

# Zero-Based Regulation Prospective Analysis

**Agency Name:** Idaho Department of Lands

**Rule Docket Number:** 20-0301-2301

IDAPA 20.03.01, Rules Governing Dredge and Placer Mining Operations in Idaho

**1. What is the specific legal authority for this proposed rule?**

Statute Section (include direct link)	Is the authority mandatory or discretionary?
<a href="#">Idaho Code Title 47, Chapter 13</a> – Dredge Mining	Mandatory
<a href="#">Idaho Code § 58-104(6)</a> – State Land Board – Powers and Duties	Discretionary
<a href="#">Idaho Code § 58-105</a> – Director	Discretionary

**2. Define the specific problem that the proposed rule is attempting to solve? Can the problem be addressed by non-regulatory measures?**

IDAPA 20.03.01 provides consistent and specific guidance on how a dredge and placer mining permit can be applied for, reviewed, approved, and administered. The proposed changes seek to comply with Executive Order 2020-01, simplify and consolidate requirements, and adjust the inspection fees so they cover the cost of inspections.

**3. How have other jurisdictions approached the problem this proposed rule intends to address?**

**a. Is this proposed rule related to any existing federal law?**

Federal citation	Summary of Law (include direct link)	How is the proposed Idaho rule more stringent? (if applicable)
36 CFR 228	<a href="https://www.ecfr.gov/current/title-36/chapter-II/part-228">https://www.ecfr.gov/current/title-36/chapter-II/part-228</a> No application fees or annual fees are charged for a Plan of Operations, but annual fees of \$165 are charged for each 20-acre mining claim. Bonding is actual cost. Exploration is bonded. Surety companies must be listed in Circular 570 of the U.S. Department of Treasury. Operations must control erosion in a manner appropriate to the site-specific and regional conditions, but no minimum standards exist for culverts. Revegetation must result in cover similar to adjacent unmined areas.	Application fees are \$50 to \$1,000. Annual fees are \$435. If bonding is insufficient, then additional funds may be recovered from the operator after a default. Operations must be designed for 20-year storm events. Minimum culvert size is 18 inches.

43 CFR 3809	<a href="https://www.ecfr.gov/current/title-43/subtitle-B/chapter-II/subchapter-C/part-3800/subpart-3809">https://www.ecfr.gov/current/title-43/subtitle-B/chapter-II/subchapter-C/part-3800/subpart-3809</a> No application fees or annual fees are charged for a Plan of Operations, but annual fees of \$165 are charged for each 20-acre mining claim. Bonding is actual cost with ability to recover additional funds if needed. Exploration is bonded. Surety companies must be listed in Circular 570 of the U.S. Department of Treasury. Plans must be designed for 25-year storm events, and minimum culvert size is 18 inches. Revegetation must result in cover similar to adjacent unmined areas.	Application fees are \$50 to \$1,000. Annual fees are \$435. If bonding is insufficient, then additional funds may be recovered from the operator after a default.
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**b. How does this proposed rule compare to other state laws?**

State	Summary of Law (include direct link)	How is the proposed Idaho rule more stringent? (if applicable)
Washington	<a href="https://app.leg.wa.gov/rcw/default.aspx?cite=78.44">https://app.leg.wa.gov/rcw/default.aspx?cite=78.44</a> <a href="https://apps.leg.wa.gov/wac/default.aspx?cite=332-18">https://apps.leg.wa.gov/wac/default.aspx?cite=332-18</a> Application fee for operations over 3 acres is \$4,500, and annual fee is \$2,000. Bonding is actual cost with ability to recover additional funds if needed. Exploration is not bonded. Any surety company may be used. Plans must be designed for 25-year storm events, but no other minimum standards for culverts. Revegetation must be suitable for the post-mining land use.	Operations from ½ acre to 3 acres must pay an application fee of \$50. Surety companies must be listed in Circular 570 of the U.S. Department of Treasury. Minimum culvert size is 18 inches.
Oregon	<a href="https://oregon.public.law/rules/oar_chapter_632">https://oregon.public.law/rules/oar_chapter_632</a> <a href="https://www.oregonlegislature.gov/bills_laws/ors/ors468b.html">https://www.oregonlegislature.gov/bills_laws/ors/ors468b.html</a> <a href="https://www.oregonlegislature.gov/bills_laws/archive/2001ors517.pdf">https://www.oregonlegislature.gov/bills_laws/archive/2001ors517.pdf</a> <a href="https://www.oregongeology.org/mlrr/forms/sufacemining/517_FeeSchedule_20230206.pdf">https://www.oregongeology.org/mlrr/forms/sufacemining/517_FeeSchedule_20230206.pdf</a> Application fee is \$400 to \$2,000, and annual fee is \$165 to \$1,460 plus \$0.0125/ton. Bonding is actual cost with no ability to recover additional funds to complete reclamation. Exploration is not bonded. Any surety company may be used. Plans must be designed for 100-year storm events, but no other minimum standards for culverts. Revegetation must result in cover similar to adjacent unmined areas.	Annual fees for smaller operations are higher. If bonding is insufficient, then additional funds may be recovered from the operator after a default. Surety companies must be listed in Circular 570 of the U.S. Department of Treasury. Minimum culvert size is 18 inches.

