archery~~ Education Programs.** All students being certified under this program must have successfully completed ~~at least ten (10) hours of~~ instruction in firearms or archery safety, wildlife management, wildlife law, hunter ethics, first aid/survival, plus practical experience in the handling and shooting of firearms or archery equipment. This instruction may be completed through classroom study, home study, an on-line computer course, or other approved methods. The Department of Fish and Game shall manage the Hunter Education Program pursuant to the Idaho Hunter Education Policy and Procedure Manual. Only certificates for courses which meet or exceed the standards of the Idaho course are acceptable from other states or countries.

~~(4-7-11)~~()

02. **Fees.** A fee ~~as established by Section 36-412(e), Idaho Code,~~ of eight dollars (\$8.00) shall be charged each student enrolling in the Hunter or Archery Education Program.

~~(3-20-04)~~()

03. **Parent to Attend Shooting Clinic with Student.** For students under the age of twelve (12), a parent, legal guardian or other adult designated by the parent or legal guardian shall attend any Hunter Education Shooting Clinic with the student. Preferably, the adult attending the Shooting Clinic exercise should be the same adult who will accompany the student into the field while hunting.

(4-11-15)

~~04. **Exemption from Practical Handling and Shooting of Firearms Requirement.** An active, former, or retired member of the United States Armed Forces (Army, Navy, Air Force, Marine Corps, and Coast Guard) or an active, former or retired peace officer as defined by Section 19-5101(d), Idaho Code, may be exempted from the practical firearms handling and shooting requirement of the Mandatory Hunter Education Program if they received training in firearms handling and shooting. To qualify for the exemption the applicant must submit by mail or in person a signed affidavit provided by the Department, which certifies the applicant meets the criteria for exemption~~

~~due to training in the practical handling and shooting of firearms provided through either the Armed Forces or as a peace officer.~~ (3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

102. TRAPPER EDUCATION.

01. Mandatory Trapper Education Program. All persons who purchased their first Idaho trapping license on or after July 1, 2011, must be certified as having successfully completed Department of Fish and Game trapper education, or provide proof that such person holds the equivalent of such a certificate obtained either in Idaho or from an authorized agency or association in another state or country. Persons being certified in Department of Fish and Game trapper education must have successfully completed instruction including safe trapping methods and rules, non-target species avoidance techniques, wildlife identification, and good conduct and respect for the rights and property of others. Persons who have successfully completed wolf trapping education in Idaho or in another state or country are not exempt from certification as having successfully completed trapper education. ()

02. Fee. A fee of eight dollars (\$8.00) shall be charged each student enrolling in the Trapper Education Program. ()

03. Effective Date. On and after July 1, 2018, no person who purchased their first Idaho trapping license on or after July 1, 2011 shall be issued a trapping license unless that person presents a certificate of completion in trapper education issued by the Department of Fish and Game or presents proof of equivalent certification obtained in Idaho or from an authorized agency or association in another state or country. ()

04. Exemption. Persons who are acting pursuant to Section 36-1107, Idaho Code, are exempt from the provisions of IDAPA 13.01.02.102. ()

1023. -- 999. (RESERVED)

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.03.16 – RULES GOVERNING OIL AND GAS LEASING ON IDAHO STATE LANDS

DOCKET NO. 20-0316-1601

NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule. The action is authorized pursuant to Title 47, Chapter 8, Section 47-802, Idaho Code.

DESCRIPTIVE SUMMARY:

- Section 050.04 of IDAPA 20.03.16 identifies a setback of 200 feet from a residence for oil and gas wells, whereas, IDAPA 20.07.02 – Rules Governing the Conservation of Oil and Natural Gas in the State of Idaho identifies a 300 foot setback. To resolve the inconsistency, Section 050.04.04 has been eliminated from IDAPA 20.03.16 in the Pending Rule and the Department will use IDAPA 20.07.02 to establish a minimum setback for residences and then implement more stringent setback distances through lease stipulations, when appropriate, on a lease by lease basis.
- Section 050.08 contains a typographical error. The Department has changed the word “regarding” in the Proposed rule with “regrading” in the Pending rule.
- The Attorney General’s office determined that IDAPA 20.03.16.103 – Public Records is in conflict with the Public Records Law and recommended that this section of the rule be deleted in its entirety. It is being removed in this Pending rule.

The text of the pending fee rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the October 5, 2016 Idaho Administrative Bulletin, [Vol. 16-10, page 521](#).

FEE SUMMARY: The following fee increases reflect cost recovery levels for administrative efforts on behalf of the Department of Lands and are in line with other oil and gas producing states in the western United States. The existing fees are at 1988 dollar levels. Title 58, Chapter 1, Section 58-127, Idaho Code, and Title 47, Chapter 8, Sections 47-801, 47-802, 47-805, and 47-807, Idaho Code, authorize the Department to issue oil and gas leases and establish fees.

The existing application/nomination fee for lease tracts is \$25. The Department is proposing raising the application/nomination fee to \$250 per lease tract, which is the current application fee for all other leasing applications on state endowment trust lands (as approved by the Land Board). If approved this would result in a positive impact on Dedicated Fund (Earnings Reserve) revenues. The number of lease tracts nominated per year has been highly variable during the last 10 years, the average being approximately 20-40 lease tracts per year, with one year including more than 200.

The existing rental rate per acre for oil and gas leases is \$1.00 per acre annually. The Department is proposing raising the rental rate to \$3.00 per acre annually, consistent with other western oil and gas producing states. The Department is also proposing a minimum annual rental of \$250.00 to avoid the issuance of leases with unavoidably small acreages that would otherwise yield a rental rate that would cost more to administer than the revenue returned. This increase in rent would result in a positive impact on Dedicated Fund (Earnings Reserve) revenues. The Department currently leases approximately 70,000 acres for oil and gas. The increase in revenue would slowly be realized as oil and gas leases carrying the \$1.00 per acre rental rate expire over the next 10 years, subjecting the leases to the new rental rate (if approved).

The existing administrative fee for assignments is \$1.00 per document. The Department is proposing raising the assignment fee to \$100.00 in order to achieve cost recovery for processing. This increase in revenue would result in a positive impact on Dedicated Fund (Earnings Reserve) revenues. Request for lease assignments historically have been highly variable, with only seven lease assignments in the last three years.

The existing rule language for shut-in oil and gas wells (wells suspended from production at the request of the operator and subject to approval by the Director) does not identify a rental rate associated with the shut-in period. The Department is proposing a doubling of the existing annual rental rate in the lease for the shut-in fee which is consistent with other western oil and gas producing states and would provide revenue to the endowed beneficiary that would otherwise be generated through royalty payments. This increase in revenue would result in a positive impact on Dedicated Fund (Earnings Reserve) revenues.

FISCAL IMPACT: This Proposed rule will have no impact, negative or positive, on the General Fund because the oil and gas leasing program impacts only Dedicated (Earnings Reserve) Funds. The proposed fee increases (described above in the Fee Summary) will result in incremental increases in Dedicated Fund revenues, with the actual increases dependent on future oil and gas activities initiated by the industry.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Mike Murphy (208) 334-0200 ext. 0290.

