GAVIN NEWSOM, GOVERNOR

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PROPOSED ACTION ON REGULATIONS

(Continued on next page)

Time-Dated Material

GENERAL PUBLIC INTEREST

SUMMARY OF REGULATORY ACTIONS

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

Information contained in this document is published as received from agencies and is not edited by Thomson Reuters.

TITLE 2. DEPARTMENT OF TECHNOLOGY

NOTICE IS HEREBY GIVEN that the **California Department of Technology (Department)**, pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment to its conflict−of−interest code. A comment period has been established, commencing August 16, 2019, and closing September 23, 2019. All inquiries should be directed to the contact listed below.

The Department proposes to amend its conflict−of−interest code to include employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code. The amendment carries out the purposes of the law and no other alternative would do so and be less burdensome to affected persons.

The proposed changes to the conflict−of−interest code will bring the code into alignment with the Department's recent classification name changes. The proposed amendment and explanation of the reasons can be obtained from the contact listed below.

Any interested person may submit written comments relating to the proposed amendment by submitting them no later than September 23, 2019 or at the conclusion of the public hearing, if requested, whichever comes later. At this time, no public hearing is scheduled. A person may request a hearing no later than September 8, 2019.

The Department has determined that the proposed amendments:

1. Impose no mandate on local agencies or school districts.
2. Impose no costs or savings on any state agency.
3. Impose no costs on any local agency or school district that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
4. Will not result in any nondiscretionary costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the state.
6. Will not have any potential cost impact on private persons, businesses or small businesses.

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to:

Jeff Pudoff
Human Resources Manager
California Department of Technology
10860 Gold Center Drive, Suite 470
Rancho Cordova, CA 95670
(916) 431−4095
jeff.pudoff@state.ca.gov

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

AMENDMENT

STATE AGENCY:
Department of Justice
Sacramento San Joaquin Delta Conservancy

MULTI−COUNTY:
Marin Clean Energy
Dublin San Ramon Services District
Peninsula Corridor Joint Powers Board

A written comment period has been established commencing on August 16, 2019 and closing on September 30, 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 person, 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 September 30, 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 respective 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 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the Commission), under the authority vested in it under the Political Reform Act (the Act)[1] by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulation at a public hearing on or after **September 19, 2019**, at the offices of the Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m.** on **September 17, 2019**.

BACKGROUND/OVERVIEW

Governing Statutes. Section 84222 of the Act establishes campaign registration and reporting requirements for multipurpose organizations (MPOs) that conduct certain levels of campaign activity in California. Section 84222 defines an MPO as an organization that solicits funds, at least in part, for purposes other than making political expenditures, but nevertheless makes political expenditures in California. Section 84222(c)(1−5) details the ways in which an MPO can qualify as a recipient committee and when it must file

[1] The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

campaign reports disclosing political activity. Section 84222.5 also requires publicly funded nonprofit organizations to comply with the registration and reporting requirements of Section 84222.

Specifically, Section 84222(e)(1)(A) requires an MPO that qualifies as a committee to file a statement of organization and describe the MPO's mission, most significant activities and political activities, on that statement. Section 84222(c)(5)(A) requires MPOs that make expenditures or contributions with nondonor funds — such as investment income or income earned from providing goods or services — to "briefly describe" the source of nondonor funds used on their campaign statements and reports. Section 84222(c)(5)(B), in turn, defines the types and sources of "nondonor funds."

Section 81002 of the Act, provides that the Commission shall accomplish certain purposes, including that receipts and expenditures in election campaigns "be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited." Section 84104 requires that committees maintain detailed accounts, records, bills, and receipts necessary to prepare campaign statements.

Existing Regulation. Regulation 18422 sets forth the registration, reporting, and recordkeeping requirements for MPOs that qualify as committees under Section 84222 of the Act. Subdivision (b) of Regulation 18422 describes information that must be included on an MPO's statement of organization but lacks direction on how an MPO should describe its mission and activities on the statement. Subdivision (c) details reporting requirements for MPOs that have qualified as recipient committees in any of the five ways under Section 84222(c)(1−5). However, Regulation 18422 does not specify what information an MPO must include to "briefly describe" its nondonor funds used for expenditures or contributions, as required by Section 84222(c)(5)(A).

Subdivision (f) of Regulation 18422, meanwhile, sets forth recordkeeping requirements for MPOs, while Regulation 18401 sets forth general recordkeeping requirements for campaign committees under the Act. As currently written, it is unclear exactly what records and source documentation MPOs must maintain under Regulation 18422(f), and how these recordkeeping requirements differ from the requirements for all committees, as set forth in Regulation 18401.

REGULATORY ACTION

Amend 2 Cal. Code Regs. Section 18422 — Multipurpose Organization Political Transparency.

Amendments to Regulation 18422. The Commission may consider amendments to provisions of current Regulation 18422, including, but not limited to, the reporting and recordkeeping requirements for MPOs. At a minimum, Commission staff anticipates proposing the following:

- Adding paragraph (b)(2) to clarify what information must be included on an MPO's statement of organization regarding the description of the MPO's mission, most significant activities and political activities.
- Adding paragraph (c)(4), to clarify what information MPOs must provide on their campaign statements and reports when making contributions and expenditures using nondonor funds.
- Deleting subdivision (f), regarding recordkeeping requirements for MPOs, so that a new Regulation 18422.1 can take its place with a more detailed explanation of recordkeeping requirements for MPOs.

Adopt 2 Cal. Code Regs. Section 18422.1 — Required Recordkeeping for Multipurpose Organizations.

Adoption of Regulation 18422.1. The Commission may consider adopting new Regulation 18422.1. At a minimum, Commission staff anticipates proposing the following:

- Expanding upon existing Regulation 18422(f) to clarify that basic recordkeeping requirements that apply to all committees under Regulation 18401, the existing regulation covering general recordkeeping requirements for committees, similarly apply to MPOs that qualify as committees under Section 84222 and Section 84222.5.
- Detailing specific forms of required recordkeeping documentation unique to MPOs, such as grant agreements and solicitations to donors.
- Specifying recordkeeping requirements for MPOs that use non−donor funds for political activity in California.

SCOPE

The Commission may adopt the language noticed herein, or it may choose new language to implement its decisions concerning the issues identified above or any related issues.

FISCAL IMPACT STATEMENT

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulation will have no fiscal impact on the federal funding of any state entity or program.

AUTHORITY

Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Act.

REFERENCE

The purpose of these regulations is to implement, interpret, and make specific Government Code Sections 81002, 84104, 84222 and 84222.5.

CONTACT

Any inquiries should be made to Toren Lewis, Fair Political Practices Commission, 1102 Q St., Suite 3000, Sacramento, CA 95811; telephone (916) 322−5660 or 1−866−ASK−FPPC. Proposed regulatory language can be accessed at http://www.fppc.ca.gov/the−law/fppc−regulations/proposed−regulations−and−notices.html.

TITLE 8. WORKERS' COMPENSATION APPEALS BOARD

RULES OF PRACTICE AND PROCEDURE
TITLE 8, CALIFORNIA CODE OF REGULATIONS, SECTIONS 10300 THROUGH 10999 (i.e., Division 1, Chapter 4.5, Subchapter 2)

NOTICE IS HEREBY GIVEN that the Workers' Compensation Appeals Board (WCAB) proposes to amend its Rules of Practice and Procedure (Rules),[1] as described below, after considering all comments, objections, and recommendations regarding the proposed action. *Although equal weight will be accorded to oral and written comments,* ***the WCAB prefers written comments to oral testimony and prefers written comments submitted by e−mail. If written comments are timely submitted, it is not necessary to present oral testimony at the public hearing.***

The WCAB's proposed amendments to its Rules are being initiated pursuant to its rulemaking power under Labor Code sections 5307(a), 133, 5309 and 5708,[2] subject to the procedural requirements of section 5307.4. This Notice of Proposed Rulemaking and the accompanying Initial Statement of Reasons have been prepared to comply with the procedural requirements of section 5307.4 and for the convenience of the regulated public to assist it in analyzing and commenting on this largely non−APA rulemaking process.[3]

PUBLIC HEARING

The WCAB will hold a public hearing starting at **9:00 a.m.** on **Tuesday, September 24, 2019**, in Room 7 of the Elihu Harris State Office Building located at 1515 Clay Street, Oakland, California. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action. Public comment will begin promptly at 9:00 a.m. and will conclude when the last speaker has finished his or her presentation. To provide everyone with an opportunity to speak, public testimony will be limited to 10 minutes per speaker and should be specific to the proposed regulations. Testimony that would exceed 10 minutes may be submitted in writing. If public comment concludes before the Noon recess, no afternoon session will be held. If an afternoon session is held, public testimony will conclude no later than **4:00 p.m.**

The state office building and its hearing rooms are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodations to facilitate effective communication for persons with disabilities, are available upon request. Please contact the Statewide Disability Accommodation Coordi-

[1] See Cal. Code Regs., Title 8, Division 1, Chapter 4.5, Subchapter 2, section 10300 et seq.

[2] All further statutory references are to the Labor Code unless otherwise specified.

[3] Under Government Code section 11351, the WCAB is not subject to Article 5 (Gov. Code, section 11346 et seq.), Article 6 (*id.* section 11349 et seq.), Article 7 (*id.* section 11349.7 et seq.), or Article 8 (*id.* section 11350 et seq.) of the rulemaking provisions of the Administrative Procedure Act (APA), with the sole exception that section 11346.4(a)(5) [publication in the California Regulatory Notice Register] does apply to the WCAB.

nator at 1−866−681−1459 (toll free), or through the California Relay Service by dialing 711 or 1−800−735−2929 (TTY/English) or 1−800−855−3000 (TTY/Spanish) as soon as possible to request assistance.

The WCAB requests but does not require that persons who make oral comments at the hearing also submit a written copy of their comments at the hearing.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representatives, may submit written comments to the WCAB relevant to the proposed rulemaking. The written comment period closes at **4:00 p.m.** on **Tuesday, September 24, 2019**. The WCAB will consider only comments it has *received* by that time.

The address for submission of comments by e−mail is WCABRules@dir.ca.gov.

The address for submission of comments by mail is:

Workers' Compensation Appeals Board
Attention; Julie Podbereski
Regulations Coordinator
P.O. Box 429459
San Francisco CA 94142−9459

The address for submission of comments by delivery service or personal delivery is:

Workers' Compensation Appeals Board
Attention: Julie Podbereski
Regulations Coordinator
455 Golden Gate Avenue, Ninth Floor
San Francisco, CA

Comments also may be submitted by facsimile (Fax) at 1−415−703−4549.

AUTHORITY AND REFERENCE

Labor Code sections 5307(a), 133, 5309 and 5708, authorize the WCAB to adopt the proposed regulations. The proposed regulations implement, interpret and make specific various sections of the Labor Code.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The WCAB has made the following initial determinations:

Mandate on Local Agencies and School Districts: None.

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: None.

Other Nondiscretionary Costs or Savings to Local Agencies: None.

Cost or Savings to Any State Agency or 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.

Effect on Small Business: None.

Cost Impacts on Representative Private Persons or Businesses: None.

Other Impacts on Jobs and Businesses: None.

Effect on Housing Costs: None.

The adoption of these regulations is not expected to create or eliminate jobs or businesses in the State of California or reduce or expand businesses currently doing business in the State of California.

CONSIDERATION OF ALTERNATIVES

Under Government Code section 11351, the WCAB is not subject to the provisions of Government Code section 11346.5(a)(13). Nevertheless, the WCAB invites interested persons to present statements or arguments at the scheduled hearing or during the written comment period regarding reasonable alternatives that would be more effective in carrying out the purpose of this rulemaking, or would be as effective and less burdensome to the affected private persons, than the proposed action of this rulemaking.

PRE−NOTICE PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

Under Government Code section 11351, the WCAB is not subject to the provisions of Government Code section 11346.45 relating to pre−notice public review and comment of contemplated amendments to its Rules.

CONTACT PERSONS

Nonsubstantive inquiries concerning this rulemaking action, such as requests to be added to the e−mail and/or mail distribution list(s) or requests for copies of rulemaking documents (e.g., the proposed regulations, the Initial Statement of Reasons), may be directed to: Julie Podbereski, Regulations Coordinator, Workers' Compensation Appeals Board, P.O. Box 429459, San Francisco, CA 94142−9459, E−mail: WCABRules@dir.ca.gov, Phone: (415) 703−4580. The backup contact person for nonsubstantive inquiries is Rachel Brill, Industrial Relations Counsel IV, at the same address, email address, and phone number.

The contact person for substantive inquiries is: Rachel Brill, Industrial Relations Counsel IV, Workers' Compensation Appeals Board, P.O. Box 429459, San Francisco, CA 94142−9459, E−mail: WCABRules@dir.ca.gov, Phone: (415) 703−4580. The backup contact person for substantive inquiries is: Anne Schmitz, Deputy Commissioner, at the same address, email address and telephone number.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE, AND INTERNET ACCESS

Throughout the rulemaking process, the WCAB will have its entire rulemaking file available for inspection and copying at its office at 455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday (excluding holidays). In addition, the above−cited materials may be accessed on the internet at https://www.dir.ca.gov/wcab/WCABProposedRegulations/Rulemaking−August−2019/Rulemaking−August−2019.htm. As of the date of this Notice, the rulemaking file consists of this Notice, the Initial Statement of Reasons, the proposed text of the regulations, and the Form 399.

AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons, and the text of the proposed regulations will automatically be sent to those interested persons on the mailing list of the WCAB, and to all persons who have requested notice of hearing as required by Labor Code Section 5307.4.

If adopted, the regulations with any final amendments will appear in the California Code of Regulations at Title 8, Division 1, Chapter 4.5, Subchapter 2, commencing with Section 10300. The text of the final regulations also may be available through the website of the Office of Administrative Law at www.oal.ca.gov.

TITLE 16. BOARD OF BEHAVIORAL SCIENCES

NOTICE IS HEREBY GIVEN that the Board of Behavioral Sciences (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

Board of Behavioral Sciences
1625 N. Market Blvd.
El Dorado Room, Suite 220
Sacramento, CA 95834
September 30, 2019
10:00a.m. − 11:00a.m.

Written comments, including those sent by mail, facsimile, or e−mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office on **September 30, 2019** or must be received by the Board at the hearing.

The Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposal 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 or oral testimony 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 481, 482, 493, 4980.60, and 4990.20 of the Business and Professions Code, and to implement, interpret, or make specific sections 141, 475, 480, 481, 482, 488, 490, 493, and 4990.30 of the Business and Professions Code, the Board is considering changes to Division 18 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board is the regulatory entity under the Department of Consumer Affairs (DCA) tasked with regulating the practice of marriage and family therapists (LMFTs), licensed educational psychologists (LEPs), licensed clinical social workers (LCSWs) and licensed professional clinical counselors (LPCCs) in the State of California. The Board's highest priority is public protection when exercising its licensing, regulatory, and disciplinary functions.

Business and Professions Code (BPC) section 480 currently authorizes boards under DCA to deny an application for licensure based on a conviction for a crime or act substantially related to the licensed business or profession. In addition, BPC section 490 permits boards to suspend or revoke a license on the basis that the licensee was convicted of a substantially related crime.

