Annexure B - OPASA Submission Table in respect of the Proposed Financial Provisioning Regulations

No.	Regulation	Previous Regulation Provision 15 May 2019 (GNR 667)	Proposed Regulation Provision 27 August 2021 (GNR 765)	Comments	Proposal
1.	Regulation 1 - Definitions	*"**applicant**" means a person who applies for or requires-* *(a) a reconnaissance permission, reconnaissance or mining permit or a prospecting, exploration, mining or production right in terms of the Mineral and Petroleum Resources Development Act, 2002; or* *(b) consent in terms of section 11 or section 102 of the Mineral and Petroleum Resources Development Act, 2002 relating to a reconnaissance permission, reconnaissance or mining permit or a prospecting, exploration, mining or production right; or* *(c) a renewal of a permit or right in terms of section 18, 24, 34, 81 or 85 respectively of the Mineral and Petroleum Resources Development Act, 2002.*	"***applicant**" means a person who applies for—* *(a) a permit, right and permission in terms of the Mineral and Petroleum Resources Development Act, excluding permits, rights or permissions contemplated in regulation 3(2) and 3(3)(a) and (b);* *(b) a consent in terms of section 102 of the Mineral and Petroleum Resources Development Act relating to a mining permit or a prospecting, exploration, mining or production right, excluding any consent for amendment or variation of an environmental management programme or works programme where there is no change to the scope of the operation; and* *(c) an environmental authorisation in terms of the Environmental Impact Assessment Regulations for an activity for which the Minister has issued an exemption in terms of section 106(1) of the Mineral and Petroleum Resources Development* Act;	The definition of "applicant" now excludes an applicant or a holder of a reconnaissance permit or an exploration right in sections 13, 74 or 79 of the Mineral and Petroleum Resources Development Act **(MPRDA**) where the application only includes a desktop study or aerial survey. Reconnaissance permit and offshore exploration applicants or right holders whose applications include a seismic survey, but not drilling of stratigraphic wells (in the case of exploration) are also excluded from the definition of "applicant". In the Previous Regulations, a person who applied for Ministerial consent in terms of section 11 of the MPRDA as well as a renewal in terms of section 81 and 85, were included in the definition of an "applicant". Such persons are now excluded. This is in accordance with the proposal made in the previous OPASA submission.	A person who applies for a consent in terms of section 102 of the MPRDA still constitutes an "applicant". Given that the Proposed Regulations provide for reviews, updates of templates, spreadsheets, plans and reports and possibility of adjustment of the financial provision, the inclusion of this subsection may result in such adjustments having to be made numerous times a year. We recommend that subsection (b) be deleted. The definition of "applicant" now includes an applicant or holder of an environmental authorisation for an activity which the Minister of Mineral Resources and Energy has issued an exemption for in terms of section 106 (1) of the MPRDA. This is only applicable to exemptions granted to an organ of state in respect of any activity to removal of minerals in respect of road construction, building of

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					dams **or any other purpose**. While section 69(2) states that Chapter 8 is applicable to petroleum, section 106(1) references sections 16, 20, 22, and 27 of the MPRDA which are applicable to minerals. It is recommended that clarity be provided regarding the applicability of this section to offshore petroleum operations.
2.	Regulation 1 - Definitions	*"**auditor**" means a suitably qualified independent person or persons responsible or undertaking the audit, which person must be registered with the appropriate professional body;*	*"**auditor**" means an independent specialist who signs off on an audit;*	The definition of auditor has been changed to remove the requirement for "registration with the appropriate professional body". However, the definition does not explicitly reflect that the "auditor" does not necessarily have to be a financial auditor. It has been OPASA's understanding that the DFFE does not intend for the auditor to be a financial auditor, but rather a "peer reviewer".	We recommend that the definition either refer to a "peer reviewer" or that the definition of auditor to be clarified in this respect. Clarity is requested in respect of whether the "auditor" may be a specialist employed by an affiliated or parent company.
3.	Regulation 1 - Definitions		*"**decommissioning**" means the shutdown of an operation with the removal of buildings and the withdrawal from service of equipment, plant and machinery used in relation to an operation regulated in terms of the*	The definition "decommissioning" has now been included in the Proposed Regulations. This is in accordance with the proposal made in the previous OPASA submission.	N/A

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			Mineral and Petroleum Resources Development Act;		
4.	Regulation 1 - Definitions	*"**Granting Date**" means the date on which the recommendation to issue a permission, right or permit is approved by the Minister in terms of the Mineral and Petroleum Resources Development Act, 2002;*	[No definition]	In terms of the Previous Regulations, the applicant or holder had to provide proof of financial provisioning arrangements on the granting date. The definition of "Granting Date" has now been removed. This is in accordance with the proposal made in the previous OPASA submission.	N/A
5.	Regulation 1 - Definitions	*"**holder**" means the holder of an old order right, a reconnaissance permission, a reconnaissance or mining permit or a prospecting, exploration, mining or production right or any consent for such permission, permits or rights issued in terms of section 11 or 102 of the Mineral and Petroleum Resources Development Act, 2002, and for which no closure certificate has been issued;*	*"**Holder**" means the holder of-* *(a) an environmental authorisation for an activity for which the Minister has issued an exemption in terms of section 106(1) of the Mineral and Petroleum Resources Development Act; and* *(b) an old order right, permission, permit and right issued in terms of the Mineral and Petroleum Resources Development Act for which no closure certificate has been issued, excluding permits, rights or permissions contemplated in regulation 3(2) and 3(3)(a) and (b);*	The definition of "Holder" has been expanded in accordance with the amended definition of "applicant" to include an EA for which the Minister granted an exemption in terms of section 106(1) of the MPRDA.	N/A
6.	Regulation 1 - Definitions	*"**Incident**" means an unplanned and unusual event which could include an act of God that may cause environmental damage.*	*"**incident**" means an unanticipated and unusual natural event which causes, has caused or may cause environmental damage;*	The definition of "incident" has been amended to apply only to "unanticipated and unusual **natural**" events.	The proposed definition of "incident" in the Draft Regulations is exceptionally narrow, given the requirement that any

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				Section 30 of NEMA defines "incident" to mean "an unexpected, sudden and uncontrolled release of a hazardous substance, including from a major emission, fire or explosion, that causes, has caused or may cause significant harm to the environment, human life or property".	such event be "natural", in addition to "unanticipated and unusual". This would have the effect of excluding scenarios particular to the offshore industry which were previously covered under the 2019 draft, such as blow-outs. It is therefore recommended that the definition be aligned with the language used in section 30 of NEMA – "unexpected, sudden and uncontrolled". Alternatively, we propose that either: 1. the word "natural" be removed from the definition; or 2. The definition be reworded to reflect that natural events are included, but not exclusively so.

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7.			**"*master rate*"** *means the prescribed rate applied to specific mitigation and rehabilitation activities for any operation identified in regulation 7, to be undertaken progressively, at decommissioning and closure and post-closure to manage post-closure impacts*	The definition of "master rate" has been included in the Proposed Regulations in accordance with its reference in Regulation 7.	N/A
8.	Regulation 1 - Definitions	*"**reconnaissance permission**" has the meaning assigned to it in section 1 of the Mineral and Petroleum Resources Development Act, 2002 and for purposes of these Regulations is limited to reconnaissance when it includes seismic activities;*	[No definition]	Given that applicants and holders of reconnaissance permits are no longer included in the definition of an "applicant" in the Proposed Regulations, this definition has been deleted.	N/A
9.	Regulation 1 - Definitions	*"**remediate**" means to repair or reverse environmental damage;*	[No definition]	In the Previous Regulations there was an obligation on the holder to remediate and rehabilitate. In the Proposed Regulations (Regulation 9), this has been replaced with the obligation of an applicant and holder to plan for, finance and implement environmental mitigation, rehabilitation and management measures. The definition of "remediate" has therefore been deleted. This is in accordance with the proposal made in the previous OPASA submission.	N/A
10.			*"**parent or affiliate company**" refers to any company that controls or is controlled*	The definition for "parent or affiliate company" is a new definition in the	N/A

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			by the applicant or holder including by having the power to materially influence the management of such company;	Proposed Regulations in accordance with Regulations 9, 10, 13 and 19.	
11.			***"parent or affiliate company guarantee"*** *is a National Treasury approved, legally binding commitment, by the parent or affiliate company of the applicant or holder, registered in a country which is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10 June 1958 (New York Convention) and has at least an investment grade credit rating from an international rating agency, who guarantees to fulfil environmental liability obligations for and on behalf of the holder or applicant in question*	The definition for "parent or affiliate company guarantee" is a new definition in the Proposed Regulations in accordance with Regulations 9, 10, 13 and 19. The requirement that the guarantee be "National Treasury" approved is somewhat vague. Regulation 10(5) provides that: *"10(5) The parent or affiliate company guarantee contemplated in subregulation (1)(d) must be prepared in accordance with the requirements of National Treasury".* In addition, the requirement for an investment grade credit rating precludes any South African company from being able to provide a Parent Company Guarantee.	Clarity is requested in respect of the "requirements of National Treasury", and how these will be published. It is further proposed that the credit rating requirement be amended to provide for a South African sovereign credit rating.

