

STATE BOARD OF LAND COMMISSIONERS

October 17, 2019

Regular Agenda

Subject

Omnibus Rulemaking – Pending Rules

Question Presented

Shall the Land Board adopt the Department's amended proposed rules as pending rules and approve the Department's Omnibus Rulemaking Notices for Adoption of Pending Rules and Fee Rules.

Background

All existing administrative rules in Idaho expire each year on July 1 unless reauthorized by the legislature. The legislature adjourned the 2019 legislative session without reauthorizing all rules prior to the end of session. Executive administrative action was required to address this unique circumstance and to ensure existing rules stayed in effect after July 1, 2019.

The governor and his staff, in coordination with the Office of the Attorney General, directed all state agencies to republish rules concurrently, as both temporary and proposed, in a special edition of the Idaho Administrative Bulletin.

As part of this reauthorization process, agencies were directed to implement the governor's Executive Order No. 2019-02 Red Tape Reduction Act (Attachment 1). The Red Tape Reduction Act requires agencies to "undertake a critical and comprehensive review of the agency's administrative rules to identify costly, ineffective, or outdated regulations" for elimination by the end of fiscal year 2021.

At its regular meeting on May 21, 2019, the Land Board approved the Idaho Department of Lands' (Department) Notices of Omnibus Rulemaking and authorized the Department to proceed with temporary and proposed rulemaking (Attachment 2). The temporary rules became effective on June 30, 2019, to ensure there was no gap with the expiring rules, and will continue in effect only to the end of the 2020 legislative session. To ensure the rules remain in effect beyond that, the 2020 legislature will need to approve pending rules.

Discussion

After the Department's administrative rules were published as temporary and proposed rules in the June 19, 2019 Administrative Bulletin, hearing requests were received for IDAPA 20.02.01, *Rules Pertaining to the Idaho Forest Practices Act*, and for IDAPA 20.03.01, *Rules Governing Dredge and Placer Mining Operations in Idaho*. In mid-August, two public hearings were conducted on IDAPA 20.02.01, and three public hearings were conducted on

IDAPA 20.03.01. A summary of oral and written comments for both rule chapters were presented at the September 13, 2019 Land Board meeting (Attachments 3 and 4). The Department did not identify any needed changes to either rule chapter based on the public hearings or the written comments received.

Consistent with the Red Tape Reduction Act, other housekeeping and minor edits were made to many of the Department's rules, such as correcting spelling errors and punctuation, fixing outdated references, eliminating definitions not used in the specific rule chapter, and other non-substantive changes. All minor housekeeping edits were reviewed by the Office of the Attorney General.

Attachments 5 and 6 are the Notices of Omnibus Rulemaking for adoption of the Department's pending rules and pending fee rules.

Recommendation

Adopt the Department's amended proposed rules as pending rules and approve the Department's Notices of Omnibus Rulemaking for adoption of pending rules and pending fee rules.

Board Action

A motion was made by Attorney General Wasden that the Board adopt the Department recommendation that is adopt the Department's amended proposed rules as pending rules and approve the Department's Notices of Omnibus Rulemaking for adoption of pending rules and pending fee rules. Controller Woolf seconded the motion. The motion carried on a vote of 4-0.

Attachments

1. Executive Order No. 2019-02 Red Tape Reduction Act
2. May 21, 2019 Approved Board Memo – Omnibus Temporary and Proposed Rulemaking
3. September 13, 2019 Board Memo – Summary of Comments Received on Proposed Rules
IDAPA 20.02.01, *Rules Pertaining to the Idaho Forest Practices Act*
4. September 13, 2019 Board Memo – Summary of Comments Received on Proposed Rules
IDAPA 20.03.01, *Rules Governing Dredge and Placer Mining Operations in Idaho*
5. Notice of Omnibus Rulemaking – Adoption of Pending Rule
6. Notice of Omnibus Rulemaking – Adoption of Pending Fee Rule





*Executive Department
State of Idaho*

*State Capitol
Boise*

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2019-02

RED TAPE REDUCTION ACT

WHEREAS, Idaho's strong economic growth is vital to ensuring our citizens and our children are able to find great jobs and raise their families in Idaho; and

WHEREAS, excessive regulation at all levels of government can impose high costs on businesses, inhibit job growth, and impede private sector investment; and

WHEREAS, burdensome regulations continue to be a hardship for many small business owners; and

WHEREAS, Idaho's Administrative Code has grown to 736 chapters, totaling more than 8,200 pages, and containing more than 72,000 restrictions.