BPC section 481 currently requires boards to develop criteria to help evaluate whether a crime or act was substantially related. BPC section 482 currently requires boards to develop criteria to evaluate the rehabilitation

of a person when considering denying a license or suspending or revoking a license.

AB 2138 (Chiu, Chapter 995, Statutes of 2018) was signed into law in 2018, with the intent of removing some of the licensing and employment barriers that those with prior criminal convictions or disciplinary actions often encounter if they can demonstrate rehabilitation. The bill makes the following changes, which become effective July 1, 2020:

- Amends BPC section 480 to prohibit a DCA board from denying a license to applicants based on a criminal conviction or the acts underlying a conviction if the applicant made a showing of rehabilitation.
- Amends BPC section 480 to allow a DCA board to deny a license, in relevant part, on the grounds the applicant was convicted of a crime or has been subject to formal discipline, if one of the following has been met:
    1. The conviction was in the past seven years and is substantially related to the qualifications, functions, or duties of the business or professions. (The seven−year limitations do not apply to convictions for a serious felony, as defined in Penal Code section 1192.7, or to certain specified sex offenses); or
    2. The applicant was released from incarceration within the last seven years for a crime that is substantially related to the qualifications, functions, or duties of the business or profession. (The seven−year limitations do not apply to convictions for a serious felony, as defined in Penal Code section 1192.7, or to certain specified sex offenses); or
    3. The applicant has been subject to formal discipline by a licensing board in or outside of California within the preceding seven years based on substantially related professional misconduct.
- Amends BPC section 481 to include more specific criteria that boards must use to determine whether a crime is substantially related to the qualifications, functions, or duties of the profession.
- Amends BPC section 482 to require boards to consider, when determining whether to deny, suspend, or revoke a license, whether an applicant or licensee has made a showing of rehabilitation, if the person has either completed the criminal sentence without a parole or probation violation, or if the person is rehabilitated based on the board's rehabilitation criteria.

The Board's current substantial relationship criteria, as well as its criteria for determining rehabilitation when considering denying, suspending, or revoking a license, are all in regulation. (CCR 16 sections 1812, 1813, and 1814.) These sections need to be amended in order to meet the requirements of AB 2138. In addition, some technical clean−up amendments are needed elsewhere in regulations in order to ensure that the regulations are consistent with the changes in statute.

Overall, the objective and anticipated benefits of this proposal are to carry out the objective of AB 2138: to increase opportunities for those with prior convictions or disciplinary action to obtain licensure if evidence points to rehabilitation, which will in turn promote fairness and social equity by boosting their employment opportunities. Ensuring the regulations are consistent and follow the direction of statute also increases openness or transparency in government by ensuring the law is clear and that regulations and statutes are consistent with each other.

There is not an existing federal regulation or statute comparable to this proposal, as the Board's license types are regulated at the state level.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing these regulations and amendments, the Board has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

INCORPORATION BY REFERENCE

The document entitled "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines" [Revised October 2015] has been incorporated by reference into section 1888.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: When evaluating the fiscal impact for AB 2138, the Board cited the need for one office technician position with an ongoing cost of $78,000 per year in order to comply with the data collection requirements of the bill, which can be found in BPC section 480(g)). However, this regulation proposal does not pertain to the data collection requirements of AB 2138; it only pertains to the substantial relationship criteria and rehabilitation criteria.

The Board anticipates that by further defining substantial relationship and rehabilitation criteria for crim-

inal convictions, Board staff may see some increased workload to research convictions and to substantiate that rehabilitation has been achieved; however, it is expected that this workload will be minor and absorbable.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500−17630 Require Reimbursement: None.

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. AB 2138 and the proposed regulation only affect Board licensees and applicants with past criminal convictions or disciplinary action and seeks to reduce barriers to their licensure if they can present evidence of rehabilitation. It does not impose more rigorous requirements on the licensure process. This bill and corresponding regulations could increase the pool of potential employees to businesses who are seeking to hire a Board licensee.

Cost Impacts on Representative Private Persons or Businesses:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The intent of AB 2138 is to reduce barriers to licensure for individuals with past convictions or disciplinary action.

Effect on Housing Costs: None.

Effect on Small Businesses

The Board has determined that the proposed regulations may affect small businesses. It may increase the ability of some individuals with past convictions or disciplinary action to obtain a Board license where they previously could not. Having more licensees increases the pool of hirable candidates for small business looking to hire licensed mental health professionals.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses

The Board has determined that the proposed regulations may have an impact on the creation of jobs or new businesses or the expansion of businesses in the State of California, as follows:

- This regulatory proposal may create and will not eliminate jobs within the State of California. The proposal seeks to reduce barriers to licensure for applicants with criminal or disciplinary history if they can show evidence of rehabilitation. Therefore, some individuals who were previously unable to become licensed due to a criminal or disciplinary background now may be able to do so. This could lead to increased job opportunities for these individuals.
- The proposal may create some new businesses and will not eliminate existing businesses. If an individual who was previously able to become licensed due to past convictions or discipline is now able to do so, that person may decide once licensed to go into business for themselves. (Some Board licensees choose to run their own private practice to provide mental health services.)
- The proposal may expand certain types of businesses. If more individuals who were previously unable to obtain a license are now able to obtain one, there will be an increased pool of hireable licensees. Therefore, businesses may choose to hire more licensed mental health professionals.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The Board has determined that this regulatory proposal will benefit the health and welfare of California residents who seek the services of the Board's licensees, because it may increase the ability of some individuals to obtain a Board license where they previously could not. This will increase the supply of licensed mental health professionals, allowing greater access to those who seek mental health services. It may also benefit individuals who are now able to obtain a license when previously they were unable to, thus allowing them increased access to jobs and therefore reducing criminal recidivism.

The proposal will have no effect on worker safety or the State's environment.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either 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 proposal described in this Notice, or would be more cost−effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

To date, the following options were considered by the Board and rejected:

1. Option 1: Pursue a regulatory change that requires the Board to find rehabilitation if the applicant or

licensee completed the terms of their criminal probation or parole. Courts historically rejected the view that compliant individuals are rehabilitated. "The fact that a professional who has been found guilty of two serious felonies rigorously complies with the conditions of his probation does not necessarily prove anything but good sense." (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal App.3d 461, 473.) Therefore, this alternative was rejected, because the Board believes that reviewing each individual on the basis of multiple criteria better indicates rehabilitation and better ensures the public's health, safety, and welfare.

2. Option 2: Not adopt the regulations. This alternative was rejected because AB 2138 requires the Board to run regulations for its implementation.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above−mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an Initial Statement of Reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in this Notice under Contact Person listed below, or by accessing the Board's website, www.bbs.ca.gov.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the Contact Person named below.

You may obtain a copy of the Final Statement of Reasons once it has been prepared, by making a written request to the Contact Person named below (or by accessing the website listed below).

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name:

Rosanne Helms

Address:

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The backup contact person is:

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WEBSITE ACCESS

Materials regarding this proposal can be found at www.bbs.ca.gov.

TITLE 16. BOARD OF PHARMACY

NOTICE IS HEREBY GIVEN that the California State Board of Pharmacy (board) is proposing to take the rulemaking action described below under the heading Informative Digest/Policy Statement Overview. Any person interested may present statements or arguments relevant to the action proposed in writing. Writ-

ten comments, including those sent by mail, facsimile, or e−mail to the addresses listed under Contact Person in this Notice, must be received by the board at its office by September 30, 2019.

The board has not scheduled a public hearing on this proposed action. The board will, however, 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.

The board may, after considering all timely and relevant comments, adopt the proposed regulations substantially as described in this notice, or may modify the proposed regulations 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 or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Sections 4005, 4076, and 4112 of the Business and Professions Code authorize the board to adopt these regulations. The proposed regulations implement, interpret, and make specific sections 4005, 4076, and 4112 of the Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The board proposes to clarify and make specific the standards that apply to all pharmacies, including mail order pharmacies or pharmacies that deliver medications, to fulfill their patient consultation requirements.

Business and Professions Code (BPC) section 4001.1 specifies that protection of the public is the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions. This section further states that whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

BPC section 4005 generally authorizes the board to adopt and amend rules and regulations necessary for the protection of the public pertaining to the practice of pharmacy. It also specifically authorizes the board to adopt regulations: relating to the sanitation of persons and facilities licensed by the board; pertaining to licensed facilities wherein any drug is compounded, prepared, furnished or dispensed; pertaining to minimum equipment for licensed facilities; and for the proper and effective enforcement and administration of Pharmacy Law.

BPC section 4037 establishes the definition of a pharmacy to include an area, place or premises licensed by the board in which the profession of pharmacy is practiced and where prescriptions are compounded.

BPC section 4076 establishes the general labeling requirements for prescriptions.

BPC section 4112 generally establishes the licensing requirements for a nonresident pharmacy. Further, this section requires a nonresident pharmacy to provide a toll−free number to facilitate communication between patients in California and a pharmacist with access to the patient's record. Additionally, this section authorizes the board to adopt regulations that apply the same requirements or standards for oral consultation to nonresident pharmacies as those applied to resident pharmacies.

Title 16, California Code of Regulations (CCR) Section 1707.2 specifies the conditions under which a pharmacist must fulfill his or her duty to consult.

This proposal would amend the current "Duty to Consult" regulations to:

- Specify the minimum time requirements a pharmacist must be available for patients to speak to, and the maximum time a consumer must wait before speaking to a pharmacist.
- Updates the authority and reference sections to comply with legal requirements and ensure readers' understanding of the underlying sections of pharmacy law that support the regulation.
- Expand the current requirements for when a pharmacist shall provide oral consultation and expand the requirements to all settings.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

The broad objective of this proposal is to ensure that California consumers have timely access to a pharmacist to receive patient consultation. The specific benefits anticipated by the proposed amendments are to protect the public from risks of unsafe and or ineffective use of prescription medications through patient education. Providing access to a pharmacist ensures a patient is provided the opportunity to understand the appropriate use of the medications, drug warnings and interactions, and potential adverse effects if the medication is not taken as directed. Without such information patients are at risk.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing these regulations and amendments, the board has conducted a search of

any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

FISCAL IMPACT AND RELATED ESTIMATES

The board has made the following initial fiscal impact determinations:

Local Mandate: None.

Fiscal Impact on Public Agencies:

- Cost to Any Local Agency or School District for Which Government Code Sections 17500−17630 Require Reimbursement: None.
- Costs/Savings to State Agencies: Minimal cost savings.
- Nondiscretionary Costs/Savings to Local Agencies: None.
- Costs/Savings in Federal Funding to the State: None.

Significant Statewide Adverse Economic Impact Directly Affecting Businesses (If Any):

The board has made a determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses and/or employees.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/New Businesses:

The board concludes that:

(1) It is unlikely that the proposal will create or eliminate any jobs within California;

(2) It is unlikely that the proposal will create new, or eliminate existing, businesses in California;

(3) It is unlikely that the proposal will expand businesses currently doing businesses within the state; and,

(4) The benefits to the public are for consumer protection and increased assurance that any patient consultation services are readily available to all California consumers irrespective of where the patient receives his or her medication.

Benefits of the Proposal:

The board has determined that this regulatory proposal will benefit the health and welfare of California residents. The legislature recognized the importance of patients having access to a pharmacist for purposes of providing patient consultation and created a mandate for the board to develop regulations specific to nonresident pharmacies. To fulfill this mandate, the board is ensuring patients have timely access to a pharmacist. The proposed amendments modify patient consultation requirements to specify how such consultation must be provided, irrespective of the care setting. This change will increase patient access to pharmacists and result in better patient education surrounding the appropriate use of prescription medications. The proposed regulations will not benefit worker safety or the state's environment.

Cost Impact on Representative Private Person or Business:

The board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The board anticipates that the regulatory proposal will not result in any cost impacts to patients. Further, the board anticipates that this regulatory proposal will not result in any cost impacts to mail order pharmacies or pharmacies that have a medication delivery service. This determination is based on public comments received from representatives of mail order pharmacies operating both within and outside of California.

BUSINESS REPORTING REQUIREMENT

The proposal requires pharmacies, including those that are nonresident, mail order, or that deliver medication to comply with patient consultation requirements. This proposal does not create any business reporting requirements.

EFFECT ON SMALL BUSINESS

The board believes this regulation will have no significant impact on small businesses. Although the board does not have nor maintain data to define if any of its licensees (pharmacies) are a "small business" as defined in Government Code section 11342.610, the board has made an initial determination that the proposed regulatory action would not have a significant adverse economic impact directly affecting small businesses. This is based on the determination that the regulatory proposal could result in existing mail order and nonresident pharmacies, some of which are likely small businesses, fulfilling patient consultation requirements already envisioned in statutory requirements.

CONSIDERATION OF ALTERNATIVES

The board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention (1) would be more effective in carrying out the purpose for which the action is proposed, (2) would be as effective and less burdensome to

affected private persons than the proposal described in this Notice, or (3) 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 the alternatives to the proposed regulations during the public comment period.

AVAILABILITY OF INITIAL STATEMENT OF 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 address above. 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, the initial statement of reasons, and all of the documents upon which the proposal is based.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, you may obtain a copy of the final statement of reasons by accessing the website listed below or by contacting the person named below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name:

Lori Martinez

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The backup contact person is:

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WEBSITE ACCESS

Copies of this notice, the initial statement of reasons, and the text of the proposed regulations in underline and strikeout can be found at the California State Board of Pharmacy's website: www.pharmacy.ca.gov.

TITLE 18. CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

The California Department of Tax and Fee Administration Proposes to Adopt Amendments to Section 4076, *Wholesale Cost of Tobacco Products,* and New Section 4077, *Tobacco Product Manufacturer,* in Title 18 of the California Code of Regulations

NOTICE IS HEREBY GIVEN that the California Department of Tax and Fee Administration (CDTFA), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 30451, proposes to amend California Code of Regulations, title 18, section (Regulation or Reg.) 4076, *Wholesale Cost of Tobacco Products*, and adopt Regulation 4077, *Tobacco Product Manufacturer*. The proposed amendments to Regulation 4076 provide additional notice that the meaning of the term "tobacco products" changed and includes "electronic cigarettes," for purposes of the taxes and surtaxes imposed under the Cigarette and Tobacco Products Tax Law (CTPTL) (Rev. and Tax. Code (RTC), section 30001 et seq.), effective April 1, 2017. The proposed amendments to Regulation 4076 clarify the meaning of the phrase "sold in combination with," which is used in the definition of electronic cigarettes,

provide examples of items that are and are not electronic cigarettes, clarify how to determine the wholesale cost of tobacco products when the manufacturer is also the distributor, and provide examples of how to estimate or calculate the wholesale cost of products included in the new definition of tobacco products. The proposed amendments to Regulation 4076 clarify that tobacco products may only be distributed once and that a retailer does not make a taxable distribution by repackaging tax−paid tobacco products with other items for retail sale or selling tax−paid tobacco products with other items for a single price at retail. The proposed amendments to Regulation 4076 also replace the regulation's references to the State Board of Equalization (BOE) with references to the CDTFA. Proposed Regulation 4077 defines the term "tobacco product manufacturer," clarifies who is regarded as the manufacturer of an electronic cigarette produced by mixing liquid nicotine with flavoring to make a customized product, and clarifies that a retailer who is not a licensed manufacturer or distributor must purchase its nicotine products from a licensed tobacco products distributor or wholesaler.

