



Negotiated Rulemaking Summary

IDAPA 20.03.02 — Rules Governing Mined Land Reclamation

Docket No. 20-0302-2001

Members of the public participated in the Department’s negotiated rulemaking process by attending the meetings and submitting written comments. Key information considered by the Department included applicable statute and information provided by the public and the Department’s legal counsel during the negotiation process. In addition, the Department solicited information from the Idaho Mining Association, Idaho Department of Environmental Quality, Idaho Associated General Contractors, United States Forest Service, Bureau of Land Management, J.R. Simplot Company, United States Environmental Protection Agency, Thompson Creek Mining Company, Idaho Conservation League, Keceph Mountain LLC, Earthworks, Nez Perce Tribe, and interested members of the public.

Key documents from the rulemaking record, which includes rule drafts, written public comments and documents distributed during the negotiated rulemaking process, are available at <https://www.idl.idaho.gov/news/rulemaking/minerals-rulemaking-for-idapa-20-03-02/>. The entire rulemaking record is available for review upon request to the Department. At the conclusion of the negotiated rulemaking process, the Department formatted the final rule draft for publication as a proposed rule in the Idaho Administrative Bulletin.

In developing the draft rule, the Department considered all comments received during the negotiated rulemaking process. Following are comments that were not incorporated into the draft rule and the Department’s response to those comments:

Commenter	Comment	Response
Alan Gilda	001.05.b should be modified to exempt an individual and small operator that operates in compliance with 060.03-08.	No statutory authority exists for this exemption. While IDL understands the concerns stated, IDL has not required a reclamation plan for operations as described in the comment. No definition is proposed for "individual and small operator", and several permitted operators may claim the same status.
Grant Brackebusch	Land application in 010.08 should also be available for mine dewatering, and not just water potentially containing cyanide. DEQ regulations allow land application for mining through an exemption.	This definition was first put into the rule for the cyanidation closure plans. While land application does have a broader use in the mining industry, for the purposes of this rule it only includes water that potentially contains cyanide. This does not change the broader definition used by DEQ in their regulations. It does match the definition in DEQ's negotiated rule for IDAPA 58.01.13.007.10.
EPA	Definition of Material Change in 010.09.b should refer to waters of the state instead of just surface waters.	Potential ground water quality issues that occur during the mining process will first be addressed by DEQ. Any plan changes needed to



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		address a potential ground water quality issue will likely increase costs by 15% or more, which would make it a material change.
Simplot	The definition of neutralization in 010.13 should be changed to "Removal of excess acidity or alkalinity by chemical treatment to provide a final pH approximately equal to 7.0"	This is a more technically correct definition of neutralization from a chemistry perspective, but in the context of this rule neutralization is only used for cyanidation facilities. In that context, it is referring to the neutralization of cyanide. This definition is the same one used in IDAPA 58.01.13, Rules for Ore Processing by Cyanidation.
Alan Gilda	Title 47-1506.3(g) says the board "may" require a reasonable fee, it does not require it. The \$1,000 application fee in 068.01 is not a reasonable fee for a hobby miner or small operator who only disturbs a few hundred square-feet or a few acres.	Application fees are integral to the success of this program. The fiscal statement in HB141 stated "With the inclusion of fee language, the proposed amendments will have no impact to the state General Fund." It is unclear what fee would be charged for the types of operations described in the comment because it is not known if they would be processed under Section 069 or 070. At the current time no fee is charged because the described activity appears to be more properly classified as exploration.
Keceph Mountain LLC	Permitted Area in 068.01 is not defined and can be different than the disturbed area. Last sentence should be edited as follows: The applicable acreage is based on the permitted disturbed area identified in the application, which is measured by the land actually being disturbed rather than the entire parcel.	Paragraph 069.04.c requires an operator to include the approximate boundaries of the lands to be utilized in the mining operations. It is not asking for the boundaries of all lands under claim or lease.
Keceph Mountain LLC	Duplicative permitting requirement, such as those with IDL and DEQ, reduce royalties paid to the state.	There are no duplicative permitting requirements. The regulatory authority of the IDL with respect to permanent closure plans was not increased through this rulemaking. The current permitting structure for ore processing by cyanidation was created in 2005 through legislation proposed by the mining industry. A joint rulemaking with IDL and DEQ occurred in 2005, with both sets of rules approved by the legislature in 2006. Changes to this permitting structure would have to first come through legislation to change Idaho Code § 47-15 and Idaho Code § 39-118A.



