

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

LCB File No. R044-19

August 26, 2019

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-9 and 11, NRS 519A.290; §10, NRS 519A.250 and 519A.290; §12, NRS 513.063 and 519A.250.

A REGULATION relating to mining; revising the provisions governing deposit calculations for participation in the program for the pooling of reclamation performance bonds; revising provisions relating to the calculation of bond premiums; revising provisions relating to the payment of bond premiums; revising the application process for the bond pool; revising provisions relating to the release of certain deposits and unused premiums paid into the bond pool; making various other changes related to the program; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Division of Minerals of the Commission on Mineral Resources to develop and administer a program providing for the pooling of reclamation performance bonds and requires the Division to adopt regulations relating to the administration of the program. (NRS 519A.290)

Existing regulations require each operator that wishes to participate in the bond pool to pay an entry deposit. (NAC 519A.595) **Section 3** of this regulation revises the formulas and classifications used to calculate the amount of an entry deposit.

Section 5 of this regulation revises the definition of “mining operation” so the term no longer excludes an aggregate or sand pit.

Section 6 of this regulation revises the definition of “plan” to include plans for reclamation filed with and approved by the Division of Environmental Protection of the State Department of Conservation and Natural Resources.

Existing regulations require each operator that wishes to participate in the program to submit an application. (NAC 519A.570) **Section 7** of this regulation provides that applications for bond coverage for notice-level projects are exempt from certain requirements. **Section 2** of this regulation defines “notice-level project” as an exploration project causing or proposing to cause a surface disturbance of not more than 5 acres on public lands.

Existing regulations require each participant in the bond pool to pay premiums for each bond. (NAC 519A.595) **Section 9** of this regulation provides that premiums for a bond for a notice-level project must be paid annually and all other bond premiums must be paid in quarterly installments.

Existing regulations provide for the release of the entry deposit and unused premiums paid by a participant after the participant has met certain requirements. (NAC 519A.610) **Section 11** of this regulation revises those provisions to authorize the partial release of certain additional premiums paid by a participant under certain circumstances.

With certain exceptions, existing regulations provide that the Division of Minerals will partially refund certain required fees for filing a plan of operation to the operator if the plan is amended to reduce the size of an area to be disturbed. Currently, no refund is available for fees related to filing a notice. (NAC 519A.635) **Section 12** of this regulation eliminates the provision that excludes notices from the refund provisions.

Section 1. Chapter 519A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *“Notice-level project” means an exploration project causing or proposing to cause a surface disturbance of not more than 5 acres on public lands.*

Sec. 3. 1. *Each participant must pay the entry deposit required by this section to maintain participation in 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.*

2. If an operator becomes a participant or the bond coverage provided by the pool changes because the plan is amended:

(a) Before August 23, 2002, the deposit is equal to 15 percent of his or her bond coverage at the time of entry into the bond pool or amendment of the plan, as applicable.

(b) On or after August 23, 2002, and before the effective date of this regulation, the amount of the deposit for:

(1) A bond that is less than \$10,000, is 100 percent of the amount of the bond; and

(2) A bond that is \$10,000 or more, is a percentage of the amount of the bond calculated using the following formula:

$$\frac{3}{299,000 \quad (\text{amount of bond} - 10,000) + 50}$$

(c) On or after the effective date of this regulation, the amount of the deposit for:

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

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

$$\frac{3}{299,000 \quad (\text{amount of bond} - 10,000) + 50}$$

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.

Sec. 4. NAC 519A.510 is hereby amended to read as follows:

519A.510 As used in NAC 519A.510 to 519A.635, inclusive, *and sections 2 and 3 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 519A.512

to 519A.555, inclusive, *and section 2 of this regulation* have the meanings ascribed to them in those sections.