AUTHORITY

Regulations 4076 and 4077: RTC section 30451

REFERENCE

Regulation 4076: RTC sections 30008, 30010, 30011, 30017, 30105, 30121, 30123, 30126, 30131.1, 30131.2, 30131.5, 30201, and 30221

Regulation 4077: RTC sections 30008, 30010, 30011, 30016, 30103, 30121, 30131.1, 30149, 30210, 30211, and 30212

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

2017 Legislation

The CTPTL currently imposes taxes and surtaxes on distributors' distributions of cigarettes and other tobacco products (OTP) in this state. The Cigarette and Tobacco Products Licensing Act of 2003 (Licensing Act) (Bus. and Prof. Code (BPC), section 22970 et seq.) currently requires distributors, manufacturers, importers, wholesalers, and retailers of cigarettes and tobacco products to obtain licenses to engage in the sale of cigarettes or tobacco products in this state. (BPC, sections 22972, 22975, 22979, 22979.21.)

The CTPTL and the Licensing Act were administered and enforced by the BOE pursuant to RTC section 30451 and BPC section 22971.2, respectively. However, on June 27, 2017, the Governor approved Assembly Bill No. (AB) 102 (Stats. 2017, ch. 16), *The Taxpayer Transparency and Fairness Act of 2017*, which added part 8.7 (commencing with section 15570) to division 3 of title 2 of the Government Code (part 8.7). Part 8.7 established the CDTFA (Gov. Code, section 15570) and transferred most of the BOE's former duties, powers and responsibilities to the CDTFA, operative July 1, 2017, including the BOE's former duties, powers, and responsibilities related to the administration and enforcement of the CTPTL and Licensing Act. (Gov. Code, section 15570.22). Part 8.7 provided for the laws prescribing the powers, duties and responsibilities transferred to the CDTFA, including the CTPTL and Licensing Act, and the regulations adopted under those laws to continue in force on and after July 1, 2017. (*Ibid.*) And, part 8.7 provides that "whenever any reference to the [BOE] appears in any statute, regulation, or contract, or in any other code, with respect to any of the functions transferred to the [CDTFA], it shall be deemed to refer to the [CDTFA]." (Gov. Code, section 15570.24.)

Distributors, Manufacturers, Importers, Wholesalers, and Retailers

As relevant here, the CTPTL currently provides that the term "distribution" includes "[t]he sale of untaxed cigarettes or tobacco products in this state" and "[t]he placing . . . of untaxed cigarettes or tobacco products . . . in retail stock for the purpose of selling the cigarettes or tobacco products to consumers." (RTC, section 30008, subds. (a) and (c).) The CTPTL currently provides that the term "distributor" includes every person who distributes cigarettes or tobacco products, "within the meaning of the term 'distribution.' " (RTC, section 30011, subds. (a) and (b).) And, it generally provides that "untaxed" cigarettes and tobacco products means cigarettes and tobacco products that have not been distributed in such a manner as to produce a tax liability under the CTPTL. (RTC, sections 30005, 30005.5.)

The CTPTL currently requires distributors to register for a distributor's license (RTC, sections 30140, 30151) and makes it a crime to engage in business as a distributor without a license. (RTC, section 30149.) The CTPTL requires distributors to purchase tax stamps to pay the taxes imposed on their distributions of cigarettes, and affix a tax stamp to each pack of cigarettes before distribution. (RTC, sections 30161, 30163.) It also requires distributors to file returns reporting the taxes imposed on their distributions of OTP, and requires distributors to remit payment for those taxes with their returns. (RTC, section 30181, subd. (b).) And, tobacco products are referred to as "tax−paid" after they

have been distributed by a licensed distributor who will pay the applicable taxes imposed on the distribution of the tobacco products under the CTPTL.

The CTPTL does not prohibit manufacturers from buying untaxed materials to use to manufacture cigarettes and tobacco products, and provides for manufacturers to sell untaxed cigarettes and tobacco products to licensed distributors (RTC, section 30103), although there are no CTPTL statutes or regulations that define the term "manufacturer" or clarify which persons are considered to be tobacco product manufacturers. The CTPTL provides for the original importer (as defined in RTC, section 30019) to sell untaxed cigarettes and tobacco products manufactured outside the United States to a licensed distributor. (RTC, section 30105.) The CTPTL provides that the term "wholesaler" includes any person, other than a licensed distributor, who engages in the business of making sales for resale of tax−paid cigarettes and tobacco products (RTC, section 30016), requires wholesalers to register for a wholesaler's license (RTC, section 30155), and makes it a crime to engage in business as a wholesaler without a license. (RTC, section 30159.) The CTPTL also provides that if any person becomes a distributor without first obtaining a distributor's license, then the taxes and applicable penalties and interest, imposed on the person's distributions of untaxed cigarettes and OTP, are immediately due and payable (RTC, section 30210), and the taxes, interest, and penalties are subject to being immediately assessed and collected by the seizure and sale of the person's property. (RTC, sections 30211, 30212.) The CTPTL does not define the term "retailer" and the CTPTL does not apply to a retailer, unless the retailer is also a distributor, manufacturer, importer, or wholesaler.

Taxes and Surtaxes on Distributors' Distributions of Cigarettes and Tobacco Products

RTC section 30101 in the CTPTL imposes a tax upon every distributor of cigarettes, and the tax applies to the distribution of each cigarette. The rate of the RTC section 30101 tax was five mills ($0.005) per cigarette distributed from October 1, 1967, through December 31, 1993, and the rate of the tax has been six mills ($0.006) per cigarette or $0.12 per pack ($0.006 x 20 cigarettes) distributed since January 1, 1994.

In November 1988, California voters passed Proposition 99, known as the "Tobacco and Health Protection Act of 1988" (Prop. 99). Among other things, Prop. 99 imposed a surtax on every distributor of cigarettes at the rate of 12.5 mills ($0.0125) per cigarette or $0.25 per pack ($0.0125 x 20 cigarettes) distributed. Prop. 99 imposed a tax on every distributor of OTP, based on the wholesale cost of the products distributed, at a rate equivalent to the combined rate of the taxes imposed on cigarettes by the Prop. 99 surtax and the other provisions of the CTPTL, which only included the RTC section 30101 tax at the time. Prop. 99 also added RTC section 30121, subdivision (b), to the CTPTL to provide that OTP "includes, but is not limited to, all forms of cigars, smoking tobacco, chewing tobacco, snuff, and any other articles or products made of, or containing at least 50 percent, tobacco, but does not include cigarettes." Prop. 99's surtax on the distribution of cigarettes and equivalent tax on the distribution of OTP are both codified in RTC section 30123 in the CTPTL.

In November 1998, California voters passed Proposition 10, known as "The Children and Families First Act" (Prop. 10). The purpose of Prop. 10 was to create county commissions to provide early childhood medical care and education. Prop. 10 imposed an additional surtax on every distributor of cigarettes at the rate of 25 mills ($0.025) per cigarette or $0.50 per pack distributed. Prop. 10 imposed a tax on every distributor of OTP (as defined in RTC, section 30131.1, subd. (b), which was identical to RTC, section 30121, subd. (b) quoted above), based on the wholesale cost of the products distributed, at a rate equivalent to the rate of the Prop. 10 surtax on cigarettes. Prop. 10's surtax on the distribution of cigarettes and equivalent tax on the distribution of OTP are both codified in RTC section 30131.2 in the CTPTL.

On November 8, 2016, California voters passed Proposition 56, known as "The California Healthcare, Research and Prevention Tobacco Tax Act of 2016" (Prop. 56), which went into effect on April 1, 2017. As relevant here, Prop. 56 imposed an additional tax on every distributor of cigarettes at the rate of 100 mills ($0.10) per cigarette or $2.00 per pack distributed, which increased the combined cigarette tax rate from $0.87 per pack to $2.87 per pack. And, Prop. 56 imposed a tax on every distributor of OTP based on the wholesale cost of the products, at a rate equivalent to the rate of Prop. 56's tax on cigarettes. Prop. 56's tax on the distribution of cigarettes is codified in RTC section 30130.51 in the CTPTL and Prop. 56's equivalent tax on the distribution of OTP is imposed by RTC section 30123 in the CTPTL (discussed above).

In addition, Prop. 56 amended RTC section 30121, subdivision (b), to provide, for purposes of Prop. 99's tax on OTP, that:

> "Tobacco products" includes, but is not limited to, a product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff, but does not include

cigarettes. Tobacco products shall also include electronic cigarettes. Tobacco products shall not include any product approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where that product is marketed and sold solely for such approved use. Tobacco products does not include any food products as that term is defined pursuant to Section 6359.

Prop. 56 added a new subdivision (c) to RTC section 30121 to provide, for purposes of Prop. 99's tax on OTP, that:

> "Electronic cigarettes" means any device or delivery system sold in combination with nicotine which can be used to deliver to a person nicotine in aerosolized or vaporized form, including, but not limited to, an e−cigarette, e−cigar, e−pipe, vape pen, or e−hookah. Electronic cigarettes include any component, part, or accessory of such a device that is used during the operation of the device when sold in combination with any liquid or substance containing nicotine. Electronic cigarettes also include any liquid or substance containing nicotine, whether sold separately or in combination with any device that could be used to deliver to a person nicotine in aerosolized or vaporized form. Electronic cigarettes do not include any device not sold in combination with any liquid or substance containing nicotine, or any battery, battery charger, carrying case, or other accessory not used in the operation of the device if sold separately.

And, Prop. 56 amended RTC section 30131.1 and added RTC section 30130.50, so that OTP has the same meaning for purposes of Prop. 10's and Prop. 56's taxes on OTP, as it does for Prop. 99's tax on OTP, after the amendments to RTC section 30121 quoted above.

Wholesale Cost

RTC section 30017 provides that " '[w]holesale cost' means the cost of tobacco products to the distributor prior to any discounts or trade allowances." On May 24, 2016, the BOE adopted Regulation 4076 to clarify the meaning of the phrase "wholesale cost," and the regulation became effective October 1, 2016.

As relevant here, Regulation 4076, subdivision (a)(3), currently provides that " '[f]inished tobacco products' and tobacco products in 'finished condition' are tobacco products that will not be subject to any additional processing before first distribution in the state." Regulation 4076, subdivision (b)(2), currently explains how to determine the wholesale cost of OTP when a manufacturer or importer is also the distributor. It provides that the wholesale cost of OTP "includes all manufacturing costs, the cost of raw materials (including waste materials not incorporated into the finished tobacco product) prior to any discounts or trade allowances, the cost of labor, any direct and indirect overhead costs, any direct (including freight−in) and indirect overhead costs, and any federal excise and/or U.S. Customs taxes paid. Wholesale cost includes all freight or transportation charges for shipment of materials and/or unfinished product from the supplier to the manufacturer concurrently licensed as a distributor, but excludes domestic freight or transportation charges for shipment of finished tobacco products." Regulation 4076, subdivision (b)(3) and (4), currently provide that "[i]f tobacco product costs include express, implicit, or unstated discounts or trade allowances" or "[i]f tobacco products are not purchased in an arm's−length transaction," "the correct wholesale costs to be reported by the distributor may be determined using any of the methods in subdivision (c)." Regulation 4076, subdivision (c), currently provides alternative methods for determining the wholesale cost of OTP using available price lists or industry data, and Regulation 4076, subdivision (c)(2)(E), currently provides for the use of additional methods with BOE approval. Regulation 4076, subdivision (d), currently presumes that transactions between related parties are not at arm's−length and explains how to rebut the presumption if the BOE determines that a transaction is between related parties. Regulation 4076, subdivision (e), currently provides seven examples about how to calculate the wholesale cost of OTP under different circumstances, the example in subdivision (e)(1) concerns a distributor who produces handmade cigars, and the example in subdivision (e)(2) concerns a transaction between related parties that the BOE presumes is not at arm's−length. And, Regulation 4076, subdivision (f), currently explains that the BOE's "annual determination of the rate of tax that applies to other tobacco products shall be made based on the wholesale cost of tobacco products as of March 1 of the current calendar year and shall be effective during the next fiscal year, beginning July 1," in accordance with the express provisions of RTC sections 30126 and 30131.5 in the CTPTL.

EFFECT, OBJECTIVE, AND BENEFITS OF THE PROPOSED AMENDMENTS AND NEW REGULATION

Initial Need for Regulatory Action

The passage of Prop. 56 changed the definition of OTP and included electronic cigarettes in the definition of OTP for the first time. Therefore, BOE staff determined that distributors may have issues (or problems within the meaning of Gov. Code, section 11346.2, subd. (b)(1)) understanding that the definition of OTP changed, effective April 1, 2017, determining whether

certain items are electronic cigarettes subject to the taxes on OTP, and determining the wholesale cost of electronic cigarettes subject to the taxes on OTP. And, BOE staff determined that it is necessary to amend Regulation 4076 for the specific purpose of addressing the issues (or problems) by providing additional notice to distributors regarding the new definition of OTP, clarifying the new definition of OTP by defining the phrase "sold in combination with," which is used in the definition of electronic cigarettes, and providing examples of how to estimate or calculate the wholesale cost of products that have been defined as OTP effective April 1, 2017.

Prop. 56 did not change the CTPTL's definition of cigarettes and BOE staff was not aware of any confusion regarding Prop 56's additional tax on the distribution of cigarettes. So, BOE staff determined that there was no need to take regulatory action to further clarify the application of the cigarette taxes imposed by the CTPTL due to the passage of Prop. 56.

Initial Definition of Sold in Combination With

As noted above, RTC section 30121, subdivision (c), provides that " '[e]lectronic cigarettes' means any device or delivery system sold in combination with nicotine which can be used to deliver to a person nicotine in aerosolized or vaporized form" and includes "any component, part, or accessory of such a device that is used during the operation of the device when sold in combination with any liquid or substance containing nicotine." BOE staff visited manufacturers' websites prior to April 1, 2017. BOE staff noted that manufacturers commonly sold vaping devices with related products, including liquids and substances containing nicotine, directly to consumers as part of starter kits or all−in−one kits for a single price. BOE staff noted that manufacturers allowed customers to choose whether to include nicotine in their start kits or all−in−one kits and to choose the percentage of nicotine included in kits with nicotine. BOE staff also noted that some manufacturers sell the same items included in starter kits and all−in−one kits individually, such as vaping devices, components, accessories, and liquids or substances containing nicotine, and they will sell the individual items for separately stated prices in the same transaction. Therefore, BOE staff determined that the phrase sold in combination with does not refer to "every" item that is merely sold "with" a liquid or substance containing nicotine in the same transaction based upon the wording of RTC section 30121, subdivision (c), and industry practice. Staff determined that when a kit containing a device or delivery system that can be used to deliver nicotine in aerosol or vapor form to a person or a kit containing any component, part, or accessory of such a device or delivery system is sold with any liquid or substance containing nicotine for a single price, then the items are sold in combination with the liquid or substance containing nicotine and the entire unit is an electronic cigarette for purposes of section 30121, subdivision (c). Staff determined that when a kit containing a device or delivery system or a kit containing any component, part, or accessory of such a device or delivery system is not sold with a liquid or substance containing nicotine for a single price, the kit is not an electronic cigarette. Staff also determined that when the individual items that can be included in a kit are sold in the same transaction for separately stated prices, then the items are not sold in combination with each other for purposes of RTC section 30121, subdivision (c), and only the liquids or substances containing nicotine would be electronic cigarettes. The other items would not be electronic cigarettes.

