

Please Return Proof to OARC by NOON, Friday, March 29, 2024

IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES

37.03.02 – BENEFICIAL USE EXAMINATION RULES

DOCKET NO. 37-0302-2401

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

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment and input prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Section 42-1805(8), Idaho Code.

MEETING SCHEDULE: A negotiated rulemaking meeting has been scheduled. Any additional meeting dates will be posted on IDWR’s website at <https://idwr.idaho.gov/legal-actions/rules/idwr-rulemaking-2024-2025/beneficial-use-exam-rules/>.

PUBLIC MEETING
Monday, May 6, 2024 at 9:00 a.m. (MT)

In Person:
Idaho Dept. of Water Resources
322 E Front St.
Boise, ID 83720-0098
(Meeting to be held at IDWR Office Conference Rooms B, C & D,
located on the 6th Floor of the University of Idaho Water Center)

To sign up for attendance via telephone/videoconference,
Contact Jean Hersley at 208-287-4942 or jean.hersley@idwr.idaho.gov by May 3, 2024.

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: <https://idwr.idaho.gov/legal-actions/rules/idwr-rulemaking-2024-2025/beneficial-use-exam-rules/>.

The meeting site(s) will be accessible to persons with disabilities, if needed. Requests for accommodation must be made not later than five (5) days prior to the meeting to the agency address below.

METHOD OF PARTICIPATION: Persons wishing to participate in the negotiated rulemaking must either attend the above scheduled meeting in person, attend the scheduled meeting by telephone or video conference by identifying themselves to the Idaho Department of Water Resources (“IDWR”) using the phone number or email address listed above and request the participation information in advance, or submit written comments to rulesinfo@idwr.idaho.gov (please clearly identify the appropriate rule).

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusion reached during the negotiated rulemaking will be addressed in a written summary. The summary will be made available to interested persons who contact the agency or, if the agency chooses, the summary may be posted on the agency website.

Should a reasonable number of people respond to this notice, additional negotiated meetings may be scheduled, and all scheduled meetings shall be posted and made accessible on IDWR’s 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, IDWR has the sole discretion in determining the feasibility of scheduling and conducting informal negotiated rulemaking and may proceed directly to formal rulemaking in proceeding with negotiated rulemaking is deemed infeasible.

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

This rulemaking will review the “Beneficial Use Examination Rules of the Idaho Department of Water Resources,” IDAPA 37.03.02, consistent with [Executive Order 2020-01](#). This chapter governs the examination requirements necessary to consider and determine the extent of application of water to beneficial use accomplished under a water right permit, establishes the procedures and requirements for qualification to become a certified water right examiner appointed by the Director, and governs licensing examination fees which are used to offset costs incurred by IDWR in reviewing and determining the extent of beneficial use. IDWR reviewed these rules pursuant to the zero-based regulation process and is considering the re-promulgation of this chapter with substantive modifications.

IDWR identified the following areas as potential changes from the existing chapter:

- Simplify, condense, and modernize rule language;
- Remove obsolete or unnecessarily duplicative rule language;
- Address relevant statutes adopted or amended since 2012, including Idaho Code §§ 42-217, 42-218a, 42-219, 42-220, and 42-221; and
- Clarify rule language not adequately explained.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES: For assistance on technical questions concerning this negotiated rulemaking or to obtain a preliminary draft copy of the rule text (if available), contact rulesinfo@idwr.idaho.gov or Erik Boe, IDWR Rules Regulation Officer at (208) 287-4935. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the IDWR’s website at the following web address: <https://idwr.idaho.gov/legal-actions/rules/idwr-rulemaking-2024-2025/beneficial-use-exam-rules/>.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments on topics covered in the May 6, 2024 public meeting must be directed to rulesinfo@idwr.idaho.gov and must be delivered on or before May 17, 2024. Information regarding any additional public comment opportunities will be posted on IDWR’s website listed above.

DATED this 1st day of April, 2024.

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