



INITIAL STATEMENT OF REASONS

PROPOSED AMENDED REGULATIONS

DEPARTMENT OF CONSERVATION DIVISION OF MINE RECLAMATION

TITLE 14. NATURAL RESOURCES Division 2. Department of Conservation Chapter 8. Mining and Geology Subchapter 1. State Mining and Geology Board Article 1. Surface Mining and Reclamation Practice

INTRODUCTION

As required by California Government Code section 11346.2, subdivision (b), the Department of Conservation's Division of Mine Reclamation (DMR) sets forth below the reasons for the adoption of the Guidance Document for Surface Mine Inspectors (Guidance Document). The DMR proposes to add section 3504.6 to the California Code of Regulations (CCR), Title 14, Division 2, Chapter 8, Subchapter 2, Article 1. This change to the regulations is necessary to implement Assembly Bill 1142, Section 10, and specifically, Public Resources Code section 2774, subdivision (e).

Public Resources Code (PRC) section 2774 was amended by Assembly Bill 1142 (Gray, Chapter 7, Statutes of 2016) (AB 1142), and such amendment was signed into law by Governor Brown on April 18, 2016, with an effective date of January 1, 2017. PRC Section 2774, subdivision (e), states the following:

“(e) (1) No later than December 31, 2017, the department shall establish a training program for all surface mine inspectors. The program shall be designed to include a guidance document, developed by the department, in consultation with the board and stakeholders, to provide instruction and recommendations to surface mine inspectors performing inspections pursuant to subdivision (b).”

(2) The training program shall include inspection workshops offered by the department in different regions of the state to provide practical application of the guidance document material.

(3) On and after July 1, 2020, all inspectors shall have on file with the Lead Agency and the department a certificate of completion of an inspection workshop. An inspector shall attend a workshop no later than five years after the date of his or her most recent certificate.

(4) The adoption of the guidance document by the department pursuant to this subdivision shall be subject to the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code)."

Under California's Surface Mining and Reclamation Act, (PRC, § 2710 et seq., hereinafter, SMARA), Lead Agencies are to cause surface mining operations to be inspected in intervals of no more than 12 months, solely to determine whether the surface mining operation is in compliance with SMARA. (See PRC, § 2774, subd. (b)(1))

Six pre-rulemaking workshops were conducted by the DMR on November 22 and 30, 2016, December 06, 2016, and March 21, 22, and 24, 2017, to receive stakeholder input on the proposed Guidance Document.

PROBLEM TO BE ADDRESSED

As described below, and prior to the enactment of AB 1142, Section 2774, subdivision (b), of SMARA required Lead Agencies to conduct annual inspections of surface mining operations within six months of receipt of the operator's Annual Report. (See former PRC, § 2774, subd. (b)) However, no set of formal inspection guidelines, rules of practice, or training for mine inspectors existed. Lead agencies, therefore, were left to develop their own differing rules and practices for mine inspections. This led to inconsistent and often inadequate inspections. Demonstrating reclamation plan compliance requires a thorough review of slope stabilities, revegetation test plots and/or actual revegetation implementation, water run-off control measures, and many other technical components. Such evaluation often requires application of specific technical training and background by inspectors. When the inspection content or inspector qualifications are inadequate, SMARA compliance is comprised.

AB 1142 addressed this problem by requiring DMR to develop a statewide Inspector Training Program (ITP) along with a guidance document for Lead Agency inspectors and Lead Agencies to follow. Under AB 1142, the adoption of the Guidance Document by the DMR is subject to the Administrative Procedure Act. This Guidance Document meets the statutory mandates of AB 1142 by providing the basic instructions and recommendations to be included in the ITP, serving as an essential reference tool. The ITP, based essentially on the Guidance Document, will be provided at workshops that take place at various times and locations around the state.

DETAILED STATEMENT OF SPECIFIC PURPOSE AND RATIONALE

§ 3504.6. Guidance Document for Surface Mine Inspectors

The purpose of CCR section 3504.6 is to establish and adopt a Guidance Document that provides instructions and recommendations to surface mine inspectors in conjunction with the ITP. This is necessary to meet the statutory requirements of PRC section 2774, subdivision (e), which requires the DMR to develop the Guidance Document and an ITP.

