NOTICE OF PROPOSED RULEMAKING ACTION

PROPOSED REGULATIONS
PUBLIC RESOURCES CODE SECTION 2714(f) EXEMPTION

TITLE 14. NATURAL RESOURCES
Division 2. Department of Conservation
Chapter 8. Mining and Geology
Subchapter 1. State Mining and Geology Board
Article 17. Surface Mining Operations of Infrequent Nature that Involve Minor Surface Disturbances

Notice Published: January 31, 2025

NOTICE IS HEREBY GIVEN the State Mining and Geology Board (Board) proposes to adopt the regulation described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to adopt California Code of Regulations (CCR), Title 14, Division 2, Chapter 8, Subchapter 1, Article 17 criteria (sections 4050-4059) for exemptions from the Surface Mining and Reclamation Act of 1975 (Public Resources Code § 2710 et seq., SMARA) under Public Records Code (PRC) section 2714(f) which pertains to: "…mining operations that the Board determines to be of an infrequent nature and that involve only minor surface disturbances." The proposed regulations detail the procedures needed to apply for an exemption for surface mining operations of infrequent nature that involve minor surface disturbances. These proposed regulations also detail the administrative record, public hearing procedures, and effect of exemption determination.

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 Board.

Comments may be submitted by email smgbregulations@conservation.ca.gov or by mail to:

State Mining and Geology Board
ATTN: 2714(f) Exemption
715 P Street, MS 19-09
Sacramento, CA 95814

The written comment period opens January 31, 2025, and closes on March 28, 2025.

Public Hearing
Pursuant to Government Code Section 11346.8, the Board scheduled a public hearing in person and virtually for the time and place stated below to receive oral or written comments regarding the proposed regulatory action:

March 27, 2025
9:00 a.m. to 12 p.m.

SMGB
715 P Street, Second Floor
Conference Room 2-201
Sacramento, CA 95814

Use this link to join the Public Hearing virtually via Microsoft Teams
https://teams.microsoft.com/l/meetup-join/19%3ameeting_NDZiZjAyZWMtMTc1Yi00ZmUxLWI5NWUtM2E0Y2Q0ZjZhNDMy%40thread.v2/0?context=%7b%22Tid%22%3a%224c5988ae-5a00-40e8-b065-a017f9c99494%22%2c%22Oid%22%3a%22cae3ec8e-f8d0-4951-8dea-87fc3083f293%22%7d

Meeting ID: 230 942 623 714

Passcode: X2Ve3GR2
Teleconference number- audio only
+1 (916)-318-8892
Phone Conference ID: 985 619 440#

Accessibility
If you have a disability and require a reasonable accommodation to fully participate in this event, please contact Sarah Rubin, Outreach and Engagement Coordinator as soon as possible to discuss your accessibility needs.
Email: Sarah.Rubin@conservation.ca.gov | PH: (916) 214-5731

[English]
Translation and interpretation services may be provided upon request. To ensure availability of these services, please make your request no later than ten working days prior to the workshop by contacting Sarah Rubin, Outreach and Engagement Coordinator. Email: Sarah.Rubin@conservation.ca.gov | PH: (916) 214-5731

[Spanish]
Se podrán proporcionar servicios de traducción e interpretación a petición previa. Para poder garantizar la disponibilidad de estos servicios, asegúrese de realizar su solicitud a más tardar diez días hábiles antes de la reunión comunitaria comunicándose con Sarah Rubin, Coordinadora de Alcance y Participación.
Correo electrónico: Sarah.Rubin@conservation.ca.gov | Tel: (916) 214-5731

AUTHORITY AND REFERENCE

Under the authority of PRC section 2755, the Board is proposing to adopt sections 4050-4059 of Article 17, Title 14, Division 2, Chapter 8, Subchapter 1 of the CCR. The proposed regulation implements, interprets, and makes specific section 2714(f) of the PRC.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

SMARA was enacted to ensure that any significant adverse impacts of mining to the environment are prevented or mitigated, and public health and safety is protected. SMARA, at PRC section 2770, requires surface mining operations obtain a local government approved permit or other authority to mine, an approved reclamation plan, and approved financial assurances to cover reclamation costs should the operator become financially incapable of reclamation, or they abandon the operation.

PRC section 2714 provides a list of exemptions from SMARA's requirements. Subdivision (f) of PRC section 2714 provides the Board with the authority to exempt "Any other surface mining operations that the board determines to be of an infrequent nature and that involve only minor surface disturbances."

Proposed Regulation

The purpose of Title 14, Division 2, Chapter 8, Subchapter 1, Article 17 of the CCR sections 4050-4059 is to govern procedures the Board will use to determine if a proposed surface mining operation is of an infrequent nature and will only involve a minor surface disturbance and should therefore not be subject to SMARA pursuant to PRC section 2714(f).

The proposed regulations address and detail:

- The purpose of the proposed regulations
- Requirement for a consultation before submittal of a request for a determination of exemption
- Information required to be included in a request for a determination of exemption
- The administrative record requirements
- The public hearing requirements and procedure
- Effects of the determination of exemption

Anticipated Benefits of the Proposed Regulations

The statute imbuing the Board with the exemption authority does not include the process for filing for an exemption under PRC section 2714(f). Applicants seeking an exemption have little to no guidance on the scope and contents of an application, how the Board conducts the public hearing, or even when or how a decision is issued by the Board, following a public hearing. The proposed regulations will specify and standardize the procedure to submit the request for exemption to the Board. The jurisdiction determination procedures are also outlined and detailed. Proposed CCR sections 4050-4059 specify and define the requirements for the administrative record, development of that record, and the requirements for public hearings and communication associated with the submitted request for exemption.

