

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

LCB FILE NO. R044-19I

**The following document is the initial draft regulation proposed
by the agency submitted on 07/23/2019**

DUTIES OF DIVISION OF MINERALS

General Provisions

NAC 519A.510 Definitions. (NRS 513.063, 519A.250, 519A.290) 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.

(Added to NAC by Dep't of Minerals, eff. 10-9-90; A 3-4-92; A by Comm'n on Mineral Resources by R069-99, 8-19-99; R066-02, 8-23-2002)

NAC 519A.512 “Administrator” defined. (NRS 519A.250, 519A.290) “Administrator” means the Administrator of the Division.

(Added to NAC by Dep't of Minerals, eff. 10-9-90) — (Substituted in revision for NAC 519A.530)

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.

(Added to NAC by Dep't of Minerals, eff. 10-9-90; A by Div. of Minerals, 11-14-97)

NAC 519A.520 “Commission” defined. (NRS 519A.290) “Commission” means the Commission on Mineral Resources.

(Added to NAC by Dep't of Minerals, eff. 10-9-90)

NAC 519A.525 “Division” defined. (NRS 519A.250, 519A.290) “Division” means the Division of Minerals of the Commission on Mineral Resources.

(Added to NAC by Dep't of Minerals, eff. 10-9-90)

NAC 519A.535 “Exploration project” defined. (NRS 519A.250, 519A.290) “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.

(Added to NAC by Dep't of Minerals, eff. 10-9-90; A 3-4-92)

NAC 519A.540 “Mining operation” defined. (NRS 519A.250, 519A.290) “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.~~

(Added to NAC by Dep't of Minerals, eff. 10-9-90; A 3-4-92)

“Notice-level project” defined. “Notice-level project” means an exploration project causing, or proposing to cause, surface disturbance of 5 acres or less of public lands.

NAC 519A.545 “Operator” defined. (NRS 519A.250, 519A.290) “Operator” means any person who owns, controls or manages an exploration project or a mining operation.
(Added to NAC by Dep’t of Minerals, eff. 10-9-90)

NAC 519A.550 “Participant” defined. (NRS 519A.290) “Participant” means an operator who has paid money to the bond pool to cover his or her bonded liability and who is in good standing in the bond pool.
(Added to NAC by Dep’t of Minerals, eff. 10-9-90)

NAC 519A.552 “Plan” defined. (NRS 513.063, 519A.250, 519A.290) “Plan” means a plan of operation filed with and approved by the United States Bureau of Land Management or the United States Forest Service *or a plan for reclamation filed with and approved by the Division of Environmental Protection of the Nevada Department of Conservation and Natural Resources.*
(Added to NAC by Comm’n on Mineral Resources by R066-02, eff. 8-23-2002)

NAC 519A.555 “Responsible regulatory authority” defined. (NRS 519A.290) “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.
(Added to NAC by Dep’t of Minerals, eff. 10-9-90)

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.

(Added to NAC by Dep't of Minerals, eff. 10-9-90; A 9-16-92; A by Div. of Minerals, 11-14-97)

NAC 519A.575 Submission of information by applicant; prequalification of applicant. (NRS 519A.290)

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 or her designee may prequalify an applicant for participation in the bond pool, subject to receipt and final review of any materials required to complete the application.

(Added to NAC by Dep't of Minerals, eff. 10-9-90)

NAC 519A.580 Notification of applicant; right to appeal denial of application. (NRS 519A.290) 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.

(Added to NAC by Dep't of Minerals, eff. 10-9-90)

NAC 519A.581 Exemptions for notice-level projects. Bonding of notice-level projects are exempt from the requirements of NAC 519A.570 (2) through (4), NAC 519A.575, and NAC 519A.580.

NAC 519A.585 Establishment of amount of bond; amount of coverage by bond pool. (NRS 513.063, 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 or her. Any coverage in excess of the coverage 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 the Administrator 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 \$3,000,000.