First Discussion Paper and Interested Parties Meeting

As a result, BOE staff drafted amendments to Regulation 4076 to address the issues described above, staff prepared a discussion paper explaining the proposed amendments, and staff issued the discussion paper on March 27, 2017. The proposed amendments:

- Added new subdivision (a)(3) to define the term "electronic cigarettes" in accordance with RTC section 30121, subdivision (c);
- Renumbered current subdivision (a)(3) as subdivision (a)(4);
- Added new subdivision (a)(5) to clarify that the term " 'sold in combination with' refers to kits, systems, or packages that usually include atomizers, cartomizers or similar type device, component pieces, accessories, and liquids containing nicotine that are all sold for a single price";
- Added new subdivision (a)(6) to explain that the definition of OTP changed effective April 1, 2017, and now "includes all products containing, made, or derived from tobacco or nicotine that are intended for human consumption," including electronic cigarettes, but does not include cigarettes; and
- Added new subdivision (f) to provide examples of how to estimate or calculate the wholesale cost of products that have been defined as OTP effective April 1, 2017, such as self−manufactured nicotine products, kits sold with nicotine for a single price, and closed−system electronic cigarettes containing nicotine.

BOE staff held an interested parties meeting to discuss the proposed amendments on April 11, 2017. During the meeting, BOE staff indicated that they were proposing to change the "definition of sold in combina-

tion with" to refer to "kits, systems, or packages that usually include atomizers, cartomizers or similar type device, component pieces, accessories, and liquids containing nicotine that are *packaged or wrapped as one set or sold for a single price*." (Italics added.) Staff explained that the change was intended to prevent distributors from selling kits containing devices or delivery systems and liquids containing nicotine as one unit, but separately stating the prices of the items in the kits so that the liquids containing nicotine are the only items in the kits classified as electronic cigarettes and only the wholesale cost of the liquids containing nicotine is subject to tax.

During the April 2017 meeting, BOE staff was asked to clarify who is regarded as the manufacturer of a tobacco product, particularly an electronic cigarette produced by mixing liquid nicotine with flavoring to make a customized product. Also, staff was asked if either Distributor A or B can obtain a refund when Distributor B purchases OTP in California from Distributor A, Distributor A reports and pays its tax on its distribution of the OTP in California, and then Distributor B subsequently sells the tax−paid OTP to a third party and ships the OTP out of state pursuant to that contract of sale. And, BOE staff said that, under those facts, tax would apply to Distributor A's distribution of the OTP in California and Distributor B could not obtain a refund of tax reported and paid by Distributor A, even if it was refundable to Distributor A.

After the April 2017 meeting, Nu Mark LLC submitted a written comment dated April 25, 2017, suggesting that BOE staff's proposed definition of electronic cigarettes was too broad and that a component, part, or accessory of a device or delivery system should only be classified as an electronic cigarette if it is sold in combination with nicotine and it is used during the operation of the device or delivery system, based upon the second sentence in RTC section 30121, subdivision (c) (quoted above). However, BOE staff disagreed and concluded that a component, part, or accessory of a device or delivery system that is not used in the operation of the device or delivery system is still an electronic cigarette if it is sold in combination with a liquid or substance containing nicotine because the fourth sentence in RTC section 30121, subdivision (c), expressly provides that "[e]lectronic cigarettes do not include . . . any battery, battery charger, carrying case, or other accessory not used in the operation of the device *if sold separately.*" (Italics added.)

In its written comment, Nu Mark LLC also agreed that items should be considered to be sold in combination with each other if they are packaged together as one set or unit. However, Nu Mark LLC did not agree that items should be considered to be sold in combination with each other solely because they are sold for a single price. And, Nu Mark LLC expressed its concern that staff's proposed definition of sold in combination was too broad and recommended that the phrase "or sold for a single price" be deleted from the definition so that tax would only apply to the wholesale cost of the liquid containing nicotine when a distributor offers to sell a separately packaged device and a separately packaged liquid containing nicotine for a single price or offers a free device to customers who purchase a specified amount of liquid containing nicotine, as a promotion.

In addition, the California Smoke Free Organization (CSFO) submitted a written comment dated April 26, 2017, agreeing that the definition of sold in combination with should include items sold with a liquid containing nicotine "as one set in [their] original manufactur[er] packaging, or packaged or wrapped as one set or sold for a single price by a licensed distributor," and suggesting that the definition should not include items a retailer purchases separately and for a separate price, no matter how the items are sold by the retailer. CSFO said that its suggested language was intended to "protect retailers [that are not licensed distributors] from being considered de facto distributors if they package or wrap nicotine substances and devices as one set or sell them for a single price at the retail level." Also, CSFO's written comment concluded that, in its opinion, "if Distributor A applies tax to its distribution of tobacco products to Distributor B, then Distributor B ships the tax paid tobacco products pursuant to a contract of sale [with a third party] to a point outside this state, either Distributor B or at least Distributor A, should be able to obtain a refund or credit" under RTC section 30176.1 and Regulation 4063.5, *Exported Tax−Paid Tobacco Products*, or RTC section 30361.5, and suggested that Regulation 4063.5 should be clarified accordingly. And, Californians for Tobacco Harm Reduction (CATHR) submitted a written comment dated April 24, 2017, asking BOE staff to clarify how the proposed definition of sold in combination with applies at the retail level.

Second Issue Paper and Second Interested Parties Meeting

After considering the interested parties comments, BOE staff determined that manufacturers commonly sell vaping devices with related products, including liquids and substances containing nicotine, as part of starter kits or all−in−one kits. Some manufacturers also allow customers to create customized kits by selecting their accessories, flavoring, and nicotine content. And, the manufacturers package the products included in a kit all together in a single box or other type of storage container, which is sealed by the manufacturer, and which lists the contents of the kit and includes the manufacturer's logos, pictures, and advertisements on the outside of the box or container. Therefore, BOE staff

agreed with CSFO that an item is sold in combination with a liquid or substance containing nicotine when they are sold together in their original manufacturer packaging as one unit. And, to address Nu Mark LLC's and CSFO's concerns, BOE staff agreed to change the definition of sold in combination with to refer to "kits, systems, or packages that usually include atomizers, cartomizers or similar type device, component pieces, accessories, and liquids containing nicotine that are *sold in their original manufacturer packaging as one unit* or sold for a single price" (italics added), so that items a retailer purchases separately for a separate price and packages with tax−paid liquid containing nicotine would not be considered sold in combination with the nicotine merely because they were packaged together by the retailer, and retailers that are not licensed distributors would not be considered de facto distributors just because they packaged an item together with a tax−paid liquid containing nicotine as one unit for sale at the retail level.

Also, to address Nu Mark LLC's and CSFO's concerns and CATHR's request for further clarification, BOE staff agreed to revise the examples in Regulation 4076, subdivision (f)(2) and (3), to make them consistent with the revised definition of sold in combination with. BOE staff agreed to add new subdivision (f)(5) to Regulation 4076 to provide an example clarifying that when a retailer purchases tax−paid liquid containing nicotine from a licensed distributor and then packages the liquid with other items for sale as part of a promotion, the promotional package is not subject to tax because "the distribution occurred prior to the retail sale." And, BOE staff agreed to add new subdivision (f)(6) to Regulation 4076 to provide an example clarifying that a separately packaged device and a separately packaged liquid containing nicotine are not sold for a single price when the distributor's invoice shows the price charged for each item, even if the price charged for one of the items is zero. However, BOE staff continued to assert that items a distributor sells with a previously un−taxed liquid containing nicotine for a single price are sold in combination with the nicotine under RTC section 30121, subdivision (c), regardless of how they are packaged by the manufacturer or distributor.

In addition, after considering the interested parties comments, BOE staff determined that there may be additional issues (or problems within the meaning of Gov. Code, section 11346.2, subd. (b)(1)) determining whether a person is a manufacturer of OTP, as newly defined, effective April 1, 2017. And, BOE staff determined that it was necessary to propose a new regulation for the specific purpose of addressing the additional issues by defining the term "tobacco product manufacturer" and clarifying who is regarded as the manufacturer of an electronic cigarette produced by mixing liquid nicotine with flavoring to make a customized product. Therefore, BOE staff looked at federal law for guidance as to who is a manufacturer of tobacco products.

Specifically, BOE staff looked at section 387(20)(A) of title 21 of the United States Code, which provides that "tobacco product manufacturer means any person, including any repacker or relabeler, who . . . manufactures, fabricates, assembles, processes, or labels a tobacco product" for purposes of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. section 301 et seq.). BOE staff drafted subdivision (a) off proposed Regulation 4077, *Tobacco Product Manufacturer*, to define tobacco product manufacturer in accordance with the federal definition and clarify that a "tobacco product manufacturer is any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a finished tobacco product." BOE staff drafted subdivision (b) of proposed Regulation 4077 to specifically clarify for retailers that a "retailer who mixes, prepares, or combines liquid nicotine and other components of a tobacco product is a tobacco product manufacturer" and "if the retailer does not mix, prepare or combine any liquid nicotine products but allows its customers to do so after a sale has been made then that retailer is not a manufacturer," based upon the general definition of tobacco product manufacturer. BOE staff also included a third sentence in subdivision (b) of proposed Regulation 4077 to provide additional notice that "A retailer must purchase their nicotine products from a licensed tobacco products distributor" so the retailer will not become a distributor without first obtaining a distributor's license.

In addition, after considering CSFO's written comment:

- BOE staff concluded that RTC section 30176.1 only provides for a refund when tax has been "paid on the *distribution* of tobacco products which are shipped to a point outside the state" (italics added) and does not apply when a distributor makes a distribution of OTP in the state and does not ship the products outside the state as part of the distribution in accordance with Regulation 4063.5;
- BOE staff also concluded that RTC section 30361 only permits an amount to be refunded to the distributor who paid it and only if the amount paid was computed upon an amount that is not taxable or the amount paid was is in excess of the tax due, and it does not provide for a refund of tax that was properly paid on the distribution of OTP in the state; and
- A statutory change would be required to provide a refund if Distributor A applies tax to its distribution of tobacco products to Distributor B in

> this state, then Distributor B ships the tax paid tobacco products to a point outside this state pursuant to a contract of sale with a third party.

As a result, BOE staff prepared a second discussion paper explaining its revised amendments to Regulation 4076, staff's new proposed Regulation 4077, and staff's understanding of RTC sections 30176.1 and 30361. Staff issued the second discussion paper, the revised amendments to Regulation 4076, and proposed Regulation 4077 on May 26, 2017. And, staff held an interested parties meeting to discuss the revised amendments and proposed regulation on June 6, 2017.

At the June 2017 interested parties meeting, BOE staff was informed by the electronic cigarette industry that when the owner of a brand or formula for a type of liquid nicotine manufactures its product, the owner of the brand or formula may contract with another person to complete the fabrication and assembly of the product to the brand or formula owner's standard. Staff was also informed that the industry refers to the owner of a brand or formula for a type of liquid nicotine as a manufacturer regardless of whether the owner directly performs all of the services related to the manufacture of its product or contracts with a third party to perform services related to the manufacture of its product on its behalf. And, some interested parties raised another issue (or problem within the meaning of Gov. Code, section 11346.2, subd. (b)(1)) about whether staff's proposed definition of tobacco product manufacturer in Regulation 4077, subdivision (a), was broad enough to classify the owner of a brand or formula for a type of liquid nicotine as a manufacturer when the owner contracts with a third party to perform services related to the manufacture of its product.

After the June 2017 meeting, BOE staff received written comments from SAVEURvape, Inc., and Ting Fan, which were both dated June 20, 2017, and recommended that the definition of tobacco product manufacturer in Regulation 4077, subdivision (a), be revised to include the owner of a "brand and formula" for a tobacco product who contracts with a third party to perform services related to the manufacture of its product. BOE staff also received written comments from Charlie's Chalk Dust, LLC, and CSFO, which were both dated June 22, 2017, and recommended that the definition of tobacco product manufacturer include a tobacco "product owner" and "product licensee" who contracts with a third party to perform services related to the manufacture of its product.

In addition, CSFO's June 2017 written comment recommended that Regulation 4076 do more to clarify that a retailer who packages untaxed devices or other items with tax−paid liquid containing nicotine and sells them for a single price will not be considered a distributor. The comment requested that staff further clarify how a person that is both the manufacturer and distributor of electronic cigarettes is required to calculate the wholesale cost of the electronic cigarettes under Regulation 4076, subdivision (b)(2). The comment recommended that the third sentence in proposed Regulation 4077, subdivision (b), be revised to clarify that a retailer "that is not also a manufacturer or distributor" must purchase their nicotine products from a licensed tobacco products distributor. And, the comment disagreed with BOE staff's analysis of RTC sections 30176.1 and 30361 and Regulation 4063.5, and requested that Regulation 4063.5 be amended to clarify that a refund is permitted if Distributor A applies tax to its distribution of tobacco products to Distributor B in the state, then Distributor B ships the tax paid tobacco products for subsequent sale or use outside this state.

CDTFA Staff's Changes to the Proposed Amendments to Regulation 4076

CDTFA staff continued to work on BOE staff's project to amend Regulation 4076 and adopt new Regulation 4077 after the July 1, 2017, transfer of the BOE's authority to administer and enforce the CTPTL to the CDTFA. CDTFA staff determined that there was another issue (or problem within the meaning of Gov. Code, section 11346.2, subd. (b)(1)) with Regulation 4076 because it refers to the BOE, instead of the CDTFA, as the agency with the authority to administer and enforce the CTPTL. Therefore, CDTFA staff proposed replacing the references to the BOE with references to the CDTFA in Regulation 4076, subdivisions (c)(2)(E), (d)(2), and (e)(2), and renumbered subdivision (g), to address the issue.

In addition, CDTFA staff considered the interested parties' comments from June 2017. And, CDTFA staff determined that Regulation 4076, subdivision (b)(2), should more clearly explain what overhead costs are includable in a manufacturer's manufacturing costs and generally permit manufacturers and importers to use the alternative methods in Regulation 4076, subdivision (c), to determine the wholesale cost of OTP. Therefore, CDTFA staff proposed deleting the phrase providing that manufacturing costs include "any direct (including freight−in) and indirect overhead costs" from the first paragraph in subdivision (b)(2) and adding a new second paragraph to subdivision (b)(2) to more clearly explain that:

> Manufacturing costs include all overhead expenses that are directly or indirectly attributable to the production of finished goods. These costs can include, but are not limited to, production and administrative salaries, depreciation, repairs and maintenance, rent and utilities for the production facilities, and equipment. Manufacturing costs must be allocated to each product unit by a

reasonable and consistent pro−rata accounting method. Manufacturing costs do not include overhead expenses that are not directly or indirectly attributable to the production of finished goods. These costs can include, but are not limited to, salaries and other expenses for business activities involving selling, distribution, marketing, finance, information technology, human resources and legal activities.