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12.	Regulation 1 - Definitions	*"**Specialist**" means an independent person who is qualified by virtue of his or her demonstrable knowledge, qualifications, skills or expertise in the mining, environmental, water, resource economy and financial fields;*	*"**specialists**" means a team of professionals who are qualified by virtue of their demonstrable knowledge, qualifications, skills or expertise in the mining, environmental science, water management and treatment, resource economy, engineering and quantity surveying;*	The definition of "specialists" no longer includes a person qualified in financial fields. This is in accordance with the proposal made in the previous OPASA submission.	N/A
13.	Regulation 1 - Definitions		*1(3) When a period of days must be reckoned in terms of these Regulations from or after a particular day, that period must be reckoned as from the start of the day following that particular day to the end of the last day of the period, but if the last day of the period falls on a Saturday, Sunday or public holiday, that period must be extended to the end of the next day which is not a Saturday, Sunday or public holiday.*	The Proposed Regulations clarifies the definition of "days" as calendar days.	It is recommended that a definition for "working days" should be provided for in accordance with its reference in Regulation 16(3).
	Regulation 1 - Definitions		***"latent environmental impacts"** means impacts which are existing and defined but not yet developed and will manifest post-closure;*		It is proposed that the definition be clarified in respect of whether it refers to only guaranteed impacts, or whether "incidents" (as defined) would also fall under the umbrella of latent environmental impacts.

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	Regulation 1 - Definitions		***"mining"*** *means the extraction of a mineral from the earth or any residue deposit or stockpile and includes underground gasification;*		Clarity is requested on whether offshore activities are excluded from this definition.
14.	Regulation 3- Application of these Regulations	*(3) These Regulations-* *(a) apply to an applicant or a holder, notwithstanding the applicability of section 52(1) of the Mineral and Petroleum Resources Development Act, 2002; and* *(b) do not apply in the case of an incident, in which case separate arrangements must be made to cover liability associated with such an incident, and in which case the provisions of section 28 of the Act applies/*	*3. (1) These Regulations apply to an applicant and a holder, notwithstanding the applicability of section 52(1) of the Mineral and Petroleum Resources Development Act.* *(2) These Regulations do not apply to an applicant or holder of-* *(a) a retention permit or a technical co-operation permit contemplated in sections 31 and 76 of the* *Mineral and Petroleum Resources Development Act respectively; and* *(b) a reconnaissance permission or permit or an exploration right contemplated in section 13, 74 or 79 of the Mineral and Petroleum Resources Development Act where the application includes only a desktop study or aerial survey.* *(3) These Regulations do not apply-*	It is noteworthy that the Proposed Regulations no longer apply to an applicant or a holder of a reconnaissance permit or an exploration right in sections 13, 74 or 79 of the MPRDA where the application only includes a desktop study or aerial survey. The Proposed Regulations are also no longer applicable to reconnaissance permit and offshore exploration applicants or right holders whose applications include a seismic survey, but not drilling of stratigraphic wells (in the case of offshore exploration).	See comments above on definition of "incident".

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			(a) to an applicant or holder of a reconnaissance permit contemplated in section 74 of the Mineral and Petroleum Resources Development Act for an offshore operation, where the application includes a seismic survey; *(b) an applicant or holder of an exploration right contemplated in section 79 of the Mineral and* *Petroleum Resources Development Act for an offshore operation, where the application includes a seismic survey but no drilling of stratigraphic wells; and* *(c) in the case of an incident –* *in which case separate arrangements must be made to cover the liability associated with such activities or incident and in which case the provisions of section 28 of the Act applies.*		
15.	Regulation 4 Previous Regulation- Obligation of the holder to remediate and rehabilitate	*(4) Every applicant and holder has an obligation to plan, manage and implement such procedures and requirements in respect of progressive rehabilitation, closure and post closure activities related to a reconnaissance, prospecting, exploration, mining and production operations as identified in the annual rehabilitation plan, the final decommissioning and mine closure*	*(4) Every applicant and holder has an obligation to plan, finance, implement and manage such procedures and requirements in respect of mitigation, progressive rehabilitation, decommissioning, closure and post-closure activities related to reconnaissance, exploration, prospecting, mining and production operations as identified in these Regulations.*	The Proposed Regulations no longer contain the obligation to remediate environmental damage. This obligation would have been unattainable as it may technically not be possible for environmental damage to be "repaired" or "reversed". The Proposed Regulations place a lessor requirement of mitigation which	N/A

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	environmental damage Proposed Regulation- Obligation of an applicant and holder to plan for, finance and implement environmental mitigation, rehabilitation and management measures.	*plan and the environmental risk assessment report for the determination of residual and latent liability for reconnaissance, prospecting, exploration, mining and production operations*		involves alleviating, reducing or making environmental damage less severe. This is in accordance with the proposal made in the previous OPASA submission.	
16.	Previous Regulations: Regulation 6(6)- Determining the financial provision Proposed Regulations: Regulation 5(3)- General	*(6) The Chief Executive Officer of the applicant, holder, or person appointed in a similar position or, where liquidation or business rescue proceedings have been initiated, the liquidator or business rescue administrator of the company, is responsible for implementing the plans and report contemplated in subregulation (2) and signing off all documentation submitted to the Minister.*	*(3) The Chief Executive Officer of the applicant or holder, or person appointed in a similar position, or, where liquidation or business rescue proceedings have been initiated, the liquidator or business rescue practitioner of the operation is ultimately responsible for implementing the requirements of these Regulations and signing off on all documentation submitted to the Minister.*	The Proposed Regulations have been amended to give the CEO (and other categories of persons mentioned) the ultimate responsibility for implementing the Proposed Regulations. This is in accordance with the recommendation made in the previous OPASA submission.	N/A

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	Requirements				
17.	Previous Regulations: Regulation 6(2)- Determining Financial Provision Proposed Regulations - 6(1)	*(2) An applicant or holder must determine the financial provision through a detailed itemisation of all activities and costs, based on actual market related rates for implementing the activities for-* *(a) annual rehabilitation, determined in the annual rehabilitation plan conforming to the content requirements of Appendix 1;* *(b) final rehabilitation, decommissioning and mine closure, determined in the final rehabilitation, decommissioning and mine closure plan, apportioned per year and conforming to the content requirements of Appendix 2; and* *(c) remediation and management of residual and latent environmental impacts, including the ongoing pumping and treatment of polluted or extraneous water, determined in an environmental risk assessment report conforming to the content requirements of Appendix 3.*	*6. The financial provision must guarantee the availability of sufficient funds for—* *(a) progressive rehabilitation;* *(b) decommissioning and closure activities; and* *(c) the mitigation and management of latent environmental impacts including the ongoing pumping and treatment of polluted or extraneous water, where relevant;* *to ensure that –* *(i) a reconnaissance, exploration, prospecting, mining or production area can be brought to the approved sustainable end state at the scheduled or unscheduled closure of operations; and* *(ii) latent impacts post-closure are mitigated, rehabilitated and managed.* *8. (1) An applicant applying for—* *must determine the financial provision by—*	The Proposed Regulations require financial provisioning for "progressive rehabilitation" (staged mitigation and rehabilitation of disturbed areas throughout the life of the operation, as opposed to the large scale works at the end of the operation) for the activities listed in 6(a)-(c). It is noted that Regulation 6(c) provides for the determination of financial provisioning for "mitigation" rather than "remediation".	It is not clear whether "progressive rehabilitation" is also applicable to the activities listed in regulation 8(1) (aa)-(cc). We recommend that regulation 6 expressly excludes section 8. Progressive rehabilitation in this Regulation speaks to staged approach, so does the annual rehabilitation plan i.e. on an annual basis throughout the life of the operation, it is understood that the annual plan forms part of the final plan i.e. aligned to the overall objectives and end use and the above is therefore deduced based on this understanding. We propose that a distinction be drawn between the rehabilitation plan and final plan in respect of this Regulation.

