

LCB File No. R066-02

**PROPOSED REGULATION OF THE DIVISION OF MINERALS
OF THE COMMISSION ON MINERAL RESOURCES**

Proposed Bond Pool Regulations

~~material to be omitted~~ *material to be added*

DUTIES OF DIVISION OF MINERALS

General Provisions

NAC 519A.510 Definitions. (NRS 519A.250) As used in NAC 519A.510 to 519A.635 , inclusive, unless the context otherwise requires, the words and terms defined in NAC 519A.512 to 519A.555 , inclusive, have the meanings ascribed to them in those sections.

NAC 519A.512 “Administrator” defined. “Administrator” means the administrator of the division.

NAC 519A.515 “Bond pool” defined.(NRS 519A.290) “Bond pool” means the program for the pooling of reclamation performance bonds that collects, holds and distributes money paid to the pool by its participants to assist those participants to comply with:

1. The bonding and surety requirements of chapter 519A of NRS ;
2. The requirements for financial guarantees set forth in the regulations adopted pursuant to 43 U.S.C. § 1740; or
3. The bonding requirements imposed pursuant to an ordinance adopted by a county in this state.

NAC 519A.520 “Commission” defined. “Commission” means the commission on mineral resources.

NAC 519A.525 “Division” defined. “Division” means the division of minerals of the commission on mineral resources.

NAC 519A.535 “Exploration project” defined. “Exploration project” means all activities conducted in this state by a person on or beneath the surface of land for the purpose of, or in connection with, determining the presence, location, extent, depth or grade of any mineral, which affects the surface.

NAC 519A.540 “Mining operation” defined. “Mining operation” means all activities conducted in this state by a person on or beneath the surface of land for the purpose of, or in connection with, the development or extraction of any mineral. The term does not include an aggregate or sand pit.

NAC 519A.545 “Operator” defined. “Operator” means any person who owns, controls or manages an exploration project or a mining operation.

NAC 519A.550 “Participant” defined. “Participant” means an operator who has paid money to the bond pool to cover his bonded liability and who is in good standing in the bond pool.

NAC 519A.555 “Responsible regulatory authority” defined. “Responsible regulatory authority” means the governmental agency that has authority to require, modify, release or require forfeiture of a reclamation performance bond for a mining operation or an exploration project.

Program for the Pooling of Reclamation Performance Bonds

NAC 519A.570 Administration by division; application for participation. (NRS 519A.290)

1. The division will administer the bond pool.
2. A person who wishes to participate in the bond pool must complete an application on a form provided by the division.
3. The application to participate in the bond pool must include a statement by the applicant and documentation that:
 - (a) Indicates whether the applicant has ever forfeited a bond or surety held for the reclamation of mined land and, if so, the location of the operation for which the bond or surety was forfeited and the circumstances of the forfeiture.
 - (b) Lists the location, scale and any other pertinent details of the previous mining or exploration activities of the applicant that required reclamation performance bonding during the preceding 10 years.
 - (c) Shows the structure of the business organization and the financial status of the applicant at the time of application. Except as otherwise provided in subsection 4, the documentation must include:
 - (1) An organizational chart naming any parent company;
 - (2) Current and long-term assets;
 - (3) Current and long-term liabilities;
 - (4) The net worth of the business organization; and
 - (5) Evidence that the financial statements have been reviewed by a certified public accountant and are a fair representation of the financial status of the applicant.
4. The administrator may waive the requirements of subparagraph (5) of paragraph (c) of subsection 3 for an applicant who:
 - (a) Applies for bond coverage of \$10,000 or less; and
 - (b) Submits to the administrator a signed and notarized affidavit stating under penalty of perjury that the information provided by the applicant pursuant to subparagraphs (2), (3) and (4) of paragraph (c) of subsection 3 is true.

NAC 519A.575 Submission of information by applicant; prequalification of applicant.

