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**IDAPA 20
TITLE 03
CHAPTER 03**

20.03.03 - RULES GOVERNING ADMINISTRATION OF THE RECLAMATION FUND

000. LEGAL AUTHORITY.

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

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as 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 of Lands' administrative procedures for implementation of a Reclamation Fund to be used as an alternative form of financial assurance for mining operations in Idaho. These rules shall be construed in a manner consistent with the duties and responsibilities of the Board as set forth in Title 47, Chapters 7, 13, 15, and 18, Idaho Code, and IDAPA 20.03.01, "Dredge and Placer Mining Operations in Idaho," IDAPA 20.03.02, "Rules Governing Exploration and Surface Mining in Idaho," 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 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. (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. Official copies of the incorporated administrative rules maybe obtained from the Office of Administrative Rules located at 650 W. State Street, Room 100, Boise, Idaho 83720. (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 954 W. Jefferson, Boise, Idaho 83720 and is open from 8 a.m. to 5 p.m. (MST), except Saturday, Sunday and legal holidays. (3-16-04)

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

03. Phone. The telephone of the office is (208) 334-0200. (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. (3-16-04)

02. Confidentiality of Information. The following records are exempt from disclosure pursuant to Section 9-340D(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.

01. Board. The State Board of Land Commissioners or any department, commission, or agency that may lawfully succeed to the duties and powers of such Board. (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)

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

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

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

06. Financial Assurance. Performance bonding submitted to ensure reclamation of disturbed acres or affected land or ensure payments under a mineral lease. (3-16-04)

07. Mine or Mine Panel. The area designated by the operator or permittee as a panel of a surface mine on the map submitted pursuant to Section 47-1506, Idaho Code, or as an identifiable portion of a placer or dredge

mine on the map submitted pursuant to Section 47-1317, Idaho Code. (3-16-04)

08. Mineral Lease. Lease executed pursuant to Title 47, Chapter 7, Idaho Code. (3-16-04)

09. Mineral Lessee. The lessee of record of a State of Idaho Mineral Lease. (3-16-04)

10. Mineral Leasing Act. Title 47, Chapter 7, Idaho Code. (3-16-04)

11. 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)

12. 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. (3-16-04)

13. Permit. Dredge and Placer Mining Permit issued pursuant to Title 47, Chapter 13, Idaho Code. (3-16-04)

14. 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. (3-16-04)

15. Reclamation Fund Act. Title 47, Chapter 18, Idaho Code. (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.

Operators of mineral leases, surface mines, and placer mines, with the exception of the operations 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. Financial assurance pursuant to the Reclamation Fund Act and this rule shall be in lieu of traditional performance bonds as set forth in the Surface Mining Act, the Dredge Mining Act, or a mineral lease. (3-16-04)

017. INELIGIBLE OPERATIONS OR OPERATORS.

The following types of operations and operators are not allowed to participate in the Reclamation Fund and may not provide alternative financial assurance through the Reclamation Fund. (3-16-04)

01. Forty Acre Limit. A surface or placer mine or mineral lease with greater than forty (40) acres of un-reclaimed disturbed acres or affected lands may not provide alternative financial assurance through the

Reclamation Fund. Un-reclaimed disturbance is that which does not meet the final traditional performance bond release criteria in the Dredge Mining Act, the Surface Mining Act or a mineral lease. (3-16-04)

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

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

04. Hardrock Mines. Operators 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. Geothermal leases 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 or operators, permittees or lessees in violation of the Dredge Mining Act, Surface Mining 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 Dredge Mining Act, Surface Mining Act, Mineral Leasing Act, or a mineral lease. (3-16-04)

12. Other Forfeitures. An operator who has forfeited a traditional performance bond. (3-16-04)

018. ACREAGE 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. (3-16-04)

019. OPTIONAL PARTICIPATION.

Operators who have one (1) or more mining operations or 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 or leases in their name. An operator who does not participate in the Reclamation Fund must secure their operation with a traditional performance bond. (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. (3-16-04)

021. -- 025. (RESERVED).

026. PAYMENT.

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

02. Acreage Calculation. The annual payment for each participant in the Reclamation Fund shall be established based upon the number of acres of disturbed or affected land at each mining operation. The acres used to calculate the annual payment shall include the acres of currently disturbed and affected land 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 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 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 affect more acreage than the acreage secured through the Reclamation Fund for the 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 lease, plan or permit is assigned, 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 before the assignment will be approved. (3-16-04)

06. Non-Payment Constitutes Lack of Bonding. For those operators or lessees required to participate in the Reclamation Fund, non-payment of the annual fee shall be considered a failure to provide a traditional performance bond as required by the Dredge Mining Act, the Surface Mining 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 Act, Mineral Leasing Act, or a mineral lease, the Department shall comply with the procedures for traditional performance bond forfeiture. (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, 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 rule 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, Surface Mining 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)

032. MINIMUM BALANCE FOR THE RECLAMATION FUND.

The Board shall determine a reasonable minimum balance for the Reclamation Fund. (3-16-04)

033. -- 999. (RESERVED).

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