

Dear Senators HEIDER, Brackett, Stennett, and
Representatives GIBBS, Gestrin, Erpelding:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Idaho Department of Lands:

IDAPA 20.03.03 - Rules Governing Administration of the Reclamation Fund - Proposed Rule
(Docket No. 20-0303-1901).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 10/07/2019. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 11/05/2019.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Resources & Conservation Committee

FROM: Deputy Division Manager - Katharine Gerrity

DATE: September 18, 2019

SUBJECT: Idaho Department of Lands

IDAPA 20.03.03 - Rules Governing Administration of the Reclamation Fund - Proposed Rule (Docket No. 20-0303-1901)

Summary and Stated Reasons for the Rule

The Idaho Department of Lands submits notice of proposed rule at IDAPA 20.03.03 - Rules Governing Administration of the Reclamation Fund. According to the department, passage of House Bill 141 during the 2019 legislative session amended definitions and terminology associated with Idaho's Reclamation Fund. The rule revisions will update definitions and terminology to comport with the statutory changes. In addition, the department notes that the proposed rule will remove mandatory participation requirements for operators with a single mining operation with less than 40 acres of disturbance. The department notes that the rule will allow operators to provide alternative forms of financial assurance if it satisfies a minimum reclamation dollar per acre and is provided in a form acceptable to the department. The department adds that it is proposing changes to allow more flexibility to the limits that restrict participation in the fund. The department states that currently, operators with a total cumulative mining disturbance greater than 40 acres and greater than \$100,000 of reclamation liability are ineligible to participate in the fund, and the Land Board is required to set a minimum balance to be maintained in the fund to cover the fund's reclamation liabilities. IDL is proposing to remove the limits and instead allow the Land Board to set disturbance and reclamation cost limits based on the Fund's required minimum balance. The department also indicates that some words and restrictions, wherever possible, have been removed to comply with the Red Tape Reduction Act.

Negotiated Rulemaking / Fiscal Impact

The department states that negotiated rulemaking was conducted.

Statutory Authority

The rulemaking appears to be authorized pursuant to Sections 58-104 and 58-105, Idaho Code.

cc: Idaho Department of Lands
Amy Johnson

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
www.legislature.idaho.gov

***** PLEASE NOTE *****

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.03.03 – RULES GOVERNING ADMINISTRATION OF THE RECLAMATION FUND

DOCKET NO. 20-0303-1901

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 58-104(6) and 58-105, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

PUBLIC HEARING
Monday, September 16, 2019 2:30 p.m. (MDT)

**Idaho State Capitol
4th Floor, Majority Caucus Room (W-433)
700 West Jefferson Street
Boise, ID 83702**

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The passage of House Bill 141 during the 2019 legislative session amended definitions and terminology associated with Idaho’s Reclamation Fund (Fund). Pursuant to Title 47, Chapter 18, Idaho Code, the Idaho Department of Lands (IDL) manages the Fund, which provides affordable and attainable financial assurances for mining operators, allowing compliance with Idaho’s mining regulations. IDL is proposing to update definitions and terminology in the rule to comport with the 2019 statute changes. IDL is also proposing to amend the rule to remove the mandatory participation requirement for operators with a single mining operation with less than 40 acres of disturbance. The proposed rule will allow operators to provide alternative forms of financial assurance if it satisfies a minimum reclamation dollar per acre and is provided in a form acceptable to IDL.

Additionally, IDL is proposing changes to allow more flexibility to the limits that restrict participation in the Fund. Currently, operators with a total cumulative mining disturbance greater than 40 acres and greater than \$100,000 of reclamation liability are ineligible to participate in the Fund, and the Land Board is required to set a minimum balance to be maintained in the Fund to cover the Fund’s reclamation liabilities. IDL is proposing to remove the limits of 40 acres and \$100,000 reclamation costs liability and instead allow the Land Board to set disturbance and reclamation costs limits based on the Fund’s required minimum balance.