<p>Nevada</p>	<p><a href="https://www.leg.state.nv.us/nac/nac-445a.html">https://www.leg.state.nv.us/nac/nac-445a.html</a>  <a href="https://www.leg.state.nv.us/NAC/NAC-519a.html">https://www.leg.state.nv.us/NAC/NAC-519a.html</a>  <a href="https://www.leg.state.nv.us/nrs/nrs-519a.html">https://www.leg.state.nv.us/nrs/nrs-519a.html</a>  <a href="https://ndep.nv.gov/uploads/documents/20201002_WPC_Permit_FeeSched_ADA.pdf">https://ndep.nv.gov/uploads/documents/20201002_WPC_Permit_FeeSched_ADA.pdf</a>  <a href="https://ndep.nv.gov/uploads/land-mining-regs-docs/20201009_WhenA_WPCP_IsRequired_ADA.pdf">https://ndep.nv.gov/uploads/land-mining-regs-docs/20201009_WhenA_WPCP_IsRequired_ADA.pdf</a></p> <p>Application fees for mining operations and exploration are \$1.50/acre of public land and \$2.50/acre of private land. Operations over 5 acres are also charged \$200. Annual fees are \$100 to \$16,000. Bonding is actual cost with no ability to recover additional funds to complete reclamation. Exploration is also bonded. Surety companies must have a superior financial strength rating and superior credit rating from a nationally recognized insurance rating service. Mining plans must be designed for the annual precipitation and may require preparation by an engineer, but no other minimum standards for design or culverts. Revegetation must be suitable for the post-mining land use. Placer operations also must obtain a Water Pollution Control Permit, which require a \$200 application and annual fee. Operations must be designed for 100-year storm events. No other minimum standards for culverts.</p>	<p>Annual fees for smaller operations are higher. If bonding is insufficient, then additional funds may be recovered from the operator after a default. Minimum culvert size is 18 inches.</p>
<p>Utah</p>	<p><a href="https://le.utah.gov/xcode/Title40/Chapter8/40-8.html">https://le.utah.gov/xcode/Title40/Chapter8/40-8.html</a>  <a href="https://fs.ogm.utah.gov/PUB/MINES/Minerals_Related/Information/r647-1.pdf">https://fs.ogm.utah.gov/PUB/MINES/Minerals_Related/Information/r647-1.pdf</a>  <a href="https://fs.ogm.utah.gov/PUB/MINES/Minerals_Related/Information/R647-2.pdf">https://fs.ogm.utah.gov/PUB/MINES/Minerals_Related/Information/R647-2.pdf</a>  <a href="https://fs.ogm.utah.gov/PUB/MINES/Minerals_Related/Information/r647-3.pdf">https://fs.ogm.utah.gov/PUB/MINES/Minerals_Related/Information/r647-3.pdf</a>  <a href="https://fs.ogm.utah.gov/PUB/MINES/Minerals_Related/Information/r647-4.pdf">https://fs.ogm.utah.gov/PUB/MINES/Minerals_Related/Information/r647-4.pdf</a>  <a href="https://fs.ogm.utah.gov/PUB/MINES/Minerals_Related/Information/R647-5.pdf">https://fs.ogm.utah.gov/PUB/MINES/Minerals_Related/Information/R647-5.pdf</a></p> <p>Application fee is \$150 to \$1,000, and annual fee is \$150 to \$1,000. Bonding is actual cost with no ability to recover additional funds to complete reclamation. Exploration is also bonded. Surety companies must be listed in Circular 570 of the U.S. Department of Treasury. Operations must control erosion in a manner appropriate to the site-specific and regional conditions, but no minimum standards exist for culverts. Revegetation must achieve 70% cover.</p>	<p>Annual fees for smaller operations are higher. If bonding is insufficient, then additional funds may be recovered from the operator after a default. Operations must be designed for 20-year storm events. Minimum culvert size is 18 inches.</p>

