



DRAFT

INITIAL STATEMENT OF REASONS

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 Disturbances

The State Mining and Geology Board (Board), proposes to adopt article 17, sections 4050, 4051, 4052, 4053, 4054, 4055, 4056, 4057, 4058, and 4059 of the California Code of Regulations (CCR), title 14, division 2, chapter 8, subchapter 1.

Unless otherwise specified, references in this document to a “section” are references to a section of CCR title 14, as it would be added by this rulemaking.

INTRODUCTION AND BACKGROUND

Established in 1885, the Board serves as a regulatory, policy, and hearing body representing the state’s interests in the development, utilization, and conservation of mineral resources, the reclamation of mined lands, and the development and dissemination of geologic and seismic hazard information to protect the health and welfare of the people of California.

The Surface Mining and Reclamation Act of 1975 (Public Resources Code (PRC) § 2710 et seq., "SMARA") was enacted into law to create and maintain an effective and comprehensive surface mining and reclamation policy in California. SMARA lead agencies, comprised of cities, counties, the San Francisco Bay Conservation and Development Commission, and the Board, have the principal responsibility to implement and administer SMARA within their respective jurisdictions.

SMARA provides that Surface Mining Operations shall not be conducted "unless a permit is obtained from, a Reclamation Plan has been submitted to and approved by, and financial assurances for reclamation have been approved by the lead agency" (PRC section 2770(a)). The exemption process provides an opportunity to perform "Surface Mining Operations that the board determines to be of an infrequent nature and that involve only minor surface disturbances" without having to meet these SMARA requirements.

SMARA requires at least one public hearing for the approval of a mining permit, pursuant to PRC section 2774(a). Prior to or at the time of approval, the lead agency must also comply with the California Environmental Quality Act (CEQA). Lead agencies often combine the approval of a mining permit and applicable CEQA documents with the approval of a Reclamation Plan and/or related approvals.

The subsections of PRC section 2714 list activities that are considered exempt from the requirements of SMARA. Most of the listed exemptions under PRC section 2714 describe projects or activities that include mining as a component of the activity or project. For example, some exemptions identify certain excavations, grading, or other earthmoving activities that might appear to be mining, such as excavations or grading associated with farming (PRC § 2714(a)) or excavations or grading to obtain materials for roadbed construction and maintenance for timber operations (PRC § 2714(k)(1)). Others outright exempt traditional surface mining operations under a certain size (PRC § 2714(d)) or the mining of a particular mineral such as salt or other minerals from sea or bay water (PRC § 2714(g)).

As extensive as the list of exemptions under PRC section 2714 might be, generating a list of every situation involving surface mining operations that might best be exempt from SMARA is problematic. In those cases, including where surface mining operations are conducted as a component of an activity, like construction or restoration projects not covered by any exemption, the PRC 2714(f) exemption allows the Board to fill the gap and exempt "any other Surface Mining Operations

that the Board determines to be of an infrequent nature and that involve only minor surface disturbances". A survey of every exemption request submitted to the Board since 2008 demonstrates the range of projects without an express exemption that included surface mining as a component of the activity. PRC section 2714(f) provides the Board the authority to exempt the mining component of the project or activity, especially in cases where the primary or underlying purpose of the project is not a traditional commercial surface mining operation.

Currently, no statutory or regulatory process for seeking an exemption from the Board under PRC section 2714(f) exists. This leaves an applicant with little choice but to contact Board staff to determine what the exemption process entails. Board staff must decide on a case-by-case basis, the content of the application including the amount and type of information required, the time it will take for Board staff to process the application, if and when a hearing is required and how the hearing will be conducted, and when the applicant can expect to receive a decision from the Board.

The lack of procedures and instructions describing the exemption request process results in, among other things, a longer process, increased costs to the applicant, a lack of transparency for applicants and the public, increased Board staff resources, potentially disparate exemption outcomes or decisions, potential reduced protections to the environment, and an overall lack of fairness, perceived or otherwise. The intent of this rulemaking is to standardize the exemption application process by clearly stating the procedure required for each request for exemption and ensuring that each request receives a diligent and comprehensive evaluation by the Board before the determination of exemption is made.

Public Input Efforts Preceding this Rulemaking

Extensive public outreach has been conducted regarding the regulations. The Board conducted pre-rulemaking workshops on March 24, 2022, and August 18, 2022, to discuss the purpose of the proposed regulatory action and concepts for draft regulatory language. Over 80 persons participated in the workshops including SMARA lead agency staff, mine operators, mining industry consultants and association representatives, other state government staff, and members of the public. Additional comments from Board members and the public were received during information updates at Board meetings dating back to December 2021 and at the Board's regular business meetings on March 23, 2023, and April 20, 2023, the

preliminary draft regulatory language was reviewed and subsequently approved by the Board.

SPECIFIC PURPOSE, RATIONALE, AND BENEFITS OF EACH REGULATION

The purpose, rationale, and anticipated benefits of each proposed section are discussed specifically below:

Section 4050 requires that the regulations in article 17 be the procedures the Board uses for determination of exemptions. Requiring a standardized process in the determination of exemption will increase clarity for the entities involved in the process by clearly defining the responsibilities of the project proponent, lead agencies, and the Board. This will result in a more streamlined, efficient, and transparent process.

