



# California Regulatory Notice Register

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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**PROPOSED ACTION ON REGULATIONS**

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**TITLE 2. FAIR POLITICAL PRACTICES COMMISSION**

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict-of-interest codes, will review the proposed/amended conflict-of-interest codes of the following:

**CONFLICT-OF-INTEREST CODES**

**ADOPTION**

MULTI-COUNTY: Julian Charter Schools

**AMENDMENT**

STATE AGENCY: Department of Fair Employment and Housing

A written comment period has been established commencing on July 5, 2019 and closing on August 19, 2019. Written comments should be directed to the Fair Political Practices Commission, Attention Amanda Apostol, 1102 Q Street, Suite 3000, Sacramento, California 95811.

At the end of the 45-day comment period, the proposed conflict-of-interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced conflict-of-interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director of the Commission, upon his or its own motion or at the request of any interested per-

son, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than August 19, 2019. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

**COST TO LOCAL AGENCIES**

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

**EFFECT ON HOUSING COSTS AND BUSINESSES**

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

**AUTHORITY**

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict-of-interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

**REFERENCE**

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict-of-interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

**CONTACT**

Any inquiries concerning the proposed conflict-of-interest code(s) should be made to Amanda Apostol, Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California 95811, telephone (916) 324-5854.

**AVAILABILITY OF PROPOSED CONFLICT-OF-INTEREST CODES**

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the re-

spective agency. Requests for copies from the Commission should be made to Amanda Apostol, Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California 95811, telephone (916) 324-5854.

### TITLE 3. DEPARTMENT OF PESTICIDE REGULATION

#### PESTICIDE HANDLERS, COTTON HARVEST AIDS, PERSONAL PROTECTIVE EQUIPMENT EXEMPTIONS AND FIELD FUMIGATION POSTING DPR REGULATION NO. 19-002

The Department of Pesticide Regulation (DPR) proposes to amend Title 3, California Code of Regulations (3 CCR) sections 6000, 6470, 6738.4, 6776, and 6784. The pesticide regulatory program activities affected by the proposal are those pertaining to pesticide worker safety and pesticide enforcement. In summary, the proposed action will amend DPR's existing regulations to increase clarity, enforceability and consistency with federal standards, and align field soil fumigation posting requirements with pesticide product labeling. Field soil fumigation posting requirements include posting responsibility, sign content, and posting duration.

#### SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on August 21, 2019. Comments regarding this proposed action may also be transmitted via e-mail to <dpr19002@cdpr.ca.gov> or by facsimile at 916-324-1491.

A public hearing is not scheduled. However, one will be scheduled if any interested person submits a written request to DPR no later than 15 days prior to the close of the written comment period.<sup>1</sup>

#### EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does affect small businesses.

<sup>1</sup> If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DPR protects human health and the environment by regulating pesticide sales and use, and by fostering reduced-risk pest management. DPR's strict oversight includes: product evaluation and registration; statewide licensing of commercial and private pesticide applicators, pest control businesses, dealers, and advisers; environmental monitoring; and residue testing of fresh produce. This statutory scheme is set forth primarily in Food and Agricultural Code (FAC) Divisions 6 and 7.

FAC section 12980 requires that DPR work jointly with the Office of Environmental Health Hazard Assessment (OEHHA) to develop regulations to ensure safe working conditions for persons handling pesticides and working in and around pesticide-treated areas. FAC section 12981 requires DPR to adopt regulations to accomplish the Legislature's intent relative to ensuring safety in the pesticide workplace. DPR's current regulatory requirements for pesticide safety training, personal protective equipment (PPE), field posting, and notice of completed applications are designed to reduce the risk of pesticide exposure and injuries among pesticide handlers and workers exposed to pesticides.

"Handle" is currently defined in 3 CCR section 6000 and the definition includes the term "greenhouse." In 2017 and 2018, DPR amended California's pesticide worker safety regulations to be consistent with the revised federal Worker Protection Standard (WPS). During the 2017 regulatory action, the definition of "greenhouse" was deleted from section 6000 and the definition of "enclosed space," which includes greenhouses, was added to section 6000 to align with the federal WPS usage of the term "enclosed space production." Since the definition of "greenhouse" was deleted, DPR changed "greenhouse" to "enclosed space" throughout 3 CCR Division 6 where its use is consistent with the federal WPS. The section 6000 definition of "Handle" was inadvertently overlooked when the earlier changes were made. This proposed action amends the definition of "Handle" by changing the term "greenhouse" to the new term "enclosed space." Additionally, the definition is proposed to be split into subsections to aid in clarity and readability.

Subsection 6470(a) describes requirements for employers using the listed pesticides as cotton harvest aids. This subsection also refers to a definition of "closed system" in section 6000 that no longer exists. Effective January 1, 2016, the definition of "closed system" was removed from section 6000 as DPR adopted a performance-based standard for this equipment during a regulatory action. For clarity, this proposed action removes the reference to section 6000 from subsection 6470(a) and makes minor grammatical edits.



Section 6738.4 currently allows PPE to be modified in certain situations and states that exempted PPE must be “available” for use at the worksite. The federal WPS requires exempted labeling PPE to be “immediately available” to the handler when the handler is using a closed system or enclosed cab. DPR proposes to amend section 6738.4 by establishing that labeling–required PPE must be within immediate reach when using a closed system or enclosed cab. Minor edits are also being made for readability.

Currently, subsection 6776(f) requires that when a fumigant is applied to a field, the field must be posted with a sign containing specific information, such as the date and time of fumigation. Subsection 6784(a) currently requires that this sign remain posted until aeration is complete. The proposed amendments to these sections address: posting responsibility, sign content, and posting duration. DPR’s proposed amendments to these subsections establish the operator of the property as the party responsible for posting a warning sign when a soil fumigant is applied to a field, and require the field fumigation warning sign to include information specified by product labeling, such as the date and time the Entry Restricted Period ends. The proposed regulations also amend the sign posting duration requirements, specifying when the sign is to be posted, how long the sign shall remain posted, and when the sign shall be removed. It also clarifies that the posted signs are to remain legible for the duration of the posting. The amendments also include a proposed restructure of both subsections for clarity and readability.

Adoption of these regulations will provide a benefit to worker safety. The FAC requires that DPR adopt regulations that provide for safe working conditions for persons handling pesticides and working in pesticide–treated areas, including regulations on the subject of PPE and other protective devices. The regulations clarify and reduce ambiguity of current requirements, more closely align California’s requirements with the federal WPS and pesticide labeling, and help ensure that pesticide users correctly comply with requirements that benefit worker safety.

During the process of developing these proposed regulations, DPR conducted a search of any similar regulations on this topic and has concluded that these proposed regulations are neither inconsistent nor incompatible with existing state regulations. Although DPR and the California Department of Industrial Relations, Division of Occupational Safety and Health, have regulatory mandates to protect workers from health and safety hazards in workplaces, DPR enforces pesticide laws in workplaces where pesticides are used.

#### IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR determined that the proposed regulatory action does not impose a mandate on local agencies or school districts. DPR also determined that there are no costs to any local agency or school district requiring reimbursement pursuant to Government Code section 17500 et seq. There are no other nondiscretionary costs or savings imposed upon local agencies that are expected to result from the proposed regulation action.

#### COSTS OR SAVINGS TO STATE AGENCIES

DPR determined that no savings or increased costs to any state agency will result from the proposed regulatory action.

#### EFFECT ON FEDERAL FUNDING TO THE STATE

DPR determined that no costs or savings in federal funding to the state will result from the proposed action.

#### EFFECT ON HOUSING COSTS

DPR made an initial determination that the proposed action will have no effect on housing costs.

#### SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR made an initial determination that adoption of this regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

#### COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Impact on the Creation, Elimination, or Expansion of Jobs/Businesses: DPR determined it is not likely the

proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business with the State of California because the proposed regulations are intended to align with federal standards.

The proposed regulations will benefit worker safety by further strengthening current regulations that are already designed to reduce the risk of pesticide poisonings and injuries among pesticide handlers and other agricultural workers exposed to pesticides. Ensuring that pesticide users comply with the newly adopted regulations will benefit worker safety. Implementation of the proposed regulations will not adversely affect the health and welfare of California residents or the environment.

#### CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, 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 regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law.

#### AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 11456, 12976, 12981, 14005, and 14102.

#### REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 11501, 12980, 12981, 14006, and 14102.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR prepared an Initial Statement of Reasons and is making available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied

in preparing this proposal and the rulemaking file are available for review at the address specified below.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make substantial changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

#### AGENCY CONTACT

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons, and the proposed text of the regulation; and inquiries regarding the rulemaking file may be directed to:

Lauren Otani, Environmental Scientist  
Department of Pesticide Regulation  
1001 I Street, P.O. Box 4015  
Sacramento, California 95812-4015  
916-445-5781

Note: In the event the contact person is unavailable, questions on the substance of the proposed regulatory action may be directed to the following back-up person at the same address as noted above:

Nathan Desjarlais  
Senior Environmental Scientist (Specialist)  
Enforcement Branch  
916-445-5779

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>. Upon request, the documents can be made available in another language, or an alternate form as a disability-related accommodation.

#### AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

## TITLE 8. OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

### Modifying Requirement to Produce Citations on Appeal and Modifying Discovery Rules

The Occupational Safety and Health Appeals Board (“Board”) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed actions.

#### PUBLIC HEARING

The Board will hold a public hearing on **August 22, 2019**, at its normally scheduled public meeting held at 2520 Venture Oaks Way, Suite 300 in Sacramento, CA 95833 and 100 North Barranca Street, Suite 410, West Covina, CA 91791 at 9:30 a.m. The locations are wheelchair accessible. At the hearing, any person may present statements orally or in writing relating to the proposed action described in the Informative Digest. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory actions to the Board. Comments may also be submitted by email to [ajackson@dir.ca.gov](mailto:ajackson@dir.ca.gov). The written comment period closes at 5:00 p.m. on **August 22, 2019**. The Board will consider only those comments received at the Board offices by that time. Written comments should be submitted to:

Aaron Jackson, Staff Counsel  
Cal/OSHA Appeals Board  
2520 Venture Oaks Way, Suite 300  
Sacramento, CA 95833

#### AUTHORITY AND REFERENCE

Labor Code (LC) section 148.7 authorizes the Board to adopt, amend, or repeal rules of practice and procedure pertaining to hearing appeals and other matters falling within its jurisdiction. The Board is charged with hearing and resolving appeals filed by employers for occupational safety and health citations issued by the Division of Occupational Safety and Health (Division).

The Board initiates this rulemaking to modify its Rules of Practice and Procedure. The Board consists of three members appointed by the Governor and confirmed by the Senate. The Board hears and resolves appeals from private and public-sector employers regarding citations issued by the Division alleging violations of workplace safety and health laws and regulations. Appeals are initially held before an Administrative Law Judge (ALJ) appointed by the Board. If a party is dissatisfied with the ALJ’s decision, a party may request reconsideration by the Board. The Board may also reconsider a matter on its own motion.

The Board proposes to make several modifications to its Rules of Practice and Procedure to add greater clarity and transparency to the Board’s current practices, and to provide greater efficiencies in its proceedings.

The Board proposes several modifications to California Code of Regulations, title 8, sections 359.1 and 361.3. The Board’s rules do not currently distinguish between a docketed and a perfected appeal; the terms are functionally synonymous. In order for an employer’s appeal to be docketed and perfected, section 359.1 requires, among other things, that the employer provide the Board copies of the citations it is appealing. The Board proposes modifications to sections 359.1 and 361.3 that will eliminate the requirement that the employer provide the Board copies of the citations it is appealing. The Board proposes instead to require that the Division provide copies of the appealed citations. To remove the requirement that an employer provide copies of the citations being appealed and place that burden on the Division, it is necessary for the Board to modify its rules concerning docketing and perfecting an appeal. The Board will need to distinguish the procedures for docketing and perfecting an appeal, and allow an employer’s appeal to be docketed before it is deemed perfected. The Board will have to delay determination of whether an appeal has been perfected until after it receives a copy of the appealed citations from the Division.

The Board proposes modifications to sections 359.1 and 361.3 that will allow an employer’s appeal to be docketed, without first being perfected, when it provides the Board certain basic information, such as its contact information, the inspection number, the citation and item numbers it is appealing, and the components of the citation(s) it is challenging. An employer need not provide the Board a copy of the citations it is appealing. Once the appeal is docketed, the Board will serve on the parties a “Notice of Docketed Appeal.” After service of this notice, the Division will have 15 working days to provide the Board a copy of all the citations being ap-



pealed. Once the Division provides a copy of the citations being appealed, if the Board determines that the employer's appeal was initiated timely and all required information has been properly submitted, the employer's appeal will then be deemed perfected and the Board will provide the parties a notice advising that the appeal has been perfected.

Further, the proposed revisions to section 359.1 will specify that party discovery may commence upon perfection of an appeal. The Board will provide the parties a notice informing them of their right to conduct discovery. The notice shall inform the parties of the discovery mechanisms available under its regulations, including those contained in sections 372, 372.1, 372.2, and 372.3.

The Board also proposes to reword certain portions of section 359.1 and 361.3 to make them more readily understandable and proposes a modification to the title of section 359.1.

The aforementioned changes to sections 359.1 and 361.3, which modify the Board's rules concerning docketing and perfecting an appeal, will require modification to several other regulations in order to make the Board's rules internally consistent. The Board proposes changes to the definitions contained in section 347 to make them consistent with the proposed changes to sections 359.1 and 361.3. The definition of "Docketed" will be modified to reflect that an appeal need not be perfected in order to be docketed. Further, a definition will be created for "Docket Number," which provides that the docket number will be the same as the inspection number.

The Board also proposes modifications to section 373, concerning expedited proceedings, to make it consistent with the changes to sections 359.1 and 361.3. Specifically, the Board proposes to modify section 373, subsection (c), to require that the Board provide an employer a copy of the notice advising that the appeal has been perfected. The Board also proposes to alter section 373, subsection (c)(1) to require, in expedited proceedings, that a telephonic status conference be held within 30 days of perfection of the appeal, rather than within 30 days of docketing.

The Board also proposes two modifications to section 372.2 concerning the issuance of subpoenas in Board proceedings in an effort to create greater efficiencies. First, the Board proposes to modify section 372.2 to require licensed members of the California State Bar, acting in a representative capacity, to issue their own subpoenas and subpoenas *duces tecum*. Attorneys may use an optional subpoena form provided by the Board for the issuance of the subpoenas. A subpoena issued by an attorney must advise the subpoenaed party or witness of their right to file a motion to quash or modify the subpoena with the Appeals Board. Second, the Board pro-

poses to give Board staff five working days to process requests for subpoenas, except that this time period may be shortened on a showing of good cause.

Finally, the Board proposes the repeal of section 372.9, which requires that the Division provide employers copies of all documents and evidence in its possession within a specified 30-day period.

*Anticipated Benefits of the Proposed Regulations:*

Anticipated Benefits of Proposed Revisions to Sections 359.1 and 361.3 — The current requirement, contained in section 359.1, that an employer provide copies of the citations it is appealing in order to docket and perfect its appeal has proven to be confusing and counterintuitive for some employers, such as small businesses, resulting in the dismissal of some appeals on procedural grounds. The Board seeks to reduce the number of appeals dismissed for procedural reasons by making the appeal and docketing process simpler for employers and removing the requirement that the employer provide copies of the citations. The Board anticipates that these regulatory changes will reduce the number of appeals dismissed on procedural grounds and increase the number of employer appeals heard on the merits.

Anticipated Benefits of Proposed Revisions to Sections 347 and 373 — The proposed changes to these rules will make them consistent with the proposed changes to sections 359.1 and 361.3, discussed above.

Anticipated Benefits of Proposed Revisions to Section 372.2 — Several California jurisdictions allow licensed members of the California State Bar to issue subpoenas. It is routinely allowed by California courts and some other state agencies. (See, e.g., Code of Civil Procedure § 1985.) The Board discerns no reason why attorneys permitted to issue subpoenas in California courts should not also be allowed to do so in Board proceedings. Board staff must spend time processing requests for subpoenas, including for those parties represented by counsel. The Board anticipates that the proposed modification to section 372.2, requiring members of the California State Bar to issue their own subpoenas, will reduce the amount of Board staff time spent processing subpoena requests. This modification will ensure better utilization of Board resources. In addition, for those parties not represented by counsel who continue to request subpoenas from the Board, the proposed modification to section 372.2 allowing Board staff five working days to process subpoenas will ensure that Board staff is not unnecessarily burdened by last minute and dilatory requests for issuance of subpoenas. The proposed modification will allow Board staff to better plan and manage their workload, and promote greater efficiencies in Board operations.



Anticipated Benefits of Proposed Repeal of Section 372.9 — The Board proposes repeal of section 372.9 because application of the rule is not desirable or beneficial in all cases. Section 372.9 currently requires, in each and every case, that the Division automatically provide each appealing employer copies of all documents and evidence within its possession related to the employer’s appeal within a 30–day time period. Division staff must spend time providing these documents in each case. However, not every case needs or benefits from this mandatory discovery rule. Many cases settle early without the need for an exchange of documents and evidence. In such cases, the automatic production of discovery required in section 372.9 becomes an unnecessary burden on the Division. The repeal of this section will provide greater efficiencies and ensure better utilization of resources, as the Division will only be required to produce discovery when it receives a written discovery request, i.e. where the discovery is needed and wanted by the requesting employer. The repeal of section 372.9 may also save employers money. Under section 372.9, the Division has to make copies of all documents and evidence in its file and provide them to the employer. The Division requires an employer to pay a certain amount of money for these copies, e.g. 20 dollars for production of a compact disc containing data. The repeal of the section will benefit employers because they will no longer be required to incur copying charges in each and every case, but rather only in cases where they explicitly make a written discovery request.

*Determination of Inconsistency/Incompatibility with Existing State Regulations:*

The Board has concluded that these changes related to the Board’s Rules of Practice and Procedure are not inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the Board has concluded that these are the only regulations that concern the Board’s internal rules of practice and procedure concerning the perfection of an employer’s appeal, subpoenas in Board proceedings, and the Division’s production of evidence when an appeal is filed.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following initial determinations:

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

**Cost or savings to any state agency:** There are three major elements to the Board’s current proposal. The proposed rule changes will result in some additional costs and savings for both the Division and the Appeals Board. While the exact costs and savings are unknown, they should not exceed the amounts specified below.

Sections 347, 359.1, 361.3, and 373 — The proposed changes to these sections will shift the duty to provide the citation package from the employer to the Division. Both the Division and Board will incur some costs as a result of this change. It is estimated that Division Management Services Technicians (MSTs) will spend 10–15 minutes per case, on average, electronically uploading the citations to the Board’s electronic case file within the Board’s OASIS system. The Board receives approximately 2,800 appealed cases per year. The MSTs are estimated to work at an hourly rate (with benefits) of 30.60 dollars,<sup>1</sup> meaning the costs for the Division’s MSTs to provide the citations should not exceed 21,420 dollars. (2,800 appealed cases \* .25 hours \* 30.60 hourly wage = 21,420 dollars.) The Board also estimates a 0.6 percent increase in the number of overall appeals it receives, representing an increase of approximately 17 appeals per year. However, the Board cannot quantify the exact costs it will incur handling this increase. It would require speculation as to whether each

<sup>1</sup> The MST hourly rate was calculated using the mid–range monthly salary for the position on the Civil Service Pay Scale <[https://www.calhr.ca.gov/Pay%20Scales%20Library/PS\\_Sec\\_15.pdf](https://www.calhr.ca.gov/Pay%20Scales%20Library/PS_Sec_15.pdf)>. The base salary for that position was 2,822 dollars and the max salary 4,111 dollars, making the mid–range salary 3,467 dollars. The Board determined the hourly rate for the employees based on an estimate of 173.33 hours per month. The Board then added an additional 53% for other benefits. 3,467 dollar monthly salary / 173.33 hours per month = 20 dollars per hour. 20 dollars \* 1.53 benefits = 30.60 dollar hourly rate with benefits.

additional case will settle early, require a hearing, require a decision, require reconsideration, or proceed to a writ stage. No savings are anticipated from these rule changes.

**Section 372.2** — This rule change will require attorneys issue their own subpoenas. It is not anticipated that either the Division or the Board will incur any costs as a result of the proposed rule change. The Board will incur some savings. The Board receives approximately 1000 requests for subpoenas each year, with each taking on average 15 minutes to process. The subpoena requests are generally processed by a Legal Analyst, working at an estimated hourly rate (with benefits) of 43.89 dollars,<sup>2</sup> which means that the Board incurs approximately 10,972<sup>3</sup> dollars per year in personnel costs processing subpoenas. The Board anticipates a 90 percent reduction in the amount of subpoena requests it will receive, since most subpoena requests come from attorneys. This will result in annual personnel savings of approximately 9,875 dollars.