Wyoming	<p><a href="https://wyoleg.gov/statutes/compress/title35.pdf">https://wyoleg.gov/statutes/compress/title35.pdf</a>  <a href="https://rules.wyo.gov/Search.aspx?mode=1">https://rules.wyo.gov/Search.aspx?mode=1</a></p> <p>Exploration application fees are \$25 with an annual fee of \$25. Operations larger than 15 acres have an application fee of \$100 or \$200 plus \$10/acre with \$2,000 maximum. No annual fee for operations. Bonding is actual cost with no ability to recover additional funds to complete reclamation. Exploration is also bonded. Any surety company may be used. Plans for temporary impacts must be designed for 2-year storm events and permanent facilities must be designed for the 100-year event, but no other minimum standards for culverts. Revegetation must be suitable for the post-mining land use.</p>	<p>Operations up to 15 acres will pay application fees of \$50/10-acre tract. Annual fees of \$435 are required. If bonding is insufficient, then additional funds may be recovered from the operator after a default. Surety companies must be listed in Circular 570 of the U.S. Department of Treasury. Minimum culvert size is 18 inches.</p>
Montana	<p><a href="https://leg.mt.gov/bills/mca/title_0820/chapter_0040/part_0040/sections_index.html">https://leg.mt.gov/bills/mca/title_0820/chapter_0040/part_0040/sections_index.html</a>  <a href="https://rules.mt.gov/gateway/ChapterHome.asp?Chapter=17%2E24">https://rules.mt.gov/gateway/ChapterHome.asp?Chapter=17%2E24</a></p> <p>Exploration application fees are \$100 with an annual fee of \$25. Operations larger than 5 acres have an application fee of \$500 and an annual fee of \$100. Bonding of Exploration is actual cost, and bonding for operations over 5 acres is actual cost. Operations under 5 acres are bonded for \$10,000. If bonds are insufficient, agency can recover additional funds if needed. Surety companies must be listed in Circular 570 of the U.S. Department of Treasury. Plans must be designed for 10-year storm events, but no other minimum standards for culverts. Revegetation must be suitable for the post-mining land use.</p>	<p>Operations up to 5 acres will pay application fees of \$50, and fees can escalate up to \$2,000. Annual fees of \$435 are required. All mining operations over ½ acre must be bonded. Operations must be designed for 20-year storm events. Minimum culvert size is 18 inches.</p>
Alaska	<p><a href="https://www.akleg.gov/basis/statutes.asp#27">https://www.akleg.gov/basis/statutes.asp#27</a>  <a href="https://www.akleg.gov/basis/aac.asp#11.97">https://www.akleg.gov/basis/aac.asp#11.97</a>  <a href="https://dnr.alaska.gov/mlw/pdf/DMLWFeeOrder3-v2.pdf">https://dnr.alaska.gov/mlw/pdf/DMLWFeeOrder3-v2.pdf</a></p> <p>Exploration application fees are \$1,000. Operations larger than 5 acres have an application fee of \$400 for 20 hours of staff time. No annual fees are charged. Bonding for operations larger than 5 acres is \$750/acre. If bonds are insufficient, agency can recover additional funds if needed. Any surety company licensed in Alaska may be used. Reestablished streams must be stable and erosion should be controlled, but no minimum standards exist for culverts. Revegetation must result in cover similar to adjacent unmined areas.</p>	<p>Operations up to 5 acres will pay application fees of \$50, and fees can escalate up to \$2,000. Annual fees of \$435 are required. All mining operations over ½ acre must be bonded up to \$1,800/acre. Surety companies must be listed in Circular 570 of the U.S. Department of Treasury. Operations must be designed for 20-year storm events. Minimum culvert size is 18 inches.</p>

