



# SMARA Modernization Update: Financial Assurances & Reclamation Plans

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CSAC / CalCIMA / RCRC Webcast  
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**Overview**

- **AB 1142 and SB 209: Major changes to...**
  - **Financial assurances**
    - Substantive requirements
    - Approval process
    - Appeals process
  - **Reclamation plans**
    - Contents
    - Approval process
    - Appeals process

### Overview

- New/significantly amended SMARA sections**

Area	Topic	Existing SMARA	New SMARA
Administrative	Annual reporting fees and total revenue limits (increased)	§ 2207	(same)
	DOC Report to Legislature re Mine Reclamation Account expenditures	n/a	<b>§ 2207.2</b>
	Definition of "Division of Mine Reclamation"	n/a	<b>§ 607</b>
	Definition of "Supervisor of Mine Reclamation"	n/a	<b>§ 2006.5</b>
	Definition of "Financial Assurances"	n/a	<b>§ 2736</b>
FACE/FAM	Substantive requirements	§ 2773.1	(same)
	Review procedures	§ 2774(c)-(d)	§ 2773.4
	Appeals (including <b>NEW</b> DOC appeals of LA FACE approvals)	§ 2770	§ 2770(e)-(g)
	Corporate self-bonding	n/a	<b>§ 2773.1.5</b>
Rec Plan	Content requirements	§ 2772	(same)
	New completeness requirements and review procedures	§ 2774(c)-(d)	§ 2772.1
	Appeals	§ 2770	§ 2770(e)-(g)
	Idle mine requirements for LA borrow pits	n/a	<b>§ 2770.1</b>
Inspections	Inspections (including training)	§ 2774	(same)
Enforcement	Violations	§ 2774.1	(same)
	Administrative penalties	§ 2774.2	(same)
	SMGB takeover of LA authority	§ 2774.4	(same)

**Financial Assurances**

# Financial Assurances

**Financial Assurances**

- **Substantive changes** ↪ § 2773.1
  - **Annual FACE adjustments**
    - FAM adjustment only required for increases ↪ § 2773.1(a)(3)
  - **FAM release**
    - Requires LA and DOC written consent ↪ §§ 2773.1(a)(5), 2773.1(c)  
(conforms statute to regulation)
  - **New FACE form** (under development) ↪ § 2773.1(a)(4)
  - **Corporate self-bonding** (to be developed) ↪ § 2773.1.5
    - Based on financial tests
    - Allowed only for companies with net worth ≥ \$35 million  
(*more later*)

## Financial Assurances

- **Substantive changes (con't)** ↪ § 2773.1
  - **FAM forfeiture**
    - If LA (or SMGB acting as LA) has “evidence” that an operator is financially incapable or has abandoned, LA/SMGB holds hearing ↪ § 2773.1(b)(1)
    - Streamlined hearing and seizure requirements:
      - 60-day period to “commence” reclamation eliminated
      - LA/DOC reclaims (or remediates if bond is inadequate to fully reclaim) ↪ § 2773.1(b)(2)(C)
  - **In cases of sale or transfer...** ↪ § 2773.1(c)
    - Within 15 days, new owner signs new statement of reclamation responsibility
    - Within 90 days, buyer submits FAM to LA and DOC
      - Can be new FAM or transfer of existing FAM

## Financial Assurances

- **Corporate self-bonding** ↪ § 2773.1.5
  - **Allowed per new § 2773.1.5 (exception to § 2773.1(e))**
    - SMGB must first adopt regulation assessing financial status
  - **Criteria** ↪ § 2773.1.5(b)(1)
    - Net worth at least \$35 million (adjusted annually per CPI);
    - Income and U.S. assets; and
    - Liabilities, including “other environmental assurances”
  - **Other requirements/provisions** ↪ § 2773.1.5(b)(2), (c)-(d)
    - Self-bonding limited to 75% of FACE (especially for companies with multiple operations)
    - Annual review/approval required by LA and DOC
    - Multiple operations can combine FACEs to pass financial test
    - Must provide independent assessment by certified accountant
    - Regulation will give LA/DOC “additional measures” to recover costs “associated with the full collection and satisfaction” of FAMs
  - **Note:** DOC or LA can disallow self-bonding ↪ § 2773.1.5(b)(2)(B)(iii)  
(i.e., self-bonding will not be required, but may not allowed)