CDTFA staff proposed adding a new fourth paragraph to Regulation 4076, subdivision (b)(2), to permit manufacturers and importers that are also distributors to use the alternative methods in Regulation 4076, subdivision (c), to determine the wholesale cost of OTP. CDTFA staff proposed amending the example currently in Regulation 4076, subdivision (e)(1), and the example proposed to be added to Regulation 4076, subdivision (f)(1), to clarify that the distributors in the examples are also manufacturers and the wholesale cost of the OTP they manufacture would include the costs described in subdivision (b)(2). CDTFA staff proposed adding new subdivision (f)(7) to Regulation 4076 to provide an example illustrating that a manufacturer who uses five percent of a rented facility for manufacturing is required to include five percent of the rent paid for the facility in its manufacturing costs. And, CDTFA staff proposed other minor grammatical changes to Regulation 4076, subdivisions (b)(2) and (f)(5) and (6), and renumbered subdivision (g).

CDTFA staff provided a revised draft of the proposed amendments to Regulation 4076 to the interested parties on August 1, 2017. CDTFA staff received a written comment from CATHR dated August 10, 2017. CATHR's comment indicated that some members of the association had received inconsistent information from CDTFA staff about how to substantiate the wholesale cost of OTP when the manufacturer is also the distributor. And, CATHR's comment requested that Regulation 4076 "spell out that there is no requirement that a certain transaction be performed to document the movement of tobacco products from a licensed manufacturer that is also a licensed distributor when they are the same entity" and requested additional "explicit clarification that an arm's length transaction would not be required in this circumstance." CDTFA staff agreed that this new issue was important, and should be addressed through appropriate training and outreach after the current rulemaking project is completed. However, CDTFA staff did not agree that further amendments to Regulation 4076 are needed to address the issue at this time.

CDTFA staff received a written comment from Dr. Michael Ong, dated August 11, 2017, on behalf of the Tobacco Education and Research Oversite Committee, which raised concerns about whether the proposed regulatory definitions for the terms "electronic cigarettes" and "tobacco products" were too abbreviated and suggested alternative definitions. Therefore, CDTFA staff reviewed the proposed definitions. Staff revised the regulatory definition of electronic cigarettes to clarify that electronic cigarettes include any liquids ("e−juice" or "e−liquid") or substances that contain nicotine, "regardless of whether they are sold in combination with any device, delivery system, or any component, part, or accessory of such a device or delivery system," to ensure consistency between the statutory and regulatory definitions and avoid any potential confusion. However, CDTFA staff did not revise the definition of tobacco products because staff determined that the regulatory definition is clear, concise, and consistent with the statutory definition in RTC section 30121 as amended by Prop. 56.

Also, CDTFA staff received a written comment from CSFO dated August 18, 2017. CSFO's comment requested that the example being added to subdivision (f)(5) of Regulation 4076 be revised to "clarify that tax would not apply to the transaction even if the retailer sold the promotional package for a single price." CDTFA staff agreed that tax would not apply to the transaction in the example even if the retailer sold the promotional package for a single price and that the example should be clarified accordingly. Staff also realized that the example was illustrating that OTP, such as a liquid or substance containing nicotine, may only be distributed once, and that an item is only sold in combination with a liquid or substance containing nicotine if they are sold in their original manufacturer packaging as one unit or sold for a single price before or when the liquid or substance containing nicotine is distributed. Therefore, staff proposed to delete the word "first" from the definition of "finished tobacco product" and tobacco product in "finished condition" in renumbered subdivision (a)(4) of Regulation 4076 to clarify that there is only one distribution of OTP. Staff revised the definition of sold in combination with proposed to be added to subdivision (a)(5) of Regulation 4076 to provide that an item is sold in combination with a liquid or substance containing nicotine if they are sold in their original manufacturer packaging as one unit or sold for a single price "before or when the liquid or substance containing nicotine is distributed." Staff also revised the example being added to subdivision (f)(5) of Regulation 4076 to clarify that tax does not apply when a retailer purchases a tax−paid liquid containing nicotine and packages it together with other items for retail sale at a single price as a promotion because the distribution of the tax−paid liquid containing nicotine already occurred.

In addition, CSFO's August 18, 2017, written comment incorporated its prior comments regarding refunds and requested that Regulation 4063.5 be further clarified. However, CDTFA staff determined that any

changes to Regulation 4063.5 would be beyond the scope of the current project to address issues (or problems) related to the passage of Prop. 56 and CDTFA staff did not agree that it is necessary to make any changes to Regulation 4063.5 at this time.

CDTFA Staff's Changes to Proposed Regulation 4077

After considering the interested parties' comments from June 2017, CDTFA staff agreed that the owner of a brand or formula for a tobacco product who contracts with another person to physically complete the fabrication and assembly of the product to the brand or formula owner's standard is a manufacturer. Therefore, CDTFA staff proposed adding the following additional sentence to Regulation 4077, subdivision (a), to address the issue regarding brand or formula owners raised at the June 2017 interested parties meeting:

> The term tobacco product manufacturer includes an owner of a brand or formula for a tobacco product who contracts with another person to complete the fabrication and assembly of the product to the brand or formula owner's standard.

In addition, after reviewing CSFO's June 2017 written comment regarding the third sentence in proposed Regulation 4077, subdivision (b), CDTFA staff determined that the statement in the third sentence that a "retailer must purchase their nicotine products from a licensed tobacco products distributor" was not entirely accurate. This is because a retailer that is a licensed manufacturer or distributor may purchase untaxed nicotine products from a person that is not a licensed tobacco products distributor, and making such a purchase will not cause a retailer that is already a licensed manufacturer or distributor to become a distributor without first obtaining a distributor's license. This is also because a retailer that is not a licensed manufacturer or distributor may purchase tax−paid cigarettes and tobacco products from a licensed distributor or wholesaler and doing so will not cause a retailer to become a distributor without first obtaining a distributor's license. Therefore, to be entirely accurate, staff revised the sentence to provide that a "retailer who is not a licensed manufacturer or distributor must purchase its nicotine products from a licensed tobacco products distributor or wholesaler."

Determinations

The CDTFA subsequently determined that staff's proposed amendments to Regulation 4076 are reasonably necessary to have the effect and accomplish the objective of addressing the issues (or problems) regarding the change to the definition of OTP, effective April 1, 2017, determining whether certain items are electronic cigarettes subject to the taxes on OTP, and determining the wholesale cost of electronic cigarettes subject to the taxes on OTP, discussed above, by providing additional notice to distributors regarding the new definition of OTP, clarifying the new definition of OTP by defining the phrase "sold in combination with," which is used in the definition of electronic cigarettes, providing examples of items that are and are not sold in combination with a liquid or substance containing nicotine, clarifying how to determine the wholesale cost of OTP when the manufacturer is also the distributor, and providing examples of how to estimate or calculate the wholesale cost of products that have been defined as OTP effective April 1, 2017. The CDTFA determined that the amendments to Regulation 4076 are reasonably necessary to have the effect and accomplish the objective of addressing the issue (or problem) regarding the references to the BOE in Regulation 4076 by replacing those references with references to the CDTFA. The CDTFA determined that staff's proposed Regulation 4077 is reasonably necessary to have the effect and accomplish the objective of addressing the issue (or problem) determining whether a person is a manufacturer of OTP, as newly defined, effective April 1, 2017, by defining the term "tobacco product manufacturer," and clarifying who is regarded as the manufacturer of an electronic cigarette produced by mixing liquid nicotine with flavoring to make a customized product. The CDTFA also determined that staff's proposed amendments to Regulation 4076 and staff's proposed Regulation 4077 are reasonably necessary to have the effect and accomplish the objective of addressing the de facto distributor issue (or problem) discussed above by clarifying in Regulation 4076 that OTP may only be distributed once and that a retailer does not make a taxable distribution by repackaging tax−paid OTP with other items for retail sale or selling tax−paid OTP with other items for a single price at retail, and clarifying in proposed Regulation 4077 that a retailer who is not a licensed manufacturer or are reasonably necessary to have the effect and accomplish the objective of distributor must purchase its nicotine products from a licensed tobacco products distributor or wholesaler.

The CDTFA anticipates that the proposed amendments to Regulation 4076 will promote fairness and benefit taxpayers and the CDTFA by providing additional notice to distributors regarding the new definition of OTP, clarifying the new definition of OTP by defining the phrase "sold in combination with," which is used in the definition of electronic cigarettes, providing examples of items that are and are not sold in combination with a liquid or substance containing nicotine, clarifying how to determine the wholesale cost of OTP when the manufacturer is also the distributor, and providing examples of how to estimate or calculate the wholesale cost of products that have been defined as OTP effective April 1, 2017. The CDTFA anticipates that proposed Regulation 4077 will promote fairness

and benefit taxpayers and the CDTFA by defining the term "tobacco product manufacturer," and clarifying who is regarded as the manufacturer of an electronic cigarette produced by mixing liquid nicotine with flavoring to make a customized product. The CDTFA also anticipates that the proposed amendments to Regulation 4076 and proposed Regulation 4077 will promote fairness and benefit taxpayers and the CDTFA by clarifying that OTP may only be distributed once, clarifying that a retailer does not make a taxable distribution by repackaging tax−paid OTP with other items for retail sale or selling tax−paid OTP with other items for a single price at retail, and clarifying that a retailer who is not a licensed manufacturer or distributor must purchase its nicotine products from a licensed tobacco products distributor or wholesaler.

In addition, the CDTFA has performed an evaluation of whether the proposed amendments to Regulation 4076 and proposed Regulation 4077 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments and proposed regulation are not inconsistent or incompatible with existing state regulations. This is because Regulation 4076 is the only regulation that clarifies the meaning of the phrase "wholesale cost" for purposes of the CTPTL and Regulation 4077 is the only regulation that clarifies who is a tobacco product manufacturer for purposes of the CTPTL. In addition, the CDTFA has determined that the provisions in the first sentence of proposed Regulation 4077 are comparable to the provisions in section 387(20)(A) of title 21 of the United States Code and do not substantially differ from the provisions in the federal statute, and that there are no comparable federal regulations or statutes to the amendments to Regulation 4076 or the other provisions in proposed Regulation 4077.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The CDTFA has determined that the adoption of the proposed amendments to Regulation 4076 and proposed Regulation 4077 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

ONE−TIME COST TO AND NON−QUANTITATIVE SAVINGS FOR THE CDTFA, BUT NO OTHER COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The CDTFA has determined that the adoption of the proposed amendments to Regulation 4076 and proposed Regulation 4077 will result in an absorbable $436 one−time cost for the CDTFA to update its website after the proposed regulatory action is completed. The CDTFA has also determined that the proposed amendments to Regulation 4076 are likely to produce some savings for the CDTFA by reducing the time it takes to perform audits, the number of times distributors will need to be billed for unreported or underreported taxes on electronic cigarettes, and the number of appeals. The CDTFA has determined that proposed Regulation 4077 is likely to produce some savings for the CDTFA by reducing the need for enforcement actions against unlicensed manufacturers. However, the CDTFA cannot quantitatively determine the amount of the savings.

In addition, the CDTFA has determined that the adoption of the proposed amendments to Regulation 4076 and proposed Regulation 4077 will result in no other direct or indirect cost or savings to any state agency, 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 title 2 of the Government Code, no other non−discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The CDTFA has made an initial determination that the adoption of the proposed amendments to Regulation 4076 and proposed Regulation 4077 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 adoption of the proposed amendments to Regulation 4076 and proposed Regulation 4077 may affect small business.

NO MEASURABLE COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

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

The CDTFA has determined that the amendments to Regulation 4076 will have some direct impact on distributors of liquid nicotine products and accessories by clarifying when devices or delivery systems and any component, part, or accessory of such a device is sold in combination with nicotine and subject to tax as an electronic cigarette, which is included in the statutory definition of tobacco products, and some of the impacted distributors may be small businesses. Also, tobacco products taxes are generally passed onto wholesalers, retailers, and consumers in the form of higher prices. Therefore, the CDTFA has determined that the amendments to Regulation 4076 may have some indirect impact on wholesalers, retailers, and consumers if they increase the wholesale or retail price of devices, components, parts, or accessories that were classified as taxable electronic cigarettes at the time they were distributed, and some of the wholesalers and retailers may be small businesses. However, the amendments to Regulation 4076 do not require distributors to sell their devices, components, parts, or accessories in combination with nicotine, and they do not prevent distributors from changing their business practices so that their sales of devices, components, parts, and accessories are not sales of electronic cigarettes subject to tax. Therefore, the CDTFA does not expect the amendments to measurably increase or decrease the taxes on or the wholesale or retail prices of devices, components, parts, and accessories or have a measurable cost impact on private persons or businesses.

The CDTFA has also determined that proposed Regulation 4077 will have some impact on businesses that manufacture tobacco products, including liquid nicotine products, in this state, and some of those businesses may be small business. This is because tobacco products manufacturers are required to register with the CDTFA for a Cigarette and/or Tobacco Products Manufacturer/Importer's License and some businesses may determine that they are manufacturers as a result of the regulation and incur costs to register with the CDTFA for a manufacturer's license that might be indirectly related to the proposed regulation. However, the CDTFA has determined that those indirect costs are likely to be relatively small and cannot be reliably estimated.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The CDTFA assessed the economic impact of the proposed amendments to Regulation 4076 and proposed Regulation 4077 on California businesses and individuals and determined that the proposed regulatory action is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the CDTFA has prepared the economic impact assessment (EIA) required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. In the EIA, the CDTFA determined that the adoption of the proposed amendments to Regulation 4076 and proposed Regulation 4077 will neither create nor eliminate jobs in the State of California nor result in the creation of new businesses or the elimination of existing businesses in the state, and will not affect the expansion of businesses currently doing business in the State of California. Furthermore, the CDTFA determined that the adoption of the proposed amendments to Regulation 4076 and proposed Regulation 4077 will not affect the benefits of the regulations to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Regulation 4076 and proposed Regulation 4077 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The CDTFA must determine that no reasonable alternative considered by it 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 than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments to Regulation 4076 and proposed Regula-

tion 4077 should be directed to Joshua Aldrich, Tax Counsel, by telephone at (916) 322−3283, by e−mail at Joshua.Aldrich@cdtfa.ca.gov, or by mail at California Department of Tax and Fee Administration, Attn: Joshua Aldrich, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279−0082.

Written comments for the CDTFA's consideration, written requests to hold a public hearing, notices of intent to present testimony or witnesses at the public hearing, and other inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445−2130, by fax at (916) 322−2958, by e−mail at Richard.Bennion@cdtfa.ca.gov, or by mail at California Department of Tax and Fee Administration, Attn: Rick Bennion, MIC:50, 450 N Street, P.O. Box 942879, Sacramento, CA 94279−0050. Mr. Bennion is the designated backup contact person to Mr. Aldrich.

