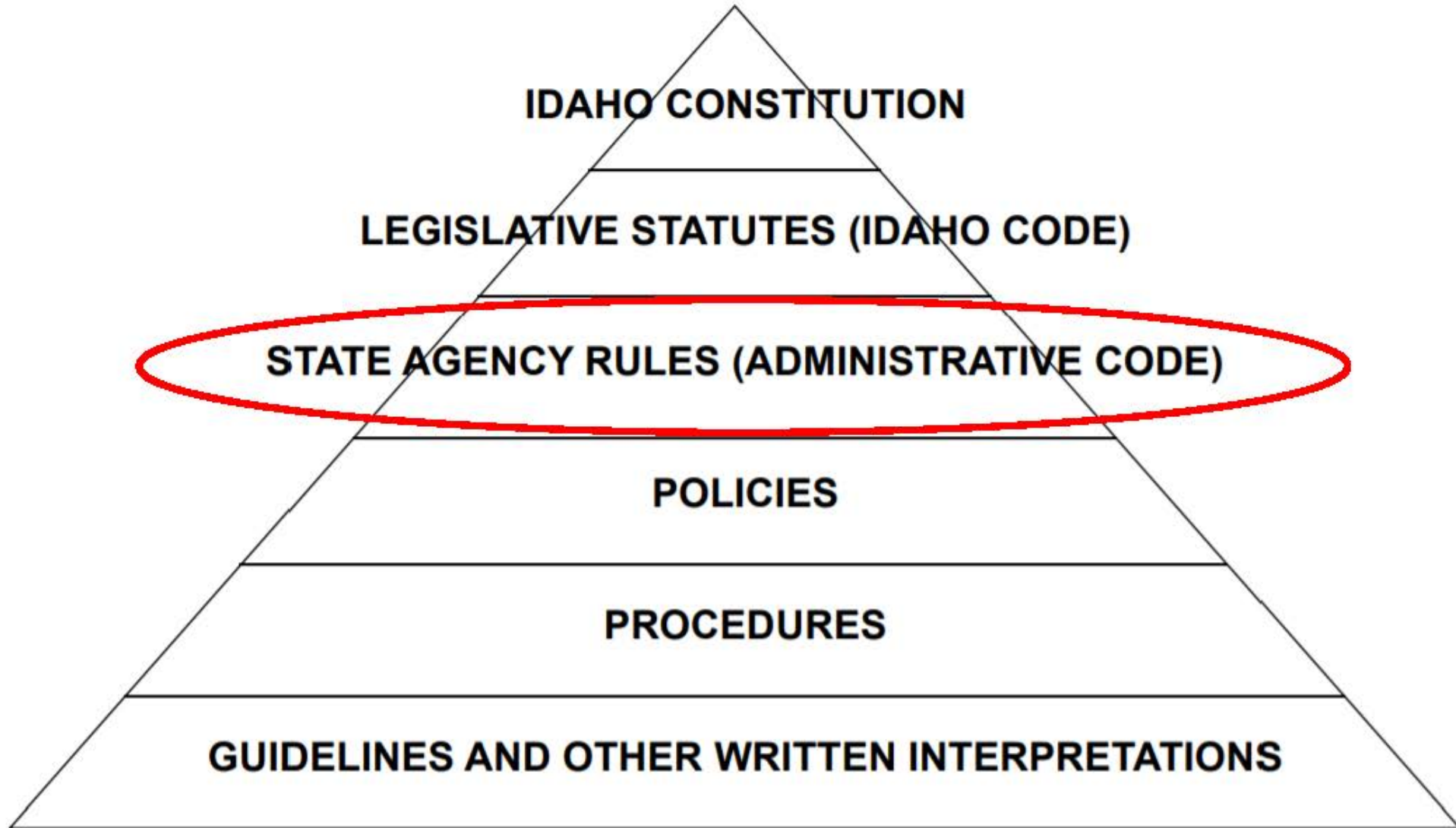




IDAHO Department of
Water Resources

IDAPA 37.03.04 – DRILLING FOR GEOTHERMAL RESOURCES
Negotiated Rulemaking Meeting – April 5, 2022

HIERARCHY OF STATE DOCUMENTS



Geothermal Resource Regulations

- Title 42, Chapter 40 Geothermal Resources Act:
<https://legislature.idaho.gov/statutesrules/idstat/Title42/T42CH40/>
- IDAPA 37.03.04 – Drilling for Geothermal Resources Rules:
<https://adminrules.idaho.gov/rules/current/37/370304.pdf>
- IDAPA 37.03.04 is under the authority of the Idaho Water Resource Board



Executive Order 2020-01 Zero-Base Regulation

- Signed by Governor in January 2020

<https://gov.idaho.gov/wp-content/uploads/sites/74/2020/01/eo-2020-01.pdf>

- Requires all agencies to undertake “**zero-base regulation**” review of all their respective rules over a five-year period.
- **“2021 marked the first year of the five-year review schedule.**
- “...each agency must publish a notice of proposed rulemaking...to repeal the existing rule chapter.”