Finally, amendments are proposed to remove words and restrictions, wherever possible, to comply with the Red Tape Reduction Act.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

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 as a result of this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 5, 2019, Idaho Administrative Bulletin, [Vol. 19-6, page 63](#).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Todd Drage at (208) 334-0247 or tdrage@idl.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2019.

Dated this 2nd day of August, 2019.

Todd Drage
Minerals Regulatory Program Manager
Idaho Department of Lands
300 N. 6th Street, Suite 103
P.O. Box 83720
Boise, Idaho 83720-0050
Phone: (208) 334-0247
Fax: (208) 334-3698
rulemaking@idl.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0303-1901
(Only Those Sections With Amendments Are Shown.)

000. LEGAL AUTHORITY.

These rules are promulgated by the Idaho State Board of Land Commissioners ~~pursuant to~~ under Sections 58-104(3) and (6), Idaho Code, and Title 47, Chapter 18, Idaho Code. The Board has delegated to the ~~the~~ Director of the Idaho Department of Lands the duties and powers under Title 47, Chapter 18, Idaho Code and these rules: ~~provided, except~~ that the Board ~~shall~~ retains responsibility for administrative review. (3-16-04)()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.03.03, "Rules Governing Administration of the Reclamation Fund," IDAPA 20, Title 03, Chapter 03. (3-16-04)

02. Scope. These rules constitute the ~~Idaho~~ Department's ~~of Lands'~~ administrative procedures and participation criteria for the implementation of a Reclamation Fund, which is to be used as an alternative form of financial assurance for ~~mining operations~~ certain mines in Idaho. These rules ~~shall are to~~ be construed in a manner consistent with the duties and responsibilities of the Board and of operators, permit holders, or lessees as set forth in Title 47, Chapter ~~7,~~ 7, Idaho Code, "Mineral Rights in the State Lands;" Title 47, Chapter 13, Idaho Code, "Dredge Mining;" Title 47, Chapter 15, Idaho Code, "Mined Land Reclamation;" and Title 47, Chapter 18, Idaho Code, "Financial Assurance;" and IDAPA 20.03.01, "Dredge and Placer Mining Operations in Idaho;" IDAPA 20.03.02, "Rules Governing ~~Exploration and Surface Mining in Idaho,~~ Mined Land Reclamation," and IDAPA 20.03.05, "Riverbed Mineral Leasing In Idaho." (3-16-04)()

002. WRITTEN INTERPRETATIONS.

The Board does not rely on any written ~~interpretive statements~~ interpretations concerning these rules. (3-16-04)()

003. ADMINISTRATIVE APPEALS.

~~01. Procedure for Appeals. Any operator, lessee, permit or plan holder aggrieved by any final decision or order of the Board shall be entitled to judicial review in accordance with the provisions and standards set forth in Title 67, Chapter 52, Idaho Code, and the Administrative Procedures Act. (3-16-04)~~

~~02. Effective Date of a Final Order. When the director or the Board finds that justice so requires, it may postpone the effective date of a final order pending judicial review. (3-16-04)~~

~~03. Filing a Civil Action in District Court for Noncompliance. Notwithstanding any other provisions of these rules concerning administrative or judicial proceedings, whenever the Board determines that a permittee or lessee has not complied with the provisions of the Dredge Mining Act, the Surface Mining Act, or a mineral lease, the Board may file a civil action in the district court for the county wherein the violation or some part occurred, or in the district court for the county where the defendant resides, in accordance with said acts or mineral lease. The Board may request the court to issue an appropriate order to remedy any alleged violation. Any person aggrieved by a final agency action or a party aggrieved by a final order of the Board arising from its administration of the Reclamation Fund Act is entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, "Administrative Procedure Act," and IDAPA 20.01.01, "Rules of Practice and Procedure Before the State Board of Land Commissioners." (3-16-04)()~~

