

**STATE MINING AND GEOLOGY BOARD**

D E P A R T M E N T   O F   C O N S E R V A T I O N

801 K Street • Suite 2015 • Sacramento, California 95814

PHONE: 916 / 322-1082 • FAX: 916 / 445-0738 • TDD: 916 / 324-2555 • INTERNET: [conservation.ca.gov/smgb](http://conservation.ca.gov/smgb)GIDEON KRACOV, CHAIR  
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DR. ZIA ZAFIR**FINANCIAL ASSURANCE COST ESTIMATE FORM****NOTICE OF PROPOSED RULEMAKING ACTION****DEPARTMENT OF CONSERVATION  
STATE MINING AND GEOLOGY BOARD****TITLE 14. NATURAL RESOURCES  
Division 2. Department of Conservation  
Chapter 8. Mining and Geology  
Subchapter 1. State Mining and Geology Board  
Article 11. Financial Assurance Mechanisms**

Notice Published: November 25, 2016

Office of Administrative Law Notice File Number: Z-2016-1115-01

**NOTICE IS HEREBY GIVEN** that the State Mining and Geology Board (SMGB), pursuant to the authority in Section 2755 of the Public Resources Code (PRC), proposes to add regulations to Title 14 of the California Code of Regulations (CCR) and to approve the proposed Financial Assurance Cost Estimate Form after considering all comments, objections or recommendations regarding the proposed action.

**PROPOSED REGULATORY ACTION**

The SMGB proposes to add Section 3805.1 and approve a Financial Assurance Cost Estimate form. This section and form pertain to the calculation of financial assurance amounts that guarantee reclamation of mined lands, which are currently imposed on surface mining operations as required by State law.

## **WRITTEN COMMENT PERIOD AND PUBLIC HEARING**

Any person, or his or her authorized representative, may submit written statements, arguments, or comments related to the proposed regulatory action to the SMGB. Comments may be submitted by email to [smgb@conservation.ca.gov](mailto:smgb@conservation.ca.gov), by facsimile (FAX) to (916) 445-0738, or by mail to:

State Mining and Geology Board  
801 K Street, MS 20-15  
Sacramento, CA 95814  
ATTN: FACE Form Regulation

**The written comment period closes at 5:00 p.m. on January 09, 2017.** The SMGB will consider only comments received at the SMGB office by that time.

If requested by a member of the public at least 15 days prior to the close of the written comment period, the SMGB will conduct a public hearing, following the close of the public comment period, to receive statements or arguments, orally or in writing, relevant to the proposed action from any interested person, or their authorized representative.

## **AUTHORITY AND REFERENCE**

Pursuant to the authority vested by section 2755 of the Public Resources Code, and to implement, interpret, or make specific section 2773.1(a)(4) of the Public Resources Code, which becomes operative on January 1, 2017 as a result of Assembly Bill 1142, the SMGB is proposing the addition of section 3805.1 to Subchapter 1 of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations and to approve a standardized financial assurance cost estimate form (FACE-1).

## **INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW**

Existing law requires surface mining operators to submit estimated costs associated with approved reclamation plans for surface mining operations in a non-specified written format. These cost estimates are commonly referred to as financial assurance cost estimates and are submitted before mining operations begin and are annually reviewed and approved thereafter.

PRC Section 2773.1(a)(4), as amended by AB 1142, requires the SMGB to approve a standardized financial assurance cost estimate form for use by each surface mining operation in the State.

### **Proposed Regulation and Form**

Adopt § 3805.1. Financial Assurance Cost Estimate Form

The purpose of section 3805.1 is to establish a standardized form for which financial assurance cost estimates shall be submitted to lead agencies for review and approval using form FACE-1. This is necessary to meet the new statutory requirements of PRC section 2773.1(a)(4) (AB 1142), which requires the SMGB to approve a financial assurance cost estimate form for use by each surface mining operation.

