



Negotiated Rulemaking Summary
IDAPA 20.03.02—Rules Governing Mined Land Reclamation
Docket No. 20-0302-2401

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.

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/rulemaking/docket-20-0302-2401/>. 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. The following is a summary of all comments and the Department’s response to the comments:

Date	Comment	Response
4-24-2024	Question: What about the deletion of subsection 060.08? This subsection allows the operator and IDL to agree to additional reclamation of an exploration project beyond the requirements in the rules.	Response: No operator has requested this over the last 20 years or more, and nothing would prevent an operator from doing additional reclamation. The exploration reclamation requirements in the rules provide a minimum standard, and additional work would not be opposed.
4-24-2024	Question: Asked about the new sentence in Subsection 120.01 regarding the amount of the initial financial assurance, and if that was related to a statutory requirement.	Response: IDL confirmed that it was from a statutory requirement.
4-24-2024	Request: Made for specifically outlining what changes from 2019 do or do not apply when discussing the draft revisions to Section 200.	Response: A plan is subject to the rules in place at the time of approval, and the new rules would only apply to new amendments for plans that were already approved in 2019. No confusion has been reported from the operators. Some clarification in the guidance documents may be more appropriate than further clarification in the rules.

Date	Comment	Response
4-30-2024	Question: What is the relationship between the proposed definitions of “Disturbed Acres”, “Permitted Acres”, and “affected lands”?	Response: Disturbed Acres are a subset of the Permitted Acres. These two new definitions are used further down in the rule, especially in regard to financial assurance.
4-30-2024	Question: Why were all the uses of “shall” replaced?	Response: The Division of Financial Management and the Office of the Administrative Rules have given specific direction regarding elimination of the word shall. IDL replaced this word with “may”, “must”, or other words depending on context.
4-30-2024	Comment: The application forms could be included in the rule.	Response: This would require a negotiated rulemaking to modify the form, which is a lot of work to go through for simple changes.
4-30-2024	Comment: DEQ is moving to change “ground water” to “groundwater” in their rules. This will reduce word count for the Zero Based Regulation goals.	Response: It is not clear if the Idaho Department of Water Resources was also making that change. This will be investigated further.
4-30-2024	Comment: Section 200 should specifically state what rule changes from 2019 do or do not apply to reclamation plans based on when the plans were approved.	Response: This would not be a simple task and runs the risk of being interpreted as conflicting with statute. The requestor offered to put together some suggested wording for consideration.
4-30-2024	Question: Should “Permitted” or “Disturbed” acres be referenced in Subsections 120.05, 06, and 08?	Response: If financial assurance is only required for the disturbed acres, then these subsections may not clearly communicate that. Some adjustment is needed to make that clearer.
5-1-2024	Question: Do the rules need a definition of “board” as used in Section 000?	Response: Board is defined in Title 47, Chapter 15, Idaho Code. The definitions in Section 010 of the rules start with this statement: “In addition to the definitions set forth in the Act, the following definitions apply to these rules:”. In order to fully understand the rules, the statute must also be examined. All definitions in statute also apply to the rules.
5-1-2024	Comment: The maps need a reference to where cross sections are located. Sometimes representative cross sections appear to be missing.	Response: IDL stated that Section 069 does have a requirement in Section 03.b.vii to show where the cross section is on the map. If representative cross sections are not submitted, then IDL may need to determine that the application is incomplete.

