

DEPARTMENT OF CONSERVATION
DMR ELECTRONIC LEAD AGENCY OFFICIAL SUBMITTAL REQUIREMENTS
Initial Statement of Reasons (ISOR)

The Department of Conservation's (Department) Division of Mine Reclamation (DMR) proposes to amend section 3504 of the California Code of Regulations, title 14, division 2, chapter 8, subchapter 1, article 1. The proposed addition to the regulations is necessary to implement Public Resources Code 2774.2.5 (PRC), subdivisions (b) and (d), which were established under Senate Bill 854 (Omnibus, Chapter 51, Statutes of 2018) (SB 854), effective June 27, 2018. The proposed changes are also necessary to implement Government Code section 11546.7, PRC section 2711 and 2712.

INTRODUCTION AND BACKGROUND

The California Surface Mining and Reclamation Act of 1975 (PRC, 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. PRC section 2207 provides annual reporting requirements for all mines in the state.

SMARA chapter 9, division 2 of the PRC, requires the Board to adopt state policy for the reclamation of mined lands and the conservation of mineral resources. These policies are prepared in accordance with the Administrative Procedures Act, and are found in California Code of Regulations, title 14, division 2, chapter 8, subchapter 1.

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 lead oversight agency. Under SMARA, a lead agency may be a city, county, a state agency, the San Francisco Bay Conservation and Development Commission, or the Board. Lead agencies have the primary responsibility for the administration and enforcement of SMARA. There are approximately 109 SMARA

lead agencies, but only 92 currently have regulated mining operations within their jurisdiction.

In 1991, the DMR was created to provide a measure of oversight for local governments as they administer SMARA within their respective jurisdictions (PRC section 607). While the primary focus is on existing mining operations and the return of those mined lands to a usable and safe condition, issues relating to abandoned legacy mines are also addressed through the Abandoned Mine Lands Unit.

As DMR has developed, the demand for transparency and accountability for mine operators and their overseeing lead agencies has increased. In 2018, the legislature passed SB 854, an omnibus budget bill that made many changes to the PRC. One of those changes was to require DMR to develop a database and graphic information system (GIS) interface and to post documents received from lead agencies under PRC 2774.2.5(a) on its Internet website in that system. Documents that are submitted under the existing requirement of subsection (a) include reclamation plans and amendments, interim management plans, financial assurance cost estimates and mechanisms, administrative penalties, notices of violations and orders to comply, permits, and vested rights determinations. The information and documents must be posted beginning January 1, 2022.

Consistent with existing Government Code section 11546.7, all documents that are posted on the Internet website of a state agency, must comply with section 508 of the federal Rehabilitation Act requiring accessibility of electronic or information technology. They must also be in compliance with section 202 of the federal Americans with Disabilities Act of 1990 which prohibits discrimination in participation in the benefits of services, programs, or activities, of a public entity. Finally, the Government Code requires that the chief information officer of each agency certify that their website is in compliance with the Web Content Accessibility Guidelines 2.0 (WCAG) or a subsequent version, at a minimum Level AA success criterion.

In order to ensure that DMR can meet this accessibility standard when posting the required documents received from lead agencies, the proposed regulation

informs lead agencies that they will be notified of any formatting deficiencies and that non-compliant documents may be rejected unless a specific exception is determined to apply.

Stakeholder Input

During the development of regulation language, Division staff reached out to mine operators, lead agency staff, and contractors regarding the upcoming regulations and their purpose. A total of five meetings have been held with lead agencies, and three meetings with mine operators, consultants, and the California Construction and Industrial Materials Association.

Stakeholder questions focused on resources for ADA document compliance, the role of the operator in compliance, specific documents that will be included, and the date after which documents must be remediated. Two surveys were also developed, collecting information from lead agencies and operators on the experience level of current staff with accessibility remediation, the likelihood that costs would be passed on to operators, and their input on the potential cost impacts of the requirement.

PURPOSE, RATIONALE, AND BENEFITS

Public Resources Code section 2711 reflects the Legislature's belief 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 environmental effects are successfully prevented and minimized and that mined lands are reclaimed to a usable condition. In support of these goals, PRC section 2774.2.5 requires DMR to post mining and reclamation documents on its Internet website and authorizes the Division to establish a format that lead agencies must use when submitting these documents to the Division. The objective of PRC section 2774.2.5 is to provide public transparency in the administration of SMARA, and the publication of the information and 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 transparency of their activities.