Section 4051 requires the Board's Executive Officer to consult with the project proponent and both the SMARA Lead Agency and land use agency with jurisdiction before submission of a request for exemption. Coordination between all parties before submission will help ensure a more complete application for exemption upon submission and foster a concerted effort that will likely be more efficient. It will also act as a filter to rule out any projects that are not Surface Mining Operations before project proponents spend time and resources creating their application and will ensure National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) agencies are aware of the request for exemption at an early stage.

Section 4052 stipulates that only Surface Mining Operations determined to be of an infrequent nature and involving only minor surface disturbances shall be eligible for an exemption. This is necessary to ensure alignment with statute.

Section 4053 stipulates that a request for exemption shall be initiated by filing a request for determination of exemption with the Board. Each subsection includes an item of information that will be used when determining if an exemption will be granted:

Subsections (a) through (h) are contact information for all pertinent parties and each is necessary to ensure that a contact can be sent relevant documents or reached for inquiry or notification related to the Surface Mining Operation.

Subsections (i) and (j) are a map and legal description of the property comprising the Surface Mining Operation and are necessary to specifically identify the geographical location of the operation. The permits and lead agency reports included in **subsections (k) through (m)** are necessary because they are records of conditions of approval for the Surface Mining Operation or the underlying project or activity that includes mining as a component of the project or activity. **Subsections (n) through (r)** are proposed parameters for the Surface Mining Operation and are necessary to determine eligibility for an exemption under PRC section 2714(f). **Subsection (s)** is grading plans showing topography of the land before and after mining and is necessary to ensure restoration of the mined land. **Subsection (t)** is an attestation that all material and information provided in the request for exemption is true and accurate and is necessary to ensure diligence and accountability by the applicant.

The inclusion of each subsection of section 4053 contributes to a diligent and thorough investigation of an application for exemption before a Board determination is made and will ultimately help minimize or prevent adverse effects on the environment and the protection of public health and safety.

Section 4054 designates the Board's Executive Officer to verify that a request for determination of exemption contains each of the items listed in section 4053 and is fully completed. If a request is not complete, the Executive Officer shall reject the request and identify the deficiencies in written correspondence to the applicant. The requirement to identify and communicate any deficiencies to an applicant will make the process more objective and transparent and will help foster a concerted effort that will likely be more efficient.

Section 4055 stipulates the items that make up the administrative record before the Board. This section will increase transparency and ensure that a comprehensive record of documents is kept in the event that an appeal or legal challenge arises, and the determination of exemption must be defended.

Section 4056 requires that a public hearing be held within 90 days of the Executive Officer's determination that a request for exemption is complete within the county where the exemption is requested or the county of the Board's offices (Sacramento County). Public outreach and analysis of the resulting feedback is crucial in ensuring that any concerns or questions from interested parties are considered, addressed, and answered. A robust and responsive outreach effort helps to cultivate public

trust and a diverse respondent demographic can identify issues that may have been overlooked or unintended.

Section 4057(a) outlines how a public hearing procedure regarding an application for exemption under PRC section 2714(f) should proceed:

Subsection (a)(1) is necessary to ensure that the proposed Surface Mining Operation meets the prescribed standards for exemption before testimony by interested parties occurs. **Subsections (a)(2) through (a)(7)** are necessary to ensure each party with an interest in the application for exemption has an opportunity to both state their argument for or against the exemption and rebut arguments contrary to their position. **Subsection (a)(8)** is necessary to allow the Board to make a determination of exemption at the conclusion of the hearing or to postpone the determination in order to further consider relevant information. **Subsection (a)(9)** is necessary to verify that the hearing can be formally concluded.

Section 4057(b) allows for the Chair of the Board to determine an alternate order of hearing proceedings or allow for additional testimony or rebuttal, at their discretion. This is necessary to ensure that due diligence is performed in a determination of exemption if extenuating circumstances exist.

Section 4057(c) allows for the Chair of the Board to impose reasonable time limits upon testimonies and rebuttals during the hearing. This is necessary to prevent an interested party from presenting for a disproportionate amount of time during the hearing and promotes fairness to all parties involved.

The inclusion of each subsection of section 4057 will ensure a diligent and thorough investigation of an application for exemption before a Board determination is made and will ultimately help minimize or prevent adverse effects on the environment and the protection of public health and safety.

Section 4058 requires the Board's Executive Officer to notify the applicant and lead agency or agencies by certified mail of the determination of exemption no more than ten days following the public hearing. This section also requires the determination to be posted on the Board's website. The requirements of this section ensure that applicants receive a timely determination of exemption from the Board and that the determination is publicly available to all interested parties. An expeditious response by the Board serves to foster a positive working relationship

with applicants and prevents determinations from dragging out over long periods of time. Posting each determination on the Board's website increases transparency.