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			(i) itemising all activities and costs, based on actual market related rates for implementing the activities for— *(aa) annual rehabilitation, determined in an annual rehabilitation plan, conforming to the* *content requirements of Appendix 1 to these Regulations;* *(bb) final rehabilitation, decommissioning and mine closure, determined in the final rehabilitation, decommissioning and mine closure plan, conforming to the content requirements of Appendix 2 to these Regulations; and* *(cc) rehabilitation and management of latent environmental impacts, including the ongoing pumping and treatment of polluted or extraneous water, where relevant, determined in an environmental risk assessment report, conforming to the content requirements of Appendix 3 to these Regulations; and* *(ii) calculating the financial provision using the methodology conforming to the requirements identified in Appendix 4 to these Regulations.*		
18.	Previous Regulations	See clause above.	*7. (1) An applicant applying for—*	The Regulation 7(1) refers to "the prescribed template, spreadsheet and	It is recommended that reference to

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	: Regulation 6(2)- Determining Financial Provision Proposed Regulations - 7(1)- Determining of the financial provision using the prescribed template, spreadsheet and master rates 8(1)- Determining of financial provision using the plans an report system.		*(a) a reconnaissance permission;* *(b) a reconnaissance permit;* *(c) a prospecting right which excludes the removal and disposal of minerals;* *(d) an exploration right which includes only an onshore seismic survey;* *(e) a mining permit for a low risk commodity; and* *(f) an environmental authorisation in terms of the Environmental Impact Assessment Regulations for a mining operation contemplated in section 16 or 27 of the Mineral and Petroleum Resources Development Act for which the Minister has issued an exemption in terms of section 106(1), when that operation relates to a low risk commodity—* *must determine the financial provision using the **prescribed template, spreadsheet and master rates** for implementing the activities associated with progressive rehabilitation, decommissioning and mine closure and the management of latent environmental impacts.* *8. (1) An applicant applying for—*	master rates". These have however not yet been published.	"reconnaissance permission" in regulation 7(1)(a) be removed as the MPRDA refers to a "reconnaissance permit" as opposed to a "reconnaissance permission". It is further recommended that reference to "reconnaissance permit" in regulation 7(1) (b) be made subject to regulations 2(b) and 3(a) which excludes reconnaissance permits where an application includes only a desktop study, aerial survey or seismic survey. In terms of Regulation 8(1), it is recommended that 8(1)(d) expressly excludes the offshore exploration activities listed in 3(2)(b) and 3(3)(b).

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			(a) a prospecting right which includes the removal and disposal of a mineral; *(b) mining permit for commodities other than low risk commodities;* *(c) a mining right;* ***(d) an exploration right other than an exploration right related to an onshore seismic survey;*** *(e) a production right; or* *(f) an environmental authorisation in terms of the Environmental Impact Assessment Regulations for a mining operation contemplated in section 16, 22 or 27, for which the Minister has issued an exemption in terms of section 106(1) of the Mineral and Petroleum Resources Development Act, when that operation does not relate to a low risk commodity—* *must determine the financial provision by—* *(i) itemising all activities and costs, based on actual market related rates for implementing the activities for—* *…*		

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19.	Previous Regulations: Regulation 6(3)- Determining Financial Provision Proposed Regulations - 7(2): Determining of the financial provision using the prescribed template, spreadsheet and master rates. 8(2): Determining of financial provision using the plans and report system	*(3) In the case of an application for consent in terms of section 11 or 102 or a renewal in terms of* *sections 18, 24, 27, 81 or 85 respectively of the Mineral and Petroleum Resources Development Act,* *2002, the applicant must-* *(a) prepare the relevant plans and report as identified in subregulation (2) or, where the relevant plans exist for that permission, right or permit, update the plans and report in relation to the consent or renewal applied for; and* *(b) determine or confirm the financial provision to be set aside as identified in subregulation (2) and demonstrate that sufficient financial provisioning has already been made available should that be the case.*	*(2) In the case of an application for consent in terms of section 102 of the Mineral and Petroleum* *Resources Development Act to amend or vary a right or permit contemplated in subregulation (1)(c) to(e) or an application to amend an environmental authorisation contemplated in subregulation(1)(f), the* *applicant must—* *(a) review and revise the information provided in the template contemplated in subregulation (1) in relation to the amendment or variation applied for, and review and revise the information provided in the* ***spreadsheet*** *contemplated in subregulation (1) to re-assess the calculations of the financial provisioning; and* *(b) where necessary,* ***adjust the financial provision*** *set aside or demonstrate that sufficient financial provisioning has already been set aside, should that be the case.* *8(2) In the case of an application for consent in terms of section 102 of the Mineral and Petroleum Resources Development Act to amend or vary a*	In terms of the Proposed Regulations, Regulation 7(2)(b) now provides for the review and revision of information by means of a spreadsheet. See comment on the “spreadsheet” in item 13 above. In terms of section 102 applicants, the financial provision may be adjusted where necessary.	We recommend that section 102 applicants should be exempt from these provisions. See comment in item 1 above.

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			permit or right contemplated in subregulation (1)(a) to (e) or to amend an environmental authorisation contemplated in subregulation (1)(f), in order to determine the continued adequacy of the financial provision, the applicant must— *(a) review the plans and report contemplated in subregulation (1)(i)(aa), (bb) and (cc) in relation tothe amendment or variation applied for, to—* *(i) re-assess the activities and costs for annual rehabilitation contemplated in subregulation* *(1)(i)(aa);* *(ii) re-assess the activities and costs for final rehabilitation, decommissioning and mine closure contemplated in subregulation(1)(i)(bb); and* *(iii) re-assess the activities and costs for rehabilitation and management of latent environmental impacts contemplated in subregulation (1)(i)(cc);* *(b) re-assess the calculation of the financial provision based on the re-assessed activities and costs using the calculation methodology contemplated in Appendix 5 to these Regulations; and*		

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			(c) adjust the financial provision set aside or demonstrate that sufficient financial provisioning has already been set aside should that be the case.		
20.	Previous Regulations : Regulation 6(4)- Determining Financial Provision Proposed Regulations - 7(3) 8(3)	*(4) The determination of the financial provision must be undertaken by specialists.*	*7 (3) The completion of the information provided in the template, spreadsheet and the determination of the financial provision contemplated in subregulation (1) and the review and re-assessment contemplated in subregulation (2) must be undertaken by* ***independent specialists.*** *8(3) The determination and review of the financial provision contemplated in subregulation (1) and (2) must be undertaken by* ***independent specialists***	The Proposed Regulations clarify that the determination of financial provisioning must be determined by independent specialists.	N/A
21.	Previous Regulations : Regulation 6(7)- 6(9) Determining Financial Provision Proposed Regulations - 7(3) 8(4)- (5): Determinin	*(7) The applicant must submit to the Minister, with the application for a permission, right or permit –* *(a) for approval –* *(i) the annual rehabilitation plan as contemplated in subregulation (2)(a); and* *(ii) the determination of financial provision as*	*(4) An applicant contemplated in subregulation (1) must submit, with the documentation for an environmental authorisation in terms of the Environmental Impact Assessment Regulations, the completed template and spreadsheet for approval by the Minister.* *(5) An applicant applying for consent to amend or vary a right or permit, or to amend an environmental authorisation contemplated in subregulation (2), must submit, with the documentation for an environmental authorisation in terms of*	The Proposed Regulations no longer provide for both "approval" and "consideration" by the Minister. An applicant for an EIA, section 102 consent or EA now has to have its financial provisioning approved by the Minister.	If the spreadsheets or plans and reports are reviewed and reassessed by independent auditors, we recommend that this be a discretionary right given to the Minister rather than a mandatory requirement. The requirement for Ministerial approval may result in an undue administrative burden, delays and additional costs.

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	g of the financial provision using the plans and report system.	*contemplated in subregulation (2); and* *(b) for consideration –* *(i) the final rehabilitation, decommissioning and mine closure plan contemplated in subregulation (2)(b); and* *(ii) the environmental risk assessment report as contemplated in subregulation (2)(c).* *(8) The applicant must submit to the Minister, with the application for consent or renewal –* *(a) for approval –* *(i) the annual rehabilitation plan as contemplated in subregulation (2)(a) where such a plan does not exist or an updated annual rehabilitation plan contemplated in subregulation (3)(a) where such a plan exists; and*	*the Environmental Impact Assessment Regulations, the reviewed template and spreadsheet for approval by the Minister.* *8 (4) An applicant contemplated in subregulation (1) must submit with the documentation for an environmental authorisation in terms of the Environmental Impact Assessment Regulations,* ***for approval by the Minister****—* *(a) the annual rehabilitation plan contemplated in subregulation (1)(i)(aa);* *(b) the final rehabilitation, decommissioning and mine closure plan contemplated in subregulation (1)(i)(bb);* *(c) the environmental risk assessment report contemplated in subregulation (1)(i)(cc); and* *(d) the calculation of financial provision using the methodology contemplated in Appendix 4 to these Regulations.* *(5) An applicant applying for consent to amend or vary a permit or right or to amend an environmental authorisation contemplated in subregulation (2), must submit with the documentation for an environmental authorisation in terms of the Environmental Impact Assessment Regulations—* *(a)* ***for approval****, the—* *(i) reviewed plans and report contemplated in subregulation (2)(a); and*		