To fully implement the objectives of PRC section 2774.2.5, the proposed amendment to California Code of Regulations section 3504 must also address the requirements of California Government Code 11546.7 which requires that documents posted on the Department website are consistent with Website Accessibility Guidelines.

Successful development of accessible documents consistent with these guidelines requires access to the document at the earliest stage of development. The document must be designed and developed to meet accessibility standards from the beginning or the process of making it accessible becomes highly burdensome or even impossible. By the time a lead agency has submitted a document to DMR, therefore, the accessibility work should already be completed, or it will not be able to be made standard-compliant and cannot be posted in the database. In cases where conformance to accessibility requirements would impose an undue burden or would result in a fundamental alteration of the nature of the content of the document, the proposed regulation provides DMR the option of accepting the document while continuing to address accessibility remediation options.

Making these documents accessible is necessary to ensure that DMR remains in compliance with federal and state law and avoids discrimination, while still achieving the statutory goals of transparency and accountability.

An addition to the **title** of the regulation provides notice that “submission of electronic documents” is now also a subject of this section. In addition, a change in **subsection (a)** ensures that documents are correctly directed to the Division of Mine Reclamation rather than the Director of the Department of Conservation.

Subsection (b) has been added to direct lead agencies to use the document submission portal that DMR has located on its website when submitting documents to comply with PRC 2774.2.5. To ensure compliance with Government Code 11546.7, when DMR posts these documents on its website, DMR will review the documents for compliance with ADA accessibility standards and federal Rehabilitation Act requirements. Where documents do not meet this

standard, and therefore cannot be posted on the DMR website, DMR will notify the lead agency of any formatting issues and require that the document be remediated to the appropriate standards. In cases where conformance to accessibility requirements would impose an undue burden or would result in a fundamental alteration of the nature of the content of the document, DMR may accept the document.

These provisions are necessary to ensure that documents received under 2774.2.5 will meet the Government Code standard for accessibility and non-discrimination. The benefit of requiring lead agencies to submit ADA standard-compliant accessible documents will be transparency and accountability that will improve operator and lead agency compliance with state law to better protect the environment and public health and safety, and to ensure that reclamation of mined lands is completed to a level where the land will be usable for another purpose when reclamation is complete. It ensures that disability will not be a barrier to public oversight, and that the agencies of the State of California continue to prioritize inclusion and equal access for all persons.

Subsection (c) has been modified to make this section consistent with changes made to SMARA in 2018 pursuant to AB 1142 which added a definition of financial assurances under PRC section 2736. Under SMARA, financial assurances are composed of a financial assurance cost estimate or “FACE” and the associated financial assurance mechanism, or “FAM,” that must at least equal the mining operation’s FACE. Financial assurance mechanisms can take the form of surety bonds, letters of credit, trust funds, and other forms of financial assurance mechanisms that the Board determines are appropriate.

Changing “may” to “shall” is to make this provision consistent with PRC section 2773.1, subdivision (a) which provides that lead agencies “shall require financial assurances of each surface mining operation,” and adding the word “mechanisms” clarifies that financial assurances are composed of both a FACE and a FAM. This language clarifies the requirement to ensure that lead agencies are taking responsibility for requiring financial assurances that support compliance with the approved reclamation plan. Clarifying the inclusion of

financial mechanisms is necessary to prevent operators from abandoning a mine and leaving the cost of reclamation to the state or local agency.

References to PRC 2774.2.5 have been added to the authority and reference clauses at the end of the amended section. These references will ensure that stakeholders can properly reference the enabling statute for this regulatory change.

Alternatives Considered

In the course of developing the proposed regulation, the Department considered and rejected various alternative approaches. No alternative considered by the Department would be more effective in carrying out the purposes of the proposed regulation or would be as effective but less burdensome to private persons and small businesses than the proposed regulation.