DATED this 18th of November 2016

Mike Murphy, Bureau Chief - Endowment Leasing
Idaho Department of Lands
300 N. 6th Street, Suite 103
P.O. Box 83720
Boise, ID 83720-0050
Phone: (208) 334-0290
Fax: (208) 334-5342

THE FOLLOWING NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Idaho Code Title 47, Chapter 8, Section 47-802.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Thursday, October 13th, 2016 - 9:00 am

Idaho Department of Lands
300 N. 6th Street, Suite 103
Garnet West Room
Boise, ID 83702

The hearing site 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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The proposed rule changes:

- Clarify the lease nomination and lease auction process (including the option to use on-line auctions)
- Allow Idaho Code Title 47, Chapter 8, Section 47-801 to determine the lease length and remove the redundant language in the existing rule language
- Improve lease area language to minimize unnecessary small acreage leases
- Adjust the lease tract application/nomination fee, the annual lease rental rate per acre (and a minimum annual rental rate), the assignment fee, and the shut-in fee (see Fee Summary below) to current day cost recovery levels
- Update definitions to current day terms
- Adjust rule formatting to comply with current Administrative Rule standards and for general, non-substantive housekeeping

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

The following fee increases reflect cost recovery levels for administrative efforts on behalf of the Department of Lands and are in line with other oil and gas producing states in the western United States. The existing fees are at 1988 dollar levels. Idaho Code Title 58, Chapter 1, Section 58-127 and Idaho Code Title 47, Chapter 8, Sections 47-801, 47-802, 47-805, and 47-807 authorize the Department to issue oil and gas leases and establish fees.

The existing application/nomination fee for lease tracts is \$25. The Department is proposing raising the application/nomination fee to \$250 per lease tract, which is the current application fee for all other leasing applications on state endowment trust lands (as approved by the Land Board). If approved this would result in a positive impact on Dedicated Fund (Earnings Reserve) revenues. The number of lease tracts nominated per year has been highly variable during the last 10 years, the average being approximately 20-40 lease tracts per year, with one year including more than 200.

The existing rental rate per acre for oil and gas leases is \$1.00 per acre annually. The Department is proposing raising the rental rate to \$3.00 per acre annually, consistent with other western oil and gas producing states. The Department is also proposing a minimum annual rental of \$250.00 to avoid the issuance of leases with unavoidably small acreages that would otherwise yield a rental rate that would cost more to administer than the revenue returned. This increase in rent would result in a positive impact on Dedicated Fund (Earnings Reserve) revenues. The Department currently leases approximately 70,000 acres for oil and gas. The increase in revenue would slowly be realized as oil and gas leases carrying the \$1.00 per acre rental rate expire over the next 10 years, subjecting the leases to the new rental rate (if approved).

The existing administrative fee for assignments is \$1.00 per document. The Department is proposing raising the assignment fee to \$100.00 in order to achieve cost recovery for processing. This increase in revenue would result in a positive impact on Dedicated Fund (Earnings Reserve) revenues. Request for lease assignments historically have been highly variable yet there have been only six assignments in the last three years.

The existing rule language for shut-in oil and gas wells (wells suspended from production at the request of the operator and subject to approval by the Director) does not identify a rental rate associated with the shut-in period. The Department is proposing a doubling of the existing annual rental rate in the lease for the shut-in fee which is consistent with other western oil and gas producing states and would provide revenue to the endowed beneficiary that would otherwise be generated through royalty payments. This increase in revenue would result in a positive impact on Dedicated Fund (Earnings Reserve) revenues.

FISCAL IMPACT: This Proposed Rule will have no impact, negative or positive, on the General Fund because the oil and gas leasing program impacts only Dedicated (Earnings Reserve) Funds. The proposed fee increases (described above in the Fee Summary) will result in incremental increases in Dedicated Fund revenues, with the actual increases dependent on future oil and gas activities initiated by the industry.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, **Volume 16-7 page 75**.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: No documents are incorporated by reference in these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mike Murphy (208) 334-0200 ext. 0290.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2016.

DATED this 8th day of September, 2016.

LSO Rules Analysis Memo

THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 20-0316-1601

000. LEGAL AUTHORITY.

~~These rules are promulgated by the Idaho State Board of Land Commissioners pursuant to Title 47, Chapter 8 and Title 67, Chapter 52, Idaho Code, and are intended to satisfy the Board's mandate (Idaho Constitution, Art. 9) to maximize return on state lands by encouraging leasing, production of oil and gas, prevention of waste, and protection of the oil, gas and other natural resources of state lands. This Chapter is adopted under the legal authorities of Sections 58-104(1), 58-104(6), 58-104(9), 58-105, and 58-127, Idaho Code; Section 58-307, Idaho Code; Title 47, Chapter 7, Idaho Code; Title 47, Chapter 8, Idaho Code; and Title 67, Chapter 51, Idaho Code. (10-11-88)()~~

~~001.—002. (RESERVED)~~

001. TITLE AND SCOPE.

01. Title. These rules will be cited as IDAPA 20.03.16, "Rules Governing Oil and Gas Leasing on Idaho State Lands." ()

02. Scope. These rules apply to the exploration and extraction of oil and gas resources situated in state-owned mineral lands. ()

03. Other Laws. In addition to these rules, the lessee shall comply with all applicable federal, state and local laws, rules and regulations. The violation of any applicable law, rule or regulation shall constitute a breach of any lease issued in accordance with these rules. ()

002. WRITTEN INTERPRETATIONS.

The Idaho Department of Lands maintains written interpretations of its rules which may include, but may not be limited to, written procedures manuals and operations manuals and other written guidance, which pertain to the interpretation of the rules of this chapter. Copies of interpretations, subject to the exemptions in Title 9, Chapter 3, Idaho Code, Sections 9-340A through 9-340H, are available for public inspection and copying at the Director's office of the Idaho Department of Lands, 300 North 6th Street, Suite 103, Boise, Idaho. ()

003. ADMINISTRATIVE APPEALS.

01. Appeal to Board. All decisions of the director are appealable to the Board. An aggrieved party desiring to take such an appeal shall, within thirty (30) days after notice of the director's decision, file with the director a written notice of appeal setting forth the basis for the appeal. (10-11-88)

02. Hearing. The Board shall hear the appeal at the earliest practical time or in its discretion appoint a hearing officer to hear the appeal, within sixty (60) days after filing of the notice of appeal. The hearing officer will make findings and conclusions that the Board may accept, reject or modify. The decision of the Board after hearing or upon a ruling concerning the hearing officer's findings and conclusions shall be final. (10-11-88)

03. Judicial Review. Judicial review of the final decision of the Board shall be in accord with the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, by filing a petition in the district court in Ada County, or the county where the Board heard the appeal and made its final decision, within thirty (30) days after notice of the Board's decision. Service of the Board's decision may be by personal service or by certified mail to the lessee. (10-11-88)