Prior to the enactment of AB 1142, PRC section 2774, subdivision (b), required Lead Agencies to conduct an annual inspection within six months of receipt of the operator's Annual Report. In addition, statute allowed for Lead Agencies to cause an inspection to be conducted by a state-licensed geologist, state-licensed civil engineer, state-licensed landscape architect, or state-licensed forester. Operators were solely responsible for the reasonable cost of an inspection under PRC section 2774, subdivision (b).

AB 1142 amended PRC section 2774, subdivision (b)(1), to require Lead Agencies to inspect surface mining operations at intervals of no more than 12 months. In addition, AB 1142 requires inspections to be conducted by a state-licensed geologist, state-licensed engineer, state-licensed landscape architect, state-licensed forester, or qualified Lead Agency employee. Operators are still responsible for the reasonable cost of an inspection.

PRC section 2774, subdivision (e)(1), requires DMR to establish an ITP for all surface mine inspectors by December 31, 2017. The ITP is to include a Guidance Document designed to provide the basic instructions and recommendations for surface mine inspections. The ITP will consist of inspection workshops to be offered by DMR in different regions of the state that will be designed to provide practical application of the Guidance Document. On or after July 1, 2020, mine inspections must be conducted by an inspector who has on file with the Department of Conservation and the Lead Agency an inspection workshop certificate of completion.

The following will explain the purpose, necessity, and benefit of each section of the Guidance Document, including the non-statutory requirements.

Introduction

The Introduction section of the Guidance Document provides general information about the implementation and administration of SMARA, as well as the DMR's obligation to establish a training program for all Lead Agency inspectors who will inspect surface mine operations (SMO). This section is necessary to provide background into the statutory responsibilities of a Lead Agency and a roadmap for the ITP. This information is beneficial for inspectors who will be required to receive a certificate of completion after attending the ITP by July 1, 2020, in order to conduct surface mine inspections.

Section 1 "Who Can Conduct Inspections"

Section 1 of the Guidance Document summarizes newly adopted provisions under AB 1142 that specifically relate to inspections and to inform Lead Agencies and their personnel who are required to attend the ITP prior to conducting inspections of SMOs. It also reinforces important conflict of interest principles that are found in statute. This section clarifies who within Lead Agencies should attend the workshops and, ultimately, conduct inspections. It also clarifies that persons who were employed by a SMO cannot conduct an inspection of the same SMO for twelve months. Section 1 also clarifies that a qualified Lead Agency employee who intends to conduct mine inspections must be a person who in the determination of the Lead Agency has demonstrated competence in performing annual mine inspections.

Section 1.1 “Professional Practice”

Section 1.1 of the Guidance Document reminds inspectors of, and recommend familiarity with, relevant laws and regulations that govern the professional practice of state-licensed disciplines. The inspector and Lead Agency must make determinations concerning the SMO’s compliance with SMARA and the approved reclamation plan. During this evaluation, the Lead Agency or inspector may need to consult another state-licensed professional, with expertise in a particular subject matter, in order to properly protect public health and safety and the environment. Section 1.1 clarifies that the identification of all conditions or aspects of an inspection that might require state licensure is beyond the scope of the Guidance Document. This section also protects the public health and safety by clarifying that concerned or interested parties may refer an inspector practicing without a license or outside of his or her area of expertise to the appropriate licensing board.

Section 2 “SMARA Inspection Requirements”

Section 2 of the Guidance Document summarizes existing requirements related to Lead Agency obligations to inspect mining operations up and until a mining site is deemed fully reclaimed in accordance with the approved reclamation plan and to clarify the inspection responsibilities of Lead Agencies, regardless of an operator’s compliance with financial requirements. PRC section 2774, subdivision (b)(1), states, in pertinent part, “The Lead Agency shall cause surface mining operations to be inspected in intervals of no more than 12 months[.]” In certain past circumstances, Lead Agencies have indicated to DMR that annual inspections were not conducted due to the operator’s failure to pay Lead Agency inspection fees. This section clarifies that an annual inspection of a surface mining operation must be conducted regardless of the payment of inspection fees to the Lead Agency. This ensures that site conditions are annually documented and that the operator complies with other administrative requirements following completion of inspection.

