

Negotiated Rulemaking for IDAPA 20.03.03

RULES GOVERNING ADMINISTRATION OF THE
RECLAMATION FUND



Today's Meeting

Introductions

Rulemaking Overview

Reclamation Fund Background and Overview

20.03.03 Negotiated Rulemaking Changes and Overview

Open Discussion / Questions

Next Steps





What Is Rulemaking?

- We are modifying and creating new rules this summer
- Rules have the force and effect of law
- Rules are created by agencies and reviewed by Governors' Office and Legislature
- Rulemaking for agencies is governed by..... rules
- Negotiation makes for better rules

HIERARCHY OF STATE DOCUMENTS

We are here

IDAHO CONSTITUTION

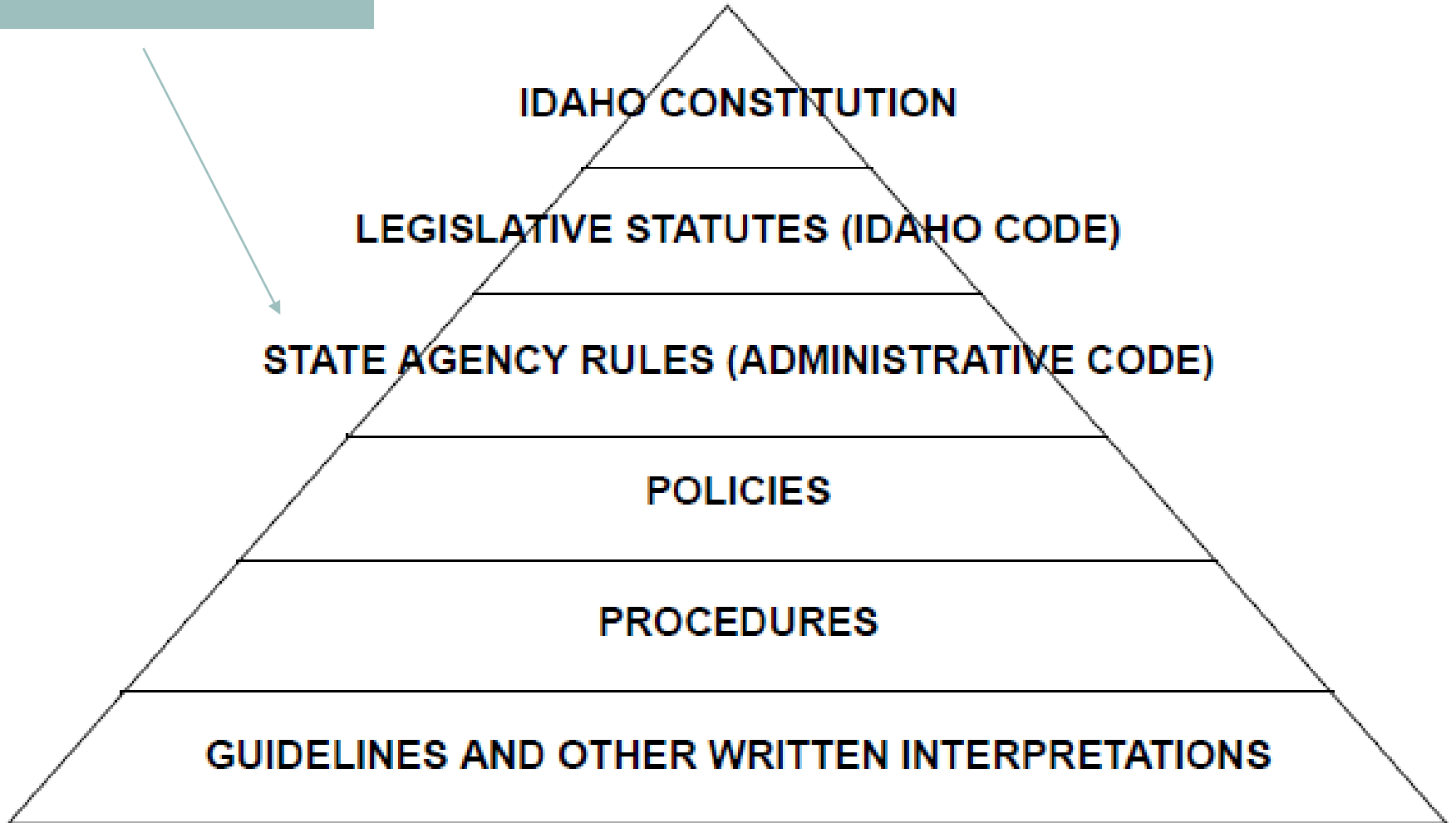
LEGISLATIVE STATUTES (IDAHO CODE)

STATE AGENCY RULES (ADMINISTRATIVE CODE)

