

STATE BOARD OF LAND COMMISSIONERS

July 18, 2023
Information Agenda

Subject

Proposed Rule for IDAPA 20.03.03 *Rules Governing Administration of the Reclamation Fund*

Background

The Idaho Department of Lands (Department) administers these rules under the authority of Title 47, Chapter 18, Idaho Code. IDAPA 20.03.03 provides consistent guidance in how Idaho's Reclamation Fund (Fund) is implemented. The Fund is a type of state bond pool created in 2002 to provide an alternative form of performance bond or financial assurance as required by Idaho mining regulations. The Fund is to be used by the Department to complete reclamation in the event an operator is unable to do so.

Negotiated rulemaking for these rules was approved by the Land Board on November 15, 2022 (Attachment 1). Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled for a comprehensive review in 2023 with the goal of simplifying the rules for increased clarity and ease of use.

Discussion

The Department's outreach for negotiated rulemaking included the following:

- Published the Notice of Negotiated Rulemaking in the Idaho Administrative Bulletin.
- Created a rulemaking webpage to post documents, scheduling information, and comments.
- Posted meeting information on social media and Townhall Idaho.
- Emailed 145 customers and other interested parties.
- Mailed postcards to 371 customers.

Negotiated rulemaking meetings were held on April 26 and May 4, 2023. A total of 6 non-Department affiliated people attended these meetings, and no written comments were received.

A question was asked regarding the elimination of Section 002, Administrative Appeals. The Department responded that the intent is to just refer to Title 67, Chapter 52 for guidance on administrative appeals. A question was asked about Subsection 018.02 and how it relates to the actual limits on participation. The Department responded that the maximum limits are set by rule, but the Land Board has flexibility to set lower actual limits. This is determined through periodic actuarial analysis. The current limits set by the Land Board in 2020 are 40 acres and \$220,000 in reclamation costs. No changes were made based on comments received. Some minor changes to the initial draft were made based on internal discussions and to further reduce word count.

Attachment 2 is the draft text that will be submitted for publication in the Administrative Bulletin as a proposed rule and is posted on the Department's rulemaking webpage. The rule is written in legislative format to allow the reader to easily identify changes.

The proposed rule reduces the overall regulatory burden by reducing the total word count and the number of restrictive words. The late payment policy is updated.

The proposed rule will be open for public comment upon publication in the September 6, 2023 Administrative Bulletin. The draft Notice of Proposed Rule is found in Attachment 3.

Attachments

1. November 15, 2022 Approved Memo
2. Proposed Rule Text
3. Draft Notice of Proposed Rule

STATE BOARD OF LAND COMMISSIONERS

November 15, 2022

Regular Agenda

Subject

Negotiated rulemaking for IDAPA 20.03.03 *Rules Governing Administration of the Reclamation Fund*

Question Presented

Shall the Land Board authorize the Department to initiate negotiated rulemaking for IDAPA 20.03.03 *Rules Governing Administration of the Reclamation Fund*?

Background

The Idaho Department of Lands (Department) administers these rules under the authority of Title 47, Chapter 18, Idaho Code. IDAPA 20.03.03 provides consistent guidance in how Idaho's Reclamation Fund (Fund) is implemented. The Fund is a type of state bond pool created in 2002 to provide an alternative form of performance bond or financial assurance as required by Idaho mining regulations. The Fund is to be used by the Department to complete reclamation in the event an operator is unable to so.

Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled for a comprehensive review in 2023 with the goal of simplifying the rules for increased clarity and ease of use.

Discussion

These rules were last reviewed in 2019 under the Red Tape Reduction Act, which reduced the total word count by 22% and the number of restrictive words by 55%. Additional reductions will be evaluated in the new rule chapter. The Department will review the rule with stakeholders to ensure that it is right-sized.

A proposed timeline for the rulemaking process is provided in Attachment 1.

Recommendation

Authorize the Department to initiate negotiated rulemaking for IDAPA 20.03.03 *Rules Governing Administration of the Reclamation Fund*.