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5-1-2024	Comment: More specificity could be required for drainage control prior, during, and after mining.	Response: IDL's focus is on where water goes during and after the operation. IDL is also only concerned with site drainage up to the point that the plan is retired and the bond is released. The site is in reclamation up until that time.
5-1-2024	Question: Is IDWR involved with the water drainage after reclamation?	Response: This question is outside the scope of this rulemaking and IDL's expertise.
5-1-2024	Question: What are the enforcement methods for the rules?	Response: Enforcement is mentioned in Section 160, but the specifics of compliance enforcement are in the statute, 47-1513.
5-6-2024	Question: How do IDL reclamation plan reviews compare to BLM, and if an operator is permitted through BLM does that take care of permitting with IDL?	Response: An approved reclamation plan is still needed for those operations approved by BLM. IDL reviews are often done with the BLM, or USFS, and with other state agencies. If a NEPA review is required, then IDL and other state agencies may have already reviewed the plan, but a reclamation plan approved by IDL is still needed.
5-6-2024	Comment: The longest part of the BLM review may be the archeological clearances.	Response: IDL does not require archeological clearances for reclamation plans.
5-7-2024	Question: Will an operator be notified if their reclamation plan was complete?	Response: Yes, the reclamation plans would be reviewed for completeness as soon as possible within the 60 day review period.
5-7-2024	Question: Would the definition of "coarse and durable rock armor" apply to riprap material placed in a channel? Sometimes smaller riprap is used, and it is unclear if the definition of coarse and durable rock armor would apply to this type of use.	Response: IDL stated that the only place coarse and durable rock armor is mentioned in the rule is in paragraph 070.04.e. It is possible that this would apply to riprap, and IDL would look into this more. Participants were encouraged to share their opinion on this in some written comments.

Date	Comment	Response
6-5-2024 1	<p>Question: Re: 010.05 Coarse and Durable Rock Armor: This is a one-size-fits-all specification to meet a specific predetermined yet unknown performance criteria instead of requiring that a specified performance criteria lead to a specified material construction specification.</p> <p>“Free of fines”? 100.00%? 99.8%? 50%, by weight or volume?</p> <p>What is the specification for “fines”? “Fines” are relative to the desired particle size and their relevance to the specification depends on the performance goals for armoring.</p> <p>Not all armoring jobs are in need of angular rock. Once again, rock and types must meet an engineering performance specification that is appropriate to the application’s needs. As written, this makes river rock that lines every river in Idaho illegal for use if removed and put back by the Operator when re-armoring a stream channel.</p>	<p>Response: The definition has been modified in the proposed rules.</p>
6-5-2024	<p>Question: Re 010.08: What is the definition of “affected land”?</p>	<p>Response: The term “disturbed acres” has been replaced with “affected land” in the proposed rule. Affected land is defined in 47-1503(5), Idaho Code.</p>
6-5-2024	<p>Question: Re 060.04(a): What about regrading a previously disturbed area in a manner that better protects from “non-point sources”? This may conflict with direction elsewhere such as language revised in Section 04.e.</p>	<p>Response: Comment acknowledged. IDL appreciates grading performed to minimize soil erosion based on field knowledge.</p>

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6-5-2024	Question: Re 060.04(e): This language adds potentially unlimited obligations for what may be disproportionate or even unrelated to the actual exploration activity or its disturbance. "Control" to what extent? Who and what criteria determines what is controlled and what is not?	Response: Comment acknowledged. The intent of the rule is to minimize sediment mobilization and transport to a water course.
6-5-2024	Question: Section 060.01.08: What's wrong with this? Does it give the operator too much [any] discretion in agreeing to what is "additional"?	Response: Comment acknowledged. Section 60.01.08 retained in proposed rule.
6-5-2024	Question: Re 070.04(c): These regulations for water compliance are more appropriate and should remain the case with 060.04(e).	Response: Comment acknowledged.
6-5-2024	Question: Re 070.05: Operating Plan Requirements. This should include language clearly recognizing that an Operating Plan approval is not required if the plan is approved by a federal agency per Idaho Code 47-1506.	Response: Comment acknowledged. Operating Plan tiering is addressed in the descriptions in 010.16 and in 070.02(c) of these rules.
6-5-2024	Question: Re 071.04(a): By the Operator?	Response: This section has been modified in the proposed rules.
6-5-2024	Question: Re 080.01: The IDL wants to have an indefinite period before reviewing reclamation plans for completeness? Unacceptable.	Response: Section 47-1507(c), Idaho Code defines review periods for both reclamation and permanent closure plans. They are not repeated here in order to comply with Executive Order 2020-01
6-5-2024	Question: Re: 080.02(a): IDEQ	Response: Comment acknowledged. "DEQ" is the acronym used by DEQ in DEQ rules.

