

DEPARTMENT OF CONSERVATION
DIVISION OF MINE RECLAMATION
LEAD AGENCY ELECTRONIC DOCUMENT SUBMITTAL

NOTICE OF PROPOSED RULEMAKING ACTION

REGARDING

**TITLE 14. NATURAL RESOURCES
DIVISION 2. DEPARTMENT OF CONSERVATION
CHAPTER 8. MINING AND GEOLOGY**

Notice Published January 21, 2021

NOTICE IS HEREBY GIVEN that the California Department of Conservation (Department) proposes to amend the regulation described below after consideration of all comments, objections, and recommendations regarding the proposed action. With this rulemaking, the Department will propose permanent regulations after the consideration of all comments, objections, and recommendations.

PROPOSED REGULATORY ACTION

The Department proposes to amend section 3504 of Title 14 of the California Code of Regulations, division 2, chapter 8, pertaining to documents related to mine operations that must be filed with the Department by lead agencies as provided for in Public Resources Code (PRC) section 2774.2.5.

WRITTEN COMMENT PERIOD AND PUBLIC COMMENT HEARINGS

Any person or their authorized representative may submit written statements, arguments, or comments relevant to the proposed regulatory action to the Department. Comments may be submitted by email to DMR-Regulations@conservation.ca.gov , or by mail to:

Department of Conservation
715 P Street, MS 1907
Sacramento, CA 95814
ATTN: OLRA/DMR Lead Agency Regulations

The written comment period closes at 5:00 p.m. on March 9, 2022. The Department will consider only comments received at the Department's offices by that date.

Pursuant to Government Code section 11346.8, the Department will hold a public hearing on the proposed action if it receives a written request for a public hearing from any interested person, or an authorized representative, no later than 15 days before the close of the written comment period.

Services such as translation between English and other languages may be provided upon request. To ensure availability of these services, please make your request no later than ten working days prior any hearing by calling the staff person referenced in this notice.

Servicios como traducción de inglés a otros idiomas pueden hacerse disponibles si usted los pide en avance. Para asegurar la disponibilidad de estos servicios, por favor haga su petición al mínimo de diez días laborables antes de una reunión, llamando a la persona del personal mencionada en este aviso.

AUTHORITY AND REFERENCE

The Department is considering making changes to Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations to amend section 3504.

Public Resources Code 2774.2.5 authorizes the Department to adopt the proposed regulations. The proposed regulations will implement, interpret, make specific, or reference section 2774.2.5 of the Public Resources Code.

INFORMATIVE DIGEST / POLICY STATEMENT

Existing Law

Regulation of Surface Mining in California

The California Surface Mining and Reclamation Act of 1975 (Public Resources Code, sections 2710-2796.5)(SMARA) provides a comprehensive surface mining and reclamation policy with the regulation of surface mining operations to assure that adverse environmental impacts are minimized and mined lands are reclaimed to a usable condition. SMARA also encourages the production, conservation, and protection of the state's mineral resources. Public Resources Code section 2207 provides annual reporting requirements for all mines in the state and requires the State Mining and Geology Board (Board) to set reporting fees on an annual basis.

In addition to the activities of the Board, California is unique among most other states in that the permitting and approval of reclamation plans for surface mining is accomplished by local governments acting as the lead oversight agency. Under SMARA, a lead agency may be a city, county, the San Francisco Bay Conservation and Development Commission, or the Board. Lead agencies have the primary responsibility for the administration and enforcement of SMARA.

In 1991, the Division of Mine Reclamation (Division) was created within the Department to provide a measure of oversight for these lead agencies as they administer SMARA within their respective jurisdictions (PRC 607). The Division issues mine numbers (PRC 2207), reviews site specific reclamation plans and financial assurance cost estimates (PRC 2772.1 and 2773.4 respectively), and publishes a quarterly list of mines in the California regulatory Notice Register (PRC 2717). It also sets training requirements for mine inspectors and maintains a required inspection form (PRC 2774).

Proposed Regulation (Including Objectives and Anticipated Benefits)

Beginning in 2018, lead agencies are required to submit official copies of documents as listed in PRC 2774.2.5(a), to the supervisor in an electronic format determined by the Division. The purpose of this regulation is to conform its requirements to changes made in 2018 pursuant to AB 1142 and to establish an electronic format for document submission in regulation. This will allow lead

agencies to submit their official copies in a format that can be posted to the Division's website as required by PRC 2774.2.5(b).

