

**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, 5, and 7. The rest of the form must be completed prior to the adoption of the proposed rule.**

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

Rule Docket Number: 37-0307-2501

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

Statute Section (include direct link)	Is the authority mandatory or discretionary?
Title 42, Chapter 38, et seq., Idaho Code – Alteration of Channels of Streams Chapter 38 – Idaho State Legislature	Discretionary

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

Idaho relies on stream channels of the state for agricultural, industrial, commercial, municipal, and recreational benefits, including fish and wildlife habitat, and in turn boosts Idaho's prosperity and quality of life. The problem the Stream Channel Alteration Rules (Rules) solve is to specify minimum standard procedures for processing and considering applications that propose stream channel alterations. The minimum standards enable IDWR to process, in a short period of time, those applications which are common type and do not propose alterations that will be a hazard to the stream channel and its environment. These rules are intended to be administered in a reasonable manner, giving consideration to all factors affecting a stream channel and adjacent property. The negotiated rulemaking process will determine whether the rules are necessary or require any modification.

Specifying procedures for reviewing proposed stream channel alterations and defining minimum standards for common stream channel alteration activities enables projects to uniformly be examined and permitted. Applicants need to know what is required of them to minimize the impacts their projects have on the stream channels of Idaho. IDWR needs sufficient, reliable, and detailed information to evaluate applications efficiently because delayed processing and decision-making slow the State of Idaho's ability to review applications and permit stream channel alterations. Proposed projects not meeting minimum standards require additional review time and resources, slowing processing down, reducing efficiency, costing the taxpayers time and money, but with the benefit of ensuring that permitted projects do not pose a hazard to the streams of Idaho.

IDWR believes the regulatory measures in the Rule are necessary for the formal, consistent, and timely, review of proposed stream channel alteration projects throughout the state. However,

some of the existing Rules may be unnecessary, while other Rules may be outdated and require updating to modern minimum standards. IDWR will seek stakeholder input to identify non-regulatory measures it can implement to fulfill the Stream Channel Alteration statutory provisions. It may also be appropriate to use the Rule to address updated statutory requirements and to clarify items not adequately explained in the current Rule. IDWR proposes repealing the Rule and replacing it through formal rulemaking, after negotiated rulemaking is complete.

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)

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		
Oregon		
Nevada		
Utah		
Wyoming		
Montana		
Alaska		
South Dakota		

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:

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

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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	No impact to governmental funds is anticipated. Stream Channel Alteration fees are governed by statute. Anticipate minor rule modifications that will not impact state funds.
Impact to Idaho businesses, with special consideration for small businesses	Maintaining the current rules, with proposed modifications, should not impact Idaho businesses, including small businesses. There are no changes proposed to permit fees. Proposed rule modifications may remove outdated minimum standards while providing clarity to existing minimum standards for improved efficiency applying rules when working with permit applicants.
Impact to any local government in Idaho	Maintaining current rules, with proposed modifications, will remove outdated minimum standards while providing clarity to existing minimum standards for improved efficiency applying rules when working with permit applicants, which may include local governments.

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

Category	Impact
Net change in word count	
Net change in restrictive word count	

7. Should this rule chapter remain as a rule chapter or be moved to statute as suggested in Section [67- 5292](#), Idaho Code?

Category	Impact
What is the cost of publishing this rule chapter annually? (Multiply the number of pages x \$56)	25 pages X \$56/page = \$1400
How frequently has this rule chapter been substantively updated over the past 5 years? (Exclude republishing triggered solely by recent sunset dates)	IDAPA 37.03.07 Idaho Department of Water Resources Stream Channel Alteration Rules were promulgated by the Idaho Legislature on June 1, 1993. IDWR reviewed and removed approximately 29 pages (approximately 53%) of these rules in 2019 as directed by the Red Tape Reduction Act and Licensing Freedom Act of 2019. In 2021, IDWR conducted negotiated rulemaking for Rule 61. Rule 61 defines minimum standards to permit Small Scale Mining with Suction Dredges, Powered Sluices, or Non-Powered Equipment. Additionally, the rulemaking process included changes to the rules, Definitions Rule 10, subsections .09, .11, and .13 and the Exemptions Rule 25, subsection .05. Rule 10.10 defines Human Life Support System, Rule 10.11 defines Non-Powered Equipment, Rule 10.13 defines Powered Equipment, and Rule 25.05 exempts permitting for Mining Operations Using Non-Powered Equipment. Rule 61, Rule 10, and Rule 25 were all promulgated on March 18, 2022. There have been no proposed updates to these rules since 2022.
What is the benefit of having all related requirements in a single location in Idaho Code?	The Stream Channel Alteration Rules should remain as a rule chapter because they provide procedures and guidelines for implementing the legal framework in Chapter 38, Title 42, Idaho Code.