Section 2.1 “Inspection Scheduling”

Section 2.1 of the Guidance Document clarifies that the 12-month interval to conduct annual inspections shall include the full calendar month containing the last conducted annual inspection. As stated above, AB 1142 amended PRC section 2774, subdivision (b)(1), to require Lead Agencies to “cause surface mining operations to be inspected in intervals of no more than 12 months.” At each of the six pre-rulemaking workshops conducted by DMR, Lead Agencies, surface mine operators, and stakeholders all expressed concern that by not including the full calendar month for scheduling would gradually push the inspection date earlier each year. This section of the Guidance Document is necessary to clarify that inspectors can conduct inspections during the same month each year. This flexibility allows inspectors and operators to anticipate inspections, avoid scheduling conflicts, and meet statutory requirements. Section 2.1 also clarifies the use of email correspondence between operators and Lead Agencies for scheduling purposes if both agree to that form of communication. This clarification allows operators and Lead Agency inspectors to timely

confirm dates, times, site contacts, safety equipment requirements, and other issues associated with the variety of mining operations that need to be inspected annually. Section 2.1 also summarizes existing statutory and regulatory requirements.

Section 3 “Mine Inspection Goals and Objectives”

Section 3 of the Guidance Document summarizes existing statutory and regulatory requirements concerning the intent and objectives of the annual inspections under SMARA. PRC section 2774, subdivision (b)(1), requires Lead Agencies to inspect SMOs “solely to determine whether the surface mining operation is in compliance with [SMARA].” Section 3 presents six statutory and regulatory concepts that Lead Agency inspectors should consider during the time of inspection. This guidance is necessary to provide an inspection framework that is predictable and reasonable, regardless of the Lead Agency or inspector conducting the inspection. This benefits both inspectors and operators by providing clear and consistent objectives and recommendations to all surface mine inspectors. Section 3 also contains clarification that neither the instructions or recommendations contained in the Guidance Document are limitations on a local or a state agency’s powers or authorities related to inspections under any other provision of law.

Section 4 “Preparation for Inspection”

Section 4 of the Guidance Document provides inspectors with recommendations and plans to prepare to conduct a SMARA inspection. This section is necessary due to the unique reclamation requirements and administrative record for each SMO. It provides both recommendations for documentation to review, as well as items that the inspector should address with the operator prior to conducting the inspection. Following these recommendations should result in a simpler inspection process by informing the inspector about the specific operations of the SMO being inspected, providing detailed information concerning administrative requirements, and eliminating scheduling conflicts or misunderstandings and issues resulting from lack of personal protection equipment.

Section 4.1 “The Administrative Record”

Section 4.1 of the Guidance Document provides clarity and instructions to an inspector concerning the elements of an SMO’s administrative record and the importance of completely reviewing the file prior to conducting an inspection. This section is necessary because an inspector is required to have knowledge of the SMO’s enabling or entitlement documents in order to conduct an inspection. This section benefits both inspectors and operators by providing clear and consistent information to all surface mine inspectors and Lead Agencies throughout the state.

Section 4.1.1 “Approved Reclamation Plan”

Section 4.1.1 provides basic instructions to inspectors relating to the need to review the mining operation’s approved reclamation plan and other permit conditions or requirements that may comprise elements in a site’s approved reclamation plan as described under SMARA and

associated regulations. This section is necessary to remind inspectors that reclamation plan requirements under SMARA may be located in other permit requirements or conditions of approval and documents prepared and approved pursuant to California's Environmental Quality Act (CEQA). Reminding inspectors of the need to review all elements of a mining operation's approved reclamation plan should result in a more comprehensive inspection and a better evaluation of a mining operation's cost to reclaim a site in the event of the operator's default.