- The Department considered, but rejected, requiring Division staff to make all submitted documents accessible after they are received from the lead agency. Technologically, this may not be possible, as many documents in their final format cannot be made accessible but must be designed in an accessible way. Where the lead agency and operators are working together to develop those documents, they have the flexibility to make changes that cannot be done after a document is converted to pdf or another final format. In addition, the Division does not currently have the budget or staffing to provide accessibility conversions of all the documents they receive, particularly when lack of original files is likely to make standard compliance that much more difficult.
- The Department considered, but rejected, placing the requirement for the generation of standard-compliant accessible documents directly on the mine operator rather than on the lead agency. However, because many of the documents submitted are created jointly by the operator and the lead agency, the lead agency is in a central position to affect the development and formatting of those documents, while the operator is in many cases using local agency developed forms and the lead agency is generating their own reports. Putting the burden for final document

accessibility on the operators does not make sense from a process perspective, and would likely introduce inefficiency in the process as operators exchange documents back and forth with the lead agency in an attempt to get a final version that can be made accessible. Because the lead agency will have access to both draft and final versions of submitted documents and will ultimately determine which is the final version, it makes more sense for the lead agency to take responsibility for accessibility.

- The Department considered, but rejected, including detailed instructions on how to make a document accessible and/or including specific software standards or other benchmarks which must be achieved. The rapid evolution of software systems and accessibility standards makes this option unrealistic and too inflexible. Any standards the Division might set outside of the formally developed standards referenced by the Government Code would quickly become obsolete. Any changes in the existing code would require regular updates to the regulations, and Division staff would be burdened with developing clear guidelines for a very complex technological process significantly outside their professional expertise.

Consistency with Comparable Federal Regulation or Statute

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, DMR, 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.

ECONOMIC IMPACT ANALYSIS

INTRODUCTION

On June 27, 2018, Governor Newsom signed into law Senate Bill 854 (Omnibus, Chapter 51, Statutes of 2018) (SB 854) which requires the Department of Conservation's (Department) Division of Mine Reclamation (Division) to post on its Internet website official copies of all electronic documents submitted by lead agencies as required under Public Resources Code (PRC) section 2774.2.5.

Consistent with existing Government Code section 11546.7, all documents that are posted on the Internet website of a state agency must follow section 508 of the federal Rehabilitation Act requiring accessibility of electronic or information technology. They must also be in compliance with section 202 of the federal Americans with Disabilities Act of 1990 which prohibits discrimination in participation in the benefits of services, programs, or activities, of a public entity. Finally, the code requires that the chief information officer of each agency certify that their website is in compliance with the Web Content Accessibility Guidelines 2.0 (WCAG) or a subsequent version, at a minimum Level AA success criterion. The proposed regulation will notify lead agencies that documents submitted to the web portal may be rejected if they do not meet these standards.

The purpose of this document is to provide discussion and quantification of potential economic impacts that will result from the proposed regulation, as estimated by the Division. The objective of the proposed regulation is in part, to ensure compliance with Government Code 11546.7 for electronic document

submissions and will satisfy the goals of SB 854 by ensuring that submitted documents can be posted without causing the Division's website to become non-compliant with the Government Code.

Current Regulations

The Division does not have any current regulations governing the electronic format of submitted documents.

Summary of Proposed Regulation

In order to ensure that lead agencies submitting documents meet the accessibility standard of the Government Code, the proposed regulation informs lead agencies that they will be notified of any formatting deficiencies in submitted documents and that non-compliant documents may be rejected. 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.

Affected Population

The population most directly affected by the proposed regulation will be local cities, counties, agencies, commissions, and boards that serve as lead oversight agency for mining operations within their jurisdictions. They are responsible for the preparation of many of these documents and their submission to the Division under PRC 2774.2.5(a) and are therefore in the best position for ensuring the documents submitted are in a format that can be posted on the Division's Internet website. As of July 2021, there are currently 92 lead agencies with regulated mines in their jurisdiction. This number changes regularly as new mines open and existing mines are closed and reclaimed.

Given the requirements of accessibility remediation, it is likely however that operators will also experience direct costs as lead agencies pass through the requirement for compliant documents. This is primarily because accessibility remediation is most successful when a document is formatted from the beginning with accessibility in mind and may require multiple conversions of a document to achieve full accessibility. Thus, operators will be required to

provide accessible documents, or to at minimum assist the lead agency in making their documents accessible, at least for those documents that are generated by the operator or the operator's contractor. As of July 2021, there are currently 640 mine operators with 1100 mine operations in the state.