**Section 372.9** — The repeal of this rule will produce savings to the Division. The Board estimates it takes on average one hour and 15 minutes for a Division MST to produce discovery to an Employer. Assuming that the Division strictly complied with section 372.9 for all appealed cases, the Division would incur annual costs of approximately 107,100 dollars producing discovery for each appealed case. (2,800 appealed cases \* 1.25 hours \* 30.60 hourly wage = 107,100 dollars.) Following the repeal of this rule, while the Division would still be required to incur discovery production costs when a written discovery request is made, it would not automatically incur such costs in all cases as required by section 372.9. The Board estimates that at least 34 percent of cases, or approximately 952 cases annually, will settle without issuance of a written discovery request, since approximately 34 percent of cases settle within the first 90 days. Following the repeal of section 372.9, the Division may be required to produce discovery in, at most, 66 percent of cases rather than 100 percent of cases, conveying savings of 36,414 dollars. However, this projection of savings may be high. First, the projection assumes the Division's strict compliance with section

<sup>2</sup> The Legal Analyst hourly rate was calculated using the mid-range monthly salary of 4,973 dollars for the position on the Civil Service Pay Scale <[https://www.calhr.ca.gov/Pay%20Scales%20Library/PS\\_Sec\\_15.pdf](https://www.calhr.ca.gov/Pay%20Scales%20Library/PS_Sec_15.pdf)> The base salary for that position is 4344 dollars and the max salary is 5602 dollars, making the mid-range salary 4973 dollars. The Board determined the hourly rate for the employees based on an estimate of 173.33 hours per month. The Board then added an additional 53% for other benefits. 4,973 dollars monthly salary/173.33 hours per month = 28.69 dollars per hour. 28.69 dollars \* 1.53 benefits = 43.89 dollars hourly rate with benefits.

<sup>3</sup> Derived from following formula: 1,000 subpoena requests \* .25 hours \* 43.89 dollars hourly rate = 10,972 dollars.

372.9, but the Board is informed that the Division does not currently strictly comply with the section meaning they are not automatically incurring such costs in all cases. Next, there are also other reasons why the projection may be inaccurate. The percentage of cases where no written discovery request is made may be higher. Therefore, the exact savings are unknown. It is not anticipated that any costs will be incurred as a result of this rule change.

**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:** Based on a six-month sample of cases (cases both opened and closed in that time period), local government entity appeals represent approximately 1.3 percent of the appeals before the Board, or approximately 36 of 2800 appealed cases per year. The Board estimates that local government entities will have representatives. Assuming there was current strict compliance with section 372.9, following the repeal of that section, if a local entity wanted discovery from the Division, their representative will have to issue written discovery request. The Board estimates the representatives charge an hourly rate of approximately 300 dollars per hour. The Board estimates that the representatives will spend no more than 15 minutes issuing a written discovery request following the repeal of rule 372.9. The costs for issuance of a discovery request will be approximately 75 dollars per case. Due to the number of cases that settle within the first 90 days, the Board estimates written discovery requests may be made in, at most, 66 percent of appealed cases, representing 24 cases. The annual costs for issuance of discovery for such local government entities may be as much as 1,800 dollars annually (24 discovery requests × 75 dollars = 1,800 dollars), but is not expected to exceed that amount. But, as discussed above, this projection may be high. The projection assumes the Division's current strict compliance with section 372.9, but the Board is informed that the Division does not currently strictly comply with the section, meaning parties already often incur such costs. Next, there are also other reasons why the projection may be inaccurate. The percentage of cases where no written discovery request is made may be higher.

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

**Cost impacts on a representative private person or business:** There are three major elements to the Board's current proposal. While the exact costs and savings are unknown, they should not exceed the amounts specified below.

**Sections 347, 359.1, 361.3, and 373** — The proposed changes to these regulations remove the requirement

that an appealing employer provide copies of the citations being appealed to the Board, and shifts that burden to the Division. It is estimated no business will incur costs as a result of this rule change. However, savings are anticipated from these rule changes. By removing the requirement that employer provide copies of the citations, the proposed rule changes will make it easier and more efficient for employers and their representatives to file appeals, conveying a monetary benefit and savings to some employers. For self-represented businesses or individuals, the monetary benefit will be negligible and unquantifiable. It will simply make the process of filing an appeal faster and simpler. For businesses or individuals represented by an attorney or non-attorney representative, accounting for approximately half of all appeals before the Board, savings will depend on the rate charged by the representative. The Board estimates that employers in half of all appealed cases, or approximately 1,400 cases per year, have representation. The Board estimates that it takes representatives approximately 15 minutes to submit copies of the citations to the Board during the appeal process. As discussed above, the Board estimates an average hourly rate of 300 dollars per hour. The costs for submission of the citations will be approximately 75 dollars per case for represented parties, and the elimination of that requirement will convey an annual savings of approximately 105,000 dollars. (1,400 appealed cases with representatives  $\times$  75 dollars = 105,000 dollars.)

**Section 372.2** — The proposed changes to this regulation require licensed members of the California State Bar to issue their own subpoenas rather than requesting them from the Board. It is estimated that no business will incur a cost due to this proposed rule change. There are also no anticipated savings.

**Section 372.9** — The repeal of section 372.9, requiring the Division to automatically produce documents and evidence in its possession to an appealing employer within a specified 30-day time period may require employers to incur costs that would not be necessary were there strict compliance with section 372.9. However, the exact costs are unknown. Following the repeal of section 372.9, an employer desiring discovery will not be entitled to discovery as a matter of right, but will need to make a written request to the Division pursuant to the Board's other discovery rules (i.e., sections 372 and 372.1). Based on a sample of approximately 900 cases, approximately 34 percent of cases will be unlikely to require discovery requests since they settle within the first 90 days. Therefore, the Board estimates that written discovery requests may be made in, at most, 66 percent of appealed cases, representing approximately 1,848 cases per year.

For self-represented businesses or individuals, the costs for requesting discovery will be negligible and un-

quantifiable, amounting to no more than preparation of a written request for the limited items of discovery permissible under the Board's other discovery rules.

For business or individuals represented by an attorney or non-attorney representative, accounting for approximately half of appeals before the Board, the costs for issuance of a discovery request will depend on the rate charged by the representative, which will vary based on the representative's experience, qualifications, attorney status, and other metrics. The Board estimates an average hourly rate for representatives of 300 dollars per hour. The Board estimates representatives will spend no more than 15 minutes issuing a written discovery request, as the Board's discovery rules permit only limited discovery. The costs for issuance of a discovery request will be approximately 75 dollars per case for represented parties. The Board further estimates that businesses or individuals will be represented in half of all appealed cases. The annual costs for issuance of discovery for represented parties may be as much as 69,300 dollars annually (1,848 discovery requests – 50 percent of cases  $\times$  75 dollars = 69,300 dollars), but is not expected to exceed that amount. These costs would not be required if section 372.9 were in effect and strictly enforced. However, this initial cost projection may be high. The projection assumes the Division's strict compliance with section 372.9, but the Board is informed that the Division does not strictly comply with section 372.9, meaning parties already often incur such costs issuing written discovery. Next, there are also other reasons why the projection may be inaccurate. The percentage of cases where no written discovery request is made may be higher. Thus, the exact costs are unknown.

The repeal of the automatic discovery rule may also provide some savings to employers since they will only be required to incur copying charges for discovery that they specifically request, rather than automatically incurring copying charges in all cases. The Division is entitled to receive 0.19 cents per page copied. The Division charges approximately 20 dollars for compact disks containing digital copies of the discovery file. Following the repeal of section 372.9, the Board estimates that at least 34 percent of cases, or approximately 952 cases annually, will settle without issuance of a written discovery request. Again, approximately 34 percent of cases settle within the first 90 days (based on a sample of approximately 900 cases), conveying savings annually of as much as approximately 19,040 dollars. (952  $\times$  20 dollars = 19,040 dollars.) However, as discussed above, this projection of savings may be quite high. The projection assumes the Division's strict compliance with section 372.9 and it assumes 20 dollars for copying costs, but the Board is informed that the Division does not strictly comply with section 372.9 and that



copying costs may be lower in some instances. For these reasons, the exact savings are unknown. Likewise, discovery may be requested in a smaller percentage of cases.

**Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states:** None.

**Effect on Small Business:** The Board estimates the percentage of small businesses that appeal citations to the Board correlates to the percentage of small businesses in the economy at large. Based on data received from the California Employment Development Department (EDD), approximately 81.9 percent of businesses have less than nine total employees.<sup>4</sup> The effect on small business will be the same as for any employer. However, on balance, it is unlikely that the proposed regulations will negatively affect small business as these regulations generally serve to clarify the Board's policies and procedures and make the appeal process simpler for smaller employers. The Board anticipates that these regulatory changes will reduce the number of appeals dismissed on procedural grounds, particularly for small employers, and increase the number of employer appeals heard on the merits.

Results of the Economic Impact Analysis

The Board concludes that it is (1) unlikely that the proposed regulations will either create or eliminate any jobs in the State of California; (2) unlikely that the proposed regulations will lead to the creation of new businesses or the elimination of existing businesses within the State of California; and (3) unlikely that the proposed regulations will lead to the expansion of businesses currently doing businesses within the state of California.

**Benefits of the Proposed Action:** The procedural amendments directly benefit the health and welfare of California workers by clarifying and increasing the efficiency in the administrative process generally, which helps achieve the purpose of the Occupational Safety and Health Act and also benefits the public.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5 subdivision (a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency 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 per-

sons 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 Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Aaron Jackson, Staff Counsel  
ajackson@dir.ca.gov  
Cal/OSHA Appeals Board  
2520 Venture Oaks Way, Suite 300  
Sacramento, CA 95833  
Phone Number: (916) 274-5751

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

The designated backup contact person to whom inquiries may be made is J. Jeffrey Mojcher, and inquiries may be made to

J. Jeffrey Mojcher, Chief Counsel  
jmojcher@dir.ca.gov  
Cal/OSHA Appeals Board  
2520 Venture Oaks Way, Suite 300  
Sacramento, CA 95833  
Phone Number: (916) 274-5751

AVAILABILITY OF STATEMENT OR REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the initial statement of reasons. Copies may be obtained by contacting Mr. Jackson at the contact information listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in

<sup>4</sup> EDD, California Establishments by Size Class, Third Quarter 2017 <[https://www.labormarketinfo.edd.ca.gov/file/indsize/chart\\_sob2017\\_3.pdf](https://www.labormarketinfo.edd.ca.gov/file/indsize/chart_sob2017_3.pdf)> [accessed 4.2.2019].



this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Mr. Jackson at the address indicated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Mr. Jackson at the above address.

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikethrough can be accessed through our website at <https://www.dir.ca.gov/oshab/Rulemaking.htm>.

### **TITLE 10. BUREAU OF REAL ESTATE APPRAISERS**

NOTICE IS HEREBY GIVEN that the Bureau of Real Estate Appraisers (“Bureau” or “BREA”) is proposing to take the action described in the informative digest below.

#### PUBLIC HEARING

The Bureau has not scheduled a public hearing on this proposed action. However, the Bureau will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under “Contact Person” in this Notice.

#### COMMENT PERIOD

Written comments, including those sent by mail or email to the address listed under “Contact Person” in this Notice, must be received by the Bureau at its office not later than 5:00 p.m. on August 23, 2019.

#### AVAILABILITY OF MODIFICATIONS

The Bureau, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written comments related to this proposal or who have requested notification of any changes to the proposal.

#### AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 11313, 11314, 11324, 11340, 11350, and 11352 of the Business and Professions Code and to implement, interpret and make specific Sections 11340, 11350, and 11351 of the Business and Professions Code, the Bureau is considering revising sections 3525, 3541, and 3542 to Title 10 of the California Code of Regulations as described in this Notice.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Title 10, Section 3525(c) of the California Code of Regulations (“CCR”) requires Temporary Practice Permit (TPP) applicants be from states that are compliant with Title XI as determined by the Appraisal Subcommittee (ASC). The problem is the ASC rarely finds any state compliant with Title XI. Usually, there are minor and easily remedied deficiencies. These state deficiencies should not prohibit an applicant from receiving a TPP. The more meaningful measure is whether the ASC recognizes the state. Derecognition only occurs if the state has severe violations of Title XI. In those cases, licenses from that state should not be allowed to practice in California, even on a temporary basis. Therefore, the Bureau proposes to change the standard from “compliant” to “recognized.”

Section 3525 explains when a TPP is required. Currently, a TPP is required when any appraiser licensed in another state enters California to appraise or provide technical review services in a federally related transaction. The proposed change to the categories mentioned above includes removing the definition of “technical review.” As a result, section 3525(e)’s reference to “technical review” will become ambiguous and needs to be removed for clarity. Additionally, effective January 1, 2018, Business and Professions Code section 11302(b) redefined the term “appraisal” to be more encompassing as “the act or process of developing an opinion of

value for real property.” Considering the changes mentioned above, the Bureau proposes to require a TPP when a person licensed as an appraiser in a state other than California enters California to conduct an appraisal in a federally related transaction.

Section 3541 sets the minimum experience required for applicants to receive an appraiser license. The Appraisal Foundation’s Appraisal Qualification Board (AQB) reduced the experience requirements effective May 1, 2018. The Bureau must meet the requirements established by the AQB.<sup>1</sup> The Bureau is proposing to reduce its requirements to the AQB’s requirements. The proposed reduction will still ensure licensees have adequate experience while reducing the level needed to enter the profession and upgrade licenses.

Sections 3541 and 3542 contain a list of eleven categories. The applicant completes the license application and categorizes their experience. Regardless of category, all experience must be written and comply with the minimum requirements of Uniform Standards of Professional Practice (USPAP).<sup>2</sup> The categories are unnecessary as they merely detail the type of experience such as: fee; ad valorem; and review. The Bureau does not need to know what type (category) of experience was earned by the applicant. Instead, the Bureau simply needs to verify the work is written and complies with USPAP. This simplification will make the application process easier for the applicant because they will no longer need to spend time categorizing their experience. This will also make the Bureau’s evaluation process faster as categories will not be included in the application.

#### ANTICIPATED BENEFITS

The benefit is a streamlined application process with a lower level of experience required. This will assist in completing the application and encouraging more applicants to apply. While applicants will be encouraged to apply, the Bureau does not expect an increase in applicants and any increase would be unquantifiable. Additionally, it will benefit license applicants by clarifying section 3525 and ensuring all appraisals for federally

related transactions are completed by licensed individuals as required by federal<sup>3</sup> and state<sup>4</sup> law.

#### CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing these regulations, the Bureau has conducted a search of any similar regulations on this topic and has determined that there is no reasonable interpretation of any state regulation that is inconsistent or incompatible with the proposed action.

#### FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: There will be no substantial cost or savings. There may be a small increase in the number of applications due to the decrease in licensing requirements. However, the Bureau does not expect an increase and if there is an increase it will be unquantifiable.

Nondiscretionary Costs/Savings to Local Agencies: None.

Cost to, or mandate imposed on, any Local Agency or School District for Which Government Code Sections 17500–17630 Require Reimbursement: None.

Business Impact: The Bureau initially determines that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This is because the requirements for licensure are being slightly reduced, which will cause a modest and absorbable increase in applications.

Impact on Jobs/New Businesses: There will likely not be a significant enough increase in applications to impact jobs or businesses.

Cost Impact on Representative Private Person or Business: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None.

Effect on Small Businesses: The proposal slightly reduces the experience requirement which may cause a small increase in licensure, but will not be enough to effect small businesses.

#### RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

Impact on Jobs/New Businesses: There will be no creation or elimination of jobs or businesses nor will the

<sup>1</sup> Business and Professions Code section 11314.

<sup>2</sup> Business and Professions Code section 11314 states in relevant part: “Requirements for each level of licensure shall, at a minimum, meet the criteria established by the Appraiser Qualification Board of the Appraisal Foundation.” The Appraiser Qualification Board states in relevant part: “All experience must be obtained after January 30, 1989, and must be USPAP-compliant.” (See page 9 of AQB’s generic experience criteria.)

<sup>3</sup> 12 U.S.C. 3331.

<sup>4</sup> Business and Professions Code section 11320.

proposed regulations affect the expansion of existing businesses.

Benefits: The benefit is a streamlined application process that is easier for the applicant and the Bureau to complete and process.

Occupations/Businesses Impacted: None.

Reporting Requirements: There will be no new reporting.

Comparable Federal Regulations: None.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The benefit will be less time and stress spent filling out applications. There will be no benefit related to worker safety or the environment because the proposed action does not involve worker safety issues or the environment.

#### CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative considered by the Bureau or that has otherwise been identified and brought to the attention of the Bureau 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.

#### INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of reasons which contains the purpose, rationale, and necessity for the proposed action.

The proposed text, this notice, the statement of reasons, and any other relevant documents are on the Bureau's website at [www.brea.ca.gov](http://www.brea.ca.gov). Click the "Laws & Enforcement" tab at the top of the page. Under the heading "Rulemaking Notifications" find the documents associated with this rulemaking subject: "Minimum Experience."

#### AVAILABILITY AND LOCATION OF THE STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the person named below. As of the date this notice is

published in the Notice of Register, the rulemaking file consists of this notice, the proposed text of the regulation and the initial statement of reasons. Copies may be obtained by contacting the person named below or by accessing the website as provided above.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the person named below.

#### CONTACT PERSON

Inquiries or comments concerning the proposed rule-making action may be addressed to:

Kyle Muteff, Legal Counsel  
3075 Prospect Park Drive, Ste. 190,  
Rancho Cordova, CA 95670  
Phone: 916-341-6126  
FAX: 916-464-0131  
[kyle.muteff@brea.ca.gov](mailto:kyle.muteff@brea.ca.gov)

The backup person is:

Mary Ann Lopez  
3075 Prospect Park Drive, Ste. 190,  
Rancho Cordova, CA 95670  
Phone: 916-440-7876  
FAX: 916-464-0131  
[maryann.lopez@brea.ca.gov](mailto:maryann.lopez@brea.ca.gov)

#### TITLE 10. DEPARTMENT OF INSURANCE

REG-2019-00018

#### NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING REGARDING THE CALIFORNIA AUTOMOBILE ASSIGNED RISK PLAN PLAN OF OPERATIONS

#### SUBJECT OF HEARING

California Insurance Commissioner Ricardo Lara will hold a public hearing to address the proposed amendments to the California Automobile Assigned Risk Plan (CAARP) Plan of Operations.

#### AUTHORITY TO ADOPT RULES AND PROCEDURES AND REFERENCE

The Commissioner will consider the proposed changes pursuant to the authority vested in him by Sec-

tion 11620 of the California Insurance Code. The Commissioner's decision on the proposed changes will implement, interpret, or make specific the requirements of Insurance Code Section 11624(e). Insurance Code Section 11620(c) applies to this proceeding.

#### HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the application at the following date, time, and place:

**Date: August 22, 2019**

**Time: 1:00 p.m.**

**Place: Department of Insurance Hearing Room  
300 South Spring Street  
Los Angeles, CA 90013**

**The hearing will continue on the date noted above until all testimony has been submitted or until 5:00 p.m., whichever is earlier.**

#### ACCESS TO HEARING ROOM

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

#### WRITTEN AND/OR ORAL COMMENTS: AGENCY CONTACT PERSON

All persons are invited to submit written comments to the Insurance Commissioner on the application prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Contact Person:

Michael Riordan, Attorney  
California Department of Insurance  
Rate Enforcement Bureau  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
[riordanm@insurance.ca.gov](mailto:riordanm@insurance.ca.gov)  
Telephone: (415) 538-4226  
Facsimile: (415) 904-5490

The backup agency contact person for this proceeding will be:

Emily Gallagher, Attorney  
California Department of Insurance  
Rate Enforcement Bureau  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
[gallaghere@insurance.ca.gov](mailto:gallaghere@insurance.ca.gov)  
Telephone: (415) 538-4108

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

#### DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on August 22, 2019**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by e-mail or facsimile transmission. Please select only one method to submit written comments.

#### ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1-2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance  
Office of the Public Advisor  
300 Spring Street, 12<sup>th</sup> Floor  
Los Angeles, CA 90013  
Telephone: (213) 346-6635

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

##### CA 19-03

In the past two years, CAARP has experienced an increase in the number and size of Commercial Automobile Insurance Program ("CAIP") premium charge-offs. Many of the premium charge-offs can be attributed to cost of hire coverage. When the application is



completed, Federal Highway Administration or Federal Motor Carrier Safety Administration filings or endorsements are required for certain commercial risks. The fields are not always completed and if they are the number of vehicles/units is not always accurate. This leads to inaccurate policy amounts and vehicles being under-insured.