Executive Order 2020-01 Zero-Base Regulation

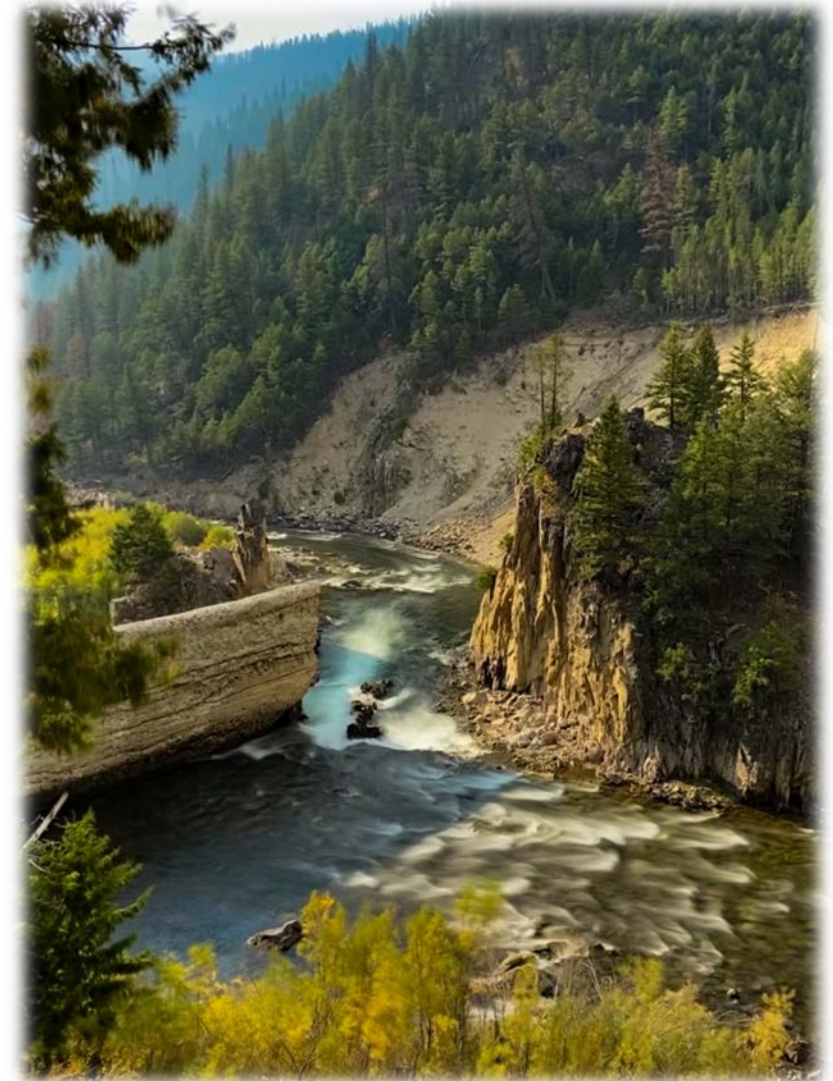
- “An agency wishing to renew a rule chapter...must promulgate a new rule...”
 - “The agency must perform a retrospective analysis of the rule chapter to determine whether the benefits the rule intended to achieve are being realized.”
 - “...whether [the benefits of the rule] justify the costs of the rule,”
 - “...whether there are less restrictive alternatives to accomplish [the rule’s] benefits.

Review Negotiated Rulemaking

- I.C. § 67-5220 – Notice of Intent to Promulgate Rules – Negotiated Rulemaking
- (2) The notice of intent to promulgate a rule is intended to facilitate negotiated rulemaking, a process in which all interested persons and the agency seek consensus on the content of a rule. Agencies shall proceed through such informal rulemaking whenever it is feasible to do so in order to improve the substance of proposed rules by drawing upon shared information, knowledge, expertise and technical abilities possessed by interested persons and to expedite formal rulemaking.
- (3) To facilitate the achievement of the purposes of this section, agencies shall, at a minimum:
 - a. Provide a reasonable period of time for interested persons to respond...;
 - b. Provide notice of meetings to interested person who responded...;
 - c. Upon request, make available to persons attending the meetings all information that is considered by the agency in connection with the formulation of the proposed rule...;
 - d. Consider the recommendations of interested persons concerning the subject of the proposed rule;
 - e. Establish, maintain and timely update the negotiated rulemaking schedule and a list of written comments and other documents and information pertinent to the proposed rules and make that information available to persons attending the negotiated rulemaking meetings;
 - f. Prepare a written summary of unresolved issues, key information considered, and conclusion reached during and as a result of the negotiated rulemaking...