In order to determine the potential impacts of the proposed regulation, the Division needed to estimate the total number of documents that are likely to be submitted under the proposed regulation during the first year of implementation. In addition, to quantify the costs of remediating those documents, the Division needed to evaluate the relative difficulty of remediation of each document type and determine the likely page range for each document. Total costs are calculated based on the midpoints of cost ranges identified.

TOTAL DOCUMENTS ANTICIPATED

Under PRC 2774.2.5 there are fourteen document types that must be submitted to the Division by the lead agency. Depending on the type of document, it may originate with the operator or with the lead agency. Each document type has a different level of complexity based on its content which will affect the cost of remediation and the time to remediate. Some documents are required at a specific stage in the life of a mine operation, others are annual, while still others are only required when issued in response to circumstances, such as notices of violation which are only issued when a violation is identified. However, even where documents are required on a specific schedule, they do not appear to be submitted consistently by all lead agencies.

Table 1. Document types under 2774.2.5 and frequency of submission

<u>Document Type</u>	<u>Frequency per Operation</u>	<u>Origination*</u>
1. Approved reclamation plans or plan amendments	At start of operations and for major changes in plan	Operator
2. Interim management plans	At the beginning of an idle period for the operation (update 5 years)	Operator
3. Financial assurance cost estimates	Annual	Operator
4. Financial assurance mechanisms	Annual	Operator
5. Notices of violation 2774.1(a)	As issued	Lead Agency
6. Orders to comply 2774.1(a)	As issued	Lead Agency
7. Notices of violation of local mining ordinance	As issued	Lead Agency
8. Stipulated orders to comply 2774.1(a)	As issued	Lead Agency
9. Order imposing administrative penalty	As issued	Lead Agency
10. Administrative decisions following an appeal	As issued	Lead Agency
11. Notices of violation or order to comply 2774.1(d)	As issued	Lead Agency
12. Notices of completion of inspection & inspection report	Annual	Lead Agency
13. Permits at the time of approval	Upon approval, usually prior to commencement of operations	Lead Agency
14. Vested rights determinations	At start of operations or when issues arise	Lead Agency

*Operators and lead agencies may include third party documents in their submissions. They will need to work with the third-party document provider to ensure those submissions can be made accessible.

The total cost of the regulation will depend on the number of documents that are submitted to the Division's database each year. To estimate this number, Department staff reviewed the historical filing data for 210 active mine files by sampling every sixth mine file and recording the details of the documents in that file. The document data was entered into a spreadsheet and statistical analyses were performed to provide estimates of future submissions based on recent filing patterns.

Mine files have an average of four documents each, which usually include the approved reclamation plan, approved financial assurance cost estimate and mechanisms, and at least one inspection report. Other documents appear more infrequently or not at all. For documents that did not appear in the sample, an estimated expected document count of one was entered to ensure that document was included in the cost totals. The estimates were then adjusted based on feedback from Division staff given their experience with recent submission patterns and their knowledge of upcoming trends.

Although the analysis included documents from the entire historical range of filings within the mine files (1977-2019, some limited 2020 data) to identify relevant patterns, only data from 2017-2019 was used to calculate the averages upon which these estimates are based. This is to ensure that the estimates reflect current patterns and requirements for submission which have changed over time and for which complete data was available.

Table 2. Number of documents anticipated during implementation period

Document Type	Year 1
1. Approved reclamation plans & amendments	60
2. Interim management plans	8
3. Financial assurance cost estimates	254
4. Financial assurance mechanisms	89
5. Notices of violation 2774.1 (a)	2
6. Orders to comply 2774.1 (a)	1
7. Notices of violation of local mining ordinance	2
8. Stipulated orders to comply 2774.1 (a)	1
9. Order imposing administrative penalty	1
10. Administrative decisions following an appeal	1
11. Notices of violation or order to comply 2774.1 (d)	2
12. Notices of completion of inspection & inspection report	248
13. Permits at the time of approval	1
14. Vested rights determinations	1
Total number of documents anticipated	671

Document Complexity

There is no set standard to evaluate the complexity of a document and the level of remediation that will be required, but complexity appears to be a driving factor in remediation cost. A review of contractor websites indicates that prices vary considerably, with wide ranges provided even for documents determined to be of the same complexity level. At the Department, accessibility compliance staff have developed the complexity table below to assist in the classification of documents for remediation purposes. This table should not be considered definitive and is being used only to provide a framework for the complexity discussion of this analysis.