Financial Assurance Cost Estimate Form, FACE-1 Form (01/17), Incorporated by Reference

Form FACE-1 is designed to receive information from the preparer regarding the surface mining operation's existing condition, performance standards of the approved reclamation plan, and the methods, effort, and direct expenses anticipated to achieve the performance standards and end use of the approved reclamation plan. In addition to receiving information regarding the surface mining operations existing reclamation requirements, form FACE-1 provides requirements for estimating the labor and administrative costs that would be associated with the lead agency or Department of Conservation managing the performance of reclamation by a third party.

Anticipated Benefits of the Proposed Regulations

The SMGB anticipates that the proposed regulation and form will establish a standardized format for the calculation and review of financial assurance cost estimates. In addition, mine operators will be provided with clear and equitable methods for calculation of financial assurance amounts, the administrative time and expense for the initial and annual review of financial assurance cost estimates by lead agencies and the Department will be reduced, and the process should result in comprehensive and complete cost estimates resulting in sufficient monies necessary to guarantee reclamation of mined lands.

**CONSISTENCY WITH FEDERAL STATUTE AND REGULATION**

This regulation change does not duplicate or conflict with existing Federal statutes or regulations. Also, by Memorandum of Understanding with the Federal Bureau of Land Management, the U. S. Forest Service, the Department of Conservation, and the SMGB, SMARA and federal law are coordinated to eliminate duplication.

**CONSISTENCY WITH EXISTING STATE REGULATIONS**

The proposed regulation and form do not significantly change the requirements of the existing financial assurance cost estimate review process which was developed through consultation with other state agencies with authority over aspects of surface mining operations. The proposed regulatory change is intended to dovetail with other state agencies jurisdictional requirements. The proposed regulatory change is not inconsistent or incompatible with existing state regulations.

## **CEQA COMPLIANCE**

This proposed regulation and form follow statutory changes approved by the Legislature and signed into law by the Governor (AB 1142) on April 18, 2016. The proposal will not result in direct or indirect physical changes to the environment. As such, the SMGB has determined that this rulemaking action is not a project as defined in Title 14, CCR, Section 15378, and that this activity is not subject to the requirements of the California Environmental Quality Act (CEQA).

## **PLAIN ENGLISH REQUIREMENT**

Department of Conservation and SMGB staff prepared the proposed regulation and form 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 (a)(1). The proposed regulation and form are written to be easily understood by the parties that will use them.

## **LOCAL MANDATE**

This proposal does not impose a mandate on local agencies or school districts.

## **FISCAL IMPACT**

This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. This proposal does not impose other nondiscretionary cost or savings on local agencies. This proposal does not result in any cost or savings in federal funding to the State.

## **COST OR SAVINGS TO STATE AGENCIES**

The proposed regulation and form imposes no additional expenses to state agencies and may reduce administrative expenses for local agencies.

## **EFFECT ON HOUSING COSTS**

The adoption of this regulation and form will have no significant effect on housing costs.

## **IMPACT ON BUSINESS**

Department and SMGB staff has made an initial determination that the adoption of the regulation and form will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed regulation and form follows statutory changes approved by the Legislature and that were signed into law by the Governor (AB 1142).

## **COST IMPACTS ON A REPRESENTATIVE PRIVATE PERSON OR BUSINESS**

PRC section 2773.1(a), effective January 1, 1999, states “Lead agencies shall require financial assurances of each surface mining operation to ensure reclamation is performed in accordance with the surface mining operation’s approved reclamation plan, as follows:...” PRC section 2773.1(a)(3) requires “The amount of financial assurances required of a surface mining operation for any one year shall be adjusted annually to account for new lands disturbed by surface mining operation, inflation, and reclamation of lands accomplished in accordance with the approved reclamation plan.” The SMGB drafted the proposed regulation and form based in part on the statutory amendments resulting from AB 1142, which requires financial assurance cost estimates for each surface mining operation be submitted to the local lead agency for review on a form approved by the SMGB. A representative private person or business will not be adversely impacted with the adoption of these regulatory changes because existing law requires mining operator to submit financial assurance cost estimates. Conversely, a representative private person or business may experience decreased annual costs due to the proposed standardization of the financial assurance cost estimate form and review process.