POLICIES

PROCEDURES

GUIDELINES AND OTHER WRITTEN INTERPRETATIONS





Rulemaking Limitations

- Rule authority is rooted in statute
- Rules must stay within statutory authority
- Rules must meet legislative intent
- The Reclamation Fund is governed by Title 47, Chapter 18, Idaho Code
- IDAPA 20.03.03 must stay within the bounds of this statute



Within Scope of Rulemaking

- Items identified in Administrative Rules Request Form (ARRF) and Admin. Bulletin
- Other items if agreed to by the Agency

Outside Scope of Rulemaking

- Statute changes
- Rules that conflict with Idaho Code § 47-18
- Items not on ARRF that are not agreed to by the Agency

●●● Administrative Rules Request Form (ARRF)

- The Surface Mining Act was recently updated so changes in definitions and terminology are needed to comport with these statute changes
- The maximum costs of reclamation under the Fund are outdated and do not match the current maximum acreage restriction
- Current Fund participants have requested the acreage limit be increased to allow greater participation.
- Participants have also requested an ability to opt out and provide alternative financial assurance



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Mining has played an important role in Idaho's history. The discovery of gold resulted in the establishment of the Idaho territory in 1863. Mining in Idaho provides jobs and materials that are important to the economy.



MINING IN IDAHO

- Idaho's Mineral Leasing Act was passed in 1923
- Dredge and Placer Mining Act was passed by Voter Initiative in 1954
- Surface Mining Act passed in 1972
- Require a "Bond" or "Financial Assurance" to guarantee funding will be available
- To provide an alternative form of financial assurance for mining operations and mineral leases Idaho's Reclamation Fund was created in 2002

FINANCIAL ASSURANCE BY THE NUMBERS

Currently of the 1,546
Dredge and Placer and
Reclamation Plans:

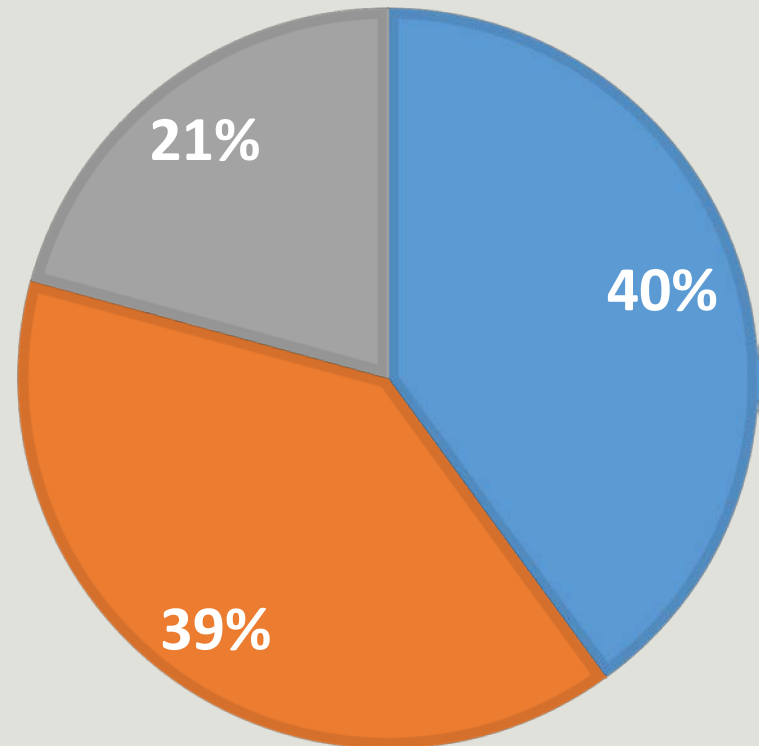
616 – Bond Exempt

605 – Reclamation Fund

320 – Traditional

FINANCIAL ASSURANCE BY THE NUMBERS

■ Bond Exempt ■ BAF ■ Traditional





Reclamation Fund Basics

- Available for eligible mineral leases, reclamation plans, and dredge and placer permits
- Reclamation plans and dredge and placer permits over 40 acres or over \$100k of reclamation costs are ineligible
- Ongoing annual payment required until Instrument has been retired, assigned, or replacement financial assurance is provided
- Fee based on acres of disturbance
- Usually not accepted on federal lands

BAF Fee Schedule	
Over 40 Acres	Not eligible to participate
35 to 40 acres	\$550
30 to 35 acres	\$500
25 to 30 acres	\$450
20 to 25 acres	\$400
15 to 20 acres	\$350
10 to 15 acres	\$300
5 to 10 acres	\$250
2 to 5 acres	\$200
2 acres or less	\$100



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●●● 20.03.03 Negotiated Rulemaking Changes