Table 3. Document complexity factors

<u>Content Category</u>	<u>Examples</u>	<u>Level of Effort</u>
Text document with simple graphic elements	Letter on letterhead	Moderate
Less than 20 pages text, simple tables & figures, simple TOC, few links	Nontechnical report	Moderate
Forms	Fillable form in PDF or Word	High
Many pages text with complex tables and figures, complex TOC, many links	Technical reports	Extreme
Complex typographic layout	Graphics heavy communications	High to Extreme
Maps and technical diagrams	Maps, scientific data schematics	High to Impossible*
Data and databases	Flat files, GIS data, SQL	Low to Impossible*

*Impossible = Content in this form cannot be remediated without causing fundamental alteration; we must provide alternative means of access to the content.

Based on the content of the document types identified in the file review, the following complexity levels have been assigned to the documents required under PRC 2774.2.5. This identified complexity level is used to estimate the per page price for remediation in the cost analysis that follows.

Table 4. Complexity of SMARA documents

<u>Document Type</u>	<u>Complexity Level</u>
1. Approved reclamation plans or plan amendments	High to Impossible (maps, technical and scientific diagrams)
2. Interim management plans	High to impossible (maps, technical and scientific diagrams)
3. Financial assurance cost estimates	Moderate (depends on 3 rd party documents)
4. Financial assurance mechanisms	Moderate (depends on 3 rd party documents)
5. Notices of violation 2774.1 (a)	Moderate to High depending on attachments
6. Orders to comply 2774.1 (a)	Moderate
7. Notices of violation of local mining ordinance	Moderate to High depending on attachments
8. Stipulated orders to comply 2774.1 (a)	Moderate
9. Order imposing administrative penalty	Moderate
10. Administrative decisions following appeal	Moderate
11. Notices of violation or order to comply 2774.1 (d)	Moderate to High depending on attachments
12. Notices of completion of inspection & inspection report	High
13. Permits at the time of approval	Moderate
14. Vested rights determinations	Moderate

Page Number Estimates

Document remediation costs will also depend on the number of pages that are in the document, because remediation contractors often charge by the page rather than by the hour or by the project. Average pages numbers for each document type were calculated based on the 2017-2019 historical data sample as described above.

Table 5. Summary of documents anticipated

<u>Type</u> <u>(2774.2.5)</u>	<u>Originator</u>	<u># of Docs</u> <u>Year 1</u>	<u>Complexity</u>	<u>Average</u> <u>Pages</u>	<u>Total Pages</u> <u>per Type</u>
1	Operator	60	High to Imp	388	23,280
2	Operator	8	High to Imp	278	2,224
3	Operator	254	Moderate	221	56,134
4	Operator	89	Moderate	61	5,429
5	Lead Agency	2	Mod to High	12	24
6	Lead Agency	1	Moderate	10	10
7	Lead Agency	2	Mod to High	12	24
8	Lead Agency	1	Moderate	10	10
9	Lead Agency	1	Moderate	10	10
10	Lead Agency	1	Moderate	10	10
11	Lead Agency	2	Mod to High	12	24
12	Lead Agency	248	High	151	37,448
13	Lead Agency	1	Moderate	547	547
14	Lead Agency	1	Moderate	10	10
Total		671		Total	125,184

These documents represent the population of documents and total pages that are anticipated to need remediation under this proposed regulation during the period of July 2022 through July 2023.

COST ELEMENTS

Many lead agencies and mine operators do not have existing expertise in accessibility remediation. In surveys issued to the two groups, 66% of respondents indicated that their staff or employees had no experience making documents compliant or that they would use a contractor to achieve the accessibility requirements. A review of cost data submitted by both groups also demonstrates that in-house remediation is more expensive than contractor remediation, unless the employees doing the remediation are skilled enough to complete documents more quickly than the average contractor specialist.

Environmental consultants may also offer remediation services, as part of the service they provide in preparing environmental documents such as reclamation plans. Their services are likely to be more expensive than dedicated accessibility remediation contractors due to higher overhead costs and less

familiarity with remediation techniques. Given that both in-house remediation and environmental consultant remediation are likely to be less cost-effective during the implementation phase than dedicated contractor remediation, this analysis assumes that all lead agencies and operators will use dedicated accessibility contractor services until they can, if they wish, develop cost-effective in-house and environmental consultant-based programs.