NOW, THEREFORE, I, Brad Little, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution and laws of this state, do hereby order that:

1. *Each executive department of the state of Idaho as set forth in section 67-2402, Idaho Code, including each division, bureau or self-governing agency that has the authority to issue administrative rules shall designate an existing employee of the agency as its Rules Review Officer (RRO) to undertake a critical and comprehensive review of the agency's administrative rules to identify costly, ineffective, or outdated regulations.*
 - a. *Agencies must submit the name and contact information of the RRO to the Division of Financial Management no later than March 1, 2019.*
2. *Through the end of fiscal year 2021, prior to proposing a new rule for publication in the Idaho Administrative Bulletin, each executive department of the state of Idaho as set forth in section 67-2402, Idaho Code, including each division, bureau or self-governing agency, shall submit to the Division of Financial Management:*
 - a. *A business/competitiveness impact statement that identifies the impact the proposed rule will have on individuals and small businesses; and*

- b. At least two existing rules to be repealed or significantly simplified, or a statement clearly and thoroughly stating why existing rules cannot be simplified or eliminated.
- 3. The Division of Financial Management shall produce an annual report to the Governor's office outlining the progress made in eliminating burdensome regulations and streamlining state government.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this 21st day of January, in the year of our Lord two thousand and nineteen.

A blue ink signature of Brad Little.

BRAD LITTLE
GOVERNOR

A blue ink signature of Lawrence Denney.

LAWERENCE DENNEY
SECRETARY OF STATE

STATE BOARD OF LAND COMMISSIONERS

May 21, 2019

Regular Agenda

Subject

Omnibus Temporary and Proposed Rulemaking

Question Presented

Shall the Board approve the Notices of Omnibus Rulemaking and authorize the Department to proceed with omnibus temporary and proposed rulemaking through executive administrative action to ensure administrative rules remain in effect after July 1.

Background

All existing administrative rules in Idaho expire each year on July 1 unless reauthorized by the legislature. The legislature adjourned the 2019 legislative session without reauthorizing all rules prior to the end of session. Executive administrative action is required to address this unique circumstance and to ensure existing rules remain in effect after July 1.

The governor and his staff, in coordination with the Office of the Attorney General, directed all state agencies to republish rules concurrently, as both temporary and proposed rules, in a special edition of the Idaho Administrative Bulletin in June 2019. The temporary rules will have an effective date of June 30, 2019, to ensure there is no gap with the expiring rules. The Office of the Attorney General and Idaho State Board of Land Commissioners must first approve all Idaho Department of Lands (Department) rules reauthorized through this process. Reauthorized rules are also subject to legislative review during the 2020 legislative session.

As part of this reauthorization process, agencies have been directed to let expire chapters or sections of rule in line with the governor's Executive Order No. 2019-02 Red Tape Reduction Act (Attachment 1). The Red Tape Reduction Act requires agencies to "undertake a critical and comprehensive review of the agency's administrative rules to identify costly, ineffective, or outdated regulations" for elimination by the end of fiscal year 2021.

Discussion

The Department has undertaken a comprehensive review of all existing administrative rules and identified the chapters under IDAPA 20, rules of the Idaho Department of Lands, to adopt and republish as temporary and proposed rules, as well as those to let expire. The notices for omnibus fee and non-fee rulemaking contain descriptive summaries for these actions (Attachments 2 and 3). Rationale has been documented for any rule chapter or section proposed for elimination (Attachment 4). The Office of the Attorney General has

reviewed all rules identified for reauthorization or elimination, as well as the omnibus rulemaking notices and associated rationale.

At a May 8, 2019 special meeting, the Idaho Oil and Gas Conservation Commission approved for reauthorization or elimination the rules pertaining to the conservation of oil and natural gas in the state of Idaho, as proposed by the Department in coordination with the Office of the Attorney General.

Recommendation

Approve the Notices of Omnibus Rulemaking and authorize the Department to proceed with omnibus temporary and proposed rulemaking through executive administrative action to ensure administrative rules remain in effect after July 1.

Board Action

A motion was made by Attorney General Wasden that the Board approve the Department recommendation, that is approve the Notices of Omnibus Rulemaking and authorize the Department to proceed with omnibus temporary and proposed rulemaking through executive administrative action to ensure administrative rules remain in effect after July 1. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

Attachments

1. Executive Order No. 2019-02 – Red Tape Reduction Act
2. Notice of Omnibus Rulemaking – Temporary and Proposed Fee Rulemaking
3. Notice of Omnibus Rulemaking – Temporary and Proposed Rulemaking
4. Rationale for Eliminating Rules of the Idaho Department of Lands



Summary of Comments Received on IDAPA 20.02.01, Rules Pertaining to the Idaho Forest Practices Act