004. INCORPORATION BY REFERENCE.

~~01. Incorporated Documents. The following documents are expressly incorporated herein by reference as part of these rules to the extent that said rules or mineral lease apply to a subject mining operation. (3-16-04)~~

~~a. IDAPA 20.03.01, "Dredge and Placer Mining Operations in Idaho." (3-16-04)~~

~~b. IDAPA 20.03.02, "Rules Governing Exploration and Surface Mining in Idaho." (3-16-04)~~

~~c. Title 47, Chapter 7, Idaho Code, Mineral Rights In State Lands. (3-16-04)~~

~~02. Availability of Incorporated Documents. Unofficial copies of the incorporated documents may be obtained from any Idaho Department of Lands Office or on-line at <http://adm.idaho.gov/adminrules/>. Official copies of the incorporated administrative rules may be obtained from the Office of the Administrative Rules Coordinator located at 650 W. State Street, Room 100, Boise, Idaho 83720. There are no documents incorporated by reference into this rule. (3-16-04)()~~

005. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.

~~01. Office. The principal place of business of the Idaho Department of Lands is the Director's Office at 300 North 6th Street, Suite 103, Boise, Idaho 83720 and is open from 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. (3-16-04)~~

~~02. Address. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, Idaho 83720-0050. (3-16-04)~~

~~03. Telephone and Fax. The telephone of the office is (208) 334-0200; and the fax number is (208) 334-2399/3698. The Department's web address is located at <https://www.idl.idaho.gov>. (3-16-04)()~~

006. PUBLIC RECORDS ACT COMPLIANCE.

~~01. Administrative Procedures Act. The rules contained herein have been promulgated in accordance with the Administrative Procedures Act, Title 67, Chapter 52, Idaho Code and are a public record subject to and in compliance with Title 74, Chapter 1, Idaho Code, "Public Records Act." Unless exempt from disclosure under said Act, any document filed with the Department under these rules is a public record. (3-16-04)()~~

~~02. Confidentiality of Information. The following records are exempt from disclosure pursuant to Section 74-107(2), Idaho Code, shall not be disclosed by the Board, director, or department employees, to any person other than the Board, director and employees of the Department without the written permission of the operator;~~

~~permit holder or lessee.~~ (3-16-04)

~~a. Notice of exploration as required pursuant to Section 47-1314(b), Idaho Code, and Section 020, IDAPA 20.03.01, "Dredge and Placer Mining Operations in Idaho."~~ (3-16-04)

~~b. Notices of exploration as required pursuant to Section 47-1506(e), Idaho Code, and Section 060, IDAPA 20.03.02, "Rules Governing Exploration and Surface Mining in Idaho."~~ (3-16-04)

~~c. Production records.~~ (3-16-04)

007. -- 009. (RESERVED)

010. DEFINITIONS.

Except as provided in these rules, the Board adopts the definitions set forth in the Mineral Leasing Act, the Dredge Mining Act, and the Mined Land Reclamation Act. As used in these rules: ()

01. Actual Allowable Cost. The allowable total reclamation cost as set by the Board to allow participation in the Reclamation Fund. ()

02. Actual Allowable Disturbance. The area of disturbed acres or affected land as set by the Board to allow participation in the Reclamation Fund. ()

03. Board. The Idaho State Board of Land Commissioners or ~~any department, commission, or agency that may lawfully succeed to the duties and powers of such Board~~ its authorized representative. (3-16-04)()

~~02. Definitions Incorporated.~~ *Except as provided in these rules, the definitions set forth in IDAPA 20.03.01, "Dredge and Placer Mining Operations in Idaho," and in IDAPA 20.03.02, "Rules Governing Exploration and Surface Mining in Idaho," to the extent not provided in these rules, shall govern actions pursuant to Title 47, Chapter 18, Idaho Code, and these rules.* (3-16-04)