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		(ii) the adjusted or confirmed determination of financial provision as contemplated in subregulation (3)(b) where such a determination is in place; and *(b) for consideration –* *(i) the final rehabilitation, decommissioning and the mine closure plan as contemplated in subregulation (2)(b) where such plan does not exist or an updated final rehabilitation, decommissioning and mine closure plan contemplated in subregulation (3)(a); and* *(ii) the environmental risk assessment report as contemplated in subregulation (2)(c) where such plan does not exist or an updated environmental risk assessment report as*	*(ii) re-assessed calculations and the adjusted or confirmed financial provision contemplated in subregulation (2)(b) and (2)(c); and* *(b) for information—* *(i) proof of availability of the adjusted financial provision should an adjustment be required; or* *(ii) confirmation of the adequacy of the financial provision already set aside should that be the case.*		

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		contemplated in subregulation (3)(a).			
22.	Regulation 12(4)(c)	*(c) submit to the Minister for consideration –* *(i) the reviewed and amended final rehabilitation, decommissioning and mine closure plan;* *(ii) the reviewed and amended environmental risk assessment report; and* *(iii) the proof of payment of the adjusted financial provision or the amended guarantee.*	[No Reg 12(4)(c)]		
23.	Previous Regulation-7(2)(a): Availability of Financial Provision Proposed Regulation 9(2)-(4): Availability of financial provision.	*7(2) An applicant and holder must, on -* *(a) the granting date, provide proof of arrangements for financial provisioning; and*	*9(2) An applicant contemplated in regulation 7(1) and regulation 8(1)(a) and (b) must provide proof of availability of the financial provision prior to the issuing of the environmental authorisation in the case* *of—* *(a) a financial guarantee, the signed certified copy of the guarantee;* *(b) a closure rehabilitation company or a closure rehabilitation trust, a signed affidavit from the directors or*	The Proposed Regulations now clarify that availability of financial provisioning comprises either a signed certified copy of a financial guarantee or a signed affidavit from the directors of a closure rehabilitation costs confirming the deposit of the approved sum.	Regulation 9(4) requires that "proof of the availability of the financial provision" must be provided within 60 days of the effective date of the right or granting date of the environmental authorisation (**EA**). Clarity is requested on whether the issuing of an EA **prior** to the effective date of any such right

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			trustees confirming the deposit of the approved sum. *(3) An applicant contemplated in regulation 8(1)(c), (d), (e) and (f) must provide proof of the arrangements made to secure financial provision, prior to the issuing of the environmental authorisation.* *(4) A holder contemplated in regulation 8(1)(c), (d), (e) and (f) must provide, within 60 days of the effective date of the right or granting date of the environmental authorisation, proof of the availability of the financial provision in the case of—* *(a) a closure rehabilitation company or a closure rehabilitation trust, a signed affidavit from the directors or trustees confirming the deposit of the approved sum; or* *(b) a financial guarantee or parent or affiliate company guarantee, a signed certified copy of the guarantee.*		would trigger the obligation.
24.	Previous Regulation-7(4): Availability	*(4) Funds set aside for financial provision for remediation and management of residual and latent impacts must, on the issuing of a closure certificate-*	*(7) Financial provision for rehabilitation and management of latent impacts must, on the issuing of a closure certificate, be transferred to the Minister for the purposes of*	The Proposed Regulations now provide that once the transfer certificate is transferred to the Minister, the Minister will be responsible for undertaking the	In accordance with OPASA's previous submission, it is recommended that a superfund is established

No.	Regulation	Previous Regulation Provision 15 May 2019 (GNR 667)	Proposed Regulation Provision 27 August 2021 (GNR 765)	Comments	Proposal
	of financial provision Proposed Regulation-9(7) Availability of financial provision.	*(a) be ceded to the Minister; or* *(b) in the case of a financial guarantee, be called upon by the Minister.*	*undertaking the rehabilitation and management of latent impacts*	rehabilitation and management of latent impacts. This is in accordance with OPASA's previous submission.	that is managed independently in respect of pooled funds that are transferred by the Minister.
25.	Previous Regulation 8(1): Financial Vehicles for setting aside financial provision Proposed Regulations 10(1): Financial vehicles available for setting aside financial provision.	*8.(1) An applicant and holder must make financial provision by using one or a combination of a-* *(a) cash deposited into an account administered by the Minister;* *(b) a trust fund established for the sole purposes of regulation 5(b) and (c);* *(c) a closure rehabilitation company established for the sole purposes of regulation 5(b) and (c); or* *(d) a financial guarantee from an institution that is registered in terms of the applicable financial sector legislation in favour of the Minister.*	*10. (1) An applicant or holder must set aside financial provision by using one or a combination of a—* *(a) cash deposited into the closure rehabilitation trust administered by the Minister on behalf of applicants or holders established for the sole purpose of regulation 6;* *(b) closure rehabilitation company or a closure rehabilitation trust established for the sole purposes of regulation 6;* *(c) financial guarantee other than a fixed term guarantee, in favour of the Minister; or* *(d) **parent or affiliate company guarantee** in favour of the Minister and as approved by the National Treasury*	The Proposed Regulations now permit the use of a parent or affiliate company guarantee. This comprises "*a National Treasury approved, legally binding commitment, by the parent or affiliate company of the applicant or holder, registered in a country which is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10 June 1958 (New York Convention) and has at least an investment grade credit rating from an international rating agency, who guarantees to fulfil environmental liability obligations for and on behalf of the holder or applicant in question"* The inclusion of this provision is accordance with OPASA's previous submission. However, the definition of "parent or affiliate company guarantee" necessitates the company having at least an investment grade	It is recommended that: 1. Regulation 10(1)(a) should specify the currency in which cash must be deposited into the closure rehabilitation trust. In particular, it is recommended that the currency is one which is agreed between the Minister and the holder or applicant. 2. Regulation 10(1)(c) should specify that the financial guarantee be made subject to applicable financial sector legislation. See proposal made above in respect of "Parent or affiliate company guarantee" definition.

No.	Regulation	Previous Regulation Provision 15 May 2019 (GNR 667)	Proposed Regulation Provision 27 August 2021 (GNR 765)	Comments	Proposal
				rating. South Africa's credit rating is below investment grade. A South African parent affiliate company is therefore excluded from providing such a guarantee. Furthermore, because the definition is premised on international ratings, it may also effectively exclude private companies.	
26.	Previous Regulation 9(1): Cancellation, withdrawal and claiming against a financial guarantee Proposed Regulation 13(1): Cancellation and claiming against a financial guarantee or parent or affiliate	*9.(1) In the event that the financial institution intends to cancel or withdraw a financial guarantee which supports a financial provision, the financial institution must communicate its intention to withdraw, by registered mail, at least **four months** in advance to the holder, the Minister, the Minister of Environmental Affairs and the Minister of Finance.*	*13. (1) In the event that the financial institution intends to cancel a financial guarantee or parent or affiliate company guarantee which supports a financial provision, the financial institution or parent or affiliate company must communicate its intentions, by registered mail, **at least six months in advance** to the holder, the Minister and the Minister responsible for environmental affairs.*	The Proposed Regulations now require 6 months advanced notice in the event of a cancellation of a financial guarantee or parent company guarantee.	Financial guarantees are typically backed by an indemnity issued by an applicant or holder. If the indemnity lapses, the financial guarantee lapses automatically. It is therefore recommended that in the case of a financial guarantee that notification occurs as soon as the financial institution becomes aware of the termination. It is proposed that, in respect of or all notices, allowance be made for same to be sent by email, together with registered couriers, in addition to any registered mail requirement.