1. An applicant may submit any part of the information required by NAC 519A.570 before submitting the remaining required information.
2. The administrator or his designee may pre_qualify an applicant for participation in the bond pool, subject to receipt and final review of any materials required to complete the application.

NAC 519A.580 Notification of applicant; right to appeal denial of application. The division will notify the applicant within 20 business days after receipt of an application that:

1. The applicant has been accepted to participate in the bond pool subject to payment of the entry deposit and the first installment of the premium due the first year;
2. The application is incomplete and identify what additional information is required; or
3. The application has been denied and the reasons for the denial. An applicant may appeal this decision pursuant to NAC 519A.630 .

NAC 519A.585 Establishment of amount of bond; amount of coverage by bond pool. (NRS 519A.290)

1. The responsible regulatory authority shall establish the amount of the reclamation performance bond.

2. A participant is subject to a maximum bond amount for which the bond pool may be liable. The maximum amount may be reached by bonding more than a single mining operation or exploration project or a combination thereof.

3. A participant may participate in the bond pool with greater bond coverage than is required by the responsible regulatory authority with the approval of the administrator or a person designated by him. Any coverage in excess of that required by the responsible regulatory authority must be identified and may not be used to cover reclamation costs in the event of the forfeiture by the participant. The administrator or a person designated by him will include any such coverage in determining the amount of the deposit and premiums the participant is required to pay pursuant to NAC 519A.595 .

4. The maximum bond coverage for a participant who is the operator of one or more mining operations or exploration projects, or any combination thereof, is ~~[\$1,000,000]~~ **\$3,000,000**.

5. A participant may request a change in his bond pool coverage. The administrator or a person designated by him may require additional information before increasing the bond coverage of a participant.

NAC 519A.590 Indemnification of bond pool. Before acceptance into the bond pool, the applicant must execute a general agreement of indemnity on a form provided by the division. After acceptance into the bond pool, he must indemnify and keep indemnified and save and hold harmless the bond pool against all loss, costs, expenses and attorney's fees incurred by the bond pool as a result of his participation in the bond pool or forfeiture of any part of his bond.

NAC 519A.595 Payment of entry deposit and premiums. (NRS 519A.290)

1. Each participant must pay the entry deposit and premiums required by this section to maintain participation in the bond pool.

2. *Deposits shall be calculated as follows:*

(a) A participant *existing prior to (effective date)* must pay a deposit equal to 15 percent of his bond coverage at the time of entry into the bond pool. The amount of the deposit will be adjusted if the bond coverage provided by the pool increases or decreases *due solely to a recalculation of the bond amount* so the deposit is equal to 15 percent of the bond coverage. *If the bond coverage provided by the pool increases due to an amendment to the plan of operations, the deposit for the entire bond will be calculated according to subsection (b).* The deposit and any addition to the original deposit must remain in the bond pool until the participant has been released by the

responsible regulatory authority from further reclamation liability. The deposit will not be released in the event of a forfeiture.

(b) A participant existing after (effective date) must pay a deposit depending on the amount of the bond as follows:

(1) For bond amounts of under \$10,000, the deposit is 100 percent of the bond amount.

(2) For bond amounts of \$10,000 and greater, the deposit is 50 percent of the bond amount, escalating linearly to 80 percent at the cap. The deposit percentage equals $\frac{3}{299,000}(\text{bond amount}-10,000)+50$.

3. Annual premiums, established as an equal percentage of each participant's bond coverage, must be paid by the participant:

(a) In quarterly installments on or before March 31, June 30, September 30 and December 31; or

(b) Annually in accordance with a schedule approved by the administrator or a person designated by him.

4. Upon entry to the bond pool, the participant must, based on the date of entry, pay a prorated amount of the first:

(a) Quarterly premium; or

(b) Annual premium, if the participant pays the premium in accordance with a schedule approved by the administrator or a person designated by him pursuant to subsection 3.

After entry to the bond pool, the participant must pay the regular quarterly or annual amount on or before the date the premium is due.