Review Negotiated Rulemaking

- Rule Writer's Manual:
https://adminrules.idaho.gov/rulemaking_templates/RuleWriterManual.pdf
- Negotiated Rulemaking, when determined by the agency to be feasible, “must be conducted by the agency with interested parties.”
- Negotiated Rulemaking is “intended to improve the substance of the rule through a consensus building process.”
- Negotiated Rulemaking “provides an opportunity for all interested and affected persons and the agency to discuss possible changes to the rule and attempt to reach a consensus on the proposed amendments...”
- Negotiated Rulemaking is an informal part of the rulemaking process that precedes all formal rulemaking proceedings.”
- Negotiated Rulemaking is a negotiation with “stakeholders [about] the very provisions of the rule that they (stakeholders) will be subject to and regulated by.”
- Negotiated Rulemaking is an opportunity for stakeholders to “provide input and ideas on the changes the agency is considering.”



Sunbeam Dam, Salmon River. Fall 2020.

ZBR Rulemaking Approved Five-Year Rulemaking Schedule

Year 1

Rule No.	Title	Date	Page Count	Word Count	
37.01.01	Rules of Procedure of the IDWR	2000	35	6,440	
37.03.06	Safety of Dams Rules	1993	17	7,708	
37.02.01	Comprehensive State Water Plan Rules	1993	8	3,123	
37.03.07	Stream Channel Alteration Rules 61.01, 61.03	1993	1	83	
Total			61	17,354	17%

Year 2

Rule No.	Title	Date	Page Count	Word Count	
37.02.03	Water Supply Bank Rules	1997	9	3,450	
37.03.10	Well Driller Licensing Rules	2000	15	6,416	
37.03.04	Drilling for Geothermal Resources Rules	1993	13	6,197	
37.03.05	Mine Tailings Impoundment Structures Rules	1993	12	4,850	
Total			49	20,913	20%

Year 3

Rule No.	Title	Date	Page Count	Word Count	
37.03.08	Water Appropriation Rules	1993	24	10,718	
37.03.03	Rules and Minimum Standards for the Construction and Use of Injection Wells	2013	26	10,488	
Total			50	21,206	21%

ZBR Rulemaking Approved Five-Year Rulemaking Schedule

Year 4

Rule No.	Title	Date	Page Count	Word Count	
37.03.01	Adjudication Rules	2009	11	4,968	
37.03.02	Beneficial Use Examination Rules	2012	13	5,107	
37.03.09	Well Construction Standards and Rules	2009	40	13,225	
Total			64	23,300	23%

Year 5

Rule No.	Title	Date	Page Count	Word Count	
37.03.11	Conjunctive Management Rules	1994	13	6,405	
37.03.12	IDWR Water Distribution Rules - Water District 34	1994	9	3,692	
37.03.07	Stream Channel Alteration Rules, entire chapter	1993	27	7,681	
37.02.04	Shoshone Bannock Tribal Water Supply Bank Rules	1994	7	1,772	
Total			56	19,550	19%

Grand Total: 280 102,323 100%

ZBR Rulemaking Timeline





Legal Actions

Archived Legal Matters

Orders ▾

Settlements ▾

Curtailment Notices and Orders ▾

Guidance Documents

Statutes, Rules, and Hearing Procedures ▾

Rulemaking

2022/2023

2021/2022

2020/2021

2019/2020

Hearing Procedures

Administrative Actions

Delivery Call Actions

District Court Actions

Mitigation Plan Actions

Statutes, Rules, and Hearing Procedures

IDWR Rulemaking

The Idaho Administrative Procedure Act ("APA") (Title 67, Chapter 52, Idaho Code), which governs rulemaking in Idaho, defines rulemaking as the process for the formulation, adoption, amendment, or repeal of a rule. This process can be driven by a number of different events but two of the most common are the enactment of a new or amended statute by our state Legislature or the enactment of a new law or regulation by the federal government. However, a citizen's petition to amend or adopt a new rule, a change in an agency's process or procedure requirements, a court order, or the need to simply update the rule can cause an agency to initiate rulemaking and set the process in motion.