Sec. 5. NAC 519A.540 is hereby amended to read as follows:

519A.540 “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.}~~

Sec. 6. NAC 519A.552 is hereby amended to read as follows:

519A.552 “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 State Department of Conservation and Natural Resources.*

Sec. 7. NAC 519A.570 is hereby amended to read as follows:

- 519A.570 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 ~~{}~~ *and submit any relevant information or supporting documents requested by the Division.*
3. ~~{The}~~ *Except as otherwise provided in subsection 5, an* 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.

5. An applicant is not required to comply with the provisions of subsection 3 when applying for a bond for a notice-level project.

Sec. 8. NAC 519A.585 is hereby amended to read as follows:

519A.585 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 *section 3 of this regulation and the amount of the 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.

Sec. 9. NAC 519A.595 is hereby amended to read as follows:

519A.595 1. Each participant must pay the ~~entry deposit and~~ *annual* premiums , *established as an equal percentage of the participant's bond coverage, as* required by this section to maintain participation in the bond pool.

2. If an operator ~~becomes~~ *became* 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, is 100 percent of the amount of the bond; and~~
~~—(b) A bond that is \$10,000 or more, is a percentage of the amount of the bond calculated using the following formula:~~

$$\frac{\text{Amount of bond} - 10,000}{299,000 - 10,000} \times 50$$

~~—4.— Annual] *the effective date of this regulation,* 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 or her.

~~]~~ **3. *If an operator becomes a participant after the effective date of this regulation, premiums must be paid by the participant for:***

(a) A bond for a project that is not a notice-level project, in quarterly installments on or before March 31, June 30, September 30 and December 31; or

(b) A bond for a notice-level project, annually in accordance with a schedule approved by the Administrator or a person designated by him or her.

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 or her pursuant to ~~subsection 4.~~ *this section.*

↳ 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.~~ 5. 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~~ *were* issued *or that increased because the plan was amended* on or after August 23, 2002, ~~for for bonds that have increased because the plan is amended,~~ *and before the effective date of this regulation,* 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), 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

299,000 (amount of bond - 10,000) +10

(3) If the amount of the deposit and the premiums paid by a participant equal or exceed the amount of the bond, is 3 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.

(c) For bonds that are issued or increased because the plan is amended on or after the effective date of this regulation:

(1) Except as otherwise provided in subparagraph 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

299,000 (amount of bond - 10,000) +10

(2) If the amount of the deposit and the premiums paid by a participant equal or exceed the amount of the bond, is 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.

~~7.1~~ 6. Except as otherwise provided in NAC 519A.610 and 519A.615, the annual premium is nonrefundable.

~~18.1~~ 7. 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.~~ *this section.*

↪ 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.

~~19.1~~ 8. 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.

Sec. 10. NAC 519A.605 is hereby amended to read as follows:

519A.605 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.~~ *section 3 of this regulation.*

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.

Sec. 11. NAC 519A.610 is hereby amended to read as follows:

519A.610 ~~{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, within 5 business days after receipt of written notification from}~~

*1. A participant is eligible for the release of funds described in subsection 2 when the responsible regulatory authority **confirms in writing** that the participant:*

~~{1.}~~ *(a) Has satisfied the requirement to reclaim land disturbed by a mining operation or exploration project and the bond may be released; or*

~~{2.}~~ *(b) Has obtained a surety which replaces the bond coverage of the participant by the bond pool.*

2. Not later than 5 business days after receipt of written notification from the responsible regulatory authority that the participant has completed the requirements of subsection 1, the Administrator or a person designated by the Administrator will request the State Treasurer to release:

(a) The deposit of a participant;

(b) Any unused premium paid by him or her, less any outstanding penalties or premiums;
and

(c) Seventy-five percent of the sum total of any premiums paid after the point in time the amount of the deposit and the premiums paid by the participant equaled the amount of the bond.

Sec. 12. NAC 519A.635 is hereby amended to read as follows:

519A.635 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”†~~, “operator” includes a person who is required by federal law to file a plan, an amended plan or a notice with the United States Bureau of Land Management or the United States Forest Service.