- Red Tape Reduction Act
 - House Bill H-141 / Clean-up
 - Potential to Remove Mandatory Participation Requirements
 - Potential to allow additional participation in the Reclamation Fund
- 



Red Tape Reduction Act

- “Excessive regulation at all levels of government can impose high costs on businesses, inhibit job growth, and impede private sector investment,” Governor Little
- Idaho's Administrative Code has grown to 736 chapters, totaling more than 8,200 pages, and containing more than 72,000 restrictions



Red Tape Reduction Act

- Governor Little issued Executive Order no. 2019-02 titled the “Red Tape Reduction Act” in January of 2019
- The directive is to cut unnecessary language and regulations from the Idaho Administrative Code
- Also, whenever possible, revise the following “restrictive words:” shall, must, may not, prohibited



Red Tape Reduction Act

- The changes to standard rule sections 20.03.02.000 through 20.03.02.009 (the first two pages)
- 20.03.03.003 Administrative Appeals – from 186 words to 64 words
- 20.03.006 Public Records Act – from 138 words to 70
- These changes do not change policy but reduce the word count



Red Tape Reduction Act

Example: Definition under 20.03.03.10.12 – “Operator”

Any person or ~~persons, any partnership, limited partnership or corporation, or any association of persons, either natural or artificial, including, but not limited to, every public or governmental agency engaged in surface mining, exploration or dredge and placer mining operations, whether individually, jointly, or through subsidiaries, agents, employees, or contractors and shall mean every government agency owning or controlling the use of any surface mine or dredge and placer mine where the extraction of minerals is to be used by or for the benefit of such agency. For the purpose of these rules, an operator shall include a party holding a permit or an approved surface mining reclamation plan.~~ entity authorized to conduct business in Idaho, partnership, joint venture, or public or governmental agency required to have any reclamation plan under the mined land reclamation act or the mineral leasing act, of a permit under the dredge mining act, whether individually or jointly through subsidiaries, agents, employees, or contractors.

109 words down to 53 while maintaining same definition



Red Tape Reduction Act

Financial assurance pursuant to the Reclamation Fund Act ~~and this rule shall be~~ is in lieu of...

~~R~~eclamation Fund payment for each ~~mineral lease, reclamation plan, placer permit or temporary permit required to participate~~ operator participating in the Reclamation Fund.



House Bill H-141

- The passage of House Bill 141 during the 2019 legislative session significantly amended Idaho's Surface Mining Act and related rules IDAPA 20.03.02.
- As read in both the House and Senate committees and floor, H-141 updates regulations that have remained relatively unchanged for approximately 50 years
- The purpose was simple:
 - To accurately reflect current industry and regulatory practices
 - To protect the lands and taxpayers of Idaho



House Bill H-141 (continued)

- Regulating surface impacts of underground mines
- Allowing cost recovery
- Incorporating water treatment and post-closure activities in reclamation plans, as needed
- Requiring that all reclamation tasks in a plan be completed and covered by financial assurance
- Estimating actual cost of reclamation and post-closure activities;
- Allowing additional types of financial assurance, such as corporate guarantees and trusts
- Reviewing every plan at least once every five years



Reclamation Fund Changes from H-141

Changes were primarily the result of definitions changes

16. ~~Surface Mining Act~~ Mined Land Reclamation Act. Title 47, Chapter 15, Idaho Code, and IDAPA 20.03.02, “Rules Governing ~~Exploration and Surface Mining in Idaho~~ mined land reclamation.”
(~~3-16-04~~)()



Reclamation Fund Changes from H-141

~~06. **Financial Assurance.** Performance bonding submitted to ensure reclamation of disturbed acres or affected land or ensure payments under a mineral lease. (3-16-04)~~

18. ~~Traditional Performance Bond~~ Financial Assurance.
Cash, corporate surety bond, collateral bond, or letter of credit as described in the ~~Dredge Mining Act, the Surface Mining Act and the Mineral Leasing Act~~, or a mineral lease. Financial assurance as defined in the mined land reclamation act. ~~(3-16-04)~~(____)



Remove Mandatory Participation

20.03.03.016. REQUIRED PARTICIPANTS.

Any ~~Operators of mineral leases, surface mines, and placer mines,~~ with the exception of the operations mines and operators listed in Section 017 of these rules, shall be required to provide alternative financial assurance through the Reclamation Fund to assure the reclamation of disturbed acres or affected lands. Financial assurance pursuant to the Reclamation Fund Act ~~and this rule shall be~~ is in lieu of ~~traditional performance bonds~~ other types of financial assurance as set forth in the Surface Mining mined land reclamation Act, the mineral leasing act, or the Dredge Mining Act, ~~or a mineral lease.~~ (3-16-04)()



Remove Mandatory Participation

20.03.03.017. INELIGIBLE MINES OR OPERATORS

13. Operators Providing Acceptable Financial Assurance. An operator who provides proof of financial assurance that is greater than or equal to the minimum dollar per acre for each acre of disturbance at a mine.