No.	Regulation	Previous Regulation Provision 15 May 2019 (GNR 667)	Proposed Regulation Provision 27 August 2021 (GNR 765)	Comments	Proposal
	company guarantee				
27.	Previous Regulations - 9(4): Cancellation, withdrawal and claiming against a financial guarantee Proposed Regulation 13(3): Cancellation and claiming against a financial guarantee or parent or affiliate company guarantee	*9. (4) In The event that the Minister wishes to initiate a claim against the financial guarantee to* ***effect remediation and rehabilitation****-* *(a) he or she must provide the holder, liquidator or business rescue administrator and the financial institution, written notice of the intention to initiate a claim, including the reasons for such claim; and* *(b) the holder, liquidator or business rescue administrator must, within 30 days of receiving the notification of the claim against the financial guarantee, respond indicating the measures to be taken to remediate and rehabilitate to the satisfaction of the Minister providing actions and timeframes.*	*(4) In the event that the Minister wishes to initiate a claim against the financial guarantee or parent or affiliate company guarantee* ***to effect the rehabilitation obligation on behalf of the holder****, the Minister must provide the holder, the financial institution, parent or affiliate company, the liquidator or business rescue practitioner with written notice of the intention to initiate a claim, which notice must include-* *(a) the reasons for such claim; and* *(b) an instruction that the holder, the parent or affiliate company, liquidator or business rescue practitioner provide to the Minister a plan indicating the measures to be taken to mitigate and rehabilitate the environmental damage, providing actions and timeframes for implementing such actions, within 60 days of receiving the notification.*	The Proposed Regulations now exclude reference to remediation in the context of the Minister instituting a claim against the financial guarantee or parent or affiliate company guarantee.	It is recommended that this provision is applicable only where the holder fails to initiate actions to rehabilitate environmental damage.
28.	Previous Regulations -10(1): Claiming	*10. (1) If the holder, liquidator or business rescue administrator fails to initiate actions to rehabilitate environmental damage as*	*14. (1) In the event that the Minister wishes to initiate a claim against the closure rehabilitation company or the closure rehabilitation trust contemplated*	In terms of the Proposed Regulations, should the Minister wish to initiate a claim against a rehabilitation company or a closure rehabilitation	N/A

No.	Regulation	Previous Regulation Provision 15 May 2019 (GNR 667)	Proposed Regulation Provision 27 August 2021 (GNR 765)	Comments	Proposal
	against a trust find closure rehabilitation company or cash deposit. Proposed Regulations - 14(1): Claiming against a closure rehabilitation company, or a closure rehabilitation trust to effect mitigation and rehabilitation.	*contemplated in regulation 4 within 30 days after being ordered to do so by the Minister, the Minister may -* *(a) order the trustees or directors of the trust fund or closure rehabilitation company to deposit an identified amount into the account administered by the Minister contemplated in regulation 8(1)(a) to enable the Minister to undertake the rehabilitation on behalf of the holder;* *(b) withdraw funds deposited into the account administered by the Minister for the purposes of the holder's financial provision, to undertake the rehabilitation on behalf of the holder; and* *(c) undertake such rehabilitation and claim the costs from the trustees of the trust fund, the directors of the closure rehabilitation company or from the financial provision deposited into the account administered by the Minister for that holder.*	*in regulation 10(1)(a) and (b) to effect the rehabilitation obligation of the holder contemplated in regulation 4, the Minister must provide the holder and the directors or trustees or the liquidator or business rescue practitioner with written notice of the intention to initiate a claim, which notice must include-* *(a)* ***the reasons for such claim****; and* *(b) a request that the holder, liquidator or business rescue practitioner* ***provide to the Minister a plan*** *indicating the measures to be taken to mitigate and rehabilitate the environmental damage, providing activities and timeframes for implementing such actions, within 60 days of the written notification.* *(2) Should the Minister not receive such plan or be dissatisfied with the measures proposed in* *accordance with subregulation (1)(b), the Minister must-* *(a) order the directors, trustees, liquidator or business rescue practitioner of the closure rehabilitation* *company or closure rehabilitation trust to deposit an identified amount into the closure* *rehabilitation trust administered by the Minister contemplated in regulation 10(1)(a) to enable the Minister to utilise the funds so deposited to give effect to the rehabilitation obligation of the holder contemplated in regulation 4, on behalf of the holder; or*	trust, it must first give reasons for the claim and request a plan indicating measures taken to mitigate and rehabilitate financial damage.	

No.	Regulation	Previous Regulation Provision 15 May 2019 (GNR 667)	Proposed Regulation Provision 27 August 2021 (GNR 765)	Comments	Proposal
			(b) give effect to the rehabilitation obligation of the holder contemplated in regulation 4 and claim the costs from- *(i) the closure rehabilitation company or the closure rehabilitation trust through the directors,* *trustees, liquidator or business rescue practitioner; or* *(ii) the funds from the holder's contribution to the closure rehabilitation trust administered by the Minister for the purposes of the holder's financial provision*		
29.	Previous Regulations - 11(1): Withdrawal against a financial provision to facilitate decommissioning and final closure activities. Proposed Regulations : 15(1): Withdrawal against a financial provision to facilitate decommissi	*11. (1) No holder may withdraw funds, or allow funds to be withdrawn, against financial provision unless-* *(a) an application by the holder of the mining or production right to withdraw is made to the Minister;* *(b) the withdrawal is required to financial decommissioning and final closure activities, as indemnified in the final rehabilitation, decommissioning and mine closure plan contemplated in regulation 6(2)(b);* *(c) the withdrawal application is made within the 10 year period immediately preceding the intended date scheduled for final closure of the operations, as approved in the final rehabilitation, decommissioning and*	*15. (1) No holder may withdraw funds, or allow funds to be withdrawn, against the financial provision set aside in the financial vehicles contemplated in regulation 10(1)(a), (b) or (c) unless—* *(a) an application by the holder to withdraw funds is made to the Minister;* *(b) the withdrawal is required to facilitate decommissioning and final closure activities, as identified in the approved final rehabilitation, decommissioning and mine closure plan contemplated in regulation 8(1)(i)(bb);* *(c) the withdrawal application is made within the 10 year period immediately preceding the intended date scheduled for final closure of the operations identified in the approved final rehabilitation, decommissioning and*	In terms of the Proposed Regulations, only approval from the Minister is required in respect of a withdrawal of funds.	The Draft Regulations do not provide for the reduction of funds set aside for the purpose of financial provisioning where, following the annual audit and review, it is determined that a lower financial provisioning amount is required to be set aside than has been provided. It is therefore recommended that this provision be amended accordingly.

No.	Regulation	Previous Regulation Provision 15 May 2019 (GNR 667)	Proposed Regulation Provision 27 August 2021 (GNR 765)	Comments	Proposal
	oning and final closure activities.	*mine closure plan contemplated in regulation 6(2)(b);* *(d) withdrawals are limited to one application per financial year;* *(e) the withdrawal application is based on proof of-* *(i) rehabilitation having been achieved in the form of, amongst others, survey reports, photographs and satellite imagery as approved in the final rehabilitation, decommissioning and mine closure plan signed off by an independent specialist; and* *(ii) financial expenditure on rehabilitation in the previous year in relation to the approved final rehabilitation, decommissioning and mine closure plan, in the form of audited reports of expenditure against the rehabilitation;* *(f) in total all requested and approved withdrawals do not exceed two thirds of the total amount set aside for the purposes of final rehabilitation, decommissioning and closure as approved in the final rehabilitation, decommissioning and mine closure plan contemplated in regulation 6(2)(b); and*	*mine closure plan contemplated in regulation 8(1)(i)(bb);* *(d) withdrawals are limited to one application per financial year;* *(e) the withdrawal application is based on proof of –* *(i) mitigation and rehabilitation having been achieved in the form of, amongst others, survey reports, photographs and satellite imagery as identified in the approved final rehabilitation, decommissioning and mine closure plan signed off by an independent specialist; and* *(ii) financial expenditure on mitigation and rehabilitation in the previous year in relation to the approved final rehabilitation, decommissioning and mine closure plan, in the form of audited reports of expenditure against the mitigation and rehabilitation;* *(f) such withdrawal* ***has been approved by the Minister****; and* *(g) the holder notifies National Treasury within 21 days of receiving approval to withdraw the funds.*		

No.	Regulation	Previous Regulation Provision 15 May 2019 (GNR 667)	Proposed Regulation Provision 27 August 2021 (GNR 765)	Comments	Proposal
		(g) such withdrawal has been approved by the Minister in concurrence with ***the Minister responsible for Water Affairs and the Minister of Finance****.*			
30.	Previous Regulation 12 (2)-(4):Review, re-assessment and confirmation or adjustment of the financial provision Proposed Regulation 11(4): Review and update of templates, spreadsheets, plans and reports and confirmation or adjustment	*12 (2) The review and re- assessment contemplated in subregulation (1) must be undertaken by specialists.* *….* *12. (4) Within 30 days of receipt of the findings of the specialists regarding the review and re-assessment, the holder must-* *(a) set aside the adjusted financial provision, if not confirmed in line with the findings of the review and re-assessment; and* *(b) submit to the Minister for Approval –* *(i) the reviewed and amended annual rehabilitation plan;* *(ii) confirmation of the adequacy of the financial provision or the adjusted financial provision; and* *(iii) findings regarding the review and re- assessment; and …*	*11 (2) The review and update contemplated in subregulation (1) —* *(a****) must be finalised no later than the financial year end of the holder****; and* *(b) may be undertaken by* ***internal specialists****.* *…* *(4) Within* ***60 days*** *of confirming or adjusting the financial provisioning calculations contemplated in subregulation (3), a holder must—* *(a) set aside the adjusted financial provision, if not confirmed, in line with the findings of the review, update and recalculation; and* *(b) submit for approval by the Minister—* *(i) the revised template and spreadsheet contemplated in regulation 7 or the revised plans and reports contemplated in regulation 8; and*	The Proposed Regulations now provide that the review contemplated in this regulation must be finalised no later than the financial year end of the holder. Furthermore, the Proposed Regulations now clarify that this review can be undertaken by internal specialists. The 30 day period previously provided for in respect of this regulation has now been extended to 60 days in the Proposed Regulations.	It is requested that the 60 day period set out in 11(4) be extended to 90 days, given the potential quantum for such financial provision.