To provide more accurate premium development at the time of application or completion of a policy change request CAARP proposes a new CAIP supporting documentation requirement introducing a new Inspected Units Form. Producers will be required to complete the form when a commercial risk requires Federal Highway Administration or Federal Motor Carrier Safety Administration filings or endorsements. The producer must access the Safety and Fitness Electronic Records System (“SAFER”) offered by the Federal Motor Carrier Safety Administration (“FMCSA”) to review inspected vehicle/unit information and verify the number of vehicles/units involved. This protects consumers by calculating the correct premium and truckers having the correct coverages.

#### COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

#### LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the application will not result in any new program mandates on local agencies or school districts.

#### MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630

The Insurance Commissioner has initially determined that the application will not result in any cost or significant savings to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other nondiscretionary costs or savings to local agencies.

#### COST OR SAVINGS TO ANY STATE AGENCY; FEDERAL FUNDING

The Commissioner has determined that the application will result in no cost or savings to any state agency and no cost or savings in federal funding to the state.

#### SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

#### COST IMPACTS ON PRIVATE PERSONS OR ENTITIES

The Insurance Commissioner has initially determined that the proposal will not affect private persons or entities.

#### IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the application will not affect housing costs.

#### IMPACT ON SMALL BUSINESS

The proposed rate changes could affect small businesses.

#### SPECIFIC TECHNOLOGIES OR EQUIPMENT

The application would not mandate the use of specific technologies or equipment.

#### ALTERNATIVES

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, 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.

#### PLAIN ENGLISH

The application describing the proposal is in plain English. However, the application itself is based on technical actuarial principles.

TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons addressing the proposed rate application in addition to the Informative Digest included in this notice. The Initial Statement of Reasons, Notice of Proposed Action and Regulation Text are available for inspection or copying, and will be provided at no charge upon request to the contact person listed above. Further details on CAARP's proposal are on file with the Commissioner and available for review as set forth below.

FINAL STATEMENT OF REASONS

A Final Statement of Reasons will be prepared at the conclusion of this proceeding. Upon written or e-mail request to the contact person listed above, the Final Statement of Reasons will be made available for inspection and copying once it has been prepared. A copy of the Final Statement of Reasons will also be posted on the Department's website.

ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of or direct questions about CAARP's application, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 45 Fremont Street, 21<sup>st</sup> Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, is being sent to all persons on the Insurance Commissioner's mailing list.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Initial Statement of Reasons, proposed text, and this Notice of Proposed Action will be published online and may be accessed through the Department's website at [www.insurance.ca.gov](http://www.insurance.ca.gov).

AVAILABILITY OF MODIFIED TEXT OF REGULATIONS

If the Department amends the application with changes that are sufficiently related to the original application, the Department will make the full text of the amended rates, with the changes clearly indicated, available to the public for at least 15 days before the date the Department adopts the amended rates.

**TITLE 10. GOVERNOR'S OFFICE OF BUSINESS AND ECONOMIC DEVELOPMENT**

**California Film and Television Tax Credit Program 3.0**

Title 10, Chapter 7.75, Sections 5520–5528

Notice is hereby given that the California Film Commission proposes to adopt the regulations described below after considering all comments, objections and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Office proposes to adopt new sections 5520 through 5528 in Title 10 of the California Code of Regulations in order to implement, interpret and make specific Revenue and Taxation Code sections 17053.98 and 23698 relating to a film and television tax credit program.

No public hearing is scheduled; however, any interested person or his or her duly authorized representative may request a public hearing no later than fifteen (15) days prior to the close of the public comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Agency. Written comments will be accepted by the Agency until August 19, 2019. Submit comments to:

Name:

Nancy Rae Stone

Address:

California Film Commission  
7080 Hollywood Boulevard  
Hollywood, CA 90028

Email:

Nancy.Stone@film.ca.gov

#### AUTHORITY AND REFERENCE

The proposed regulation has been adopted under the authority of Government Code section 11152, and Revenue and Taxation Code sections 17053.98(e) and 23698(e) and in order to implement, interpret and make specific Revenue and Taxation Code sections 17053.98 and 23698.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Film Commission (CFC) proposes to adopt new sections 5520, 5521, 5522, 5523, 5524, 5525, 5526, 5527 and 5528. The regulations establish a procedure for allocating tax credits to qualified taxpayers in the motion picture industry. This tax credit program shall be named the California Film and Television Credit Program 3.0.

Existing law provides for a similar program, allocating tax credits to qualified taxpayers in the motion picture industry until July 1, 2020. The provisions in the existing program provide for applicants to file a written application for the allocation of the tax credit; and for the California Film Commission to establish criteria for allocating tax credits, determine and designate applicants who meet the requirements to apply for the tax credit, and issue the credit certificate to the qualified taxpayer upon completion of the Qualified Motion Picture. The existing program limits the aggregate amount of credits that may be allocated to qualified motion pictures in any fiscal year to \$330,000,000. The California Film and Television Credit Program 3.0 includes the ability for all types of qualified productions to qualify for additional tax credits for the hiring of labor which resides and works outside the Los Angeles studio zone, bifurcates the Independent Film category by budget level, and includes a skilled pilot training program for underserved populations.

Section 5520 provides definitions of terms used in the California Film and Television Tax Credit Program. This section defines terms that are specific to this Program: Applicable Period, Applicant, California Film Commission, California in-state Vendor, Credit Allocation Letter, Contracted Services, Independent Film, Jobs Ratio, Local Hire Labor, Office or other place of business, Production Budget, and Reasonable Cause. This section also defines the following terms used in the statute or regulation that are industry terms: Feature Film, Force Majeure, Hiatus, Miniseries, Outside Los

Angeles Zone Vendor, Pass-through Business, Pick Up Order, Pilot, Principal Photography Days, Producer, Production budget, Recurring Series, Television Project, Television Season, Television Series and Visual Effects. Local Hire Labor and Recurring series are new definitions added for clarity; Miniseries was redefined in the statute and the regulatory definition was rewritten to conform to it. Defining these terms will clarify the requirements in these regulations.

Section 5521 provides for an application process for the allocation of the tax credits. This section will provide for the announcement of a period of time when the production companies can apply for eligible tax credits in each fiscal year based on category type. The application process shall be in two phases. Phase I requires the applicant to complete an online application and to submit a synopsis of the Qualified Motion Picture. The online application requires both the applicant's contact and business structure information as well as information on the project, such as proposed filming days and proposed qualified wages and expenditures. The project information allows the CFC to determine if there are any additional percentage points, known as "bonus points" in the industry, and to determine the Jobs Ratio of the applicant. The Jobs Ratio will be used to initially rank the applicants. The top ranked applicants will be notified and begin Phase II of the application process. Phase II will require the applicant to submit a qualified expenditure budget, a One-Line Schedule, a Fringe Matrix, Screenplay, narrative statement or relocating statement, a financial plan. If the Applicant is a Pilot, Relocating TV Series or New TV series, a Pick-up Order is also required. Recurring TV series may submit an application without a pick up order but if not received within 140 calendar days, will be removed from the queue and may reapply during a future allocation period. All projects are required to submit their policies against unlawful harassment, specific company structural and financial information, and, excluding the lowest tier Independent Film, a summary of voluntary programs to increase representation of women and minorities as well as information about how these programs are publicized to interested parties. Materials will be reviewed for accuracy and an approved Adjusted Jobs Ratio will be determined. The top ranked applicants for which credits are available will be issued a Credit Allocation Letter (CAL), which is a reservation of tax credits. This section shall also require a production company to commence filming no later than 180 calendar days after the Credit Allocation Letter is issued; projects with qualified expenditures over \$100 million dollars have a deadline of 240 days. This program will also require specific production company staff to attend an orientation meeting with the California Film Commission. This section provides that any television series

that has been approved and issued tax credits shall be placed at the top of the queue for the following open allocation period in the next fiscal year for the life of that series. However, a television series shall submit a new application each year and the queue placement will be based on the fiscal year of the original credit allocation and, if necessary, the current job ranking for that series.

Section 5522 identifies the eligibility requirements for Program 3.0. This section requires that the applicant plans to produce a qualified motion picture and provides that the qualified motion picture must be consistent with the requirements in the Revenue and Taxation Code. It also specifies that the applicants must plan to film at least 75% of principal photography days wholly in California or incur 75% of the production expenditures within California. This section provides the criteria for a New Television Series or a Television Pilot for a New Television Series to be qualified. It also states that an animated production is not a Qualified Motion Picture. This section also specifies the maximum qualified expenditure amount eligible for tax credits for an Independent Film and the maximum qualified expenditure amount for a Feature Film, Television series, Pilot or Mini-series. The same maximum per category applies to the 5% augmentation. Also included is a provision which states that revocation of the tax credit reservation is final and not subject to review.

Section 5523 identifies the provisions in the statute for Qualified Expenditures and clarifies that State and Federal income taxes, Certified Public Accountant (CPA) fees, expenditures for rentals or purchases out of the state, expenditures for services performed outside of California, financial contributions related to the pilot career pathways training program and expenditures for exhibition of the production are not qualified expenditures. This section also clarifies that elements created for foreign distribution and archival purposes are not considered final elements of the production. This section also states that the CFC shall provide charts identifying qualified expenditures and wages. These charts will be posted on the CFC website and provided only as a guide for the applicant.

Section 5524 provides for the procedures in allocating the tax credits. The section clarifies that the statute provides for the percentage of qualified expenditures allowed for a Qualified Motion Picture. A provision is included which delineates how unused credits from previous tax credit programs will be allocated. This section also provides that if the tax credits have been allocated for any allocation period, any applications still in the queue will remain in their Jobs Ratio ranking order until allocations become available, the applicant withdraws the application or the allocation period ends. A provision in this section allows for a five percent augmentation to the tax credit allocated to the Qualified Motion

Picture for productions that purchase or lease tangible personal property outside the Los Angeles zone during the applicable period and the personal property is used or consumed outside the Los Angeles zone or for a production company that incurs qualified wages for services performed relating to original photography outside the Los Angeles zone. This section also describes the methodology by which outside the Los Angeles zone partially consumed or totally consumed qualified non-wage expenditures are calculated and provides examples of totally consumed non-wage expenditures. A 10% additional augmentation to the tax credit for the hiring of local labor working outside the Los Angeles zone is included. This section will not apply to Independent Films or Relocating Television series already allocated 25% tax credits; however, these productions qualify for a 5% additional augmentation to the tax credit for the hiring of local labor working outside the Los Angeles zone.

Section 5525 sets forth the elements of Phase III and provides reporting requirements for a production company during the filming of the Qualified Motion Picture, including submittal of daily call sheets, final production reports for Principal Photography and a report of any significant changes to the project, if applicable. This section also requires the production company to be involved in the local training and public service programs aimed at exposing high school students, community college students, and/or approved career-based learning program participants to jobs in the entertainment industry. Specific time requirements for professional skills tours, faculty externships and internships are delineated and the minimum hours for workshops or panels have been eliminated. The applicant will also have the option to make a financial contribution based on 0.25 percent of the estimated tax credit reservation with minimum and maximum requirements. This section also outlines the requirement to make a financial contribution to fund a pilot career pathways training program. The contribution is based on 0.25 percent of the estimated tax credit and must be paid no later than 10 days after acceptance into the program. The contribution is refundable, in whole or in part, under specified circumstances.

Section 5526 provides for Phase IV — the issuance of the Tax Credit Certificate — which is the document issued to the qualified taxpayer upon completion of the Qualified Motion Picture. This section defines a completed project and requires the applicant to submit documents verifying the completion of the project: proof of copyright registration of the screenplay; seller's permit number, if applicable; documentation certifying date of completion of post-production; list of all cast and crew; and copy of script supervisor's lined script or continuity/spotting log of the project. The Expenditure



Summary Report must be completed via the portal on the CFC website. The applicant will provide information related to the completed production, including qualified expenditures, production shoot days and locations, financial statistics, diversity and gender statistics for both qualified and non-qualified individuals which were voluntarily submitted by cast and crew and all other information needed to determine bonus points and augmentation to the tax credit. Also required: layout of the main and end titles; documentation for each visual effect, title, digital effects and /or post sound company contracted by the production company; a listing of locales outside of California where any member of the applicant's combined reporting group has shot in the preceding year; updated company structure and financial information; verification of participation in a career based learning program; and payment for the pilot career pathways training program. The Agreed Upon Procedures report is required to be completed by an independent licensed Certified Public Accountant (CPA) who has attended a California Film Commission CPA orientation meeting whose firm has a successful Peer Review. Miniseries shall be required to submit additional documentation verifying initial distribution. This section states that if the application is disapproved, the finding is final and not subject to administrative appeal.

Section 5527 provides for the Jobs Ratio Ranking Process. The statute requires the CFC to rank the applications by a Jobs Ratio computation. The base ratio ranking is the amount of qualified wages paid to qualified individuals plus 35% of non-wage expenditures divided by the estimated amount of tax credits. Visual effects vendor expenditures for work performed in California will be apportioned 70% labor, 30% non-labor. This ranking will be calculated online based on the data entered by the applicant. This section also provides that an adjustment to the job ratio will be made for dollars spent on qualified visual effects performed in the state, number of principal photography days outside the Los Angeles studio zone and amount paid in qualified wages for music scoring and/or track recording. The Jobs Ratio calculation does not include tax credit amounts increased by the 5% or 10% augmentation for outside of the Los Angeles zone photography or visual effects expenditures. It also does not include a contingency or bond. Bonus points will be awarded in each area based on methodology provided for in this section. The ranges used to assign the bonus points will be posted on the CFC website before each application period. Overstatement of the production plan may result in penalties as per the statute.

Section 5528 requires the holder of the Credit Certificate to comply with promotional requirements, including an on-screen acknowledgement to the CFC, CFC logo, and five production stills. The production stills

must come with cast approvals and illustrate the diversity of California locations and/or job creation and be used for promotional purposes by the CFC.

This regulation will incorporate by reference the California Film Commission forms that are required to be submitted during the application, filming and completion of the motion picture phases of the process.

**The following forms are incorporated by reference in these regulations:**

Credit Allocation Letter, CFC Form D3 (new. 06/25/19) This form provides for the written approval of the applicant and identifies the approved jobs ratio number and the number of tax credits for which the applicant is eligible.

Local Community Expenditure Report, CFC Form LE3 (new. 06/25/19). This form provides production expenditure statistics on wage and non-wage expenditures outside the Los Angeles studio zone and is required of productions with expenditures of \$100,000 or more outside the Los Angeles studio zone.

The Tax Credit Certificate, CFC Form M3 (new. 06/25/19) is the actual tax credit certificate that will be issued by the CFC and is the document that will be submitted to the Franchise Tax Board or the Board of Equalization.

Career Readiness Forms, CFC Forms CR 1-5 (as applicable):

CFC Form CR1 (new. 06/25/19) verifies paid internship(s)

CFC Form CR2 (new. 06/25/19) verifies professional skills tour participation

CFC Form CR3 (new. 06/25/19) verifies faculty externship participation

CFC Form CR4 (new. 06/25/19) verifies classroom workshop/panel participation

CFC Form CR5 (new. 06/25/19) verifies financial contribution

**CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS**

After conducting a review for any regulations that would relate to or affect this area, the California Film Commission Board evaluated this regulatory proposal and finds that it is not inconsistent or incompatible with existing state regulations.

**ANTICIPATED BENEFITS OF THE PROPOSED REGULATION**

The proposed regulations will provide a program to the motion picture industry allocating tax credits for qualified motion pictures. These tax credit incentives will encourage production companies regardless of distribution outlet to film in California instead of other

states, provinces and countries offering incentives. Program 3.0 is structured to emphasize job creation when allocating tax credits and provides separate funding categories to ensure tax credits for multiple types of productions. The program is enabling California to increase the number of productions and therefore, jobs and dollars spent in state.

#### AUTHORITY AND REFERENCE

The proposed regulations have been adopted under the authority of Revenue and Taxation Code sections 17053.98(e) and 23698(e) to implement, interpret and make specific Revenue and Taxation Code sections 17053.98 and 23698.

#### ESTIMATES OF ECONOMIC IMPACT

The California Film Commission has made the following 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.
- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
- Potential cost impact on representative persons or businesses: The agency 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 effect on housing costs: None.

#### EFFECT ON SMALL BUSINESS

The California Film Commission has determined that the proposed regulations will not directly affect small business. The businesses that are complying with these regulations are film production companies and are not small businesses. Small businesses in California do, however, provide goods and services to the businesses

complying with these regulations and will benefit from the additional filming in California.

#### RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Adoption of these regulations will: (1) facilitate the creation of jobs within California; (2) facilitate the creation of businesses within California; and (3) facilitate the expansion of businesses currently doing business within California. As stated above under Anticipated Benefits of the Proposed Regulation, these tax credit incentives will encourage production companies regardless of distribution outlet to film in California instead of other states, provinces and countries offering incentives. Program 3.0 is structured to emphasize job creation and provides separate funding categories to ensure tax credits for multiple types of productions. The program is enabling California to increase the number of productions and therefore, jobs and dollars spent in state.

#### REASONABLE ALTERNATIVES CONSIDERED

The California Film Commission must determine that no reasonable alternative considered by the Commission 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 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.

#### CONTACT PERSON

Inquiries concerning the proposed action may be directed to:

Name: Nancy Rae Stone  
Email: Nancy.Stone@film.ca.gov

The backup contact person for these inquiries is:

Name: Leah Medrano  
Email: Leah.Medrano@film.ca.gov  
Phone Number: 323-860-2960

Questions on the substance of the proposed regulations may be directed to:

Name: Nancy Rae Stone  
Phone Number: 323-860-2960

AVAILABILITY OF CHANGED OR  
MODIFIED TEXT

After the close of the forty-five (45) day public comment period, the California Film Commission (CFC) may adopt the proposed regulation. As a result of public comments, either oral or written, that are received by the CFC regarding this proposal, the CFC may determine that changes to the proposed regulations are appropriate. If the CFC makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the CFC adopts the regulations as revised. The CFC will provide notification of any such modifications to all persons whose comments were received during the public comment period, all persons whose comments (written or oral) were received at the public hearing (if one is held) and all persons who requested notice of such modifications. Otherwise, please send requests for copies of any modified regulations to the attention of Nancy Rae Stone at the above email address. The CFC will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF INITIAL STATEMENT OF  
REASONS, RULEMAKING FILE AND EXPRESS  
TERMS OF THE PROPOSED REGULATIONS

The CFC has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the California Film Commission, 7080 Hollywood Boulevard, Suite 900, Hollywood, California during normal business working hours (9:00 a.m.–5:00 p.m.). Please contact Leah Medrano at the above email address to arrange a date and time to inspect the files. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the regulations. Copies of these items are available, upon request, from the Contact Person designated in this Notice.

AVAILABILITY OF  
FINAL STATEMENT OF REASONS

The CFC is required to prepare a Final Statement of Reasons. Once the CFC has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy. Requests for copies should be addressed to the Contact Person identified in this Notice.

OFFICE INTERNET WEBSITE

The Office maintains an Internet website for the electronic publication and distribution of written material. Copies of the Notice of Proposed Action, the Initial Statement of Reasons and the text of the regulations can be accessed through our website at: [www.film.ca.gov](http://www.film.ca.gov).

**TITLE 14. BOARD OF FORESTRY  
AND FIRE PROTECTION**

**“Post-Fire Recovery Exemption, 2019”**

**Title 14 of the California  
Code of Regulations (14 CCR),  
Division 1.5, Chapter 4  
Subchapters 7, Article 2  
Amend: §§ 1038, 1038.1, and 1038.2  
Repeal: § 1038.6**

NATURE OF PROCEEDING

Notice is hereby given that the California State Board of Forestry and Fire Protection (Board) is proposing to take the action described in the Informative Digest.

PUBLIC HEARING

The Board will hold a public hearing on August 21, 2019, at its regularly scheduled meeting commencing at 9:00 a.m., at the Natural Resources Building Auditorium, 1416 9<sup>th</sup> Street, Sacramento, CA. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. Additionally, pursuant to **Government Code (GOV) § 11125.1(b)**, writings that are public records pursuant to **GOV § 11125.1(a)** and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends on August 21, 2019 at the conclusion of the public hearing.

The Board will consider comments received at the Board office by that time and those comments received at the public hearing, including written comments submitted in connection with oral testimony at the public hearing. The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection  
Attn: Eric Hedge  
Regulations Program Manager  
P.O. Box 944246  
Sacramento, CA 94244–2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection  
Room 1506–14  
1416 9<sup>th</sup> Street  
Sacramento, CA 95814

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653–0989

Written comments may also be delivered via e-mail at the following address:

PublicComments@BOF.ca.gov

**AUTHORITY AND REFERENCE**  
(pursuant to GOV § 11346.5(a)(2) and  
1 CCR § 14)

Authority cited: Sections 4551, 4553, 4584 and 4584.1, Public Resources Code. Reference: Sections 4290, 4291, 4516, 4527, 4584, 4584.1 and 4597, Public Resources Code.

**INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW**  
(pursuant to GOV § 11346.5(a)(3)(A)–(D))

Pursuant to the Z'berg–Nejedly Forest Practice Act of 1973 (FPA), Public Resources Code (PRC) § 4511, et seq., the Board is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands.

Pursuant to PRC §4584 the Board is authorized to exempt a person engaged in specific forest management activities, upon determining that the exemption is con-

sistent with the purposes of the FPA, from the FPA, or portions of the FPA.

PRC § 4584 authorizes the Board to adopt regulations to provide an exemption, from all or portions of the FPA, to a person engaging in certain forest management activities specified by the statute, including the cutting or removal of dead, dying, or diseased trees of any size.

Additionally, pursuant to PRC § 4551.5, the rules and regulations that the Board is authorized to adopt include measures for fire prevention and control and for prevention and control of damage by forest insects, pests, and diseases.

The history of the development of this regulation is as follows:

- The Board adopted and authorized for submission to the Office of Administrative Law (OAL) the regulatory action entitled “Emergency Rulemaking to Facilitate Post–Fire Recovery Efforts within the County of Butte” as emergency regulations in accordance with Government Code (GOV) §§ 11346.1, 11346.5 (2)–(6) and 11349.6 at their regularly scheduled meeting on January 23, 2019.
- This regulatory action (OAL File No. 2019–0206–01E) became effective February 19, 2019 and is set to expire on August 20, 2019.
- To avoid a lapse in the effective period, at their regularly scheduled meeting on June 12, 2019, the Board authorized re–adoption of the findings of emergency, with minor revisions to the rule text.

**Wildfires in California**

Modern California wildfire activity represents a significant public risk and hazard. In 2018, over 8,500 fires burned nearly 2 million acres throughout the state, resulting in over \$3.5 billion in damages, the destruction of over 18,000 structures, and the deaths of at least 98 people. These severe wildfires also create significant and widespread issues with tree mortality, resulting in a large number of dead and dying trees across the landscape, including those areas surrounding homes and other structures. The **problem** that the proposed action seeks to address is that the large number of trees which are damaged and weakened as a result of these fires can hamper rebuilding and recovery efforts. Additionally, trees which are dead or dying as a result of wildfires represent a potential hazard to life or property as they deteriorate and ultimately collapse.

Additionally, there currently exists an issue of consistency within the FPRs in which the term “Approved and Legally Permitted Structures” is used throughout the regulations in its defined capacity, but the regulatory definition is limited to one specific provision.



The **purpose** of the proposed action is to: 1) provide a person engaging in the cutting or removal of dead or dying trees an exemption from the plan preparation and submission requirements (PRC § 4581) and from the completion report and stocking report requirements (PRC §§ 4585 and 4587) of the Forest Practice Act, when specific requirements are met; and 2) to clarify that the term “Approved and Legally Permitted Structures” is not exclusive in application to 14 CCR § 1038(c).

The **effect** of the proposed action is to provide an exemption from portions of FPA to allow the harvesting of dead or dying trees around Approved and Legally Permitted Structures, or those that have been damaged or destroyed by wildfire, in order to facilitate the removal of hazardous materials from and assist in the reconstruction and revitalization of areas directly affected by wildfires when those activities are consistent with, and within the geographic scope of, an existing valid and effective gubernatorial executive order or proclamation of a state of emergency. If a fire has caused dead or dying trees surrounding an Approved and Legally Permitted Structure where no such gubernatorial action has been taken, a timberland owner may also be eligible for the exemption with the certification of a Registered Professional Forester that those trees are dead or dying as a result of wildfire which had occurred no more than three years prior to the submission of the notice of exemption. The proposed action will provide exemption from the plan preparation and submission requirements (PRC § 4581) and from the completion report and stocking report requirements (PRC §§ 4585 and 4587) of the FPA when specific requirements are met.

The primary **benefit** of the proposed action is the reduction in risk to life, property, and the environment posed by dead and dying trees by streamlining their harvest and removal and enabling landowners to successfully recover from destructive wildfire events.

There is no comparable Federal regulation or statute.

Board staff conducted an evaluation on whether or not the proposed action is inconsistent or incompatible with existing State regulations pursuant to **GOV § 11346.5(a)(3)(D)**. State regulations related to the proposed action were, in fact, relied upon in the development of the proposed action to ensure the consistency and compatibility of the proposed action with existing State regulations. Otherwise, Board staff evaluated the balance of existing State regulations related to secondary egress routes and found no existing State regulations that met the same purpose as the proposed action. Based on this evaluation and effort, the Board has determined that the proposed regulations are neither inconsistent nor incompatible with existing State regulations.

The proposed regulation is entirely consistent and compatible with existing Board rules.

Statutes to which the proposed action was compared: §§ 4584, 4584.1, and 4584.2, Public Resources Code.

MANDATED BY FEDERAL  
LAW OR REGULATIONS

The proposed action is not mandated by Federal law or regulations.

The proposed action neither conflicts with, nor duplicates, Federal regulations.

There are no comparable Federal regulations related to management plans for the non-industrial harvesting of timber. No existing Federal regulations meeting the same purpose as the proposed action were identified.

OTHER STATUTORY REQUIREMENTS  
(pursuant to GOV § 11346.5(a)(4))

There are no other matters as are prescribed by statute applicable to the specific State agency or to any specific regulation or class of regulations.

LOCAL MANDATE  
(pursuant to GOV § 11346.5(a)(5))

The proposed action does not impose a mandate on local agencies or school districts.

FISCAL IMPACT  
(pursuant to GOV § 11346.5(a)(6))

There is no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

A local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by the act, within the meaning of Section 17556 of the Government Code.

The proposed action will not result in the imposition of other non-discretionary costs or savings to local agencies.

The proposed action will not result in costs or savings in Federal funding to the State.

The proposed action will not result in costs to any State agency. The proposed action represents a continuation of existing forest practice regulations related to exemptions from the Forest Practice Act and allows for an additional exemption type for utilization by the regu-

lated public, but does not create additional burden on any state agency.

The proposed action will not result in the imposition of other non-discretionary costs or savings to local agencies.

**HOUSING COSTS**  
(pursuant to GOV § 11346.5(a)(12))

The proposed action will not significantly affect housing costs.

**SIGNIFICANT STATEWIDE  
ADVERSE ECONOMIC IMPACT  
DIRECTLY AFFECTING BUSINESS,  
INCLUDING ABILITY TO COMPETE**  
(pursuant to GOV §§ 11346.3(a),  
11346.5(a)(7) and 11346.5(a)(8))

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states (by making it costlier to produce goods or services in California).

**FACTS, EVIDENCE,  
DOCUMENTS, TESTIMONY, OR OTHER  
EVIDENCE RELIED UPON TO SUPPORT  
INITIAL DETERMINATION IN THE  
NOTICE THAT THE PROPOSED ACTION  
WILL NOT HAVE A SIGNIFICANT ADVERSE  
ECONOMIC IMPACT ON BUSINESS**  
(pursuant to GOV § 11346.2(b)(5) and  
GOV § 11346.5(a)(8))

Contemplation by the Board of the economic impact of the provisions of the proposed action through the lens of the decades of contemplating fire safety in land use and development in California that the Board brings to bear on regulatory development.

**STATEMENTS OF THE RESULTS OF THE  
ECONOMIC IMPACT ASSESSMENT (EIA)**

The results of the economic impact assessment are provided below pursuant to **GOV § 11346.5(a)(10)** and prepared pursuant to **GOV § 11346.3(b)(1)(A)–(D)**. The proposed action:

- Will not create jobs within California (GOV § 11346.3(b)(1)(A));
- Will not eliminate jobs within California (GOV § 11346.3(b)(1)(A));

- Will not create new businesses (GOV § 11346.3(b)(1)(B));
- Will not eliminate existing businesses within California (GOV § 11346.3(b)(1)(B));
- Will not affect the expansion or contraction of businesses currently doing business within California (GOV § 11346.3(b)(1)(C));
- Will yield nonmonetary benefits (GOV § 11346.3(b)(1)(D)). For additional information on the benefits of the proposed regulation, please see anticipated benefits found under the Informative Digest/Policy Statement Overview.

**COST IMPACTS ON REPRESENTATIVE  
PERSON OR BUSINESS**  
(pursuant to GOV § 11346.5(a)(9))

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. No adverse impacts are to be expected.

**BUSINESS REPORT**  
(pursuant to GOV §§ 11346.5(a)(11) and 11346.3(d))

The proposed action does not impose a business reporting requirement.

**SMALL BUSINESS** (defined in GOV § 11342.610)

Small businesses, within the meaning of GOV § 11342.610, are not expected to be affected by the proposed action.

Small business, pursuant to 1 CCR § 4(a):

- (1) Is legally required to comply with the regulation;
- (2) Is not legally required to enforce the regulation;
- (3) Does not derive a benefit from the enforcement of the regulation;
- (4) May incur a detriment from the enforcement of the regulation if they do not comply with the regulation.

Pursuant to 1 CCR § 4(b), the reason(s) the regulation affects small business are the same as provided in the Economic Impact Analysis in the Initial Statement of Reasons.

**ALTERNATIVES INFORMATION**

In accordance with **GOV § 11346.5(a)(13)**, the Board must determine that no reasonable alternative 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, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection  
 Attn: Eric Hedge  
 Regulations Program Manager  
 P.O. Box 944246  
 Sacramento, CA 94244-2460  
 Telephone: (916) 653-8007

The designated backup person in the event Mr. Hedge is not available is Matt Dias, Executive Officer for the Board of Forestry and Fire Protection. Mr. Dias may be contacted at the above address or phone.

AVAILABILITY STATEMENTS  
 (pursuant to GOV § 11346.5(a)(16), (18))

All of the following are available from the contact person:

1. Express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion.
2. Initial Statement of Reasons, which includes a statement of the specific purpose of each adoption, amendment, or repeal, the problem the Board is addressing, and the rationale for the determination by the Board that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed.
3. The information upon which the proposed action is based (pursuant to GOV § 11346.5(b)).
4. Changed or modified text. After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text — with the changes clearly indicated — available to

the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who testified at the hearings, submitted comments during the public comment period, including written and oral comments received at the public hearing, or requested notification of the availability of such changes from the Board of Forestry and Fire Protection. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

FINAL STATEMENT OF REASONS

When the Final Statement of Reasons (FSOR) has been prepared, the FSOR will be available from the contact person on request.

INTERNET ACCESS

All of the material referenced in the Availability Statements is also available on the Board website at: <https://bof.fire.ca.gov/regulations/proposed-rule-packages/>.

**TITLE 14. BOARD OF FORESTRY AND FIRE PROTECTION**

**“STOCKING AND SILVICULTURAL STANDARDS AMENDMENTS, 2019”**

**Title 14 of the  
 California Code of Regulations (14 CCR),  
 Division 1.5, Chapter 4  
 Subchapters 4, 5 & 6  
 Articles 2, 3 & 6  
 Subchapter 7  
 Article 7  
 Amend: §§ 912.7, 932.7, 952.7, 913.2,  
 933.2, 953.2, 913.3, 933.3, 953.3,  
 913.4, 933.4, 953.4, 916.9, 936.9,  
 956.9, 1072.6 and 1080.1  
 Adopt: §§ 912.7(e), 932.7(e) and 952.7(e)**

NATURE OF PROCEEDING

Notice is hereby given that the California State Board of Forestry and Fire Protection (Board) is proposing to take the action described in the Informative Digest.

PUBLIC HEARING

The Board will hold a public hearing on August 21, 2019, at its regularly scheduled meeting commencing at 9:00 a.m., at the Natural Resources Building Auditorium, 1416 9<sup>th</sup> Street, Sacramento, CA. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. Additionally, pursuant to **Government Code (GOV) § 11125.1(b)**, writings that are public records pursuant to **GOV § 11125.1(a)** and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends on August 21, 2019 at the conclusion of the public hearing.

The Board will consider comments received at the Board office by that time and those comments received at the public hearing, including written comments submitted in connection with oral testimony at the public hearing. The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection  
Attn: Eric Hedge  
Regulations Program Manager  
P.O. Box 944246  
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection  
Room 1506-14  
1416 9<sup>th</sup> Street  
Sacramento, CA 95814

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

PublicComments@BOF.ca.gov

AUTHORITY AND REFERENCE  
(pursuant to GOV § 11346.5(a)(2) and  
1 CCR § 14)

Authority cited: Sections 4551, 4593.4, 4593.5, 4593.9, and 4594, Public Resources Code. Reference: Sections 4593, 4593.4, 4593.5, 4593.8, 4594, and 4597, Public Resources Code.

INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW  
(pursuant to GOV § 11346.5(a)(3)(A)-(D))

The Z'berg-Nejedly Forest Practice Act declares the existence of a public interest in the management and treatment of the forest resources and timberlands of the state. Pursuant to Article 7.5, the Board "shall adopt rules and regulations to implement Article 7.5 (commencing with Section 4593) of Chapter 9 of Part 2 of Division 4 of the Public Resources Code." The provisions of the article (Nonindustrial Timber Management Plan) provided under Public Resources Code (PRC) § 4593(c) declare "that it is the policy of the state to encourage prudent and responsible forest resource management of nonindustrial timberlands by approving nonindustrial timber management plans in advance and withdrawing governmental discretion to disapprove nonindustrial timber harvest notices submitted pursuant to the approved nonindustrial timber management plans." PRC § 4551 requires the Board to "... adopt district forest practice rules . . . to ensure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish, wildlife, and water resources . . ." and PRC § 4553 requires the Board to continuously review the rules in consultation with other interests and make appropriate revisions.

In 2018, Senate Bill (SB) 901 (chapter 626) approved by the Governor, filed with the Secretary of State, and became effective January 1, 2019. Section 17 of SB 901 amended PRC § 4593.2(e) to read "Nonindustrial timber management plan means a management plan for nonindustrial timberlands with an objective of an uneven aged managed timber stand and sustained yield for each parcel or group of contiguous parcels meeting the requirements of Section 4593.3. A nonindustrial timber management plan may include multiple nonindustrial tree farmers, but shall not cover more than 2,500 acres."

The proposed action was developed in response to address the statutory amendments in SB 901 related to



multiple landowners and acreage restrictions and to additionally 1) expand upon the use of a designated agent for various reporting requirements for Nonindustrial Timber Management Plans (NTMPs) with multiple landowners; 2) clarify the use of various exemptions within the footprint of an NTMP; and 3) to update the mapping requirements for the NTMP and the associated Nonindustrial Timber Harvest Notice. The problem is that statutory amendments within SB 901 create issues of clarity and consistency with the existing regulations in the Forest Practice Rules (FPRs). Additionally, the Department of Forestry and Fire Protection (Department) requested clarification on the use of exemptions within the footprint of an NTMP, which allow for the bypassing of the Nonindustrial Timber Harvest Notice process contained within the regulations for NTMPs to achieve certain, specified, management objectives. Lastly, mapping standards for the NTMP have not been updated for 27 years and do not adequately reflect current technology and other existing regulatory mapping standards.

The **problem** is that the issues of clarity and consistency exist within the Forest Practice Rules (FPRs) related to both existing regulations as well as the statutory amendments within SB 901. Additionally, the Department requested clarification on the use of exemptions within the footprint of an NTMP, which allow for the bypassing of the Nonindustrial Timber Harvest Notice process contained within the regulations for NTMPs in order to achieve certain, specified, management objectives. Lastly, mapping standards for the NTMP have not been updated for 27 years and do not adequately reflect current technology and other existing regulatory mapping standards.

The **purpose** of the proposed action is to make the regulations congruent with changes resulting from the passage of SB 901, to update 14 CCR § 1090 et seq. to make the NTMP regulations more consistent with the Working Forest Management Plan (WFMP) regulations, to clarify the use of exemptions within the footprint of an NTMP, and to improve clarity within the existing regulations.

The **effect** of the proposed action is to: 1) clarify and effectuate the statute in the regulations provided for NTMPs in PRC § 4593 to add provisions for multiple landowners; 2) to allow the use of exemptions pursuant to 14 CCR § 1038 et seq. within the footprint of an NTMP; and 3) to update the mapping standards by making them consistent with the companion document and more recently approved WFMP.

The **benefit** of the proposed action is that it will make regulations for NTMPs clearer and more consistent with regulations for WFMPs, and thus allow for better stewardship of California's forests. SB 901 clarifies what had been assumed in the initial NTMP regula-

tions: that multiple landowners may indeed participate in an NTMP. The new regulations proposed will provide for a single point of contact for NTMPs with multiple owners by using a designated agent to aid the department in the administration of NTMPs. It will also provide benefits to the nonindustrial tree farmer by clarifying that the use of some exemptions will be allowed within the footprint of an NTMP which is a more flexible permitting vehicle for the landowner than using a Nonindustrial Timber Harvest Notice associated with the NTMP. The clarification elements will make plan development easier for land owners, allow for cooperation amongst landowners, and enable land owners with an NTMP to participate in relevant exemptions within the NTMP area; the updated mapping requirements will help protect California's forests by improving documentation of harvest activities and awareness of sensitive areas in the harvest area. The mapping updates will also make it easier for the Department to review NTMPs and WFMPs by providing consistency between the two plans. Finally, changes to NTMP mapping requirements will improve enforcement and implementation of these regulations by the Department.

There is no comparable Federal regulation or statute.

Board staff conducted an evaluation on whether or not the proposed action is inconsistent or incompatible with existing State regulations pursuant to **GOV § 11346.5(a)(3)(D)**. State regulations related to the proposed action were, in fact, relied upon in the development of the proposed action to ensure the consistency and compatibility of the proposed action with existing State regulations. Otherwise, Board staff evaluated the balance of existing State regulations related to secondary egress routes and found no existing State regulations that met the same purpose as the proposed action. Based on this evaluation and effort, the Board has determined that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The proposed regulation is entirely consistent and compatible with existing Board rules.

Statute to which the proposed action was compared: 4551, 4593.4, 4593.5, 4593.9, 4594, and 4597, Public Resources Code.

#### MANDATED BY FEDERAL LAW OR REGULATIONS

The proposed action is not mandated by Federal law or regulations.

The proposed action neither conflicts with, nor duplicates, Federal regulations.

There are no comparable Federal regulations related to management plans for the non-industrial harvesting of timber. No existing Federal regulations meeting the same purpose as the proposed action were identified.

**OTHER STATUTORY REQUIREMENTS**  
(pursuant to GOV § 11346.5(a)(4))

There are no other matters as are prescribed by statute applicable to the specific State agency or to any specific regulation or class of regulations.

**LOCAL MANDATE**  
(pursuant to GOV § 11346.5(a)(5))

The proposed action does not impose a mandate on local agencies or school districts.

**FISCAL IMPACT**  
(pursuant to GOV § 11346.5(a)(6))

There is no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

A local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by the act, within the meaning of Section 17556 of the Government Code.

The proposed action will not result in the imposition of other non-discretionary costs or savings to local agencies.

The proposed action will not result in costs or savings in Federal funding to the State.

The proposed action will not result in costs to any State agency. The proposed action represents a continuation of existing forest practice regulations related to the preparation, submittal, and administration of documents and activities related to the non-industrial management and harvesting of timber, with clarifications which may reduce state costs in the review and administration of these documents and activities.

The proposed action will not result in the imposition of other non-discretionary costs or savings to local agencies.

**HOUSING COSTS**  
(pursuant to GOV § 11346.5(a)(12))

The proposed action will not significantly affect housing costs.

**SIGNIFICANT STATEWIDE  
ADVERSE ECONOMIC IMPACT  
DIRECTLY AFFECTING BUSINESS,  
INCLUDING ABILITY TO COMPETE**  
(pursuant to GOV §§ 11346.3(a),  
11346.5(a)(7) and 11346.5(a)(8))

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states (by making it costlier to produce goods or services in California).

**FACTS, EVIDENCE,  
DOCUMENTS, TESTIMONY, OR OTHER  
EVIDENCE RELIED UPON TO SUPPORT  
INITIAL DETERMINATION IN THE  
NOTICE THAT THE PROPOSED ACTION  
WILL NOT HAVE A SIGNIFICANT ADVERSE  
ECONOMIC IMPACT ON BUSINESS**  
(pursuant to GOV § 11346.2(b)(5) and  
GOV § 11346.5(a)(8))

Contemplation by the Board of the economic impact of the provisions of the proposed action through the lens of the decades of contemplating fire safety in land use and development in California that the Board brings to bear on regulatory development.

