



**forestry, fisheries
& the environment**

Department:
Forestry, Fisheries and the Environment
REPUBLIC OF SOUTH AFRICA

SOCIO-ECONOMIC IMPACT ASSESSMENT SYSTEM (SEIAS)

PROPOSED REGULATIONS PERTAINING TO THE FINANCIAL PROVISIONING FOR THE MITIGATION AND REHABILITATION OF ENVIRONMENTAL DAMAGE CAUSED BY RECONNAISSANCE, PROSPECTING, EXPLORATION, MINING OR PRODUCTION OPERATIONS

The proposal involves the substantial revision and amendment of the Regulations Pertaining to the Financial Provision for Prospecting, Exploration, Mining or Production Operations (GN R1147 in Government Gazette No. 39425 of 20 November 2015), which will be repealed by this proposed amendment

1. Please DO NOT ALTER the template and questionnaire
2. Date must be clearly indicated
3. Draft SEIAS report should have a watermark word DRAFT indicating the version and should be accompanied by the supporting documents (draft proposal, M&E plan and pieces of research work)
4. FINAL report will be in PDF format and will be inclusive of the sign-off
5. FINAL report will have the approval stamp of the Presidency on the front cover and will include the signoff
6. Sign off forms are only valid for a period of six months.

7. Bills and Regulations that introduce permitting, licensing and registration system must be accompanied by a streamlined process map and indicate the proposed turnaround time for processing of such.

PART ONE: ANALYSIS FOR FINAL SEIAS REPORT

Please keep your answers as short as possible. Do not copy directly from any other document.

1. Conceptual Framework, Problem Statement, Aims and Theory of Change

1.1. What socio-economic problem does the proposal aim to resolve?

1.2. What are the main root causes of the problem identified above?

What socio-economic problem does the proposal aim to resolve	What are the main roots or causes of the problem
The proposed amendments to the Financial Provisioning Regulations, 2015, as amended, hereafter referred to as “the Regulations”, intend to limit the amount of funds to be set aside by holders of mining, production, exploration and prospecting rights and permits, (hereinafter referred to as mining and petroleum operations/rights and permits) to reflect only the environmental disturbance already caused and that which will be caused over the next year.	The Regulations which currently apply to holders of mining, production, exploration and prospecting rights and permits require that funds be set aside for the anticipated environmental disturbance to be caused over a period of 10 years hence.
The proposed amendments to the Regulations intend to allow for a dual system of calculating of the financial provision by also providing for small scale operations i.e. operations that are regarded as having a low environmental risk and are articulated in the proposed amendment to the Regulations.	The Regulations currently allow for only one system to calculate the financial provision for a mining or petroleum operation. This system relies on the preparation of three plans which are very onerous and costly for small scale miners.
The proposed amendments to the Regulations intend to allow for the use of “parent or affiliate company guarantee” for the oil and gas industry.	The Regulations currently do not provide for the use of a parent or affiliate company guarantee. The oil and gas industry has identified that the costs of production of oil and gas do not allow for normal bank guarantees to support the closure rehabilitation, and post closure environmental impact management measures, due to the nature of the industry and the very large sums involved. The industry requested that they be allowed to consider the use of parent or affiliate company guarantees. National Treasury has agreed to the use of the instrument to provide a guarantee to rehabilitate environmental damage at the decommissioning of an oil or gas operation.

1.3. Summarise the **aims** of the proposal and **how** it will address the problem in no more than five sentences.

The aims of implementing the proposed amendments to the Regulations is to achieve a better balance between environmental protection, functional mining operations and the need to prevent the State from becoming liable for the rehabilitation of ownerless and derelict mines, by reducing the amount of funds from the operating funds of a mine or petroleum operation to reflect the environmental disturbance already caused and only one year into the future.

1.4. How is this proposal contributing to the following national priorities?

National Priority	Impact
1. Economic transformation and job creation	Should the amount of money to be set aside for financial provision be reduced to allow for the rehabilitation of environmental impacts already disturbed and projected for one year only, more mines may be encouraged to seek permits or rights which will create jobs and economic activity in a sustainable mining environment. It is also expected that by promoting ongoing concurrent rehabilitation through the life of the mine that additional jobs in the rehabilitation field can be created.
2. Education, skills and health	The mines do provide skills training and it is possible that with access to regular employment, that education and health of the families of miners will be improved.
3. Consolidating the social wage through reliable and quality basic services	Mines do often provide services within the broader community in which they operate.
4. Spatial integration, human settlements and local government	Should land used for mining activities be successfully rehabilitated, it will allow for secondary use which can provide a post mining economy and stimulate economic activity in the local government areas.
5. Social cohesion and safe communities	Should land used for mining activities be successfully rehabilitated it will not become abandoned and an unsafe area but could provide a post mining economy and promote economic development.
6. Building a capable, ethical and developmental state	Amendments to the Regulations which will enable a more practical and achievable implementation of the Regulations, will enhance confidence in the industry regarding the capability of the state.
7. A better Africa and world.	The mining industry is a global industry and an environmentally aware and sustainable mining industry in South Africa could provide opportunities for the rest of Africa.

1.5. Please describe how the problem identified could be addressed if this proposal is not adopted. At least one of the options should involve no legal or policy changes, but rather rely on changes in existing programmes or resource allocation.

Option 1.	It is not possible for the problem to be addressed without amending the current regulatory requirements. The problem is a problem that exists in the 2015 Regulations and amendments must be made to address the problem.
Option 2.	There are no non-legal solutions to addressing the problem.

PART TWO: IMPACT ASSESSMENT

2. Policy/Legislative alignment with other departments, behaviours, consultations with stakeholders, social/economic groups affected, assessment of costs and benefits and monitoring and evaluation.

2.1. Are other government laws or regulations linked to this proposal? If so, who are the custodian departments? Add more rows if required.