Board Action

A motion was made by Attorney General Wasden that the Land Board authorize the Department to initiate negotiated rulemaking for IDAPA 20.03.03 Rules Governing Administration of the Reclamation Fund. Superintendent Ybarra seconded the motion. The motion carried on a vote of 4-0.

Attachments

1. Draft rulemaking timeline



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~~ under Sections 58-104(3) and (6) and 58-105, Idaho Code, and Title 47, Chapter 18, Idaho Code. The Board 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, ~~except that the Board retains responsibility for administrative review.~~ (3-18-22)()

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. (3-18-22)

~~02. Scope.~~ These rules constitute the Department’s administrative procedures ~~and participation criteria for the Reclamation Fund, which is~~ for implementation of the Act with the intent to provide an alternative form of financial assurance for certain mines in Idaho. These rules 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, Idaho Code, “Mineral Rights in State Lands;” Title 47, Chapter 13, Idaho Code, “Dredge Mining Act;” Title 47, Chapter 15, Idaho Code, “Mined Land Reclamation Act;” Title 47, Chapter 18, Idaho Code, “Financial Assurance;”~~ IDAPA 20.03.01, “Dredge and Placer Mining Operations in Idaho;” IDAPA 20.03.02, “Rules Governing Mined Land Reclamation;” and IDAPA 20.03.05, “Riverbed Mineral Leasing In Idaho.” (3-18-22)()

~~002. ADMINISTRATIVE APPEALS.~~

~~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.”~~ (3-18-22)

003. -- 009. (RESERVED)

010. DEFINITIONS.

Except as provided in these rules, the Board adopts the definitions set forth in the Mineral ~~Leasing Act~~ Rights in State Lands, the Dredge Mining Act, and the Mined Land Reclamation Act. As used in these rules: (3-18-22)()

01. Actual Allowable Cost. The allowable total reclamation cost as set by the Board to allow participation in the Reclamation Fund. (3-18-22)

02. Actual Allowable Disturbance. The area of disturbed acres or affected land as set by the Board to allow participation in the Reclamation Fund. (3-18-22)

03. Board. The Idaho State Board of Land Commissioners or its authorized representative. (3-18-22)

04. Department. The Idaho Department of Lands. (3-18-22)

05. Disturbed Acres; Affected Lands. ()

a. 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 mine. ()

b. The land area included in overburden disposal areas, mined areas, mineral stockpiles, roads, tailings ponds, and other areas disturbed at a mine. and ()

- c.** The land area disturbed by motorized exploration of state land under a mineral lease. (3-18-22)
- 06. Dredge Mining Act.** Title 47, Chapter 13, Idaho Code, and IDAPA 20.03.01, “Dredge and Placer Mining Operations in Idaho.” (3-18-22)
- 07. Financial Assurance.** ()
- a.** Cash, corporate surety bond, collateral bond, or letter of credit as described in the Dredge Mining Act; or the Mineral ~~Leasing Act, or a mineral lease.~~ Rights in State Lands; and ()
- b.** Financial assurance as defined in the Mined Land Reclamation Act. (3-18-22)
- 08. Mine; Mine Panel.** All areas designated by the operator 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 under Section 47-1317, Idaho Code. (3-18-22)
- 09. Mined Land Reclamation Act.** Title 47, Chapter 15, Idaho Code, and IDAPA 20.03.02, “Rules Governing Mined Land Reclamation.” (3-18-22)
- 10. Mineral Lease.** Lease executed by the Board and the mineral lessee pursuant to the Mineral ~~Leasing Act~~ Rights in State Lands. (~~3-18-22~~)()
- 11. Mineral Lessee.** The lessee of a mineral lease. (3-18-22)
- 12. Mineral ~~Leasing Act~~ Rights in State Lands.** Title 47, Chapter 7, Idaho Code. (~~3-18-22~~)()
- 13. Mining Reclamation Plan.** Any reclamation plan approved pursuant to the Mined Land Reclamation Act. (3-18-22)
- 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 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~~ will be considered motorized exploration regardless of intake size. (~~3-18-22~~)()
- 15. Operator.** Any person or 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~~ Rights in State Lands, or a permit under the Dredge Mining Act, whether individually or jointly through subsidiaries, agents, employees, or contractors. (~~3-18-22~~)()
- 16. Permit.** Dredge or placer mining permit issued pursuant to the Dredge Mining Act. (3-18-22)
- 17. Reclamation Fund.** The interest-bearing dedicated fund authorized pursuant to the Reclamation Fund Act. (3-18-22)
- 18. Reclamation Fund Act.** Title 47, Chapter 18, Idaho Code, and IDAPA 20.03.03, “Rules Governing Administration of the Reclamation Fund.” (3-18-22)
- 011. -- 015. (RESERVED)**
- 016. REQUIRED PARTICIPANTS.**
Any operator, with the exception of the mines and operators listed in Sections 017 and 019 of these rules, ~~shall~~ will be required to provide alternative financial assurance through the Reclamation Fund to assure the reclamation of disturbed acres or affected lands. Alternative financial assurance pursuant to the Reclamation Fund Act is in lieu of