**STATEMENTS OF THE RESULTS OF THE  
ECONOMIC IMPACT ASSESSMENT (EIA)**

The results of the economic impact assessment are provided below pursuant to **GOV § 11346.5(a)(10)** and prepared pursuant to **GOV § 11346.3(b)(1)(A)–(D)**. The proposed action:

- Will not create jobs within California (GOV § 11346.3(b)(1)(A));
- Will not eliminate jobs within California (GOV § 11346.3(b)(1)(A));
- Will not create new businesses (GOV § 11346.3(b)(1)(B));
- Will not eliminate existing businesses within California (GOV § 11346.3(b)(1)(B));
- Will not affect the expansion or contraction of businesses currently doing business within California (GOV § 11346.3(b)(1)(C));
- Will yield nonmonetary benefits (GOV § 11346.3(b)(1)(D)). For additional information on the benefits of the proposed regulation, please see anticipated benefits found under the Informative Digest/Policy Statement Overview.

**COST IMPACTS ON REPRESENTATIVE  
PERSON OR BUSINESS**  
(pursuant to GOV § 11346.5(a)(9))

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. No adverse impacts are to be expected.

**BUSINESS REPORT**  
(pursuant to GOV §§ 11346.5(a)(11) and 11346.3(d))

The proposed action does not impose a business reporting requirement.

**SMALL BUSINESS**  
(defined in GOV § 11342.610)

Small businesses, within the meaning of GOV § 11342.610, are not expected to be affected by the proposed action.

Small business, pursuant to 1 CCR § 4(a):

- (1) Is legally required to comply with the regulation;
- (2) Is not legally required to enforce the regulation;
- (3) Does not derive a benefit from the enforcement of the regulation;
- (4) May incur a detriment from the enforcement of the regulation if they do not comply with the regulation.

Pursuant to 1 CCR § 4(b), the reason(s) the regulation affects small business are the same as provided in the Economic Impact Analysis in the Initial Statement of Reasons.

**ALTERNATIVES INFORMATION**

In accordance with **GOV § 11346.5(a)(13)**, the Board must determine that no reasonable alternative 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, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

**CONTACT PERSON**

Requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, modified text of

the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection  
Attn: Eric Hedge  
Regulations Program Manager  
P.O. Box 944246  
Sacramento, CA 94244-2460  
Telephone: (916) 653-8007

The designated backup person in the event Mr. Hedge is not available is Matt Dias, Executive Officer for the Board of Forestry and Fire Protection. Mr. Dias may be contacted at the above address or phone.

**AVAILABILITY STATEMENTS**  
(pursuant to GOV § 11346.5(a)(16), (18))

All of the following are available from the contact person:

1. Express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion.
2. Initial Statement of Reasons, which includes a statement of the specific purpose of each adoption, amendment, or repeal, the problem the Board is addressing, and the rationale for the determination by the Board that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed.
3. The information upon which the proposed action is based (pursuant to **GOV § 11346.5(b)**).
4. Changed or modified text. After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text — with the changes clearly indicated — available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who testified at the hearings, submitted comments during the public comment period, including written and oral comments received at the public hearing, or requested notification of the availability of such changes from the Board of Forestry and Fire Protection. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**FINAL STATEMENT OF REASONS**

When the Final Statement of Reasons (FSOR) has been prepared, the FSOR will be available from the contact person on request.

**INTERNET ACCESS**

All of the material referenced in the Availability Statements is also available on the Board website at: <https://bof.fire.ca.gov/regulations/proposed-rule-packages/>.

**TITLE 15. BOARD OF JUVENILE HEARINGS**

**NOTICE IS HEREBY GIVEN** that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Penal Code (PC) Section 5055, and Welfare and Institutions Code (WIC) Section 1712, and the rulemaking authority granted by WIC Sections 1712 and 1722, proposes to amend sections 4986, 4995, and 4996, adoption of sections 4988, 4994, 4994.3, 4994.5, 4996.3, and 4996.5, and repeal of sections 4989, 4990, and 4997 of the California Code of Regulations (CCR), Title 15, Division 4.5, regarding honorable discharge.

**PUBLIC HEARING INFORMATION**

Date and Time:

August 29, 2019 — 11:00 a.m. to 12:00 p.m.

Place:

CDCR — Division of Juvenile Justice  
8220 Longleaf Drive, Building B  
1<sup>st</sup> Floor, Room 126  
Elk Grove, CA 95758

Purpose:

To receive comments about this action.

This hearing site is accessible to the mobility impaired. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. It is not a forum to debate the proposed regulations. No decision regarding the permanent adoption of these regulations will be rendered at this hearing. The Department requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

**PUBLIC COMMENT PERIOD**

The public comment period will close August 29, 2019 at 5:00 p.m. Any person may submit written comments (by mail or by email) regarding the proposed changes. To be considered, comments must be submitted to the California Department of Corrections and Rehabilitation (CDCR), Division of Juvenile Justice, Policy, Procedures, and Regulations Unit, P.O. Box 588501, Elk Grove, CA 95758-8501, or by e-mail to [M\\_DJJ-PPR@cdcr.ca.gov](mailto:M_DJJ-PPR@cdcr.ca.gov) before the close of the comment period.

**CONTACT PERSON**

Please direct any inquiries regarding this action to:

Shelly Jones  
Division of Juvenile Justice  
P.O. Box 588501, Elk Grove, CA 95758-8501  
Telephone: (916) 683-7473

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

Sandi Becker  
Division of Juvenile Justice  
Telephone: (916) 683-7467

**AUTHORITY AND REFERENCE**

Welfare and Institutions Code Section 1712 provides that, commencing July 1, 2005, the Secretary is authorized to make and enforce all rules appropriate to the proper accomplishment of the functions of the Division of Juvenile Facilities, Division of Juvenile Programs, and Division of Juvenile Parole Operations. The rules shall be promulgated and filed pursuant to Chapter 4.5 (commencing with Section 11371) of Part 1, Division 3 of Title 2 of the Government Code, and shall, to the extent practical, be stated in language that is easily understood by the general public.

Welfare and Institutions Code Section 1722 provides that, effective June 27, 2016, the Board of Juvenile Hearings is authorized to promulgate and file any rules and regulations, including any resolutions and policy statements, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

References cited pursuant to this regulatory action are as follows:

Welfare and Institutions Code Section 177 provides that persons discharged from the Department of Corrections and Rehabilitation, Division of Juvenile Facilities by the Board of Juvenile Hearings may petition the



Board for consideration of an honorable discharge. This section requires the Board to establish criteria for the award of an honorable discharge, including consideration of: the petitioner’s offense history while under the jurisdiction of the Division, or during or after local probation supervision; and the petitioner’s efforts toward successful community reintegration, including employment history, educational achievements or progress toward obtaining a degree, vocational training, volunteer work, community engagement, positive peer and familial relationships, and any other relevant indicators of successful reentry and rehabilitation.

Welfare and Institutions Code Section 1178 provides that a person previously committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities may petition the Board of Juvenile Hearings for an honorable discharge upon his or her completion of local probation supervision following discharge, but not sooner than 18 months following the date of discharge, by the board. This section requires the county of commitment to, upon request by the Division, provide a summary report of the petitioner’s performance while on probation after release from the Division of Juvenile Facilities.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Department of Corrections and Rehabilitation (CDCR), Division of Juvenile Justice (Division), Board of Juvenile Hearings (Board) proposes to amend sections 4986, 4995, and 4996, adoption of sections 4988, 4994, 4994.3, 4994.5, 4996.3, and 4996.5, and repeal of sections 4989, 4990, and 4997 of the California Code of Regulations (CCR), Title 15, Division 4.5, regarding honorable discharge.

This rulemaking action will ensure compliance with current statutory authorities and requirements.

Senate Bill 625 (Statutes of 2017) created a process to grant honorable discharge to individuals previously committed to or supervised by the Division, who have proven the ability to desist from criminal behavior and initiated a successful transition into adulthood.

The purpose of an honorable discharge is to remove barriers to a youth’s successful integration into society and to enable the pursuit of greater opportunities. Removing these barriers increases access to education, employment, and occupational licenses, including opportunities for employment as a peace officer within the Division. Honorable discharge recognizes and rewards youth who have avoided reoffending and have pursued productive and engaged roles as members of society. The goal of achieving an honorable discharge inspires and motivates youth committed to the Division to plan

and pursue a positive life. It serves as an incentive for youth to participate in treatment and training while placed in the Division.

Welfare and Institutions Code Section 177 provides that persons discharged from the Department of Corrections and Rehabilitation, Division of Juvenile Facilities by the Board of Juvenile Hearings may petition the Board for consideration of an honorable discharge. This section requires the Board to establish criteria for the award of an honorable discharge, including consideration of: the petitioner’s offense history while under the jurisdiction of the Division, or during or after local probation supervision; and the petitioner’s efforts toward successful community reintegration, including employment history, educational achievements or progress toward obtaining a degree, vocational training, volunteer work, community engagement, positive peer and familial relationships, and any other relevant indicators of successful reentry and rehabilitation.

Welfare and Institutions Code Section 1178 provides that a person previously committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities may petition the Board of Juvenile Hearings for an honorable discharge upon his or her completion of local probation supervision following discharge, but not sooner than 18 months following the date of discharge, by the board. This section requires the county of commitment to, upon request by the Division, provide a summary report of the petitioner’s performance while on probation after release from the Division of Juvenile Facilities.

The proposed text establishes the Board’s honorable discharge process and implements provisions of SB 625. Additionally, this proposed rulemaking repeals text related to the outdated use of general and dishonorable discharge statuses.

This rulemaking action updates names and terms for consistency with current statutes and terminology used by the Division and repeals text related to the outdated use of general and dishonorable discharge statuses

This action provides the following:

- Authorizes youth previously committed to the Division the ability to request an honorable discharge.
- Authorizes youth previously housed in the Division as provided by Welfare and Institutions Code sections 1731.5 (to complete a set prison term) and 1731.7 (participants in the Division’s transition–aged youth pilot program) the ability to request an honorable discharge.
- Establishes requirements, including submission of documentation, in petitioning the Board for an honorable discharge.

- Requires the Executive Officer to request a summary probation report containing information regarding the applicant’s performance while on probation from the county of commitment.
- Ensure the applicant’s right to receive information regarding a scheduled hearing, including the right to appear in person.
- Establishes criteria for the Board to determine whether the applicant qualifies for an honorable discharge, including a case-by-case determination based upon a preponderance standard of proof.
- Requires an applicant be provided written decisions of honorable discharge proceedings.
- Establishes a process by which the Board may issue a stay of proceedings.
- Ensures an applicant’s right to appeal a denial of honorable discharge.
- Provides a process through which an applicant may request reconsideration following the denial of honorable discharge.
- Authorizes the Board to share an applicant’s contact information with public, private, and nonprofit organizations for the purpose of assisting the applicant with completing a petition for honorable discharge.
- Changes the term “Youth Authority” to “Division” for consistency with Welfare and Institutions Code Section 1703(c).
- Changes the term “Youthful Offender Parole Board” to “Board of Juvenile Hearings” for consistency with Welfare and Institutions Code Section 1716.
- Changes the term “ward” to “youth” for consistency with Welfare and Institutions Code

#### BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The Board believes there are benefits to increasing the number of formerly incarcerated youth who receive an honorable discharge. Welfare and Institution Code section 1772 states that individuals granted an honorable discharge shall thereafter be released from all penalties and disabilities resulting from the offense or crime for which the individual was committed, including those that affect access to education and employment. The fewer barriers to education and employment that formerly incarcerated youth face, the more likely they will be able to provide for themselves and their

families. The criteria for honorable discharge include positive behaviors that are directly correlated with the successful transition into adulthood, thereby reducing risks to reoffend.

Juvenile offenses and arrests often turn up in background checks. Although receipt of an honorable discharge will not prevent this from occurring, it can be offered as proof of rehabilitation. Employers may see this as a reason to give a youth a second chance.

Additionally, for youth who are facing deportation pursuant to removal proceedings, an honorable discharge may improve the youth’s chances in receiving a favorable outcome. Courts must consider receipt of an honorable discharge as evidence of rehabilitation, which will be helpful to youth should they pursue a sealing or expungement of their records.

#### EVALUATION OF CONSISTENCY/COMPATIBILITY WITH EXISTING REGULATIONS

Pursuant to Government Code 11346.5(a)(3)(D), the Department must evaluate whether the proposed regulations are inconsistent or incompatible with existing state regulations. Pursuant to this evaluation, the Department has determined these proposed regulations are not inconsistent or incompatible with any existing regulations within CCR, Title 15, Divisions 4 or 4.5.

#### LOCAL MANDATES

The proposed regulatory action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Sections 17500–17630.

#### FISCAL IMPACT STATEMENT

Cost to any local agency or school district that is required to be reimbursed: *None*.

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

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

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

#### EFFECT ON HOUSING COSTS

The Department has determined that the proposed action will have no significant effect on housing costs because the proposed regulations affect only the internal operations of the Board and youth previously committed to or housed in the Division.

SIGNIFICANT STATEWIDE ADVERSE  
ECONOMIC IMPACT ON BUSINESS

The Department has determined that the proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states because the proposed regulations affect only the internal operations of the Board and youth previously committed to or housed in the Division.

RESULTS OF  
ECONOMIC IMPACT ASSESSMENT

The Department has determined that the proposed regulations will have no impact on the creation of new or the elimination of existing jobs or businesses within California or affect the expansion of businesses currently doing business in California because the proposed regulations affect only the internal operations of the Board and youth previously committed to or housed in the Division. For additional information on the benefits of the proposed regulation, please see anticipated benefits found under the aforementioned Informative Digest/Policy Statement Overview.

The Division has determined that the proposed regulations will have no impact on the health and welfare of California residents, worker safety, or the State's environment as the proposed regulations only affect the internal management of the Division.

COST IMPACTS ON REPRESENTATIVE  
PRIVATE PERSONS OR BUSINESSES

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

EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations will have no significant adverse economic impact on small businesses because the proposed regulations affect only the internal operations of the Board and youth previously committed to or housed in the Division.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must de-

termine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention 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 provisions of law.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND  
INITIAL STATEMENT OF REASONS

The Department has prepared, and will make available, the proposed text and the Initial Statement of Reasons (ISOR) of the proposed regulatory action. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (rulemaking file) is available to the public upon request directed to the contact person listed in this Notice. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website at [https://www.cdcr.ca.gov/Regulations/Juvenile\\_Justice](https://www.cdcr.ca.gov/Regulations/Juvenile_Justice).

AVAILABILITY OF THE  
FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the contact person listed in this Notice.

AVAILABILITY OF CHANGES TO  
PROPOSED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 calendar days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person listed in this Notice. The Department will accept written comments on the modified regulations for 15 calendar days after the date on which they are made available.

**TITLE 23. DELTA  
STEWARDSHIP COUNCIL**

**California Code of Regulations, Title 23. Waters  
Division 6. Delta Stewardship Council  
Chapter 2. Consistency with Regulatory Policies  
Contained in the Delta Plan**

**Article 1. Definitions, Section 5001. Definitions  
and**

**Article 3. Consistency with the Regulatory Policies  
Contained in the Delta Plan, Section 5012.**

**Prioritization of State Investments in Delta Levees  
and Risk Reduction**

NOTICE IS HEREBY GIVEN that the Delta Stewardship Council (Council) proposes to amend California Code of Regulations, Title 23, Section 5012, *Prioritization of State Investments in Delta Levees and Risk Reduction*, to incorporate the Delta Levees Investment Strategy (DLIS). The Council also proposes to amend California Code of Regulations, Title 23, Section 5001 to add definitions for terms used in Delta Plan Policy RR P1. The Council will conduct a public hearing at the time and place noted below to consider approving for adoption the proposed amendments after considering comments, objections, and recommendations.

**OPPORTUNITY FOR PUBLIC COMMENT**

- **Written Comment Period.** Interested members of the public may provide comments by mail or by electronic submittal. The public comment period for this regulatory action will begin on July 5, 2019 and close on August 19, 2019. Any interested person, or her or his authorized representative, may submit written comments relevant to the proposed regulatory action. Submit written comments to:

Erin Mullin  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814  
(916) 445-5471

- **Electronic Submittal of Comments.** Any interested person, or her or his authorized representative, may submit comments by electronic submittal on August 19, 2019. Electronic submittals of comments are preferred, and must be submitted to the following address to be considered:

[OAL\\_amendRRP1@deltacouncil.ca.gov](mailto:OAL_amendRRP1@deltacouncil.ca.gov)

- **Public Hearing.** The Council will conduct a public hearing at the time and location set forth below to

consider approving for adoption the proposed amendments after considering comments, objections, and recommendations. This hearing will be held in accordance with the requirements set forth in Government Code section 11346.8. Interested members of the public may present comments verbally or in writing at the hearing prior to the closing of the hearing.

**Date:** August 22, 2019

**Time:** This item will be considered at a regularly scheduled public meeting of the Council, which is anticipated to commence at 9:00 a.m. This item may be heard at any time during the regularly scheduled meeting. The public hearing item will remain open as long as attendees are presenting testimony. Please consult the agenda, which will be available at <http://deltacouncil.ca.gov> at least ten (10) days before August 22, 2019, to determine the time at which this item will be heard.

**Location:** Park Tower Plaza, 2<sup>nd</sup> Floor Conference Room, 980 Ninth Street, Sacramento, CA 95814

**AUTHORITY AND REFERENCE**

Water Code sections 85210(i), 85210(h), and 85306 authorize the Council to adopt regulations or guidelines as needed to carry out its powers and duties relevant to this amendment. Water Code section 85210(i) authorizes the Council to adopt regulations or guidelines as needed to carry out its powers and duties; Water Code section 85210(h) grants the Council the power “to request reports from state, federal, and local governmental agencies on issues related to the implementation of the Delta Plan”; and Water Code section 85306 authorizes the Council, in consultation with the Central Valley Flood Protection Board (CVFPB), to recommend priorities for state investments in levee operation, maintenance, and improvements in the Delta. This action is proposed to implement, interpret, and make specific one or more of the following: sections 85020, 85022, 85054, 85057.5, 85225, 85300, 85305, 85306, 85307, and 85309 of the Water Code.

**INFORMATIVE DIGEST**

Summary of Existing Laws and Regulations Related Directly to the Proposed Rulemaking

This proposed rulemaking action implements, interprets, and makes specific certain provisions of the Sacramento–San Joaquin Delta Reform Act of 2009 (Delta Reform Act) (Wat. Code, § 85000 *et seq.*). The Delta Reform Act requires the Council to adopt and implement a legally enforceable long-term management



plan for the Sacramento–San Joaquin Delta (Delta) to further the “coequal goals” for the Delta of “providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem” to “be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.” (Wat. Code, §§ 85001(c) and 85300(a); the coequal goals are set forth in Wat. Code, § 85054.) The Delta Plan also furthers the State of California (State) policies specified in Water Code sections 85020 through 85023 of the Delta Reform Act, which include: providing for the sustainable management of the Delta ecosystem, a more reliable water supply for the State of California (State), and protecting and enhancing the quality of water supply from the Delta, as well as reducing risks to people, property, and State interests through appropriate land use and flood protection. State interests in the Delta include the economic and social well-being of Californians, environmental protection, use and conservation of resources, public access and recreation, habitat restoration and enhancement, water quality, and flood protection.<sup>1</sup>

Pursuant to the Reform Act, the Council adopted the Delta Plan as a comprehensive, long-term management plan for the Delta. The Delta Plan provides guidance and recommendations to state and local agencies on actions they may take to further the coequal goals for the Delta and implement the subgoals and strategies for the Delta set forth in the Delta Reform Act. (Wat. Code, §§ 85059 and 85300.) The Delta Plan also includes regulatory policies with which State and local public agencies are required to comply. (Wat. Code, § 85210(i).) The Reform Act also grants the Council regulatory and appellate authority over certain actions that take place in whole or in part in the Delta and Suisun Marsh, which are referred to as “covered actions”; State and local agencies are required to demonstrate consistency with the applicable regulatory policies (which are incorporated into the Delta Plan) when carrying out, approving, or funding a covered action. (Wat. Code, §§ 85022(a) and 85057.5.)

The Delta Reform Act also requires the Delta Plan to attempt to reduce risks to people, property, and State interests in the Delta by promoting effective emergency preparedness, appropriate land uses, and strategic levee investments (Wat. Code, § 85305(a)); and to recommend priorities for State investment in levee operation, maintenance, and improvements in the Delta, including both project levees (which are a part of the State Plan of Flood Control), and nonproject levees (which are not a

part of the State Plan of Flood Control) (Wat. Code, § 85306).

#### Overview of the Objective of the Regulatory Amendment

The Delta is the largest estuary on the west coast of the Americas and is the hub of the State’s major water supply systems. The Delta is home to about 500,000 people and comprises approximately 1,300 square miles of low-lying, flood-prone lands bound by 1,100 miles of levees. Before the Delta was modified by levees and other human structures, the natural flows of the San Joaquin and Sacramento rivers overflowed the Delta’s low-lying islands and floodplains for long periods each spring. Today, flooding of the Delta’s complex labyrinth of islands and waterways is prevented by levees.