No.	Regulation	Previous Regulation Provision 15 May 2019 (GNR 667)	Proposed Regulation Provision 27 August 2021 (GNR 765)	Comments	Proposal
	of financial provision.		*(ii) confirmation of the adequacy of the reviewed or the adjusted financial provision; and* *(c) submit to the Minister for information the proof of payment of the adjusted financial provision or the amended guarantee.*		
31.	Previous Regulations -13(1): Audits and related requirements Proposed Regulations 12(1): Audits and related requirements	*13. (1) The holder must ensure that the results of the reviews, confirmations or adjustments of the adequacy of the financial provision contemplated in regulation 12(1), 12(3) and 12(4)(b) are-* *(a) audited by an independent auditor;* *(b) included in the form of an auditor's report; and* *(c) submitted for approval to the Minister.* *(2) The holder must, where relevant, submit to the Minister the financial audit undertaken in compliance with the Companies Act, 2008 (Act No. 71 of 2008), once completed*	*12. (1) A holder must ensure that the template,* ***spreadsheet, plans, report and calculations*** *contemplated in regulation 7 and 8 and the reviewed and updated template, spreadsheet, plans, report and calculation contemplated in regulation 11 are audited* ***every three years****, commencing from the effective date of the right or permit, the date of issue of the permission and the date on which the environmental authorisations granted in the case of an exemption has been issued by the Minister in terms of section 106(1) of the* *Mineral and Petroleum Resources Development Act.* *(2) The audits must be—* *(a) concluded within a period not exceeding 36 months from the effective date, date of issue of a permission or the granting date of the environmental authorisation;*	The Proposed Regulations now require that the template spreadsheet, plans, report and calculations must be audited. In the Previous Regulations, an audit of the annual rehabilitation report, final rehabilitation and commissioning report and environmental risk assessment report be conducted on an annual basis.	It is proposed that the audit requirement be extended to every five years. A requirement to audit every five years would align with the Regulation 34 audit requirements, which include a review of the Environmental Management Programme. It is further proposed that the Regulations explicitly provide for rights granted under the MPRDA, as opposed to only permissions.

No.	Regulation	Previous Regulation Provision 15 May 2019 (GNR 667)	Proposed Regulation Provision 27 August 2021 (GNR 765)	Comments	Proposal
			(b) conducted by an independent auditor; *(c) included in the form of an auditor's report; and* *(d) submitted for approval within 30 days from the receipt of the auditor's report contemplated in paragraph (c).* *(3) A holder must, in addition to and with the report contemplated in subregulation 2(c), where relevant, submit to the Minister, the annual audited financial statements undertaken in compliance with the Companies Act, 2008 (Act No. 71 of 2008), and the Companies Regulations, 2011, once completed.*		
32.	Previous Regulations 14(1): Responsibility of a holder to disclose information Proposed Regulations 16: Responsibility of an applicant or holder to consult and	*14. (1) The applicant and holder must make the determination, review and adjustment of financial provision as well as any audit of such financial provision, once submitted to the Minister,-* *(a) available on a publically accessible website of the holder if such a website exists;* *(b) available at the site office of the reconnaissance, prospecting, exploration, mining or production operation; and*	*16. (1) An applicant contemplated in regulation 7(1), 7(5), 8(1) and 8(5) must subject the documentation contemplated in those sub-regulations to the consultation requirements as prescribed in the Environmental Impact Assessment Regulations.* *(2) Within **5 days** of receiving notification of the review decision of the documents contemplated in regulation 11(4)(b), the holder must publish the outcome of such a review decision in a provincial newspaper as well as a newspaper distributed within the municipal area within which the reconnaissance, prospecting, mining, production or*	The Proposed Regulations now clarify that the consultation provisions in this regulations are those contemplated in the NEMA Environmental Impact Assessment Regulations.	It is proposed that: 1. In respect of 16(2), two weeks is allowed for publication of the review decision, given the operational necessity to book a week in advance for certain publications. 2. In respect of 16(3), the prescribed period for notifying the Minister be extended to five working days, in order to allow for the

No.	Regulation	Previous Regulation Provision 15 May 2019 (GNR 667)	Proposed Regulation Provision 27 August 2021 (GNR 765)	Comments	Proposal
	disclose information.	*(c) accessible to the public on request.*	*exploration operation is located, and indicate where the reviewed and revised template, spreadsheet, plans, report and calculations can be obtained.* *(3) The holder, business rescue practitioner or liquidator must inform the Minister and the Minister responsible for the environment within* ***two working days of****-* *(a) filing a resolution to go into business rescue, with the Companies and Intellectual Property Commission, in terms of section 129(2)(b) of the Companies Act, 2008 (Act No. 71 of 2008) in the case of voluntary business rescue or from date of an application being made to the Court in terms of section 131(1) of the Companies Act, 2008 (Act No. 71 of 2008); or* *(b) filing a resolution for the winding up of the company, with the Companies and Intellectual Property Commission, in terms of section 80(2) of the Companies Act, 2008 (Act No. 71 of 2008), in the case of a voluntary winding up of the company or from date that an application has been made to the Court for the winding up of a company by the Court, in terms of section 81(1) of the Companies Act, 2008 (Act No. 71 of 2008).* *(4) An applicant or holder must make the* ***original documents*** *contemplated in*		collating of all relevant information. Regulation 16(4) makes provision for the disclosure of "original documentation". However, this creates confusion as the provision allows for the documentation to be made available on a publically accessible website. It is recommended that clarity be provided in this regard.

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			regulation 7(1) and (2), regulation 8(1)(i) and (2)(a), regulation 11(4)(b) and (c) and regulation 12(2)(c), once submitted to the *Minister—* *(a) available on a publicly accessible website of the holder if such a website exists;* *(b) available at the site office of the reconnaissance, exploration, prospecting, mining or production operation; and* *(c) accessible to the public on request.*		
33.	Chapter 4 Transitional Arrangements	*16. (1) Unless subregulation (2) applies, a holder who applied for such right or permit prior to 20 November 2015, regardless when the permission, permit or right was obtained-* *(a) must, by no later than 3 months following its financial year end, which financial year end occurs after **19 February 2020**, comply with these Regulations; and* *(b) shall, until **19 February 2020,** be regarded as having complied with the*	*18. (1) Unless subregulation (2) applies, a holder who applied for a right prior to 20 November 2015,* *regardless when the right was obtained—* *(a) must, by no later than 3 months following its next financial year end, which financial year end occurs after **19 June 2022,** determine the financial provision as required by regulation 8(1), which determination has been undertaken by independent specialists, using the calculation methodology contemplated in Appendix 5 to these*	In terms of transitional provisions, holders who applied for a right prior to 20 November 2015 still have until 19 June 2022 to comply with Proposed Regulation. In respect of holders of offshore oil and gas or production rights, the transition date is now 19 February 2024.	It is recommended that the holders of rights conducting offshore exploration activities in accordance with Regulation 3(2)(b) and 3(3)(b) are expressly excluded from any obligation to comply with Regulation 18(2).

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		provisions of these Regulations if such holder has complied with the provisions and arrangements *regarding financial provisioning, approved as part of the right or permit issued in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).* *(2) A holder of an offshore oil or gas exploration right or production right who applied for such right prior to 20 November 2015, regardless when the right was obtained-* *(a) must by no later than 3 months following its financial year end, which financial year end occurs after **19 February 2024**, comply with these Regulations; and* *(b) shall, until **19 February 2024,** be regarded as having complied with the provisions of these Regulations if such holder has complied with the provisions and arrangements regarding financial provisioning, approved as part of the right issued in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).*	*Regulations, provide proof of payment or arrangement, whichever applies, and submit the documents contemplated in regulation 8(4) to the Minister for approval; and* *(b) shall, until **19 June 2022,** be regarded as having complied with the provisions of these* *Regulations if such holder has complied with the provisions and arrangements regarding financial provisioning, approved as part of the right issued in terms of the Mineral and Petroleum Resources Development Act.* *(2) A holder of an offshore oil or gas exploration right or production right who applied for such right prior to 20 November 2015, regardless when the right was obtained—(2) A holder of an offshore oil or gas exploration right or production right who applied for such right prior to 20 November 2015, regardless when the right was obtained—* *(a) must by no later than 3 months following its financial year end, which financial year end occurs after 19 February 2024, comply with these Regulations; and* *(b) shall, until **19 February 2024**, be regarded as having complied with the provisions of these Regulations if such*		