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

(Added to NAC by Dep't of Minerals, eff. 10-9-90; A 3-4-92; A by Div. of Minerals, 11-14-97; A by Comm'n on Mineral Resources by R066-02, 8-23-2002)

NAC 519A.590 Indemnification of bond pool. (NRS 519A.290) 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, the applicant 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 or her participation in the bond pool or forfeiture of any part of his or her bond.

(Added to NAC by Dep't of Minerals, eff. 10-9-90)

NAC 519A.595 Payment of entry deposit and premiums. (NRS 513.063, 519A.290)

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

2. If an operator becomes a participant before August 23, 2002, the participant must pay a deposit equal to 15 percent of his or her 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 solely because of a recalculation of the amount of the bond so the deposit is equal to 15 percent of the bond coverage. If the bond coverage provided by the pool increases because the plan is amended, the deposit for the bond will be calculated in the manner provided in subsection 3. 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.

3. If an operator becomes a participant after August 23, 2002, the amount of the deposit for:

(a) A bond ~~that is less than \$10,000~~ *for a notice-level project*, is 100 percent of the amount of the bond; and

(b) A bond ~~that is \$10,000 or more~~ *that is not for a notice-level project*, is a percentage of the amount of the bond calculated using the following formula:

3

$$\frac{\text{amount of bond} - 10,000}{299,000} + 50$$

4. 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, *for bonds for notice-level projects*, in accordance with a schedule approved by the Administrator or a person designated by him or her.

5. 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 or her pursuant to subsection 4.

↳ 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.

6. The annual premium will be calculated as follows:

(a) Except as otherwise provided in paragraph (b), for bonds that were issued before August 23, 2002, the annual premium is 5 percent of the bond coverage of a participant.

(b) For bonds that are issued on or after August 23, 2002, or for bonds that have increased because the plan is amended, the annual premium:

~~(1) Except as otherwise provided in subparagraph (3), for bonds whose total amount is less than \$10,000, is 3 percent of the amount of the bonds.~~

~~(2)~~ Except as otherwise provided in subparagraph ~~(3)~~2, for bonds whose total amount is at least \$10,000, is a percentage of the amount of the bond calculated using the following formula:

- 0.5

$$\frac{299,000}{\text{amount of bond} - 10,000} + 10$$

~~(3)~~2 If the amount of the deposit and the premiums paid by a participant equal or exceed the amount of the bond, is ~~3~~ 2 percent of the amount of the bond. For the purposes of this subparagraph, any late penalty paid by a participant will not be considered in determining the amount of the annual premium.

7. Except as otherwise provided in NAC 519A.610 and 519A.615, the annual premium is nonrefundable.

8. 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 or her 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 or her premium in accordance with a schedule approved by the Administrator or a person designated by the Administrator pursuant to subsection 4.

↳ The Administrator or a person designated by him or her 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.

9. The Administrator or a person designated by him or her will:

(a) Consult with the Risk Management Division of the Department of Administration to determine the availability and cost of obtaining insurance to insure against exposure to a risk that would cause the liability of the bond pool to exceed the amount of money in the bond pool.

(b) Consult with the Commission to determine whether to obtain such insurance. If the insurance is obtained, the Administrator or a person designated by him or her will establish a schedule for payment of the premiums for each participant based on the participant's portion of the total liability of the bond pool.

(c) Notify each participant of the amount of the premium the participant owes not less than 30 days before the premium is due.

(Added to NAC by Dep't of Minerals, eff. 10-9-90; A by Div. of Minerals, 11-14-97; A by Comm'n on Mineral Resources by R066-02, 8-23-2002)

NAC 519A.600 Use of money held in bond pool; interest earned on money; transfer of administrative expenses. (NRS 519A.290)

1. All money held in the bond pool must be used only for the purposes of the bond pool, including administrative expenses.

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.

3. Except as otherwise provided in this subsection, administrative expenses, calculated at a rate of 3 percent of the average total active bond amount held in the bond pool at the end of each of the 4 immediately preceding fiscal quarters, may be transferred annually from the bond pool to the Account for the Division of Minerals created pursuant to NRS 513.103. The amount transferred must be based on the actual administrative expenses incurred by the Division and may not exceed the amount resulting from the calculations made pursuant to this subsection.

