



Eric Milstead  
Director

# Legislative Services Office

## Idaho State Legislature

*Serving Idaho's Citizen Legislature*

### MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Resources & Conservation Committee

**FROM:** Deputy Division Manager - Katharine Gerrity

**DATE:** July 10, 2019

**SUBJECT:** Idaho Department of Lands

IDAPA 20.00.00 - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking (Docket No. 20-0000-1900F) Idaho Department of Lands

The Idaho Department of Lands submits notice of temporary and proposed rules that reauthorize and re-publish the following previously approved chapters at:

- **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
- **20.03.02**, Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities
- **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- **20.03.05**, Riverbed Mineral Leasing in Idaho – All rules except Section 032 – Term (Superseded by Section 47-704(2), Idaho Code.)
- **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 - All rules except the following Sections/ Sub-sections: 010.06 – Definition, Leasehold Value (Rule 027, which required a sharing of the premium rental based on a percentage of leasehold value, expired on December 31, 1992 (per Rule 027) and therefore the definition of Leasehold Value in Rule 010.06 is not needed.); 020.01.a. - (The requirement for submission of duplicate forms is antiquated and current assignment processes within the Department no longer require a second document to be processed.), 020.01.c. - (The information requested in Rule 020.01.c was used in the leasehold value calculation that is no longer utilized due to the expiration of the Equity Sharing Premium Rental in Rule 027.), and 020.01.d. - (The information requested in Rule 020.01.d was used in the leasehold value calculation that is no longer utilized due to the expiration of the Equity Sharing Premium Rental in Rule 027.); 025 – Leasehold Value Determination (Rule 027, which required a sharing of the premium rental based on a percentage of leasehold value, expired on December 31, 1992 (per Rule 027) and therefore the leasehold value determination in Rule 025 is not needed.); 027 – Equity Sharing Premium Rental (Rule 027 expired on December 31, 1992.); 030 – Subleasing (Subleasing is an administrative process that is covered by Department administrative procedures and does not require Rule 030. The Department's procedures for cottage site subleases are available on the public website at [www.idl.idaho.gov/cottage-sites/leases](http://www.idl.idaho.gov/cottage-sites/leases).)

Kristin Ford, Manager  
Research & Legislation

Paul Headlee, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

- **20.03.14**, Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases – All rules except the following Sections/Subsections: 051 – Lease Reinstatement (If an endowment lease is cancelled or otherwise terminates, it cannot be reinstated as allowed by Rule 051 and is subject to a conflict auction/application process. See *Wasden v. State Bd. of Land Comm’rs.*, 153 Idaho 190, 280 P.3d 693 (2012). (A Notice of Default is sent to the lessee with a 30-day period to cure prior to lease termination as outlined in Rule 050, Department Policy #9, and in the lease template language for all lease types.)); 060.07 – Fees, Lease Reinstatement (If an endowment lease is cancelled or otherwise terminates, it cannot be reinstated as allowed by Rule 051 and is subject to a conflict auction/application process. See *Wasden v. State Bd. of Land Comm’rs.*, 153 Idaho 190, 280 P.3d 693 (2012). The fee for a Lease Reinstatement as required in Rule 060.07 is therefore unnecessary. (A Notice of Default is sent to the lessee with a 30-day period to cure prior to lease termination as outlined in Rule 050, Department Policy #9, and in the lease template language for all lease types.)); 105.02 – Conflict Auctions, Applicant Notification (Duplicative of statute: Idaho Code § 58-310(2)).

- **20.03.15**, Rules Governing Geothermal Leasing on Idaho State Lands – All rules except the following Sections/ Subsections: 031 – Lease Expiration (If an endowment lease ends or is terminated, it cannot simply be renewed, and is subject to a conflict application/auction process. See *Wasden v. State Bd. of Land Comm’rs.*, 153 Idaho 190, 280 P.3d 693 (2012). Rule 031 allows a preferential right for a new lease for the existing lessee without a conflict auction/application process, which is contrary to the Idaho Supreme Court’s decision and the Idaho Constitution.); 090 – Preferential Rights Upon Discovery of Unleased Minerals, Oil, Gas and Other Hydrocarbons (In *Wasden v. State Bd. of Land Comm’rs.*, 153 Idaho 190, 280 P.3d 693 (2012), the Idaho Supreme Court held that leases of state endowment trust lands require a conflict auction/application process. Rule 090 allows a preferential right for a new minerals or oil and gas lease to an existing geothermal lessee upon discovery of unleased minerals, oil, or gas without a conflict auction/application process, which is contrary to the Idaho Supreme Court’s decision and the Idaho Constitution. Idaho Code § 47-801 still allows a lease to be extended due to production or good faith drilling operations.); 095.01.d (Rule 095.01.d includes requirements of the record title holder that are no longer needed. This requirement is unique to geothermal leasing, has never been enforced, and is not required by statute. This specific requirement also is not found in any of the other chapters of IDAPA 20 related to leasing.)

- **20.03.16**, Rules Governing Oil and Gas Leasing on Idaho State Lands – All rules except the following Sections/Subsections: 022.02.a. – Lease Acquisition Process, Lease Provisions, Term (Superseded by statute: Idaho Code § 47-801); 071.02 – Termination - Cancellation of Lease, Failure to Pay Rental (To be consistent with other state endowment trust land leasing programs, the Department desires to eliminate the requirement of Rule 031 to terminate leases immediately upon late payment without notice or opportunity to cure, in order to allow a Notice of Default be sent to the lessee with a 30-day period to cure. Reliance on this 30-day default process, which is outlined in Department Policy #9 and in the lease template language for all lease types, is consistent with Idaho Code § 47-809, which allows 90-day periods to cure for non-financial defaults of oil and gas leases.); 104 – Outstanding Leases -- Grandfather Rights (Rule 104 allows grandfather rights for oil and gas leasing following passage of Idaho Code § 47-701, which reserves from sale mineral deposits in lands belonging to the state. All leases that Rule 104 applied to have expired and the rule is no longer needed.)

- **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
- **20.07.02**, Rules Governing Conservation of Oil and Natural Gas in the State of Idaho – All rules except the following Sections/Subsections: 010.10, .16, .20, .32, .34, .35, .36, .39, .42, .56, .57 – Definitions; 110 – Surface Owner Protections; 120 – Well Spacing; 130 – Integration; 131 – Integration Orders; 140 – Unit Operation Agreements; 400.02 – Production Reports, Frequency; 402.01 – Measurement of Gas, Gas Metering; 410.02

– Meters, Meter Calibration; 420.01 – Tank Batteries, Location; 430.01 – Gas Processing Facilities, Location; 430.06 – Gas Processing Facilities, Reports (Superseded by various sections of Chapter 3, Title 47, Idaho Code.)

The basis for omissions of certain subsections, as provided by the department, are noted in parenthetical.

These rules were previously analyzed and reviewed by the Legislative Services Office upon their initial promulgation. It appears that in addition to the omitted material noted above, only minor, nonsubstantive changes in the nature of cleanup were made. No other changes from the existing rules have been noted.

This is a fee rule. According to the department, this rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules.

The rulemaking appears to be authorized pursuant to Sections 38-132, 38-402, and 38-1208, Idaho Code; Title 47, Chapters 3, 7, 8, 15, 16 and 18, including Sections 47-314, 47-315, 47-328, 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; and Article IX, Sections 7 and 8 of the Idaho Constitution.

cc: Idaho Department of Lands  
Dustin Miller

**\*\*\* PLEASE NOTE \*\*\***

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.