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			holder has complied with the provisions and arrangements regarding financial provisioning, approved as part of the right issued in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).		
34.	Appendices 4 and 5	***Appendix 4…*** *3.* ***Calculating the costs to be set aside for final rehabilitation, decommissioning and mine closure*** *In order to calculate the costs to be set aside for final rehabilitation, decommissioning and mine closure for a new operation, the following formula must be used:* ***Total 1 + Total 2 = sum (1 + CPI plus 2%) x VAT.*** Where: Total 1 is - the costs calculated in the final rehabilitation, decommissioning	***Appendix 4…*** **3. Calculating the costs to be set aside for final rehabilitation, decommissioning and mine closure** In order to calculate the costs to be set aside for final rehabilitation, decommissioning and mine closure for a new mining operation contemplated in regulation 8(1), the following formula must be used: **Total 1+ Total 2 = sum x VAT.** Where: Total 1 is – the costs calculated in the final rehabilitation, decommissioning and mine closure plan for the rehabilitation	Under both the Previous Regulations and Proposed Regulations, new operations are required to set aside funds necessary to fully rehabilitate any environmental harm resulting from: i) works planned in the next 12 month period, in the case of a new operation (taking CPI into consideration); or ii) works planned in the next 12 month period and works conducted previously in the life of the operation, in the case of an existing operation (taking CPI into account).	It is proposed that the oil and gas industry in general, and oil and gas production operations in particular, be exempt from the requirement to set aside the full amount required for final rehabilitation and decommissioning prior to carrying out the associated works. In accordance with international best practice, it is submitted that oil and gas production operations be permitted to contribute on an a 'unit-of-production' basis whereby the full

No.	Regulation	Previous Regulation Provision 15 May 2019 (GNR 667)	Proposed Regulation Provision 27 August 2021 (GNR 765)	Comments	Proposal
		and mine closure plan for the rehabilitation and impact management related to the disturbance that will occur in the first year of the operation; and Total 2 is - the costs calculated in part 2 of the risk assessment report for the determination of residual and latent liability, which are the costs calculated for the management and rehabilitation of residual and latent impacts that are expected to manifest in the future based on an unscheduled closure on the anticipated disturbed area for the first year of operation. ***Appendix 5…*** *3.* ***Calculating the costs to be set aside for final rehabilitation, decommissioning and mine closure*** *In order to calculate the costs to be set aside for final rehabilitation, decommissioning and mine closure for an existing operation, the following formula must be used:* ***Total 1 + Total 2 + Total 3 = sum (1 + CPI plus 2%) x VAT.*** Total 1 is - the costs calculated in the final rehabilitation, decommissioning	and impact management related to the disturbance that will occur in the first year of the operation; and Total 2 is – the costs calculated in part 2 of the risk assessment report for the determination of latent liability, which are the costs calculated for the management and rehabilitation of latent impacts that are expected to manifest in the future based on an unscheduled closure on the anticipated disturbed area for the first year of operation. ***Appendix 5…*** **3. Calculating the costs to be set aside for final rehabilitation, decommissioning and mine closure** In order to calculate the costs to be set aside for final rehabilitation, decommissioning and mine closure for an existing operation, the following formula must be used: **Total 1+ Total 2 + Total 3 = sum x VAT.** Where: Total 1 is – the costs calculated in the final rehabilitation, decommissioning and mine closure plan for the rehabilitation	The Proposed Regulations' calculations no longer make provision for CPI in the calculation. it is noted that these Regulations are untenable for oil and gas production operations due to the enormous costs associated with the decommissioning and rehabilitation of such operations, the ultra-long lifespans of such operations, and the fact that concurrent rehabilitation is extremely limited	financial provision required for final rehabilitation, decommissioning and closure be built up over time from the revenue generated from production operations, being fully available by the time the operation reaches closure.

No.	Regulation	Previous Regulation Provision 15 May 2019 (GNR 667)	Proposed Regulation Provision 27 August 2021 (GNR 765)	Comments	Proposal
		and mine closure plan for the rehabilitation and impact management for the current disturbed area; Total 2 is - the costs calculated in the final rehabilitation, decommissioning and mine closure plan for the rehabilitation and impact management related to the disturbance that will occur in the next 12 months of the operation; and Total 3 is - the costs calculated in part 2 of the environmental risk assessment report contemplated in Appendix 3 for the determination of residual and latent liability, which are the costs calculated for the management and rehabilitation of residual and latent impacts that are expected to manifest in the future	and impact management for the current disturbed area; Total 2 is – the costs calculated in the final rehabilitation, decommissioning and mine closure plan for the rehabilitation and impact management related to the disturbance that will occur in the next 12 months of the operation; and Total 3 is – the costs calculated in part 2 of the environmental risk assessment report contemplated in Appendix 3 for the determination of latent liability, which are the costs calculated for the management and rehabilitation of latent impacts that are expected to manifest in the future based on an unscheduled closure on the current disturbed area as well as the disturbance for the next year of operation.		
35.	Appendix 6	4. General The founding documents of a trust fund or closure rehabilitation company contemplated in these Regulations must comply with the requirements set out in this Appendix and must as a minimum include-	1. General The founding documents of a closure rehabilitation company or a closure rehabilitation trust, hereafter referred to as the “company or trust”, contemplated in these Regulations must comply with the requirements set out in this Appendix and must as a minimum include—	The Proposed Regulations now state that the Minister is identified as the first beneficiary of the company trust and the holder is identified as the second beneficiary of the company or trust. To the extent that management of the financial provisioning in	It is proposed that the concerns raised in the left-hand column be noted and considered.

No.	Regulation	Previous Regulation Provision 15 May 2019 (GNR 667)	Proposed Regulation Provision 27 August 2021 (GNR 765)	Comments	Proposal
		1.1 details of the- 1.1.1 holder for which the deed of trust or the closure rehabilitation company is being set up; and 1.1.2 trustee(s) or director(s) who will administer the trust fund or closure rehabilitation company, including the names and identification information; 1.2 the permission, right or permit number to which the trust fund or closure rehabilitation company relates and its lapsing date; 1.3 the obligation of the holder, namely to remediate and rehabilitate environmental damage as identified in these Regulations; 1.4 the sole objective of the trust fund or closure rehabilitation company namely to receive contributions and to hold these contributions for the purposes of providing the vehicle contemplated in regulation 8(1)(b) and (c) of these Regulations, for maintaining the financial	1.1 details of the— 1.1.1 holder for which the company or trust is being set up; and 1.1.2 trustee(s) or director(s) who will administer the company or trust, including the names and identification information; 1.2 the Minister being identified as the first beneficiary and the holder being identified as the second beneficiary of the company or trust; 1.3 the permission, right or permit number to which the company or trust relates; 1.4 the obligation of the holder, namely to mitigate and rehabilitate environmental damage as identified in these Regulations; 1.5 the sole objective of the company or trust, namely to receive contributions and to hold these contributions for the purposes of providing the vehicle contemplated in regulation 10(1) (a) and (b) of these Regulations, for maintaining the financial provision required to be set aside by the holder for the guaranteeing of funds for the purposes of fulfilling the holder's	undertaken by a professional fiduciary services company, it will require payment of fees and in this regard, normal commercial rates for the provision of the services will have to be paid. There is some concern that item 1.5.2 of Appendix 6 may be in violation of section 37A, of the Income Tax Act, 58 of 1962, as amended. Section 37A (1)(c) states that distributions may only be made if the purpose for the distribution falls within the ambit of the sole purpose of the trust or, if it is in accordance with section 37A(3) or (4) and section 37A(1)(d). Seeing as none of the sections, as aforementioned, deal with the payment of remuneration as stated in item 1.6.2, any payments made to the fiduciary services company may be seen to be in violation of section 37A. The Minister is afforded the following powers in respect of the trust fund and the closure rehabilitation company: i) item 1.6.1, the provisions of the founding documents of the company or trust may only be varied with written approval from the holder and Minister;	