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6-5-2024	Question: Re: 080.02(a): The Idaho Public Records Act should not apply to the Director? Or should it be less clear in this statute that this is the case?	Response: This section has been modified in the proposed rules.
6-5-2024	Question: Re 080.03(a): It appears that IDL alone will be able to set the schedule for the inspection. Unacceptable. This should state that the inspection shall/will/must be scheduled at a time mutually agreed to by IDL and the applicant or owner.	Response: This section has been modified in the proposed rules.
4-15-2025	Question: What are the review periods for the draft rules?	Response: The current negotiated rulemaking comment period for Draft #2 ended on June 13, 2025. A review period for the proposed rule will occur from October 1 to October 21, 2025.
4-16-2025	Question: What are IDL's reclamation standards	Response: See IDAPA 20.03.02.140.11(b).
4-16-2025	Question: When are updates required?	Response: Reclamation plans <u>may</u> be updated every five years at the discretion of the operator (155.03(a)). Reclamation plans <u>must</u> be updated when material changes to the operation occur (010.09). The Cyanidation Facility Permanent Closure Plan cost estimates must be updated at a minimum of every three years (120.19(a)).
4-16-2025	Question: Frequency of inspections	Response: Inspections accompany: (a) material changes in the reclamation plan; or (b) change in permanent closure plan cost estimates. Inspection frequency at other mines is performed periodically based on a priority and resource availability basis (155.03)
4-21-2025	Question: Mine inspection frequency.	Response: Mine inspection frequency is governed by 47-1508(e), Idaho Code, and 155.03 of the rules. Refer to the response to the previous question.

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4-21-2025	Question: Provide an analysis on the benefits and costs of current subsection 150.03(a).	Response: The request is not within the negotiated rulemaking scope.
4-21-2025	Question: Use of the "tailings facility" term.	Response: The term "tailings facility" has been changed to either "tailings ponds" or "tailings infrastructure" throughout the proposed rules.
4-21-2025	Question: Preparation of Zero-Based Prospective Analysis	Response: The Zero-Based Prospective Analysis for this rule was posted on February 2, 2024. This analysis will be posted on the rulemaking webpage when updated.
4-21-2025	Question: Re 155.03(a): Reclamation plan review frequency.	Response: This section has been modified in the proposed rules.
4-23-2025	Question: Prefers retaining "affected acres" in rules.	Response: This section has been modified in the proposed rules.
4-23-2025	Question: What are the objectives of Zero-Based Rulemaking?	Response: Comment acknowledged. Not within the scope of negotiated rulemaking process.
4-23-2025	Question: Rules applicability with respect to upcoming application submittals.	Response: Use the rules on the IDL website: https://adminrules.idaho.gov/rules/current/20/200302.pdf . Changes to these rules would not take effect until July 1, 2026.
4-23-2025	Question: No acronym for Fish & Game?	Response: The term "Fish & Game" is only used twice in the rules. No need for an acronym.
4-23-2025	Question: When will the applicant learn of the required number of maps?	Response: The applicant should recognize the number of required maps during preparation of the application. Draft #2 requires at least two maps. Creating more than two maps is based on discretion of the applicant and the need for clarity for interpretation by the IDL reviewer.
4-23-2025	Question: Are the cross-section requirements new?	Response: No, the cross-section requirement is stated in the current rule. What is new is the requirement for at least two cross-sections.