## Financial Assurances

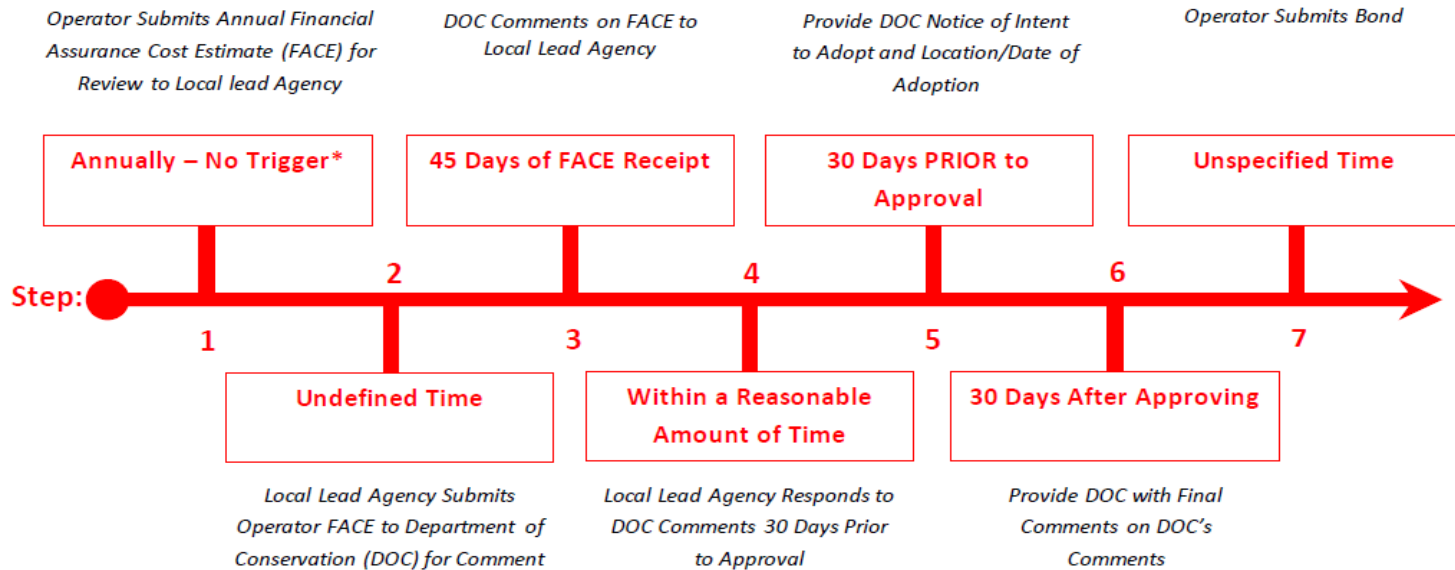
- **FACE approval process** ↪ § 2773.4 (was § 2774)
  - **Now two separate processes**
    - 1) FACE for new or amended Rec Plan ↪ § 2773.4(a)-(c)
    - 2) Annual FACE review/update ↪ § 2773.4(d)
  - **Significant changes that apply to both processes**
    - **New** process for DOC to determine that FACE submittal is incomplete and remand for revisions
    - **New** DOC “consultation” with LA/operator if DOC’s comments not adopted
    - **New** DOC has right to appeal FACE approvals to SMGB ↪ § 2770(e)-(g)
      - More on this in moment
    - **New** deadlines, especially for annual FACE reviews (designed to create accountability and ensure approval)
    - Must submit FAM within 30 days of FACE approval (15-day review period for sufficiency of FAM submittal)



Financial Assurances

- Existing FACE approval process (new + annual)