Section 4.1.2 "Reference Maps"

Section 4.1.2 advises inspectors of the need to be familiar with a site's boundaries as described in survey and topographic maps. This section provides recommendations on using current technologies allowing for the most accurate assessment of the progress of mining and to confirm that an operation stays within its approved operational three-dimensional boundaries. Reminding inspectors of the need to review all available maps and diagrams contained in a mining operation's approved reclamation plan relating to boundaries should result in a more comprehensive inspection and a better evaluation of a mining operation's cost to reclaim a site in the event of the operator's default.

Section 4.1.3 "Financial Assurances"

Section 4.1.3 advises inspectors of the purposes of a financial assurance cost estimate in the context of an inspection, in particular, the annual inspection. Under AB 1142, operators are now required to submit a financial assurance cost estimate (FACE) 30 days following the annual inspection. Since the FACE represents an estimate of the amount of money needed to reclaim mined lands, which are set aside for local or state governments to conduct reclamation in the event of the operator's default, this section reinforces the need of the inspector to accurately assess site conditions as impacted by reclamation costs. Reminding inspectors of the need to review the mining operation's most recent FACE should result in a more comprehensive evaluation of a mining operation's cost to reclaim a site in the event of the operator's default.

Section 4.1.4 "Operator Annual Reports"

Section 4.1.4 advises inspectors of the need to review the mining operation's Annual Reports going back at least five years. A mining operation's Annual Reports and reporting history allow inspectors and the Lead Agency an opportunity to confirm ongoing SMARA compliance requirements. Annual Reports include the operator's estimate of total acreage of land disturbed during the previous calendar year and land reclaimed during that time. These estimates can and should be confirmed during the inspection. Reminding inspectors of the need to review the mining operation's reporting history should result in a more comprehensive evaluation of a mining operation's cost to reclaim a site in the event of the operator's default.

Section 4.1.5 "Prior Inspection Report and Notice of Completion of Inspection"

Section 4.1.5 advises inspectors of the need to review the mining operation's previous Inspection Reports as well as new requirements under AB 1142 regarding the Notice of Completion of Inspection. Under AB 1142, the Lead Agency is required to send the Department a completed annual Inspection Report and a Notice of Completion of the Inspection, within 90 days following the inspection. The Notice of Completion of Inspection summarizes the compliance status of the operation and contains a statement of the Lead Agency's intentions relating to non-compliant issues noted during the inspection. Review of these documents by the inspector is necessary for ongoing monitoring of an operator's compliance with SMARA as it relates to the conduct of an anticipated annual inspection. Reminding inspectors of the need to review the mining operation's inspection and compliance history should result in a more comprehensive evaluation of a mining operation's ongoing compliance with SMARA and ensure that violations are timely resolved and do not grow in nature or scope.

Section 4.1.6 "Enforcement Actions"

Section 4.1.6 advises inspectors that they should be aware of any ongoing enforcement actions that affect completion of reclamation in accordance with the approved reclamation plan. Under AB 1142, the use of stipulated orders to comply are encouraged. Orders to comply, stipulated or non-stipulated, include timelines agreed to or imposed on operators that are designed to achieve resolution of issues that may require many months to accomplish. Review of these documents by inspectors is necessary prior to an inspection to confirm the operator's efforts to comply with an order to comply at the site since noncompliance with the terms of an order to comply serve as the basis in considering the assessment of administrative penalties. Reminding inspectors of the need to review the mining operation's compliance efforts relating to ongoing enforcement actions should result in a more comprehensive evaluation of a mining operation's ongoing compliance with SMARA and ensure that violations are timely resolved and do not grow in nature or scope.

Section 4.2 "Other Recommendations"

Section 4.2 of the Guidance Document provide recommendations for the inspector to consider, such as confirming the time and date of the inspection, the personal protective equipment required to enter the SMO, and discussing the upcoming annual review of the SMO's FACE. This guidance is necessary to ensure that all parties are informed about the requirements of the inspection, as well as upcoming administration requirements upon its completion. This should encourage more cooperation and reduce miscommunications and surprises when the inspector arrives to conduct the inspection.

