

## Origin of Draft 8 Trust Fund Rules July 2020

**05. Trusts.** Trusts are subject to the requirements of Sections 47-1512(1) and 68-1, Idaho Code. The proposed trustee, range of investments, initial funding, schedule of payments, trustee fees, and expected rate of return are subject to review and approval by the Department through a memorandum of agreement with the operator. Trusts are also subject to the following conditions: (3-20-20)T

**a.** The joint party on the trust must be identical to the entity identified in the reclamation plan or in the permanent closure plan as the party obligated to complete reclamation or permanent closure. (3-20-20)T

**Commented [EW1]:** 43 CFR 3809.552

**b.** The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. (3-20-20)T

**Commented [EW2]:** BLM Handbook H3809-1 Section 6.3.1.3, and Arizona R11-2-806.A, and New Mexico 19.10.12.1208.E(1), and Pennsylvania PAC 86.158(f)(3) , and Wyoming 020-0007.6(5)(a)(ii)(B), and 40 CFR 258.74(a)(1), and 40 CFR 264.143(a)(1)

**c.** Equities may include stock funds or stock index funds, but not individual stocks or direct investments in the operator's company or parent company. Corporate equities must not exceed seventy percent (70%) of the total value of the trust fund. (3-20-20)T

**d.** Bonds or money market funds must be investment-grade rated securities having a Standard and Poor's rating of AAA or AA or an equivalent rating from a nationally recognized securities rating service. (3-20-20)T

**Commented [EW3]:** BLM Handbook H3809-1 Section 6.3.1.3, 6.3.4.5

**e.** Payments into the trust will be made as follows: (3-20-20)T

**i.** When used to cover reclamation **or permanent closure** costs, the trust fund will be initially funded in an amount at least equal to the costs estimated in the approved reclamation **or permanent closure** plan for reclamation of existing surface disturbances covered by the chapter and any surface disturbances to occur in the first year of the trust fund. Annual payments to keep pace with increased disturbance and reclamation costs will occur as needed no later than thirty (30) days after each annual anniversary of the date of the initial payment. (~~3-20-20~~)T( )

**Commented [EW4]:** Arizona R11-2-806.D, and Nevada NAC 519A.350(2)(b) , and New Mexico 19.10.12.1208.E(2)(b), and Pennsylvania PAC 86.158(f)(1) , and Wyoming 020-0007.6(5)(a)(ii)(C)

**ii.** When used to cover a portion of reclamation **or permanent closure** costs in combination with other types of financial assurance, the initial and annual payments will be the pro-rata amount of the reclamation **or permanent closure** costs as described in subparagraph 122.05.e.i of these rules. (~~3-20-20~~)T( )

**Commented [EW5]:** Arizona R11-2-806.E, and Nevada NAC 519A.350(2)(c)

**iii.** When used to cover the anticipated post-closure costs, a payment schedule will be created in the memorandum of agreement. The post-closure costs must be fully funded by the time the post-closure period occurs. (3-20-20)T

**Commented [EW6]:** BLM Handbook H3809-1 Section 6.3.4.6

**f.** Disbursements from the trust will only occur upon written authorization of the Department. (3-20-20)T

**Commented [EW7]:** BLM Handbook H3809-1 Section 6.3.4.4, and New Mexico 19.10.12.1208.E(2)(h), and Pennsylvania PAC 86.158(f)(2)(iv), and 40 CFR 264.143(a)(10)

**g.** Trusts will be irrevocable. (3-20-20)T

**Commented [EW8]:** Pennsylvania PAC 86.158(f)(2)(i) , and Wyoming 020-0007.6(5)(a)(ii)

**h.** Income accrued on trust funds will be retained in the trust, except as otherwise agreed by the director under the terms of an agreement governing the trust. (3-20-20)T