other types of financial assurance as set forth in the Mined Land Reclamation Act, the Mineral ~~Leasing Act~~ Rights in State Lands, or the Dredge Mining Act. (3-18-22)()

017. INELIGIBLE MINES OR OPERATORS.

The following types of mines and operators are not allowed to participate in the Reclamation Fund and must file proof of other acceptable financial assurance as required by the Department. (3-18-22)

01. Disturbed Acres Limit. A mine or mineral lease with un-reclaimed disturbed acres 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 financial assurance release criteria in the Dredge Mining Act, the Mined Land Reclamation Act, or ~~a mineral lease~~ the Mineral Rights in State Lands. (3-18-22)()

02. Reclamation Cost Limit. Operators with an estimated reclamation cost in excess of the actual allowable reclamation cost, regardless of the disturbed acres. (3-18-22)

03. Phosphate Mines. Operators or mineral lessees of phosphate mines. (3-18-22)

04. Hardrock Mines. Operators or mineral lessees of hardrock mines such as gold, silver, molybdenum, copper, lead, zinc, cobalt, and other precious or base metal mines. (3-18-22)()

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. (3-18-22)

06. Oil and Gas Conservation. Oil and gas exploration and development under Title 47, Chapter 3, Idaho Code. (3-18-22)

07. Oil and Gas Leasing. Oil and gas leases and associated exploration and development under Title 47, Chapter 8, Idaho Code. (3-18-22)

08. Geothermal. Operators or mineral lessees of geothermal wells and development under Title 47, Chapter 16, Idaho Code. (3-18-22)

09. Off Lease Exploration. Motorized exploration on state lands that are not under a mineral lease or exploration location. (3-18-22)

10. Violators. Mines or operators in violation of the ~~Reclamation Fund Act~~, Dredge Mining Act, Mined Land Reclamation Act, or Mineral ~~Leasing Act, or a mineral lease~~ Rights in State Lands. (3-18-22)()

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, Mined Land Reclamation Act, or Mineral ~~Leasing Act, or a mineral lease~~ Rights in State Lands. (3-18-22)()

12. Other Forfeitures. An operator who has forfeited any financial assurance. (3-18-22)

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. (3-18-22)

018. ACREAGE AND RECLAMATION COST LIMITATIONS.

01. Actual Allowable Participation. The Board will establish by policy 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. (3-18-22)

02. Maximum Disturbance and Reclamation Cost. ~~The maximum disturbance and maximum reclamation costs in these rules are maximums.~~ The maximum allowable disturbance is eighty (80) acres; the maximum allowable reclamation cost is four hundred forty thousand dollars (\$440,000). (3-18-22)()

03. Multiple Plans or Permits. An operator who has multiple mining reclamation plans or permits that 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-established actual allowable limits. (3-18-22)

019. OPTIONAL PARTICIPATION.

Operators who have one (1) or more 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 eligible mines or mineral leases in their name. An operator who does not participate in the Reclamation Fund must secure all mines with other types of financial assurance approved by the Department. (3-18-22)()