	Rule Section	Comment	Response
1	Shade Rule	The rule was supported by all major forest landowner groups.	IDL agrees and committed to an adaptive rulemaking process that will meet Idaho Department of Environmental Quality (DEQ) water quality requirements while also providing riparian area forest management flexibility.
2	Shade Rule	The rule is effective at protecting and maintaining the water quality of Class I fish-bearing streams.	The DEQ Shade Effectiveness Study results will inform the validity of this statement.
3	Shade Rule	Idaho Conservation League (ICL), the Nez Perce Tribe, and the Environmental Protection Agency (EPA) have expressed concerns the current rule may not sufficiently protect water quality.	The goal of the 2014 shade requirement modification was to ensure that on average throughout Idaho no more than 10% reduction of shade would result from harvesting under the Class I Stream Protection Zone Relative Stocking harvest-options.
4	Shade Rule	Landowners can more efficiently and effectively manage forestlands under the current shade rule vs the past shade rule.	IDL agrees.
5	Shade Rule	The new shade rule is scientifically defensible and more enforceable.	IDL agrees.
6	Shade Rule	Premature to modify the Shade Rule prior to the results of the Shade Effectiveness Study.	IDL agrees.
7	Shade Rule	Support reauthorization of the current Shade Rule with no changes.	IDL agrees.
8	Shade Rule	ICL is concerned revisions to the shade rule will impede collaborative efforts to reduce hazardous fuels and improve forest health under Shared Stewardship.	Revision of any rule should not impede forest practices that meet or exceed the minimum standards required under IDAPA 20.02.01.

	Rule Section	Comment	Response
9	Shade Rule	Shade retention improvement is critical to meeting water quality standards for temperature.	EPA and Idaho DEQ have indicated that retaining shade over fish-bearing streams minimizes temperature increases that would degrade water quality for aquatic habitat.
10	Shade Rule	The rule premise is flawed because temperature is not directly considered.	Shade is a well-established proxy for temperature.
11	Shade Rule	Domestic use should be removed from the Class I Stream definition, because there is not a water quality temperature requirement for domestic use.	IDL is investigating water quality requirements for domestic use and other states' regulations regarding domestic use and forest practices.
12	Shade Rule	The rule is difficult and costly to implement.	The metrics for the rule are less difficult to determine and IDL offers implementation assistance to landowners. IDL added three Private Forestry Specialist positions at the time of rule passage to assist forest landowners.
13	Shade Rule	Landowners must hire specialized knowledge to implement the rule.	IDL offers implementation assistance to landowners free of charge and has provided hundreds of such assists since the rule was codified.
14	Shade Rule	The IDL added three additional Private Forestry Specialists to assist landowners.	This is correct.
15	Shade Rule	The rule is a disincentive to forest management and will result in conversion of land-use to use that is not subject to the shade rule.	The rule has resulted in more responsible management than in the past.
16	Shade Rule	Agricultural producers and developers are not required to provide shade for Class I streams.	IDL does not have regulatory authority for non-forest related practices in Idaho.
17	Shade Rule	The rule is based on a model and not actual conditions.	The rule is based on Idaho timber stand data and forestry community accepted tools for estimating shade from forest canopy.

	Rule Section	Comment	Response
18	Shade Rule	The rule should take into account the stream width.	Geo-morphology and hydrology for forest streams is very complex and adding additional metrics to the rule would make compliance for landowners extremely challenging.
19	Shade Rule	The rule prevents managing for forest health.	IDL can assist landowners to develop a site-specific, riparian, management plan to address unique situations arising from insect, disease or other tree damage issues.
20	Shade Rule	The rule should take into account hardwoods that provide shade.	The rule counts all trees with diameter at breast height equal to or greater than 4 inches regardless of species.
21	Shade Rule	The shade rule is unconstitutional.	The State of Idaho Attorney General's Office has prepared an analysis confirming constitutionality of the rule.
22	Shade Rule	There is no clear authorization in the Forest Practices Act for the shade rule	Idaho Code § 38-1304(1)(a) provides authorization for the protection of fish habitat.
23	Shade Rule	Changes in the shade rule are barred by the act itself.	Idaho Code § 38-1305(2)(a) provides for a Forest Practices Advisory Committee to assist IDL and the Land Board in rule promulgation.
24	Shade Rule	The rule is a taking of private property/landowner compensation is required.	The State of Idaho Attorney General's Office has prepared an analysis to address comment. Their overall conclusion is the Shade Rule does not constitute a taking under the Idaho Constitution.
25	Shade Rule	Enforcing the shade rule on private landowners provides only an incremental benefit.	Idaho Code § 38-1304(1)(a) provides for the protection of fish habitat, regardless of ownership.
26	Shade Rule	Small landowners are proportionally affected more than large landowners.	Large landowners often have more acreage in the SPZ, higher harvest operating costs and costs for infrastructure development.
27	Shade Rule	None of us think there should be no riparian management rules at all.	This supports the proposed rule. If the Shade Effectiveness Study shows need for further shade rule amendment, IDL will work with FPAAC to develop appropriate rule changes.