004. INCORPORATION BY REFERENCE.
There are no documents that have been incorporated by reference into this rule. ()

005. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.
The principal place of business of the Idaho Department of Lands is 300 North 6th Street, Suite 103, Boise, Idaho 83702 and it is open from 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, Idaho 83720-0050. The telephone number of the office is (208) 334-0200 and the fax number is (208) 334-3698. ()

006. PUBLIC RECORDS ACTION COMPLIANCE.
The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 51, Idaho Code and are public records. ()

0047. -- 009. (RESERVED)

010. DEFINITIONS.

01. Board. The Idaho State Board of Land Commissioners or its authorized representative, or where appropriate, the state of Idaho. (10-11-88)

02. Commission. The Idaho Oil and Gas Conservation Commission. (10-11-88)

03. Collateral Surety Bond and Corporate Surety Bond. See Subsections 080.04.a. and 080.04.b. (10-11-88)

04. Department. The Idaho Department of Lands, Boise office business address is 300 North 6th Street, Suite 103, Boise, Idaho 83720. (10-11-88)

05. Director. The director of the Idaho Department of Lands or his authorized representative. (10-11-88)

06. Discretion. Exercising authority to make a decision, choice or judgment without being arbitrary, capricious or illegal. (10-11-88)

07. Exploration. The activities related to the search for oil and gas including without limitation aerial, geographical and geophysical surveys and studies, seismic work, core drilling and the drilling of test wells Activities related to the various geological and geophysical methods used to detect and determine the existence and extent of hydrocarbon deposits. (10-11-88) ()

08. Final Board Approval. Approval of a lease occurs after the lease is signed by the Governor, the Secretary of State and the director on behalf of the Board after approval of the lease by a majority of the Board. All

approved leases shall first be signed by the lessee and then by the above-entitled state officials. (10-11-88)

09. Lease. ~~An oil and gas lease in accord with these rules~~ A written agreement between the Department and a Person containing the terms and conditions upon which the Person will be authorized to use state lands. (10-11-88)()

10. Legal Subdivision. See Subsection 071.04. (10-11-88)

11. Lessee. The person to whom a lease has been issued and his successor in interest or assignee(s). More than one (1) person may be entered as an applicant on the application form but only one (1) person shall be designated in the application for lease or assignment as the lessee of record with sole responsibility for the lease under these rules. (10-11-88)

12. Lessor. The Board on behalf of the state of Idaho. (10-11-88)

13. Motorized Exploration Equipment. ~~Seismic, stratigraphic, core or other drilling equipment, whether portable or vehicular, vibrator vehicles and other similar equipment~~ Motorized exploration equipment means the equipment used in exploration which may appreciably disturb or damage the land or resources thereon as defined in Idaho Code 47-703A. (10-11-88)()

~~**14. Oil and Gas.** Oil, gas, casinghead gas, casinghead gasoline, all other hydrocarbons and other carbonaceous substances present in the earth and produced therefrom in a gaseous or liquid form and shall include sulfur and such other gaseous substances and elements as shall be produced in a gaseous or liquid form in association with or separate from oil and gas including carbon dioxide and helium, but shall not include coal, lignite, oil shale or similar hydrocarbons, or synthetic fuels derived therefrom.~~ (10-11-88)

14. Natural Gas Plant Liquids. Natural Gas Plant Liquids means hydrocarbon compounds in raw gas that are separated as liquids at gas processing plants, fractionating plants, and cycling plants. Natural Gas Plant Liquids obtained include ethane, liquefied petroleum gases (propane and the butanes), and pentanes plus any heavier hydrocarbon compounds. Component products may be fractionated or mixed. ()

15. Oil and Gas. Oil and gas means oil or gas or both. ()

~~156.~~ **Person.** (7-1-93)

a. An individual of legal age; (7-1-93)

b. Any firm, association or corporation that is qualified to do business in the state of Idaho; (7-1-93)

c. Or any public agency or governmental unit, including without limitation, municipalities. (10-11-88)

~~167.~~ **Production in Paying Quantities.** That gross income from oil and/or gas produced and saved (after deduction of taxes and royalty) that exceeds the cost of operation. (10-11-88)

~~178.~~ **State Lands.** Lands, including the beds of navigable waters within Idaho, in which the title to mineral rights are owned by the state of Idaho and that are under the jurisdiction and control of the Board or any other state agency. (10-11-88)

19. Tract. Tract means an expanse of land representing the surface expression of the underlying mineral estate that includes oil and gas rights owned by the State. A tract: ()

a. May be identified by its public land survey system of rectangular surveys which subdivides and describes land in the United States in the public domain and is regulated by the U.S. Department of the Interior, Bureau of Land Management; ()

b. Is of no particular size; ()

- c. Shall be a maximum size of 640 acres or one section, unless otherwise determined by the Director; ()
- d. May be irregular in form; ()
- e. Is contiguous; ()
- f. May lie in more than one township or one section; ()
- g. May have a boundary defined entirely or in part by natural monuments such as streams, divides, or straight lines connecting prominent features of topography; ()
- h. May include the mineral estate beneath navigable waters of the State; and ()
- i. May be combined with other tracts to form a Lease. ()

(BREAK IN CONTINUITY OF SECTIONS)

016. WITHDRAWAL OF LANDS.

At any time prior to final Board approval of a lease, the Board reserves the right to withdraw state lands entirely from oil and gas leasing if consistent with its constitutional and statutory duties and in the state's best interests; ~~provided that the Department shall refund application fee.~~ (10-11-88)()

017. -- 019. (RESERVED)

020. QUALIFIED APPLICANTS AND LESSEES.

Any person ~~as defined in Subsection 010.15 shall be qualified to lease the oil and gas resources in state lands or take or hold an interest therein, provided that n~~ who is not then in default of any contract with the state of Idaho or any Department or agency thereof is a qualified applicant and lessee. No member of the Board or employee of the Department may take or hold such lease; ~~and provided further, that the Board may in its discretion deny a lease or assignment to any person who has forfeited a lease as per Subsection 071.01 or until delinquent rentals plus interest on any previous lease have been paid in full.~~ (10-11-88)()

021. EXPLORATION.

01. Written Permit Required. Any ~~exploration with~~ appreciable surface disturbing activity, including, but not limited to, motorized exploration ~~equipment~~ on state lands is prohibited except by written permit for exploration signed for a period of time as determined by the ~~d~~Director, ~~which shall be valid for ninety (90) days or less for each section of state lands not withdrawn or leased under these rules. However, no test well shall be drilled prior to award of a lease and compliance with Section 055~~ This permit is in addition to any permit required by the Commission. (10-11-88)()

02. Permit Conditions. The permit shall contain such conditions as the director determines will protect the existing surface uses and resources of the state. The permit applicant shall pay in advance the fee required by Section 120; ~~however, when the permit applicant is also the lessee, no fee is required.~~ (10-11-88)()