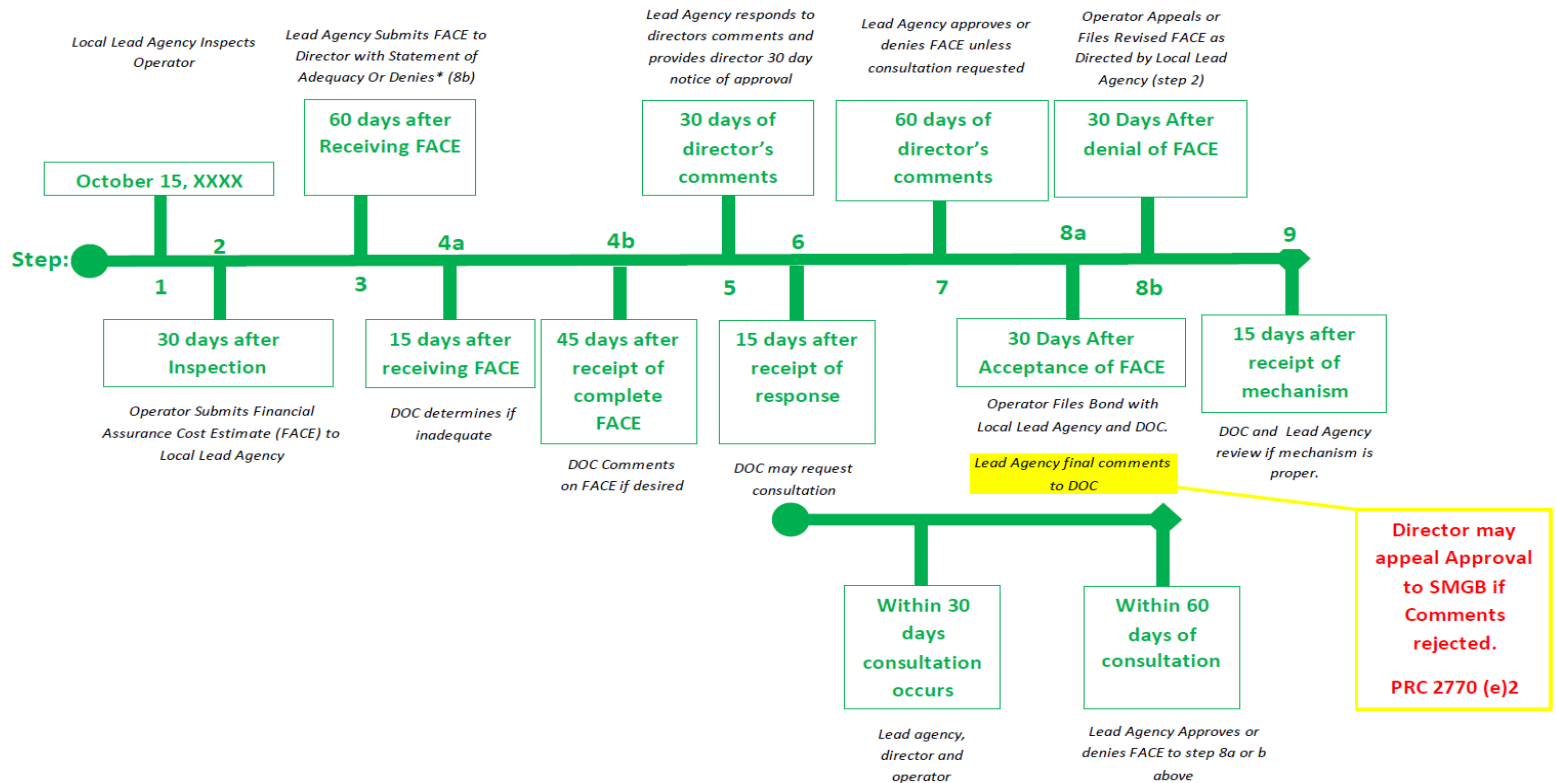
Existing Annual Financial Assurance Cost Estimate (FACE) Timeline