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Keceph Mountain LLC	The terminology differences between federal and state reclamation plans and operating plans is set up to increase duplication and cause confusion.	There is no duplicated authority between the federal and state reclamation language. Changes to the reclamation plan and operating plan terminology would have to first come through legislation to change Idaho Code § 47-15.
Keceph Mountain LLC	IDL has to do little work for the very large amount of money IDL receives from mining royalties.	The Idaho Constitution requires clear separation between the regulatory and leasing programs. 20.03.02 has no relation to state mineral leasing. IDL endowment beneficiaries receive rent and royalties from leases on state owned lands and mineral ownership. The RPA Bureau receives funding through the general fund and some dedicated funds. The new reclamation plan application fees that IDL is now collecting go into a dedicated fund that IDL can use to help administer this program. See the fiscal note for HB 141.
EPA	Water management plans should be required for all plans in 070.04.c.	This will effectively be achieved through the inclusion of the summary of requirements from the SWPPP, NPDES, ground water points of compliance, and other permits or approvals or BMPs in the reclamation plan as stated in 070.04.c. If conditions at closure are different than what is stated in a reclamation plan, then a plan amendment may be required.
EPA	Reference to BMPs should be included in 070.04.d.	BMPs are already required under 069.05.a, and 070.02.a requires all of the Section 069 information to be included.
EPA	Geotechnical analysis for subsidence due to underground mining should be added in 070.04.f or in 070.04.g.	IDL is not aware of subsidence related issues in Idaho. With no coal mining in Idaho, IDL is not certain that subsidence will occur at future underground mines. Modern hard rock mines have extensive reinforcement for worker safety and use waste rock or tailings for backfill which greatly reduces the underground void space.
EPA	070.04.h should be clearer about monitoring requirements for all water management activities.	An IPDES permit will have a monitoring component, and SWPPP may as well. 070.06 allows the collection of monitoring data.
DEQ	A reference to applicable surface and ground water quality standards is needed in 070.04.h.	This does not appear necessary as the IPDES, SWPPP, and ground water point of compliance should address the need to meet water quality standards.



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Simplot	The requirement to provide additional monitoring data is not needed, as it is unclear what purpose this information would serve. It is also unclear what the regulatory authority is for IDL to require this data.	No additional data will be required Idaho Code § 47-1506(h) requires IDL to coordinate with DEQ. Subsection 070.06 is part of that coordination. It was pulled up from subsection 080.05 so it could be part of the application. This gives operators advance notice that they may want to discuss potential monitoring needs with both agencies before submitting a plan. Rule text was modified to clarify that this is only done as needed and will not duplicate other monitoring efforts required by other state and federal permits.
EPA	Soil monitoring should also be required in 070.06, especially in areas impacted by historic mining activities.	Vegetative success is described in 140.12, and the operator may need to add soil amendments in order to achieve the standard. If soils impacted by historic mining activity affect water quality, then an operator may need to address that issue in order to meet water quality standards at a mine site.
EPA	Clarification needed in 120.01 that reclamation plan and financial assurance must be approved before mining begins.	069.01 and 070.01 both clearly require that a reclamation plan be approved prior to mining. 120.01 clearly states that financial assurance is required prior to mining.
Thompson Creek Mining	From the state's perspective, there is no reason for financial assurance to be in place 18 to 24 months prior to the commencement of mining.	Most states require financial assurance to be in place prior to plan approvals. In Idaho, financial assurance must be in place before mining commences as required by Idaho Code § 47-1512(a)(1) and 1512(b).
Thompson Creek Mining	Instead of requiring financial assurance to be in place within 24 months of reclamation plan approval, the rules should require a operator to prepare and submit a reevaluation of all reclamation costs within 24 months following the commencement of operations.	For some operators, a reevaluation of all reclamation costs without a material change would be unnecessary and burdensome. For other operators, this change suggest that they could mine for 24 months without financial assurance in place. The rule as written allows an operator to extend the 24-month deadline. This provides operators the flexibility they need to provide the financial assurance after 24 months as needed but before operations begin as required by Idaho Code § 47-1512(a)(1) and 1512(b).
Thompson Creek Mining	Financial assurance provided by the operator at the commencement of operations is for the entire life-of-mine surface disturbance.	Idaho Code § 47-1512(a)(1) and 1512(b) require financial assurance to cover the disturbance that is expected over the following year. If operations will exceed the amount of the existing bond, then a bond increase is required prior to that exceedance. Subsection 120.03 of