~~**022. APPLICATIONS — CONTENT — FEE.**~~

~~**01. Filing.** An application for a lease may be filed with the Department in Boise during regular business hours (8:00 a.m. to 5:00 p.m.) on a department form or exact copy thereof. The application shall contain the following: name, address, telephone number, signature of the applicant, the Department's tract number and legal description of the lands applied for, and the twenty five dollars (\$25) nonrefundable application fee. The Department's tract number and legal description for each tract shall be obtained from the competitive tract list.~~ (10-11-88)

~~02. **Establishing Priority.** Individuals not attending a competitive auction under Section 025 may file an application establishing a priority for purposes of Rule 025.02. (10-11-88)~~

~~03. **Competitive Bidding.** Individuals bidding at a competitive auction will file an application in accord with Subsection 028.04. (10-11-88)~~

~~023. **SIZE AND COMPOSITION OF LEASABLE TRACT.**~~

~~01. **Maximum Size.** Each lease shall include all available state lands within a section and shall not exceed six hundred and forty (640) acres in size, unless available state lands in the section exceed six hundred and forty (640) acres. Available state lands means lands not withdrawn or leased per these rules. (10-11-88)~~

~~02. **Navigable Water Courses.** Operations in or under the beds of navigable water courses shall not be authorized except in extraordinary circumstances and only with express written approval of the Board upon such conditions and security as the Board deems appropriate. An applicant may need to obtain a stream channel alteration permit from the Department of Water Resources prior to commencing operations in the beds of any water courses. (10-11-88)~~

~~024. **(RESERVED)**~~

~~025. **COMPETITIVE BIDDING.**~~

~~01. **Highest Bid.** Subject to Section 016 and Subsection 025.02 a lease shall be acquired by competitive bidding and shall be awarded to the qualified bidder with the highest bid. If no application for a particular tract is timely filed and in the absence of any bids for such tract at an auction, that tract will be offered on an over the counter basis on the first of the month following the sale to the first qualified applicant. The tract offering period shall be open for a six (6) month period of the auction year. (10-11-88)~~

~~02. **First Applicant When No Bid.** In the absence of any bid at an auction on a particular tract, a lease shall be awarded to the person who filed an application first in time in accord with these rules. If an application with a priority in time is withdrawn per Subsection 027.04, and in the absence of any bid at an auction for that particular tract, the lease shall be awarded to the person who filed an application with next priority in time. (10-11-88)~~

~~03. **Simultaneous Filings.** Applications received by the Department over the counter or by mail on the same day shall be considered as simultaneous filings and shall be resolved by competitive bidding at an auction at a time and place designated by the director. (10-11-88)~~

~~026. **AUCTIONS—SCHEDULE.**~~

~~01. **Time.** Public auctions shall be scheduled as needed by the director. Public auctions will normally be held in Boise and commence at 9:30 a.m. (10-11-88)~~

~~02. **Notice.** A notice of lease auction shall be published no less than thirty (30) days prior to the date of the auction in two (2) newspapers of general circulation in Idaho and in one (1) or more major trade journals of the Department's choice, and mailed to persons on the Department mailing list. The notice shall be posted in the offices of the Department in Boise and in the county courthouse at the county seat of the county where the land is located. The notice shall state the date, time and place of auction, information concerning the tracts offered and special lease stipulations, if any. All tracts on the competitive tract list will be open for competitive bidding. (10-11-88)~~

~~027. **DESIGNATING TRACTS BY APPLICATION.**~~

~~01. **Application for Auction.** Any person who desires that a tract of state land be offered for oil and gas leasing at the next scheduled auction shall make application in compliance with Sections 022 and 023 at least sixty (60) days prior to the date set for auction. Each application shall be deemed an offer to lease the lands described in the amount of the minimum required first year's rental and shall constitute an undertaking to pay, within ten (10) business days after the auction, the required first year's rental for the lease. (10-11-88)~~

~~02. **Designation of Other Tracts.** The director may also designate tracts to be offered at an auction. (10-11-88)~~

~~03. **Filing.** Applications for purposes of priority in time for purposes of Subsection 025.02 made after publication of a notice of lease offering shall be filed with the Department in Boise at least ten (10) business days prior to the date of the auction. (10-11-88)~~

~~04. **Withdrawal of Application.** Any application may be withdrawn by the applicant if a request for such withdrawal is received by the Department in Boise at least seven (7) business days prior to the date fixed for the auction, but the twenty-five dollars (\$25) application fee will not be refunded. (10-11-88)~~

~~028. **AUCTION PROCEDURE.**~~

~~01. **Oral Auction.** For oral auction, all bidders shall register with the Department during the seven (7) business days prior to the auction or during a ninety (90) minute period immediately preceding the auction. Registration shall include the name, address and signature of the bidder, the assignment of a bidding number, the submission of either a power of attorney or a designation of agent executed by the applicant, and payment of the ten dollars (\$10) bidding fee; provided that persons who have timely filed an application and paid the twenty-five dollars (\$25) application fee for a tract to be offered at a particular auction do not need to pay the bidding fee for that auction. Immediately after completion of the auction, each winning bidder shall supplement his registration by listing the name and address of the applicant for the lease, and if the bidder is not an employee of the applicant, he shall submit a copy of a power of attorney executed by the applicant. A qualified applicant pursuant to Section 020 or a designated agent may bid for a competitive lease. (10-11-88)~~

~~02. **Cash Bonus Bid.** The method of bidding will generally be by cash bonus bid at oral auction. The minimum opening bid shall be a twenty-five cent (\$.25) bonus per acre. The successful bonus bid for an offered tract at auction shall be the number of dollars bid multiplied by the number of acres in the offered tract plus the first year's rental per Subsection 041.03. The Board reserves the right to specify in the notice of offering any other method of competitive bidding that, in its discretion, it determines to be in the best interests of the state. (10-11-88)~~

~~03. **Right to Reject Bids.** The director reserves the right to reject any or all bids. The Board and Department expressly disclaim any liability for inconvenience or loss caused by errors that may occur concerning lease offerings. (10-11-88)~~

~~04. **Winning Bidder Payments.** Winning bidders who have not previously submitted an application for the tract bid upon shall submit by check or money order to the Department's representative immediately after the completion of an oral auction, the application fee for each lease per Section 120. Within ten (10) business days thereafter, winning bidders shall submit to the Department a completed, signed application for each section, if not previously filed, and the bonus bid by check or money order, and the pro-rata share of the cost of advertising based upon the percentage of acreage acquired, computed from the total acres leased. A check that is subsequently not honored for any reason other than error by a bank may disqualify the applicant from leasing under these rules until the dishonored check is paid and for one (1) year thereafter. (10-11-88)~~

~~05. **Execution of Lease.** The completed lease shall be executed by the lessee within thirty (30) days from the date of mailing, or if personally delivered to the applicant or his agent by the Department, within thirty (30) days from the date of receipt. An individual who executes a lease on behalf of another person shall submit a power of attorney which outlines his delegated authority. (10-11-88)~~