Government legislative prescripts	Custodian Department	Areas of Linkages	Areas of contradiction and how will the contradictions be resolved
National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA)	Department of Forestry, Fisheries and the Environment	NEMA is the enabling legislation for the Financial Provisioning Regulations, 2015 and any amendments thereto	None, NEMA is the enabling legislation for the proposed amendments to the Regulations
National Environmental Management Laws Amendment Bill B14-2017	Department of Forestry, Fisheries and the Environment	Amendments to the definitions and sections 24C, 24P of NEMA are proposed to align NEMA with the proposed amendments to the Regulations and provide greater clarity with respect to some mining issues which are now legislated under NEMA	As the Amendment Bill has not been passed by Parliament, the Regulations will not be able to be finalised until the Amendment Bill is finalised. The process is far advanced.
Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) (MPRDA)	Department of Mineral Resources and Energy	The MPRDA previously provided for the regulation of environmental matters related to mining, however, with the introduction of the "One Environmental System" which came into effect on 8 December 2014, the environmental provisions related to mining, which included the provisions related to financial provisioning, were moved under the NEMA legislative framework.	There are no conflicts, related to the Financial Provisioning Regulations.
National Water Act, 1998 (Act No. 36 of 1998)(NWA)	Department of Water and Sanitation	The NWA, provides for the protection and allocation of water and water management.	Section 30 of the NWA makes provision for a "security" to be applied. This "security" is being applied by Catchment Management Agencies to

			<p>provide financial provision for possible water pollution through the water use licence. This is a duplication of the financial provisioning in the NEMA Regulations, as the management of polluted water is included in the calculations.</p> <p>The proposed amendments to NEMA have included a provision to allow the Minister responsible for water affairs to access the financial provision put aside by a mine during its operation to remediate any water pollution should the holder not undertake their rehabilitation obligation. This inclusion will avoid the need to duplicate financial provisioning between the two Acts.</p>
Income Tax Act, 1962 (Act No. 58 of 1962)	National Treasury	Section 37A of the Income Tax Act, provides for a tax penalty should the funds that are set aside in the trust for the holder be used for purposes other than rehabilitation.	<p>Section 37A(c), 37A(7) and 37A(10)(ii) and (iii) specifically addresses the utilisation of a trust fund or closure rehabilitation company for purposes other than rehabilitation and remediation. The consequence for such use would be a tax penalty.</p> <p>These provisions are not aligned with the Financial Provisioning Regulations as the expectation of these Regulations with regard to the withdrawal of funds from the trust fund is that no funds can be withdrawn from the fund other than for purposes of effecting rehabilitation and remediation, and then only under very strict circumstances irrespective of any tax penalty applying. The Financial Provisioning Regulations specifically require that financial provisioning may only be used for rehabilitation purposes. The silence of the Income Tax Act creates the</p>

			impression that withdrawal for other purposes is possible, although subjected to a tax penalty. The provisions are not contradicting one another per se but the Financial Provisioning Regulations amendments cannot solve the implied Income Tax Act interpretation. National Treasury is aware but do not wish to amend the Income Tax Act as it deals with tax implications and is not necessarily in conflict with the Financial Provisioning Regulations.
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2.2. Proposals inevitably seek to change behaviour in order to achieve a desired outcome. Describe (a) the behaviour that must be changed, and (b) the main mechanisms to bring about those changes. These mechanisms may include modifications in decision-making systems; changes in procedures; educational work; sanctions; and/or incentives.

a) What and whose behaviour does the proposal seek to change? How does the behaviour contribute to the socio-economic problem addressed?

The proposed amendment to the Regulations seek to reduce the number of years for which the current financial provision must be set aside by a mine during its operation for the purposes of closure and rehabilitation and the management of post closure environmental impacts. The change of timeframe from 10 to 1 year will allow mines to more easily comply with the Regulations. In addition the proposal to allow for a “parent or affiliate company guarantee” for the oil and gas industry will similarly allow the oil and gas industry to more easily comply with the requirements of the Regulations.

b) How does the proposal aim to bring about the desired behavioural change?

The methodology used for the calculation of the financial provisions is proposed to be amended, which will reduce the timeframe for which FP is to be set aside. The inclusion of the “parent or affiliate company guarantee” has been included in the proposed amendments.

2.3. Consultations

a) Who has been consulted inside of government and outside of it? Please identify major functional groups (e.g. business; labour; specific government departments or provinces; etc.); you can provide a list of individual entities and individuals as an annexure if you want.

Consulted Government Departments, Agencies and Other Organs of State

Department's name	What do they see as main <u>benefits</u> , <u>Implementation/ Compliance costs</u> and <u>risks</u> ?	Do they <u>support</u> or <u>oppose</u> the proposal?	What <u>amendments</u> do they propose?	Have these amendments been <u>incorporated</u> in your proposal? If yes, under which section?
DMRE	<p>The DMRE officials have been part of the drafting team of the proposed amendments to the Regulations. A practical timeframe set for the calculation of the financial provision will assist with the ease of implementation of the Regulations. These proposed amendments to the Regulations do not attract additional costs for the DMRE as they were implementing the Regulations before the proposed amendments and will continue to do so after the proposed amendments.</p>	Support	<p>A comments and responses document is appended to this template.</p> <p>DMRE officials have been part of the drafting team and have influenced the proposed amendments throughout the amendment process. The DMRE required that the availability of the financial provision for small scale miners were paid prior to receiving environmental authorisation.</p>	<p>Yes. The requirement for small scale miners to make available the financial provision prior to receiving environmental authorisation has been included in the proposed amendments as part of regulation 9 of the proposed amended Regulations.</p>
National Treasury	<p>The proposed amendments clarify the timeframes and the manner in which withdrawals can be made from the trust funds of the mining company which will assist National Treasury when they monitor these withdrawals. The proposed amendments to the Regulations do not attract additional costs for National Treasury, they have monitored reviews of withdrawals from the trust funds before the implementation of the proposed amendments and will continue to monitor the trust funds</p>	Support	<p>A comments and responses document is appended to this template.</p> <p>National Treasury specifically raised the fact that setting aside funds for annual rehabilitation was a duplication of the requirements for setting aside the financial provision i.e. funds were to be used from operation budget for annual rehabilitation but also set aside</p>	<p>Yes. The proposed amendments make it clear that the funds for the implementation of annual rehabilitation are to be taken from the operational budget of the mine. This is proposed as regulation 9(1) of the proposed amended Regulations.</p>

	after the proposed amendments should they be implemented.		through the financial provision.	
Department of Water and Sanitation	Improved closure objectives and provide clarity on the Minister responsible for water affairs' ability to draw down funds to remediate water pollution. These proposed amendments to the Regulations do not attract additional costs for the DWS, they provided input to closure plans for mines prior to the amendments and they will continue to do so should the proposed amendments be implemented.	Support. The DWS was part of the drafting team, drafting the proposed amendments to the Regulations.	A comments and responses document is appended to this template, although DWS did not provide formal inputs. The DWS specifically wanted the Minister responsible for water affairs to be able to access funds from the financial provision to remediate water pollution.	Yes. The Minister responsible for water affairs has been identified as a party who is able to draw funds from the financial provision should they need to remediate water pollution on behalf of the holder. Regulation 2(c) is applicable. DWS will therefore not need to duplicate this requirement through their conditions.
Petroleum Agency SA	Clarified that the costs of managing incidents are not included in the quantum. There will be no additional costs associated with these proposed amendments to PASA, they were reviewing and making recommendation on oil and gas applications before these amendments and will continue to do so should the amendments be implemented.	PASA has been part of the drafting team drafting the proposed amendments to the Regulations. Support the Regulations	A comments and responses document is appended to this template. Wanted to ensure that the costs of managing an incident were not included in the financial provisioning and that a "parent or affiliate company guarantee" could be used.	Yes both aspects were included in the proposed amendments to the Regulations. Regulation 3(c) deals with the incident.
Western Cape: DEADP	Greater clarity provided in implementation, and improved costing of rehabilitation activities. There will be no additional costs associated with these proposed amendments to the Western Cape: DEADP as they are not an implementing authority for any aspect of the Regulations.	Partially support the Regulations	A comments and responses document is appended to this template. They had some drafting inputs.	The drafting conventions were incorporated.