The Suisun Marsh, located immediately downstream from the Delta and north of Grizzly Bay, is the largest contiguous brackish wetland on the west coast of North America. The Suisun Marsh is a critical part of the San Francisco Bay–Delta estuary ecosystem encompassing 116,000 acres, including 52,000 acres of managed wetlands, 30,000 acres of bays and sloughs, 27,700 acres of uplands, and 6,300 acres of tidal wetlands. Suisun Marsh includes about 230 miles of levees that reduce flood risk and help manage flows for wetlands, but only about 80 miles of these levees protect Delta water quality and terrestrial and aquatic habitat of statewide importance.<sup>2</sup>

The Delta and Suisun Marsh levees reduce flood risk to people, property, water supply, the Delta ecosystem, and infrastructure of statewide importance. However, levee failure (such as a levee breach) can cause catastrophic flooding, and can potentially cause injury or loss of life, disrupt water supplies, and possibly damage property, infrastructure, and environmental resources of importance to the entire State. Though levee maintenance and improvements over the past three decades have reduced the frequency of levee failures, the State does not have a comprehensive method to prioritize its investments in operations, maintenance, and improvement projects for levees in the Delta and Suisun Marsh. Without a prioritization methodology, the apportionment of public resources into levees may not occur in a manner that reflects a broader, long-term approach.<sup>3</sup>

To guide discretionary State investments in Delta flood risk management prior to the completion and adoption of the updated priorities developed pursuant to Water Code section 85306 (which are included in this

<sup>1</sup> Delta Stewardship Council (Council). 2013. The Delta Plan: Ensuring a reliable water supply for California, a healthy Delta ecosystem, and a place of enduring value. May 2013.

<sup>2</sup> Council. 2017. Delta Levees Investment Strategy. Final Report. July 2017, p. 1.

<sup>3</sup> Council. 2013. The Delta Plan: Ensuring a reliable water supply for California, a healthy Delta ecosystem, and a place of enduring value. May 2013. p. 271.

amendment), the Council adopted Policy RR P1, *Prioritization of State Investments in Delta Levees and Risk Reduction*, included in the 2013 Delta Plan and codified in California Code of Regulations, Title 23, Section 5012 (hereafter Section 5012), which set forth interim priorities for State investments in levee operation, maintenance, and improvements.

In addition, the 2013 Delta Plan described a framework for the Delta Levees Investment Strategy (DLIS) to adequately assess Delta flood risk and included recommendations to: assess existing Delta levee conditions; develop an economics-based risk analysis for each Delta tract and island; conduct ongoing Delta flood risk analyses in an open manner for the public; and develop an updated understanding of Delta hydrology.

In 2014, the Council began formulating a comprehensive analysis of State interests and risks in the Delta. The analysis began with the development of the document: *State Investment in Delta Levees: Key Issues*,<sup>4</sup> which summarizes relevant statutes, and key issues to consider in developing update priorities for State investment in Delta levees. Following a workshop with nationally recognized flood management experts, Council staff drafted the *Delta Flood Management Investment Principles*.<sup>5</sup> These documents informed the Council's draft methodology that would be the foundation of the DLIS. The documents were reviewed by an independent scientific panel in the summer of 2015. In addition to the independent peer review, the Council deployed an extensive public engagement process in developing its methodology. Council staff hosted over 70 workshops and public meetings with Delta residents, reclamation district engineers, water supply and ecosystem interests, and other Delta stakeholders.

The Council completed DLIS in 2017 to establish a comprehensive method to identify funding priorities for State investments in the Delta levee system for reducing the likelihood and consequences of levee failures to protect people, property, and State interests, while advancing the coequal goals. The DLIS combined risk analysis, economics, engineering, and decision-making techniques to identify funding priorities and assemble a comprehensive investment strategy for Delta levees. By applying the risk analysis methodology, the Council established a three-tiered priority list of tracts and islands — Very-High Priority, High Priority, and Other Priority — for State investments in levee improvements for Delta islands.

<sup>4</sup> Council. 2015. State Investments in Delta Levees. Key Issues for Updating Priorities. January 2015

<sup>5</sup> Council. 2015. Delta Flood Management Investment Strategy Principles Approved as Interim Guidance on July 24, and August 27, 2015.

At its April 26, 2018 meeting, the Council adopted Resolution 2018-1 (Resolution) for “Certification of the Delta Plan Amendments Program Environmental Impact Report; Adoption of Findings and a Statement of Overriding Considerations, Mitigation Measures, and a Mitigation Monitoring and Reporting Program; and Adoption of the Delta Plan Amendments.”<sup>6</sup> In the Resolution, the Council (among other things) adopted revisions to its policy set forth in Section 5012, adopted amendments to Chapter 7 of the Delta Plan (*Reduce Risk to People, Property, and State Interests in the Delta*)<sup>7</sup> to be consistent with the revised policy, certified the Environmental Impact Report for the Delta Plan Amendments,<sup>8</sup> and directed the initiation of this rulemaking process to amend Section 5012 and Section 5001.

The current Section 5012 reflects the interim priorities for the apportionment of public resources into levees, adopted in 2013. The proposed amendment would modify the existing Section 5012 to prioritize investment in levees to ensure that the limited public funds available are expended first for improvements that are most critical to protect lives, property, and State interests. In addition, Section 5001 would be amended to add new definitions for terms used in the revised Section 5012.

#### Environmental Review

The adopted Resolution certified that the Environmental Impact Report (EIR) for the Delta Plan Amendments was prepared in compliance with the requirements of the California Environmental Quality Act (Public Resources Code section 21080.5 et seq. (CEQA)) and approved the Delta Plan Amendments. The Delta Plan Amendments included “pursuant to section 85305 and 85306 of the Water Code, updated and new Delta Plan recommendations and regulations regarding strategic investment in Delta levees for risk reduction, and emergency preparedness, response and recovery, all based on best available science, including repealing interim Delta Plan policy RR P1 and adopting new Delta Plan policy RR P1, referred to as the Delta Levee invest and Risk Reduction Strategy (“DLIS”).” The DLIS priorities adopted in the Delta Plan Amendments and certified in the EIR are the same as in this

<sup>6</sup> Council. 2018. Resolution 2018-1. Certification of the Delta Plan Amendments Program Environmental Impact Report; Adoption of Findings and a Statement of Overriding Considerations, Mitigation Measures, and a Mitigation Monitoring and Reporting Program; and Adoption of the Delta Plan Amendments. April 26, 2018. Available at: <http://deltacouncil.ca.gov>.

<sup>7</sup> Council. 2018. Delta Plan Amendments. April. Available at: <http://deltacouncil.ca.gov>.

<sup>8</sup> Council. 2018. Delta Plan Amendments Final Program Environmental Impact Report. April. Available at: <http://deltacouncil.ca.gov>.

proposed amendment. The proposed amendment is within the scope of the project analyzed in the certified EIR and approved by the Council in the Resolution, and the EIR adequately describes the proposed amendment for purposes of CEQA.

### SUMMARY OF THE EFFECT OF THE PROPOSED AMENDMENT

The Council proposes to amend section 5012 to carry out the legislative requirement that the Council adopt a legally enforceable long-term management plan for the Delta and to carry out the legislative intent of achieving the coequal goals<sup>9</sup> and objectives specified in Water Code sections 85054, 85020 through 85023, and 85306. Specifically, for Water Code section 85306, the Legislative requirement directs the Council, in consultation with the Central Valley Flood Protection Board, to recommend priorities for State investments in levee operation, maintenance, and improvements in the Delta. The Delta Reform Act states that, inherent in the coequal goals for management of the Delta, the policy of the State is to achieve the objective of reducing risks to people, property, and State interests in the Delta through effective emergency preparedness, appropriate land uses, and investments in flood protection (Wat. Code §85305).

The proposed amendment to Section 5012 is necessary to ensure that state-funded improvements to Delta levees are based on updated priorities to reduce the likelihood and consequences of levee failures, and to protect people, property, and State interests, while advancing the coequal goals.

In addition, Section 5001 must be amended to include new terms associated with the proposed amendment to Section 5012.

### POLICY STATEMENT OVERVIEW

A key objective of the Delta Reform Act is to “reduce risks to people, property, and State interests in the [Sacramento–San Joaquin] Delta by promoting effective emergency preparedness, appropriate land use, and strategic levee investments.” (Water Code section 85305). This must be carried out in a manner that advances the state’s coequal goals for the Delta of: “. . . providing a more reliable water supply for California and protecting, restoring and enhancing the Delta

ecosystem,” achieved in a manner that protects and enhances the “unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.” (Public Resources Code section 85054.)

### OBJECTIVES AND BENEFITS

The Delta Reform Act explicitly sets State of California policy for the Delta, including a specific policy in Water Code section 85020 for achieving the following objectives inherent in the coequal goals for the management of the Delta:

- (a) Manage the Delta’s water and environmental resources and the water resources of the state over the long term.
- (b) Protect and enhance the unique cultural, recreational, and agricultural values of the California Delta as an evolving place.
- (c) Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem.
- (d) Promote statewide water conservation, water use efficiency, and sustainable water use.
- (e) Improve water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta.
- (f) Improve the water conveyance system and expand statewide water storage.
- (g) Reduce risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and investments in flood protection.
- (h) Establish a new governance structure with the authority, responsibility, accountability, scientific support, and adequate and secure funding to achieve these objectives.

Public funds currently available for flood management are not sufficient to significantly raise the level of flood protection throughout the Delta to the levels called for by local agencies and prior State plans. The State remains the primary source of funding for flood protection. Spreading inadequate funding thinly throughout the Delta cannot address the serious flood risks to State interests in the Delta. Lacking a strategy to systematically guide levee investments in the Delta toward islands and tracts that represent the greatest risks to people, property, and State interests, California is challenged to meet the risk reduction objectives of the Delta Reform Act in a manner that advances the coequal goals.

**Objective (Goal)** — The broad objectives of this proposed regulatory action are to achieve the requirements of the Delta Reform Act by:

<sup>9</sup> In addition, the Council adopted Resolution 2018–1 in April 2018, which determined that implementation of the proposed amendment is necessary to achieve the coequal goals as enumerated in the Delta Reform Act and to be consistent with the amended Delta Plan.



- Setting priorities for strategic Delta levee investments that maximize protection of people, property, and State interests;
- Requiring the State to first invest public resources in Delta levees with greatest potential to protect people, property, and State interests, before investing public resources in Delta levees with lower potential to achieve these objectives; and
- Increasing public awareness of how State expenditures maximize public safety and protect State interests in the Delta.

**Benefits** — The anticipated benefits, including any nonmonetary benefit to the protection of public health and safety of California residents, worker safety, and the State’s environment, from this proposed regulatory action are:

- Reduced risk of damage to property and infrastructure, including reduced cost to repair failed levees (11 Very–High Priority or High Priority islands and tracts with expected annual damages (EAD) greater than \$3.5 million per year (at least 80 percent of Delta–wide EAD));
- Reduced annual risk of fatalities from a levee failure (11 Very–High Priority or High Priority islands and tracts with an expected annual fatality (EAF) greater than 0.24 lives per year (at least 90 percent of Delta–wide EAF));
- State water supply reliability benefits (22 Very–High Priority or High Priority water supply islands and tracts with a probability of flooding greater than 0.5 percent per year (1–in–200–year probability));
- “Delta as a Place” benefits from cultural, recreational, and natural resource, and agricultural qualities that distinguish the Delta; and
- Improving transparency and public awareness of State levee funding decisions.

**CONSISTENCY WITH EXISTING STATE LAWS AND REGULATIONS**

Pursuant to Government Code section 11346.5(a)(3)(D), the Council evaluated the proposed amendment to determine whether it is inconsistent or incompatible with existing State regulations and concluded that the proposed amendment is neither inconsistent nor incompatible with existing State regulations.

**SUBSTANTIAL DIFFERENCES FROM EXISTING, COMPARABLE FEDERAL REGULATIONS OR STATUTES**

There are no federal regulations or statutes that address the specific subject addressed by the proposed regulations.

**DOCUMENTS INCORPORATED BY REFERENCE**

Maps showing the proposed DLIS priority designation for each island and tract in the Delta and Suisun Marsh, which are set forth in proposed Table 1 of proposed Section 5012, are incorporated by reference into Section 5012 as Appendix P to the Delta Plan. All other regulatory provisions of Section 5001 and Section 5012 are within the body of the proposed regulations.

**MANDATED BY FEDERAL LAW OR REGULATIONS**

The proposed amendments to Section 5001 and Section 5012 are not mandated by federal law or regulations.

**OTHER STATUTORY REQUIREMENTS**

None.

**FISCAL IMPACT/LOCAL MANDATE DETERMINATION REGARDING THE PROPOSED ACTION**

Pursuant to Government Code 11346.5(a)(5) and 11346.5(a)(6), the Council has made a preliminary determination that the proposed amendment to Section 5012 could create costs or savings to any State agency (see Sections 11 and 12 of Attachment 1 to the ISOR). The Council has determined that the proposed amendment would not create costs to or mandates to any local agency or school district, whether or not reimbursable by the State pursuant to Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies. The Council has determined that the proposed amendment would not create costs or savings in federal funding to the State.

**FISCAL IMPACT TO LOCAL GOVERNMENT**

The proposed amendment to Section 5001, which adds definitions for terms used in proposed Section



5012, would not cause any direct or indirect economic or fiscal impacts to local agencies. The proposed amendments to Section 5012 would not impose fiscal costs on local governments.

FISCAL IMPACT ON STATE GOVERNMENT

The proposed amendment to Section 5001, which adds definitions for terms used in proposed Section 5012, would not cause any direct or indirect economic or fiscal impacts to state agencies. Any fiscal impacts related to these definitions would be caused by proposed amendments to Section 5012, where these terms are applied.

The Council estimates that the proposed amendments will create fiscal costs to State agencies of approximately \$368,000 per year. The California Department of Water Resources (DWR) would be required to prepare and submit an annual report to the Council describing Delta levee investments, and if necessary, justifying why funding decisions deviated from the priorities in the proposed amendment. The Council would be required to review the annual report prepared by DWR. The additional cost of preparing an annual report is generally moderate and can be completed by existing staff that are familiar with Delta levee investments and the Delta Plan; thus, it is likely these additional costs would be absorbed within existing DWR and Council budgets. This estimate is based on analysis in the *Economic and Fiscal Impact Analysis of Proposed Amendments to Prioritization of State Investments in Delta Levees and Risk Reduction* (EFIA) pursuant to Government Code section 11346.3(b)(1)(A)–(D), which is included as Attachment 1 to the Initial Statement of Reasons and summarized in the Form 399: *Economic and Fiscal Impact Statement*.

SIGNIFICANT STATEWIDE  
ADVERSE ECONOMIC IMPACT  
DIRECTLY AFFECTING BUSINESS,  
INCLUDING THE ABILITY TO COMPETE

The Council has made an initial determination that the proposed amendment to sections 5001 and 5012 would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF THE RESULTS OF THE  
ECONOMIC IMPACT ASSESSMENT

Pursuant to Government Code 11346.3(b), the Council has prepared an Economic and Fiscal Impact Analy-

sis of Proposed Amendments to Prioritization of State Investments in Delta Levees and Risk Reduction (EFIA), Attachment 1 to the Initial Statement of Reasons to this rulemaking, of the proposed amendment. Based on the analysis and supporting information provided in the EFIA, the Council makes the following initial determinations:

- The proposed amendment would not affect the creation or elimination of jobs within California.
- The proposed amendment would not affect the creation of new businesses or elimination of existing businesses within California.
- The proposed amendment would not affect the expansion of businesses currently doing business within the State.
- The benefits of the regulation to the health and welfare of California residents, worker safety, and the State’s environment are as follows:
  - Reduced risk of damage to property and infrastructure, including reduced cost to repair failed levees;
  - Reduced annual risk of fatalities from a levee failure;
  - State water supply reliability benefits;
  - Ecosystem/habitat benefits; and
  - “Delta as a Place” considerations<sup>10</sup>.

DESCRIPTION OF COST  
IMPACT ON REPRESENTATIVE  
PRIVATE PERSON OR BUSINESSES

The requirements of the amended regulations apply to State agencies — they do not apply to representative persons or businesses. The Council is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed amendment to sections 5001 and 5012.

BUSINESS REPORTING REQUIREMENTS

The administrative requirements of the amended regulations would not apply to businesses.

SMALL BUSINESS

The direct cost of the proposed amendment would fall on State agencies, not on businesses. Therefore, it would have no direct effect on businesses, including small businesses. Based on the analysis and supporting information provided in the EFIA (Attachment 1 to the

<sup>10</sup> For example, legacy communities, recreation, and prime agriculture.

Initial Statement of Reasons), the Council makes an initial determination that any potential indirect effects on small businesses would be insignificant.

### HOUSING COSTS

Based on the analysis and supporting information provided in the EFIA (Attachment 1 to the Initial Statement of Reasons), the proposed amendment would not have a significant effect on housing costs. The proposed amendments could shift the distribution of benefits from levee investment within the Delta, indirectly affecting land values either positively or negatively. As analyzed in the EFIA, any overall effect on housing costs would be insignificant.

### CONSIDERATION OF ALTERNATIVES

The Council must determine that no reasonable alternative considered or that has otherwise been identified and brought to its attention 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 Council has prepared an Initial Statement of Reasons that contains an analysis of alternatives considered and rejected due to reasons as described. Interested persons may present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

### CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Erin Mullin  
Delta Stewardship Council  
980 Ninth Street, Suite 1500  
Sacramento, CA 95814  
(916) 445-5459  
[erin.mullin@deltacouncil.ca.gov](mailto:erin.mullin@deltacouncil.ca.gov)

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All comments must be submitted as set forth in "Opportunity for Public Comment" section, above.

### AVAILABILITY STATEMENTS

The following materials are available for public review throughout the public comment period:

- Text of Proposed Amendment to Existing Regulation
- Notice of Proposed Rulemaking
- Initial Statement of Reasons
- Attachment 1 to Initial Statement of Reasons — Economic and Fiscal Impact Analysis of Proposed Amendments to Prioritization of State Investments in Delta Levees and Risk Reduction
- Form 400 (Notice Publications/Regulation Submission)
- Form 399 (Economic and Fiscal Impact Statement)
- Information upon which proposed amendment is based, including;
  - Comparison of PL 84-99 Analyses Delta Levees Investment Strategy (DLIS) Technical memorandum. Delta Stewardship Council (Council), 2017.
  - Economic Sustainability Plan for the Sacramento-San Joaquin Delta. Delta Protection Commission, 2012.
  - Delta Flood Management Investment Strategy Principles. Council, Approved as Interim Guidance on July 24, and August 27, 2015.
  - Delta Levees Investment Strategy Issue Paper. Council, 2015.
  - Delta Levees Investment Strategy Final Report, Council, 2016.
  - DLIS MOU and Joint Implementation Plan. Council, June 22, 2017 Meeting.
  - The Delta Plan: Ensuring a reliable water supply for California, a healthy Delta ecosystem, and a place of enduring value. Council, 2013.
  - Delta Plan Program Environmental Impact Report. Council, 2013.
  - Delta Plan Amendments. Council, April 2018.
  - DLIS Risk Analysis Methodology Report. Council, Revised June 2017.
  - DLIS: Sea Level Rise Methodology. Council, 2015.
  - Delta Reclamation District Financing and Budgets. Council, 2015.
  - Delta Risk Management Strategy, Phase 1. Risk Report: Section 2. DWR, 2009.

- Discussion Draft of Potential Revisions to Chapter 7 Policies and Recommendations. Council, March 23, 2017 Meeting.
- Draft Report: Earthquakes and High Water as Levee Hazards in the Sacramento–San Joaquin Delta. Delta Independent Science Board (Delta ISB), 2016.
- Final: Levee Related Habitat Review Issue Paper. Council, 2015.
- Inspection and Local Maintaining Agency Report of the Central Valley State–Federal Flood Protection System. DWR, 2013.
- Map of the Sacramento–San Joaquin Delta. Council, 2014.
- Map of the Sacramento–San Joaquin Delta and Suisun Marsh prepared by the Flood SAFE Environmental Stewardship and Statewide Resources Office (FESSRO). DWR, 2013.
- Reclamation District Ability to Pay (ATP) Analysis Technical memorandum. Council, 2017.
- Resolution 2018–1. Certification of the Delta Plan Amendments Program Environmental Impact Report, Adoption of Findings and a Statement of Overriding Considerations, Mitigation Measures, and a Mitigation Monitoring and Reporting Program, and Adoption of the Delta Plan Amendments. Council, April 26, 2018.
- Review Technical Memoranda from Delta Levee Prioritization Methodology Peer Review Meeting. Council, May 19–20, 2015.
- Revisions to Current DLIS Amendment. Council, March 23, 2017 Meeting.
- Sacramento–San Joaquin Delta Atlas. DWR, 1995.
- State Investments in Delta Levees. Key Issues for Updating Priorities. Council, 2014.
- State Investments in Delta Levees. Key Issues for Updating Priorities. Council, 2015.
- Suisun Marsh Properties Map. Suisun Marsh RCD, 2015.
- Final Statement of Reasons (upon completion)
- Final Text of Regulation (upon completion)

These materials may be viewed as follows:

- By visiting the Council’s website (<http://deltacouncil.ca.gov>); or
- By arranging an in–person review. Please contact Erin Mullin for arrangements (contact information provided above).

