



## **NOTICE OF PROPOSED RULEMAKING ACTION**

### **NATURAL RESOURCES AGENCY STATE MINING AND GEOLOGY BOARD**

#### **CALIFORNIA CODE OF REGULATIONS TITLE 14. NATURAL RESOURCES Division 2. Department of Conservation Chapter 8. Mining and Geology Subchapter 1. State Mining and Geology Board Article 11.5. Forfeiture of Financial Assurance**

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

#### **PROPOSED REGULATORY ACTION**

The SMGB proposes to amend sections 3810 – 3817 of the California Code of Regulations (CCR), Title 14, Division 2, Chapter 8, Subchapter 1, Article 11.5, pertaining to the forfeiture of financial assurance mechanisms as provided for in Public Resources Code (PRC) Section 2773.1, subdivision (b).

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

Any person, or an 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) or by mail to:

State Mining and Geology Board  
801 K Street, MS 20-15  
Sacramento, CA 95814  
ATTN: Financial Assurance Forfeiture

**The written comment period closes on December 16, 2019.** The SMGB will only consider comments received at the SMGB office by that time.

Pursuant to Government Code (GC) section 11346.8, the SMGB will hold a public hearing 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.

## **AUTHORITY AND REFERENCE**

The SMGB is proposing to amend sections 3810 – 3817 of Title 14, Division 2, Chapter 8, Subchapter 1, Article 11.5 of the CCR pursuant to the authority granted in the Surface Mining and Reclamation Act of 1975 (SMARA), Public Resources Code (PRC) section 2710 et seq., specifically PRC sections 2755 and 2759 to implement, interpret, and make specific PRC section 2773.1(b).

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

On April 18, 2016, Governor Brown signed Assembly Bill (AB) 1142 (Gray) into law and thereby enacted significant revisions to SMARA. To enact the revisions to SMARA, the SMGB must address these changes by way of regulations.

SMARA was enacted in part to ensure that any significant adverse impacts of mining to the environment are prevented or mitigated and public health and safety are protected. Under SMARA, surface mining operators are required to submit to their respective local governments (lead agency) for approval, a plan for reclaiming lands disturbed by mining activities, as well as proof of financial assurances to ensure that those disturbed lands are reclaimed in accordance with the approved reclamation plan. Lead agencies are responsible for ensuring their surface mining operators follow SMARA's requirements, including permitting and conditions of approval that relate to the conduct of mining, the operation's reclamation plan, and financial assurance requirements.

The Department of Conservation's (DOC), Division of Mine Reclamation (DMR) and the SMGB provide lead agency assistance and oversight. Currently, the SMGB administers certain lead agency responsibilities under SMARA for 38 individual surface mining operations by conducting inspections, reviewing and approving financial assurance cost estimates, and undertaking compliance and enforcement actions when necessary.

### **Existing Law**

PRC section 2773.1(a) provides that lead agencies must require financial assurances for each surface mining operation within its jurisdiction to ensure reclamation is performed in accordance with the surface mining operation's approved reclamation plan.

PRC section 2736 provides that "Financial Assurances" means a current approved financial assurance cost estimate (FACE) and a financial assurance mechanism that is at least equal to the current approved FACE.

PRC section 2773.1(b)(1) provides the lead agency, or the Board when acting as the lead agency, has evidence that an operator may be financially incapable of completing reclamation in accordance with their approved reclamation plan or the operator has abandoned the surface mining operation without completing reclamation shall hold a public hearing to address the issue. The hearing will determine whether the operator is financially capable of completing reclamation or has abandoned the mining operation. The mine operator must receive at least 30 days' notice prior to the hearing.

PRC section 2773.1(b)(2) provides the steps necessary if, following the public hearing, it is determined that the operator is financially incapable of performing reclamation in accordance with its approved reclamation plan or has abandoned its surface mining operation without completing reclamation. The lead agency or the supervisor shall notify the operator that they intend to take appropriate action to forfeit the financial assurances and must specify the reasons for doing so. They must then take the appropriate steps to seize and then use proceeds from the forfeited financial assurance mechanisms to conduct and complete reclamation in accordance with the approved reclamation plan. The operator is responsible for all costs of completing reclamation that exceed the proceeds from the forfeited financial assurance mechanisms.

PRC section 2773.1(d) provides the lead agency or the Board acting as a lead agency primary responsibility to seek forfeiture of the financial assurance mechanisms and to reclaim the mine site pursuant to PRC 2773.1(b). The Division of Mine Reclamation has secondary authority to seek forfeiture of the financial assurance mechanisms and to reclaim the mine site pursuant to PRC 2773.1(b) if the financial incapability of the operator or the abandonment of the surface mining operation has come to the attention of the supervisor and the supervisor provides notice of intent to the lead agency to take such action.

Sections 3810 – 3817 of CCR, Title 14, Division 2, Chapter 8, Subchapter 1, Article 11.5 govern procedures that lead agencies, including the SMGB when acting as a lead agency, must follow when seeking forfeiture of financial assurance mechanisms. The regulations detail the steps of the hearing procedures to ensure that mine operators, lead agencies, regulatory agencies and the general public, are aware of the process and are designed at a minimum to provide due process to all parties.