Consulted stakeholders outside government

Name of Stakeholder	What do they see as main <u>benefits, Implementation/ Compliance costs and risks?</u>	Do they <u>support or oppose</u> the proposal?	What <u>amendments do they propose?</u>	Have these <u>amendments been incorporated in your proposal?</u>
Minerals Council SA	The requirements for the mining industry in relation to financial provision will be clearer, and a system will be in place which can be implemented. The proposed amendments to the Regulations will impose no costs or risks to the Minerals Council SA.	They do not support all aspects of the proposed amendments to the Regulations	The Minerals Council SA proposed several amendments which have been considered. In addition, the Council proposes that the VAT requirement should be removed from the calculation and that withdrawals from the financial provision should be allowed at any time.	The removal of the funding of the annual plan has been removed as per the concern raised by the Minerals Council, the need to consult with three Ministers on a withdrawal prior to approval has been removed, CPI +2% has been removed from the calculation, and it has been clarified that there are no changes to the ability to use trust funds. The drafting team has considered this but not agreed to the removal of VAT from the calculation of financial provision or the more frequent withdrawals from the financial provision.
Mining and Engineering Consultancies	Consultants who have provided input have noted that the calculation of costs seems more appropriate, and they approve of the risk based approach to the calculation of latent impacts. There will be no costs or risk implications associated with the proposed amendments to the Regulations on consultants. The benefits to consultants is that they will be required	Support aspects of the proposed amendments	Consultants have proposed that a peer review not be considered as no consultants would base their assessment of the adequacy of the costs on a peer review they would need to reassess the calculations to put forward an opinion on the adequacy based on a thorough assessment . Consultants have also made comment on the	Yes. The amendments include a provision indicating that the costs associated with the annual rehabilitation do not need to be made available to the public after the initial approval. The concerns regarding peer review have been amended and the inputs on the various plans have been incorporated. A focus group

	to provide their expert and professional services to prepare the calculations for large scale operations. They will also benefit from the clarity provided in the preparation of plans and the calculation of the financial provision to be set aside.		content of the various plans. There is some criticism in that the costs for rehabilitation are known to the reader of the documents which could impact negatively on tender prices.	meeting was held with consultants regarding the content of the plans.
Offshore Petroleum Association of South Africa (OPASA)	There will be no financial implication or risks related to the amendments to the Regulations for OPASA.	Support parts of the proposed amended Regulations	A comments and responses document is appended to this template. OPASA have commented on the provision of vehicles for setting aside financial provision and the explicit exclusion of costs related to incidents which makes compliance with Regulations possible for the petroleum and gas industry	Yes. The clarification that incidents are not included in the proposed amended Regulations have been made, and a provision has been made for the inclusion of the parent or affiliate company guarantee.
Banking Industry	The clarity provided in terms of the vehicles that can be used for setting aside financial provision for a mine would be a benefit to the banking industry. There are no additional costs or risk related to the proposed amendments to the Regulations which would impact on the banking industry.	Support aspects of the proposed amendments dealing with the calculation but the banking industry were concerned that they needed to inform two Ministers should they wish to withdraw their guarantee.	A comments and responses document is appended to this template. The banking industry was concerned that an unknown risk could not be quantified in an audit, the industry was also concerned that they need to inform two Ministers of their intention to withdraw a guarantee.	Yes. Clarity was provided on the need to include an unquantified risk. This was achieved through the removal of an incident from the financial provisioning calculation and the modelling of latent risks. The proposed amendments do not change the requirement for the banks to inform both the Minister responsible for minerals resources and for environmental affairs should they

				wish to withdraw a guarantee.
Insurance industry	The clarity provided in terms of the vehicles that can be used for setting aside financial provision for a mine would be a benefit to the insurance industry. There are no additional costs or risk related to the proposed amendments to the Regulations which would impact on the insurance industry.	Support the proposed amendments and the improved template for the entering into an insurance contract.	A comments and responses document is appended to this template. The insurance industry raised a concern on the timeframes in which funds needed to be transferred to the Minister when called on. They also wanted reporting should the Minister call on the funds and wanted clarity on calendar days or days.	Yes. The timeframe in which the funds were to be transferred were extended and the inclusion of a reporting requirement for the Minister should funds be called on was added. A provision clarifying the meaning of the calculation of “days” was provided to clarify that the days referred to was calendar days.
Centre for Environmental Rights and the Federation for a Sustainable Environment representing civil society	The additional transparency on the calculations and need to disclose information would be a benefit to civil society as they would have the basis for challenging costs should they feel they are inadequate. There are no costs or risks to civil society imposed by the proposed amendments to the Regulations.	Are generally supportive of the proposed amendments in terms of the improved transparency provided for in the Regulations and the proposed improved accuracy related to determining the quantum of financial provisioning	A comments and responses document is appended to this template. Civil society is concerned that the proposed amendments no longer address “Care and Maintenance”. They are also concerned about the long delays in implementing the Regulations.	The “care and maintenance” provision was removed as it was regarded as not being part of the financial provisioning, and there was a concern that this was not the mandate of the Department to legislate. The concern about the delay in implementing is noted, however, it is noted that the Regulations are applicable to new entrants to the market but until the proposed amendments are finalised the timeframe for compliance of existing holders will need to be extended as they are not certain as to what requirements they must comply with.

				A provision has been proposed which indicates that the Regulations also apply when the mine is in care and maintenance. This has clarified the requirements of the holder to continue to make provision for mine closure throughout their periods of care and maintenance.
Independent Regulatory Board for Auditors (IRBA)	There are no real benefits to auditors and there are also no additional costs to the industry posed by the proposed amendments to the Regulations.	They support the improved clarity related to auditing in the proposed amendments.	<p>A comments and responses document is appended to this template.</p> <p>The IRBA was concerned that the Regulations did not refer to the auditors' standards and it was not clear if the audit was a financial audit or a technical audit.</p>	Yes. The proposed amendments made it clear that the audit required is to be a technical audit of the engineering aspects, so there was no need to refer to the IRBA's standards as they would not apply.