5. The annual premium ***shall be calculated as follows:***

(a) ***For bonds existing prior to (effective date), the annual premium is ~~5~~ 5 percent of the bond coverage of a participant; and***

(b) For bonds existing after (effective date) or for bond amounts that have increased due to an amendment to the plan of operations, the annual premium is calculated as follows:

(1) For bonds under \$10,000, the annual premium is 3 percent of the bond amount.

(2) For bonds of \$10,000 or greater, the annual premium is 10 percent of the bond amount, declining linearly to 5 percent of the bond amount at the cap. The annual premium is $-0.5/299,000(\text{bond amount}-10,000)+10$.

(3) When the amount of deposit and premiums paid by a participant equal or exceed the amount of the bond, the annual premium is 3 percent of the bond amount. Any late penalties paid by a participant shall not count toward equaling or exceeding the bond amount.

~~(b)~~ (c) Except as otherwise provided in NAC 519A.610 and 519A.615, is nonrefundable.

6. If a change occurs in the required premium as a percentage of the bond coverage of a participant, the administrator or a person designated by him will notify the participant not less than 30 days before the due date of the next:

(a) Quarterly premium; or

(b) Annual premium, if the participant pays his premium in accordance with a schedule approved by the administrator or a person designated by him pursuant to subsection 3.

The administrator or a person designated by him will base any change in the percentage of the premium on the recommendation of an actuary who is approved by the commissioner of insurance to review the status of the bond pool. The findings of the actuary must show that a change in percentage allows the bond pool to remain self-sustaining under statistically expected forfeiture rates and forecasted administrative costs.

7. The administrator or a person designated by him will consult with the risk management division of the department of administration to determine the availability and cost of obtaining

insurance to cover an event where the liability of the bond pool exceeds the amount of money held in the bond pool. The administrator or a person designated by him will consult with the commission to determine whether the bond pool will obtain insurance if it is available. If insurance is obtained, the administrator or a person designated by him will develop an insurance premium payment schedule for participants based on their contribution to the bond pool's exposure. The administrator or a person designated by him will notify a participant of the amount of an insurance premium payment not less than 30 days before it would be due.

NAC 519A.600 Management and use of money held in bond pool.

1. All money held in the bond pool must be held in trust by the state treasurer and used only for the purposes of the bond pool, including administrative expenses. The state treasurer may release money to a participant, the responsible regulatory authority or the division only upon receipt of a written request from the administrator or his designee.
2. All interest earned on money held in the bond pool must be added to the bond pool and be used solely for the purposes of the bond pool. Participants are not entitled to receive any interest on deposits or premiums paid into the pool.

NAC 519A.605 Failure to pay premiums: Penalty; termination of participation; liability of bond pool. (NRS 519A.290)

1. If a participant fails to pay the premiums in the amount and by the time required by NAC 519A.595 , he shall pay a penalty of 5 percent of the amount of:
 - (a) His quarterly premium; or
 - (b) His annual premium, if the participant pays the premium annually in accordance with a schedule approved by the administrator or a person designated by him pursuant to that section.
2. If a participant fails to pay the quarterly or annual premium and the 5 percent penalty specified in subsection 1 within 30 calendar days after the date on which the premium is due, the division will notify the participant that his participation in the bond pool will be terminated if full payment of the quarterly or annual premium and penalty is not received within 70 calendar days after the date on which the premium was due. The notice will be sent to the participant and the responsible regulatory authority by certified mail, return receipt requested, at least 30 calendar days before any action concerning termination is taken by the administrator or a person designated by him.
3. If full payment of the quarterly or annual premium, including any penalty, is not received within 70 calendar days after the date on which it is due, the division will send a notice to the responsible regulatory authority and the participant by certified mail, return receipt requested, that his participation in the bond pool is terminated. If a participant's participation in the bond pool is terminated pursuant to this section, the division will not return the deposit paid by participant pursuant to NAC 519A.595 .
4. The bond pool:
 - (a) Is liable for the coverage of the participant for reclamation of land that is disturbed until the date of termination.
 - (b) Is not liable for the reclamation of any land that is disturbed after the date of termination.