Note: Land Board would periodically update the minimum dollar per acre amount per proposed language in 20.03.03.018.01



Allow Additional Participation

20.03.03.017. Ineligible Operations or Operators

- 1. Forty Acre Limit.** A surface or placer mine or mineral lease with greater than forty (40) acres of un-reclaimed disturbed acres or affected lands may not provide alternative financial assurance through the Reclamation Fund. Un-reclaimed disturbance is that which does not meet the final traditional performance bond release criteria in the Dredge Mining Act, the Surface Mining Act or a mineral lease.
- 2. One Hundred Thousand Dollar Limit.** Operators of mines with an estimated reclamation cost in excess of one hundred thousand dollars (\$100,000), regardless of surface acreage.
(Needs to be updated to reflect current costs of reclaiming up to 40 acres of disturbance $40 \text{ acres} \times \$5,500/\text{acre} = \text{new limit of } \$220,000$)



Allow Additional Participation

- To start IDL contracted an Actuarial Analysis of the current conditions
- Actuarial analysis is a type of asset to liability analysis used by financial companies to ensure they have the funds to pay required liabilities
- Actuarial analysis uses statistical models to manage financial uncertainty by making educated predictions about future events. Insurance companies, banks, government agencies and corporations use actuarial analysis to design optimal insurance policies, retirement plans and pension plans.
- For the Reclamation Fund, IDL uses an actuarial analysis to recommend to the Board a minimum fund balance.



Allow Additional Participation

Scenarios	Frequency and Severity		
	Low	Medium	High
Average Annual Loss	\$209,177	\$445,226	\$693,266
75 % Confidence	\$309,000	\$672,000	\$1,031,000
90 % Confidence	\$545,100	\$1,135,200	\$1,682,200
95 % Confidence	\$703,100	\$1,453,300	\$2,199,200

- To ensure an adequate balance is maintained, the Department recommended that the Land Board adopt a minimum balance of \$1,682,000. The Land Board approved this recommendation in November of 2018
- Currently the Reclamation Fund has a balance just over \$2 million



Allow Additional Participation

- Analysts look at if the fund was expanded to 50, 60, 80, and 100 acres.

Scenarios	Acreage Limits			
	Less than 50	Less than 60	Less than 80	Less than 100
Average Annual Loss	\$1,105,549	\$1,232,391	\$1,299,485	\$1,411,996
75 % Confidence	\$1,645,250	\$1,798,000	\$1,196,250	\$2,058,000
90 % Confidence	\$2,832,400	3,235,100	\$3,356,000	\$3,692,600
95 % Confidence	\$3,588,300	\$4,128,700	\$4,349,500	\$4,861,350



Allow Additional Participation

- Unable to raise acreage participation to a hard number in rule
- Propose instead, setting a hard ceiling of 80 acres of disturbance and \$440,000 maximum reclamation cost liability per revised IDAPA 20.03.03.018.
- Allow the Board to adjust the “Actual Allowable Disturbance” and “Actual Allowable Cost” as defined in 20.03.03.10 definitions 19 and 20 and described in 20.03.03.18
- These limits could then be raised as the fund continues to grow if routine actuarial analysis supports it. Which would allow additional participation.



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2019 Rulemaking Schedule

June 12-20, 2019	Negotiated rulemaking meetings:
June 28, 2019	Comments for 1 st Draft Rule Text Due to IDL (due by close of business)
July 5 th , 2019	2 nd Draft Rule Text posted to IDL negotiated rulemaking webpage
July 15, 2019	Last day to submit comments for negotiated rulemaking
July 19, 2019	IDL submits proposed rule text to Division of Financial Management
Aug. 2, 2019	IDL submits <i>Notice of Proposed Rule</i> for September Administrative Bulletin
Sept. 4, 2019	Administrative Bulletin publication date of proposed rules
Sept. 16, 2019	Public hearing in Boise on proposed rules
Sept. 25, 2019	Last day to submit comments on proposed rules
Oct. 15, 2019	IDL presents to Land Board for approval to adopt rules as pending
2020 legislative session: Legislative review of pending rules	



2019 Rulemaking

**For schedule changes, Draft Rule Text and comments received by the department visit IDL's rulemaking webpage at:

www.idl.idaho.gov/rulemaking/20.03.03-2019

**Comment at IDL website or at the email address –

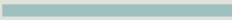
rulemaking@idl.idaho.gov

**To be added to the Department's email notification and distribution list for this contact rulemaking@idl.idaho.gov

**Additional questions on the rulemaking process contact Todd Drage at 208-334-0247



THANK YOU



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www.idl.idaho.gov