### **Proposed Action**

#### **Amend CCR sections 3810 – 3817, Forfeiture of Financial Assurance**

The proposed regulatory action ensures the process of forfeiting financial assurance mechanisms is clearly and plainly explained to reflect changes to statute resulting from AB 1142. The purpose of the amended regulation is to define the procedures to be followed by the lead agency or the Board acting as the lead agency pursuant to PRC Section 2773.1(b). These sections offer guidance on determining whether a surface mining operation can perform reclamation in accordance with its approved reclamation plan or has abandoned its surface mining operation without completing reclamation and should therefore forfeit its financial assurance mechanisms pursuant to PRC Section 2773.1(b).

### **Anticipated Benefits of the Proposed Regulatory Action**

The broad objective of the proposed regulatory action is to make procedural revisions and improvements to the financial assurance forfeiture process based primarily on statutory changes to PRC section 2773.1(b) caused by AB 1142 (Gray). Furthermore, the proposed amended regulatory language is intended to ensure mine operator accountability in cases where forfeiture is necessary and provide due process prior to seizing an operator's financial assurance mechanism.

## CONSISTENCY WITH FEDERAL STATUTE AND REGULATION

The proposed regulatory action does not duplicate or conflict with existing Federal statutes or regulations. By Memorandum of Understanding with the Federal Bureau of Land Management, the United States Forest Service, the Department, and the SMGB, SMARA and federal law are coordinated.

## CONSISTENCY WITH EXISTING STATE REGULATIONS

The proposed regulatory action is not inconsistent or incompatible with existing regulations pertaining to forfeiture of financial assurance mechanisms for surface mining operations. After conducting a review for any regulations that would relate to or affect this area, the SMGB has concluded that Article 11.5 in Title 14, Division 2, Chapter 8, Subchapter 1 of the CCR, contains the only regulations that concern the forfeiture of financial assurance mechanisms under SMARA.

## CEQA COMPLIANCE

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

## DISCLOSURES REGARDING THE PROPOSED ACTION

The SMGB has made the following initial determinations:

**Mandate on local agencies and school districts:** None.

**Cost or savings to any state agency:** None.

**Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:** None.

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

**Cost or savings in federal funding to the state:** None.

**Costs impacts on a representative private person or business:** The SMGB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states:** The SMGB has determined that the proposed regulatory action will not have an adverse economic impact on businesses and individuals statewide, including small businesses. Surface mining operations are statutorily required to maintain financial assurance mechanisms during the life of the mining operation and that these financial assurance mechanisms may be forfeited if certain conditions within the statutory criteria arise. The proposed changes to existing regulations may affect small business, however, the proposed amendments address changes made to statutory requirements and are aimed primarily at conforming the existing regulatory hearing process to the statutory changes.

**Significant effect on housing costs:** None.

**Business reporting requirement:** The SMGB finds that this regulation does not imposed reporting requirements on businesses.

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

**Creation or elimination of jobs within California:** The SMGB anticipates the proposed regulatory action will not have an impact on the creation of new, or the elimination of existing, jobs within California.

**Creation of new businesses or the elimination of existing businesses within California:** The SMGB anticipates the proposed regulatory action will not have an impact on the creation, expansion, or elimination of new or existing business within California.

**Benefits to the health and welfare of California residents, worker safety, and the state's environment:** The SMGB anticipates that the proposed regulatory action will result in non-monetary benefits to public health and welfare, worker safety, and environmental safety. Operators and lead agencies are already familiar with existing processes for forfeiture of financial assurance mechanisms for surface mining operations.

Reducing the amount of time the lead agency has to seize the financial assurance mechanisms (FAM) following the hearing will avoid the expiration or lapse of the FAM, depending on the type of FAM established by the operator. The proposed regulatory action conforms existing procedural requirements with changes made to the underlying statutory procedures that were revised because of AB 1142.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code Section 11346.5 (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 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 alternative of no action would conflict with statutory requirements set forth by AB 1142 and could result in confusion by appellants attempting to reconcile existing hearing procedures with the applicable revised statutory requirements.

The SMGB invites interested persons to present statements or arguments with respect to alternatives to the proposed regulatory action 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 regulatory action should be directed to:

Matthew Livers, Regulatory Specialist  
State Mining and Geology Board  
801 K Street, Suite 2015  
Sacramento, California 95814  
Phone: (916) 319-9032  
[Matthew Livers Email](#)

Jeffrey Schmidt, Executive Officer  
State Mining and Geology Board  
801 K Street, Suite 2015  
Sacramento, CA 95814  
Phone: (916) 322-1082  
[Jeffrey Schmidt Email](#)

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 Matthew Livers 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. Copies of the components of the rulemaking file may be obtained by contacting Matthew Livers 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 proposed regulatory action, the SMGB will consider all timely and relevant comments received. Thereafter, the SMGB may adopt the proposed amended 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 Matthew Livers at the address indicated above. The SMGB will accept written comments on the modified text of the regulation 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 Matthew Livers at the above address.

### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Rulemaking Action, the Initial Statement of Reasons, and the proposed amended text of the regulation can be accessed through the SMGB website at:

[www.conservation.ca.gov/smgb](http://www.conservation.ca.gov/smgb)