Section 5 "Conduct of the Inspection"

Section 5 of the Guidance Document, and its subdivisions, provides instructions and recommendations for inspectors conducting SMARA mine inspections. This section is necessary because inspectors should strive to conduct the inspection employing a standard of practice that is consistent with the current ethical principles and codes of conduct that meets or adheres to business and professions codes for engineering, land surveying, geology,

landscape architecture; public resources codes for forestry; and the American Institute of American Planners (AIAP) "Code of Ethics and Professional Conduct" for planners. This is true whether or not the inspector is a licensed professional. This section benefits the regulated community because inspectors are required to behave in a fair and ethical manner that promotes confidence in a Lead Agency's inspection program.

Section 5.1 "Tools and Reference"

Section 5.1 of the Guidance Document provides the recommended equipment and reference materials an inspector should have at an inspection. This section is necessary because an inspector who arrives for an SMO should carry with them the necessary tools and reference materials to conduct an inspection. This section benefits the inspector by recommending the appropriate tools and reference materials needed to perform an inspection.

Section 5.2 "Upon Arrival"

Section 5.2 of the Guidance Document describes the recommended best practices the inspector should follow upon arrival at the SMO for an inspection. This is necessary to ensure that all parties understand the requirements, objectives, and expectations for the inspection. This guidance helps to ensure an informed and smooth inspection and engender confidence in the inspector and the results of the inspection.

Section 5.3 "Inspector Observations"

Section 5.3 of the Guidance Document describes the recommended best practices the inspector should employ to observe the SMO. This section also provides guidance as to the types of information that should be observed, measured, and documented, as applicable to each SMO. Section 5.3 is necessary because it provides guidance to inspectors concerning reclamation requirements that are applicable at various stages of the SMO's development, such as: active extraction, idle, and reclaiming. It also includes methods to observe specific conditions, estimate volumes of extracted minerals, notify other governmental entities of primary authority when issues are noted, and compare and evaluate fee status. This section benefits both inspectors and operators by providing clear and consistent recommendations for methods of observation, measurement, and documentation during the inspection process. This, in turn, sets predictable expectations for operators.

Section 5.3.1 "General Observations"

Section 5.3.1 provides instructions to the inspector to note the general nature and scope of the mining operation to be inspected. This section is necessary because the general nature and scope of an operation serves as the basis for the inspection of the individual conditions of the mining operation. This should result in a more comprehensive inspection.

Section 5.3.2 "Ground Surfaces"

Section 5.3.2 provides inspectors with instructions and definitions regarding the terms “undisturbed,” “disturbed,” “reclaimed,” “native,” “cut,” or “fill,” as they relate to ground surfaces. Section 5.3.2 is necessary to establish common terms of use as they relate to the description of ground surfaces and how they are described in the reclamation plan. This, in turn, affects how each ground surface is to be treated under the approved reclamation plan and at what stage each ground surface is in at the time of inspection. Providing inspectors with defining terms related to ground surfaces should create consistent and uniform inspection results and a more comprehensive evaluation of a mining operation’s cost to reclaim a site in the event of the operator’s default.

Section 5.3.3 “Boundaries”

Section 5.3.3 instructs the inspector on the need to document all applicable boundaries relating to the mining operation. This section implements the instructions discussed in Section 4.1.2, concerning the need to adequately inspect and document the operations’ three dimensional boundaries during the inspection following a review of maps contained within the reclamation plan. This is necessary to ensure that an operation does not encroach on or exceed approved boundaries that would result in the need to amend reclamation plans and require an increase in financial assurances. Providing inspectors with instructions related to the observation and documentation of boundaries should help to avoid or reduce the need to initiate enforcement actions that require reclamation plan amendments to adjust boundaries, which are often the costliest amendments operators undertake. Inspectors who are diligent in monitoring an operation’s boundaries help to reduce a Lead Agency’s administrative enforcement costs as well as the operator’s ongoing compliance costs. This, in turn, helps to reduce costs to produce mined minerals. This also creates consistent and uniform inspection results and a more comprehensive evaluation of a mining operation’s cost to reclaim a site in the event of the operator’s default.