After holding the hearing and considering all timely and relevant comments received, the Council may adopt the proposed amendment as described in this notice. If the Council makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Council adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Erin Mullin at the address indicated above. The Council will accept written comments on the modified regulations for 15 days after the date on which they are made available to the public.

#### FINAL STATEMENT OF REASONS

The Final Statement of Reasons will be posted on <http://deltacouncil.ca.gov>. If the amendment is approved by the Office of Administrative Law, the date the regulation is filed with the Secretary of State and the effective date of the regulations will also be posted on the Council’s website.

#### INTERNET ACCESS

All materials published or distributed by the Council are available at its internet website at <http://deltacouncil.ca.gov>.

### TITLE MPP/22. DEPARTMENT OF CHILD SUPPORT SERVICES

#### NOTICE OF PROPOSED RULEMAKING TO REPEAL MANUAL OF POLICIES AND PROCEDURES CHAPTER 12–500 FRANCHISE TAX BOARD FULL COLLECTION PROGRAM OF THE DEPARTMENT OF CHILD SUPPORT SERVICES

**NOTICE IS HEREBY GIVEN** that the Department of Child Support Services (DCSS) proposes to repeal subsections 12–501, 12–505, 12–510, and 12–515 of Chapter 12–500 of the Manual of Policies and Procedures (MPP) in their entirety. It is necessary to repeal these subsections as they contain requirements and procedures that are no longer consistent, or are in conflict, with current statute and DCSS policy. Subsection 12–520 of Chapter 12–500 of the MPP is amended and proposed to be adopted in 22 California Code of Regulations (CCR) Division 13, Chapter 9, Article 11 Refund of Over Collections, Section 119905 “Refund of Over Collections to Noncustodial Parent”. A definition

is proposed to be added into 22 CCR Division 13, Subchapter 1 Operations, Article 1 Definitions, Subsection 110487 “Over Collection.”

#### AVAILABILITY OF DOCUMENTS

The proposed text for the repeal and replacement of MPP Chapter 12–500 in this rulemaking is posted to the DCSS public website at:

<https://childsupport.ca.gov/regulations/>

Any further revised version of the text and the Final Statement of Reasons will be posted to this webpage when they become available. DCSS has available all of the information upon which this rulemaking is based at the contact address listed below. That information is too voluminous to include here. If you do not have internet access, copies of the proposed repealed text of MPP Chapter 12–500, text to be adopted into CCR, and the Initial Statement of Reasons may be secured from the contact person listed below.

#### 15–DAY AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all relevant and timely comments received, the DCSS may adopt the proposed regulations substantially as described in this notice. If the DCSS makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the DCSS adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Andrew Enriquez at the address indicated below. The DCSS will accept any written comments on the modified regulations for 15 days after the date on which they are made available.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Andrew Enriquez at the address below.

#### CONTACT PERSON

Any inquiries regarding this action to repeal the DCSS MPP Chapter 12–500 may be directed to:

Name:

Andrew Enriquez

Telephone:

916–464–6689

Fax:

916–464–5772

Email Address:

[andrew.enriques@dcss.ca.gov](mailto:andrew.enriques@dcss.ca.gov)

Postal Address:

Dept. of Child Support Services  
Policy and Program Branch  
MS–210

Attn: Andrew Enriquez

P.O. Box 419064

Rancho Cordova, CA 95741–9064

The backup contact person for inquiries is:

Name:

Kristi Anderson

Telephone:

916–464–6682

Fax:

916–464–5772

Email Address:

[kristi.anderson@dcss.ca.gov](mailto:kristi.anderson@dcss.ca.gov)

Postal Address:

Dept. of Child Support Services  
Policy and Program Branch  
MS–210

Attn: Kristi Anderson

P.O. Box 419064

Rancho Cordova, CA 95741–9064

#### 45–DAY WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to DCSS. All comments should be submitted to the contact person named above at the addresses or phone number provided. The written comment period shall begin on July 5, 2019 and end on August 20, 2019 at midnight. DCSS shall consider only comments received by the contact person at the DCSS Policy and Program Branch by the deadline.

#### PUBLIC HEARING

DCSS has not scheduled a public hearing for this proposed action. Any interested person or his or her representative may request a public hearing. If DCSS receives a written request for a public hearing from any interested person or his or her authorized representative no later than 15 days before the close of the written



comment period, DCSS will conduct a public hearing on this proposed action.

**INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW**

DCSS proposes to repeal MPP Chapter 12–500 as it contains outdated regulations specifically describing the roles and responsibilities of local county district attorneys and the Franchise Tax Board in administering and enforcing child support orders. DCSS was established by Assembly Bill (AB) 196, (Chapter 478, Statutes of 1999) and Senate Bill (SB) 542, (Chapter 480, Statutes of 1999), and is the single state organizational unit that has the duty to administer the Title IV–D state plan for securing child and spousal support, medical support, determining paternity, and enforcing child support orders.

The MPP was adopted by the Department of Social Services prior to the establishment of DCSS. At that time, district attorneys would refer delinquent child support cases to the Franchise Tax Board for collection. Subsequent to the creation of the MPP, the duties and responsibilities of the district attorneys were transferred to local child support agencies (LCSAs) in accordance with Family Code Section 17304 and Family Code Section 17305. The delegation of child support enforcement actions to the Franchise Tax Board Child Support Collection Program that were specified in Sections 19271 through 19275 of the Revenue and Taxation Code (RTC) have been repealed.

DCSS proposes the adoption of Article 11 “Refund of Over Collection” and Section 119905 “Refund of Over Collections to Noncustodial Parent” into the California Code of Regulations, Title 22, Division 13, Chapter 9 to replace MPP 12–520 “Overcollections.” DCSS also proposes the adoption of new Section 110487 “Over Collection” into California Code of Regulations, Title 22, Division 13, Chapter 1, Article 1 Definitions, to define what is meant by use of the term “over collection” in this section.

**ANTICIPATED BENEFITS OF THE  
PROPOSED REGULATIONS**

The objective of the proposed regulation repeal is to ensure that there is clear guidance in regulation regarding the actions that LCSAs take to manage child support cases and enforce child support orders. The regulations contained in the MPP 12–700 are obsolete or are in conflict with State and Federal authorities and with existing regulations found in the California Code of Regulations. The specific benefit of this rulemaking will be to

provide clarity by repealing conflicting and obsolete regulations.

**EVALUATION OF  
INCONSISTANCY/INCOMPATIBILITY WITH  
EXISTING STATE REGULATIONS**

DCSS has reviewed existing regulations and higher authorities and has determined that there are other regulations and statutes that more accurately reflect current child support enforcement requirements which necessitates repealing the obsolete or inaccurate regulations contained in this rulemaking.

After conducting a review for any regulations that relate to or affect this area, the DCSS has found that there are no other regulations that concern the refund of over collected child support to the noncustodial party. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

**AUTHORITY AND REFERENCE**

Authority: Sections 17306, 17310, and 17312, Family Code.

Reference: Section 17311, Family Code; Sections 303.72, 303.100, and 303.102, 45 Code of Federal Regulations.

**DISCLOSURES REGARDING THE  
PROPOSED ACTION**

Pursuant to Government Code 11346.5, DCSS has determined that the proposed repeal of the DCSS MPP Chapter 12–500 will not impose a cost or savings on any state agency, local agency, or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of the Government Code; will not result in any nondiscretionary cost or savings to local agencies; will not result in any cost or savings in federal funding to the state; will not impose a mandate on local agencies or school districts; will not have a significant impact on housing costs; and will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The DCSS is not aware of any cost impacts that a representative private person or business will incur in reasonable compliance with the proposed action.

Small Business Determination: DCSS has determined that this rulemaking will not have any potential cost impact on small businesses as these regulations pertain to the enforcement of individual child support orders not small business regulation.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), DCSS must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DCSS 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.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

DCSS does not anticipate any impacts on 1) the creation or elimination of jobs within the State; 2) the creation or elimination of existing businesses in the State; 3) the expansion of businesses in the State. DCSS anticipates benefits to the health and welfare of California residents, specifically to local child support agencies by repealing obsolete regulations and adopting new regulations that accurately reflect current DCSS policy and are in line with state and federal authorities. This will result in more standard business practices among counties, less confusion regarding current child support policies, and better service to the public.

TITLE MPP. DEPARTMENT OF SOCIAL SERVICES

ORD #0119-05

ITEM #1 California Work Opportunity and Responsibility to Kids (CalWORKs) Maximum Aid Payment (MAP) Increase

The CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held on August 21, 2019, at the following address:

Office Building #8  
744 P St., Room 103  
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only if attendees are presenting testi-

mony. The purpose of the hearing is to receive public testimony, not to engage in debate or discussion. The CDSS will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you need a language interpreter at the hearing (including sign language), please notify CDSS at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on August 21, 2019.

Following the public hearing CDSS may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. Except for nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at [CDSS Public Hearings for Proposed Regulations \(http://www.cdss.ca.gov/inforesources/Letters-Regulations/Legislation-and-Regulations/CDSS-Regulation-Changes-in-Process-and-Completed-Regulations/Public-Hearing-Information\)](http://www.cdss.ca.gov/inforesources/Letters-Regulations/Legislation-and-Regulations/CDSS-Regulation-Changes-in-Process-and-Completed-Regulations/Public-Hearing-Information). Additionally, all the information which CDSS considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading at the address listed below. Following the public hearing, copies of the Final Statement of Reasons will also be available at the following address:

CONTACT

California Department of Social Services  
Office of Regulations Development  
744 P Street, MS 8-4-192  
Sacramento, CA 95814  
Tel: (916) 657-2586, Fax: (916) 654-3286  
Email: [ord@dss.ca.gov](mailto:ord@dss.ca.gov)

CHAPTERS

44-200, 44-300, and 89-100

INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW

These proposed regulations revise references to the CalWORKs Maximum Aid Payment (MAP). These changes are a result of Assembly Bill (AB) 1811 (Chapter 35, Statutes of 2018), which became effective April 1, 2019. AB 1811 requires CDSS to increase the MAP in the CalWORKs program. The proposed regulations implement the following by referring to the statutes and noting that updates to the MAP figures are published by CDSS through an All County Letter:

- Increases the CalWORKs MAP by ten percent, effective April 1, 2019, and
- Provides for further MAP increases in Fiscal Years 2019–20 and 2020–21.

This regulatory action will benefit the health and welfare of California residents by alleviating the effects of deep poverty. Children living in deep poverty endure hardships that impair their ability to succeed in school and adult life. Increasing the MAP will allow families to meet their basic needs, and thus improve the physical and mental health of their children, as well as their future potential.

The CDSS conducted a review of existing regulations and evaluated the proposed regulations for any inconsistency or incompatibility. The CDSS has found that these are the only regulations concerning the MAP in CalWORKs. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations, but do fulfill the intent of the Legislature in enacting AB 1811.

COST ESTIMATE

1. Costs or Savings to State Agencies: None.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance with Government Code Sections 17500–17630: None.
3. Nondiscretionary Costs or Savings to Local Agencies: None.
4. Federal Funding to State Agencies: None.

LOCAL MANDATE STATEMENT

These regulations do impose a mandate upon local agencies, but not upon school districts. The mandate is not required to be reimbursed pursuant to part 7 (commencing with Section 17500) of Division 4 of the Government Code or Section 6 of Article XIII B of the California Constitution because implementation of the reg-

ulations will result in no additional costs to local agencies.

STATEMENT OF SIGNIFICANT ADVERSE  
ECONOMIC IMPACT ON BUSINESS

The CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made based on the proposed regulatory action, which was designed to impact the regulations that only affect individuals applying for or receiving CalWORKs.

STATEMENT OF POTENTIAL COST IMPACT ON  
PRIVATE PERSONS OR BUSINESSES

The CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This regulatory action is designed to impact only the CalWORKs population in order to aid and strengthen needy families and there are no known expected costs associated to the individuals.

SMALL BUSINESS IMPACT STATEMENT

The CDSS has determined that there is no impact on small businesses as a result of filing these regulations because these regulations are only applicable to state and county agencies. These regulations are mandated by AB 1811 and are only applicable to CalWORKs program applicants or recipients; therefore, they do not have a cost impact on the private sector, including small businesses.

STATEMENT OF RESULTS OF  
ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California. The implementation of this regulatory action will benefit CalWORKs applicants or recipients. There are no additional benefits for worker safety or the state's environment, as the regulations only affect individuals applying for or receiving CalWORKs. For additional information on the benefits of the proposed regulation, please see anticipated benefits found under the aforementioned Informative Digest/Policy Statement Overview.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

In developing the regulatory action, CDSS did not consider any other alternatives because there were no other alternatives proposed. AB 1811 (Chapter 35, Statutes of 2018), Sections 24 and 25, specifically requires that CDSS implement MAP increases through regulations. These regulations would implement these increases by referring to the appropriate Welfare and Institutions Code sections which pertain to the MAP and by referring to the All County Letters issued by CDSS for the most recent MAP amounts.

The CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affect private persons and equally effective in implementing the statutory policy or other provision of law.

AUTHORITY AND REFERENCE CITATIONS

Sections 10553, 10554, 10604, 11450, 11450.017, 11450.018, 11450.02, 11450.021, 11450.022, 11450.025, 11450.026, and 11453.01 of the Welfare and Institutions Code.

CDSS REPRESENTATIVE  
REGARDING THE RULEMAKING  
PROCESS OF THE PROPOSED REGULATION

Contact Person:

Kenneth Jennings  
(916) 657-2586

Backup:

Sylvester Okeke  
(916) 657-2586

EMERGENCY STATEMENT

These regulations are to be adopted on an emergency basis. To allow interested persons an opportunity to submit statements or arguments concerning these regulations, they will be considered at a public hearing in accordance with Government Code Section 11346.4.

**GENERAL PUBLIC INTEREST**

**DEPARTMENT OF  
FISH AND WILDLIFE**

**HABITAT RESTORATION AND  
ENHANCEMENT ACT CONSISTENCY  
DETERMINATION NO. 1653-2019-037-001-R1**

**Project:** Lower Sugar Creek Floodplain Restoration Project

**Location:** Siskiyou County

**Applicant:** Scott River Watershed Council

**Background**

Project Location: The Lower Sugar Creek Floodplain Restoration Project (Project) is located at 9926 S Highway 3, near Callahan, CA, at a property owned by Sugar Creek Ranch (Marlin and Mike Kalpin) Assessor Parcel Number (APN) 031-490-150, and affects Sugar Creek, a tributary of the Scott River. The Project is within the Scott River Hydrologic Unit 105.42. Sugar Creek supports populations of Coho salmon, northern spotted owl, western pond turtle, foothill yellow-legged frog, tailed frog, and willow flycatcher.

Project Description: The Scott River Watershed Council (Applicant) proposes to enhance and restore up to 2.4 acres and 500 lineal feet of habitat within Sugar Creek to provide improved habitat for Southern Oregon Northern California Coho salmon (*Oncorhynchus kisutch*) and other aquatic and terrestrial organisms. The first phase of the Project will reconnect 0.8 acres of former floodplain within Sugar Creek by excavating approximately 5,500 cubic yards of mine tailings. The 0.8 acres of seasonally inundated floodplain habitat will provide slow water refuge and enhanced food sources for Coho salmon and other aquatic species. Providing additional habitat for Coho salmon in a critical reach with complex enhanced habitat that was produced in prior restoration efforts has the potential to contribute to the recovery of the species, providing long-term benefit for species recovery.

Construction will occur on an elevated terrace along a 160-foot long reach of Sugar Creek. The project will excavate an 0.8 acre area of mine tailings to an elevation of 3,002.5 feet. Excavation depth will vary through the site from zero feet to approximately 15 feet. Excavated materials will be placed on adjacent existing tailings upslope of the excavated area. Excavation will occur outside the drip line of existing mature riparian vegetation and outside the wetted Sugar Creek channel. Additional construction activities include installing a tempo-



rary silt fence upslope of the low water edge to prevent sediment from entering the creek during construction, removing invasive vegetation (i.e., Himalayan blackberry), and planting native riparian vegetation. Construction will occur during the base flow of summer to eliminate potential effects on fisheries and water quality. Excavation below the Sugar Creek water surface elevation will occur while the floodplain remains isolated from the stream. Fish relocation and/or stream dewatering will not be necessary to implement the Project. All excavation, transport and disposal will be outside of the wetted channel at time of construction.

This Project builds upon a complex of habitat features, including beaver dam analogues (BDAs) installed downstream of the proposed Project on Sugar Creek, and an off-channel pond connected to the stream channel. Monitoring efforts have documented that the BDAs have created 2.1 acres of slow water habitat, offering high quality summer and winter rearing habitat which contributed to the production of approximately 6,400 out-migrating juvenile salmonids, primarily Coho salmon, in 2016.

The Project is conceived as a phased project with the first phase, scheduled for implementation in 2019, as described above. Future phases will be detailed in annual work-plans to be approved by the North Coast Regional Water Quality Control Board (Regional Water Board) and will be limited to cumulative total impacts of less than 500 linear feet of stream bank impact and/or 2.4 acres. The purpose of future phases is to be able to adaptively manage the site as the dynamic restoration processes, and the impact of beaver habitation at the location, take effect. Such future phases may include placing posts into existing beaver dams to enhance their integrity in high flow events, building additional BDAs, planting additional riparian vegetation, and/or placing large wood to increase habitat complexity and diffuse high flow velocities. In addition to future phases with major construction activity requiring heavy equipment and agency approvals, minor adaptive management activities utilizing hand tools and hand labor may proceed on an as needed basis.

Project Size: The Project footprint for all phases is approximately 2.4 acres and less than 500 linear feet. The first phase of the Project will impact approximately 160 linear feet of streambed. The Applicant has included project size calculations that were used to determine the total size of the Project. The proposed Project complies with the General 401 Certification for Small Habitat Restoration Projects and associated categorical exemption from the California Environmental Quality Act (Cal. Code Regs., tit. 14, § 15333).

Project Associated Discharge: Discharge of materials into Waters of the State, as defined by Water Code section 13050 subdivision (e), resulting from the Project

include those associated with the following: fine sediment.

Project Timeframes:

Start date: July 1, 2019

Completion date for Phase 1: June 30, 2020

Completion date for all phases: August 30, 2024

Work window: July 1–October 31

Water Quality Certification Background: Because the Project's primary purpose is habitat restoration intended to improve the quality of waters in California and provide slow water refuge and enhanced food sources for Coho salmon and other aquatic species, the Regional Water Board issued a Notice of Applicability (NOA) for Coverage under the State Water Resources Control Board General 401 Water Quality Certification Order for Small Habitat Restoration Projects SB12006GN (Order) (Waste Discharge Identification (WDID) No. 1A190031WNSI, Electronic Content Management Identification (ECM PIN) No. CW-857482 for the Project. The NOA describes the Project and requires the Applicant to comply with terms of the Order. Additionally, the Applicant has included measures to avoid and minimize impacts to Coho salmon, northern spotted owl, western pond turtle, foothill yellow-legged frog, tailed frog, and willow flycatcher.

Receiving Water: Sugar Creek, tributary to the Scott River

Filled or Excavated Area:

Permanent area impacted: none

Temporary area impacted: 2.4 acres

Length temporarily impacted: 160 linear feet for Phase I; less than 500 linear feet for all phases

Length permanently impacted: 0 linear feet

Dredge Volume: 5,500 cubic yards of mine tailings

Discharge Volume: No materials are proposed to be discharged to waters of the state; however, some incidental fine sediment may be released as the sediment fence between work area and the stream is removed.

Project Location:

Upstream:

Latitude: 41.339420°N

Longitude: 122.826088°W

Downstream:

Latitude: 41.340793°N

Longitude: 122.824947°W

Regional Water Board staff determined that the Project may proceed under the Order. Additionally, Regional Water Board staff determined that the Project, as described in the Notice of Intent (NOI) complies with the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.).

On May 28, 2019, the Director of CDFW received a notice from the Applicant requesting a determination pursuant to Fish and Game Code Section 1653 that the NOA, NOI, and related species protection measures are consistent with the Habitat Restoration and Enhancement Act (HREA) with respect to the Project.

