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## **BACKGROUND, NEED, PROPOSED ACTION, AND IMPACTS**

### PROPOSED REGULATION CHANGES RELATING TO THE DIVISION OF MINERALS' ABANDONED MINE LANDS PROGRAM (NAC 513.260 TO 513.390)

#### *Background*

The proposed regulation changes affect the program created by Nevada Revised Statute (NRS) 513.094 to discover, rank, determine ownership, educate the public, and establish standards for the securing, of dangerous physical safety conditions resulting from historic mining practices. In addition, the proposed regulation increases the fee which funds this program. The regulations for the administration of the abandoned mine lands (AML) program were approved by the Commission on Mineral Resources (CMR) in 1988 and funded by a \$0.50 fee (initially set by NRS 513.094) for each mining claim filed at the county recorder. This fee was increased by the Nevada legislature to \$1.00 in 1993. In 1999, the Nevada legislature approved the fee to be established by the CMR not to exceed \$4.00 per claim. Through public rulemaking, the CMR approved an increase to \$1.50 in 1999. Under NAC 513, the AML program has not received a per-claim funding increase since 1999 and there have been no other changes to these regulations since 1988.

#### *Need*

Existing regulations do not adequately address some of the facets of the AML program and need to be updated to reflect current practices of the agency and clarify methods for securing of dangerous conditions. General housekeeping of the regulatory language is also desired to clarify that a dangerous condition's **rank** (rather than rating) is the sum of the **ratings** for location and degree of danger. The ability to modify the rating for location based on certain accessibility factors (such as topography, proximity to hiking or OHV trails, signs of visitation, etc.) reflect a similar ability when rating the degree of danger already in existing regulations. Clarification of the requirement for when a **warning sign** is to be posted is necessary to eliminate the confusion resulting from existing language. Broader language for **methods of securing** is needed to reflect the many acceptable methods and materials available and commonly used currently, and which may be used in the future, which meet the intent of preventing "a person or animal from accidentally exposing himself or herself to the dangerous condition." Lastly, the **cost** to administer the AML program has increased significantly since 1999, due to inflation and increased travel costs. The latter is a result of normal prioritization of work towards those features closest and most easily accessible to the public rendering the remainder of features to be inventoried further afield. Claim filings have steadily decreased since 2012, negatively impacting this important public safety program.

### ***Proposed Action***

At the November 5, 2015 quarterly meeting of the Commission on Mineral Resources (CMR), the agency presented the need for regulation updates and language recommendations. At that meeting, the CMR recommended the agency move forward with rulemaking and submit to the Legislative Counsel Bureau (LCB) proposed regulation changes including the per claim increase. NDOM submitted the proposed regulation changes (R127-15I) to LCB on November 11, 2015. After legal review resulting in some minor changes, LCB released their draft of the regulations (R127-15RP1), dated January 7, 2016.

In summary, the proposed regulation changes include:

#### \$1.50 fee increase per mining claim (NAC 513.315)

The \$1.50 increase will bring the total amount of the “additional fee imposed on filings pursuant to subsection 1 of NRS 513.094” to \$4.00 per claim, which is the statutory cap approved by the Nevada legislature under subsection 4 of NRS 513.094.

#### Clarification of inventory, notification and securing processes

1. Clarification that the Administrator or his or her representative may assign a different rating to the location of a dangerous condition based on accessibility factors, but that the rating cannot exceed 5 points. (NAC 513.330)
2. Language clarification for the dangerous condition to be ranked, rather than rated. (NAC 513.360 through 513.390)
3. Clarification that the Commission on Mineral Resources is providing the official notification of the existence of a dangerous condition to an owner or responsible person.
4. Clarification that upon notification, a warning sign is to be posted within 180 days for a dangerous condition ranked as a minimal hazard (2 or 3 points). (NAC 513.380)
5. Clarification for methods of securing, and the maintenance thereof, for dangerous conditions ranked as a low, moderate, or high hazard. (NAC 513.390)
6. Addition of language addressing approval by the Administrator or his or her representative for the modification of securing method specific to a dangerous condition. (NAC 513.390)

#### Repealed sections (obsolete language)

1. NAC 513.260 - “Fence” has the meaning ascribed to it under subsection 5 of NRS 207.200.
2. NAC 513.370 – A dangerous condition regardless of its ranking must be posted with a warning sign mounted on an orange post. The sign must be posted within 30 days after the responsible person is notified by the county sheriff of the existence of the condition.

### *Impacts*

In order to determine the impacts on claimants resulting from the per claim fee increase, a list of active (2016 Assessment Year) claims and claimants in Nevada was downloaded on October 19, 2015 from the Bureau of Land Management's Legacy Rehost (LR2000) website. An analysis of the 163,542 active 2016 claims found that 63% of the 1,968 entities are claimants with 10 or fewer claims, which would have an average impact resulting from the proposed fee increase of \$5.39 per claimant. Approximately 86 of the listed claimants are current mine operators, or their subsidiaries, which would see an average impact of \$1,240.24. Current claim fees paid to the BLM annually are \$155.00 per claim and those to NDOM, upon filing at the county, are \$8.50 per claim. The proposed \$1.50 per claim fee increase would then represent 0.9% of the current total fee per claim paid by claimants. While this is a direct impact, it is not considered significant. Based on county mining claim filing projections, increasing the per claim fee by \$1.50 is expected to generate approximately \$240,000 in State Fiscal Year 2017.

The language changes as proposed are intended to clarify facets of a more mature AML program and reflect the need for periodic "housekeeping" of regulations to ensure they reflect the intent of the program as set forth by statute, are internally sound from a legal perspective, and adequately address and incorporate changes due to current best practices and technology. Impacts, from the proposed changes, to owners and responsible persons notified by NDOM are expected to be minimal, and should provide for better understanding and communication of the public safety issues regarding AML hazards.