The specific benefits anticipated from the regulation include the Board's receipt of defined application contents, and coordination of environmental review with the lead agency. This allows the Board to make an informed decision following a required public hearing. This will ensure the continued protection of the environment and public health and safety, promote fairness to all applicants, ensure social equity, and increase openness and transparency of the Board's exemption application and hearing process.

Consistency with Federal Statute and Regulation

The proposed regulations do not duplicate nor conflict with existing federal statutes or regulations.

Consistency with Existing State Regulation

The proposed regulations are not inconsistent nor incompatible with existing state regulations. After conducting a review for any regulations that relate to or would affect the Board's exemption determination, the Board has concluded that these are the only regulations concerning the Board's exemption determination procedures.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following determinations, based in part on the Economic Impact Analysis prepared for this proposed rulemaking:

Mandate on local agencies and school districts: The rulemaking would require the Executive Officer to consult with the SMARA lead agency and the land use lead agency with jurisdiction. Participation in this consultation by these lead agencies is voluntary on their part. If the project proponent subsequently decides to request a determination of exemption, the SMARA lead agencies may attend the hearing to provide statements and/or rebuttal and may be asked questions by the Board during the deliberative phase. However, under PRC section 2207(e) local lead agencies may impose a fee on mining operations to cover the costs of SMARA administration, thus there is no unfunded local mandate.

Costs or savings to any state agency: There could conceivably be a modest savings to state agencies due to the elimination of superfluous steps by outlining the determination of exemption process.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code §§ 17500 through 17630: The Board staff determined this proposed regulation does not impose any additional cost obligations on local agencies or on local school districts.

Other nondiscretionary costs or savings imposed upon local agencies: The Board staff determined that no other non-discretionary costs or savings to local agencies are imposed by the proposed regulations.

Cost or savings in federal funding to the state: The Board staff determined that there are no costs or savings in Federal funding to the State.

Significant effect on housing costs: The Board staff has determined that the adoption of these regulations will have no significant effect on housing costs.

Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: The Board staff determined that no statewide adverse impacts to California businesses result from the adoption of this proposed regulatory language. The proposed regulations will have no cost impact on businesses beyond the cost associated with the request for exemption, and no existing businesses in California will be expanded or eliminated.

Creation or elimination of jobs within California: The Board does not anticipate the proposed regulations would create or eliminate jobs within California.

Creation of new businesses or the elimination of existing businesses within California: The Board does not anticipate the proposed regulations would create new businesses or eliminate existing businesses.

Expansion of businesses currently doing business within California: The Board does not anticipate the proposed regulations would lead to the expansion of businesses currently doing business within California.

Benefits to the health and welfare of California residents, worker safety, and the state's environment: The Board does not anticipate the proposed regulations would negatively impact the health and welfare of California residents, worker safety, and the state's environment. A structured procedure for a determination of exemption will ensure the Board thoroughly considers every exemption request on a fair and consistent basis. This will allow for a sufficient evaluation of each request to ensure that appropriate information is obtained and required environmental review has been conducted prior to granting the exemption for surface mining operations.

As a result, The Board anticipates that the proposed regulations will further the goal and mission of SMARA which seeks to prevent any significant adverse impact of mining on the environment, protect public health and safety and ensure the welfare of California residents. The proposed regulatory action will not affect worker safety.

Costs impacts on a representative private Person or business: The cost of a request for a determination of exemption for the requestor is somewhere between $71,600 and $172,800. However, the proposed regulations do not add any requirements to the current determination of exemption procedure; instead, they specifically outline the procedure, which could conceivably result in a modest cost savings to requestors due to the elimination of superfluous steps.

Effects on small businesses: The proposed regulations will only affect small businesses which request a determination of exemption and would conceivably result in modest cost savings to those who file a request due to the elimination of superfluous steps by outlining the determination of exemption process.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered by the Board or identified and brought to the Board's attention would be more effective in carrying out the rulemaking's purpose, would be effective 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 PRC section 2714(f).

The Board invites interested persons to present statements or arguments regarding alternatives to the proposed regulations during the public comment period or at any scheduled hearing.

CONTACT PERSONS

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

Paul Fry, Senior Geologist
State Mining and Geology Board
715 P Street, MS 1909
Sacramento, CA 95814
Phone: (916) 212-1139
Paul.Fry@conservation.ca.gov

Back-up contact:
Mallory Jones, Geologist
State Mining and Geology Board
715 P Street, MS 1909
Sacramento, CA 95814
Phone: (916) 214-2066
Mallory.Jones@conservation.ca.gov

Please direct requests for copies of the proposed text (the "express terms") of this regulation, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which this rulemaking is based to Paul Fry at the above address.

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

The Board 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 Paul Fry 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 Board to accept comments and evidence regarding the adoption of the proposed regulation, the Board will consider all timely and relevant comments received. Thereafter, the Board may adopt the proposed regulation substantially as described in this notice. If the Board 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 Board adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Paul Fry at the address indicated above. The Board 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 Paul Fry at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the proposed amended text of the regulation can be accessed through our webpage at:
https://www.conservation.ca.gov/smgb/Pages/Rulemaking/index.aspx