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		the rule also provides for phased bonding and does not require bonding of the entire site at start of operations.
DEQ	Subsection 120.20 appears to be redundant with 160.02.	Most of this Subsection is redundant, but one type of violation is not and will be retained.
Simplot	Well diversified is not defined in 122.05. Language from HB 141 should be used instead.	This language was provided by staff of the Endowment Fund Investment Board. Idaho Code § 47-15012(l)(4) states "The trustee shall invest the principal and income of the fund in accordance with general investment practices. Investments can include equities, bonds, and government securities." The term "general investment practices" is not defined. Financial managers use and understand "well diversified". Rule text modified to include both terms.
Idaho Mining Association	RCRA regulations for payments into a trust fund should be used in 122.05.e.iii, or a trust fund used for post-closure financial assurance should only have to provide the amount needed for the first five years of post-closure at the time of closure, with annual payments thereafter as liability is added.	The stated purpose of HB141 was to more accurately reflect current industry and regulatory practices. RCRA covers hazardous waste and municipal waste disposal, which is a different industry than mining. Water treatment, if required, will likely last at least thirty years, if not longer. The proposed language only funds the first five years of post-closure. While a trust fund would have to be "trued up" annually, An operator that goes bankrupt before post closure or in that first five years may leave the taxpayers with at least 25 years of unfunded liability. Depending on the specifics of the ongoing operations and maintenance needs, and trust revenue, the trust income may be sufficient to keep pace with normal costs. The cost of periodic equipment replacement after the first five years, however, may be in excess of trust income and might not be captured under the proposed change.
Idaho Mining Association	Unclear what disbursements from the trust mean in 122.05.f.	Disbursements include payments to the trustee, or any other payment of funds not related to financial assurance release. Financial assurance release is handled as described in Section 120.
Idaho Mining Association	Language on Best Management Practices in Section 140 from the prior rule should be reinstated.	That language was not in compliance with current water quality standards in IDAPA 58.01.02.



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		IDAPA 58.01.02.350.03.f and g gives IDL the responsibility for non-point source BMPs at mines. The original wording could be interpreted to mean that nothing in this section needed to be followed. This is in contrast to how other nonpoint source rules implement minimum standards, such as IDAPA 37.03.07.055 for Stream Channel Alterations; IDAPA 20.02.01.040 for road construction done under Forest Practices; IDAPA 20.03.01.040 for Dredge/Placer Mining.
DEQ	A reference to applicable surface and ground water quality standards is needed in 140.09.	The language in 140.01 clearly states that all BMPs should meet water quality standards, and 140.09.c.iii requires detoxification necessary to achieve water quality standards in waters of the state which includes ground water in 010.28.
EPA	Inspections should be required at least once per year for all reclamation plans in 155.03, and not just cyanidation facilities.	Not all reclamation plans need to be inspected every year. Larger mines approved under Section 070 will likely be inspected at least yearly. Smaller sand and gravel sources with no discernable impact on surface or ground waters may only need to be inspected every five years. IDL is developing criteria to determine how often inspections should be conducted, and a schedule for inspections based on those criteria.
Idaho Conservation League	IDL needs to evaluate the applicability of these rules to underground operations that existed prior to July 1, 2019.	Idaho Code § 47-1503(18) defines a "significant change" for an underground mine to be an increase of fifty percent or more in the areal extent of the affected land. Idaho Code § 47-1518(c) states that the Act only applies to underground mines that have a significant change to their affected land after July 1, 2019.
Idaho Conservation League	IDL needs to further evaluate whether off-site processing facilities are subject to these rules.	Idaho Code § 47-1503(5) defines "affected land" as "the land area included in overburden disposal areas, mined areas, mineral stockpiles, roads, tailings ponds and other areas disturbed on the surface of mining operations." Idaho Code § 47-1503(7) defines "mining operations" as "the activities performed on the surface of a surface or underground mine in the extraction of minerals from the ground, including the excavating of pits, removal of minerals, disposal of overburden, and the construction of haulage roads, exclusive of exploration operations..." Processing plants that are



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		several miles removed from the "mining operations" are not included in the definition of "affected land".
Idaho Conservation League	IDL needs to identify regulatory gaps between these rules and those administered by IDEQ. The Attorney General's office could assist with a legal opinion.	Coordination between our agencies is ongoing. We are working on an MOU to ensure that roles and responsibilities are clear to both agencies. This process should also identify regulatory gaps.

The following conclusions were reached during and/or as a result of the negotiated rulemaking process:

Section Number	Proposed Rule Verbiage	Discussion and Key Information Considered
010.01	<u>Adit. A nearly horizontal passage from the surface into an underground mine.</u>	Definition was needed for context.
010.03	Best Management Practices (BMP). Practices, techniques or measures developed, or identified, by the designated agency as described in IDAPA 58.01.02, "Water Quality Standards," <u>and identified in the state water quality management plan</u> which are determined to be a cost-effective and practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals.	Definition did not match the one found in Idaho Code § 39-3602(3), so it was modified accordingly.
10.09	A change which <u>that</u> deviates from the approved reclamation plan or permanent closure plan and causes one (1) <u>or more</u> of the following to occur: <u>a.</u> Results in a substantial adverse effect to the geotechnical stability of overburden disposal areas, topsoil, stockpiles, roads, embankments, tailings facilities, cyanidation facilities or pit walls; <u>b.</u> Substantially modifies surface water management or a water management plan, not to include routine implementation and maintenance of	Comments received that a new underground opening should not automatically be a material change. IDL agrees, but if it increases reclamation costs by more than 15 percent or meets one of the other criteria in 10.09 a through d then it will be a material change.