PRC section 2711 reflects the Legislature's intent that reclamation of mined lands is necessary to prevent or minimize adverse effects on the environment and to protect the public health and safety. Section 2712 indicates that the goal of a comprehensive mining and reclamation policy is to ensure that those environmental effects are successfully prevented and minimized and that mined lands are reclaimed to a usable condition. In support of these goals, section 2774.2.5 requires the Division to post mining and reclamation documents on its Internet website. The transparency of these documents will ensure that lead agencies are diligent in their preparation, that the public is able to access specific information about mines in their area, and should lead to better compliance by mine operators who will be incentivized by the public nature of their activities.

Consistent with Government Code 11546.7, content posted on the Division's Internet Website must be compliant with section 508 of the federal Rehabilitation Act, must be free of discrimination, and must be in compliance with the Web Content Accessibility Guidelines 2.0 or a subsequent version at a minimum Level AA success criteria. This means that every document which will be posted on the Division's website under PRC 2774.2.5(b) must be fully compliant with the specified accessibility standard.

To fulfill the objectives of PRC 2774.2.5(b), while also complying with Government Code 11546.7, the proposed regulation section 3504 must therefore ensure that lead agencies submit all required documents to the Division in a format that is easily accessible by persons with disabilities, consistent with California Government Code 11546.7. Making these documents accessible is necessary to ensure that the Division remains in compliance with federal and state law and avoids discrimination against people with disabilities, while still achieving the statutory goals of transparency and accountability. The regulation also provides for exceptions to the accessibility requirements related to undue burden and fundamental modification of a document, which are consistent with existing exceptions to federal section 508.

CONSISTENCY WITH FEDERAL STATUTE AND REGULATION

The proposed regulation is not inconsistent or incompatible with federal statutes or regulations. The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior is tasked with oversight of the implementation of the Surface Mining Control and Reclamation Act (SMCRA), which was enacted in 1977 and is focused primarily on surface coal mines and abandoned mines. SMCRA sets forth certain national minimum standards for these two populations of mines, but still allows states to establish their own regulatory programs. California does not have any coal mines, so those requirements do not apply. Abandoned mines are not included in these regulations, so there is no conflict with SMCRA. In addition, there are no national rules regarding non-coal mines, which are therefore primarily governed by state laws and regulations.

Mining on federal and tribal lands is regulated by the Bureau of Land Management and the Forest Service, but in California a Memorandum of Understanding between the Department, the Division, the Board, and those federal agencies provides for specific coordination and cooperation between the agencies for oversight of mines, including accepting each other's documents as compliant and coordinating oversight activities where needed. The terms of this memorandum ensure that federal and state action are coordinated consistent with state law.

CONSISTENCY WITH EXISTING STATE REGULATIONS

The Division has determined that the proposed regulations are not inconsistent or incompatible with existing state regulations. PRC 2774.2.5 is specific to lead agencies under the Division's oversight and governs only the electronic submission of documents rather than any substantive requirement. The Division and the Board are the only state agencies with regulations specific to lead agencies under SMARA. To the extent other state agencies may enforce health, safety, or environmental protection standards that could apply to mining because they are regulations of general application affecting a wider range of industrial activities, those regulations are not expected to be inconsistent or incompatible with the regulations proposed here, as the regulations involve only the filing of documents in a specific format.

CEQA COMPLIANCE

The Department has determined that the proposed regulatory action is not a project as defined in Title 14 of the California Code of Regulations, section 15378, and that this activity is not subject to the requirements of the California Environmental Quality Act (CEQA).

PLAIN ENGLISH REQUIREMENT

Department staff prepared the proposed regulations pursuant to the standard of clarity provided in Government Code section 11349 and the plain English requirements of Government Code sections 11342.580 and 11346.2, subdivision (a)(1). The proposed regulations are written so as to be easily understood, to the extent possible given the technical subject matter, by the persons that will use them.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Division has made the following initial determinations:

Mandate on local agencies and school districts: This proposed action does impose a mandate on local agencies acting as lead agencies under SMARA. The digest for SB 854, which promulgated section 2774.2.5, included the statement "By adding to the duties of local governments acting as lead agencies under the act, this bill would impose a state-mandated local program." In interpreting the statute, the amendment to the regulation adds detail to that state-mandated local program and thus also imposes a local mandate.