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4-23-2025	Question: What is the definition of financial assurance phases?	Response: Applicants should develop discrete phase segments in a way that suits the applicant's Operations Plan. The phases should pair work tasks with financial assurance units.
4-23-2025	Question: Why not duplicate language in statute when composing the rules? Paging from rules to statute and back again is tedious.	Response: Executive Order 2020-01 and guidance provided by the Division of Financial Management requires avoidance of duplicative words and sections.
4-23-2025	Question: Re 110.01, sections 069, 070 and 071 should be replaced by section 080.	Response: Comment acknowledged. Section 080.02 refers to interagency notification requirements. Section 110.01 refers to Public Hearing requirements. Usage is different in sections 080 and 110. Draft #2 language is retained.
4-23-2025	Question: Re section 120.01, financial assurance should be changed to " . . . must cover one year . . .".	Response: Comment accepted. This section has been modified in the proposed rules.
4-23-2025	Question: Are Minerals Program policies and procedures available to the public?	Response: Yes. They can be found at this link: https://www.idl.idaho.gov/wp-content/uploads/sites/2/2023/01/agency-guidance-minerals-regulatory-procedures.pdf
4-23-2025	Question: Status of negotiated rulemaking?	Response: Negotiated rulemaking will conclude at the conclusion of the public comment period that ends on June 13, 2025.
6-13-2025	Question: Eliminate redundant section 120.08	Response: Comment acknowledged.
6-13-2025	Question: Reconsider volume of "cyanide" and "cyanidation" references throughout the rules.	Response: Comment acknowledged.
6-13-2025	Question: Re 155.01: Support for use of federal submittals for five year updates.	Response: This section has been modified in the proposed rules.

Date	Comment	Response
6-13-2025	Question: Re 010: Add "Affected Land" in definitions section.	Response: "Affected land" is defined in statute and is not duplicated in these rules as per Executive Order 2020-01 and guidance from the Division of Financial Management.
6-13-2025	Question: Re 010.04: Add " . . . and state groundwater management plan and regulations . . ."	Response: Comment acknowledged. IDL is only authorized to regulate suspended solids in surface water.
6-13-2025	Question: Re 010.04: Add ". . . and groundwater . . ."	Response: Refer to response to previous question.
6-13-2025	Question: Re 010.08: Add financial assurance definition in section 010.	Response: Financial assurance is defined in statute. Financial assurance definition is not duplicated in these rules as per Executive Order 2020-01 and guidance from the Division of Financial Management.
6-13-2025	Question: Re 010.14: Add "surface and ground "waters of the state"	Response: Comment acknowledged. IDL is only authorized to regulate suspended solids in surface water.
6-13-2025	Question: Re 010.08 Delete "permitted acres" in section 010. definition.	Response: Comment accepted. Permitted acres struck from the proposed rules.
6-13-2025	Question: Re 120.14. Strike "that also meets . . . of these rules."	Response: Comment acknowledged. The Department's reclamation cost estimation calculation rules may differ from other state and federal agencies. The Department retains the right to use Department rules for cost estimation calculations.
6-13-2025	Question: Re 120.15(a) Insert "Such a determination initial financial amount."	Response: Comment acknowledged. The review period is not specified in 47-15, Idaho Code. Section 120.15(a) retained without insertion of recommend language.
6-13-2025	Question: Re new clause in 120.16: Insert "Financial assurance associated . . . of such activities " in section 120.	Response: Comment acknowledged. Financial assurance release requirements are specified in section 120.16.
6-13-2025	Question: Re 140.01(a): Add " . . . surface and ground" water . . .	Response: Comment acknowledged. IDL is only authorized to regulate suspended solids in surface water.

Date	Comment	Response
6-13-2025	Question: Re 140.04(d): Insert "Where appropriate slope angles allow . . ."	Response: This section has been modified in the proposed rules
6-13-2025	Question: Re 155.01: Insert "A mine plan update . . . meet the requirement."	Response: This section has been modified in the proposed rules