	Rule Section	Comment	Response
28	General	Landowners can do a site-specific plan, and utilize the variance process within the rules, for unique situations.	This is correct.
29	General	Other portions of the Forest Practices Act indicate the act is purely voluntary and cooperative.	Idaho Code § 38-1304(1) provides for the adoption of rules that are minimum standards.
30	General	The legislature clearly indicated flexibility in reforestation.	Idaho Code § 38-1312(1) indicates the act does not prevent the conversion in use of forest land, but does require compliance with the rules promulgated pursuant thereto.
31	General	The legislature intended to defer to private owner management decisions.	Idaho Code § 38-1304(1) provides for the adoption of rules that are minimum standards.

Summary of Comments Received on IDAPA 20.03.01, Rules Governing Dredge and Placer Mining Operations in Idaho

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	Rule Section	Comment	Response
1	001.02 Scope 012.01 Policy	The ability to accept or reject applications due to the "benefit in the public interest" may be contrary to the Idaho Constitution's protections of mining.	Idaho Code § 47-1312 has similar language as the rule, so the rule language is in keeping with the statute. The only mention of mines or mining in the Idaho Constitution is: Article 1, Section 14 (Right of Eminent Domain); Article XIII, Section 2 (Protection and Hours of Labor) and Section 4 (Child Labor in Mines Prohibited); Article XV, Section 3 (Water of Natural Stream - Right to Appropriate - State's Regulatory Power - Priorities). The Idaho Constitution does not appear to prohibit the regulation of mining activities.
2	010.25 Placer or Dredge Exploration Operation	012.28 has no definition of a placer exploration operation.	There is not a 012.28 section. However, the definition does exist in Subsection 010.25. In addition, Subsection 013.06 specifically exempts suction dredges with an intake diameter of 8 inches or less.
3	012.04 Compliance With Other Laws	A mine operator should not have to also acquire a Stream Channel Alteration Permit for dredge exploration or operation.	IDL has successfully implemented a Joint Review Process for over 30 years. This process resolves potential conflicts between overlapping authorities and jurisdictions. By far the majority of suction dredging in Idaho is classified as recreational, and is only regulated by IDWR through their Letter Permit.
4	013.02 Types of Operations	013.2.b does not mention suction devices that are hand operated, hand dug, electric, or motor driven pump suction on dry land and beaches.	Any hand-worked placer operation that exceeds 1/2 acre would require a permit. See Subsection 010.26 and 27. A complete list of all "motorized earth-moving equipment" is not practical or needed. Electric or motor driven pump suction devices used outside of a streambed would be subject to this rule. Up to 1/2 acre could be disturbed during exploration.
5	013.06 Suction Dredges	No reclamation should be required for suction dredging unless the stream channel is changed.	Subsection 013.06 states that these rules do not apply to the use of suction dredges with an intake diameter of 8 inches or less.

	Rule Section	Comment	Response
6	013.06 Suction Dredges	Riverbed mineral leasing rules should also not apply to suction dredges with an intake diameter of 8 inches or less.	The Riverbed Mineral Leasing Rule, IDAPA 20.03.05, is a completely separate rule that only applies to state-owned navigable rivers. The purpose of IDAPA 20.03.05 is to manage the leasing and extraction of minerals from these state-owned lands; it is not to regulate suction dredging. IDWR regulates recreational suction dredging under the Stream Channel Protection Act and rules. Under IDAPA 20.03.05, any use of a suction dredge with an intake diameter over 5 inches is a commercial endeavor, and the state must be compensated through rents and royalties. Rents go to the Public Trust dedicated fund used to manage state-owned navigable waters. Royalties go to the Public School Endowment Fund.
7	020.03 One-Half Acre Limit	Roads should not be included in the half-acre of disturbance threshold for exploration versus mining.	Roads are also included in the definitions of Disturbed Land in Idaho Code § 47-1313(c) and Placer or Dredge Exploration Operation in Idaho Code § 47-1313(j). Road is defined in Idaho Code § 47-1313(m) and only includes those ways constructed solely for access to a mining or exploration operation. This would not include a public road or a road used for multiple purposes. A rule change cannot modify the statute, so the requirement would remain. Roads are often a primary source of sediment pollution, so eliminating them from exploration activities may expose the state's waterways to increased pollution.
8	020.04 Reclamation Required	If a road already exists, does it get reclaimed back to a road?	As used in this rule, "Road" is defined in Idaho Code § 47-1313(m) and IDAPA 20.03.01.010.30. Road only includes those ways constructed solely for access to a mining or exploration operation, and they would normally be reclaimed. This would not include a public right of way or an access route used for multiple purposes.
9	021.01 Approved Reclamation Plan Required	A permit from a federal agency supersedes a state permit and makes the state permit illegal.	This is incorrect. The Idaho Supreme Court has affirmed the applicability of state regulations on federal lands. See State ex rel. Andrus v. Click, 97 Idaho 791, 554 P.2d 969 (1976).