Costs or savings to any state agency: The Division will incur costs in providing staff to administer the regulation estimated at \$90,145 in the first year. State agencies that are also mine operators, such as the Department of Water Resources and the California Department of Transportation will also incur costs consistent with the burden on all mine operators as discussed in the economic impact analysis.

Costs to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: Although the regulation does impose a state-mandated local program, reimbursement is not required because lead agencies may recover their reasonable costs from mine operators under subdivision (e) of Public Resources Code 2207.

Other nondiscretionary cost or savings imposed on local agencies: None.

Costs or savings in federal funding to the state: None.

Costs impacts on a representative private person or business: A typical mine operator will incur approximately \$16,932 in the first year of operations for a new mine and \$1,912 per year during the following years of operation.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

Significant effect on housing costs: None.

Business reporting requirement: None.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Creation or elimination of jobs within California: Some jobs will likely be created for accessibility remediation specialists who may be employed by mine operations, environmental consultants, lead agencies, and/or accessibility remediation contractors.

Creation of new businesses or the elimination of existing businesses within California: None.

Expansion of businesses currently doing business within the state: Some expansion of existing business operating within California is anticipated due to the statewide nature of the requirements and the likelihood that contractors will be most cost effective at achieving the required standards.

Benefits to the health and welfare of California residents, worker safety, and the state's environment: The submission of documents for easy public access and review will improve mine operations overall as mine operators become more cognizant of the public and regulatory oversight of their operations and the public is better able to access documents to provide this oversight. This awareness will lead to better compliance with legal requirements by mine operators and a more conscientious approach to operations to avoid public condemnation, and as such should improve public health and safety, increase protection of the public welfare, improve worker safety, and provide better protection of the state's environment as mine operators improve the quality of their operations under the greater level of scrutiny afforded by these regulations.

Effect on Small Business: Small business will be affected by increased costs associated with the regulation.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Division must determine that no reasonable alternative it considered, or that was otherwise identified and brought to the Department's attention, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected persons and equally effective in implementing the statutory policy or other provision of law.

The Division has engaged in substantial pre-rulemaking surveys and discussions, and the economic impact assessment for the proposed regulation evaluates alternatives to the proposals. No alternative considered by the Division would be more effective in carrying out the purposes of the proposed regulation or would be equally effective but less burdensome to affected private persons and small businesses than the proposed regulation. The proposed regulation will further the statutory mandates and regulatory goals for SMARA mines; reduce risks to health, safety and the environment; and promote transparent oversight and evaluation of mine operations.

Nevertheless, the Division invites interested persons to submit comments regarding alternatives to the proposed regulations during the written comment period, or to present any such comments regarding alternatives, either orally or in writing, at any hearing scheduled to receive comments relevant to the proposed action.

CONTACT PERSONS

Inquiries concerning the proposed action may be directed to:

Mr. Tim Shular

Department of Conservation

715 P Street, MS 1907

Sacramento, CA 95814

Phone: (916) 322-3080

Mr. Nick Pesci

Department of Conservation

715 P Street, MS 1907

Sacramento, CA 95814

Phone: (916) 322-3080

Email: DMR-Regulations@conservation.ca.gov

Please direct requests for copies of the text of the proposed regulation, the initial statement of reasons, or other information upon which this rulemaking is based to Tim Shular at the above address.

AVAILABILITY OF DOCUMENTS

The Department has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, the initial statement of reasons, the documents relied upon, and a standard form 399.

Copies of these documents may be obtained by contacting Mr. Tim Shular at the address and phone number listed above and at <https://www.conservation.ca.gov/index/Pages/rulemaking.aspx>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the written comment period and any hearing(s) that may be conducted by the Department to receive comments regarding the proposed regulations, the Department will consider all timely and relevant comments received. Thereafter, the Department may adopt the proposed regulations in substantially the same form as described in this notice.

If the Department makes any modifications to the text of the proposed regulations that are substantial but still sufficiently related to the original proposed text as described in this notice, the Department will make the modified text (with changes clearly indicated) available to the public for at least 15 days before adopting the proposed regulations as modified. The Department will accept written comments regarding modified regulations for 15 days after the date upon which they are made available to the public. Please send requests for copies of any modified regulations to the attention of Tim Shular at the address indicated above.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon completion, copies of the Final Statement of Reasons may be obtained by contacting Tim Shular at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through the Department's website at:

<https://www.conservation.ca.gov/index/Pages/rulemaking.aspx>

If you have any questions regarding the process for this proposed action, please contact Tim Shular at the contact information provided above.