Financial Assurances

• New Annual FACE approval process

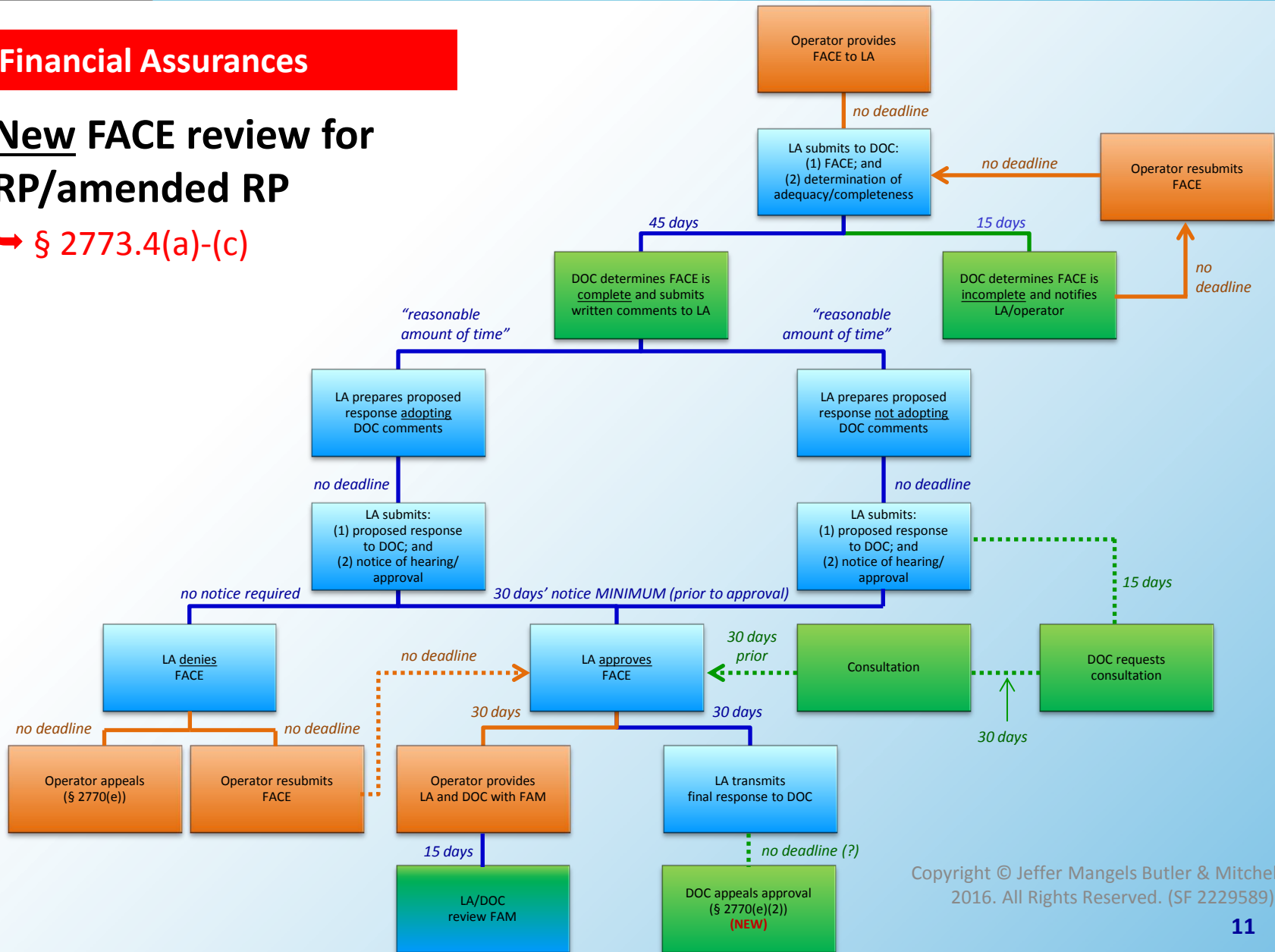
AB 1142 Annual Financial Assurance Cost Estimate Timeline  
Hypothetical October 15<sup>th</sup> Inspection Date



Financial Assurances

New FACE review for  
RP/amended RP

↪ § 2773.4(a)-(c)





**Financial Assurances****• FACE Appeals**

↪ § 2770(e)-(g)

- **Operators can continue to appeal LA FACE denial (or failure to act)** ↪ § 2770(e)(1)
  - SMGB has discretion to refuse appeal due to “no substantial issues” or untimeliness ↪ § 2770(f)(1)
- **But DOC may now appeal FACE approvals by LAs** ↪ § 2770(e)(2)
  - DOC must first comment on FACE under § 2773.4
  - SMGB must hear appeals by Director
  - SMGB to adopt/revise appeals regulations accordingly ↪ § 2770(f)(1)
- **Required financial assurances during appeals**
  - New/amended Rec Plan: Must provide FAM pending appeal ↪ § 2770(e)(3)
  - FACE update: Must maintain existing FAM pending appeal ↪ § 2770(e)(4)
- **Standard of review/remand**
  - Does FACE “substantially” meet applicable requirements? ↪ § 2770(g)(1)(B)
    - “Substantially” = “actual compliance in respect to the substance and form requirements essential to the objectives of this chapter”
  - SMGB hearing w/in 45 days of appeal filing (or longer if agreed)
  - If SMGB upholds DOC appeal at hearing: ↪ § 2770(g)(3)
    - Within 10 days, SMGB provides notice of adequate cost estimates for each deficiency
    - Operator submits revised FACE (30 days or longer), which LA “shall” approve