WRITTEN COMMENT PERIOD

The written comment period ends at 11:59 p.m. (PDT) on September 30, 2019. The CDTFA will consider the statements, arguments, and/or contentions contained in written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, before the CDTFA decides whether to adopt the proposed amendments to Regulation 4076 and proposed Regulation 4077. The CDTFA will only consider written comments received by that time.

However, if a public hearing is held, written comments may also be submitted at the public hearing and the CDTFA will consider the statements, arguments, and/or contentions contained in written comments submitted at the public hearing before the CDTFA decides whether to adopt the proposed amendments to Regulation 4076 and proposed Regulation 4077.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The CDTFA has prepared a copy of the text of the proposed amendments to Regulation 4076 illustrating its express terms. The proposed amendments are illustrated in underline and strikeout format because California Code of Regulations, title 1, section 8, subdivision (b) provides that "the final text of the regulation shall use underline or italic to accurately indicate additions to, and strikeout to accurately indicate deletions from, the California Code of Regulations."

The CDTFA has prepared a copy of the text of proposed Regulation 4077 illustrating its express terms; however, the proposed regulation is not illustrated in underline or italics format because California Code of Regulations, title 1, section 8, subdivision (b) provides that "[u]nderline or italic is not required for the adoption of a new regulation or set of regulations if the final text otherwise clearly indicates that all of the final text submitted to OAL for filing is added to the California Code of Regulations."

The CDTFA has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 4076 and proposed Regulation 4077, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments and proposed regulation are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments to Regulation 4076 and proposed Regulation 4077 and the initial statement of reasons are also available on the CDTFA's website at www.cdtfa.ca.gov.

PUBLIC HEARING

The CDTFA has not scheduled a public hearing to discuss the proposed amendments to Regulation 4076 and proposed Regulation 4077. However, any interested person or his or her authorized representative may submit a written request for an oral hearing no later than 15 days before the close of the written comment period, and the CDTFA will hold a public hearing if it receives a timely written request.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The CDTFA may adopt the proposed amendments to Regulation 4076 and adopt proposed Regulation 4077 with changes that are non−substantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the CDTFA will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The CDTFA will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF
FINAL STATEMENT OF REASONS

If the CDTFA adopts the proposed amendments to Regulation 4076 and proposed Regulation 4077, the CDTFA will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the CDTFA's website at www.cdtfa.ca.gov.

TITLE 20. CALIFORNIA ENERGY COMMISSION

Title 20. Public Utilities and Energy
Division 2. State Energy Resources
Conservation and Development Commission
Chapter 1. General Provisions
Article 1. Construction of Regulations
Section 1004
and
Chapter 4. Energy Conservation
Article 4. Appliance Efficiency Regulations
Sections 1601−1609
California Energy Commission
General Service Lamps
Docket No. 19−AAER−04

INTRODUCTION

The California Energy Commission proposes to amend the regulations for general service lamps to align with federal law and to reinstate a severability clause after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

Energy Commission staff will hold a public hearing for the proposed regulations on the following date and time. Interested persons, or their authorized representatives, may present oral and written statements, arguments, or contentions relevant to the proposed regulations at the hearing. The record for this hearing will be kept open until 12:00 p.m. (Pacific Time) or until every person present, in person or via webinar, who indicates a desire to speak has had an opportunity to do so.

Tuesday, October 1, 2019
10:00 a.m.−12:00 p.m. (Pacific Time)
California Energy Commission
1516 9th Street
Sacramento, CA 95814
First Floor, Imbrecht Hearing Room
(Wheelchair accessible)

Audio for the hearing will be broadcast over the internet. Details regarding the Energy Commission's webcast can be found at https://energy.webex.com/ec.

If you have a disability and require assistance to participate in the hearing, please contact Yolanda Rushin at Yolanda.Rushin@energy.ca.gov, or (916) 654−4310, at least five days in advance.

WRITTEN COMMENT PERIOD

You may submit written comments to the Commission for consideration on or prior to September 30, 2019. The Energy Commission appreciates receiving written comments at the earliest possible date.

Please submit comments using the Energy Commission's e−commenting feature by going to the Energy Commission's general service lamps rulemaking webpage at https://www.energy.ca.gov/appliances/2019−AAER−04/ Docket Number 19−AAER−04 then select the "Submit e−comment" link. A full name, e−mail address, comment title, and either a comment or an attached document (.doc, .docx, or .pdf format) is mandatory. After a challenge−response test used by the system to ensure that responses are generated by a human user, click on the "Agree and Submit Your Comment" button to submit the comment to the California Energy Commission's Docket Unit.

Please note that written comments, attachments, and associated contact information included within the written comments and attachments (e.g., your address, phone, email, etc.) become part of the viewable public record.

You are encouraged to use the electronic filing system, described above, to submit comments. All written comments submitted prior to the hearing must be submitted to the docket. If you are unable to submit electronically, a paper copy of your comments may be sent to:

Docket Unit
California Energy Commission
Docket No. 19−AAER−04
1516 9th Street, MS−4
Sacramento, CA 95814
Telephone: (916) 654−5076
Or by email to DOCKET@energy.ca.gov.
Or fax them to Dockets at (916) 654−4354.

PUBLIC ADVISER

The Energy Commission's Public Adviser's Office provides the public assistance in participating in Energy Commission proceedings. If you want information on how to participate in this forum, please contact the Acting Public Adviser, Jennifer Martin−Gallardo, at PublicAdviser@energy.ca.gov or (916) 654−4489 (toll free at (800) 822−6228).

NEWS MEDIA INQUIRIES

News media inquiries should be directed to the Media and Public Communications Office at (916) 654−4989, or by e−mail at mediaoffice@energy.ca.gov.

STATUTORY AUTHORITY AND REFERENCE

Public Resources Code Sections 25213, 25218(e), and 25402(a)−(c) authorize the Energy Commission to adopt rules or regulations, as necessary, to implement, interpret, and make specific Public Resources Code Sections 25402(a)−(c) and 25216.5(d).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Warren−Alquist Act establishes the Energy Commission as California's primary energy policy and planning agency. Sections 25213, 25218(e), and 25402(a)−(c) of the Public Resources Code mandate and/or authorize the Energy Commission to adopt rules and regulations, as necessary, to reduce the inefficient consumption of energy and water by prescribing efficiency standards and other cost−effective measures for appliances whose use requires a significant amount of energy or water statewide.

One of the ways the Energy Commission satisfies this requirement is through the Appliance Efficiency Regulations (California Code of Regulations, Title 20, Sections 1601−1609), which contain definitions, test procedures, efficiency standards, and marking and certification requirements for state and federally regulated appliances. Further, the regulations require that appliance manufacturers certify to the Energy Commission that their products meet all applicable state and federal appliance efficiency regulations before their products can be included in the Energy Commission's database of appliances approved to be sold or offered for sale within California.

On December 3, 2008, the Energy Commission adopted efficiency regulations for general purpose lighting. These regulations mirrored federal statutory standards for these products and provided for early implementation of the standards in California compared to the rest of the nation (U.S. Code, Title 42, Sections 6295(i)(6)(A)(vi) and 6297(b)(1)(B)(ii)). These regulations included a requirement that all general service lamps be at least 45 lumens per watt if manufactured on or after January 1, 2018, and offered for sale in California.

On January 27, 2016, the Energy Commission adopted efficiency regulations for small−diameter directional lamps and general service light−emitting diode (LED) lamps. These regulations are effective for small−diameter directional lamps and general service LED lamps manufactured on or after January 1, 2018, and offered for sale in California.

On January 19, 2017, the U.S. Department of Energy (DOE) published federal definitions for general service lamps and their subcategories, which would take effect on January 1, 2020. These definitional rules expand the number of light bulbs subject to the 45 lumen−per−watt efficacy standard in federal law that applies nationwide to general service lamps sold on or after January 1, 2020.

On August 3, 2018, Energy Commission staff published the *Analysis of General Service Lamps (Expanded Scope)*. In its analysis, staff determined that a 45 lumen−per−watt efficacy standard for general service lamps is technically feasible, cost−effective to the consumer, and would yield significant statewide energy savings as required by Public Resources Code Section 25402(c)(1).

The Energy Commission proposes to incorporate the federal definitions published on January 19, 2017, and the 45 lumen−per−watt efficacy standard into both state and federal efficiency standards for general service lamps. The Energy Commission also proposes to align the existing test procedures with the new and updated test procedures that have been adopted by the DOE and are mandatory for manufacturers making representations about the energy use or efficiency of the applicable lamp types (Code of Federal Regulations, Title 10, Section 430.23).

The proposed regulations would be effective for general service lamps sold on or after January 1, 2020.

In addition, the Energy Commission proposes to reinstate a severability clause into the regulations. Such a clause used to be present, but was previously removed under the mistaken notion that it was codified in statute. It is the intent of the Energy Commission, should any regulation be struck down by the courts that all other regulations not so struck down remain. These regulations would reinstate this severability provision to codify this intent.

Difference from existing comparable federal regulation or statute

On January 19, 2017, DOE published two Federal Register notices of final rules adopting a revised definition for general service lamps. The effective date for the final rules is January 1, 2020. The Energy Commission is proposing regulations in Sections 1602, definitions, and 1604, test methods for specific appliances, to reflect existing federal regulations. The Energy Commission is proposing regulations in Section 1605.1, federal and state standards for federally regulated appliances, to reflect existing federal law imposing a minimum efficacy requirement on general service lamps (U.S. Code, Title 42, Section 6295(i)(6)(A)(v)). The Energy Commission is simultaneously proposing identical regulations in Section 1605.3, state standards for non−federally−regulated appliances, pursuant to California's exemption from state preemption in U.S. Code, Title 42, Section 6295(i)(6)(A)(vi).

Broad objectives of the regulations and the specific benefits anticipated by the proposed amendments

The broad objective of these regulations is to ensure energy efficiency savings from federal requirements related to general service lamps occur in California by revising the appliance efficiency regulations to align with federal requirements and by exercising California's exemption from state preemption to set identical state requirements. The Energy Commission proposes to align the appliance efficiency regulations definitions for general service lamps with the two DOE definitional final rules published in the Federal Register on January 19, 2017, and effective January 1, 2020, and to align the existing test procedures with the new and updated test procedures that have been adopted by the DOE and are mandatory for manufacturers making representations about the energy use or efficiency of the applicable lamp types. The Energy Commission proposes to incorporate the federal efficiency standard for general service lamps that exists in federal law and to adopt a state regulation that is identical to the federal law to ensure implementation of the regulations if repealed at the federal level. California has an exemption from state preemption in U.S. Code, Title 42, Section 6295(i)(6)(A)(vi).

California has existing regulations that apply to a subset of the lamps defined as "general service lamps." However, most of the lamps described in the definitional rules are only covered under federal standards. The proposed regulations would give the Energy Commission authority to enforce the 45−lumen−per−watt standard on the broader scope of products described in the definitional rules. The proposed regulations would not change the efficiency levels, types of products, or effective dates applicable already under federal law and regulation.

The specific benefits from the federal requirements, which the proposed regulations are meant to ensure take place regardless of potential changes at the federal level, would be utility bill cost savings to the consumer and lower statewide energy use. No additional energy savings benefits or incremental costs will result directly from the proposed regulations, beyond those that would result from federal law and regulations effective January 1, 2020. The estimated savings below are those expected to occur in California due to federal law and regulations effective January 1, 2020, for lamps not already covered by California efficiency standards. The estimated savings are highly dependent on the current population of efficient lamps in California. Because this cannot be known with certainty, a range of savings is estimated between a low population (0 to 20 percent) of efficient lamps and a higher population (30 to 50 percent) of efficient lamps. The federal requirements would save between 2,290 and 4,600 gigawatt−hours of electricity in California the first year the standard is in effect. After existing stock fully turns over, the federal requirements would have an annual electricity savings in California between 4,000 and 13,600 gigawatt−hours. The annual electricity savings equate to a value between $736 million and $2.4 billion in annual savings, after stock fully turns over, to California businesses and individuals.

DETERMINATION OF INCONSISTENCY OR INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

The Energy Commission has conducted an evaluation for any other regulations in this topic area, and found the California Energy Code, Title 24, Part 6, requires that all lighting in new residential construction be high efficacy, and meet the requirements in Joint Appendix 8 (JA8). Lamps covered by the appliance efficiency regulations must also meet the JA8 requirements if installed in new residential construction in California. The JA8 requirements are more stringent than the proposed regulations — therefore, it is possible for lamps to comply with both the proposed regulations and with JA8.

The proposed regulations would not prevent compliance with existing state regulations. The proposed Title 20 amendments are separate and distinct from the provisions in Title 24, Part 6, and have different points of enforcement (point of sale versus point of installation in new construction). Therefore, the Energy Commission has determined that the proposed regulations are neither inconsistent nor incompatible with these regulations.

DOCUMENTS INCORPORATED BY REFERENCE

The Energy Commission is proposing to incorporate the following document by reference:

Code of Federal Regulations, Title 10, Appendix DD of subpart B of part 430.

MANDATED BY FEDERAL LAW OR REGULATIONS

The proposed changes to the regulations reflect current federal law and regulations related to general service lamps.

OTHER STATUTORY REQUIREMENTS

None.

FISCAL IMPACTS

The Energy Commission has made the following initial determinations:

- The mandate on local agencies and school districts: None.
- The cost to any local agency or school district requiring reimbursement pursuant to 17500 et seq.: None.
- Cost or savings to any state agency: None.
- Non−discretionary cost or savings imposed upon local agencies: None.
- Cost or savings in federal funding to the state: None.

SIGNIFICANT EFFECT ON HOUSING COSTS

None.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES

The Energy Commission estimates that businesses may be impacted by the federal requirements, which the proposed regulations are intended to codify in California law. However, these regulations are not likely to result in a significant adverse economic impact on any business.

The proposed regulations maintain the baseline conditions that exist due to federal law and regulation — the prohibition of sale of low efficacy general service lamps beginning January 1, 2020. This results in no economic impact due to the proposed regulations. Manufacturers are obligated to comply with federal appliance efficiency standards and the proposed changes to the requirements do not increase the expected requirements but align with the DOE requirements. The federal requirements will be effective nationwide and all regulated parties will have to comply with them regardless of California's regulations. Manufacturers will have needed to prepare to comply with the federal regulations well ahead of the January 1, 2020, effective date, as only compliant products may be sold on or after that date. Therefore, even in the event of a federal repeal of the definitions, there will not be an economic impact on businesses or consumers from having to comply with the state standards, which ensure the continuation of the federal standards in case of repeal.

The proposed regulations would not change the efficiency levels, types of products, or effective dates applicable already under federal law and regulation. The proposed regulations do not add any reporting requirements for these lamp types.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ ASSESSMENT

The Energy Commission concludes that: (1) it is unlikely the proposal will create jobs within California, (2) it is unlikely the proposal will eliminate jobs within California, (3) it is unlikely the proposal will create new businesses in California, (4) it is unlikely the proposal will eliminate existing businesses within California, (5) it is unlikely the proposal will result in the expansion of businesses currently doing business within the state.