Contractor Services

Unlike environmental consultants who are primarily in the business of providing SMARA environmental documents, dedicated accessibility remediation contractors offer a wide range of document remediation services to many industries and government agencies. They usually charge based on the level of complexity of the document, at a per page price. Some contractors offer flat rate monthly service contracts and lower cost AI-driven remediation, but it is unlikely that a document of the level of complexity of a reclamation plan can be handled by solely technological means. Lead professionals at the Office of State Publishing recommend against AI-driven remediation, as it has not yet reached the quality level provided by human-driven review and remediation. Thus, the cost estimates included here do not include the lower per page rates which may be available using AI-based services.

Contractor data available via the internet provides the following price points per page for remediation services based on complexity.

Table 6. Correlation of complexity categories

<u>Document Content</u>	<u>Level of Effort</u>	<u>Category</u>	<u>Price Range</u> <u>Per page</u>
Text document with simple graphic elements	Moderate	Low complexity	\$1-\$15
Less than 20 pages, simple tables & figures, simple TOC, few links	Moderate	Mid-complexity	\$4-\$20
Forms	High	Forms	\$15-\$50
Many pages with complex tables and figures, complex TOC, many links	Extreme	High complexity	\$6-\$30
Complex typographic layout	High to Extreme	High complexity	\$6-\$30
Maps and technical diagrams	High to Impossible*	High complexity	\$6-\$30
Data and databases	Low to Impossible*	Mid-High complexity	\$4-\$30

We then combine the price range with the number of pages that are anticipated of each document to determine the cost per document type.

Table 7. Costs for accessibility contractor remediation services

Type 2774.2.5(a)	Complexity	Per Page Rate Range	Documents Anticipated	Total Pages	Cost*
1	High to Imp	\$6-\$30	60	23,280	\$419,040
2	High to Imp	\$6-\$30	8	2,224	\$40,032
3	Moderate	\$4-20	254	56,134	\$673,608
4	Moderate	\$4-20	89	5,429	\$65,148
5	Mod to High	\$4-30	2	24	\$408
6	Moderate	\$4-20	1	10	\$120
7	Mod to High	\$4-30	2	24	\$408
8	Moderate	\$4-20	1	10	\$120
9	Moderate	\$4-20	1	10	\$120
10	Moderate	\$4-20	1	10	\$120
11	Mod to High	\$4-30	2	24	\$408
12	High	\$6-30	248	37,448	\$674,064
13	Moderate	\$4-20	1	547	\$6,564
14	Moderate	\$4-20	1	10	\$120
TOTALS				YEAR 1	\$1,880,280

*Estimated costs are calculated at the midpoint of the range for all pages in each document.

Training Costs

Some lead agencies and mine operators may ultimately choose to do their own remediation in-house and may dedicate training funds to facilitate the skills development of their employees. However, even agencies that do not choose to do in-house remediation will still need employees who are trained to review operator document submissions to ensure they are compliant. They will need the skills to review the document, identify any accessibility issues, communicate those issues to the operator or consultant, and confirm when remediation has finally been completed. Advanced skills may not be required for this task.

Thus, it is assumed for this analysis that agencies and operators desirous of training will have at least one person go through the basic training available through the Department of Rehabilitation "Accessibility for Microsoft Office and Adobe PDF" for \$412 per employee per course (2 courses) but may not seek training beyond the basic level. Additional options for basic training are also offered by remediation software contractors for individuals at rates starting at \$495 per course, with advanced courses and certification also offered.

Based on survey responses and including all active, idle, newly permitted, and closed status mine operations it is estimated that approximately 35% of operators and 50% of lead agencies will seek some type of training for accessibility remediation. This translates into 224 operators and 46 lead agencies, for total estimated training costs of \$222,480 in the first year.

Total Direct Costs

Contractor remediation costs	\$1,880,280
Training costs	<u>\$ 222,480</u>
Total	\$2,102,760 in Year 1

COST IMPACTS

Lead Agencies & Operators

Any costs incurred by the lead agencies will likely be passed onto the mine operators via administrative fees, as provided in PRC 2207. Lead agency costs represent about 97% of the total remediation costs but will not ultimately be borne by the agency unless the agency decides to absorb the costs rather than pass them on. Thus, the true impact of the direct cost burden will fall on the mine operators.