- b) Summarise and evaluate the main disagreements about the proposal arising out of discussions with stakeholders and experts inside and outside of government. Do not give details on each input, but rather group them into key points, indicating the main areas of contestation and the strength of support or opposition for each position
- i. *Mining industry – VAT and CPI+2%; the use of external professionals to prepare the calculation and plans; approval of annual plans, restriction on draw downs, and the one size fits all method of calculating the financial provision which is complicated and costly for small scale miners. The most recent version of the proposed amendments has removed the requirement to include CPI+2%, so this concern should fall away. A dual system for the calculation of the financial provision has been provided for, this concern should also fall away. On the inclusion of VAT, it is the Department’s view as well as National Treasury and DMRE that VAT must be included to ensure that there is no shortfall, should a holder not comply with the rehabilitation obligation. This is not a new requirement through the NEMA Regulations, as it was also a requirement through the calculations previously prepared under the MPRDA. There is also a need to approve the annual plan as this contains the area of land disturbed by mining and forms the basis on which the financial provisioning – also for the final rehabilitation - is calculated. Both DWS and National Treasury insisted that there were strict requirements and limitations to the drawdown of funds from the trust funds. This view is supported by the Department. The financial provision is not a fund for the use of the holder but an insurance to the State, should rehabilitation not be undertaken, in order to allow the State to rehabilitate on behalf of the holder, using the financial provision accumulated.*
 - ii. *Minerals Council of South Africa – definition of applicant which includes and brings into the ambit of the Financial Provisioning Regulations, amendment of rights and permits; the requirement to approve annual plans; and the need to submit plans to DMRE. The Department is of the view that a trigger to consider the plans and the adequacy of the financial provision when amending a right or permit is necessary as the scope of the mining could be altered through this extension. The need to approve the annual plan has been clarified above. The Department is of the view that, in order to allow transparency and for DMRE to consider the acceptability of plans, these must be submitted for approval.*
 - iii. *NGOs – the removal of “Care and Maintenance”. It was necessary for the Department to remove the proposal to include care and maintenance in the financial provisioning Regulations as the Act does not enable this trigger. However, a provision has been included indicating that the requirements set out in the Regulations will apply regardless if the holder is subject to section 52 of the MPRDA i.e. if they are on Care and Maintenance.*

- iv. National Treasury – *concerned about the risks of drawdowns, want cross reference to section 37A of the Income Tax Act. Drawdown is necessary to allow for final rehabilitation to be undertaken, strict conditions were included as per the requirements of DWS and National Treasury. The Department did not find it necessary to cross reference the Income Tax Act, as the Act was not clearly aligned with the principles of the Regulations. The Act by implication allows (does not specifically prohibit) drawdown of funds for reasons other than rehabilitation and without conditions, barring a tax penalty.*
- v. Banks and insurance companies – *concerned that they are required to notify more than one Department should they wish to withdraw a guarantee or insurance. The Department does not regard this as a major task and it provides an additional level of protection to the State as it will allow the Department of Forestry, Fisheries and the Environment to be alerted to the withdrawal of the guarantee or insurance and enable them to engage with the DMRE to ensure that alternative arrangements are in place. The need to notify Treasury as well was removed to simplify the procedures.*

2.4. Describe the groups that will benefit from the proposal, and the groups that will face a cost. These groups could be described by their role in the economy or in society. Note: NO law or regulation will benefit everyone equally so do not claim that it will. Rather indicate which groups will be expected to bear some cost as well as which will benefit. Please be as precise as possible in identifying who will win and who will lose from your proposal. Think of the vulnerable groups (disabled, youth women, SMME), but not limited to other groups.

List of beneficiaries (groups that will benefit)	How will they benefit?
Mining industry	The proposed amendments will bring clarity on the method for the calculation of the financial provision. The amendments will provide guidance to the development of plans, will ensure consistent implementation of the VAT requirement over the various regional offices of DMRE, the holder will be able to drawdown funds under certain conditions and the concept of a “risk threshold” has been included which sets a limitation on latent defects. The proposed amendments should also bring mines closer to being able to obtain closure certificates as the long term management of mine water is clarified and must be costed.
DMRE	The proposed amendments have attempted to clarify many implementation issues and provide a level of guidance not previously provided. As funds for latent defects are transferred to the DMRE, the rehabilitation of ownerless and derelict mines can be funded from these long term committed funds and employment in the rehabilitation industry can be stimulated.
Communities surrounding mining areas	Concurrent rehabilitation should be encouraged through the proposed amendments which will reduce the risk of pollution. Marginalised communities surrounding mines will benefit most from the reduce risk of pollution as they are most exposed to pollution from mines.

Boards of trust funds	The roles and responsibilities of trustees and Directors of companies and trust funds will be clarified should the proposed amendments be approved.
Mining consultants	The requirement to prepare plans and to have the plans prepared by professionals will stimulate the industry.
NGOs	Transparency, NGOs will be able to engage with the plans and confirm the acceptance of the quantum calculated.
The State	There should be improved calculation of financial provision as well as improved concurrent rehabilitation. This should reduce the liability of the State should the holder not implement his/her rehabilitation obligation and the task falls to the DMRE.

List of cost bearers (groups that will bear the cost)	How will they incur / bear the cost
Mining industry	<p>The mining industry has had to set aside financial provision since 1991. In 2002 the requirements were more defined and the first set of regulations were drafted to give guidance on the manner in which the financial provision was to be calculated. In 2005 a guideline document was prepared which provided additional clarification. Therefore, the preparation of plans and the setting aside of financial provision through trust funds or rehabilitation companies is not a new requirement. What is additional to the requirement that was there before, is the express requirement for the calculation to be based on surveyed disturbance and the preparation of three plans by independent specialists. The survey requirement should however, not be a new requirement as there is no way of determining impacts without survey. The explicit reference regarding the addition of VAT should also not be a new requirement as this was expressly required in the 2005 guideline document. The inclusion of water treatment into the financial provision was previously not included in the financial provision set aside but formed part of a capital expense. There should therefore not be any additional costs associated with water treatment but merely that it must now be included in the financial provisioning sum. There is now an express requirement to undertake annual rehabilitation to the extent that is possible, so although this requirement may now be expressly identified, the MPRDA did require rehabilitation to be undertaken as an integral part of the mining operations.</p> <p>It is possible that the rehabilitation of disturbed land prior to 1991 now having to be included in the financial provisions to be set aside will have a direct additional financial impact on the mining companies who were operating prior to 1991. However, this land has been disturbed by the mining operation and must be rehabilitated by the mine through the proceeds of profits made, as the polluter pays principle is not a new requirement and it is not possible for</p>