Benefit of the Proposed Action: The specific benefits from the federal requirements, which the proposed regulations are meant to ensure take place regardless of potential changes at the federal level, would be utility bill cost savings to the consumer and lower statewide energy use. No additional energy savings benefits or incremental costs will result directly from the proposed regulations, beyond those that would result from federal law and regulations effective January 1, 2020. The estimated savings below are those expected to occur in California due to federal law and regulations effective January 1, 2020, for lamps not already covered by California efficiency standards. The estimated savings are highly dependent on the current population of efficient lamps in California. Because this cannot be known with certainty, a range of savings is estimated between a low population (0 to 20 percent) of efficient lamps and a higher population (30 to 50 percent) of efficient lamps. The federal requirements would save between 2,290 and 4,600 gigawatt−hours of electricity in California the first year the standard is in effect. After existing

stock fully turns over, the federal requirements would have an annual electricity savings in California between 4,000 and 13,600 gigawatt−hours. The annual electricity savings equate to a value between $736 million and $2.4 billion in annual savings, after stock fully turns over, to California businesses and individuals.

The federal requirements, which the proposed regulations are meant to codify in California law, will have a significant positive impact on the environment through energy efficiency gains and avoiding greenhouse gas emissions and criteria pollutant emissions associated with the generation of electricity from fossil fuels. No additional environmental benefits are expected as a result of the proposed regulations.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

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

On January 19, 2017, DOE published two Federal Register notices of final rules adopting a revised definition for general service lamps. The effective date for the final rules is January 1, 2020. The Energy Commission used information from the DOE final rules to support the proposed regulation. The Energy Commission has prepared the proposed regulations to reflect federal law and regulations effective January 1, 2020.

The proposed regulations maintain the baseline conditions that exist due to federal law and regulation — the prohibition of sale of low efficacy general service lamps beginning January 1, 2020. This results in no economic impact due to the proposed regulations. Manufacturers are obligated to comply with federal appliance efficiency standards and the proposed changes to the requirements do not increase the expected requirements but align with the DOE requirements. The federal requirements will be effective nationwide and all regulated parties will have to comply with them regardless of California's regulations. Manufacturers will have needed to prepare to comply with the federal regulations well ahead of the January 1, 2020, effective date, as only compliant products may be sold on or after that date. Therefore, even in the event of a federal repeal of the definitions, there will not be an economic impact on businesses or consumers from having to comply with the state standards, which ensure the continuation of the federal standards in case of repeal.

The proposed regulations would not change the efficiency levels, types of products, or effective dates applicable already under federal law and regulation. The proposed regulations do not add any reporting requirements for these lamp types.

BUSINESS REPORT

The proposed regulations do not add any reporting requirements for these products.

SMALL BUSINESS

The Energy Commission is not aware of any significant cost impacts that a small business would incur in reasonable compliance with the proposed action. For purposes of this analysis, the Energy Commission used the consolidated definition of small business contained in Government Code section 11346.3(b)(4)(B). The proposed regulations maintain the baseline conditions that exist due to federal law and regulation — the prohibition of sale of low efficacy general service lamps beginning January 1, 2020. This results in no economic impact due to the proposed regulations. Manufacturers are obligated to comply with federal appliance efficiency standards and the proposed changes to the requirements do not increase the expected requirements but align with the DOE requirements. The federal requirements will be effective nationwide and all regulated parties will have to comply with them regardless of California's regulations. Manufacturers will have needed to prepare to comply with the federal regulations well ahead of the January 1, 2020, effective date, as only compliant products may be sold on or after that date. Therefore, even in the event of a federal repeal of the definitions, there will not be an economic impact on businesses or consumers from having to comply with the state standards, which ensure the continuation of the federal standards in case of repeal.

The proposed regulations would not change the efficiency levels, types of products, or effective dates applicable already under federal law and regulation. The proposed regulations do not add any reporting requirements for these lamp types.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Commission 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 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 Energy Commission invites interested persons to present statements or arguments concerning alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSON

Please direct inquiries concerning all aspects of the rulemaking process including requests for copies of the proposed text (the "express terms"), the initial statement of reasons (ISOR), any modified version of the regulations, the substance of the proposed regulations, or any other information upon which the rulemaking is based to:

Corrine Fishman
Regulations Manager, Efficiency Division
1516 Ninth Street
Sacramento, CA 95814−5512
(916) 654−4976
Corrine.Fishman@energy.ca.gov

If Corrine Fishman is unavailable, you may contact Patrick Saxton at Patrick.Saxton@energy.ca.gov or (916) 654−4274.

COPIES OF THE INITIAL STATEMENT OF REASONS, THE EXPRESS TERMS, AND RULEMAKING FILE

The Energy Commission 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 express terms, the Initial Statement of Reasons (ISOR), documents incorporated by reference, and documents relied upon. Copies may be obtained by contacting Corrine Fishman at the address or phone number listed above or accessed through the Energy Commission's website at https://www.energy.ca.gov/appliances/2019−AAER−04/

AVAILABILITY OF SUBSTANTIAL CHANGES TO ORIGINAL PROPOSAL FOR AT LEAST 15 DAYS PRIOR TO AGENCY ADOPTION/REPEAL/AMENDMENT OF RESULTING REGULATIONS

Participants should be aware that any of the proposed regulations could be substantively changed as a result of public comment, staff recommendation, or recommendations from commissioners. Moreover, changes to the proposed regulations not indicated in the express terms could be considered if they improve the clarity or effectiveness of the regulations. If the Energy Commission considers changes to the proposed regulations pursuant to Government Code Section 11346.8, a full copy of the text will be available for review at least 15 days prior to the date on which the Energy Commission adopts or amends the resulting regulations.

COPY OF THE FINAL STATEMENT OF REASONS

At the conclusion of the rulemaking, persons may obtain a copy of the Final Statement of Reasons (FSOR), once it has been prepared, by visiting the Commission's website at https://www.energy.ca.gov/appliances/2019−AAER−04/ or contacting the contact person listed above.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Energy Commission maintains a website in order to facilitate public access to documents prepared and considered as part of this rulemaking proceeding. Documents prepared by the Energy Commission for this rulemaking, including this Notice of Proposed Action, the express terms, and the Initial Statement of Reasons have been posted on our website at https://www.energy.ca.gov/appliances/2019−AAER−04/.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND WILDLIFE

CESA CONSISTENCY DETERMINATION REQUEST FOR
Green Diamond Resource Company Forest Habitat Conservation Plan
2080−2019−008−01
Del Norte and Humboldt Counties

The California Department of Fish and Wildlife (CDFW) received a notice on July 31, 2019 that the Green Diamond Resource Company proposes to rely on an intra−Service biological and conference opinion to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The proposed project involves forest management activities on approximately 357,412 acres of Green Diamond timberlands in Del Norte and Humboldt Counties. Proposed activities will include, but are not limited to, land management; growing, harvesting,

and transporting timber; timber stand regeneration and improvement; retention of trees and wood; road and landing construction, reconstruction, and maintenance; and monitoring and research (i.e., northern spotted owl monitoring and barred owl (*Strix varia*) experimental removing) activities. The proposed project will occur on Green Diamond timberlands in Del Norte and Humboldt Counties, California.

The U.S. Fish and Wildlife Service (Service) issued a federal biological opinion (Service Ref. No. AFWO−19B0005−19F0017) which considered the effects of the proposed project on state and federally threatened northern spotted owl (*Strix occidentalis caurina*).

Pursuant to California Fish and Game Code section 2080.1, the Green Diamond Resource Company is requesting a determination that the BO, its associated ITS, and the ITP are consistent with CESA for purposes of the proposed project. If CDFW determines the BO, its associated ITS, and the ITP are consistent with CESA for the proposed project, the Green Diamond Resource Company will not be required to obtain an incidental take permit under Fish and Game Code section 2081 subdivision (b) for the proposed project.

DEPARTMENT OF FISH AND WILDLIFE

HABITAT RESTORATION AND ENHANCEMENT ACT CONSISTENCY DETERMINATION NO. 1653−2019−044−01−R3

Project: Calistoga Elementary Biotechnical Streambank Stabilization Project

Location: Napa County

Applicant: Chris Ochs, Calistoga Joint Unified School District

Background

Project Location: The Calistoga Elementary Biotechnical Streambank Stabilization Project (Project) is located at 1327 Berry Street in Calistoga, Napa County (38.57973 Latitude, −122.58265 Longitude), at the Calistoga Elementary School, and affects the downstream right bank of the Napa River. The Napa River supports populations of California freshwater shrimp (*Syncaris pacifica*), steelhead trout (*Oncorhynchus mykiss*), and fall−run Chinook salmon (*Oncorhynchus tshawytscha*).

Project Description: During a series of winter storm events in January and February 2017, flood flows along the Napa River undermined the streambank bordering Calistoga Elementary School and caused significant bank failure along approximately 105 linear feet of channel. The Project was implemented in the summer of 2017 to construct a stable bank with a combination of vegetated rock rip rap, fabric encapsulated soil wrapped lifts vegetated with native plantings, and large woody debris to protect the toe of the bank. During a series of winter storm events in 2018, bank erosion was observed on the downstream end of the project, adjacent to where the large woody debris (i.e., fallen tree with root mass) was installed. The Project will remediate bank erosion by removing a portion of the large woody debris and placing small rock, cobble, and gravel in the eroded area. The area will be planted with two rows of willow poles, 30 willow poles in total planted on 2−foot centers. Additionally, small rock and gravel will be placed in the interstitial spaces of the vegetated rock rip rap, immediately upstream of the eroded area, which was constructed in 2017.

Project Size: The total area of ground disturbance associated with the Project is approximately 0.117 acres and 185 linear feet. The remediation work associated with the Project is approximately 0.03 acres and 40 linear feet. 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, section 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: (1) rock rip rap (i.e. small rock, cobble, and gravel), (2) native vegetation (i.e. willow pole plantings), and (3) large woody debris.

Project Timeframes:

Start date: August 2019
Completion date: October 2019
Work window: June 15 to October 2019

Water Quality Certification Background: Because the Project's primary purpose is habitat restoration intended to improve the quality of waters in California, the San Francisco Regional Water Quality Control Board (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), CIWQS Reg. Meas. 414317, CIWQS Place ID 836598 for the Project. The NOA describes the Project and requires the Applicant to comply with terms of the Order. Additionally, the Applicant has provided a supplemental document that sets

forth measures to avoid and minimize impacts to California freshwater shrimp.

Receiving Water: Napa River

Filled or Excavated Area:

Permanent area impacted: 0.017 acres maximum
Temporary area impacted: 0.1 acres maximum
Length temporarily impacted: 105 linear feet
Length permanently impacted: 85 linear feet

Dredge Volume: None.

Discharge Volume: 550 cubic yards of rock, 665 cubic yards of native soil and permeable fill, including two large wood structures and native riparian vegetation.

Project Location: 38.57973 degrees Latitude, −122.58265 Longitude

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, section 21000 et seq.).

On July 16, 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 July 19, 2019 for publishing in the General Public Interest section of the California Regulatory Notice Register (Cal. Reg. Notice File Number Z−2019−0718−03) on August 2, 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 the Project, as required by Fish and Game Code section 1653, subdivision (b)(4), were included in an attachment to the NOI, which contains the following categories: (1) Administrative Measure; (2) Work Period and Design; (3) Wildlife Prevention and Protection; (4) Vegetation; and (5) Erosion Control and Water Quality. The specific avoidance and minimization requirements are found in an attachment to the NOI, *Avoidance and Minimization Measures for Adaptive Management Actions — Calistoga Elementary Biotechnical Streambank Stabilization Project.*

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 includes a minimum of five years of monitoring and provides performance standards, and monitoring parameters and protocols. Specific requirements of the plan are found in an attachment to the NOI, *Calistoga Elementary Streambank Stabilization Project Monitoring Plan,* prepared by Environmental Science Associates, dated July 2019.

Notice of Completion

Coverage under the State Water Resources Control Board General 401 Water Quality Certification Order for Small Habitat Restoration Projects requires the Applicant 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;
- CIWQS Reg. Meas. 414317, CIWQS Place ID 836598;
- 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, CIWQS Reg. Meas. 414317, CIWQS Place ID 836598 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: Garrett Allen, Environmental Scientist (garrett.allen@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 and G. Code, section 1654, subd. (c).)

DEPARTMENT OF FISH AND WILDLIFE

HABITAT RESTORATION AND ENHANCEMENT ACT CONSISTENCY DETERMINATION NO. 1653−2019−041−001−R1

Project: Upper Shasta River Habitat Improvement Project

Location: Siskiyou County

Applicant: California Trout (CalTrout)

Background

Project Location: The Upper Shasta River Habitat Improvement Project (Project) is located at 13521 Big Springs Road, in Montague, California at a property owned by Hidden Valley Ranch, Assessor Parcel Numbers (APN) 020−040−080, 020−040−070, 020−050−020, 020−050−320, and 020−050−330, and affects the Shasta River, within the Shasta Valley Hydrologic Unit 105.50 The Shasta River supports populations of Coho salmon (*Oncorhynchus kisutch*) and migratory birds.

Project Description: CalTrout (Applicant) proposes to enhance or restore habitat within the Shasta River to provide a net conservation benefit to Southern Oregon Northern California Coast Coho salmon. The Project will construct riffle and large woody debris structures, as well as enhance the riparian corridor and an existing off−channel alcove. The project consists of building riffle structures within the wetted channel in a 1.5−mile−long reach of the Shasta River, immediately downstream of Dwinnell Dam. A total of five riffles will be built and the average riffle length will be approximately 60 feet, with a combined total length of approximately 306 feet. Approximately 200 cubic yards total of coarse aggregate will be used to construct the riffles and another 54 cubic yards of spawning gravel will be placed on the riffle faces. Building an aggregate riffle structure will provide stability in the channel bed to hold the spawning gravel in place at varying discharges and provide a catch point for any additional gravel injection that may occur within the reach in the future. These riffles will add channel complexity to the reach, changing the reach from a long run to adding several pool−riffle−run features. This will provide spawning habitat and pool habitat for rearing salmonids, as well as some potential for hyporheic cooling.

The riffles will be constructed within the channel without needing an extensive dewatering plan. Project implementation will be scheduled when water deliveries from Dwinnell Dam and discharge from Hidden Valley Springs are at minimum base flows and water temperatures exceed 18 degrees C. These conditions would make it unlikely for Coho salmon to be rearing within the project area during implementation. However, turbidity monitoring will be performed, per the Protective Measures identified in the Notice of Intent (NOI), to ensure water quality impacts do not extend beyond the property where work is occurring.

A total of 50 juniper trees, from outside of the riparian zone, will be used in the large woody debris (LWD) structures that will be built within the project footprint. Approximately ten trees have already been harvested and stockpiled. The additional 40 trees with rootwads will be harvested on−site, in the uplands, within the total project footprint. Trees will be no larger than 12 to 18 inches in diameter at breast height. The average instream impact associated with each LWD structure will be less than seven linear feet, totaling 168 feet for all structures. The structures will be placed on either side of the bank to direct flow toward the thalweg of the constructed riffles and to reduce any channel stress or erosion. The primary purpose of the rootwad structures is to increase pool depth and provide cover for rearing and migrating juvenile Coho salmon.