034. Department. The Idaho Department of Lands. (3-16-04)

045. Disturbed Acres; ~~or~~ Affected Lands. ~~Any~~ land, natural watercourses, or existing stockpiles or waste piles affected by placer or dredge mining, remining, exploration, stockpiling of ore, waste from placer or dredge mining, or construction of roads, settling ponds, structures, or facilities appurtenant to a placer or dredge ~~mining operations~~ mine. The land area included in overburden disposal areas, mined areas, mineral stockpiles, roads, tailings ponds, and other areas disturbed at a ~~surface mining site~~ mine. The land area disturbed by motorized exploration of state land under a mineral lease. (3-16-04)()

056. Dredge Mining Act. Title 47, Chapter 13, Idaho Code, and IDAPA 20.03.01, "Dredge and Placer Mining Operations in Idaho." (3-16-04)

067. Financial Assurance. ~~Performance bonding submitted to ensure reclamation of disturbed acres or affected land or ensure payments under a mineral lease~~ Cash, corporate surety bond, collateral bond, or letter of credit as described in the Dredge Mining Act, the Mineral Leasing Act, or a mineral lease. Financial assurance as defined in the Mined Land Reclamation Act. (3-16-04)()

078. Mine; ~~or~~ Mine Panel. ~~The~~ All areas designated by the operator ~~or permittee as a panel of a surface~~ mine on the map ~~or plan~~ submitted pursuant to Section 47-703A, Idaho Code, or Section 47-1506, Idaho Code, or as an identifiable portion of a placer or dredge mine on the map submitted ~~pursuant to~~ under Section 47-1317, Idaho Code. (3-16-04)()

09. Mined Land Reclamation Act. Title 47, Chapter 15, Idaho Code, and IDAPA 20.03.02, "Rules Governing Mined Land Reclamation." ()

108. Mineral Lease. Lease executed by the Board and the mineral lessee pursuant to ~~Title 47, Chapter 7, Idaho Code~~ the Mineral Leasing Act. (3-16-04)()

- ~~0911.~~ Mineral Lessee. The lessee *of record* of a *State of Idaho M*ineral *L*ease. (3-16-04)()
- ~~102.~~ Mineral Leasing Act. Title 47, Chapter 7, Idaho Code. (3-16-04)
- ~~13.~~ Mining Reclamation Plan. Any reclamation plan approved pursuant to the Mined Land Reclamation Act. ()
- ~~14.~~ **Motorized Exploration.** Exploration which may appreciably disturb or damage the land or resources thereon. Motorized exploration includes, but is not limited to, drilling, trenching, dredging, or other techniques which employ the use of earth moving equipment, seismic operations using explosives, and, *under the Mineral Leasing Act*, includes sampling with a suction dredge having an intake diameter greater than two (2) inches when operated in a perennial stream. When operated in an intermittent stream, suction dredges shall be considered motorized exploration regardless of intake size. (3-16-04)()
- ~~125.~~ **Operator.** Any person or *persons, any partnership, limited partnership or corporation, or any association of persons, either natural or artificial, including, but not limited to, every public or governmental agency engaged in surface mining, exploration or dredge and placer mining operations, whether individually, jointly, or through subsidiaries, agents, employees, or contractors and shall mean every government agency owning or controlling the use of any surface mine or dredge and placer mine where the extraction of minerals is to be used by or for the benefit of such agency. For the purpose of these rules, an operator shall include a party holding a permit or an approved surface mining reclamation plan entity authorized to conduct business in Idaho, partnership, joint venture, or public or governmental agency required to have any reclamation plan under the Mined Land Reclamation Act or the Mineral Leasing Act, or a permit under the Dredge Mining Act, whether individually or jointly through subsidiaries, agents, employees, or contractors. (3-16-04)()*
- ~~136.~~ **Permit.** Dredge *and P* or *p*lacer *M*ining *P*ermit issued pursuant to *Title 47, Chapter 13, Idaho Code* the Dredge Mining Act. (3-16-04)()
- ~~147.~~ **Reclamation Fund.** The interest-bearing dedicated fund authorized pursuant to *Title 47, Chapter 18, Idaho Code. The Reclamation Fund shall consist of fees paid by participating operators, permittees or lessees, interest and cost recoveries initiated by the Board pursuant to Section 47-1804, Idaho Code* the Reclamation Fund Act. (3-16-04)()
- ~~158.~~ **Reclamation Fund Act.** Title 47, Chapter 18, Idaho Code, and IDAPA 20.03.03, "Rules Governing Administration of the Reclamation Fund." (3-16-04)()
- ~~16.~~ Surface Mining Act. Title 47, Chapter 15, Idaho Code, and IDAPA 20.03.02, "Rules Governing Exploration and Surface Mining in Idaho." (3-16-04)
- ~~17.~~ Surface Mining Reclamation Plan. Reclamation plan approved pursuant to Title 47, Chapter 15, Idaho Code. (3-16-04)
- ~~18.~~ Traditional Performance Bond. Cash, corporate surety bond, collateral bond, or letter of credit as described in the Dredge Mining Act, the Surface Mining Act and the Mineral Leasing Act, or a mineral lease. (3-16-04)
011. -- 015. (RESERVED)
016. **REQUIRED PARTICIPANTS.**
Any ~~Operators of mineral leases, surface mines, and placer mines,~~ with the exception of the operations ~~mines~~ and operators listed in Section 017 of these rules, shall be required to provide alternative financial assurance through the Reclamation Fund to assure the reclamation of disturbed acres or affected lands. ~~FA~~Alternative financial assurance pursuant to the Reclamation Fund Act ~~and this rule shall be~~ is in lieu of ~~traditional performance bonds~~ other types of financial assurance as set forth in the Surface Mining Mined Land Reclamation Act, the Mineral Leasing Act, or the Dredge Mining Act, ~~or a mineral lease.~~ (3-16-04)()