	rehabilitation to be left to other parties such as the tax payer to fund.
DMRE	The DMRE has administered the financial provisioning requirements since 1991 and a more detailed version of the financial provision since 2002 and the NEMA Financial Provisioning Regulations since 2015. The proposed amendments merely provide more clarity on certain matters but do not change the fundamental principles on which the 2015 regulations were drafted. Annual reviews and audits are also not new requirements and formed part of the financial provisioning requirements under the MPRDA and the 2015 NEMA Regulations. Again on this matter the proposed amendments merely provide more clarity on the requirements. The calculation of the financial provision has also been undertaken based on plans, therefore the review of plans under the NEMA Regulations is not a new requirement and the proposed amendments to the NEMA Regulations merely clarify certain aspects. DMRE has also monitored compliance against the MPRDA Financial Provisioning Regulations and the NEMA Financial Provisioning Regulations since 2015. There are no new aspects in the proposed amendments to the Regulations which would increase the compliance costs of DMRE.
Communities surrounding mining areas	There will be no additional costs which result from the proposed amendments to the Regulations on communities surrounding mining areas.
Boards of trust funds	There will be no additional costs to boards or trust funds as a result of the proposed amendments to the Regulations as the board and trusts operated under the MPRDA Financial Provisioning Regulations since 1991 and 2001 as well as the NEMA Financial Provisioning Regulations of 2015. The proposed amendments just clarify requirements of board members and trustees.
Mining consultants	Mining consultants will incur no costs which are not recovered from the mining industry as they will sell their professional services. This is not different to the situation under the MRDA Financial Provisioning Regulations or the NEMA Financial Provisioning Regulations of 2015. The proposed amendments made slight changes to the calculation methodology and some aspects of the plans but they provide more guidance rather than propose new obligations.
NGOs	NGO's will incur no additional costs as a result of the proposed amendments to the Regulations. NGOs who were commenting on mining authorisations will continue to do so and the proposed amendments to the Regulations will simply assist in that the proposed amendments are prepared to provide clarity to aspects which were noted as not been clear before and reduce some administrative requirements which were regarded as being cumbersome.

The State	As indicated above there are no increased administrative costs to DMRE or National Treasury resulting from the amendments.
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2.5. Describe the costs and benefits of implementing the proposal to each of the groups identified above, using the following chart. Please do not leave out any of the groups mentioned, but you may add more groups if desirable. Quantify the costs and benefits as far as possible and appropriate. Add more lines to the chart if required.

Note: "Implementation costs" refer to the burden of setting up new systems or other actions to comply with new legal requirements, for instance new registration or reporting requirements or by initiating changed behaviour. "Compliance costs" refers to on-going costs that may arise thereafter, for instance providing annual reports or other administrative actions. The costs and benefits from achieving the desired outcomes relate to whether the particular group is expected to gain or lose from the solution of the problem.

For instance, when the UIF was extended to domestic workers:

- The implementation costs were that employers and the UIF had to set up new systems to register domestic workers.*
- The compliance costs were that employers had to pay regularly through the defined systems, and the UIF had to register the payments.*
- To understand the inherent costs requires understanding the problem being resolved. In the case of UIF for domestic workers, the main problem is that retrenchment by employers imposes costs on domestic workers and their families and on the state. The costs and benefits from the desired outcome are therefore: (a) domestic workers benefit from payments if they are retrenched, but pay part of the cost through levies; (b) employers pay for levies but benefit from greater social cohesion and reduced resistance to retrenchment since workers have a cushion; and (c) the state benefits because it does not have to pay itself for a safety net for retrenched workers and their families.*

Group	Implementation costs	Compliance costs	Costs/benefits from achieving desired outcome	Comments
Mining industry	<p>The implementation costs of the mining industry will be reduced through the proposed amendments to the regulations as the 10 years for which financial provision was required to be set aside has been reduced to one year. The auditing requirements are proposed to be reduced from once per year to once every three years, and the annual review is proposed to be undertaken by an internal team which will save money. In addition, a dual system has been proposed for small scale miners of low risk commodities which is far less complex and will save them time and money as they will use pre-prepared templates. No new systems are required to be implemented through the proposed amendments to the regulations. The costs associated with VAT and rehabilitation of land prior to 1991 were required to be included since 2002.</p>	<p>The mining industry has always had to comply with the requirements of the Financial Provisioning Regulations under the MRPDA and since 2015 under NEMA. The proposed amendments do not increase the compliance costs for the mining industry and will reduce them as noted in the previous column should the amendments be implemented.</p>	<p>Ensuring that the State does not become liable for the rehabilitation costs associated with mining operations is desirable. The proposed amendments to the Regulations reduce the costs to the mining industry in that the CPI+2% is proposed to be removed, the requirement to set aside funds for 10 years hence is proposed to be removed and the annual reviews can be undertaken by an in-house expert.</p>	<p>The setting aside of financial provisioning for a mine to effect rehabilitation is not a new requirement. The proposed amendments to the Regulations intend to clarify and simplify certain implementation issues where this was needed.</p>
DMRE	<p>The DMRE has implemented Financial Provisioning Regulations from 1991, in 2002 the first set of Financial Provisioning Regulations were implemented under the MPRDA and since 2015, the DMRE implemented the NEMA Financial Provisioning Regulations. There are therefore no new implementation requirements.</p>	<p>The DMRE has monitored compliance with the Financial Provisioning Regulations since 1991, the proposed amendments to the Regulations do not impose additional compliance requirements.</p>	<p>There are no new compliance costs associated with implementing the proposed amendments to the Regulations.</p>	<p>No additional comment</p>

Boards of trust funds	The sum set aside for financial provision by a mine has traditionally been set aside through trust funds or insurance products. The proposed amendments to the Regulations clarify the role of the trustees and Directors to pay funds to the Minister, should the Minister call on them after having implemented all of the notification requirements. This is not a new requirement, but it is now simply stated to be a requirement to a trustee or Director.	There are no additional compliance costs associated with the proposed amendments to the Regulations.	The role of the trustee or board member has simply been clarified through the proposed amendment to the Regulations.	No additional comment
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2.6 Cost to government: Describe changes that the proposal will require and identify where the affected agencies will need additional resources

- a) Budgets, has it been included in the relevant Medium Term Expenditure Framework (MTEF) and
- b) Staffing and organisation in the government agencies that have to implement it (including the courts and police, where relevant). Has it been included in the relevant Human Resource Plan (HRP)

Note: You MUST provide some estimate of the immediate fiscal and personnel implications of the proposal, although you can note where it might be offset by reduced costs in other areas or absorbed by existing budgets. It is assumed that existing staff are fully employed and cannot simply absorb extra work without relinquishing other tasks.

The proposed amendments to the Regulations will not have an impact on the budget or the human resource capacity needed within the DMRE who are the implementing authority. The proposed amendments to the Regulations do not add new requirements other than the dual system which is proposed to be implemented for small scale low risk operations. The system however, is the same as was implemented by the DMRE when the Financial Provisioning Regulations were promulgated under the MPRDA. There will therefore be no learning curve to implementation. The dual system which is more simple should assist to reduce the work load of DMRE for small scale operations.

2.7 Describe how the proposal minimises implementation and compliance costs for the affected groups both inside and outside of government.