~~029. **Competitive Tract List.** A list of available state lands will be published for distribution. This list shall contain a tract number for each tract designated by the Department, the legal description of each tract and the number of acres per tract. (10-11-88)~~

~~030.—039. (RESERVED)~~

~~040. **TERM.**~~

~~01. **Ten-Year Lease.** All leases shall have a term of ten (10) years from the anniversary date. The anniversary date of the lease shall be the first day of the month after final Board approval. The lease shall have a primary term consisting of lease years one (1) through five (5), inclusive, and a secondary term consisting of lease years six (6) through ten (10), inclusive. At the expiration of the tenth year, the lease shall continue in force so long as production of oil and gas continues in paying quantities, or as long as the lessee conducts diligent and continuous drilling operations at a depth of one thousand (1,000) feet or deeper, or at a lesser depth than one thousand (1,000) feet if approved by the director, or the lessee reworks a former well under authorized permit from the commission on the leased land. (10-11-88)~~

~~02. **Diligent Drilling.** Diligent and continuous drilling operations means no delay or cessation of drilling for a period greater than one hundred twenty (120) days, unless extended in writing by the director. The director must receive a written request for an extension at least ten (10) days prior to the expiration of the one hundred twenty (120) day period. (10-11-88)~~

~~03. **Notification at End of Lease Period.** The lessee shall notify the director in writing prior to the expiration of the tenth year of his lease that drilling or reworking operations has commenced and will extend beyond the expiration date of the lease. Rental payment, in the amount required by Section 041 for the eleventh and each succeeding year, shall be received by the Department prior to the expiration date and shall entitle the lessee to hold the lease only so long as drilling or rework operations are pursued in accord with these rules. There will be no refund of unused rental. (10-11-88)~~

~~04. **Abandonment.** During the eleventh or succeeding year of any lease, cessation of production for a period of six (6) months shall be considered as abandonment. The lease will then automatically terminate at its next anniversary date unless the director determines that such cessation of production is justified or the well meets the requirements of a shut in gas well under Subsection 040.05. (10-11-88)~~

~~05. **Suspension of Production.** The director may grant a suspension of production not to exceed two (2) years upon a written request showing that the lessee is unable to market oil or gas. If such well is shut in and the director approves suspension of production requirements after expiration of the ten (10) year term, the lease shall be considered as if the well was producing in paying quantities under Subsection 040.01. The lessee shall pay rental for each year during which the well is shut pursuant to Section 041. The lessee may request continuation of this suspension, provided such request is received in writing by the director at least thirty (30) days prior to the expiration date of the period of suspension. (10-11-88)~~

041. RENTALS:

~~01. **Advance Annual Rental.** The lessee shall pay to the state of Idaho an advance annual rental for each acre under lease. The annual rental and bonus bid for the first year shall be due and payable within ten (10) business days after the auction pursuant to Subsection 028.04. Subsequent rental payments must be received in the Department in Boise on or before the anniversary date of the lease. Rental payments shall be made directly to the Department and not through any bank or depository. Failure to pay the exact rental due may result in cancellation of the lease. (10-11-88)~~

~~02. **Delinquent Rental.** Rental is delinquent if not paid on or before the due date. Should rental be delinquent, the Department will send a single notice of delinquent payment by certified mail to the lessee. If payment is not received by the Department within thirty (30) days from the date of mailing, the Department may cancel the lease without further notice to the lessee or may assess the greater of the following: either a twenty five (\$25) late payment charge or interest at the rate of one percent (1%) for each calendar month or fraction thereof, compounded monthly, for late payments from the date the rental is due. The Department is not responsible for notifying lessees of rentals due prior to the due date notwithstanding any billing practices of the Department. (10-11-88)~~

~~03. **Bonus Bid.** The lessee shall pay the offered bonus bid and the first year's rental of one dollar (\$1) per acre of the lease. For the second year through the tenth year, lessee shall pay in advance an annual rental one dollar (\$1) for each acre or part thereof under lease. For leases extended into the eleventh year and/or longer, the advanced annual rental shall be three dollars (\$3) for each acre or part thereof under lease, unless the lease is producing in paying quantities. In such instances the annual rental shall be one dollar and fifty cents (\$1.50) for each acre or part thereof under the lease. (10-11-88)~~

022. LEASE ACQUISITION PROCESS.

01. Acquiring a Lease. A lease shall be acquired for the exclusive right and privilege to explore for and produce oil and gas by oral auction, online auction, or such other method of competitive bidding authorized by the Board, in its discretion, determined to be in the best interest of the state, and shall be awarded to the winning bidder at close of auction. The winning bidder at auction shall be issued the lease by the Department on the first day of the month following Final Board Approval. The Board and Department reserve the right to reject any or all nominations or bids, and expressly disclaim any liability for inconvenience or loss caused by errors that may occur concerning lease offerings. ()

02. Lease Provisions. ()

a. Term. All oil and gas leases shall have a term as provided by Idaho Code 47-801 as amended and shall continue from year to year thereafter for so long as production of oil and gas continues in paying quantities, or as long as the lessee conducts diligent and continuous drilling operations. ()

b. Advance Annual Rental. The lessee shall pay to the state of Idaho an advance annual rental for each lease of \$3.00 per acre with a minimum of \$250.00 per lease. ()

c. Diligent Drilling. Diligent and continuous drilling operations means no delay or cessation of drilling for a period greater than one hundred twenty (120) days, unless extended in writing by the Director. The Director must receive a written request for an extension at least ten (10) days prior to the expiration of the one hundred twenty (120) day period. ()

d. Notification at End of Lease Period. The lessee shall notify the Director in writing prior to the expiration of the final year of his lease that drilling or reworking operations has commenced and will extend beyond the expiration date of the lease. Advance Annual Rental, in the amount required by Section 022 for any additional and each succeeding year, shall be received by the Department prior to the expiration date and shall entitle the lessee to hold the lease only so long as drilling or rework operations are pursued in accord with these rules. There will be no refund of unused rental. ()

e. Abandonment. During any additional or succeeding year of any lease, cessation of production for a period of six (6) months shall be considered as abandonment. The lease will then automatically terminate at its next anniversary date unless the Director determines that such cessation of production is justified or the well meets the requirements of a shut in well under Subsection 022f. ()

f. Suspension of Production. The Director may grant a suspension of production not to exceed one (1) year upon a written application showing that the lessee is unable to market oil or gas from a well located on the leased premises capable of oil and gas production in paying quantities due to a lack of suitable production facilities or a suitable market for the oil or gas and such conditions are outside the reasonable control of lessee and the lease is not being otherwise maintained in force and effect. If such well is shut in and the Director approves the application for suspension of production requirements prior to the expiration or termination of the lease then the lease shall be extended in accordance with the terms of Idaho Code § 47-801 for a period of one year if the lessee timely submits an application in a form approved by the Director and, upon approval of said application, pays a shut-in royalty in the amount equal to double the annual rental provided for by these rules for each well capable of producing oil or gas in paying quantities. The lessee must remit the shut-in royalty payment while the lease is otherwise maintained in force and effect. Payment of shut-in royalty after the expiration or other termination of the lease will not revive or extend the lease. The lessee may request continuation of this suspension of production, provided such request is received in writing by the Director at least thirty (30) days prior to the expiration date of the period of suspension. ()