017. INELIGIBLE ~~OPERATIONS~~ MINES OR OPERATORS.

The following types of ~~operations~~ mines and operators are not allowed to participate in the Reclamation Fund and ~~may not provide alternative financial assurance through the Reclamation Fund~~ must file proof of other acceptable financial assurance as required by the Department. (3-16-04)()

01. ~~Forty-Disturbed Acres~~ Limit. A ~~surface or placer~~ mine or mineral lease with ~~greater than forty (40) acres of~~ un-reclaimed disturbed acres ~~or affected lands~~ in excess of the actual allowable disturbance, may not provide alternative financial assurance through the Reclamation Fund. Un-reclaimed disturbance is that which does not meet the final ~~traditional performance bond~~ financial assurance release criteria in the Dredge Mining Act, the ~~Surface Mining~~ Mined Land Reclamation Act or a mineral lease. (3-16-04)()

02. ~~One Hundred Thousand Dollar~~ Reclamation Cost Limit. Operators ~~of mines~~ with an estimated reclamation cost in excess of ~~one hundred thousand dollars (\$100,000)~~ the actual allowable reclamation cost, regardless of ~~surface~~ the distributed acreage. (3-16-04)()

03. Phosphate Mines. Operators or mineral lessees of phosphate mines ~~or lease holders of phosphate leases.~~ (3-16-04)()

04. Hardrock Mines. Operators or mineral lessees of hardrock mines such as gold, silver, molybdenum, copper, lead, zinc, cobalt, and other precious metal mines. (3-16-04)()

05. Potential Heavy Metal Releases. Operators of mines with a reasonable potential to release heavy metals or other substances harmful to human health or the environment, but not including substances such as fuels and other materials commonly used in excavation or construction. (3-16-04)

06. Oil and Gas Conservation. Oil and gas exploration and development ~~authorized~~ under Title 47, Chapter 3, Idaho Code. (3-16-04)()

07. Oil and Gas Leasing. Oil and gas leases and associated exploration and development ~~authorized~~ under Title 47, Chapter 8, Idaho Code. (3-16-04)()