Section 5.3.4 “Erosion Control”

Section 5.3.4 instructs the inspector of the need to document erosion control measures required in the approved reclamation plan and other permit documents incorporated into the approved reclamation plan. This is necessary to ensure that an operation remains in compliance with the reclamation plan and to remind inspectors that erosion control measures are also within the jurisdiction of other state or federal agencies. Reminding inspectors to document erosion control measures and their effectiveness should result in continued compliance with reclamation plan requirements and other permit requirements that are designed to protect human health and safety as well as the environment.

Section 5.3.5 “Stream and Wetland Protection/Water Quality and Watershed Control”

Section 5.3.5 instructs the inspector of the need to document measures required in the approved reclamation plan and other permit documents incorporated into the approved reclamation plan relating to the protection of streams, wetlands, and watersheds. This is necessary to ensure that an operation remains in compliance with the reclamation plan and to remind inspectors that streams, wetlands, and watershed protection measures are also within

the jurisdiction of other state or federal agencies. Reminding inspectors to document streams, wetlands, and watershed protection measures and their effectiveness should result in continued compliance with reclamation plan requirements and other permit requirements that are designed to protect human health and safety as well as the environment.

Section 5.3.6 “Fish and Wildlife Habitat”

Section 5.3.6 instructs the inspector of the need to document measures required in the approved reclamation plan and other permit documents incorporated into the approved reclamation plan relating to the protection of fish and wildlife habitat. This is necessary to ensure that an operation remains in compliance with the reclamation plan and to remind inspectors that fish and wildlife habitat protection measures are also within the jurisdiction of other state or federal agencies. Reminding inspectors to document fish and wildlife habitat protection measures and their effectiveness should result in continued compliance with reclamation plan requirements and other permit requirements that are designed to protect human health and safety as well as the environment.

Section 5.3.7 “Soil/Overburden Stockpile Management”

Section 5.3.7 instructs inspectors regarding the documentation of an operation’s management of soil and overburden stockpiles. This is necessary to confirm compliance with SMARA and, in particular, the approved reclamation plan. Reminding inspectors to observe and document soil and overburden stockpile management measures should create consistent and uniform inspection results and a more comprehensive evaluation of a mining operation’s cost to reclaim a site in the event of the operator’s default.

Section 5.3.8 “Revegetation”

Section 5.3.8 instructs inspectors regarding the documentation of an operation’s ongoing revegetation efforts, depending on the phase of the development of the operation and the end use of the site as described in the reclamation plan. This is necessary to confirm compliance with SMARA and, in particular, the approved reclamation plan. Reminding inspectors to observe and document an operation’s ongoing revegetation efforts should create consistent and uniform inspection results and a more comprehensive evaluation of a mining operation’s cost to reclaim a site in the event of the operator’s default.

Section 5.3.9 “Structures”

Section 5.3.9 instructs inspectors regarding the observation and documentation of the presence and location of any structures and the treatment of those structures relating to the end use of the site as described in the reclamation plan. This is necessary to confirm compliance with SMARA and, in particular, the approved reclamation plan. Reminding inspectors to observe and document the presence and location of any structures should create consistent and uniform inspection results and a more comprehensive evaluation of a mining operation’s cost to reclaim a site in the event of the operator’s default.

Section 5.3.10 “Equipment and Storage Yards”

Section 5.3.10 instructs inspectors regarding the observation and documentation of the presence and location of any mining equipment or storage areas and the treatment of any mining equipment or storage areas relating to the end use of the site as described in the reclamation plan. This is necessary to confirm compliance with SMARA and, in particular, the approved reclamation plan. Reminding inspectors to observe and document the presence and location of any mining equipment or storage areas should create consistent and uniform inspection results and a more comprehensive evaluation of a mining operation’s cost to reclaim a site in the event of the operator’s default.

Section 5.3.11 “Surface Openings”

Section 5.3.11 instructs inspectors regarding the observation and documentation of the presence and location of surface openings including drill holes, water wells, monitoring wells, portals, shafts, tunnels, or other underground workings and the treatment of these items relating to the end use of the site as described in the reclamation plan. This is necessary to confirm compliance with SMARA and, in particular, the approved reclamation plan. Reminding inspectors to observe and document the presence and location of any surface openings should create consistent and uniform inspection results and a more comprehensive evaluation of a mining operation’s cost to reclaim a site in the event of the operator’s default.

