

**IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES  
IDAHO WATER RESOURCE BOARD**

**37.03.05 – MINE TAILINGS IMPOUNDMENT STRUCTURES RULES**

**DOCKET NO. 37-0305-2201**

**NOTICE OF INTENT TO PROMULGATE RULES –  
ZERO-BASED REGULATION NEGOTIATED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5220, Idaho Code, notice is hereby given that the Idaho Department of Water Resources and the Idaho Water Resource Board (“Agencies”) intend to repeal and promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Section(s) 42-1710 and 42-1714, Idaho Code. This action is consistent with [Executive Order 2020-01](#): Zero-Based Regulation, which directs agencies to review all administrative rules over the five-year period of 2021-2025 (completing review no later than sine die 2026).

**MEETING SCHEDULE:** A negotiated rulemaking meeting has been scheduled. Any additional meeting dates will be posted on the Agencies’ website at <https://idwr.idaho.gov/>.

<p><b>*PUBLIC MEETING*</b> <b>Friday, May 27, 2022 @ 9:30 a.m. (Mountain Time)</b></p>
<p><b>In Person: Idaho Dept. of Water Resources</b> <b>322 E Front St.</b> <b>Boise, ID 83720-0098</b> <b>(Meeting to be held at IDWR Office Conference Rooms B, C &amp; D, located on the 6<sup>th</sup> Floor of the University of Idaho Water Center)</b></p> <p><i>To sign up for attendance via telephone/videoconference, Contact Sarah Tschohl at 208-287-4815 or <a href="mailto:rulesinfo@idwr.idaho.gov">rulesinfo@idwr.idaho.gov</a> by April 27, 2022</i></p> <p><i>Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the agency web site at the following web address: <a href="https://idwr.idaho.gov/">https://idwr.idaho.gov/</a>.</i></p>

**METHOD OF PARTICIPATION:** Those interested in participating in the negotiated rulemaking process must either attend the above-scheduled meeting or identify themselves to the Agencies using the phone number and email address listed above in advance of the above-scheduled meeting. Upon conclusion of negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary. The summary will be made available to interested persons who contact the Agencies or, if the Agencies choose, the summary may be posted on the Agencies’ website listed above.

Should a reasonable number of persons respond to this notice, additional negotiated meetings may be scheduled, and all scheduled meetings shall be posted and made accessible on the Agencies’ website listed in this notice.

A lack of a sufficient number of responses to this notice of intent may result in the discontinuation of further informal proceedings. In either event, the agency has sole discretion in determining the feasibility of scheduling and conducting informal negotiated rulemaking and may proceed directly to formal rulemaking if proceeding with negotiated rulemaking is deemed infeasible.

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

In compliance with [Executive Order 2020-01](#), this rulemaking will review the Agency's Mine Tailings Impoundment Structures Rules (Mine Tailings Rule), IDAPA 37.03.05, and Safety of Dams Rules (Dam Safety Rule), IDAPA 37.03.05.

The Mine Tailings Rule establishes acceptable construction standards and governs IDWR's design and technical review of mine tailing and water impoundment structures. The Mine Tailings Rule also supports the collection of fees to review plans, drawings, and specifications pertaining to any mine tailings impoundment structure.

The Dam Safety Rule establishes acceptable standards for construction of dams and establishes guidelines for the safety evaluation of new or existing dams. The Dam Safety Rule applies to all new dams, to existing dams to be enlarged, altered, or repaired, and the maintenance of certain existing dams, as specifically provided in the rule. The Dam Safety Rule also establishes the collection of fees to review plans, drawings, and specifications pertaining to the construction, enlargement, alteration, or repair of small high-risk, intermediate, or large dams.

The Agency has reviewed these rules pursuant to the zero-based regulation process and is considering the repromulgation of these rules as a single rule chapter with substantive and procedural modifications.

The Agency has identified the following areas as potential changes from the existing Rules:

- Remove subsection rules contingent on whether any non-regulatory measures can be implemented in lieu of the rules;
- Simplify, condense, clarify, and modernize rule language; and
- Update rules, where necessary, to be consistent with current statutes.

**ASSISTANCE ON TECHNICAL QUESTIONS, MEETING ACCOMMODATIONS, SUBMISSION OF WRITTEN COMMENTS OR OBTAINING DRAFT COPIES:** For assistance on technical questions concerning this negotiated rulemaking, requests for special meeting accommodations or accessibility, or to obtain a preliminary draft copy of the rule text, contact Mathew Weaver, IDWR Deputy Director at (208) 287-4800.

DATED this 11th day of April, 2022.

Mathew Weaver, Deputy Director  
Idaho Department of Water Resources  
322 E. Front Street  
PO Box 83720  
Boise, ID 83720  
Phone: (208) 287-4800  
Fax: (208) 287-6700  
Email: [Mathew.weaver@idwr.idaho.gov](mailto:Mathew.weaver@idwr.idaho.gov)

**IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES  
IDAHO WATER RESOURCE BOARD**

**37.03.06 – SAFETY OF DAMS RULES**

**DOCKET NO. 37-0306-2201**

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DATED this 11th day of April, 2022.

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Idaho Department of Water Resources  
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Boise, ID 83720  
Phone: (208) 287-4800  
Fax: (208) 287-6700  
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