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		provision required to be set aside by the holder for the guaranteeing of funds for the purposes of fulfilling the holder's obligation to remediate and rehabilitate environmental damage; 1.5 an indication that - 1.5.1 the provisions of the founding documents of the trust fund or closure rehabilitation company may only be varied with written approval of the holder and the Minister and on condition that the objective of the trust or closure rehabilitation company and obligation of the holder is not varied in any way; 1.5.2 the trustee(s) and director(s) shall not receive any remuneration from the trust fund for their services, unless the trustee or director is a professional fiduciary services company, in which event it may be paid its normal commercial rates for the provision of professional services; and	obligation to mitigate and rehabilitate environmental damage; 1.6 an indication that— 1.6.1 the provisions of the founding documents of the company or trust may only be varied with written approval of the holder and the Minister and on condition that the objective of the company or trust and obligation of the holder is not varied in any way; 1.6.2 the trustee(s) and director(s) shall not receive any remuneration from the company or trust for their services, unless the trustee or director is a professional fiduciary services company, in which event it may be paid its normal commercial rates for the provision of professional services; and 1.6.3 no person may be a trustee or director if he or she would not be eligible to be a director of a company under the Companies Act, 2008 (Act No. 71 of 2008), or has been convicted of any offence involving dishonesty;	ii) item 1.7.1 allows for withdrawals from the trust or company provided that the Minister has approved the withdrawal; and iii) item 1.7.3 permits the Minister to order payments to be made out of trust or company after the relevant procedures have been followed. The power to control, manage and administer a trust fund or the company in terms of the Trust Property Control Act and/or the Companies Act, respectively, is given to the trustees and the directors. The trustees and the directors derive the capacity and authority to manage a trust fund and the company, respectively, from the respective trust deed and the Companies Act (read together with the company's constitutional documents). Furthermore, the law imposes certain fiduciary duties on either the trustees or the directors and any provisions contained in a trust deed or the company's constitutional documents shall be void in so far as they would have the effect of exempting a trustee and a director from or indemnifying him against liability for breach of trust or the Companies Act, in particular, where he / she fails to show the degree of care, diligence	

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		1.5.3 no person may be a trustee or director if he or she would not be eligible to be a director of a company under the Companies Act No. 71 of 2008, or has been convicted of any offence involving dishonesty; 1.6 the duties and obligations of the trustee or director, which must include as a minimum- 1.6.1 the duty to not allow any funds to be withdrawn from the trust fund or closure rehabilitation company or in any form be alienated from the trust fund or closure rehabilitation company, other than if such withdrawal has been approved by the Minister in terms of these Regulations or a closure certificate has been issued by the Minister, 1.6.2 the obligation to pay out funds from the trust fund or closure rehabilitation company when ordered by the Minister to do so after the procedures set out in these Regulations have been complied with; and 1.6.3 that such trustee or director -	1.7 the duties and obligations of the trustee or director, which must include as a minimum— 1.7.1 the duty to not allow any funds to be withdrawn from the company or trust or in any form be alienated from the company or trust, other than if such withdrawal has been approved by the Minister in terms of these Regulations; 1.7.2 the obligation to pay out funds from the trust administered by the Minister where the Minister has initiated a claim, contemplated in regulation 14, against a holder's financial provision held in the company or trust; 1.7.3 the obligation to pay out funds from the company or trust when ordered by the Minister to do so after the procedures set out in these Regulations have been complied with; and 1.7.4 that such trustee or director— 1.7.4.1 shall not, in their personal capacity,	and skill as required under the relevant laws. Therefore to the extent that the Minister orders payments contrary to the trustees and the directors' fiduciary duties to the trust and company, the trustees and directors must comply with their duties under the provisions of the Trust Act and the Companies Act. Furthermore, in terms of the relevant laws, the Minister may lack capacity and authority to control the affairs of the trust fund and company, unless he/she (or his / her nominee) was appointed as a trustee or director in such entities and provided with the requisite powers as the trustee or director to veto certain actions undertaken by the company. Item 1.6.1 provides that for any variation, Ministerial consent is required. However, item 1.6.1 does not differentiate between material amendment or simply administrative amendments and consequently the Minister will be required to consent to both administrative and substantive changes. This is impractical and would frustrate the trustees or directors in the execution of their duties in terms of the Regulations, the	

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		1.6.3.1 shall not, in their personal capacity, engage in any trade, undertaking or business of the trust fund or closure rehabilitation company, nor shall any such trustee or director participate in any of the affairs of the trust fund or closure rehabilitation company, or provide any financial assistance or services or facilities other than is required to fulfil their role as trustee or director; 1.6.3.2 shall cause proper books of account to be kept for the trust fund and closure rehabilitation company and shall appoint independent auditors to report on the financial statements for each financial year of the trust fund and closure rehabilitation company; 1.6.3.3 shall not be permitted to distribute, except as may otherwise be provided herein, any of the funds of the trust fund or closure rehabilitation company to any person and shall utilise the trust fund or closure rehabilitation company solely for investment in accordance	engage in any trade, undertaking or business of the company or trust, nor shall any such trustee or director participate in any of the affairs of the company or trust, or provide any financial assistance or services or facilities other than is required to fulfil their role as trustee or director; 1.7.4.2 shall cause proper books of account to be kept for the company or trust and shall appoint independent auditors to report on the financial statements for each financial year of the company or trust; 1.7.4.3 shall not be permitted to distribute, except as may otherwise be provided herein, any of the funds of the company or trust to any person and shall utilise the company	trust deeds, the constitutional documents and applicable law.	

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		with the object for which the trust fund or closure rehabilitation company has been established; 1.6.3.4 shall not be entitled, on behalf of the trust or closure rehabilitation company ,to- 1.6.3.4.1 incur any indebtedness of any nature (including through the use of any negative mark to market position in relation to any derivative instrument) save for non -interest bearing trade credit incurred in the ordinary course of the business of the trust or closure rehabilitation company; or 1.6.3.4.2 encumber the assets of the trust fund or closure rehabilitation company in any manner whatsoever; and 1.7 an indication that the trust or company may only hold financial instruments issued to the holder by any - 1.7.1 collective investment scheme as regulated in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);	or trust solely for investment in accordance with the object for which the company or trust has been established; 1.7.4.4 shall not be entitled, on behalf of the company or trust, to— 1.7.4.4.1 incur any indebtedness of any nature (including through the use of any negative mark to market position in relation to any derivative instrument) save for non-interest bearing trade credit incurred in the ordinary course of		

No.	Regulation	Previous Regulation Provision 15 May 2019 (GNR 667)	Proposed Regulation Provision 27 August 2021 (GNR 765)	Comments	Proposal
		1.7.2 long -term insurer as regulated in terms of the Long -term Insurance Act, 1998 (Act No. 52 of 1998); 1.7.3 bank as regulated in terms of the Banks Act, 1990 (Act No. 94 of 1990); 1.7.4 mutual bank as regulated inters of the Mutual Bank Act, 1993 (Act No. 124 of 1993); or 1.7.5 sphere of government in the Republic.	the business of the company or trust; or 1.7.4.4.2 encumber the assets of the company or trust in any manner whatsoever; and 1.8 an indication that the company or trust may only hold financial instruments issued to the holder by any— 1.8.1 collective investment scheme as regulated in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002); 1.8.2 long-term insurer as regulated in terms of the Long-term Insurance Act, 1998 (Act No. 52 of 1998); 1.8.3 bank as regulated in terms of the Banks Act, 1990 (Act No. 94 of 1990);		

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			1.8.4 mutual bank as regulated in terms of the Mutual Bank Act, 1993 (Act No. 124 of 1993); or 1.8.5 sphere of government in the Republic.		
36.	Appendix 7	*7. (4) Funds set aside for financial provision for remediation and management of residual and latent impacts must, on the issuing of a closure certificate-* *(a) be ceded to the Minister; or* *(b) in the case of a financial guarantee, be called upon by the Minister.* *3. This guarantee is not negotiable nor transferable, and -……* *3.2 …shall lapse –* *(i) after the financial institution has paid out the Guaranteed Sum, should the Minister call on the guarantee;* *(ii) on the granting of a closure certificate in terms of the Mineral and Petroleum Resources Development Act, 2002 in respect of the whole of the operations; or*	*9 (7) Financial provision for rehabilitation and management of latent impacts must, on the issuing of a closure certificate, be transferred to the Minister for the purposes of undertaking the rehabilitation and management of latent impacts* *5. This guarantee is not negotiable nor transferable, and—* *5.1 must be returned to the Guarantor when giving account to the Guarantor in terms of the Financial Provisioning Regulations, 2021, or any legislation or subordinate legislation which supplements, amends and/or replaces such Regulations, or if the original guarantee document* *has been lost, must be accompanied by a statement that the applicable document cannot be located and that you indemnify the Guarantor against any direct loss that it may suffer (other than as a result of its*	In accordance with OPASA's previous submission, the Proposed Regulations also provide for the transfer of financial provision to the Minister upon the issuing of the closure certificate. However, section 5 of appendix B states that the guarantee will lapse on the granting of a closure certificate in terms of the MPRDA.	N/A

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		(iii) on the withdrawal of this guarantee and replacement with an alternative financial vehicle where relevant; and …	*own negligent or willful act or omission) as a direct result of such original* *document not being returned to it;* *5.2 shall lapse—* *(a) after the financial institution has paid out the Guaranteed Sum, should the Minister call on the guarantee;* *(a) on the granting of a closure certificate in terms of the Mineral and Petroleum Resources* *Development Act in respect of the whole of the operations; or* *(c) on withdrawal of this guarantee and replacement with an alternative financial vehicle, where relevant; and* *5.3 shall not be construed as placing any other responsibility on the Guarantor other than the paying of the Guaranteed Sum or any portion thereof.*		