	Rule Section	Comment	Response
10	021.01 Approved Reclamation Plan Required	Are existing mining operations grandfathered?	The Idaho Dredge and Placer Mining Protection Act was passed by voter initiative in 1954. The rules apply to placer and dredge mining activity conducted from 1955 to the present.
11	021.03.a Incomplete Applications	If landowner signature is required, will the Forest Service sign the application?	The Forest Service will sign as the landowner. Typically, this occurs after they have gone through their NEPA analysis, and before the Land Board reviews the permit. IDL reviews the application package with the Forest Service and other state agencies to ensure that one plan meets all the agencies' requirements.
12	021.04 Requirements of Maps	7.5 minute maps are no longer sold, so are they still required?	As stated in this subsection, an equivalent map may be used. Several digital elevation models are available that mimic the 7.5 minute topographic maps.
13	021.04.g Requirements of Maps	The reclamation section appears to be hiding the requirement for filtering the output of a suction dredge.	All suction dredging with an intake diameter of 8 inches or less does not require a permit under these rules. For dredges with an intake diameter greater than 8 inches, the rule is very specific about the application requirements for describing filtration.
14	022.04 Interagency Comments	Requiring a miner to fill out a permit for all state and federal agencies to dig a hole smaller than 1/2 acre will require too much review time. The operator would spend all their time filling out forms each year.	If the cumulative disturbance is 1/2 acre or less, then no permit is needed. If the cumulative disturbance will be over 1/2 acre, then the operator should develop one plan to mine through a project area. The plan should meet the requirements of all permitting agencies, and then the agencies will review it at the same time. The plan could include keeping the unreclaimed disturbance down to a small level, like 1/2 acre, in order to satisfy the Forest Service if needed. Then only one plan review is needed for the entire property. While annual inspections may be made, no further plan reviews should be required.

	Rule Section	Comment	Response
15	022.05 Stream Alteration Permits	IDAPA 20.03.01.022.05 should exempt suction dredges with an intake diameter of 8 inches or less.	These rules do not apply to the use of suction dredges with an intake diameter of 8 inches or less. See Subsection 013.06, Applicability, Suction Dredges.
16	022.06 Water Clarification	Will water quality be tested at high water or low water? Water is already muddy at high water, and distance from the mining project may also affect results.	In general, the water quality standards cannot be exceeded regardless of the condition of the receiving water. If discharge is direct to surface waters, then a stormwater permit or Idaho Pollution Discharge Elimination System permit may also be needed. The potential need for these permits will be determined through the Joint Review Process if a permit is processed under this rule. It is recommended that an operator contact EPA or IDEQ in advance to inquire about their permit requirements. Those agencies' needs can then be incorporated into the application.
17	022.07 Permit Denial Authority	IDAPA 20.03.01.022.07 should clarify that suction dredging is not covered by this rule because suction dredging cannot cause permanent damage to a stream channel.	Subsection 013.06 states that these rules do not apply to the use of suction dredges with an intake diameter of 8 inches or less. Suction dredging that does not follow the IDWR Letter Permit can damage a stream channel. The banks of rivers and streams are often unconsolidated gravel that is subject to erosion. Stacking dredge spoils or undermining stream banks can alter the flow of a stream and cause bank erosion. Stripping vegetation from streambanks can also cause bank erosion.
18	022.10 Permit Offering	Should an operator submit 20 applications, get approval for the first one right away, and then keep working on the other applications so he can continuously work on mining?	If the cumulative disturbance is 1/2 acre or less, then no permit is needed from IDL. If the cumulative disturbance will be over 1/2 acre, then the operator should develop one plan to mine through a project area. The plan could include keeping the unreclaimed disturbance down to a small level, like 1/2 acre, in order to satisfy the Forest Service if needed. Then only one plan review is needed for the entire property. While annual inspections may be made, no further plan reviews should be required.