Pursuant to Fish and Game Code section 1653 subdivision (c), CDFW filed an initial notice with the Office of Administrative Law on May 28, 2019 for publishing in the General Public Interest section of the California Regulatory Notice Register (Cal. Reg. Notice File Number Z-2019-0528-03) on June 7, 2019. Upon approval, CDFW will file a final notice pursuant to Fish and Game Code section 1653 subdivision (f).

**Determination**

CDFW has determined that the NOA, NOI, and related species protection measures are consistent with HREA as to the Project and meets the conditions set forth in Fish and Game Code section 1653 for authorizing the Project.

Specifically, CDFW finds that: (1) The Project purpose is voluntary habitat restoration and the Project is not required as mitigation; (2) the Project is not part of a regulatory permit for a non-habitat restoration or enhancement construction activity, a regulatory settlement, a regulatory enforcement action, or a court order; and (3) the Project meets the eligibility requirements of the State Water Resources Control Board’s Order for Clean Water Act Section 401 General Water Quality Certification for Small Habitat Restoration Projects.

**Avoidance and Minimization Measures**

The avoidance and minimization measures for Project, as required by Fish and Game Code section 1653, subdivision (b)(4), were included in a section of the NOI, which contains the following categories: (1) Proposed erosion control measures; (2) Measures to minimize disturbance from instream construction; (3) Measures to minimize degradation of water quality; (4) Environmental resources, and (5) Covered species. The specific avoidance and minimization requirements are found in section 8 of the NOI.

**Monitoring and Reporting**

As required by Fish and Game Code section 1653, subdivision (g), the Applicant included a copy of the monitoring and reporting plan. The Applicant’s Monitoring and Reporting Plan provides a timeline for restoration, performance standards, and monitoring parameters and protocols. Specific requirements of the plan are found in section 15 of the NOI.

**Notice of Completion**

Coverage under the State Water Resources Control Board General 401 Water Quality Certification Order for Small Habitat Restoration Projects requires the Ap-

plicant to submit a Notice of Completion (NOC) no later than 30 days after the project has been completed. A complete NOC includes at a minimum:

- photographs with a descriptive title;
- date the photograph was taken;
- name of the photographic site;
- WDID number and ECM PIN number indicated above;
- success criteria for the Project.

The NOC shall demonstrate that the Applicant has carried out the Project in accordance with the Project description as provided in the Applicant’s NOI. Applicant shall include the project name, WDID number, and ECM PIN number with all future inquiries and document submittals. Pursuant to Fish and Game Code section 1653, subdivision (g), the Applicant shall submit the monitoring plan, monitoring report, and notice of completion to CDFW as required by the General Order. Applicant shall submit documents electronically to: [Suzanne.Turek@wildlife.ca.gov](mailto:Suzanne.Turek@wildlife.ca.gov).

**Project Authorization**

Pursuant to Fish and Game Code section 1654, CDFW’s approval of a habitat restoration or enhancement project pursuant to section 1652 or 1653 shall be in lieu of any other permit, agreement, license, or other approval issued by the department, including, but not limited to, those issued pursuant to Chapter 6 (commencing with section 1600) and Chapter 10 (commencing with section 1900) of this Division and Chapter 1.5 (commencing with section 2050) of Division 3. Additionally, Applicant must adhere to all measures contained in the approved NOA and comply with other conditions described in the NOI.

If there are any substantive changes to the Project or if the Water Board amends or replaces the NOA, the Applicant shall be required to obtain a new consistency determination from CDFW. (See generally Fish & G. Code, § 1654, subd. (c).)

**DEPARTMENT OF FISH AND WILDLIFE**

**PROPOSED RESEARCH ON FULLY PROTECTED SPECIES  
Salvage of Peregrine Falcon**

The Department of Fish and Wildlife (Department) received a study proposal from Katelyn J. Bishop, on behalf of University of California, Los Angeles, requesting authorization to take Peregrine Falcon (*Falco peregrinus*), a Fully Protected bird, for scientific research purposes, consistent with conservation and recovery of the species.

Ms. Bishop is planning to conduct studies throughout the range of the species in California, in accordance with methods approved by the Department and the U.S. Fish and Wildlife Service (Service). The research activities include salvage of peregrine carcasses, processing carcasses to isolate bones, and storage of full skeletal specimens. The purpose of the study is to ensure this species is represented in the skeletal avifaunal study collection being constructed at the University of California, Los Angeles. No adverse effects on individuals or populations are expected.

The Department intends to issue, under specified conditions, a Memorandum of Understanding (MOU) that would authorize Ms. Bishop, as the Principal Investigator, to carry out the proposed activities.

Pursuant to California Fish and Game Code (FGC) Section 3511(a)(1), the Department may authorize take of Fully Protected bird species after a 30-day notice period has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research is consistent with the requirements of FGC Section 3511 for take of Fully Protected birds, it would issue the authorization on or after August 5, 2019, for an initial and renewable term of up to, but not to exceed three years. Contact: Carie Battistone, [Carie.Battistone@wildlife.ca.gov](mailto:Carie.Battistone@wildlife.ca.gov), 916-445-3615.

**OFFICE OF ENVIRONMENTAL  
HEALTH HAZARD ASSESSMENT**

**SAFE DRINKING WATER AND TOXIC  
ENFORCEMENT ACT OF 1986  
PROPOSITION 65**

**NOTICE OF MODIFICATION TO TEXT OF  
PROPOSED REGULATION TITLE 27,  
CALIFORNIA CODE OF REGULATIONS**

**PROPOSED AMENDMENT TO  
SECTIONS 25821(a) AND (c)  
LEVEL OF EXPOSURE TO CHEMICALS  
CAUSING REPRODUCTIVE TOXICITY:  
CALCULATING INTAKE BY THE  
AVERAGE CONSUMER OF A PRODUCT**

As required by Government Code section 11346.8(c), and Title 1, section 44 of the California Code of Regulations, the Office of Environmental Health Hazard Assessment (OEHHA) is providing no-

tice of changes to the proposed regulatory action to amend Sections 25821(a) and 25821(c) of Title 27 of the California Code of Regulations. Section 25821 addresses calculating the level of exposure to chemicals listed under Proposition 65 as known to cause reproductive toxicity.

The proposed regulation was originally the subject of a Notice of Proposed Rulemaking published on October 5, 2018, in the California Regulatory Notice Register (Register No. Z2018-0925-07), which initiated a 45-day public comment period. A public hearing was held on November 19, 2018. OEHHA received oral comments from four commenters. The California Chamber of Commerce and the Grocery Manufacturers Association requested an extension of the comment period, which OEHHA granted. Ten written comments were received during the extended comment period that ended December 3, 2018.

After carefully reviewing the comments received, OEHHA has modified the proposed regulation in Section 25821(a) to state that the concentration of a listed chemical in a food product may be based on the concentration in the product as it is offered for sale to the end consumer, even if the product contains ingredients sourced from different manufacturers or producers. For example, where grains are harvested from multiple farms and are then mixed together at a manufacturing facility, the concentration of a listed chemical in the mixture can be measured in the finished product as it is offered for sale to the consumer (i.e., in a bag, box or other container).

In addition, OEHHA is not proceeding at this time with the amendment to Section 25821(c)(2), which would have established the arithmetic mean as a default in calculating the reasonably anticipated rate of intake or exposure for average users of a consumer product. Therefore, OEHHA is no longer proposing a change to Section 25821(c)(2) as part of this rulemaking.

The full regulatory text with the modified language provided in double underline and double strikeout format is available on request from Monet Vela in the OEHHA Legal Office at [monet.vela@oehha.ca.gov](mailto:monet.vela@oehha.ca.gov) or (916) 323-2517.

OEHHA is requesting comments on the modifications to the regulatory text. In order to be considered, **OEHHA must receive comments by July 22, 2019, which is the designated close of the comment period.** All comments will be posted on the OEHHA website at the close of the public comment period.

Comments may be submitted electronically through our website at <https://oehha.ca.gov/comments>. Com-



ments submitted in paper form can be submitted by mail, fax, or hand-delivered to the address below.

ORDER NO: 19-0612-18

Monet Vela  
Office of Environmental Health Hazard Assessment  
1001 I Street, 23<sup>rd</sup> Floor  
P.O. Box 4010  
Sacramento, California 95812-4010

Telephone: 916-323-2517  
Fax: 916-323-2610

OEHHA is subject to the California Public Records Act and other laws that require the release of certain information upon request. If you provide comments, please be aware that your name, address and e-mail may be available to third parties.

**RULEMAKING PETITION  
DECISION**

**CALIFORNIA ENERGY COMMISSION**

**Government Code Section 11340.7**

**Agency:** California Energy Commission

**Petitioner:** Steve Uhler

**Relevant Regulations:** Title 20 section 3204

**Authority:** Public Resources Code sections 25218 and 25402

**Agency Decision:** Petition denied. See attached order.

**Agency Contact Person:**

Jared Babula 916-651-1462,  
[Jared.babula@energy.ca.gov](mailto:Jared.babula@energy.ca.gov)

**Obtaining Documents:**

<https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-RPS-01> see TN# 228363 for petition.

**STATE OF CALIFORNIA  
STATE ENERGY RESOURCES  
CONSERVATION AND DEVELOPMENT  
COMMISSION**

**IN THE MATTER OF: STEVE UHLER**

**PETITION FOR RULEMAKING HEARING**

**Docket No. 19-RPS-01**

**ORDER DENYING THE PETITION FOR  
RULEMAKING HEARING**

**I. INTRODUCTION AND PROCEDURAL  
HISTORY**

On April 16, 2019, Mr. Uhler's petition requesting that the Commission initiate a rulemaking hearing under California Code of Regulations, title 20, section 1221 and Government Code section 11340.6, for the purpose of implementing statutory provision PUC 399.30 (c)(4), was filed with the Executive Director.

Specifically, the petition requests implementation of statutory provision PUC 399.30(c)(4).

PUC 399.30(c)(4) states that: Beginning January 1, 2014, in calculating the procurement requirements under this article, a local publicly owned electric utility may exclude from its total retail sales the kilowatthours generated by an eligible renewable energy resource that is credited to a participating customer pursuant to a voluntary green pricing or shared renewable generation program. Any exclusion shall be limited to electricity products that do not meet the portfolio content criteria set forth in paragraph (2) or (3) of subdivision (b) of Section 399.16. Any renewable energy credits associated with electricity credited to a participating customer shall not be used for compliance with procurement requirements under this article, shall be retired on behalf of the participating customer, and shall not be further sold, transferred, or otherwise monetized for any purpose. To the extent possible for generation that is excluded from retail sales under this subdivision, a local publicly owned electric utility shall seek to procure those eligible renewable energy resources that are located in reasonable proximity to program participants.

In his petition, Mr. Uhler states that the Calculations listed in 20 CCR § 3204 of RPS Procurement Requirements fail to implement the method for calculating the procurement requirements under ARTICLE 16. California Renewables Portfolio Standard Program [399.11-399.33], where a local publicly owned electric



utility may exclude from its total retail sales the kilowatt-hours generated by an eligible renewable energy resource that is credited to a participating customer pursuant to a voluntary green pricing or shared renewable generation program.

On April 23, 2019, the Commission's Executive Director certified that the petition was complete and contained the informational requirements of CCR title 20, section 1221.

On June 7, 2019, Commission Staff filed a response to the petition recommending denial of the petition because a rulemaking hearing is not necessary. According to the staff recommendation, pre-rulemaking activities supporting an update to the Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities have already been initiated and the planned update will implement the provisions of PUC 399.30(c)(4).

On June 12, 2019, the Commission held a hearing to consider the petition.

**II. FINDINGS**

Based on the record, the Commission finds that:

- 1) Public Resources Code section 25218 empowers the Commission to adopt any rule or regulation, or take any action it deems reasonable and necessary to carry out its statutory duty. Thus, the Commission has the authority to initiate a rulemaking, as requested in the petition.
- 2) On June 3, 2019, Energy Commission staff posted a public notice informing parties of a scheduled Pre-Rulemaking Workshop implementing changes to the *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* including changes pursuant to SB 350 and subsequent legislation.
- 3) Energy Commission staffs' planned update to the *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* will address all changes in law affecting the RPS program.
- 4) As a rulemaking to address regulatory changes implementing PUC 399.30(c)(4) has been initiated, no additional rulemaking proceedings on this topic are necessary.

**III. CONCLUSION AND ORDER**

For the reasons stated above, the Petition is hereby DENIED.

**IT IS SO ORDERED.**

**CERTIFICATION**

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and cor-

rect copy of an Order duly and regularly adopted at a meeting of the California Energy Commission held on June 12, 2019.

AYE: Scott, Douglas, Monahan  
 NAY: None  
 ABSENT: Hochschild, McAllister  
 ABSTAIN: None  
 Original Signed by:  
 Cody Goldthrite  
 Secretariat

**SUMMARY OF REGULATORY ACTIONS**

**REGULATIONS FILED WITH SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2019-0619-03  
**AIR RESOURCES BOARD**  
 Amendments to Solid Waste Collection Vehicles Regulation

This rulemaking action by the Air Resources Board amends existing requirements to encompass diesel-fueled on-road single engine heavy cranes and adopts a new phase-in schedule to reduce particulate matter and oxides of nitrogen emissions. Additionally, this action adds recordkeeping requirements for heavy cranes and solid waste collection vehicles (SWCVs), and requires reporting for all fleets that own or operate heavy cranes and SWCVs with 1960 to 2006 model year diesel engines.

Title 13  
 ADOPT: 2021.2, 2021.3  
 AMEND: 2021, 2021.2 (renumbered to 2021.1)  
 REPEAL: 2021.1  
 Filed 06/25/2019  
 Effective 07/01/2019  
 Agency Contact: Bradley Bechtold (916) 322-6533

File# 2019-0513-02  
**CALIFORNIA HORSE RACING BOARD**  
 Out-of-Competition Testing

The California Horse Racing Board amended four regulations and adopted two regulations to establish

procedures, requirements, and penalties related to taking samples from race horses that are not entered in a race to test for prohibited substances.

Title 4  
ADOPT: 1859.1, 1869  
AMEND: 1858, 1859, 1859.25, 1867  
Filed 06/24/2019  
Effective 06/24/2019  
Agency Contact: Robert Brodnik (916) 263-6025

File# 2019-0517-06  
CALIFORNIA HORSE RACING BOARD  
Paymaster of Purses

This action amends duties of a paymaster of purses concerning deductions from jockey and trainer accounts and revises a form incorporated by reference entitled, "Notification of Exclusion of CARMA Contribution."

Title 4  
AMEND: 1467  
Filed 06/24/2019  
Effective 10/01/2019  
Agency Contact: Robert Brodnik (916) 263-6025

File# 2019-0611-02  
CALIFORNIA SCHOOL FINANCE AUTHORITY  
State Charter School Facilities Incentive Grants Programs

The California School Finance Authority amended six regulations pertaining to grant awards under the federal State Charter School Facilities Incentive Grants Program.

Title 4  
AMEND: 10177, 10178, 10179, 10181, 10182, 10188  
Filed 06/20/2019  
Effective 06/20/2019  
Agency Contact: Thomas Dear (916) 651-7710

File# 2019-0517-07  
DEPARTMENT OF JUSTICE  
Ammunition Purchases or Transfers

This action establishes regulations governing the sale or transfer of ammunition in California.

Title 11  
ADOPT: 4300, 4301, 4302, 4303, 4304, 4305, 4306, 4307, 4308, 4309  
Filed 06/24/2019  
Effective 06/24/2019  
Agency Contact: Kelan Lowney (916) 227-7615

File# 2019-0516-02  
DEPARTMENT OF MANAGED HEALTH CARE  
Standard Prescription Drug Formulary Template

This action establishes health care service plan obligations pertaining to the structure of, and information contained in, prescription drug formularies pursuant to Health and Safety Code section 1367.205.

Title 28  
ADOPT: 1300.67.205  
Filed 06/25/2019  
Effective 10/01/2019  
Agency Contact: Jennifer Willis (916) 324-9014

File# 2019-0513-03  
DEPARTMENT OF PESTICIDE REGULATION  
Ground Water Protection Areas

In this rulemaking action, the Department of Pesticide Regulation amends the definitions of "ground water protection area," "leaching ground water protection areas," and "runoff ground water protection areas." The amendment updates the document incorporated by reference, the "Ground Water Protection Areas 2018," to add 122 new ground water protection areas.

Title 3  
AMEND: 6000  
Filed 06/20/2019  
Effective 01/01/2020  
Agency Contact:  
Linda Irokawa-Otani (916) 445-3991

File# 2019-0618-01  
DEPARTMENT OF SOCIAL SERVICES  
CalWORKs Statewide Fingerprint Imaging System and New ID Process

This emergency readopt was submitted by the Department of Social Services as a file and print action to keep in effect regulations to reflect the repeal of the Statewide Fingerprint Imaging System (SFIS), and to implement the new identity verification process in the California Work Opportunity and Responsibility to Kids (CalWORKS) program. Pursuant to the uncodified provision of section 58 of Statutes 2017, chapter 24 (SB 89), this action is a deemed emergency and exempt from OAL review.

Title MPP  
AMEND: 40-105, 40-171, 80-301  
REPEAL: 40-026  
Filed 06/26/2019  
Effective 06/26/2019  
Agency Contact: Oliver Chu (916) 657-3588

File# 2019-0603-01  
 DEPARTMENT OF TOXIC SUBSTANCES  
 CONTROL  
 Determining the Initial Penalty for Each Violation

This action makes permanent the emergency regulatory increases in the minimum-to-maximum initial penalty amount ranges for violations of laws related to hazardous waste control and disposal.

Title 22  
 AMEND: 66272.62  
 Filed 06/24/2019  
 Effective 06/24/2019  
 Agency Contact: Shawn Cox (916) 322-7527

File# 2019-0521-02  
 FAIR EMPLOYMENT AND HOUSING COUNCIL  
 Definition of "Employer", Harassment Prevention and Training

This rulemaking action by the Fair Employment and Housing Council revises the definition of "employer" and updates harassment prevention and training requirements in accordance with recent statutory changes.

Title 2  
 AMEND: 11008, 11023, 11024  
 Filed 06/24/2019  
 Effective 10/01/2019  
 Agency Contact: Brian Sperber (213) 337-4495

File# 2019-0521-03  
 FAIR POLITICAL PRACTICES COMMISSION  
 Gifts: Agency Provided Tickets or Passes, Valuation

The Fair Political Practices Commission repealed and adopted one regulation and amended three regulations pertaining to agency-provided tickets or passes and their valuation.

Title 2  
 ADOPT: 18944.1  
 AMEND: 18946, 18946.1, 18942  
 REPEAL: 18944.1  
 Filed 06/20/2019  
 Effective 07/20/2019  
 Agency Contact: Amanda Apostol (916) 324-3854

File# 2019-0517-03  
 FISH AND GAME COMMISSION  
 Archery Equipment and Crossbow Regulations

The California Fish and Game Commission is changing text that is difficult to enforce to a clearer requirement regarding archery equipment and crossbows. The new requirement will be that a bow draw weight must be at least 30 pounds and a crossbow draw weight must

be at least 125 pounds. Additionally they are authorizing the possession of a lawfully concealed firearm during an archery-only season or under an archery-only tag while hunting any big game except deer as long as the weapon is not used in the take of an animal.

Title 14  
 AMEND: 354  
 Filed 06/26/2019  
 Effective 07/01/2019  
 Agency Contact: Jon Snellstrom (916) 653-4899

File# 2019-0618-03  
 FISH AND GAME COMMISSION  
 Special Order Regarding Take of Chinook Salmon

In this emergency rulemaking the Fish and Game Commission is opening the lower Klamath River and upper Trinity River for Upper Klamath-Trinity River Spring Chinook Salmon fishing.

Title 14  
 AMEND: 7.50  
 Filed 06/26/2019  
 Effective 06/26/2019  
 Agency Contact: Sherrie Fonbuena (916) 654-9866

File# 2019-0614-01  
 GOVERNMENT OPERATIONS AGENCY  
 Conflict-of-Interest

This is a Conflict-of-Interest code that has been approved by the Fair Political Commission and is being submitted for filing with the Secretary of State and printing only.

Title 2  
 AMEND: 59780  
 Filed 06/26/2019  
 Effective 07/26/2019  
 Agency Contact: Joy Lavin-Jones (916) 651-9039

**PRIOR REGULATORY  
 DECISIONS AND CCR  
 CHANGES FILED WITH THE  
 SECRETARY OF STATE**

A quarterly index of regulatory decisions by the Office of Administrative Law (OAL) is provided in the California Regulatory Notice Register in the volume published by the second Friday in January, April, July, and October following the end of the preceding quarter. For additional information on actions taken by OAL, please visit [www.oal.ca.gov](http://www.oal.ca.gov).