NAC 519A.610 Release of deposit and unused premium. (NRS 519A.290) The administrator or a person designated by him will request the state treasurer to release the deposit of a participant and any unused premium paid by him, less any outstanding penalties or premiums, within 5 business

days after receipt of written notification from the responsible regulatory authority that the participant:

1. Has satisfied the requirement to reclaim land disturbed by a mining operation or exploration project and the bond may be released; or
2. Has obtained a surety which replaces the bond coverage of the participant by the bond pool.

NAC 519A.615 Partial release of deposit and unused premium. (NRS 519A.290) The deposit of a participant and any unused premium paid by him may be partially released in the same manner described in NAC 519A.610 if the responsible regulatory authority notifies the division that:

1. The required amount of the bond has been reduced; or
2. The participant has partially substituted another form of surety for a portion of the coverage provided by the bond pool.

The reduction in the amount of the deposit required is the same percentage as the percentage decrease in the coverage provided by the bond pool.

NAC 519A.620 Forfeiture of bond: Action by administrator; liability and exoneration of bond pool.

1. Upon notification from the responsible regulatory authority that a participant has failed to complete the required reclamation and that the responsible regulatory authority, in accordance with all applicable laws and regulations, requires forfeiture of the bond, the administrator will:

(a) Immediately notify the participant that his participation in the bond pool is terminated and his deposit will not be returned; and

(b) Request that the state treasurer transfer to the responsible regulatory authority an amount of money from the bond pool determined by the administrator or his designee to be equal to the estimated cost of reclamation less any other bonds or surety held in favor of the State of Nevada or the United States relating to the mining operation or exploration project of the participant to which the forfeiture applies.

2. The maximum liability of the bond pool is the coverage provided to the participant relating to the mining operation or exploration project of the participant at the time of the forfeiture.

3. If the responsible regulatory authority exonerates the participant from any portion of bonded liability, the bond pool is exonerated of an equal amount of bonded liability.

NAC 519A.625 Forfeiture of bond: Action against participant or former participant. (NRS 519A.290) In the event of a forfeiture by a participant or a former participant whose participation in the bond pool is terminated pursuant to NAC 519A.605 , the administrator or a person designated by him will immediately notify the attorney general and request that action be taken against the participant or former participant in the name of the State of Nevada in any court of competent jurisdiction to recover the full costs incurred by the bond pool as a result of the forfeiture. Any money recovered must be deposited in the bond pool and used for the general purposes of the bond pool.

NAC 519A.630 Appeal of denial or termination of participation in bond pool.

1. Any person who is denied participation in the bond pool pursuant to NAC 519A.580 or whose participation in the bond pool is terminated pursuant to NAC 519A.620 may appeal the denial or termination.
2. Written notice of the appeal must be received by hand delivery or certified mail, return receipt requested, by the division within 20 calendar days after receipt of the notice of denial or termination.
3. The appeal must state the grounds for the appeal of the denial or termination.
4. Within 30 calendar days after receipt of a notice of appeal, the division will send a notice of the hearing to the person appealing the denial or termination. The notice will include the time, place and nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held, and a statement of the matters asserted.
5. The hearing will be held before a panel composed of:
 - (a) The administrator who is the chairman of the panel and hearing officer;
 - (b) A member of the commission who is designated by the chairman of the commission; and
 - (c) A representative of the current participants in the bond pool who is selected by the chairman of the commission and the administrator.
6. The person appealing the denial or termination may present evidence and has the burden of proving that the denial or termination should be modified or reversed.
7. The panel shall render a written decision which must be served personally or by certified mail upon the person appealing the denial or termination. The decision of the panel is a final decision for the purposes of judicial review.