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	<p>BMPs;</p> <p>iii.c. Exceeds the permitted acreage; or</p> <p>iv.d. Increases overall estimated reclamation costs by more than fifteen percent (15%).</p> <p>b. <u>For underground mines with an approved reclamation plan, a new opening to an underground mine is also a material change.</u></p>	
010.14	<p><u>Operating Plan. A plan that describes how a mining operation will be constructed and operated to avoid or minimize surface disturbance and potential impacts to waters of the state, and to prepare for final reclamation.</u></p>	<p>Definition was needed to distinguish it from the reclamation plan and to provide context for the operating plan contents. Plan requirements from Alaska, Arizona, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, Wyoming, BLM, and USFS were researched.</p>
010.21	<p><u>Reclamation Plan. A plan using a combination of maps, drawings, and descriptions that describes how a mine is constructed and how reclamation of a mine's affected land is accomplished.</u></p>	<p>Definition was needed to distinguish it from the operating plan and to provide context for the reclamation plan contents. Plan requirements from Alaska, Arizona, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, Wyoming, BLM, and USFS were researched.</p>
010.23	<p><u>Shaft. A vertical or inclined passage from the surface into an underground mine.</u></p>	<p>Definition was needed for context.</p>
060.03	<p>Notification. Any operator desiring to conduct exploration using motorized earth-moving equipment to locate minerals for immediate or ultimate sale shall notify the Department within seven (7) days after beginning exploration operations. <u>No application fee or financial assurance is required for exploration that is not a mining operation.</u></p>	<p>Concern was expressed that application fees could be charged for exploration projects, so this clarifying language was added. Definition of "mining operations" in Idaho Code § 47-1503(7) determines when exploration may become a mining operation.</p>
068	<p><u>01. Base Application Fees. The following base fee schedule will be used for all reclamation plan and cyanide permanent closure plans and amendments to those plans. For plans processed under Section 069 of these rules, this base fee covers up to twenty (20) hours of staff time for review and processing. For plans</u></p>	<p>Fee structure modified to reflect cost recovery. For plans processed under Section 069, full cost recovery will only occur if the plan is determined to be incomplete. This concept is borrowed from the Alaska mining regulations. Average length of plan reviews is from IDL Operations staff. Language for cost recovery in 068.03 is similar to that used by DEQ for ore processing by cyanidation permits.</p>



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processed under Section 070 of these rules, the applicant may instead enter an agreement with the Department as described in Subsection 068.03 of these rules. The applicable acreage is based on the permitted proposed reclamation plan area identified in the application: (Table omitted for space, unchanged from 2019 temporary rule)

02. Additional Fees for Applications Submitted Under Section 069. Plans processed under Section 069 of these rules that require more than twenty (20) hours of staff time due to an incomplete application will result in additional fees being charged. After a revised application has been received and determined to be complete with the exception of the fee, IDL will send an invoice to the operator at a rate of forty dollars per hour (\$40/hour) for the additional review time over the initial twenty (20) hours. If this additional fee is not paid prior to the sixty (60) day approval deadline, the application will be denied. If the additional fee is paid within 30 days of the denial, the application will be considered complete and the time requirements of Subsection 080.03 will apply.

03. Alternative Fee Agreement for Applications Submitted Under Section 070. In lieu of paying a fee at the time the application is submitted, an applicant under Section 070 of these rules may enter into an agreement with the Department for actual costs incurred to process an application, verify a reclamation cost estimate submitted under Idaho Code § 47-1512(c), and issue a final decision. The applicant shall not commence operations until the terms of the agreement have been met, including that the Department has been



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	<u>reimbursed for all actual costs incurred for the permitting process.</u>	
069.05.a	Where surface waters <u>of the state</u> are likely to be impacted and or when requested by the director, documents identifying and assessing foreseeable, site-specific nonpoint sources of water quality impacts upon adjacent surface waters and the BMPs the operator will use to control such impacts during surface mining and reclamation <u>from mining operations and proposed management activities, such as BMPs or other measures and practices, to comply with water quality requirements;</u>	Language modified to more closely match Idaho Code § 47-1506(a)(1)(vii), in response to several comments received, and to include potential impacts to waters of the state and not just surface waters to better implement Idaho Code § 47-1501.
069.05.i	<u>If construction, mining, or reclamation will be completed in phases, a description of the tasks to be completed in each phase, an estimated schedule, and proposed adjustments of financial assurance related to each phase.</u>	Addition made to address comments about needing a more explicit reference to reclamation plan phases.
070.04.c and d	<p>c. A description of foreseeable, site-specific impacts from acid rock drainage and the BMPs that will be used to mitigate any impacts from such acid rock drainage. <u>To assist in meeting the requirements of paragraph 069.05.a in these rules, a summary of requirements from a SWPPP, IPDES permit, ground water point of compliance, and other permits or approvals or BMPs related to foreseeable water quality impacts on the affected land.</u></p> <p>d. Structures that will be built to help implement a SWPPP, IPDES permit, Point of Compliance or other permits or approvals related to foreseeable water quality impacts on the affected land.</p>	Changes made after much discussion and comment. Idaho Code § 47-1506(a)(1)(vii) requires “A description of foreseeable water quality impacts from mining operations and proposed water management activities to comply with water quality requirements.” If this information is already contained in one of the other listed permits, then a summary is still needed in the reclamation plan so the information can be used for reclamation cost estimates and financial assurance. The intent is not to have duplicative permitting requirements, but IDL can only require financial assurance for activities described in the reclamation plan.