08. Geothermal. ~~G~~Operators or mineral lessees of geothermal ~~leases~~ wells and development ~~authorized~~ under Title 47, Chapter 16, Idaho Code. (3-16-04)()

09. Off Lease Exploration. Motorized exploration on state lands that are not under a mineral lease or exploration location. (3-16-04)

10. Violators. ~~Operations~~ Mines or operators, ~~permittees or lessees~~ in violation of the Reclamation Fund Act, Dredge Mining Act, ~~Surface Mining~~ Mined Land Reclamation Act, Mineral Leasing Act, or a mineral lease. (3-16-04)()

11. Reclamation Fund Forfeitures. Operators, permittees or lessees who have not reimbursed the Reclamation Fund for a forfeiture from the Reclamation Fund due to their violations of the Reclamation Fund Act, Dredge Mining Act, ~~Surface Mining~~ Mined Land Reclamation Act, Mineral Leasing Act, or a mineral lease. (3-16-04)()

12. Other Forfeitures. An operator who has forfeited any ~~traditional performance bond~~ financial assurance. (3-16-04)()

13. Operators Providing Acceptable Financial Assurance. An operator who provides proof of financial assurance accepted by the Department that is greater than or equal to the minimum dollar per acre for each acre of affected land at a mine. ()

018. ACREAGE AND RECLAMATION COST LIMITATIONS.

~~No operator shall be allowed to provide bonding through the Reclamation Fund if said operator has more than forty (40) acres of cumulative surface disturbance at more than one (1) mine site. An operator who has multiple plans and permits with a total disturbance in excess of forty (40) acres may participate in the Reclamation Fund with one (1) or~~

~~more sites that contain less than forty (40) acres of total disturbance. These operators may also choose to not participate in the Reclamation Fund at all. A plan or permit that does not provide alternative financial assistance through the Reclamation Fund must be bonded with a traditional performance bond~~

01. Limitations for Participation. The Board will determine the actual allowable disturbance, actual allowable reclamation cost, and the minimum dollar per acre of disturbance in order to provide financial assurance to opt out of participation in the Reclamation Fund. ()

02. Maximum Affected Lands And Reclamation Costs. The maximum acreage of affected land and maximum allowable reclamation costs in these rules are maximums. Actual allowable acreage of affected lands and reclamation costs shall be established by Board policy. ()

03. Maximum Allowable Disturbance & Reclamation Cost Liability. The maximum allowable disturbance shall be eighty (80) acres; the maximum allowable reclamation cost shall be four hundred forty thousand (\$440,000) dollars. ()

04. Multiple Plans/Permits/Sites. An operator who has multiple mining reclamation plans or permits, which have a total disturbance in excess of the actual allowable disturbance, or with total reclamation costs in excess of the actual allowable reclamation cost, may participate in the Reclamation Fund with one (1) or more sites that together contain less than both of the Board-determined actual allowable limits. (3-16-04)()

019. OPTIONAL PARTICIPATION.

Operators who have one (1) or more ~~mining operations~~ mines or mineral leases that are ineligible to participate in the Reclamation Fund as set forth in Section 017 or 018 of these rules may choose to not participate in the Reclamation Fund with respect to all other ~~mining operations~~ eligible mines or mineral leases in their name. An operator who does not participate in the Reclamation Fund must secure ~~their operation all mines~~ with a traditional performance bond other types of financial assurance approved by the Department. (3-16-04)()

020. FEDERAL AGENCY NON-ACCEPTANCE OF RECLAMATION FUND.

If a federal agency will not accept an operator's participation in the Reclamation Fund as proof of reclamation security, the operator will be required to provide a traditional performance bond the Department with proof of other types of financial assurance acceptable to the Department. (3-16-04)()

021. -- 025. (RESERVED)

026. PAYMENT.

01. Board Approved Payment Schedule. The Board shall adopt a payment schedule which will to be used to determine the annual Reclamation Fund payment for each mineral lease, reclamation plan, placer permit or temporary permit required to participate operator participating in the Reclamation Fund. Any changes to the payment structure must schedule will be reviewed and approved by the Board. Participating operators shall pay all required payments annually. (3-16-04)()