With 1100 mine operations in California and total direct costs of \$2.1 million, the per operation cost would be approximately \$1,912 over the one-year implementation period. However, it is unlikely that the cost will be spread evenly across all active mining operations. A new mine operator for example, will be filing their four primary documents (rec plan, financial assurances, permit) for the first time and would be subject to the cost of remediation for these documents prepared by themselves and the lead agency.

Table 8. Remediation cost for new mine operation documents in year 1

<u>Type</u> <u>(2774.2.5)</u>	<u>Complexity</u>	<u>Per Page</u> <u>Rate Range</u>	<u>Documents</u> <u>Anticipated</u>	<u>Pages</u>	<u>Cost*</u>
1	High to Imp	\$6-\$30	1	388	\$6,984
3	Moderate	\$4-20	1	221	\$2,652
4	Moderate	\$4-20	1	61	\$732
13	Moderate	\$4-20	1	547	\$6,564
TOTALS				YEAR 1	\$16,932

*Estimated costs are calculated at the midpoint of the range for all pages in each document.

There are seven mining operations that are currently in “proposed” status in the Division database, which means that a draft reclamation plan has been received by the Division for initial review, but approved final primary documents have not yet been submitted by the lead agency. It is likely that some or all of these seven will proceed to full operations during the implementation year; those operators will be subject to at least \$16,932 in direct costs related to their primary document remediation.

Similarly, a mining operation that amends its reclamation plan or receives a notice of violation, order, or administrative penalty, would be subject to the costs associated with remediating those documents, which in the case of an amended reclamation plan, may be extensive. However, these costs cannot be estimated because the timing and impact on a specific operator are too varied for quantification based on available data and the size of an amendment or violation can vary from as small as three pages to as many as 1,000.

Typical Operators and Small Businesses

Based on data provided by the U.S. Small Business Administration Office of Advocacy, approximately 41% of the employment share in the mining, quarrying, and oil and gas extraction industry are associated with small business. Thus, it is likely that approximately 451 of the mining operations subject to these requirements are small businesses.

Given the distribution of mine ownership, these small businesses operate a single mine and will thus incur \$16,932 for their initial package, with lower estimated annual costs during later years. However, a significant portion of active mines already have these primary documents on file and will only be subject to costs associated with amendments and permit changes, violations and orders, so should not experience cost impact beyond the per mine average of \$1,912 per operation during the first year of implementation. Only new mines will be subject to the cost for primary document remediation.

Many of those small businesses will also fall into the category of a typical mine operation, with 75% of mine owners operating a single mine. Larger operators who own up to 20 mines will experience similar initial and per mine costs but may obtain some efficiencies due to economies of scale.

Effects on Jobs and Business Development

These regulations are likely to improve the economic health of the dedicated accessibility remediation contractor industry by providing a broad base of agencies and operators statewide who will need remediation services. It may also improve the success of remediation training providers as lead agencies and

mine operators are incentivized to develop their remediation skills. However, the broad geographic nature of the compliance spending means that new businesses are unlikely to be created unless they have the capacity to take advantage of the statewide market. Local businesses providing accessibility remediation services may expand, but that business may fall off as lead agencies are able to develop their in-house accessibility capacities and accessibility skills generally become more present in the labor market.

Individuals are unlikely to be affected by the requirements of this proposed regulation. Markets for the commodities that are produced by mine operations are generally global or national in scope and are not affected by small changes in compliance costs at the state level such that consumer prices would be affected. In addition, because the base accessibility requirements are federal, the impending impact of accessibility remediation costs will be a feature of and an impact on the economy as a whole rather than any specific industry or because of an individual regulation.

BENEFITS

The goals of a comprehensive mining and reclamation policy are to ensure that negative environmental effects are successfully prevented and minimized and that mined lands are reclaimed to a usable condition. In support of these goals, PRC 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.

Ensuring that all persons are able to access the tools of effective oversight ensures that a core element of our population can participate fully in their government as required by federal law and our community values. These benefits cannot be specifically quantified but should increase economic, health, and environmental outcomes for all members of the California community who are influenced by activities in the mining industry.