	Rule Section	Comment	Response
19	026 Deviation from an Approved Permit	If a miner digs 2 feet outside of a designated boundary, he should be able to get approval from an inspecting agency without going through the amendment process.	If a plan is developed for an entire mine site, this can easily be accommodated if all the excavation occurs within the permit boundary and does not cause instability of the excavated slopes.
20	050 Termination of a Permit	Can the ending time of a permit be indefinite?	If mining operations are continuous and bonding is kept up to date, then the permit never expires. If mining does not commence within two years of permit approval, then it may be cancelled as per Paragraph 050.02.b. If mining or reclamation operations have not occurred for one year, then they are presumed to have ceased and reclamation must begin within the following year. A deferral of the final reclamation may be requested. See Subsection 040.16 for more details.
21	051.01.a	No mention is made of BLM lands for inspection fees.	Correct. Placer permits on BLM lands would be assigned a \$250 inspection fee. Only operations on USFS land have a \$100 inspection fee.
22	060.02 Mining Withdrawals	Withdrawn lands and waterbodies raises concern over whether or not these lands are within the jurisdiction of federal land managers. Mineral development should proceed on federal lands that are more valuable for such mineral deposits due to the strategic national interests.	The list of waterbodies withdrawn from mineral entry by statute or Land Board action is available here: https://www.idl.idaho.gov/lakes-rivers/riverbed/withdrawn-rivers_rev.pdf . All of these waterbodies are considered navigable by the State of Idaho, and are therefore owned by the State of Idaho. At the current time, only garnet and gold are being mined from placer deposits in Idaho. Neither one of these commodities is considered to be a strategic mineral by the U.S. Government. The list of strategic minerals can be found here: https://www.usgs.gov/news/interior-releases-2018-s-final-list-35-minerals-deemed-critical-us-national-security-and
23	General	Is IDL hiring mine inspectors? With the thousands of mining claims in Idaho, an estimated 500 inspectors are needed with a budget of over \$20 million.	IDL does not inspect each mining claim in Idaho. Only mining sites with active dredge and placer permits are regularly inspected. 28 permits are currently active. Jobs are posted on the state's website here: https://www.idaho.gov/jobs/find-a-job/

	Rule Section	Comment	Response
24	General	Mining districts should be contracted for inspections.	Inspections should be carried out by trained staff knowledgeable in IDL's program. Hiring is governed by the state hiring process, and mining districts have no statutory authority for conducting inspections.
25	General	Is a mining permit needed to dig a basement or drill a well on a patented claim?	General construction and water well development on a patented claim does not require a permit from IDL. If the construction takes on the nature and appearance of a mining operation, then a permit or reclamation plan may be required.
26	General	Why can't miners fill in abandoned mines on Forest Service lands and get paid for it?	IDL does have an Abandoned Mine Lands program, and IDL has done reclamation projects on Forest Service lands through cooperative agreements with them. IDL is bound by our agency's contracting guidelines and the state procurement processes. All contracts over a certain dollar amount must be advertised for bid, and the lowest qualifying bid must be selected. Insurance and other requirements exist for contractors hired by IDL. If an operator is qualified to bid on these projects and wants to be contacted for future reclamation projects, they should contact the local IDL office.
27	General	The rulemaking timeframe is very compressed and does not give much time for comment and analysis.	The proposed rule does not modify the rule that was in place prior to June 29, 2019. It is the same rule approved during the last legislative session. The compressed timeframe is due to the omnibus rulemaking schedule developed in response to the lapse of rules on July 1.
28	General	Recreational Mining should continue to be allowed.	Recreational Mining is generally not regulated by this rule. Suction dredges with an intake diameter of 8 inches or less are regulated by IDWR under the Stream Channel Protection Act and associated rules, not by IDAPA 20.03.01. See Subsection 013.06.
29	General	More restrictions on sluicing and dredging is not needed.	The proposed rule does not add any additional restrictions to the rule that was in place prior to June 29, 2019. It is the same rule approved during the last legislative session. This rule also does not apply to recreational suction dredging with an intake diameter of 8 inches or less, which is the majority of the operations in the state.

	Rule Section	Comment	Response
30	General	The rules should acknowledge that suction dredging does not alter streams and the Stream Channel Protection Act should not apply to suction dredging.	IDAPA 20.03.01 only regulates the use of suction dredges with an intake diameter over 8 inches. No applications for this type of activity has been submitted in at least 25 years. IDL has observed the deleterious effects of recreational suction dredging (intake diameter smaller than 5 inches) in smaller streams where material was piled up to block the flow of a stream, vegetation was stripped from the banks, and the banks were undermined by suction dredging. Those activities are in violation of the Letter Permit used by IDWR for recreational suction dredging, which suggests that this activity does in fact need to be regulated.
31	General	Permits should not be required unless the operation involves stream changes or pollution above what naturally occurs and has occurred in the past.	Permits are required to ensure that the affected lands are reclaimed. Exploration does not require a permit under these rules if kept to a disturbance of 1/2 acre or less, and all suction dredging with an intake diameter of 8 inches or less does not require a permit under these rules.
32	General	If reclamation is successful, can the bond be applied for succeeding projects?	If a portion of one mine is reclaimed, then the bond could be applied to disturbance on additional parts of the same mine. Separate mines can be covered with one blanket bond, but the amount of bond allocated to each mine must be specified. If the amount allocated to each mine changes, then the allocation modification must be documented.
33	General	If a bond is required by the BLM and Forest Service, does IDL also require a bond?	IDL can recognize a federal bond if it meets the requirements of Idaho Code § 47-13.
34	General	Operators with at least 5 successful mine reclamations should be given preference for IDL reclamation projects. A list of good miners could be contacted to see if they wanted to perform the reclamation before other contractors are notified.	IDL is bound by our agency's contracting guidelines and the state procurement processes. All contracts over a certain dollar amount must be advertised for bid, and the lowest qualifying bid must be selected. Insurance and other requirements exist for contractors hired by IDL. If an operator is qualified to bid on these projects and wants to be contacted for future reclamation projects, they should contact the local IDL office.

