

STATE BOARD OF LAND COMMISSIONERS

November 21, 2023

Regular Agenda

Subject

Adoption of Pending Fee Rule, IDAPA 20.03.03 *Rules Governing Administration of the Reclamation Fund*

Question Presented

Shall the Land Board adopt the pending fee rule for IDAPA 20.03.03?

Background

Negotiated rulemaking for these rules was approved by the State Board of Land Commissioners (Land Board) on November 15, 2022. Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled for a comprehensive review in 2023 with the goal of simplifying the rules for increased clarity and ease of use.

The Idaho Department of Lands (Department) administers these rules under the authority of Title 47, Chapter 18, Idaho Code. IDAPA 20.03.03 provides consistent guidance in how Idaho's Reclamation Fund (Fund) is implemented. The Fund is a type of state bond pool created in 2002 to provide an alternative form of performance bond or financial assurance as required by Idaho mining regulations. The Fund is to be used by the Department to complete reclamation in the event an operator is unable to do so.

Discussion

The Department'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.
- Posted meeting information on social media.
- Emailed 145 customers and other interested parties.
- Mailed postcards to 371 customers.

Negotiated rulemaking meetings were held on April 26 and May 4, 2023. A total of 6 non-Department affiliated people attended these meetings. No written comments were received. Substantive comments and the Department's responses are summarized in Attachment 1. No changes were made based on comments received. Some minor changes to the initial draft were made based on internal discussions and to further reduce word count.

The proposed rule was published in the September 6, 2023 Administrative Bulletin. The Notice of Proposed Rulemaking is in Attachment 2. No comments were received.

The proposed rule reduced the overall regulatory burden by reducing the total word count and the number of restrictive words. The late payment policy is updated.

Upon further review, a few punctuation changes were needed as well as clarifications to some statute references. Attachment 3 has the draft Pending Rule consisting of the Proposed Rule with the engrossed changes highlighted in yellow.

If approved by the Land Board, the Department will submit the Notice of Adoption of Pending Fee Rule (Attachment 4) to the Office of the Administrative Rules Coordinator for the 2024 legislative session.

Recommendation

Adopt the pending fee rule for IDAPA 20.03.03 *Rules Governing Administration of the Reclamation Fund*.

Board Action

Attachments

1. Summary of Negotiated Rulemaking
2. Notice of Proposed Rulemaking
3. Draft Pending Rule
4. Draft Notice of Adoption of Pending Fee Rule