

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Amendment of Regulations of the Board to Review Claims LCB File No. R049-21P

The Board to Review Claims will hold a public hearing at 10:00 a.m. on the 10th day of March of 2022. The hearing will be held by videoconference and teleconference. Members of the public are encouraged to participate by either means using the below Lifesize web links or telephone number:

Join the meeting: <https://call.lifesizecloud.com/12908775>

Call in by Phone (audio only): 1-877-422-8614

Meeting extension: 12908775#

The purpose of the hearing is to receive comments from all interested persons regarding the amendment of regulations that pertain to chapter 445C of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The need for and the purpose of the proposed regulation or amendment:

The proposed regulation amendments are meant to update the *Small Business* definition to reflect current economic conditions, clarify storage tank testing/record keeping requirements, establish deadlines for the Fund for Cleaning Up Discharges of Petroleum (i.e. Petroleum Fund) applications for coverage and claim submittals, require demonstration of operator cost allocations and proof of vendor/contractor payment, and update requirements for grants to finance or assist in financing the purchase and installation of upgrades to storage tank systems.

2. A copy of the proposed regulation can be obtained from:

- a. Register of Administrative Regulations:
<https://www.leg.state.nv.us/Register/2021Register/R049-21P.pdf>
- b. Nevada Division of Environmental Protection: <https://ndep.nv.gov/environmental-cleanup/petroleum-fund/whats-new-in-petroleum-fund>
- c. Petroleum Fund Program Staff: Nevada Division of Environmental Protection, Attn: Petroleum Fund Program, 901 S. Stewart St., #4001, Carson City, NV 89701,
ndepbca@ndep.nv.gov

3. The estimated economic effect of the regulation on the business which it is to regulate and on the public:

(a) Both adverse and beneficial effects: No adverse economic effects are expected from the amendments proposed. Additionally, there are no new fees being proposed, nor any increases to existing fees.

The updated *Small Business* definition and amendments to regulatory language of grants for storage tank upgrades should have beneficial economic effects for the regulated community because more businesses are expected to meet the revised definition of *Small Business*, as it applies to NAC 445C, and overall access to grant funding for those businesses will be streamlined. This means small businesses required to cleanup a discharge from a previous release will pay less, and current operating businesses that need to upgrade their storage tank systems can access grant funding over a longer application period, work with existing contractors that already service their facilities, and maximize funding to upgrade more components of their storage tank systems.

(b) Both immediate and long-term effects: Upon adoption, businesses can take immediate advantage of the benefits described above. Long-term benefits include expedited cleanup due to lower operator cost-share payments and reduced rate of discharges to the environment due to newer storage tank equipment.

4. The methods used by the agency in determining the impact on a small business:

The Nevada Division of Environmental Protection solicited comments from the regulated community, including the Nevada Petroleum Marketers and Convenience Store Association, and did not receive comments indicating a negative impact on small business. A public workshop was conducted on September 2, 2021, and the regulation amendments were also presented during the September 9, 2021 quarterly Board to Review Claims meeting, both of which satisfy Open Meeting Law requirements. The Division did not receive comments during either meeting indicating the proposed regulations would impose a direct and significant economic burden upon a small business, nor would the amendments directly restrict the formation, operation, or expansion of a small business.

5. The estimated cost to the agency for enforcement of the proposed regulation:

There are no additional costs to the agency for enforcement of the proposed amendments.

6. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates, and a statement explaining why the duplication or overlapping is necessary:

The proposed regulations do not overlap or duplicate regulations of other federal, state, or local governmental agencies.

7. If the regulation is required pursuant to federal law, a citation and description of the federal law:

The Petroleum Fund satisfies a federal requirement of storage tank operators to maintain a financial responsibility mechanism in the event their storage tank systems should cause a discharge to the environment (40 CFR 280.93). The Petroleum Fund operates as a *State Fund* as described in 40 CFR 280.101.

8. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions:

The amended regulation does not include provisions more stringent than federal regulation. The Petroleum Fund is approved by the federal Environmental Protection Agency to operate as a *State Fund* as described in 40 CFR 280.101.

9. Whether the proposed regulation establishes a new fee or increases an existing fee:

The proposed regulatory changes do not establish any new fees or increases to existing fees.

Persons wishing to comment upon the proposed action of the Board to Review Claims may provide oral comment during the scheduled public hearing using the above provided Lifesize link or call-in phone number, or may address their comments, data, views, or arguments in written form to:

Michael Cabble, Executive Secretary to the Board to Review Claims, mcabble@ndep.nv.gov
Nevada Division of Environmental Protection, Attn: Petroleum Fund Program, 901 South Stewart Street, Ste. #4001, Carson City, Nevada, 89701

Written submissions must be received by the Executive Secretary to the Board to Review Claims on or before March 4, 2022. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Board to Review Claims may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be amended will be on file at the State Library, Archives and Public Records, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be amended will be available at:

- Nevada Division of Environmental Protection, Bureau of Corrective Actions, 901 South Stewart Street, Carson City, Nevada, 89701
- Nevada Division of Environmental Protection, 375 E. Warm Springs Rd., Suite #200, Las Vegas, NV 89119
- Agency internet website: <https://ndep.nv.gov/environmental-cleanup/petroleum-fund/whats-new-in-petroleum-fund>. In accordance with NRS 233B.060, the regulation that is posted on the internet website of the agency 3 working days before the hearing will be the regulation considered. The agency shall ensure that the regulation to be considered at the hearing is posted on the internet website of the agency 3 working days before the hearing.

This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us/>. Copies of this notice and the proposed regulation will also be mailed to members of the public at no charge upon request.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.