03. Nominating a Tract for Auction. A tracts may be nominated for auction either by application to the Department at least 90 days prior to a Department defined close of auction date, or by Department nomination at least 90 days prior to a Department defined close of auction date. Any qualified Person may nominate a tract for lease auction by submitting a nomination to the Department in Boise, and paying the nomination fee in an amount determined by the Board, during regular business hours (8:00 a.m. to 5:00 p.m.) on the Department nomination form. Each nominated tract shall be a maximum size of 640 acres or one section. The nominating Person may propose that

multiple tracts be included in a single lease. Each nomination for a tract for auction shall be deemed an offer by the nominating Person to lease the tract for the advance annual rental amount as defined in Subsection 02 above. ()

04. Withdrawing a Tract for Auction. Any Person nominating a tract for auction may withdraw their nomination if a request for such withdrawal is received by the Department in Boise at least ten (10) business days prior to the opening date of auction. The nomination fee shall not be refunded. ()

05. Auction Conditions. The Department shall determine the conditions associated with the auction, including, but not limited to: when or if a tract will be offered for auction; whether the tract is to be removed from the auction; whether multiple tracts will be combined in a single lease at the discretion of the Department; and any disclaimers, additional information, and any other such terms and conditions associated with the auction of the tracts. Any such terms and conditions, disclaimers, and additional information shall be posted on the Department's website. ()

06. Lease Information for Auction. For each lease to be auctioned, the Department shall provide on the website: a lease number designated by the Department; the legal description; the lease length; the number of acres; a minimum bid per acre; a lease template; any lease stipulations; any other lease information; a specific date designated for the beginning and ending dates that a bidder may conduct due diligence; a specific date designated for the opening of auction; and a close of auction date. A notice of lease auction shall be published at least once per week for the four consecutive weeks prior to the date of auction in a newspaper in general circulation in the county in which the nominated lease is located and in a newspaper in general circulation in Ada County. ()

07. Auction Procedure. The Department shall determine the procedures associated with the auction, including, but not limited to place of auction, time of auction, and bidder registration procedure. Additional auction procedures are as follows. ()

a. Bid Increments. The minimum bid increment shall be one dollar (\$1.00). ()

b. Winning Bid. At close of auction, the winning bid for a Lessee shall be the number of dollars bid multiplied by the number of acres in the Lease, with fractions of an acre rounded up to the next whole acre. If, at close of auction, a bid for a Lease has not been submitted by a bidder, then the Lease shall be awarded to the nominating applicant. The entry of a bid constitutes an enforceable contractual obligation. ()

c. Amount Due. The amount due for a lease shall be the winning bid, plus the first year's annual rental amount as per Subsection 02 above, plus the nomination fee. If the winning bid was submitted by the nominator of the tract(s), then the nomination fee will already have been submitted to the Department and shall not be included in the amount due. The nominator will be refunded the nomination fee if they are not the winning bidder. ()

d. Transfer of Funds. Unless otherwise required in the notice of auction, the winning bidder for each lease shall have five (5) full business days after close of auction to complete the transfer of funds to the Department. Failure of the winning bidder to transfer funds within the period specified constitutes a breach of contract, and the state may pursue any action or remedy at law or in equity against the winning bidder. ()

08. Execution of Lease. The completed Lease shall be executed by the winning bidder within thirty (30) days from the date of mailing after close of auction, or if personally delivered to the applicant or his agent by the Department, within thirty (30) days from the date of receipt. An individual who executes a Lease on behalf of another Person shall submit a power of attorney which outlines his delegated authority. ()

~~0423.~~ -- 044. (RESERVED)

045. ROYALTIES.

01. Royalty Payments. Unless otherwise specified by the Board, the lessee shall pay to the state of Idaho in money or in kind to the state at its option a royalty of no less than twelve and one-half percent (12-1/2%) of the oil and/or gas or natural gas plant liquids produced and saved. The lessee shall make payments in cash unless written instructions for payment in kind are received from the state. Royalty shall be due on all production from the leased premises except that consumed for the direct operation of the producing wells and that lost through no fault of

the lessee.

~~(10-11-88)~~()

02. Royalty Not Reduced. Where royalties are paid in cash, costs of marketing, transporting and processing oil and/or gas or natural gas plant liquids or all of them produced shall be borne entirely by the lessee, and such cost shall not reduce the lessor's royalty directly or indirectly. If the director elects to take royalty in kind, the state shall reimburse the lessee for reasonable additional storage and transportation costs. ~~(10-11-88)~~()

~~**03. Oil Royalty Calculation.** When paid in cash, the royalty shall be calculated upon the reasonable market value of the oil at the well which shall not be less than the price actually paid or agreed to be paid to the lessee at the well by its purchaser; in no event shall the royalties be based upon a market value at the well less than the posted price in the field for such oil, or upon a market value at the well less than the prevailing price received by other producers in the field for oil of like grade and gravity at the time such oil is run into pipelines or storage tanks. (10-11-88)~~

~~**04. Gas Royalty Calculation.** On gas, including casinghead gas or other gaseous substances, the royalty shall be calculated upon the reasonable market value at the well or on the price received by lessee at the well, whichever is greater, of all gas produced and saved from the leased premises. Where gas is sold under a contract that has been approved by the state of Idaho, the reasonable market value of such gas for determining the royalties payable shall be the price at which such gas is sold under such contract; provided, however, that no approval by the state of Idaho of the terms of any such agreement shall operate to make the state a party thereto or obligate it in any way except as herein provided, and the lessee agrees to hold the state harmless from any such obligation. (10-11-88)~~

~~**05. Due Date.** Royalties shall be due and payable monthly in the Department in Boise on or before the last day of the calendar month following the month in which the oil and/or gas was produced. Each royalty payment shall be accompanied by the production report described in Section 056. (10-11-88)~~

03. Oil, Gas, and Natural Gas Plant Liquids Royalty Calculation and Reporting. All royalty owed to the Lessor hereunder and not paid in kind at the election of the Lessor shall be paid to the Lessor in the following manner: ()

a. Payment of royalty on production of oil shall be due and must be received by the Lessor on or before the 65th day after the month of production: ()

b. Payment of royalty on production of gas and natural gas plant liquids shall be due and must be received by the Lessor on or before the 95th day after the month of production: ()

c. All royalty payments must be completed in the form and manner approved by the Department, including but not limited to, the gross amount and disposition of all oil, gas, and natural gas plant liquids produced and the market value of the oil, gas, and natural gas plant liquids: ()

d. Lessee must maintain, and make available to the Lessor upon request, copies of all documents, records or reports confirming the gross production, disposition and market value including gas meter readings, pipeline receipts, gas line receipts and other checks or memoranda of the amount produced and put into pipelines, tanks, or pools and gas lines or gas storage, and any other reports or records which the Lessor may require to verify the gross production, disposition and market value; and ()

e. Each royalty payment shall be accompanied by a check stub, schedule, summary or other remittance advice showing, by the assigned Lessor lease number, the amount of royalty being paid on each lease. ()