For groups outside of government (add more lines if required)

Group	Nature of cost (from question 2.6)	What has been done to minimise the cost?
DMRE	As indicated in the table above the proposed amendments to the Regulations will not incur additional costs either through administration or compliance to the DMRE who implements the Regulations as they have implemented the Regulations since 1991.	There are no additional costs and therefore no requirement for additional funding.
National Treasury	National Treasury has provided for tax incentives on the trusts operated by mining companies in which they secure their financial provision. These incentives have been put in place in 2002 and have been administered and monitored by National Treasury from that time. The proposed amendments to the Regulations do not pose additional administrative requirements or monitoring requirements.	No additional comment
DFFE	DFFE are required to set the legislative framework for the mining industry. DFFE does not implement the Regulations or monitor compliance to the Regulations.	There are no additional costs and therefore no requirement for additional funding.
DWS	The proposed amendments to the Regulations identify that the Minister responsible for water affairs can draw down funds from the financial provision to effect water management should the holder fail to do so after having been given notice to do so. This is a new provision but DWS manages acid mine drainage from mines currently and have a unit set up to do this work. The proposed amendment to the Regulations simply now provides funds to do this work.	No additional comment.

For government agencies and institutions:

Agency/institution	Nature of cost (from question 2.6)	What has been done to minimise the cost?
N/A	N/A	N/A

2.8 Managing Risk and Potential Dispute

- a) Describe the main risks to the achievement of the desired outcomes of the proposal and/or to national aims that could arise from implementation of the proposal. Add more lines if required.

Note: It is inevitable that change will always come with risks. Risks may arise from (a) unanticipated costs; (b) opposition from stakeholders; and/or (c) ineffective implementation co-ordination between state agencies. Please consider each area of risk to identify potential challenges.

- b) Describe measures taken to manage the identified risks. Add more rows if necessary.

Mitigation measures means interventions designed to reduce the likelihood that the risk actually takes place.

Identified risk	Mitigation measures
Litigation by the mining sector	The proposed amendments to the Regulations have been proposed in part to avoid litigation that has been brought against the DFFE based on the 2015 version of the Regulations as they feel that they are not practical and would impact negatively on the mining industry. These proceedings have been held in abeyance until the final amendments have been drafted. It is possible that the sector may still not support the proposed amendments and will continue with the litigation. In order to reduce the risk of litigation, the proposed amendments have been consulted extensively with the industry and various other sectors and their comments and inputs have been carefully considered and the proposed amendments drafted considering these inputs where possible. The proposed amendments will go for a further round of public comment before being implemented.
Duplication of financial provisioning by DWS through the National Water Act	The National Water Act allows the Minister of Water Affairs to apply “security” through the water use licences to ensure that there are funds for the protection of the water resources of the country. As the management of mine water is included in the ambit of the financial provisioning Regulations, the drafting of alternative regulations to manage mine water would duplicate the requirements to set aside funds for long term rehabilitation and mitigation of the impacts of mining. This would not be desirable to the industry or government. The Department of Water and Sanitation has formed part of the drafting team to ensure that the proposed Regulations meet their requirements and an amendment in NEMLA 4 has been proposed which will explicitly allow the Minister responsible for water affairs to draw on the funds set aside for rehabilitation and remediation should the holder not comply with their rehabilitation and remediation obligation. The proposed amendments to the Regulations also provide for this scenario.
Litigation against DMRE should they not implement the Regulations effectively	The DMRE are the implementers of the Financial Provisioning Regulations and the proposed amendments to the Regulations. The NGO sector has launched litigation against DMRE on a number of mining issues in the recent past in order to ensure sustainable mining practices. The proposed amendments to the financial provision Regulations allow significant transparency in the detail of calculations. Should DMRE not implement the Regulations in the manner intended or follow through on non-compliance it

	<p>is possible that they will be challenged. In order to reduce this risk, DMRE was part of the drafting team and officials have been consulted throughout the drafting process to ensure that they are aware of the proposed amendments and that they are fully practical and implementable. An interdepartmental coordinating committee is in place between DWS, DFFE and DMRE to discuss any implementation issues. This committee meets quarterly and will assist with the implementation of the Regulations as well as the proposed amendments to the Regulations. In addition, as part of the implementation of the Environmental Impact Assessment Regulations, 2014 as amended, a governmental sector structure is in place, This sector body meets quarterly to discuss reporting on the environmental sector targets to the MTSF. This structure comprises of Working Groups which includes a sub-working group dealing specifically with implementation issues. Any implementation issues are brought to these committees for resolution which would avoid to a large extent litigation as implementation issues can be resolved before they become practical problems.</p>
Inconsistent implementation between regional offices	<p>Through the drafting of the initial Regulations and these proposed amendments, it has been identified that the regional offices of DMRE have not implemented the Regulations consistently. This causes concern for the mining sector and can lead to litigation. In order to remedy such inconsistent implementation, DMRE officials have been part of the drafting team. The structures identified above are also used to ensure that there is consistent implementation. Training will be set up once the proposed amendments are finalised. Initially this training will be done by DFFE but on the basis of train the trainer.</p>

- c) What kinds of dispute might arise in the course of implementing the proposal, whether (a) between government departments and government agencies/parastatals, (b) between government agencies/parastatals and non-state actors, or (c) between non-state actors? Please provide as complete a list as possible. What dispute-resolution mechanisms are expected to resolve the disputes? Please include all of the possible areas of dispute identified above. Add more lines if required.

Note: Disputes arising from regulations and legislation represent a risk to both government and non-state actors in terms of delays, capacity requirements and expenses. It is therefore important to anticipate the nature of disputes and, where possible, identify fast and low-cost mechanisms to address them.

Nature of possible dispute (from sub-section above)	Stakeholders involved	Proposed Dispute-resolution mechanism
There should be no disputes arising from the proposed amendments to these Regulations. The drafting team was an interdepartmental team made up of PASA, DMRE, DWS, DFFE and National Treasury Officials. There has been	N/A	N/A

Nature of possible dispute (from sub-section above)	Stakeholders involved	Proposed Dispute-resolution mechanism
agreement on the proposed amendments throughout the drafting process.		

2.9 Monitoring and Evaluation

Note: Sound implementation of policy and legislation is due to seamless monitoring and evaluation integration during the policy development phase. Policies and legislation that are proficiently written yet unable to report on implementation outcomes are often a result of the absence of an M&E framework at the policy and legislative planning phase. It is therefore imperative to state what guides your policy or legislation implementation monitoring.

- 2.9.1 Develop a detailed Monitoring and Evaluation Plan, in collaboration with your departmental M&E unit which should include among others the following:

2.9.1.1 Provide clear and measurable policy or legislative objectives

These are not new Regulations, the NEMA Financial Provisioning Regulations were implemented in 2015. The proposed amendments are to clarify some issues and provide a reduction of the number of years for which the funds must be set aside through the operation of the mine. The legislative objective of these proposed amendments is to take into consideration the comments raised by the industry.