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070.04.h	<p>A description of post-closure activities- <u>that includes the proposed length of the post-closure period and the following:</u></p> <ul style="list-style-type: none"> <u>i. A summary of procedures and methods for water management including any likely IPDES permit, stormwater permit, and monitoring required for any ground water point of compliance, along with sufficient information to support a cost estimate for such water management activities.</u> <u>ii. Care and maintenance for facilities after mining has ceased.</u> 	<p>Changes made after much discussion and comment. Idaho Code § 47-1506(a)(1)(vii) requires “A description of foreseeable water quality impacts from mining operations and proposed water management activities to comply with water quality requirements.” If this information is already contained in one of the other listed permits, then a summary is still needed in the reclamation plan so the information can be used for reclamation cost estimates and financial assurance. The intent is not to have duplicative permitting requirements, but IDL can only require financial assurance for activities described in the reclamation plan. The anticipated length of the post-closure period is needed due to Idaho Code § 47-1503(30) and § 47-1506(a)(1)(viii). It also affects the calculation of post-closure costs.</p>
070.05	<ul style="list-style-type: none"> <u>a. Ore, tailings, and waste rock handling flow sheets and diagrams.</u> <u>b. Waste rock management plan.</u> <u>c. Water quality monitoring locations.</u> <u>d. Anticipated concurrent reclamation prior to the cessation of mining.</u> <u>e. Estimated throughput and timeline for mining.</u> <u>f. Types of ore processing and beneficiation.</u> <u>g. Process fluid pond volumes and anticipated contents, if applicable.</u> 	<p>Idaho Code § 47-1506(b)(2) allows the contents of a non-federal operating plan to be determined by rules. The prior operating plan requirements were largely repeated from Subsection 069.04. The operating plan will only be needed for mines on private or state land, as the BLM or USFS already require them and IDL reviews them with these other agencies as part of the reclamation plan. Rule 070.02.c references the above statute. This list of requirements was modified based on comments received. IDL looked at the requirements for mining plans in the mining regulations of Alaska, Arizona, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, Wyoming, BLM, and USFS. The information is needed to assist in reviewing the plans and reclamation cost estimates. It can also be used to help evaluate whether a material change occurs during the life of a mine.</p>
070.06	<p><u>Monitoring Data. The Department will, as needed and through consultation with DEQ, obtain the operator’s baseline data on ground water or surface water gathered during the planning and permitting process for the operation, and may require the operator to furnish additional monitoring data during the life of the project.</u></p>	<p>This subsection was previously in subsection 080.05. It was moved from the plan review to the plan application section in order to give operators more advance notice of potential monitoring needs. Language was substantially modified based on comments received. As with 070.04, this information can be satisfied if the listed permits are already capturing monitoring information. Idaho Code § 47-1506(h)</p>



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	<u>This will not require any additional monitoring data where such data is already provided under an IPDES permit, SWPPP, ground water point of compliance, or other federal or state requirements for collecting surface or ground water data.</u>	requires IDL to coordinate with DEQ, and this is an important part of that coordination.
071.01	Permanent Closure Plan Approval Required. No operator shall construct or operate a new cyanidation facility or materially modify or materially expand an existing cyanidation facility prior to obtaining a permit, approval from the director and before the operator has filed financial assurance, as required by these rules.	This change was made based on comments received, and more accurately reflects statutory language.
111.03	<u>Review of a Permanent Closure Report. The Department will immediately forward a copy of the permanent closure report to DEQ for their review and comment.</u>	Several comments were received about coordination with DEQ, due in part to recent statutory changes to fix potential coordination issues and the ongoing rule making for IDAPA 58.01.13. This clearly requires IDL to coordinate with DEQ in a timely fashion when a permanent closure report is submitted.
120.01 and 03	01. Submittal of Financial Assurance Before Mining. Prior to beginning any mining on a mine panel covered by a reclamation plan, an operator shall submit to the director, on a Department mine reclamation financial assurance form, financial assurance meeting the requirements of this rule. If financial assurance is not received by the Department within eighteen (18) months of reclamation plan approval and operations have not begun, the Department will cancel the reclamation plan without prejudice. The operator must then resubmit the reclamation plan application and correct application fee to restart the approval process prior to mining. An extension to the eighteen (18) month period may be granted by the Department for reasonable cause given if the request is received prior to the end of that period.	Comments stated that the 18-month deadline for reclamation plan financial assurance submittal should be extended to 24 months. IDL will now notify the operator at 18 months after plan approval and allow an opportunity to either submit the financial assurance or extend the deadline. This rewrite also includes 120.03. IDL looked at the requirements for the timing of plan approval and financial assurance submittal in the mining regulations of Alaska, Arizona, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, Wyoming, BLM, and USFS. Most of these programs require financial assurance before plan approval.