02. Acreage Calculation. The annual payment for each participant in the Reclamation Fund shall will be established based upon the number of acres of disturbed or affected land acres at each mining operation mine. The acres used to calculate the annual payment shall will include the acres of total currently disturbed and acres of affected lands and the acres planned to be disturbed or affected during the next twelve (12) months as required by the Surface Mining Act and the Dredge Mining Act, or as may be required by a mineral lease. The acreages of disturbed or affected land at the mining operation shall total acreage calculation will not be rounded when determining annual payments. (3-16-04)()

03. Annual Payments Non-Refundable. Payments to the Reclamation Fund are non-refundable. Payments will be billed annually and are subject to late penalties, if not timely paid, will accrue late fees and interest as established by the Board. New participants will be assessed a pro-rated payment based on the Department's established billing cycle. (3-16-04)()

04. Supplemental Payments. If an operator finds it necessary to affects more acreage than the acreage

secured through the Reclamation Fund for ~~the a~~ current period, the Department may require supplemental Reclamation Fund payments. ~~Additional Reclamation Fund payments for mineral leases may be required by the Department based on site specific conditions.~~ (3-16-04)()

05. Assignment ~~or Transfer~~. When a mineral lease, mining reclamation plan, or permit is assigned, all financial assurance requirements must be assumed by the new ~~lessee or~~ operator. No Reclamation Fund payments will be refunded following an assignment. If the new operator ~~or lessee~~ is ineligible to participate in the Reclamation Fund, the new operator ~~or lessee~~ must provide ~~a traditional performance bond~~ proof of other acceptable financial assurance before the assignment ~~with~~ may be approved. (3-16-04)()

06. Non-Payment Constitutes Lack of Bonding. For ~~those any~~ operators ~~or lessees required to~~ participate ing in the Reclamation Fund, non-payment of the annual fee payment shall be considered a failure to provide ~~a traditional performance bond~~ financial assurance as required by the Dredge Mining Act, the Surface Mining Mined Land Reclamation Act, Mineral Leasing Act, or a mineral lease. (3-16-04)()

027. -- 030. (RESERVED)

031. ENFORCEMENT AND FAILURE TO COMPLY.

01. Forfeiture. Prior to withdrawing monies from the Reclamation Fund due to a violation of the Dredge Mining Act, the Surface Mining Mined Land Reclamation Act, Mineral Leasing Act, or a mineral lease, the Department shall comply with the forfeiture procedures ~~for traditional performance bond forfeiture set forth in Section 47-1513, Idaho Code.~~ (3-16-04)()

02. Penalties. If an operator fails to provide financial assurance as required by these rules or has forfeited monies from the Reclamation Fund and has not repaid those monies, the Board shall be authorized to file liens against personal property and equipment of the operator to recover costs. The operator shall be liable for actual costs of ~~the required financial assurance~~ all unpaid annual payments, interest, and late payment charges, the actual reclamation costs, and administrative costs incurred by the Department in reclaiming the disturbed or affected lands. ~~All legal action by the Department shall be in accordance with the Dredge Mining Act, Surface Mining Act, Mineral Leasing Act, or any mineral lease.~~ Authorization to obtain a lien under ~~this~~ these rules and Section 47-1804, Idaho Code, shall be in addition to, not in lieu of, any other legal remedy available to the Board and the Department pursuant to the Dredge Mining Act, ~~the Surface Mining~~ Mined Land Reclamation Act, Mineral Leasing Act, or ~~any~~ mineral lease. (3-16-04)()

~~**03. Procedure for Appeals.** Any operator or lessee aggrieved by any final order of the Board regarding the Reclamation Fund Act shall be entitled to appeal using the procedures as set forth in the Dredge Mining Act, Surface Mining Act, Mineral Leasing Act or a mineral lease.~~ (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)