	Rule Section	Comment	Response
35	General	IDWR is inhibiting development of a riverbed mineral lease, so compliance with IDWR's rules should not be required by the riverbed mineral leasing rules.	Riverbed mineral leasing is governed by IDAPA 20.03.05. Money is not the only factor used by IDL to manage riverbed mineral development. The river resources are subject to the Public Trust Doctrine, and are used by many other segments of the population. As stated in IDAPA 20.03.05 "The Board of Land Commissioners is delegated discretionary power to regulate and control the use or disposition of lands in the beds of navigable lakes, rivers, and streams, to the natural or ordinary high water mark thereof, so as to provide for their commercial, navigational, recreational or other public use;" If IDWR believes that a proposed mining activity jeopardizes other uses of the river, then they should deny a permit. An operator should be able to discuss the mining proposal with them and modify it to address their concerns. IDAPA 20.03.01, however, has no bearing on this issue.
36	General	Federal and state agencies reviews and bonding should be streamlined and better coordinated.	If a project requires a permit from IDL, then IDL does coordinate with other state and federal agencies on the permit reviews. Both federal and state agencies accept proof of bonding with the other agency if it is one of the standard bond types (cash, CD, Letter of Credit, surety) and meets both agencies' requirements. The bond amount will be agreed upon by the agencies prior to the permit being reviewed by the Land Board.

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

DOCKET NO. 20-0000-1900

NOTICE OF OMNIBUS RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and the Idaho State Board of Land Commissioners and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective upon the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the approved or non-rejected portions of the rule become final and in full force and effect upon adoption of the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 38-115, 38-132, 38-402, 38-1304, 58-104, 58-105, and 67-5201 et seq., Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

This rulemaking was prompted by the expiration of the rules. This pending rule adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 20, Rules of the Idaho Department of Lands:

IDAPA 20

- 20.01.01, Rules of Practice and Procedure Before the State Board of Land Commissioners
- 20.02.01, Rules Pertaining to the Idaho Forest Practices Act
- 20.04.01, Rules Pertaining to Forest Fire Protection

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. Minor edits to the proposed rule were prompted by the Red Tape Reduction Act and the Department's continued efforts to clarify and streamline its rules. The complete text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), Vol. 19-6SE, pages 4099–4159.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Amy Johnson at (208) 334-0255 or rulermaking@idl.idaho.gov.

DATED this 17th day of October, 2019.

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IDAPA 20 – IDAHO DEPARTMENT OF LANDS

DOCKET NO. 20-0000-1900F

NOTICE OF OMNIBUS RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency, the Idaho State Board of Land Commissioners, the Idaho Oil and Gas Conservation Commission (as to IDAPA 20.07.02), and the Idaho Board of Scaling Practices (as to IDAPA 20.06.01), and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to:

- Sections 38-132 and 38-402, Idaho Code;
- Title 38, Chapter 12, including Section 38-1208, Idaho Code;
- Title 47, Chapters 3, 7, 8, 15, 16 and 18, including Sections 47-314(8), 47-315(8), 47-328(1), 47-710, 47-714, and 47-1316, Idaho Code;
- Title 58, Chapters 1, 3, 6, 12 and 13, including Sections 58-104, 58-105, 58-127, and 58-304 through 58-312, Idaho Code;
- Title 67, Chapter 52, Idaho Code;
- Article IX, Sections 7 and 8 of the Idaho Constitution; and
- The Equal Footing Doctrine (Idaho Admission Act of July 3, 1890, 26 Stat. 215, Chapter 656).

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed fee rule and the text of the pending fee rule with an explanation of the reasons for the change.

