

Negotiated Rulemaking Summary

IDAPA 20.03.14, Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leasing

Docket No. 20-0314-2401

Following Executive Order 2020-01: Zero-Based Regulation, this rule chapter is scheduled for review during the 2025 legislative session.

IDAPA 20.03.14 provides guidance for grazing, farming, conservation, noncommercial recreation, and communication site leasing on state lands. The rules include guidance regarding administrative appeals, the application process, valuation of improvements, and conflict auctions. Of particular importance are the rules regarding conflict auctions, which are typically not outlined in a lease. These rules ensure a smooth and transparent auction process and eliminate time consuming improvement valuation disputes and ensure committed parties participate at auction. Many of these rules were developed in close conjunction with, and at the request of the livestock industry.

Negotiated rulemaking for these rules was approved by the Land Board on January 16, 2024 (Attachment 1). The Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking was published in the Idaho Administrative Bulletin on March 6, 2024.

Stakeholder Outreach

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

- Published the Notice of Negotiated Rulemaking in the Idaho Administrative Bulletin
- Created a rulemaking webpage to post documents, scheduling information, and comments (<https://www.idl.idaho.gov/rulemaking/docket-20-0314-2401/>)
- Posted rulemaking notices to Townhall Idaho
- Mailed postcards to 904 customers

Negotiated Rulemaking Public Meetings

Negotiated rulemaking meetings were held on March 27 and April 4, 2024. A total of 9 non-Department affiliated people attended these meetings.

Some discussion occurred regarding amending section 030, Change in Land Use in both meetings. Discussion revolved around extending the change in land use until the expiration of the current lease. This was proposed and supported by Idaho Cattle Association (ICA), Idaho Wool Growers Association (IWGA), and Idaho Farm Bureau (IFB). After internal consideration of the comments, IDL leadership had concerns about the proposed change and declined to update this section.

Written Comments

Four written comments were received during the open comment period. ICA, IFB and IWGA submitted similar comments requesting: "If the endowment lands are to be leased for any other use as designated by the Board or the department and the new use is incompatible with the existing lease, a change in land use can be executed at the conclusion of the existing lease term." And "If the endowment lands are to be leased for any other use as designated by the Board or the Department and the new use is

incompatible with the existing lease, then the new use may not begin until the expiration of the existing lease. No lease may be cancelled in whole or in part prior to the expiration of the existing lease.”

Western Watersheds Project (WWP) submitted written comments requesting definitions for grazing, farming, and conservation. Additionally, the written comments opposed the comments made by ICA in the March 27th meeting, regarding the change in use.

These comments will be posted for public review.

Concluding Negotiated Rulemaking

IDL concluded the negotiated rulemaking process and submitted the rule changes for publication as a proposed rule in the July 3, 2024, edition of the Idaho Administrative Bulletin. Key documents from the rulemaking record are available at <https://www.idl.idaho.gov/rulemaking/docket-20-0314-2401/>, including research materials, and the proposed rule text in legislative format to allow the reader to easily identify changes.

Response to Comments on Negotiated Rule

IDAPA 20.03.03, Rules Governing Administration of the Reclamation Fund

| Comment | Rule Section | Response |
|---|--------------|---|
| If the endowment lands are to be leased for any other use as designated by the Board or the department and the new use is incompatible with the existing lease, a change in land use can be executed at the conclusion of the existing lease term. | 050.02 | Upon consideration of this comment, Idaho Department of Lands (IDL) will not make the recommended change to the rule. It is IDL's position that significant delays in the Board's ability to allow for a change in use may be in opposition to the constitutional obligation of the Board to secure the maximum long-term financial return for the endowment beneficiaries. |
| If the endowment lands are to be leased for any other use as designated by the Board or the department and the new use is incompatible with the existing lease, then the new use may not begin until the expiration of the existing lease. No lease may be cancelled in whole or in part prior to the expiration of the existing lease. | 050.02 | Upon consideration of this comment, Idaho Department of Lands (IDL) will not make the recommended change to the rule. It is IDL's position that significant delays in the Board's ability to allow for a change in use may be in opposition to the constitutional obligation of the Board to secure the maximum long-term financial return for the endowment beneficiaries. |
| ...IDL should supplement the rule with definitions of the activities that it governs, specifically grazing, farming, and conservation. The contours of these terms are not set out in the rule, and each can mean different things to different people... | 010 | We have also considered the request for the addition of definitions, however IDL will not be including definitions for grazing, farming, or conservation in IDAPA 20.03.14. These leasing programs operate well under the broad understanding of the various uses under the grazing, farming, and conservation programs and that practice has not been a limiting factor in IDL's ability to issue leases to interested parties or administer these programs. |