2.9.1.2 Provide a Theory of Change clearly describing the following components:

- Impact: the organisational, community, social and systemic changes that result from the policy or legislation;

These are not new Regulations, the NEMA Financial Provisioning Regulations have been in place since 2015, and before that the MRDA Financial Provisioning Regulations were in place. There are no additional organisation, community, social and systemic changes that will result from these proposed amendments. Should the amendments achieve their objective the industry issues that have been raised would be met to the extent that is possible.

- Outcomes: the specific changes in participants (i.e. beneficiaries) behaviour, knowledge, skills, status and capacity;

These proposed amendments to the Regulations are not intended to change participants, beneficiaries behaviour, knowledge, skill, status and capacity. The mining industry has been subjected to financial provisioning requirements since 1991. The proposed amendments are intended only to clarify certain issues which were raised and to address some concerns related to the Regulations implemented in 2015.

- Outputs: the amount, type of degree of service(s) the policy or legislation provides to its beneficiaries;

These proposed amendments to the Regulations do not provide a service to the beneficiaries, the proposed amendments attempt to clarify issues which were not clear and to reduce the number of years for which financial provision must be set aside through the operational life of the mine.

- Activities: the identified actions to be implemented

The actions to be implemented are not new as in some instances the proposed amendments to the Regulations have just provided clarity and a dual system to the calculation which is the same as that imposed by the MPRDA Regulations. So there are no new actions associated with these proposed amendments that have not been imposed on the mining sector before.

- Input: departmental resources used in order to achieve policy or legislative goals i.e. personnel, time, funds, etc.

Financial provisioning has been implemented by the DMRE since 1991, the administrative system has been set up within the Department to administer the previous MRPDA Regulations, the NEMA Regulations since 2015, and the proposed amendments simply clarify some issues that were raised by the industry.

- External conditions: the current environment in which there's an aspiration to achieve impact. This includes the factors beyond control of the policy or legislation (economic, political, social, cultural, etc.) that will influence results and outcomes.

The mining industry has retracted in the past MTSF cycle, therefore the reduction in the costs to be set aside for financial provision and the inclusion of a dual system for small scale miners can assist to retain the mining industry.

- Assumptions: the facts, state of affairs and situations that are assumed and will be necessary considerations in achieving success

The proposed amendments to the Regulations will need to be clearly articulated and drafted to ensure that the requirements of the industry are clear. DMRE will need to be fully capacitated in terms of staff to be able to successfully implement the proposed amendments, but the amendments themselves will not increase the workload. The mining industry must be able to see that their concerns have been heard, understood and where possible addressed in the proposed amendments.

2.9.1.3 Provide a comprehensive Logical Framework (LogFrame) aligned to the policy or legislative objectives and the Theory of Change. The LogFrame should contain the following components:

- Results (Impact, Outcomes and Output)
 - *Impact – address the implementation issues raised by the industry, reduced costs of implementing the Financial Provisioning Regulations while achieving the maximum protection to the State should the holder not implement their rehabilitation obligation and ensuring sufficient funds are available for rehabilitation.*
 - *Outcome – implementable Regulations accepted by most mining houses.*
 - *Output – amended Financial Provisioning Regulations.*

- Activities and Input
 - *Activities – prepare the proposed amendments, gazette the proposed amendments for public consultation, incorporate comments and then gazette for implementation.*
 - *Inputs – drafting time, vetting time, gazetting costs and advertising costs to inform the public of the availability of the proposed amendments for comment.*

- Indicators (A measure designed to assess the performance of an intervention. It is a quantitative or qualitative factor or variable that provides a simple and reliable means to measure achievement, to reflect the changes connected to an intervention, or to help assess the performance of a development actor)
 - *A reduction in degraded mining land when measured from the baseline using machine learning.*
- Baseline (the situation before the policy or legislation is implemented)
 - *The baseline of degraded mining land will be determined for a pilot area and a pilot waste using land cover change and machine learning.*
- Targets (a specified objective that indicates the number, timing and location of that which is to be realised)
 - *By the fourth quarter of this financial year the proposed amendments are to be gazetted and full implementation is to be achieved by 19 June 2022.*

2.9.1.4 Provide an overview of the planned Evaluation, briefly describing the following:

- Timeframe: when it the evaluation be conducted –

An evaluation project has been planned to be initiated once the proposed amendments to the Regulations have been implemented and the existing holders are required to comply.

- Type: What type of evaluation is planned (formative, implementation or summative) – the selection of evaluation type is informed by the policy owners objective (what it is you want to know about your policy or legislation –

A pilot project is being planned in the intensive coal mining areas of the Mpumalanga Highveld. This project is intended to use “machine learning” to identify the distinctive waste stockpiles left by dragline mining. A baseline assessment of the pilot areas will be undertaken to determine the area of these un-rehabilitated waste stockpiles. Each year at a given time after the implementation of the amended Regulations the area will be

surveyed again using satellite imagery to determine the remaining area. It is anticipated that should the Regulations be implemented effectively the area of un-rehabilitated mining land should decrease over time. Should the pilot be effective other areas with high level of mining will be targeted for evaluation.

- 2.9.1.5 Provide a straightforward Communication Plan (Note: a common assumption is that the target group will be aware of, and understand how to comply with a policy or legislation come implementation. However, increases in the complexity and volume of new or amendment policy or legislation render this assumption false. Hence, the need for a communication plan to guide information and awareness campaigns to ensure that all stakeholders (including beneficiaries) are informed.

The Department has prepared these proposed amendments in consultation with the industry. In order to get to this version of the proposed amendments, several workshops have been held where the proposed amendments have been discussed line by line. Workshops have also been held with smaller groups, including the mines who must prepare the calculations, the consultants who need to prepare the plans and the small scale miners. The proposed amendments have been gazetted for public comment twice, this will be the third time. A workshop is planned with the industry and interested stakeholders once the proposed amendments have been gazetted for the third round of public comment.

- 2.10 Please identify areas where additional research would improve understanding of then costs, benefit and/or of the legislation.

Methods to protection of trust funds from the risks of bankruptcy.

PART THREE: SUMMARY AND CONCLUSIONS

1. Briefly summarise the proposal in terms of (a) the problem being addressed and its main causes and (b) the measures proposed to resolve the problem.

The NEMA Financial Provisioning Regulations, 2015 as amended, were implemented in November 2015. Soon after the promulgation of the Regulations, the industry through the Minerals Council South Africa identified certain concerns with the implementation. The DFFE in partnership with DMRE, DWS and National Treasury embarked on a process to understand the industry concerns and proposed amendments to address the concerns where possible.