This rulemaking was prompted by the expiration of the rules. This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 20, Rules of the Idaho Department of Lands:

IDAPA 20

- 20.02.14, Rules for Selling Forest Products on State-Owned Endowment Lands
- 20.03.01, Rules Governing Dredge and Placer Mining Operations in Idaho
- 20.03.02, Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities
- 20.03.03, Rules Governing Administration of the Reclamation Fund
- 20.03.04, Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho
- 20.03.05, Riverbed Mineral Leasing in Idaho
- 20.03.08, Easements on State Owned Lands
- 20.03.09, Easements on State Owned Submerged Lands and Formerly Submerged Lands
- 20.03.13, Administration of Cottage Site Leases on State Lands
- 20.03.14, Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases
- 20.03.15, Rules Governing Geothermal Leasing on Idaho State Lands
- 20.03.16, Rules Governing Oil and Gas Leasing on Idaho State Lands
- 20.03.17, Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands
- 20.04.02, Rules Pertaining to the Idaho Forestry Act and Fire Hazard Reduction Laws

- 20.06.01, Rules of the Idaho Board of Scaling Practices
- 20.07.02, Rules Governing Conservation of Oil and Natural Gas in the State of Idaho

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. Minor edits to the proposed rule were prompted by the Red Tape Reduction Act and the Department's continued efforts to clarify and streamline its rules. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), Vol. 19-6SE, pages 4160–4375.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules.

- 20.02.14 – Stumpage payments and associated bonding for removal of state timber from endowment land pursuant to timber sales. This charge is being imposed pursuant to Sections 58-104, 58-105 and 58-127, Idaho Code.
- 20.03.01 – Application fee, amendment fee, assignment fee, and inspection fee for all dredge and placer permits in the state of Idaho. This fee is being imposed pursuant to Section 47-1316, Idaho Code.
- 20.03.02 – Application fee for permanent closure plans and assignment fee for reclamation plans and permanent closure plans. This fee is being imposed pursuant to Sections 47-1506(g) and 47-1508(f), Idaho Code.
- 20.03.03 – Annual payment for Reclamation Fund participation. This charge is being imposed pursuant to Section 47-1803, Idaho Code.
- 20.03.04 – Application fees for encroachment permits and deposits toward the cost of newspaper publication. This fee is being imposed pursuant to Sections 58-127 and 58-1307, Idaho Code.
- 20.03.05 – Fees for applications, advertising applications, exploration locations, and approval of assignments for riverbed mineral leasing. This fee is being imposed pursuant to Section 47-710, Idaho Code.
- 20.03.08 – Application fee, easement consideration fee, appraisal costs, and assignment fee for easements on state-owned lands. This fee is being imposed pursuant to Sections 58-127, 58-601, and 58-603, Idaho Code.
- 20.03.09 – Administrative fee, appraisal costs, and assignment fee for easements on state-owned submerged lands and formerly submerged lands. This fee is being imposed pursuant to Sections 58-104, 58-127 and 58-603, Idaho Code.
- 20.03.13 – Annual rental payment paid to the endowment for which the property is held. This charge is being imposed pursuant to Section 58-304, Idaho Code.
- 20.03.14 – Lease application fee, full lease assignment fee, partial lease assignment fee, mortgage agreement fee, sublease fee, late rental payment fee, minimum lease fee, and lease payment extension request fee on state endowment trust lands. This fee is being imposed pursuant to Section 58-304, Idaho Code.
- 20.03.15 – Application fee, assignment fee, and late payment fee for geothermal leases on state-owned lands. This fee is being imposed pursuant to Section 58-127, Idaho Code.
- 20.03.16 – Exploration location permit fee, nomination fee, and processing fee for oil and gas leases on endowment lands. This fee is being imposed pursuant to Section 58-127, Idaho Code.
- 20.03.17 – Application fee, rental rate, and assignment fee for leases on state-owned submerged lands and formerly submerged lands. This fee is being imposed pursuant to Sections 58-104, 58-127 and 58-304, Idaho Code.
- 20.04.02 – Fee imposed upon the harvest and sale of forest products to establish hazard management performance bonds for the abatement of fire hazard created by a timber harvest operation, and fees imposed upon contractors for transferring fire suppression cost liability back to the State. This fee or charge is being imposed pursuant to Sections 38-122 and 38-404, Idaho Code.
- 20.06.01 – Scaling assessment fee paid to a dedicated scaling account for all scaled timber harvested within the state of Idaho; administrative fees for registration, renewal, and transfer of

- log brands; fees for testing and issuance of a temporary scaling permit, specialty scaling license, and standard scaling license; fee to renew a specialty or standard scaling license; and fee for a requested check scale involving a scaling dispute. This fee is being imposed pursuant to Section 38-1209, Idaho Code.
- 20.07.02 – Bonding for oil and gas activities in Idaho and application fees for seismic operations; permit to drill, deepen or plug back; multiple zone completions; well treatment; pits and directional deviated wells. This fee or charge is being imposed pursuant to Sections 47-315(5)(e) and 47-316, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Amy Johnson at (208) 334-0255 or rulemaking@idl.idaho.gov.

DATED this 17th day of October, 2019.

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