

# Summary of Negotiated Rulemaking

IDAPA 20.03.03

Rules Governing Administration of the Reclamation Fund

**Docket No. 20-0303-1901**

## Reason for Rulemaking

This rulemaking was initiated for the following reasons:

- To update definitions and terminology to align with 2019 statute changes
- To consider removing the mandatory participation requirement for operators with a single mining operation with less than 40 acres of disturbance
- To consider potential expansion of the Reclamation Fund's acreage limit to allow more participation

## Notice of Intent to Promulgate Rules and Stakeholder Outreach

Notice of Negotiated Rulemaking was published in the June 5, 2019 issue of the Idaho Administrative Bulletin. The Idaho Department of Lands (IDL) issued a press release and mailed postcards to a list of 700 potentially interested parties to invite their participation in the negotiated rulemaking process.

## Negotiated Rulemaking Meetings

IDL held five meetings across the state in June 2019 to seek public comments on the draft changes to IDAPA 20.03.03, *Rules Governing Administration of the Reclamation Fund*. The table below is a summary of the meeting locations and public participation:

Date	Location	No. of public participants
June 12, 2019	Pocatello	0
June 13, 2019	Challis	0
June 18, 2019	Coeur d'Alene	2
June 19, 2019	McCall	2
June 20, 2019	Boise	1

## Summary of Meeting Discussions

The negotiated rulemaking meetings opened with a short presentation on the negotiated rulemaking process and an overview of Idaho's Reclamation Fund. The recommended changes to the current rule were then discussed. In general, the discussion at each of the meetings involved questions about participating in and the operation of the Reclamation Fund. IDL did not receive any comments specifically about the language changes or suggestions for additional changes or revisions.

## Written Comment

IDL received one written comment. The Bureau of Land Management (BLM) Idaho office submitted a comment that discussed another rulemaking currently being carried out by IDL (IDAPA 20.03.02) and referenced the Reclamation Fund rules (20.03.03) in this comment. The BLM comment cited language in 20.03.03 as an example of language that they would like to see added in IDAPA 20.03.02.

**Comment:** "BLM feels our largest point of cooperation is ensuring adequate bonding and reclamation cost estimates. Attached are several documents that outline current bond estimating guidelines used by the BLM as well as several other references that discuss the complex issues of bonding for mineral development. The BLM would hope to see that through the rulemaking process and any subsequent policy implementation that any changes be congruent to what we are allowed for both reclamation cost estimations and financial guarantee requirements on Public Lands. The current draft rules include two bonding methods that are not allowed by the BLM, those being the use of corporate guarantees and real property. Those financial assurance methods were specifically removed from bonding forms allowed by the BLM in 2000. Currently the BLM is allowed to use surety bonds, cash, CDs, trusts, and insurance (43 CFR 3809.555). The BLM may participate with Idaho's bond pool, under specific guidelines (43 CFR 3809.571) The solution we propose is adopting opt-out language similar to that currently found in Rules Governing Administration of the Reclamation Fund, IDAPA 20.03.03.020. We feel by adding a clause requiring an operator to provide financial assurance in a form acceptable to the Federal Government when on Public Lands would alleviate confusion and the risk of duplicating bonding efforts of various regulatory agencies."

**Response:** This comment was submitted for two of IDL's current rulemakings, IDAPA 20.03.02 and IDAPA 20.03.03. The comment references and supports language in IDAPA 20.03.03 and requests that it be added to 20.03.02. As IDL is not proposing any changes to the referenced language, it appears no action is necessary for IDAPA 20.03.03 to address this comment.

### **Concluding Negotiated Rulemaking**

With no issues left unresolved, IDL concluded the negotiated rulemaking process and submitted the negotiated rule changes for publication as a proposed rule in the September 2019 edition of the Idaho Administrative Bulletin.

The rulemaking record is available for review upon request, and key documents are available at [www.idl.idaho.gov/rulemaking/20.03.03-2019](http://www.idl.idaho.gov/rulemaking/20.03.03-2019).