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	<p style="text-align: center;"><u>03. Timely Financial Assurance Submittal.</u></p> <p><u>Financial assurance must be received by the Department within twenty-four (24) months of reclamation or permanent closure plan approval or the Department will cancel the respective plan without prejudice. If financial assurance is not received within eighteen (18) months of a plan approval, the Department will notify the operator that financial assurance is required prior to the twenty-four (24) month deadline. Extensions will be granted by the director for reasonable cause given if a written request is received prior to the deadline. If financial assurance or an extension request is not received by the deadline, the plan will be cancelled. The operator must then submit a new plan application and application fee to restart the approval process. ()</u></p>	
<p>120.02 and 03</p>	<p style="text-align: center;"><u>02. Submittal of Financial Assurance Before Operating a Cyanidation Facility.</u> <u>Prior to beginning operation of a cyanidation facility an operator will submit to the director, on a Department form, financial assurance meeting the requirements of Section 47-1512(a)(2), Idaho Code. The financial assurance will be in an amount equal to the total costs estimated under paragraph 071.02.k. and Section 120 of these rules.</u></p> <p style="text-align: center;"><u>03. Timely Financial Assurance Submittal.</u> <u>Financial assurance must be received by the Department within twenty-four (24) months of reclamation or permanent closure plan approval or the Department will cancel the respective plan without prejudice. If financial assurance is not received within eighteen (18) months of a plan approval, the</u></p>	<p>Comments stated that the 90-day deadline for submittal of permanent closure plan financial assurance should be removed. While this had been in the rules since 2006, IDL agreed to simplify the rule and make it consistent with reclamation plan financial assurance. This rewrite also includes 120.03 and addresses other comments received on these subsections. IDL looked at the requirements for the timing of plan approval and financial assurance submittal in the mining regulations of Alaska, Arizona, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, Wyoming, BLM, and USFS. Most of these programs require financial assurance before plan approval.</p>



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	<p><u>Department will notify the operator that financial assurance is required prior to the twenty-four (24) month deadline. Extensions will be granted by the director for reasonable cause given if a written request is received prior to the deadline. If financial assurance or an extension request is not received by the deadline, the plan will be cancelled. The operator must then submit a new plan application and application fee to restart the approval process.</u></p>	
120.04	<p><u>Phased Financial Assurance. If the Department approves a reclamation plan or permanent closure plan with phased financial assurance, then financial assurance may increase incrementally commensurate with the additional reclamation or permanent closure liability. After construction and operation of the initial phase has commenced and after filing by an operator of the initial financial assurance, an operator will not construct any component of a subsequent phase or phases of the subject mine or cyanidation facility before filing the additional financial assurance amount that is required by the Board. If phased financial assurance is not authorized, the operator is required to file the financial assurance amount required to complete reclamation or permanent closure of all planned phases prior to any construction of the mine or operation of the cyanidation facility.</u></p>	<p>This subsection was added in response to comments that requested more specificity regarding phased financial assurance.</p>
120.09	<p><u>Mobilization Costs are Direct Costs. Mobilization and demobilization costs will be included in financial assurance calculations as a direct cost. Costs will be calculated to the mine from the nearest community that has at least two (2) contractors able to perform the reclamation.</u></p>	<p>This was previously included as an indirect cost. After reviewing how mobilization is handled in the mining regulations of Alaska, Arizona, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, Wyoming, BLM, and USFS this was moved to the current location as a direct cost.</p>