2. Identify the social groups that would benefit and those that would bear a cost, and describe how they would be affected. Add rows if required.

Groups	How they would be affected
Beneficiaries	
1. Mining industry	The proposed amendments will bring clarity on the method for the calculation of the financial provision, the amendments will provide guidance to the development of plans, will ensure consistent implementation of the VAT requirement over the

	various regional offices of the DMRE, the holder will be able to draw down funds under certain conditions, the concept of a “risk threshold” has been included which sets a limitation on latent defects. The proposed amendments should also bring mines closer to being able to obtain closure certificates as the long term management of mine water is clarified and must be costed.
2. Communities surrounding mining areas	Concurrent rehabilitation should be encouraged through the proposed amendments which will reduce the risk of pollution. Marginalised communities surrounding mining areas will benefit most from the reduce risk of pollution as they are most exposed to pollution from mines.
3. NGO’s	Transparency, NGOs will be able to engage with the plans and confirm the acceptance of the quantum calculated.
4. The State	There should be improved calculation of financial provision as well as improved concurrent rehabilitation. This should reduce the liability of the State should the holder not implement their rehabilitation obligation and the task falls to the DMRE.
Cost bearers	
1. The mining industry	What is additional to the requirement that was there before is the express requirement for the calculation to be based on surveyed disturbance and the preparation of three plans by an independent company. The survey requirement should however, not be a new requirement as there is no way of determining impacts without survey. The addition of VAT is also not a new requirement as this was expressly required in the 2005 guideline document. Financial provision for water treatment was previously not included in the financial provision set aside but formed part of a capital expense. There should therefore not be any additional costs associated with water treatment but merely that it must now be included in the financial provisioning sum. There is now an express requirement to undertake annual rehabilitation to the extent that is possible, so although this requirement may now be expressly identified, the MPRDA did require rehabilitation to be undertaken as an integral part of the mining operations. It is possible that the rehabilitation of disturbed land prior to 1991 now having to be included in the financial provisions to be set aside will have a direct additional financial impact on the mining companies who were operating prior to 1991, however, this land has been disturbed by the mining operation and must be rehabilitated by the mine through the proceeds of profits made, it is not possible for rehabilitation to be left to the tax payer to fund.
2. DMRE	The DMRE has administered the financial provisioning requirements since 1991 and a more detailed version of the financial provision since 2002 and the NEMA Financial Provisioning Regulations since 2015. The proposed amendments merely provide more clarity on certain matters but do not change the fundamental principles on which the 2015 Regulations were drafted. Annual reviews and audits are also not new requirements and formed part of the financial provisioning requirements under the MPRDA and the 2015 NEMA Regulations, again on this matter the proposed amendments merely provide more clarity on the requirements. The calculation of the financial provision have also been undertaken based on plans therefore the review of plans under the NEMA Regulations are not a new requirement and the proposed amendments to the NEMA Regulations merely clarify certain aspects. DMRE has also monitored compliance against the MRPDA Financial Provisioning Regulations and the NEMA Financial Provisioning Regulations since 2015. There are no new aspects in the proposed amendments to the Regulations which would increase the compliance costs of DMRE.

3. What are the main risks from the proposal in terms of (a) undesired costs, (b) opposition by specified social groups, and (b) inadequate coordination between state agencies?

There are increased costs to the mining industry and they have raised concern regarding these increases. The proposed amendment to the Regulations reduces these costs by reducing the number of years that the financial provision needs to be set aside for during operations, it allows annual review undertaken by in-house professionals, the amendments reduce the annual audit to a three yearly audit and removed the inclusion of CPI +2% from the calculation of financial provision and it reduces the complexity for small scale miners of low risk commodities. With the attempt to reduce the costs of implementing the Regulations it is hoped that the risk from implementing the Regulations would be reduced.

It is not expected that there would be opposition from any specific group other than the mining industry. There would be opposition from the NGO sector should there be a further extension to the implementation of these Regulations by existing holders.

The proposed amendments to the Regulations have been prepared in partnership with the government departments who are affected by these proposed amendments. There should therefore be no concern regarding a lack of coordination between government departments.

4. Summarise the cost to government in terms of (a) budgetary outlays and (b) institutional capacity.

There are no additional costs to government either in terms of budgetary or institutional capacity as the DMRE are implementing the Regulations and have implemented the financial provision promulgated under the MPRDA before 2015.

5. Given the assessment of the costs, benefits and risks in the proposal, why should it be adopted?

The proposed amendments assist the mining industry with the implementation of the Regulations and reduce the financial burden on the industry.

6. Please provide two other options for resolving the problems identified if this proposal were not adopted.

Option 1.	It is not possible for the problem to be addressed without amending the Regulations. The problem is a problem that exists in Regulations and amendments must be made to address the problem.
Option 2.	There are no non-legal solutions to addressing the problem.

7. What measures are proposed to reduce the costs, maximise the benefits, and mitigate the risks associated with the legislation?

The proposed amendments have as their primary aim to address the concerns raised by the mining industry which include the additional cost issues. The proposed amendments are therefore aimed at reducing costs and clarifying implementation issues. The risk would be present should the proposed amendments not be implemented or that the proposed amendments do not address all of the concerns raised.

8. Is the proposal (mark one; answer all questions)

	Yes	No
a. Constitutional?	X	
b. Necessary to achieve the priorities of the state?	X	
c. As cost-effective as possible?	X	
d. Agreed and supported by the affected departments?	X	

9. What is the impact of the Proposal to the following National Priorities?

National Priority	Impact
1. Economic transformation and job creation	Should the amount of money to be set aside for financial provision be reduced to allow for the rehabilitation of environmental impacts already disturbed and projected for one year only, more mines may be encouraged to seek permits or rights which will create jobs and economic activity in a sustainable mining environment. It is also expected that by promoting ongoing concurrent rehabilitation through the life of the mine that additional jobs in the rehabilitation field can be created.
2. Education, skills and health	The mines do provide skills training and it is possible that with access to regular employment, that education and health of the families of miners will be improved.
3. Consolidating the social wage through reliable and quality basic services	Mines do often provide services within the broader community in which they operate.
4. Spatial integration, human settlements and local government	Should land used for mining activities be successfully rehabilitated, it will allow for secondary use which can provide a post mining economy and stimulate economic activity in the local government areas.
5. Social cohesion and safe communities	Should land used for mining activities be successfully rehabilitated it will not become abandoned and an unsafe area but could be provide a post mining economy and promote economic development.
6. Building a capable, ethical and developmental state	Amendments to the Regulations will enable a more practical and achievable implementation of the Regulations, and enhance confidence in the industry regarding the capability of the state.
7. A better Africa and world.	The mining industry is a global industry and an environmentally aware and sustainable mining industry in South Africa could provide opportunities for the rest of Africa.

For the purpose of building a SEIAS body of knowledge please complete the following:

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