FISCAL IMPACTS

The direct costs discussed above as imposed on lead agencies are considered fiscal impacts, but their costs will likely be passed onto the operators and are not discussed again here. This is supported by survey data where more than 80% of lead agency respondents indicate their intent to pass the costs through to the operator as permitted under PRC 2207. Some lead agencies may decide not to pass their costs onto the operators as they have done in the past due to the economic circumstances in their jurisdiction. Those agencies will be subject to the direct costs attributed to the operators above, which will therefore be fiscal impacts. They are not included in the calculations below because the number of lead agencies likely to make this choice is small.

The Division will experience fiscal impacts associated with the implementation of the regulation, primarily in the form of staff costs for the review of documents for compliance with the accessibility standard. Staff will also need to communicate with lead agencies whose documents are being rejected, and work with those agencies to correct remediation issues.

Division staff indicate that there will be three program groups that may be assigned to do these reviews depending on the type of document that is submitted. Staff involved include an Associate Governmental Program Analyst, an Environmental Scientist, and an Engineering Geologist, for approximately 10 hours each per month at a total cost of \$60,379 per year. An additional 10 hours per month of management time is anticipated, with a reduction after the first six months to 5 hours per month. This managed time translates into \$14,407 in management cost during the first year. Thus, during the implementation period, the total fiscal cost to the Division for administering the regulation is estimated at \$74,786. These costs would be incurred in document review every year, with management costs remaining at 5 hours per month, for annual ongoing costs of \$69,984.

Division staff are also likely to need extensive training. Although they may not have to remediate documents themselves when work can be done by a contractor, for the sake of this regulation, they will need to understand how remediation works, how to identify accessibility issues, and how to fix problems

to assist the lead agencies. Although it is not intended that staff should become a resource for accessibility remediation assistance, they are unlikely to be able to avoid providing some level of support to the process. Division management indicates that they would train at least one person to a high level, likely the Analyst, anticipating approximately 30 hours of formal training and 80 hours of on-the-job and self-directed skill development at a cost of \$7,109 for staff time plus an estimated \$2,050 in training costs for an Advanced certification.

Other Division staff will need basic training, including staff who may not be primarily assigned to this responsibility but who may fill-in or otherwise support the accessibility compliance process. There are potentially 20 staff positions within the Division that could serve in this capacity; at a basic training cost of \$570 per position the total cost would be \$11,400. As it is unlikely that all staff members would be trained in the first year, this analysis assumes a three-year period for completion of all training, with an annual training cost of \$3,800 per year.

Finally, the Division will need to purchase licenses for remediation software that will be used to check for compliance and assist with remediation processes. At approximately \$800 per year for three licenses, the cost would be \$2400 annually.

The total fiscal impact to the Division during the one-year implementation period is estimated to be \$90,145 with annual ongoing costs of \$72,384.

SUMMARY AND CONCLUSION

The populations directly affected by this proposed regulation will be California lead agencies with mining operations in their jurisdiction, and the mining operators themselves. These include 92 lead agencies with currently regulated mines in their jurisdiction and 640 mine operators. Most direct costs will initially be paid by the agency but will be passed on to the mine operators through administrative fees.

The total costs associated with this proposal include the cost for training of lead agency and operator staff and employees, the cost for dedicated accessibility

remediation contractors who are likely to remediate the bulk of the documents during the one-year implementation period, and fiscals cost to the Department.

Table 9. Total costs

<u>Cost Item</u>	<u>Year 1 (FY 22-23)</u>	<u>Annual Ongoing Costs</u>
Direct costs		
• Contractor remediation services	\$1,880,280	Variable
• Training costs	\$222,480	Variable
Fiscal costs	\$90,145	\$72,384
Total	\$2,192,905	\$72,384

Total costs are estimated to be \$2,192,905 during the implementation year, with known recurring costs of \$72,384.

As a result of the cost burden being spread across the State, the Division has made the following determinations:

- May create accessibility remediation jobs in California
- Will not create new business nor eliminate businesses within the State of California
- May lead to the expansion of accessibility remediation contractor businesses in California
- Will benefit the health and welfare of California residents, worker safety, and the environment

Compliance with the proposed requirement will ensure that all members of the public are able to participate fully in the oversight of mines that may affect their health and well-being. This greater oversight should improve health and welfare for those who would be affected by mining operations. Transparency of documents also provides pressure on operators to keep their operations safe, and to be sensitive to community concerns that arise as a result of the more public nature of their documentation.