

**Zero-Based Regulation
Prospective Analysis**

- Fill out entire form to the best of your ability, unless submitting a Notice to Negotiate only fill out 1, 2, and 5**

Agency Name: Idaho Water Resource Board and Idaho Department of Water Resources ("IDWR")

Rule Docket Number: Docket No. 37-0305-2201 (IDAPA 37.03.05 & IDAPA 37.03.06)

1. What is the specific legal authority for this proposed rule?

Statute Section (include direct link)	Is the authority mandatory or discretionary?
Idaho Code §§ 42-1710 and 42-1714	Mandatory
https://legislature.idaho.gov/statutesrules/idstat/Title42/T42CH17/	

2. Define the specific problem that the proposed rule is attempting to solve? Can the problem be addressed by non-regulatory measures?

The proposed rule establishes processes for regulating the construction, maintenance, operation, and removal of all dams, reservoirs, and mine tailings impoundment structures as required to ensure the protection of public safety. Refer to I.C. § 42-1710. The proposed rule shall also require the owner(s) of mine tailings impoundment structures to develop an “abandonment plan” that assures they leave the site in a “safe maintenance-free condition” upon their completion of mining operations. Refer to I.C. § 42-1714. Further, the proposed rule requires owners of mine tailings impoundment structures to provide to the Director of IDWR a “bond or other acceptable surety adequate to complete the abandonment plan if the owner abandons the [mining] site without conforming to the [abandonment] plan.” Id.

IDWR does not believe it can carry out the intent of Idaho Code regarding the regulation of dams, reservoirs, and mine tailings impoundment structures with only non-regulatory measures. However, IDWR will seek public comment on whether it can implement less or different regulatory measures to meet the intent of Idaho Code and ensure the protection of public safety. Initially, IDWR proposes negotiated rulemaking to combine the existing IDAPA 37.03.05 Mine Tailings Impoundment Structures Rule ("Mine Tailings Rule") and IDAPA 37.03.06 Safety of Dams Rule ("Dam Safety Rule") into a single rule and eliminate redundant or unnecessary existing rules.

3. How have other jurisdictions approached the problem this proposed rule intends to address?

a. Is this proposed rule related to any existing federal law?

Federal citation	Summary of Law (include direct link)	How is the proposed Idaho rule more stringent? (if applicable)
N/A	N/A	N/A

b. How does this proposed rule compare to other state laws?

State	Summary of Law (include direct link)	How is the proposed Idaho rule more stringent? (if applicable)
Washington	N/A	N/A
Oregon	N/A	N/A
Nevada	N/A	N/A
Utah	N/A	N/A
Wyoming	N/A	N/A
Montana	N/A	N/A
Alaska	N/A	N/A
South Dakota	N/A	N/A

c. If the Idaho proposed rule has a more stringent requirement than the federal government or the reviewed states, describe the evidence base or unique circumstances that justifies the enhanced requirement:

N/A

4. What evidence is there that the rule, as proposed, will solve the problem?

N/A

5. What is the anticipated impact of the proposed rule on various stakeholders? Include how you will involve stakeholders in the negotiated rulemaking process?

Category	Potential Impact
Fiscal impact to the state General Fund, any dedicated fund, or federal fund	Combining the current Mine Tailings Rule and the Dam Safety Rule, with proposed modifications, will have no impact to the state general fund, dedicated funds, or federal funds. Design review and construction inspection fees are controlled by statute rather than rule. Refer to I.C. § 42-1713. As a result, this negotiated rulemaking cannot affect the fees paid by dam and mine tailings impoundment structure owners (i.e., stakeholders). Related fees have not changed since at least 2004. IDWR plans to send notice of the negotiated rulemaking to owners of regulated dams and mine tailings impoundment structures, other state and federal agencies with related or overlying regulatory processes, and other interested parties who have expressed interest in dam safety and mine tailings impoundment structure regulation issues.
Impact to Idaho businesses, with special consideration for small businesses	Combining the current Mine Tailings Rule and the Dam Safety Rule should not impact Idaho businesses, including small businesses engaged in the construction, repair, or operation of regulated dams and mine tailings impoundment structures. Design review and construction inspection fees are established by statute, not rule. IDWR does not plan to include new fees or bonding rates, or changes to fees and bonding rates set by statute through this negotiated rulemaking.
Impact to any local government in Idaho	Combining the current Mine Tailings Rule and the Dam Safety Rule through the proposed negotiated rulemaking should have no impact on local governments in Idaho unless they construct, repair, or operate a regulated dam or mine tailings impoundment structure, in which case they will be subject to the new rule the same as any other owner.

6. What cumulative regulatory volume does this proposed rule add?

Category	Impact
Net change in word count	N/A
Net change in restrictive word count	N/A