In Idaho, rules are typically proposed by state agencies, opened for public comment, and in many instances, reviewed by a board of citizens appointed by the governor. If approved by the board, the rules are then sent to the Legislature for review. If the Legislature does not act on the rules, they automatically take effect at the end of the legislative session. However, legislative action affirmatively approving a rule is required when a rule implements a new fee or revises an existing fee. Rules are compiled in administrative codes and people who do not adhere to the rules may be subject to enforcement actions. Rules specifically governing the actions of the Idaho Water Resource Board (IWRB) and the Idaho Department of Water Resources (IDWR) are contained in Chapter 37 of the Idaho Administrative Code.

When feasible, negotiated rulemaking is conducted with interested parties, in order to improve the final rule and expedite the

Terminology

+ [Curtailment](#)

+ [Delivery Call](#)

+ [Mitigation Plan](#)

Statutes & Rules

Listed below are legal considerations regarding water rights, irrigation, and floodplain management in Idaho.

Idaho Constitution

- [Article XV: Water Rights](#)

Idaho Statute

- [Title 42: Irrigation and Drainage — Water Rights and Reclamation](#)
- [Title 43: Irrigation Districts](#)
- [Title 46, Chapter 10: State Disaster Preparedness Act](#)

Idaho Administrative Code

- [Rule 37: Department of Water Resources](#)



Legal Actions

Archived Legal Matters

Orders ▾

Settlements ▾

Curtailment Notices and Orders ▾

Guidance Documents

Statutes, Rules, and Hearing Procedures ▾

Administrative Actions

Delivery Call Actions

District Court Actions

Mitigation Plan Actions

IDWR Rulemaking 2022/2023

The following table summarizes the IWRB's and IDWR's rulemaking activities for the 2022/2023 rulemaking period.

Show entries

Search:

Authorizing Authority	Section	Docket Description	Status
IWRB/IDWR	All	Omnibus Temporary Fee Rulemaking	Pending Initiation
IWRB	Planning and Projects	ZBR* Rulemaking – IDAPA 37.02.03 Water Supply Bank	Pending Initiation
IWRB	Ground Water Compliance	ZBR* Rulemaking – IDAPA 37.03.04 Drilling for Geothermal Resources Rules	Pending Initiation
IWRB	Ground Water Compliance	ZBR* Rulemaking – IDAPA 37.03.10 Well Driller Licensing Rules	Pending Initiation
IWRB	Safety of Dams	ZBR* Rulemaking – IDAPA 37.03.05 Mine Tailings	Pending

Legal Actions

Archived Legal Matters

Orders ▾

Settlements ▾

Curtailment Notices and Orders ▾

Guidance Documents

Statutes, Rules, and Hearing Procedures ▾

Administrative Actions

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Drilling for Geothermal Resources Rules

IDAPA 37.03.04

The IWRB is negotiating these rules as part of its requirement to review each rule every 5 years consistent with the Governor's Zero-Based Regulation [Executive Order 2020-01](#).

Scheduled Meetings and Deadlines

- [Public Meeting: Tuesday, April 5, 2022](#)
- [Agenda – April 5, 2022](#)

Documents

- [37.03.04 Strawman Drilling for Geothermal Resources Rules \(DRAFT\) – March 21, 2022](#)
- [37.03.04 Prospective Analysis Document – February 1, 2022](#)
- [37.03.04 Rulemaking Recommendation Memo – January 18, 2022](#)

Comments

Comments may be sent by email or mail to rulesinfo@idwr.idaho.gov or

IDWR Rules Review Officer
PO Box 83720
Boise, ID 83720

Terminology

[+ Curtailment](#)

[+ Delivery Call](#)

[+ Mitigation Plan](#)

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Idaho Administrative Code

- [Rule 37: Department of Water Resources](#)

Hearing Procedures

Geothermal Resource Drilling Activity

- Approximately 4 to 5 wells drilled over past 10 to 12 years
 - Estimated cost over \$4 million per/well



Today's Meeting Process

1. Requires polite and respectful engagement.
2. We are recording today's proceedings and the recordings will be posted to IDWR's website.
3. IDWR has prepared a Preliminary Draft Rule or "strawman," which it will present.
4. After presentation of the strawman, stakeholders will have an opportunity to comment regarding the strawman.
5. IDWR and IOEMR representatives are participating to answer related questions.
6. At the end of the meeting, we will need to determine whether additional meetings are needed.





Negotiated Rulemaking Next Steps

**Submit written comments by April 29, 2022
through rulesinfo@idwr.idaho.gov**

**Reference the rule chapter: IDAPA 37.03.04
Or docket number: 37-0304-2201**

**If necessary, revise Strawman Rules based on comments
and hold second public meeting**



Questions & Discussion.