4. As used in this section, "total active bond amount" means the total amount of money held in the bond pool that has not been requested to be returned to a participant.

(Added to NAC by Dep't of Minerals, eff. 10-9-90; A by Div. of Minerals by R108-13, 10-24-2014)

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, the participant shall pay a penalty of 5 percent of the amount of:

(a) His or her quarterly premium; or

(b) His or her annual premium, if the participant pays the premium annually in accordance with a schedule approved by the Administrator or a person designated by the Administrator 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 or her 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 the Administrator.

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 or her 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.

(Added to NAC by Dep't of Minerals, eff. 10-9-90; A by Div. of Minerals, 11-14-97)

NAC 519A.610 Release of deposit and unused premium. (NRS 519A.290) The Administrator or a person designated by the Administrator will request the State Treasurer to release the deposit of a participant and any unused premium paid by him or her, less any outstanding penalties or premiums, *and 75% of the sum total of premiums paid at which time the amount of the deposit and the premiums paid by a participant equals the amount of the bond* 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. (Added to NAC by Dep't of Minerals, eff. 10-9-90; A by Div. of Minerals, 11-14-97)

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 or her 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.

(Added to NAC by Dep't of Minerals, eff. 10-9-90; A by Div. of Minerals, 11-14-97)

NAC 519A.620 Forfeiture of bond: Action by Administrator; liability and exoneration of bond pool. (NRS 519A.290)

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 or her participation in the bond pool is terminated and his or her 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 or her 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.

(Added to NAC by Dep't of Minerals, eff. 10-9-90)

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 the Administrator 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.

(Added to NAC by Dep't of Minerals, eff. 10-9-90; A by Div. of Minerals, 11-14-97)

NAC 519A.630 Appeal of denial or termination of participation in bond pool. (NRS 519A.290)

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 chair of the panel and hearing officer;
- (b) A member of the Commission who is designated by the Chair of the Commission; and
- (c) A representative of the current participants in the bond pool who is selected by the Chair 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.

(Added to NAC by Dep't of Minerals, eff. 10-9-90)

Fee for Filing Plan of Operation

NAC 519A.634 Amount of fee. (NRS 519A.250) The amount of the fee that an operator must pay pursuant to subsection 1 of NRS 519A.250 is \$20 per acre or part of an acre.

(Added to NAC by Comm'n on Mineral Resources by R069-99, eff. 8-19-99)

NAC 519A.635 Refund of portion of fees. (NRS 513.063, 519A.250)

1. The Division will refund to an operator a portion of the fees required by NRS 519A.250 according to the following schedule:

(a) For an amended plan:

(1) That reduces the number of acres or part of an acre to be disturbed from the original number of acres or part of an acre to be disturbed; and

(2) For which a fee has been paid to the Division pursuant to NRS 519A.250,
→ the refund is \$1 for each acre or part of an acre removed from planned disturbance by the amendment.

(b) For a plan, there is no refund.

~~(c) For a notice, there is no refund.~~

2. An operator who wishes to receive a refund must send to the Administrator a written request and a copy of the approved amended plan showing the reduction in acreage. Within 20 business days after receiving a valid written request for a refund and a copy of the amended plan, the Administrator or his or her designee will request that the State Controller issue a check to the operator in an amount calculated pursuant to paragraph (a) of subsection 1.

3. As used in this section:

~~(a) “Notice” means a notice of intent to conduct activities that disturb the surface which is filed with the United States Bureau of Land Management or the United States Forest Service.~~

~~—(b) “Operator” includes a person who is required by federal law to file a plan; *or* an amended plan ~~or a notice~~ with the United States Bureau of Land Management or the United States Forest Service.~~

(Added to NAC by Dep’t of Minerals, eff. 10-9-90; A by Comm’n on Mineral Resources by R080-01, 1-16-2002; R066-02, 8-23-2002)