~~**065. 04. Overriding Royalty.** All assignments of overriding royalty without a working interest made directly by the lessee and not included with an assignment of lease shall be filed with the Department in Boise with the recording processing fee within ninety (90) days from the date of execution; provided that it shall be the lessee's responsibility and not the Department's, to record process such assignments by third parties. Any assignment which creates an overriding royalty, ~~which when added to overriding royalties previously created and to the royalty payable to the state aggregates in excess of seventeen and a half percent (17 1/2%) exceeds the royalty previously payable to the state by greater than five percent (5%),~~ shall be deemed a violation of the terms of the lease unless such~~

an assignment expressly provides that the obligation to pay such excess overriding royalty shall be suspended when the average production of oil per well per day, averaged on a monthly basis, is fifteen (15) barrels or less.

~~(10-11-88)~~ ()

(BREAK IN CONTINUITY OF SECTIONS)

050. LAND USE, SURFACE RIGHTS AND OBLIGATIONS.

01. Use and Occupancy. Notwithstanding other leases for other uses of state lands, the lessee shall be entitled to use and occupy so much of the surface of the leased lands as may be required for all purposes reasonably incident to exploration, drilling and production and marketing of oil and gas produced from the leased land, including the right to construct and maintain all works, buildings, plants, waterways, roads, communication lines, pipelines, reservoirs, tanks pumping stations or other structures necessary to full enjoyment and development; provided that lessee's operation shall not unreasonably interfere with or endanger operations under any lease, license, claim, permit or other authorized, lawful use. (10-11-88)

02. Prevention of Injury or Damage. The lessee, its assignees, agents, and/or contractors shall take all reasonable precautions to prevent injury or damage to persons, real and personal property and to prevent waste or damage to the oil, gas and other surface and subsurface natural resources and the surrounding environment, including but not limited to, vegetation, livestock, fish and wildlife and their natural habitat, streams, rivers, lakes, timber, forest and agricultural resources. The Lessee, his assignees, agents and/or contractors shall compensate the Board, his surface lessees, grantees or contract purchasers for any damage resulting by reason of their operations or any damage resulting from their failure to take all reasonable precautions to prevent injury or damage to persons, real and personal property and to prevent waste or damage to the oil, gas and other surface and subsurface natural resources and surrounding environment as set forth above. The lessee, its assignees, agents and/or contractors shall comply with all environmental laws, rules and regulations as they pertain to its operation. (10-11-88)

03. Blowout or Spill. The lessee shall report to the director any blowout, fire, uncontrolled venting, or oil spill on the leased land within twenty-four (24) hours and shall confirm this report in writing within ten (10) days. (10-11-88)

~~**04. Distance From Residence.** No well shall be drilled within two hundred (200) feet of any occupied residence or barn without the written consent of the owner of such building. (10-11-88)~~

054. Fences. The lessee shall not at any time fence any watering place upon leased lands where it is the only accessible and feasible watering place upon the lands within a radius of one (1) mile, without first having secured the written consent of the director. (10-11-88)

065. Timber Removal. The lessee shall not unreasonably interfere with the removal of timber purchased prior or subsequent to the issuance of an oil and gas lease. The lessee may remove any timber required for ingress or egress or necessary for operations. The lessee shall pay for any timber cut or removed on a current stumpage price basis as determined by the director, and proceeds therefrom shall accrue to the state agency that has custody and control over the leased lands. (10-11-88)

076. Potable Water Discovery. If the lessee finds only potable water in any well drilled for exploration or production of oil and gas, and the water is of such quality and quantity as to be valuable and usable for agricultural, domestic, or other purposes, the Board may acquire the well with whatever casing is installed in the well at the fair market value of the casing upon the assumption by its surface lessee, grantee, or contract purchaser of all future liabilities and responsibilities for the well, with the approval of the commission and in compliance with Section 058; provided that the surface lessee, grantee, or contract purchaser shall also comply with applicable laws and rules of the Department of Water Resources. (10-11-88)

087. Reclamation. The lessee shall reclaim all state lands disturbed by its exploration and operations at least consistent with previous use by the surface owner, including segregating and protecting topsoil and regrading to approximate previous contour. If substantial removal of topsoil has occurred as determined by the director, the

lessee shall replace the topsoil and revegetate to the extent necessary to minimize erosion. ~~(10-11-88)~~()

~~098.~~ **Entry by Director.** The director shall be permitted at all reasonable times to go in and upon the leased lands and premises to inspect the operations and the products obtained and to post any lawful notice. The director may at any time require that reasonable tests, surveys, samples, etc., be taken in accord with his instruction, without cost to the state of Idaho, to assure compliance with these rules. The director may at any reasonable time inspect and copy at his own expense all of lessee's books and records pertaining to a lease under these rules. Upon failure of lessee to take timely, corrective measures ordered by the director or the Board or the commission, the director may shut down lessee's operations if he determines they are unsafe or are causing or can cause waste or pollution, to oil, gas or other resources; or the director may terminate the lease in accord with these rules, and may cause damage or unsafe conditions to be repaired or corrected at the expense of the lessee and forfeiture of bond under these rules. (10-11-88)

~~109.~~ **Other Uses.** Subject to Subsection 050.01, the director may issue leases for other uses of state lands leased under these rules. All lessees shall have the right of reasonable ingress and egress at all times during the term of the lease. (10-11-88)

~~110.~~ **Disposal of Leased Lands.** The Board reserves the right to sell or otherwise dispose of the surface of the leased lands; provided that any sale of surface rights made subsequent to execution of the lease shall be subject to all terms and provisions of the oil and gas lease during its life including extensions and continuations under Rule 040. (10-11-88)

051. DILIGENT EXPLORATION REQUIRED.

The lessee shall perform diligent exploration during the entire term of a lease. Diligent exploration means that the lessee shall provide continuing efforts as a reasonably prudent operator toward achieving production, including, without limitation, performing geological and geophysical surveys and/or the drilling of a test well. ~~To qualify as diligent exploration for each year of the secondary term the lessee shall:~~ (10-11-88)()

~~01. Drill One Well. Drill at least one (1) well upon the leased premises or upon adjacent state leases or upon unitized lands in which the leasehold is included pursuant to Section 090, of such diameter and to such depth as may be necessary to make a reasonable test for oil and gas; or~~ (10-11-88)

~~02. Pay in Advance. Pay in advance a delayed drilling penalty of one dollar (\$1) per acre per year for the remainder of the secondary term.~~ (10-11-88)