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 the Department with proof of other types of financial assurance acceptable to the Department and the federal agency. (3-18-22)()

021. -- 025. (RESERVED)

026. PAYMENT.

01. Board Approved Payment Schedule. The Board will adopt a payment schedule that ~~determines sets~~ the annual Reclamation Fund payment for each operator participating in the Reclamation Fund. Any changes to the payment schedule will must be approved by the Board. ~~Participating operators shall pay all required payments annually. New participants will be assessed a pro-rated payment based on the Department's established billing cycle.~~ (3-18-22)()

02. Acreage Calculation. The annual payment for each participant in the Reclamation Fund will be established based upon the number of disturbed acres at each mine. The acres used to calculate the annual payment will include the total current disturbed acres of affected lands and the acres planned to be disturbed or affected during the next twelve (12) months. The total acreage calculation will not be rounded when determining annual payments. (3-18-22)

03. Annual Payments Non-Refundable. Payments to the Reclamation Fund will be billed annually and are non-refundable. ~~Payments will be billed annually and, 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.~~ (3-18-22)()

04. Late Payments. Payments not received by the due date are considered late and will result in the following monthly charges: ()

a. A late charge of twenty-five dollars (\$25.00) or one percent (1%) of the unpaid principal obligation, whichever is greater, and ()

b. An interest charge of one percent (1%) on the unpaid principal obligation. ()

0405. Supplemental Payments. If an operator affects more acreage than the acreage secured through the Reclamation Fund for a current period, the Department may require supplemental Reclamation Fund payments. (3-18-22)

0506. Assignment. When a mineral lease, mining reclamation plan, or permit is assigned, all financial assurance requirements must be assumed by the new operator. No Reclamation Fund payments will be refunded

following an assignment. If the new operator is ineligible to participate in the Reclamation Fund, the new operator must provide proof of other acceptable financial assurance before the assignment may be approved. (3-18-22)

~~0607.~~ **Non-Payment Constitutes Lack of Bonding.** For any operator participating in the Reclamation Fund, non-payment of the annual payment ~~shall~~ will be considered a failure to provide financial assurance as required by the Dredge Mining Act, the Mined Land Reclamation Act, or Mineral ~~Leasing Act, or a mineral lease.~~ Rights in State Lands. (~~3-18-22~~)()

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 Mined Land Reclamation Act, or Mineral ~~Leasing Act, or a mineral lease.~~ Rights in State Lands, the Department will comply with the respective financial assurance forfeiture procedures. (~~3-18-22~~)()

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~~ is authorized to file liens against personal property and equipment of the operator to recover costs. The operator ~~shall be~~ is liable for actual costs of 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. Authorization to obtain a lien under these rules and Section 47-1804, Idaho Code, ~~shall be~~ is in addition to, not in lieu of, any other legal remedy available to the Board and the Department pursuant to the Dredge Mining Act, Mined Land Reclamation Act, or Mineral ~~Leasing Act, or a mineral lease.~~ Rights in State Lands. (~~3-18-22~~)()

032. MINIMUM BALANCE FOR THE RECLAMATION FUND.

The Board will determine a reasonable minimum balance for the Reclamation Fund. (3-18-22)

033. -- 999. (RESERVED)

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.03.03 - RULES GOVERNING ADMINISTRATION OF THE RECLAMATION FUND

DOCKET NO. 20-0303-2301

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, and Title 47, Chapter 18, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2023.

The hearing site(s) 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:

Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled to be repealed and replaced in 2023 for review during the 2024 legislative session. The overall regulatory burden has been reduced by decreasing both total word count and the number of restrictive words in the new rule chapter. The late payment policy was updated.

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

A monthly late fee of the greater of twenty-five dollars (\$25) or one percent (1%) of the unpaid principal, and an interest charge of one percent (1%) on the unpaid principal.

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 resulting from 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 April 5, 2023, Idaho Administrative Bulletin, Vol. 23-4, pages 38–39.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Eric Wilson at (208) 334-0261 or ewilson@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 27, 2023.

DATED this 6th day of September, 2023.

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