<p>South Dakota</p>	<p><a href="https://sdlegislature.gov/Statutes/45-6C">https://sdlegislature.gov/Statutes/45-6C</a>  <a href="https://sdlegislature.gov/Statutes/45-6B">https://sdlegislature.gov/Statutes/45-6B</a>  <a href="https://sdlegislature.gov/Statutes/45-6">https://sdlegislature.gov/Statutes/45-6</a>  <a href="https://sdlegislature.gov/Rules/Administrative/74:29">https://sdlegislature.gov/Rules/Administrative/74:29</a>  Application fee for exploration is \$250. Application fee for operations is \$100 to \$1,000, and annual fee is \$50. Exploration requires a \$20,000 bond. Operations under 10 acres require a \$10,000 bond. Operations over 10 acres require an actual cost bond with no ability to recover additional funds to complete reclamation. Any surety company may be used. Ponds must be designed for a 100-year storm event, but no minimum standards exist for culverts. Revegetation must result in cover similar to adjacent unmined areas.</p>	<p>Annual fees are higher. If bonding is insufficient, then additional funds may be recovered from the operator after a default. Surety companies must be listed in Circular 570 of the U.S. Department of Treasury. All operations must be designed for 20-year storm events. Minimum culvert size is 18 inches.</p>
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**c. If the Idaho proposed rule has a more stringent requirement than the federal government or the reviewed states, describe the evidence base or unique circumstances that justifies the enhanced requirement:**

The application fees in Idaho are in the range of what other states are charging. Some states are a little lower especially for smaller operations, but several states are also much higher. While the federal agencies do not charge application fees, they do require operators to comply with the National Environmental Policy Act, which may result in the applicant paying for environmental studies and documentation. Application fees are set by statute in Idaho, and generally do not cover the cost of processing the applications.

The annual inspection fee of \$435 is in the range of what other states are charging. Some states charge less, but a few charge more. The Bureau of Land Management charges yearly fees on most federal mining claims, which can be similar to the proposed inspection fee. The proposed inspection fee is needed to cover the costs of these inspections. The statute also makes it clear that the purpose of the fee is to cover the cost of the inspection.

Several states do not have the ability to recover additional funds from the operator after a default if the bond is insufficient. Idaho’s statute, however, limits the bond amount to \$1,800 per acre which is insufficient to cover the full cost of reclamation. Some states allow any surety company to be used for bonding, but a few others and the federal agencies require surety companies to be listed in Circular 570 published by the U.S. Department of Treasury. This is a good practice to help ensure funds are available for reclamation.

The 20-year design storm standard is in the range of what other states require from operators. A few states have no specific standards, others have a best practices type of standard, and a few states have specific standards that are more stringent. The standards used by the Idaho stream channel protection and forest practices rules are more stringent than the proposed standard. The Idaho Department of Lands is the primary regulatory

authority for mining related stormwater practices, so having minimum standards ensures a fair and predictable regulatory framework.

**4. What evidence is there that the rule, as proposed, will solve the problem?**

These rules have been effective in minimizing the impact of dredge and placer mining on water quality over the last 30 years or more. Responsible operators do not have difficulties complying with these rules.

**5. What is the anticipated impact of the proposed rule on various stakeholders? Include, how will you involve them in the negotiated rulemaking process?**

Category	Potential Impact
Fiscal impact to the state General Fund, any dedicated fund, or federal fund	Increased fees will result in an estimated annual increase of \$6,600 to the dedicated Dredge and Placer Mining Account. No impact to the General Fund is anticipated.
Impact to Idaho businesses, with special consideration for small businesses	Increased fees will result in an estimated annual increase of \$6,600 and will allow IDL to cover the costs of inspecting these mining operations. This will affect all current permittees, and future permittees. All current permittees will be notified of the negotiated rulemaking, and public meetings will be held around the state.
Impact to any local government in Idaho	No impact to local government is anticipated.

**6. What cumulative regulatory volume does this proposed rule add?**

Category	Impact
Net change in word count	26% Reduction
Net change in restrictive word count	18% Reduction