Section 5.3.12 “Other Reclamation Plan Requirements”

Section 5.3.12 instructs inspectors regarding the observation and documentation of any other reclamation plan requirements not specifically referenced in previous sections. Due to the variety of mining operations that may exist, it is not possible to describe all possible conditions that may be present at all mining operations. Nonetheless, the observation and documentation of these items is necessary to confirm compliance with SMARA and, in particular, the approved reclamation plan. Reminding inspectors to observe and document all conditions at the site in relation to the requirements described in the reclamation plan should create consistent and uniform inspection results and a more comprehensive evaluation of a mining operation’s cost to reclaim a site in the event of the operator’s default.

Section 5.3.13 “Enforcement Actions, Court Rulings, or Decisions”

Section 5.3.13 instructs the inspector on the need to observe and note actual site conditions as it relates to ongoing enforcement actions. This section implements the instructions discussed in Section 4.1.6 concerning the need to monitor ongoing compliance efforts. This is necessary to confirm compliance with SMARA and, in particular, the resolution of noncompliant issues as they relate to the reclamation plan. Reminding inspectors to observe and document the presence and location of any surface openings should create consistent and uniform inspection results and a more comprehensive evaluation of a mining operation’s cost to reclaim a site in the event of the operator’s default. In addition, the inspector and Lead Agency will

have additional information that affects a Lead Agency's determination to assess administrative penalties.

Section 5.3.14 "Fee Status"

Section 5.3.14 instructs inspectors to compare the operator's claimed operating status in the Annual Report with conditions observed on site. This is necessary to corroborate an operation's reported status with site conditions and the phasing of reclamation in accordance with the approved reclamation plan. This also serves to confirm appropriate fees associated with the status of the operation. This should result in confirmation that the operation is in compliance with SMARA and encourage a level economic playing field relating to administrative costs for all operators throughout the state.

Section 5.4 "Inspection Considerations for Completion of Reclamation and Release of Financial Assurances"

Section 5.4 of the Guidance Document provides information that should be considered prior to determining that reclamation has been completed pursuant to the approved reclamation plan and subsequent release of financial assurances. This section clarifies what constitutes the closure of a mining operation. This section is necessary to provide inspectors with guidelines that explain what conditions need to be observed and/or resolved before the reclamation is deemed complete and financial assurances are released. This section benefits the public by ensuring that adequate financial assurances remain in place until reclamation is determined complete by both the Lead Agency and DMR.

Section 5.4 "Discussion of Observations"

Section 5.4 of the Guidance Document recommends discussion topics for the inspector and operator. This section is necessary to inform surface mine inspectors of the types of feedback that should consistently be communicated to operators, including observations that are not compliant with performance standards under the approved reclamation plan or SMARA and any observed violations. These communications can aid the parties in finding resolution to those issues.

Section 6 Administrative Requirements Following the Inspection

Section 6 of the Guidance Document describes the statutory scheme that requires filing of the FACE, submittal of the Inspection Report/Form, and submittal of the Notice of Completion of Inspection to DMR within 90 days following the inspection. These sections are necessary to explain the administrative procedures that an inspector must follow after conducting an annual inspection. The use of a Notice of Completion of the Inspection is a new requirement under AB 1142. This ensures the orderly submittal of inspection documents to be filed and that DMR has a record of all inspections conducted at an SMO, as required by statute. This also allows DMR to consider whether a Lead Agency is taking appropriate enforcement actions depending on the nature and scope of inspection results. This, in turn, allows DMR to consider initiating separate enforcement actions in a timely manner.

Section 6.1.1 “Considerations for Lead Agency Review of the Updated FACE”

Section 6.1.1 of the Guidance Document prepares the Lead Agency for the review of the operator’s updated FACE submittal, and is necessary to outline the nexus of the inspector’s observed site conditions to the operator’s description of tasks, methods, and equipment in the upcoming FACE submittal. This ensures adequate Lead Agency review of financial assurances.

