

# Replacement NEMA open for comment

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The Department of Environmental Affairs' (DFFE) final suggested draft of the National Environmental Management Act (NEMA) Financial Provisioning Regulations is now available to the public for comment before they are Gazetted into law. Public comments may be submitted on or before 6 October 2021.



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## The key proposed changes

- The definition of "applicant" no longer includes MPRDA section 11 applicants. The FP Regulations will continue to apply to all current holders of MPRDA rights and permits (subject to transitional arrangements) and new MPRDA applicants.
- The transition date for holders who applied for a right/permit prior to 20 November 2015 remains 19 June 2022. For holders of an offshore oil or gas exploration right or production right the transition date is 19 February 2024.
- Some important exemptions have also been incorporated for the oil and gas industry, particularly for aerial and seismic surveys.
- The FP Regulations suggest imposing an obligation of environmental mitigation, rehabilitation and management measures. The previous unrealistic definitions of "rehabilitate"; "remediate" and "residual environmental impacts" have been deleted.

## Two categories of applicants contemplated

*The Regulation 7 Applicants include those applying for*

1. A reconnaissance permission.
2. A reconnaissance permit.
3. A prospecting right which excludes the removal and disposal of minerals.
4. An exploration right which includes only an onshore seismic survey.
5. A mining permit for a low risk commodity (defined).

These applicants must submit, together with the documentation for an EA in terms of the EIA Regulations, a completed prescribed template, spreadsheet and master rates (to be completed by specialists) for approval by the Minister. It is presumed that this prescribed template will still be published.

*The Regulation 8 Applicants include those applying for*

1. A prospecting right which includes the removal and disposal of a mineral.
2. Mining permit for commodities other than low risk commodities.
3. A mining right
4. An exploration right other than an exploration right related to an onshore seismic survey.
  
5. A production right.

These applicants must submit, together with the documentation for an EA in terms of the EIA Regulations, the annual rehabilitation plan; final rehabilitation, decommissioning and mine closure plan ; and environmental risk assessment report as well as the calculation of financial provision using the Appendix 4 methodology, for approval by the Minister.

Financial provision must here be determined by itemising all activities and costs, based on actual market related rates for implementing the activities contemplated in these documents.

Once calculated, financial provisioning can be set aside in a multitude of approved vehicles, or combination thereof, including, and subject to certain exceptions:

- Cash deposit to a Ministerial managed closure rehabilitation trust.
- A closure rehabilitation company or a closure rehabilitation trust, which have thankfully remained.
- A financial guarantee (except for latent environmental impacts) or a parent or affiliate company guarantee (only for exploration / production rights); and specified insurance products.

The annual review and update of the Regulation 7 templates or Regulation 8 documents can now be undertaken by internal specialists for a certain date. External technical audits are to take place every three years.

Guaranteeing the availability of sufficient funds to bring the area to an approved sustainable end state at the scheduled or unscheduled closure of operations, determined against agreed closure objectives, remains the purpose of the third draft Replacement FP Regulations.

**Source:** [Webber Wentzel](#)

## ABOUT THE AUTHOR

Garyn is an environmental law expert. His work is cross-sectoral and his clients operate in the energy, mining, oil and gas, industrial, waste management, biotechnology and

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