(BREAK IN CONTINUITY OF SECTIONS)

~~056. PRODUCTION REPORT.~~

~~The lessee shall file with the Department on a Department form or on a reasonable facsimile a sworn monthly report on all production for each lease. The report must be received by the Department no later than the end of the calendar month following the month for which the report is prepared. If production should cease during any month, the reason for cessation shall be explained on the report.~~ (10-11-88)

~~057. EXPLORATION AND OPERATIONS RECORDS—CONFIDENTIALITY.~~

~~All production reports filed with the director and information obtained pursuant to Subsection 050.09 shall be held confidential for one (1) year, unless otherwise directed by the lessee; provided that the Board may utilize such information in asserting or defending its rights under these rules in litigation or administrative hearings.~~ (10-11-88)

~~058.~~ **WATER RIGHTS.**

The lessee shall comply with all state laws and rules regulating the appropriation of water rights. No water rights developed or obtained by the lessee in conjunction with operations under a lease shall be sold, assigned or otherwise transferred without written approval of the director. Upon surrender, termination or expiration of the lease, the lessee shall take all actions required by the director to assign to the Board all water rights, including applications and permits, subject to applicable laws regarding the transfer or assignment of permits to appropriate water. (10-11-88)

~~057.~~ -- 059. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

~~061.~~ -- ~~064.~~ (RESERVED)

~~065. OVERRIDING ROYALTY.~~

~~All assignments of overriding royalty without a working interest made directly by the lessee and not included with an assignment of lease shall be filed with the Department in Boise with the recording fee within ninety (90) days from the date of execution; provided that it shall be the lessee's responsibility and not the Department's, to record such assignments by third parties. Any assignment creating an overriding royalty, which when added to overriding royalties previously created and to the royalty payable to the state aggregates in excess of seventeen and a half percent (17 1/2%), shall be deemed a violation of the terms of the lease unless such an assignment expressly provides that the obligation to pay such excess overriding royalty shall be suspended when the average production of oil per well per day, averaged on a monthly basis, is fifteen (15) barrels or less. (10-11-88)~~

~~066~~1. -- 069. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

071. TERMINATION - CANCELLATION OF LEASE.

01. **Cause.** Except as otherwise provided in these rules, the director may terminate the lease for any substantial violation of these rules, the lease, or the rules of the commission, ninety (90) days after notice of the violation has been given to lessee by personal service or by certified mail to the lessee, unless: (10-11-88)

a. The violation has been corrected; or (10-11-88)

b. The violation is one that cannot be corrected within the notice period and the lessee has in good faith commenced within the notice period to correct the violation and proceeds diligently to complete corrective action within a time period set by the director. If sent by certified mail, such notice shall be deemed served upon mailing. (10-11-88)

02. **Failure to Pay Rental.** ~~The director may terminate a lease for failure to pay rentals or royalties thirty (30) days after mailing of notice of delinquent rental~~ Failure to pay rent on or before the due date shall result in the termination of the Lease without notice or opportunity to cure. Time is of the essence for payment of rent and it is a material term of the Lease. (10-11-88)()

03. **Surrender After Termination.** Upon the expiration or termination of the lease, the lessee shall quietly and peaceably surrender possession of the premises to the state. Thereafter, lessee's obligations under these rules that have accrued prior to the date of expiration or termination shall continue in full force and effect. (10-11-88)

04. **Other Wells.** Default by the lessee in the performance of any of the conditions or provisions of the lease concerning a well or wells on any legal subdivision of the leasehold shall not affect the right of the lessee to continue the possession or operation of any other well or wells, situated upon any other legal subdivision of the leasehold. The term "legal subdivision" as herein used shall mean a subdivision as established by the United States land survey that most nearly approximates in size the area allocated to one well under any approved well spacing program; provided that if no special program has been approved, "legal subdivision" shall mean the parcel upon which such well is located, but in any event not less than forty (40) acres surrounding such well. Where such a default involving one (1) or more wells results in cancellation, and the lessee has other wells on the lease not in default, such cancellation shall result in the division of the defaulting acreage from the lease and resultant reduction in the size of the lease held by the lessee. (10-11-88)

05. **Equipment Removal.** Upon the expiration of the lease, or its earlier termination or surrender

pursuant to these rules, the lessee shall, within a period of ninety (90) days, remove from the premises all materials, tools, appliances, machinery, structures; equipment subject to removal, but not removed within the ninety (90) day period, or any extension that may be granted because of adverse climatic conditions during that period, shall, at the option of the director, become property of the state of Idaho; or the director may cause the property to be removed at the lessee's expense. (10-11-88)

(BREAK IN CONTINUITY OF SECTIONS)

~~081. -- 084. (RESERVED)~~

~~085. PREFERENTIAL RIGHTS UPON DISCOVERY OF UNLEASED GEOTHERMAL RESOURCES AND OTHER MINERALS.~~

~~A lessee who shall discover any mineral, including geothermal resources, on the leasehold shall have a right of first refusal to a state lease covering such minerals, including geothermal resources; provided they are not included within a mineral location under Section 47-703, Idaho Code, a mineral lease, or mineral lease application. The right shall continue for a period of sixty (60) days after discovery of minerals, provided the lessee shall notify the director within thirty (30) days after the discovery and shall make application to lease the minerals within sixty (60) days after the date of discovery. Notwithstanding, nothing herein shall require the Board to issue a mineral lease or geothermal resource lease. (10-11-88)~~

~~086. -- 089. (RESERVED)~~

(BREAK IN CONTINUITY OF SECTIONS)

~~103. PUBLIC RECORDS. (RESERVED)~~

~~Applications are not public records until the day after the next regularly scheduled auction. Leases, assignments and relinquishments, after approval by the Board or the director as required by these rules, are public records available for public inspection during regular business hours. (10-11-88)~~

(BREAK IN CONTINUITY OF SECTIONS)

120. FEES.

~~The following are the fees established under these rules: (10-11-88)~~

~~01. Exploration Permit. One hundred dollars (\$100) per linear mile or a minimum of one hundred dollars (\$100) per section. (10-11-88)~~

~~02. Nonrefundable Application Nomination Fee. Twenty five dollars (\$25) per application for lease. The nomination fee shall be set by the Board at a minimum of two hundred and fifty dollars (\$250.00) per Tract. (10-11-88)()~~

~~03. Bidding Fee. Ten dollars (\$10) per auction (unless an application has been timely filed for the scheduled auction). (10-11-88)~~

~~04. Application for Approval. Application for approval twenty dollars (\$20) per lease involved of assignment in the assignment. (10-11-88)~~

~~05. Record Processing Fee. Recording fee five dollars (\$5) The processing fee shall be set by the Board at a minimum of one hundred dollars (\$100) per each document. (10-11-88)()~~

~~06. Fee Adjustment. The Board may annually adjust these fees without formal rule-making procedures. (10-11-88)~~