Section 4059 requires an applicant to notify the Board within thirty days of any future modification to the Surface Mining Operation. This section also requires the Board to notify a mine operator at least five days prior to conducting an inspection. Operators may make modifications that render a previously exempted operation ineligible for exemption and the Board may decide to hold a public hearing to determine if the previous exemption is still valid considering any modifications made by the operator.

ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative that it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private Persons than the proposed action. The Board's Executive Officer has not identified any adverse impacts resulting from the proposed regulation.

- An alternative the Board considered was the Board taking no action to address the unprescribed nature of section 2714(f). By taking no action, the Board would continue to address the exemption process the way it has in the past, leaving the unprescribed nature of the exemption process intact, allowing for variation in the exemption determination and resulting in an ambiguous process that could be perceived as inequitable.
- An alternative the Board considered, but rejected, was to impose a fee for the processing of the exemption application. It was determined that the Board does not have the authority under SMARA to charge a fee for this process.
- An alternative the Board considered, but rejected, was providing definitions for "infrequent nature" and "only minor surface disturbances". It was determined that leaving these terms flexible would allow the board discretion to consider these projects in context rather than being limited to defined quantities. The Legislature included this exemption language in SMARA when it was initially drafted in 1975 with the intention of providing the Board with the discretion to determine on a case-by-case basis what type of operation is "infrequent" and "minor." While conducting pre-rulemaking workshops and

public outreach, some interested parties requested that the proposed regulations further clarify and specify “infrequent” and “minor.” The Board considered those comments but wanted to maintain its discretionary authority, as described in the statutory language, and therefore directed staff not to further define those terms in the proposed regulatory language.

- An alternative the Board considered, but rejected, was requiring the project proponent provide information about how the project was funded. It was determined that this information was out of scope for projects which received exemption from 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.

CEQA COMPLIANCE

The Board has determined that this rulemaking process is either not a project under Title 14, CCR section 15378 of the CEQA Guidelines, or is exempt under the common sense exemption under Title 14, CCR section 15061(b)(3) of the CEQA Guidelines, because there is no possibility that the development and approval of these regulations will have a direct or indirect significant effect on the environment. The proposed regulations would merely establish a procedure to implement an existing statutory provision that allows the Board to exempt Surface Mining Operations that it determines are of an infrequent nature and that involve only minor surface disturbances.

CONSISTENCY WITH COMPARABLE FEDERAL REGULATION OR STATUTE

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

CONSISTENCY WITH STATE REGULATIONS

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.

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. School districts are not affected by the regulation.

ECONOMIC IMPACTS

The Board has made the following determinations, based in part on the Economic Impact Analysis prepared for this proposed rulemaking, which is included as a separate document in the rulemaking package and incorporated here by reference.

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.

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.

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

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.

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.

Ability of businesses to compete with businesses in other states. The Board does not anticipate the proposed regulations would affect the ability of businesses in California to compete with businesses in other states.

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 gives due diligence to every request for a determination of exemption and will sufficiently evaluate each request to ensure an exemption is appropriate and the Surface Mining Operation will not have a negative impact to the health and welfare of California residents, worker safety, and the state's environment.

DOCUMENTS RELIED UPON

The Board relied upon the following documents in proposing this rulemaking:

- The Economic Impact Analysis and STD 399 for the proposed regulations.
- Benchmark Resources. (2023). *PRC § 2714(f) Potential Applicant Costs*.
- Department of Conservation. (2023). *CalGEM Fiscal Worksheet 2324_2714(f)*.
- State Mining and Geology Board (2021, December 16). *15.B. Historical Board Information for PRC 2714(f)*. Department of Conservation.
- State Mining and Geology Board (2022, August 18). *Pre-Rulemaking Workshop Proposed Regulatory Text for PRC 2714(f)*. Department of Conservation.
- State Mining and Geology Board (1996). *Mining Ordinance Guidance Document*. [\[Link\]](#)
- State of California – CalHR. (2023, November 7). *Civil Service Pay Scale*. https://www.calhr.ca.gov/Pay%20Scales%20Library/PS_Sec_15.pdf [\[Link\]](#)

- State of California – CalHR. (2023, March 3). *Exempt Pay Scale*. <https://www.calhr.ca.gov/Documents/exempt-pay-scale.pdf> [\[Link\]](#)
- State of California – CalHR. (2023, December 11). *Travel Reimbursements*. <https://www.calhr.ca.gov/employees/pages/travel-reimbursements.aspx> [\[Link\]](#)
- U.S. Bureau of Labor Statistics. (2022, May). *Occupational Employment and Wage Statistics - Urban and Regional Planners*. <https://www.bls.gov/oes/current/oes193051.htm#ind> [\[Link\]](#)
- U.S. General Services Administration. (2023, January 1). *Privately Owned Vehicle (POV) Mileage Reimbursement Rates*. https://www.gsa.gov/plan-book/transportation-airfare-pov-etc/privately-owned-vehicle-pov-mileage-reimbursement?gsaredirect=pov&gclid=EAlaIQobChMI8ea2q8KhgwMVOwytBh0K_wj4EAAYASAAEgLZMPD_BwE [\[Link\]](#)

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