**Reclamation Plans**

# Reclamation Plans

## Reclamation Plans

- **Reclamation plan content** ↪ § 2772
  - Rec Plan content consolidated into one document
  - Rec Plan must include a chart identifying where content is located (page number, chapter, appendix, etc.) ↪ § 2772(b)
  - Maps, calculations, etc. must, where relevant, be stamped by licensed engineers, geologists, land surveyors, etc. ↪ § 2772(c)(5)(F)
  - Clarifies manner in which all or part of use permit application or CEQA documents, such as mitigation measures, may be included by reference into Rec Plan ↪ § 2772(d)

## Reclamation Plans

### • Approval process

↪ § 2772.1 (was § 2774)

- Similar to existing law but with more steps and revised timelines
- Process now consolidated into single, separate SMARA section
- LA submits Rec Plan/amendment for Director review “as early as practicable” to facilitate CEQA review ↪ § 2772.1(a)(1)
- Then:
  - LA certifies Rec Plan complete, complies with SMARA and mining ordinance ↪ § 2772.1(a)(3)
  - Director must notify LA of incomplete submission within 30 days ↪ § 2772.1(b)(1)
  - Director then has at least 30 days to comment on Rec Plan ↪ § 2772.1(b)(2)-(3)
  - LA must then:
    - Review Director’s comments “within a reasonable amount of time” ↪ § 2772.1(b)(4)-(6)
    - At least 30 days before the “intended approval” of the Rec Plan, LA must send written response to the Director explaining what changes it will adopt in response to Director’s comments
    - Must provide 30 days’ notice of hearing (or intended approval date)
- Following approval, LA must send to Director: ↪ § 2772.1(b)(7)
  - Notice of approval within 30 days of hearing/approval
  - Official copy of Rec Plan within 60 days of approval, including:
    - » Final index updating locations of all incorporated documents (permit conditions, mitigation, etc.)
    - » All indexed documents in appendix that form part of reclamation obligation, annual inspections, etc.