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120.10	<p>0410. Indirect Costs for Reclamation Cost Calculations. Reclamation <u>and permanent closure</u> cost calculations shall include the following indirect costs <u>and should fall within the percentages given. If a different percentage is used, then a justification must be given. Alternatively, an operator may propose the use of an industry recognized standardized reclamation cost estimation tool for use in reclamation and/or permanent closure cost estimates and the use of the tool's associated indirect costs which are established using the project direct costs as identified.:</u></p> <ul style="list-style-type: none">a. Mobilization and demobilization costs from the nearest community that has at least two (2) contractors able to perform the reclamation;b. Contractor profit <u>as a percentage at six percent to ten percent (6% to 10%)</u> of direct costs;c. Contractor overhead <u>as a percentage at four percent to eight percent (4% to 8%)</u> of direct costs;d. Contractor insurance <u>as a percentage at one and a half percent (1.5%)</u> of labor costs;e. Contractor bonding <u>as a percentage at two and a half percent to three and a half percent (2.5% to 3.5%)</u> of direct costs;f. Contract administration <u>as a percentage at five percent to nine percent (5% to 9%)</u> of direct costs;g. Re-engineering for mines <u>or cyanidation facilities</u> with direct reclamation costs over five hundred thousand dollars (\$500,000). Re-engineering will be <u>determined as a percentage at three percent to seven percent (3% to 7%)</u> of direct costs;h. <u>Scope contingency at six percent to eleven percent (6% to 11%)</u> of direct costs;i. <u>Bid C</u>ontingency <u>as a percentage at six percent</u>	<p>Ranges of percentages and other language were added based on comments received. As stated in the rule, the actual percentages used may be different if justified or if a standardized cost estimation tool is used. These indirect costs are similar to those used by Alaska, Nevada, New Mexico, BLM, and USFS. These indirect costs will capture the actual costs incurred by IDL when contracting out a reclamation project. Publications from Alaska, BLM, and USFS describe what each of these indirect costs are and how they may vary between projects.</p>
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	<p><u>to eleven percent (6% to 11%)</u> of direct costs; and</p> <p>i. Other site specific costs as appropriate.</p>	
120.14	<p>Financial Assurance <u>Provided</u> to the Federal Government. Any financial assurance provided to the federal government that also meets the requirements of Section 120 shall be sufficient for the purposes of these rules. <u>A mine providing financial assurance through an order under the Comprehensive Environmental Response, Compensation, and Liability Act is not required to submit financial assurance to the Department as described in Idaho Code 47-1512(n).</u></p>	Changes made based on comments received and to more closely reflect Idaho Code § 47-1512(n).
120.16 and 120.16.b	<p>4016. Financial Assurance Release Following <u>Mine</u> Reclamation. Upon completion of <u>all or a portion of</u> the reclamation <u>or post-closure activity</u> specified in the plan, the operator may notify the director of his desire to secure release from financial assurance. When the director has verified that the requirements of the reclamation plan have been substantially met as stated in the plan, the financial assurance will be released.</p> <p>a. Any request for financial assurance release will be answered by the director within thirty (30) days of receiving such request unless weather conditions prevent inspection.</p> <p>b. If the director finds that a specific portion of the reclamation <u>or post-closure activity</u> has been satisfactorily <u>substantially</u> completed, the financial assurance may be reduced to the amount required to complete the remaining reclamation <u>or post-closure activity</u>. The following schedule will be used to complete these financial assurance reductions unless the director determines in a specific case that this schedule is not appropriate and specifies a different schedule, <u>or the</u></p>	Comments received stating that financial assurance release language should be more consistent with Idaho Code § 47-1512(h). IDL went to Idaho Code § 47-1512(h)(1) and used the word “substantially” in the rule as it is used in the statute. Partial release and post-closure financial assurance also addressed as requested in comments.



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	<u>approved reclamation plan has a different schedule based on site specific conditions:</u>	
120.22	<u>Appeal Process for Financial Assurance Decisions.</u> <u>All decisions regarding any plan cancellation, financial assurance reduction, or financial assurance release as described in Section 120 of these rules are subject to appeal as described in Section 58-104, Idaho Code, and Section 47-1514, Idaho Code.</u>	Subsection added based on comments received.
122.05	Trusts. Trusts are subject to the requirements of Sections 47-1512(l) and 68-101, <u>et seq.</u> , Idaho Code. The proposed trustee, range of investments, initial funding, schedule of payments, trustee fees, and expected rate of return are subject to review and approval by the Department through a memorandum of agreement with the operator. Trusts are also subject to <u>The trustee will invest the principal and income of the fund in accordance with general investment practices. Investments can include equities, bonds, and government securities and be well diversified in accordance with</u> the following conditions:	Some statutory language added from Idaho Code § 47-1512(l) based on comments received with some additional language added. Staff at the Endowment Fund Investment Board recommended some of this additional language. The term “well diversified” is widely used in the financial services sector, including NASDAQ.
122.05.c	Equities may include stock funds, or stock index funds, but not or individual stocks <u>but an individual stock may not exceed five percent (5%) of the total value of the trust.</u> or d Direct investments in the operator’s company or parent company <u>are not allowed.</u> Corporate equities must not exceed seventy percent (70%) of the total value of the trust fund.	Comments received that a trust should be able to invest in individual stocks. IDL agreed with a limit on 5% for individual stocks to minimize risk. IDL looked at trust requirements used by BLM and discussed with staff at the Endowment Fund Investment Board.
122.05.d	Bonds or money market funds must be investment-grade rated securities having a Standard and Poor's rating of AAA or AA or an equivalent rating from a nationally recognized securities rating service.	Comments received that a trust should be able to invest in any investment grade rated bonds and not be limited to those rated AA or higher. IDL looked at trust requirements used by BLM and discussed with staff at the Endowment Fund Investment Board.