Section 7 “SMARA Inspector Training Program”

Section 7 of the Guidance Document briefly describes DMR’s ITP and the requirement that all inspectors must attend prior to July 1, 2020, and every five years thereafter. This section is necessary to remind inspectors of the administrative requirements that must be completed prior to inspecting a surface mining operation. This benefits interested parties by explaining how the guidance document relates to the ITP.

ECONOMIC IMPACT ANALYSIS

AB 1142 amended PRC section 2774, requiring that the DMR prepare a Guidance Document to be included into DMR’s ITP. DMR notes that the proposed Guidance Document was prepared as a result of specific changes made to PRC section 2774 by the Legislature as discussed above and does not establish additional requirements for surface mine operators. The proposed regulation and Guidance Document neither creates new jobs or businesses nor will they directly eliminate existing jobs or businesses. Further, because the proposed regulation and Guidance Document only set guidelines for inspections that have been occurring for many years, it will not lead to the expansion of businesses currently operating in California.

The proposed regulation and Guidance Document satisfies the DMR’s statutory mandate to develop a Guidance Document to provide instruction and recommendations to surface mine inspectors. Further, DMR staff have determined that the proposed Guidance Document will result in non-monetary benefits such as protection of public health and safety and transparency in business and government. Specifically, the benefits are as follows:

- Surface mine inspectors will receive timely and consistent instructions and recommendations to conduct inspections on a statewide basis.
- Surface mine inspectors will have guidance to use to determine surface mining operation compliance with SMARA.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

Previously, PRC section 2774, subdivision (b), required Lead Agencies to conduct an annual inspection within six months of receipt of the operator's Annual Report. In addition, statute allowed for Lead Agencies to cause an inspection to be conducted by a state-licensed geologist, state-licensed civil engineer, state-licensed landscape architect, or state-licensed forester. Operators were solely responsible for the reasonable cost of an inspection under PRC section 2774, subdivision (b).

Although AB 1142 amended PRC section 2774, subdivision (b)(1), to require Lead Agencies to inspect surface mining operations in intervals of no longer than 12 months, the Guidance Document clarifies that the full calendar month containing the last conducted annual inspection may be used when calculating a 12-month inspection interval. Therefore, there is no change in the number or frequency of inspections that will be conducted compared to the present.

Finally, AB 1142 did not cause any shift in burden for the reasonable cost of an inspection; that burden is still borne by the operator. The Guidance Document does not create any additional requirements for surface mine operators.

In light of the above information, DMR concludes that the proposed Guidance Document does not have a significant adverse economic impact directly affecting business because the operator's obligation to pay the reasonable cost of an inspection is currently a statutory requirement.

IDENTIFICATION OF TECHNICAL / THEORETICAL / EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS UPON WHICH THE DIVISION OF MINE RECLAMATION HAS RELIED

No studies or reports have been relied upon by the DMR in preparing the proposed Guidance Document. The text of PRC section 2774(e), as added, and review of the existing SMGB Inspection Report Form (MRRC-1) were utilized by DMR staff in development of the proposed addition of CCR 3504.6 and Guidance Document. The State Mining and Geology Board Inspection Report Form is available at <http://www.conservation.ca.gov/smgbl/>.

ALTERNATIVES CONSIDERED

In accordance with Government Code section 11346.5, subdivision (a)(13), the DMR must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DMR would be more effective in carrying out the purpose for which the action is proposed. In addition, DMR must determine that no alternative 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.

A proposed alternative of taking no action would preclude DMR from implementing the inspector training program and be contrary to the amendment of PRC section 2774, subdivision (e)(1), required by AB 1142, which took effect on January 1, 2017. The DMR invites interested persons to present statements or arguments with respect to alternatives to the proposed Guidance Document during the written comment period.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

This Guidance Document does not duplicate or conflict with existing federal statutes or regulations. Also, state and federal law are coordinated to eliminate duplication through a Memorandum of Understanding with the Federal Bureau of Land Management, the United States Forest Service, the California Department of Conservation, and the State Mining and Geology Board.