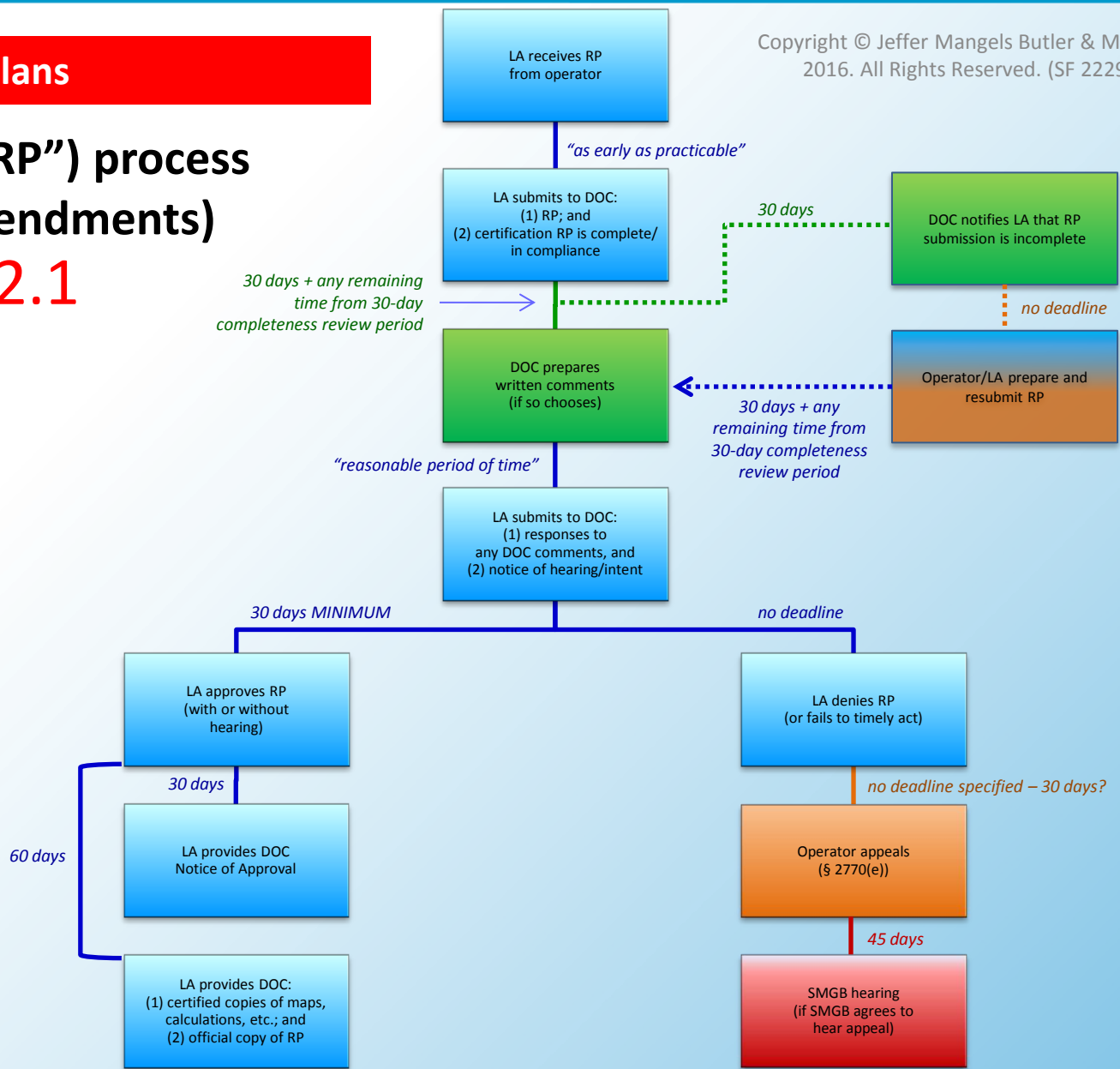


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### Reclamation Plans

## Rec Plan ("RP") process (new & amendments)

↪ § 2772.1



## Reclamation Plans

- **Appeals** ↪ § 2770(e)(1), (f)-(g)
  - Remain mostly unchanged for Rec Plans
  - Operators can continue to appeal LA Rec Plan denials (or inaction) ↪ § 2770(e)(1)
    - SMGB has discretion to refuse appeal due to “no substantial issues” or untimeliness ↪ § 2772.0(f)(1)
  - Unlike FACEs, Director may not appeal Rec Plan approvals
    - New § 2770(e)(2) limited to FACEs
  - **Standard of review**: Same for FACE—i.e., SMGB determines if Rec Plan “substantially” meets applicable requirements ↪ § 2770(g)(1)(B)
    - “Substantially” = “actual compliance in respect to the substance and form requirements essential to the objectives of this chapter”
  - **If SMGB denies operator appeal at hearing:** ↪ § 2770(g)(2)
    - SMGB must hold hearing within 45 days of appeal filing (or longer if agreed)
    - Within 10 days, SMGB provides operator and LA with notice of determination, and returns Rec Plan with notice of deficiencies; operator has 30 days (or longer if agreed) to submit revised Rec Plan to LA for “review and approval”

**Key Points**

- **What new State agency rules and guidance are expected as a result of AB 1142 and SB 209?**
  - **Explicitly required by the bills:**
    - Revised annual FACE form ↪ §§ 2773.1(a)(4)
      - No deadline, but draft issued Sept. 7, 2016
      - Workshops 9/27 (Redding) and 10/4 (Santa Ana)
    - Revised FAM form (by July 1, 2018) ↪ 2773.4(e)(3)
      - SMGB develops and approves
    - Training for SMARA inspectors (by Dec. 31, 2017) ↪ § 2774(e)
    - Regulation for corporate self-bonding ↪ § 2773.1.5(b)
  - **Implicitly required:**
    - Modified FACE appeal regulations ↪ § 2770  
(14 C.C.R. §§ 3680-3690), including new regulation for appeals by DOC of FACE approvals

**Key Points**

- **What can you do to prepare? Among other things:**
  - Participate in the SMGB **rulemaking** and regulatory guidance **process**
  - Understand the **revised interface points with DOC** (including timelines)
  - Know the **technical and organizational requirements for “complete” FACES and Rec Plans**
  - **Anticipate questions** about these topics, timing with annual inspections, and corporate self-bonding

**For more information**

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