To increase riparian shading and potential future LWD recruitment, a riparian planting plan will be implemented along the riverbanks. Approximately 100 woody riparian species, primarily willows, will be pole planted and caged.

The final component of the project will enhance an existing cold−water alcove. The alcove currently receives cold water from a spring on Hidden Valley Ranch. When receiving spring water, the alcove maintains water temperature that could support rearing Coho salmon throughout the summer. Currently, the alcove is small and lacks cover. To reduce the mixing of warmer water with the cold water in the alcove, a 15−foot long boulder fence will be built in the channel to extend the alcove and keep cold water along the right bank.

The project will be constructed and implemented in accordance with all supplemental information provided in the NOI, including the Water Quality Monitoring Plan and Protective Measures for Coho Salmon during Construction Activities, the Protective Measures for Terrestrial Wildlife Species during Construction Activities, the General Protective Measures, and the Upper Shasta River Habitat Improvement Project Plans.

Project Size: The total Project area is approximately 3.54 acres and 494 linear feet. 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, section 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: coarse aggregate, boulders, rootwads, and spawning gravel.

Project Timeframes:

Start date: July 1, 2019
Completion date: December 31, 2020
Work window: July 1 through November 15
Number of workdays: Approximately four weeks

Water Quality Certification Background: Because the Project's primary purpose is habitat restoration intended to improve the quality of waters in California that will provide 1.5 miles of spawning habitat and pool habitat for rearing salmonids, the North Coast Regional Water Quality Control Board (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. 1A190063WNSI, Electronic Content Management Identification (ECM PIN) No. CW−858742 for the Project. The NOA describes the Project and requires the Applicant to comply with terms of the Order. Additionally, the Applicant has provided a supplemental document that sets forth measures to avoid and minimize impacts to Coho salmon and migratory birds.

Receiving Water:

Shasta River

Filled or Excavated Area:

Area impacted: 3.54 acres
Length impacted: 494 feet

Dredge Volume:

None.

Discharge Volume: Approximately 200 cubic yards of course aggregate, 200 cubic yards of rock riprap, 50 rootwads, 100 riparian trees, and 54 cubic yards of spawning gravels will be discharged to waters of the state.

Project Location:

Upstream:
Latitude 41.547639 degrees N
Longitude −122.384504 degrees W

Downstream:
Latitude 41.553009 degrees N
Longitude −122.398665 degrees 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 NOI complies with the California Environmental Quality Act (Pub. Resources Code, section 21000 et seq.).

On July 9, 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 July 9, 2019, for publishing in the General Public Interest section of the California Regulatory Notice Register (Cal. Reg. Notice File Number (Z−2019−0709−03) on July 19, 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 an attachment to the NOI, which contains the following categories: (1) General protection measures; (2) Protective measures related to equipment use; (3) General erosion control during construction; (4) Guidelines for temporary stockpiling; (5) Pre rainstorm and post construction erosion control; and (6) Minimizing impacts to migratory birds. The specific avoidance and minimization requirements are found in an attachment to the NOI.

Monitoring and Reporting

As required by Fish and Game Code section 1653, subdivision (g), the Applicant included information on monitoring reports that will be submitted after each seasonal work period and upon project completion. Each report will include the pre− and post−project monitoring findings and indicate whether performance standards have been achieved. Specific details as to what each report will include can be found in Section VIII 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 Applicant 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.

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 and G. Code, section 1654, subd. (c).)

DEPARTMENT OF FISH AND WILDLIFE

PROPOSED RESEARCH ON FULLY PROTECTED SPECIES
Research on California Ridgway's Rail

The Department of Fish and Wildlife (Department) received a proposal on August 27, 2018 from Dr. Cory T. Overton, on behalf of the U.S. Geological Survey, Western Ecological Research Center, Dixon Field Station, Dixon, California, requesting authorization to take California Ridgway's rail (*Rallus obsoletus obsoletus*) formerly California clapper rail ('rail'), a Fully Protected bird, for scientific research purposes, consistent with conservation and recovery of the species. The rail is listed as Endangered under the California Endangered Species Act and Endangered under the federal Endangered Species Act.

Dr. Overton is planning to capture and attach tracking devices (GPS tags) on up to 20 individual rails using standard capture techniques. The captured rails will be transported, translocated, and released between marshes in the San Francisco Bay Area as described in the study proposal and federal recovery permit. The translocated sample size may be increased if necessary, as approved by the Department and the U.S. Fish and Wildlife Service (Service). Rails will also be measured, weighed, and banded, and blood and feather samples will be taken. Surveys for the rail will occur throughout their range in accordance with a standard protocol approved by the Department and the Service. Additionally, nests will be monitored and eggs may be candled and floated. If any rails are found dead, or unviable eggs are discovered, they will be salvaged and donated to a scientific institution open to the public, as designated by the Department and the Service. No adverse effects on rail populations are expected, and relocating rails to other occupied marshes will help increase gene flow and enable a feasibility assessment of this methodology for future use as a management and recovery tool. The research is necessary to help alleviate known genetic

problems resulting from the fragmentation and isolation of rail populations within San Francisco Bay area.

The Department intends to issue, under specified conditions, a Memorandum of Understanding (MOU) that would authorize qualified professional wildlife researchers, with Dr. Overton as the Principal Investigator, to carry out the proposed activities. The applicants are also required to have a valid federal recovery permit for the rail, and a scientific collecting permit (SCP) to incidentally take other bird species in California.

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 September 16, 2019, for an initial and renewable term of up to, but not to exceed four years. Contact: Esther Burkett, Esther.Burkett@wildlife.ca.gov, 916−531−1594.

DEPARTMENT OF HEALTH CARE SERVICES

Notice of 30−Day Public Comment Period August 12 — September 10, 2019 Home and Community−Based Alternatives (HCBA) Waiver Amendment

NOTICE IS HEREBY GIVEN that the Department of Health Care Services (DHCS) intends to submit an amendment to the Home and Community−Based Alternatives (HCBA) Waiver. This notice provides information of public interest with respect to DHCS seeking approval from the federal Centers for Medicare and Medicaid Services (CMS) to allow DHCS to amend the HCBA Waiver. The proposed HCBA Waiver Amendment will be effective upon approval from CMS.

WRITTEN PUBLIC COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments to the Department relevant to the amendment identified in this notice. All comments and input received during the 30−day public comment period will be considered for incorporation into the HCBA Waiver Amendment.

On August 12, 2019, the draft HCBA Waiver amendment will be posted to the DHCS HCBA Waiver webpage, at: https://www.dhcs.ca.gov/services/ltc/Pages/Home−and−Community−Based−(HCB)−Alternatives−Waiver.aspx

Public comments will be accepted from August 12, 2019 through 5:00 p.m. on September 10, 2019.

Public comments about the proposed HCBA Waiver amendment may be submitted to DHCS in writing or by email, to the following addresses:

Department of Health Care Services
Integrated Systems of Care Division, MS 4502
P.O. Box 997437 Sacramento, CA 95899−7437
Attention: HCBS Section

Email: HCBAIternatives@dhcs.ca.gov

The public comment period closes at 5:00 p.m. on September 10, 2019. Any written comments regardless of the method of transmittal must be received electronically by 5:00 p.m. or postmarked on this date, for consideration.

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# 2019−0621−02
AIR RESOURCES BOARD
Specially Produced Motor Vehicles

The California Air Resources Board is adopting the California Regulation and Certification Procedures for Light−Duty Engine Packages for Use in New Light−Duty Specially−Produced Motor Vehicles for 2019 and Subsequent Model Years to create a process for the certification of a specially−produced motor vehicle (SPMV), also referred to as a replica car, in California, which complies with applicable LEV II and LEV III emissions performance criteria. The procedure creates a simplified process for the SPMVs to be certified and sold in California by requiring engine packages to meet current Low Emissions Vehicle (LEV II and LEV III) exhaust standards and evaporative standards.

Title 13
ADOPT: 2209, 2209.1, 2209.2, 2209.3, 2209.4, 2209.5, 2209.6, 2209.7, 2209.8, 2209.9, 2209.10
Filed 08/05/2019
Effective 10/01/2019
Agency Contact: Bradley Bechtold (916) 322−6533

File# 2019−0722−02
BOARD OF EDUCATION
English Language Proficiency Assessments for CA

In this emergency rulemaking, the Board of Education is adopting and amending regulations to transition from a paper−based English Language Proficiency Assessment for California to an online test delivery system.

Title 5
ADOPT: 11518.37, 11518.77
AMEND: 11518, 11518.5, 11518.15, 11518.20, 11518.25, 11518.30, 11518.35, 11518.40, 11518.45, 11518.50, 11518.75
Filed 08/01/2019
Effective 08/01/2019
Agency Contact: Hillary Wirick (916) 319−0860

File# 2019−0619−01
BOARD OF FORESTRY AND FIRE PROTECTION
14 CCR Section 1052.1 Non−Substantive Amendments

This change without regulatory effect filing by the Board of Forestry and Fire Protection relocates, and revises the subdivision lettering of, regulatory provisions concerning conditions that constitute an emergency.

Title 14
AMEND: 1052, 1052.1
Filed 07/31/2019
Agency Contact: Eric Hedge (916) 653−9633

File# 2019−0723−01
BOARD OF FORESTRY AND FIRE PROTECTION
Emergency Post−Wildfire Recovery Regulations for Butte County

In this emergency readopt of OAL Matter No. 2019−0206−01E, the Board of Forestry and Fire Protection is providing an exemption from the plan preparation and submission requirements and from the completion report and stocking report requirements of the Z'berg−Nejedly Forest Practice Act of 1973 (Pub. Resources Code, sec. 4511, et seq.) to persons engaging in specified forest management activities, including the cutting or removal of dead or dying trees when within 300 feet of an Approved and Legally Permitted Structure that was damaged or destroyed by wildfire during the 2018 northern California wildfires in Butte County.

Title 14
ADOPT: 1038.6
Filed 08/01/2019
Effective 08/20/2019
Agency Contact: Eric Hedge (916) 653−9633

File# 2019−0723−02
BOARD OF FORESTRY AND FIRE PROTECTION
Exemption Emergency Regulations, 2019

This action by the Board of Forestry and Fire Protection readopts emergency regulations that established, restructured, and modified exemptions from the plan, completion report, and stocking report requirements of the Z'berg−Nejedly Forest Practice Act of 1973 in accordance with Statutes 2018, chapter 626 (Senate Bill 901). Pursuant to Statutes 2018, chapter 626, section 46, this action is deemed an emergency and shall remain in effect until revised by the board.

Title 14
AMEND: 1038, 1038.1, 1038.2, 1038.3, 1038.4
Filed 08/01/2019
Effective 08/01/2019
Agency Contact: Eric Hedge (916) 653−9633

File# 2019−0725−01
BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
Conflict−of−Interest Code

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: 59760
Filed 08/06/2019
Effective 08/06/2019
Agency Contact: Phil Laird (916) 653−4090

File# 2019−0627−05
CALIFORNIA HORSE RACING BOARD
Horse Ineligible to Start in a Race

In this action, the California Horse Racing Board amends its regulations so as to make ineligible for racing any horse that has not raced within 12 consecutive months of its previous start or that is four years of age or older and a first−time starter until the horse has performed satisfactorily in a workout or standardbred qualifying race.

Title 4
AMEND: 1588, 1866
Filed 08/06/2019
Effective 10/01/2019
Agency Contact: Harold Coburn (916) 263−6026

File# 2019−0624−04
DEPARTMENT OF INSURANCE
CAARP Plan of Operations

The Department of Insurance (DOI) submitted this action for filing and printing pursuant to Government Code section 11343.8. This action makes changes to the California Automobile Assigned Risk Plan (CAARP) Plan of Operations, which is incorporated by reference in title 10, California Code of Regulations, section 2498.4.9. This action is exempt from the Administrative Procedure Act pursuant to Insurance Code section 11620(c).

Title 10
AMEND: 2498.4.9
Filed 08/06/2019
Effective 08/06/2019
Agency Contact: Michael Riordan (415) 538−4226

File# 2019−0624−05
DEPARTMENT OF INSURANCE
CAARP Simplified Manual of Rules and Rates

In this file and print action, the California Department of Insurance amends the California Automobile Assigned Risk Plan Simplified Manual of Rules and Rates. This action is exempt from the Administrative Procedure Act pursuant to Insurance Code section 11620(c).

Title 10
AMEND: 2498.5
Filed 08/06/2019
Effective 08/06/2019
Agency Contact: Michael Riordan (415) 538−4226

File# 2019−0624−06
DEPARTMENT OF INSURANCE
Low Cost Plan of Operations

This file and print action by the Department of Insurance amends the California Automobile Insurance Low Cost Program Plan of Operations. This action is exempt from the Administrative Procedure Act pursuant to California Insurance Code section 11620(c).

Title 10
AMEND: 2498.6
Filed 08/06/2019
Effective 08/06/2019
Agency Contact: Michael Riordan (415) 538−4226

File# 2019−0625−01
DEPARTMENT OF PUBLIC HEALTH
Source Material Distribution and General License

In this rulemaking action, the Department aligns the state's regulations of source materials (uranium and thorium) with the federal regulations. The amendments and adoptions affect the sections related to general licenses, specific licenses, and exemptions to the licensing requirements. The amendments and adoptions also affect reporting and record keeping requirements.

Title 17
ADOPT: 30201, 30302, 30302.1
AMEND: 30181, 30191, 30192.6, 30293
Filed 08/07/2019
Effective 10/01/2019
Agency Contact: Dawn Basciano (916) 440−7367

File# 2019−0620−03
PUBLIC EMPLOYMENT RELATIONS BOARD
Repeal of fair−share/agency fee regulations and Repeal of IHSSEERA

This action amends and repeals regulations, as changes without regulatory effect, to (1) remove provisions governing public sector agency fee arrangements held invalid by the United States Supreme Court in Janus v. American Federation of State, County, and Min. Employees, Council 31 (2018) 138 S.Ct. 2448 and (2) remove a provision in response to the repeal of the In−Home Supportive Services Employer−Employee Relations Act by Senate Bill 90 (Stats. 2017, ch. 25).

Title 8
AMEND: 32700, 32721, 32724, 32998, 32999, 33015, 40160, 61000, 61020, 81000, 81020, 91000, 91020
REPEAL: 32990, 32992, 32993, 32994, 32995, 32996, 32997, 34020, 34030, 34035, 34040, 34050, 34055, 34060, 34065, 40400, 40410, 40420, 40430, 51700, 51710, 51715, 51720, 51725, 51730, 51735, 51740, 61600, 61610, 61620, 61630, 71700, 71710, 71715, 71720, 71725, 71730, 71735, 71740, 81600, 81610, 81620, 81630, 91600, 91610, 91620, 91630
Filed 07/31/2019
Agency Contact: Jessica Kim (510) 622−0111

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.