## **RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

The proposed regulation and form satisfy the SMGB’s statutory mandate to impose a standardized financial assurance cost estimate form upon surface mining operators, and to establish minimum standards for estimating financial assurance amounts. Further, imposition of minimum standards ensures that the Department and SMGB are able to carry out the provisions of SMARA and complete reclamation of mined lands if the surface mining operator is unable to do so. The proposed regulation meets the statutory goals of AB 1142 by creating a form and minimum standards for calculating the financial assurance amount to be held by a surface mining operation. SMGB staff has determined that the proposed regulation and form will not result in the creation or elimination of California jobs, nor will it result in the creation or elimination of California businesses. Additionally, SMGB staff has determined that expansion of existing California businesses will not result from adoption of the proposed regulation. Further, Department of Conservation and SMGB staff have determined that the proposed regulation will result in nonmonetary benefits such as protection of public health and safety, environmental safety, and transparency in business and government. Specifically, the benefits are as follows:

- The public will be ensured of sufficient and reliable funding to guarantee reclamation of mined lands.
- Mine operators will be provided with clear and equitable methods for calculation of financial assurance amounts.
- Financial assurance amounts for each surface mine in the state will be calculated in the same format, providing consistency for operators that work in multiple jurisdictions, and for lead agencies reviewing financial assurance cost estimates for multiple surface mining operations.

- The format of an operation's annual estimate will remain consistent and allow for the lead agency and Department to easily compare and contrast financial assurance cost estimates as the mine is expanded or reclaimed and potentially reduce administrative costs associated with the review and approval of financial assurance cost estimates.

### **FINDING OF NECESSITY OF REPORTS**

SMGB staff has found that the proposed regulation and form are necessary to implement fair and effective regulation of financial assurances held by surface mines. Financial assurance amounts are annually calculated by surface mine operators and submitted to local lead agencies for review and approval. Such annual estimates of reclamation costs are necessary to guarantee reclamation, and for the health, safety, and welfare of the people of the State, and therefore annual financial assurance cost estimate requirements should apply to mining businesses.

### **SMALL BUSINESS DETERMINATION**

The proposed regulation and form follow statutory changes approved by the Legislature and that were signed into law by the Governor (AB 1142). Further, adoption of the proposed regulation continues current local lead agency and department policies. Therefore, SMGB staff has determined that the proposed regulations will not adversely affect small businesses.

### **CONSIDERATION OF ALTERNATIVES**

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

The SMGB invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period or at any hearing scheduled to take statements or arguments that are relevant to the proposed action.

## **CONTACT PERSONS**

Inquiries concerning the substance of the proposed amended regulation should be directed to:

Nicholas Lash, Associate Governmental Program Analyst  
State Mining and Geology Board  
801 K Street, Suite 2015  
Sacramento, California 95814  
Phone: (916) 322-1082  
Fax: (916) 445-0738  
[Nicholas.Lash@conservation.ca.gov](mailto:Nicholas.Lash@conservation.ca.gov)

OR

Amy Scott, Executive Assistant  
State Mining and Geology Board  
801 K Street, Suite 2015  
Sacramento, CA 95814  
Phone: (916) 322-1082  
Fax: (916) 445-0738  
[Amy.Scott@conservation.ca.gov](mailto:Amy.Scott@conservation.ca.gov)

Please direct requests for copies of the proposed text (the “express terms”) of these regulations, the initial statement of reasons, the modified text of these regulations, if any, or other information upon which this rulemaking is based to Amy Scott at the above address.

## **AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION, AND RULEMAKING FILE**

The SMGB 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 regulation, the initial statement of reasons, and a standard form 399.

Copies of these documents may be obtained by contacting Nicholas Lash or Amy Scott at the address and phone number listed above.

## **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After the written comment period and any hearing that may be conducted by the SMGB to accept comments and evidence regarding the adoption of the proposed amended regulation, the SMGB will consider all timely and relevant comments received, and thereafter the SMGB may adopt the proposed regulation substantially as described in this

notice. If the SMGB makes modifications that are sufficiently related to the original proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least 15 days before the SMGB adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Nicholas Lash or Amy Scott at the address indicated above. The SMGB will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Nicholas Lash or Amy Scott 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 our website at:

<http://www.conservation.ca.gov/smgb>