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	<p><u>Individual corporate bonds may not exceed five percent (5%) of the total value of the trust.</u></p>	
<p>122.05.e.i and 122.05.e.ii</p>	<p>e. Payments into the trust will be made as follows:</p> <p>i. When used to cover reclamation <u>or permanent closure</u> costs, the trust fund will be initially funded in an amount at least equal to the costs estimated in the approved reclamation plan for reclamation of existing surface disturbances covered by the chapter and <u>needed to cover</u> any surface disturbances to occur in the first year of the trust fund. Annual payments to keep pace with increased disturbance and reclamation costs will occur as needed no later than thirty (30) days after each annual anniversary of the date of the initial payment into the trust will occur as needed prior to the disturbance of additional affected land at the mine or cyanidation facility.</p> <p>ii. When used to cover a portion of reclamation <u>or permanent closure</u> costs in combination with other types of financial assurance, the initial and annual payments will be the pro-rata amount of the reclamation <u>or permanent closure</u> costs as described in subparagraph 122.05.e.i of these rules.</p>	<p>Comments received that trusts should not be limited to reclamation and post-closure costs, and incremental payment language needs modification. IDL changed the language in 122.05.e to include reclamation and permanent closure costs. Post-closure costs are addressed in 122.05.e.iii. IDL looked at trust requirements used by Arizona, Nevada, New Mexico, Pennsylvania, and Wyoming.</p>
<p>122.06.c</p>	<p>c. Operators who want to provide financial assurance through a corporate guarantee must provide an audited financial statement from a third-party certified public accountant licensed in Idaho that <u>meets the requirements of IDAPA 24.30.01, the Idaho Accountancy Rule. The audited financial statement must show</u> the operator meets two (2) of the following three (3) criteria and the criteria in paragraph d of this section:</p>	<p>Comments received that the language is too restricted because CPA's do not necessarily need to be licensed in Idaho. IDL modified the language to conform with IDAPA 24.30.01. IDL looked at corporate guarantee requirements used by Alaska, Nevada, Pennsylvania, Wyoming, 40 CFR 264, 40 CFR 258, and 40 CFR 800.</p>



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122.06.e	<p>Paragraph stricken, and changes made to 122.06.e.v and 122.06.f as follows:</p> <p>fe. A corporate guarantee can be provided by a parent company guarantor if that guarantor meets the conditions of paragraphs (c) and (d) in this section as if it were the operator. The terms of this corporate guarantee will provide for the following:</p> <p>i. The operator and the parent company will submit to the Department an indemnity agreement signed by corporate officers from both companies who are authorized to bind their corporations. The operator or parent company must also provide an affidavit certifying that such an agreement is valid under all applicable federal and state laws. The indemnity agreement will bind each party jointly and severally;</p> <p>ii. If the operator fails to complete reclamation or permanent closure, the parent company guarantor will do so or the guarantor will be liable under the indemnity agreement to provide funds to the Department sufficient to complete reclamation or permanent closure as per the plan, but not to exceed the financial assurance amount;</p> <p>iii. The corporate guarantee will remain in force unless the parent company guarantor sends notice of cancellation by certified mail to the operator and to the Department at least ninety (90) days in advance of the cancellation date, and the Department accepts the cancellation; and</p> <p>iv. The cancellation will be accepted by the Department only if the operator obtains replacement financial assurance before the cancellation date or if the lands for which the corporate guarantee, or portion thereof, was accepted have not been disturbed.</p>	<p>Comment received about whether this paragraph is needed and what it means. IDL looked at corporate guarantee requirements used by Alaska, Nevada, Pennsylvania, Wyoming, 40 CFR 264, 40 CFR 258, and 40 CFR 800. Language was adjusted to more closely reflect these other examples.</p>
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	<p style="color: red;"><u>v. If the operator is a partnership or joint venture, the indemnity agreement will bind each partner or member who has a beneficial interest, directly or indirectly, in the operator.</u></p> <p style="color: blue;"><u>gf. The operator, or parent company guarantor, is required to either complete the approved reclamation or permanent closure plan for the lands in default, or pay to the Department an amount necessary to complete the approved reclamation, not to exceed the amount established in Sections 120 or 124 of these rules. Any indemnity agreement under forfeiture will operate as a judgment against those parties liable under the indemnity agreement.</u></p>	
122.09	<p style="color: red;"><u>Multiple Forms of Financial Assurance Accepted.</u> <u>An operator may combine more than one type of financial assurance, within the limitations of each type of financial assurance, to reach the full amount of the required financial assurance for a reclamation plan or permanent closure plan.</u></p>	<p>Comments received about the ability of an operator to use multiple forms of financial assurance on one mine. Subparagraph added to explicitly allow this.</p>